Policy Brief
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Civil Forfeiture 101

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Introduction

Civil asset forfeiture, or simply civil forfeiture, is a procedure whereby a law enforcement agency can seize and retain certain assets, like cash or a car, if there is reasonable suspicion that those assets were employed in the commission of a crime.

In many cases, they can keep the property even though the criminal charges are never proved. The controversial practice is lauded by law enforcement agencies as an effective and essential crime-fighting tool, particularly in the fight against drugs.

But civil forfeiture has earned increasing scrutiny as a result of attention to nationwide abuses whereby citizens that were not convicted or even charged have been faced with the costly prospect of fighting in court for the return of seized property. In many cases, the fight is an uphill one, requiring significant legal fees and other costs that many innocent individuals can ill afford.

Quick Hits

- Civil forfeiture allows law enforcement to seize property without a criminal conviction. This raises due process concerns and can lead to abuses of power.
- Wisconsin civil forfeiture law has three fundamental flaws:
  1. No criminal conviction requirement for property seizure,
  2. A low burden of proof to justify a seizure; police only need "preponderance of evidence," and
  3. No requirement for the government to track civil forfeiture. WILL open records requests highlight this lack of transparency.
- A bill, SB 61, puts Wisconsin in line with other states by fixing those problems through:
  - Requiring a criminal conviction for police to seize property
  - Raises the burden of proof
  - Creates mandatory reporting to increase transparency

The criticism of civil forfeiture is that it violates due process rights.

One of the foundational constitutional rights in the United States is the presumption of innocence. Civil forfeiture starts with the presumption of guilt. When law enforcement can seize assets based on a preponderance of evidence – the lowest legal threshold – and then can keep those assets without earning a criminal conviction, there is a serious abridgement of civil liberties. Even worse are those cases where innocent property owners, sometimes not even the person suspected of committing a crime, must use their own resources to pay an attorney to go to court in hopes of getting their property back.

The story of Wisconsin resident, Beverly Greer.

Beverly Greer[1] has come to represent how this system can be abused. In 2011, her son Joel Greer was arrested by a drug task force in Brown County. When his bail was set at $7,500, Beverly withdrew cash to pay her son's bail. But when she got to the jail, a drug sniffing dog was dispatched to see if Beverly's money was drug money. The dog indicated there were trace amounts of illegal drugs on Beverly's cash and the money was immediately seized, despite Beverly's ATM receipts. Without any due process, her money was gone and her son remained in custody. It took Beverly Greer and the attorney she was forced to hire four months to get her money back.

Other cases around the country are equally absurd. In 2016, an Oklahoma traffic stop resulted in the seizure of $53,000 from the manager of a Christian band touring the country.[2] The cash, raised through concert and CD sales, was earmarked for an orphanage and a Christian college in Southeast Asia. But law enforcement officers weren't buying the story, and took the cash on suspicion of drug trafficking. The money was eventually recovered after the story came to light. The DEA alone has taken $3.2 billion in the last decade from individuals never charged with a crime, according to a 2017 inspector general report.[3]

Wisconsin's civil forfeiture law has three fundamental problems.

1. Wisconsin does not require a criminal charge, much less a criminal conviction prior to initiating a civil forfeiture proceeding.

The only real protection for an individual who has had their assets seized is the right to request that forfeiture proceedings be delayed until after the adjudication of charges relating to the seizure of property, or a pretrial hearing making the case that the property should not be considered evidence.

In addition, current law does not specifically require a court to return property in the case of an acquittal or dismissal of charges. Therefore, it is difficult to determine just how many people never claim their assets due to the prohibitive cost of fighting in court. According to the Wisconsin Justice Initiative[4], 30 out of 43 civil forfeiture cases in Milwaukee County during 2015 resulted in default judgments. A default judgment

[1] "Under Asset Forfeiture Law, Wisconsin Cops Confiscate Families' Bail Money", The Huffington Post, May 21, 2012
[2] "How police took $53,000 from a Christian band, an orphanage and a church", Washington Post, April 25, 2016
[3] "Since 2007, the DEA has taken $3.2 billion in cash from people not charged with a crime", Washington Post, March 29, 2017
[4] "Council Supports Restricting Asset Forfeiture", UrbanMilwaukee.com, August 10, 2017

means that no one showed up to contest the seizure of property.[5] Just 4 cases out of 43 had someone show up to contest, and in 3 of those cases at least some property was returned.

