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Mike Fischer and Elena Ramlow: Civil forfeiture reform debate coming in 2017

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Concerned citizens across the political spectrum agree that it is an abuse of property rights and freedom for the government to seize and sell personal property under “civil forfeiture” laws. According to a [new survey](#) conducted by YouGov and the CATO Institute, 84 percent of Americans oppose the practice of civil forfeiture. The Institute for Justice, a nonprofit libertarian law firm, [concluded](#) that civil forfeiture abuse is rapidly expanding. Policymakers have taken notice, especially in Wisconsin; U.S. Congressman Jim Sensenbrenner and state Sens. Dave Craig and Steve Nass are calling for civil forfeiture reform.

Civil forfeiture laws, in general, permit police departments around the country to seize property they suspect is related to a crime. Law enforcement agencies argue these laws are necessary to prevent future criminal activity, which may be true in some cases. But as use has become more common, it is increasingly clear that civil forfeiture laws create an incentive problem. When police departments are given an opportunity to use civil forfeiture to increase their budgets, they tend to find more circumstances for seizing property. According to [experimental research](#), “the problem with civil forfeiture is not one of ‘bad apples’ but bad rules... when civil forfeiture puts people in a position to choose between benefiting themselves or the overall public, people choose themselves.”

Some states, including Wisconsin, allow police departments to keep seized property even if the owners are never actually charged with a crime. Wisconsin departments can do so without having to prove beyond a reasonable doubt — the standard in criminal cases — that the property they seize was actually used in a crime. Instead, they only have to establish to a reasonable certainty that the property they seized was connected to a possible crime.

Under Wisconsin’s statutes, law enforcement can keep 50 percent of the money made from selling seized property. Even if the property had no connection to a crime, the owner has to fight for its return by proving that it was not. This burden is often too much for people, especially those unable to hire a lawyer and make their case in court. As state Rep. Evan Goyke [explains](#), “Too often the law is used to seize the property of innocent people who are too poor to hire a lawyer to help them get it back.”

The extent of civil forfeiture abuse in Wisconsin is unknown because, in contrast to many other states, Wisconsin does not require police departments to report seizures. But news stories confirm that it is a prevalent issue.

As reported in the Journal Sentinel, an innocent Wisconsin father had his \$20,000 car seized because his daughter used it in connection with drug sales amounting to \$250 while at college, even though he had no knowledge of her involvement with drugs. The police kept the forfeited car, but the daughter was never charged with a crime. In an almost identical case, Whitewater police seized a woman's car because her grandson used it in a minor drug deal.

CBS 58 reported that from 2012 to 2013, the Racine County and Waukesha Sheriff's departments spent \$163,845 and \$159,827 respectively in civil forfeiture proceeds.

Bipartisan attempts have been made to reform Wisconsin's civil forfeiture laws. In 2015, bills were proposed in both the Assembly and Senate to restrict civil forfeiture to property deemed proportional to the crime and to mandate the return of seized property if the owner was not convicted. The reform bills also required profits from the sale of forfeited property to go into the state school fund — as forfeited cash currently does — instead of to the police department involved. Both bills failed to pass. However, Sen. Dave Craig plans to tackle this issue in 2017.

On the national level, Wisconsin U.S. Rep. Jim Sensenbrenner has led the charge for reform in Congress. His bill, the DUE PROCESS Act, would protect innocent owners whose property was used in a crime, give property owners the opportunity to immediately contest seizures, and raise the burden of proof from "preponderance of evidence" to "beyond a reasonable doubt." Sensenbrenner has called on the new Congress to pass the bill.

These are steps in the right direction. Laws that allow law enforcement to profit off seized property, combined with low requirements of proof and lack of accountability, incentivize bad behavior. Police should have to convincingly establish that property they seize was actually related to a crime and owners who are not convicted should be allowed to reclaim their property. Directing proceeds from civil forfeiture to a general or school fund instead of to the police departments involved would greatly align incentives and eliminate abuse.

A national movement to protect property rights is occurring; 19 states have reformed their civil forfeiture laws. It is time for Wisconsin to join them.