2. Wisconsin's civil forfeiture proceedings are subject to a low burden of proof.

Forfeiture proceedings are required to satisfy the lowest burden of proof – a preponderance of evidence that property was used in service of a crime. This stands at odds with criminal proceedings that require proving guilt beyond a reasonable doubt. This creates an obvious tension whereby the burdens of proof are different for an individual suspected of committing a crime versus the property seized.

3. Current law does not require uniform tracking and reporting of civil forfeiture.

This obscures the public's ability to ascertain the full extent of civil forfeiture by Wisconsin law enforcement and whether the process is abused or conducted properly within the scope of the law. The Wisconsin Institute for Law & Liberty attempted to test how local law enforcement tracks and reports civil forfeiture. Eight open records requests were sent to law enforcement agencies throughout the state of Wisconsin, including the Wisconsin State Patrol.

Civil Forfeiture 2013-2016

AGENCY	FUNDS RECEIVED	FUNDS SPENT
BEAVER DAM POLICE DEPARTMENT	N/A	N/A
BELOIT POLICE DEPARTMENT	N/A	N/A
DODGE COUNTY SHERIFF	$7,330.00	$27,370.00
EAU CLAIRE SHERIFF/POLICE	N/A	N/A
LANGLADE COUNTY SHERIFF	$4,680.00	$6,863.70
RACINE COUNTY SHERIFF	N/A	N/A
ROCK COUNTY SHERIFF	$24,399.90	$223,027.12
WISCONSIN STATE PATROL	$291,327.56	$574,157.91
TOTAL	**$327,737.46**	**$831,418.73**[6]

N/A signifies a law enforcement agency could not or did not produce any summary reports of civil forfeiture.

The results highlight one of the central problems of Wisconsin's civil forfeiture law: inconsistent reporting. Wisconsin law enforcement agencies rarely have any documents related to civil forfeiture unless they have entered into an equitable sharing agreement with the federal government. All other civil forfeitures are not uniformly tracked and reported, leaving interested observers with the task of scouring circuit court records and databases for the unusual names of cases like *State of Wisconsin vs. One 2003 Saab 9-3 Linear 4 Door Sedan, et al* (a civil forfeiture case from Milwaukee County in 2015) or *State of Wisconsin vs. One 2005 Ford Freestyle, et al* (another civil forfeiture case from Milwaukee County in 2015).

[5] A default judgement does not mean that a civil forfeiture was improper. But the costs of contesting forfeiture in court make it difficult to know the exact reasons why property owners are failing to show up.

[6] Law enforcement agencies were able to spend more than they took in due to building up a large balance of funds from previous civil forfeiture.

Senate Bill 61, introduced in February 2017 with bipartisan support, provides a meaningful overhaul of Wisconsin's civil forfeiture laws.

The 2017-18 legislative session features a significant civil forfeiture reform effort. In September 2017, SB 61 passed out of the Senate Committee on Labor and Regulatory Reform by a 3-2 margin. In its current form, as amended in committee, SB 61 addresses the three most troublesome aspects of the current civil forfeiture law.

CURRENT LAW	SB 61
No criminal conviction requirement, no requirement for the court to return property in cases of acquittal or dismissal of charges	• SB 61 prohibits property forfeiture without a criminal conviction for a crime which served as the basis for seizure. The bill lays out six exceptions for the conviction requirement that include if the defendant has died, been deported, fled the jurisdiction, or been granted immunity. • SB 61 requires the court to return any property subject to forfeiture within 30 days of acquittal or dismissal of charges.
A low burden of proof requiring only a preponderance of evidence	SB 61 requires the state to prove with clear and convincing evidence that property is subject to forfeiture.
Inconsistent reporting of civil forfeiture from law enforcement agencies.	SB 61 requires itemized reporting of forfeiture expenses for property taken under the Controlled Substance Act, non-drug related crimes, as well as federal forfeiture proceedings. All forfeiture expenses will be reported and submitted to the Wisconsin Department of Administration and available on the DOA website.

These are important reforms for freedom and property rights.

Moving Wisconsin from a state with civil forfeiture to criminal forfeiture, raising the burdens of proof for forfeiture, and creating a mandatory reporting system will better safeguard civil liberties in the Badger State, without altogether eliminating a program that law enforcement agencies endorse.