



Legislative Testimony on Forfeiture Package
HB 4599, 4500, 4503-08

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We are pleased that serious attention is being given to reforming our civil asset forfeiture laws, particularly following growing public awareness about forfeiture abuse around the country.

We have reviewed and support the bills before the committee today because a robust reporting requirement will give us the ability to analyze how forfeiture laws affect Michigan citizens, which is a solid first step to making needed reforms to our forfeiture laws.

I'd like to focus my testimony today on the abuses that occur under a Michigan forfeiture statute known as the "nuisance abatement" law. See M.C.L. §§ 600.3801-600.3840.

The Nuisance Abatement Law

The nuisance abatement law, which was historically called the "padlock statute," was originally enacted to allow the state to close business establishments that were covers for illegal operations such as brothels, gambling dens, drug houses, and blind pigs.

It allows the prosecutor to initiate a civil action to "abate" the nuisance by getting an injunction from the court that padlocks the establishment for a year. The owner of the property would naturally have the opportunity to contest the case and argue that the building should not be "padlocked."

Unfortunately, a few quirks in the nuisance abatement law have led law enforcement agencies to treat it as a forfeiture statute and, unfortunately, deprive Michigan citizens of basic constitutional rights that we take for granted in a free society.

The trouble begins with how the statute defines "nuisance." Not only is any "building" used for illegal business a nuisance, so is any "vehicle" that is being used for such activity.

To make matters worse, the statute does more than allow the prosecutor to get an injunction against the use of the nuisance property. The general remedy for a *building* is the "padlocking" injunction to shut down the illegal business. In contrast, for a *vehicle*, the state is allowed to take possession of a person's car, sell it at auction, and keep the money.

Thus, courts have recognized that the “nuisance abatement” law, while once primarily used for “padlocking” illegal businesses, is in reality a “forfeiture” law that is now used to seize and take ownership of someone’s car. *Bennis v. Michigan*, 516 U.S. 442, 453 (1996).

In theory, the vehicle’s owner can challenge the forfeiture in court. In practice, however, that almost never happens. The police take possession of the vehicle immediately, and it is the owner’s obligation to file a claim and schedule a court hearing.

The wait for a court hearing (particularly in Detroit) can be several months, and typically the citizen would need to hire and pay for a lawyer who understands the complex law in this area.

Because nuisance abatement is a civil action, there is no right to a court-appointed attorney.

Taking advantage of this situation, the police and prosecutor’s office have developed an abusive, extrajudicial alternative that does not involve court oversight or any due process.

As soon as the police seize a vehicle, they notify its owner that if they are willing to immediately fork over a “redemption fee” of \$900 plus towing and storage fees to “settle” the nuisance abatement case, their car will be returned to them promptly.

Thus, the citizen is left with the “choice” of either (a) hiring a lawyer and waiting months for a court hearing, which could ultimately result in the total and permanent loss of the vehicle, or (b) paying about \$1000 in what is essentially ransom money for the prompt return of their car.

Not surprisingly, most vehicle owners who can afford the so-called redemption fee choose option (b). Some do not have the resources to pursue either option, so they never see their cars again. It is rare that a citizen is willing and able to spend the money to hire an attorney, mount a court case, and obtain a judicial ruling.

The result is a broken system where police seize thousands of cars and are almost never called upon to justify their conduct in a court of law.

Documented Abuses

Police abuse of the nuisance abatement law has been a public embarrassment in Michigan, and in Wayne County in particular, for decades. There are numerous well-documented examples, but due to time limitations I will just tell you about one.

The infamous “CAID raid” of 2008: The Detroit police raided the Contemporary Art Institute of Detroit (“CAID”) because the non-profit arts organization was hosting fundraisers without obtaining the proper permits.

Instead of using the “padlocking” function of the nuisance abatement law to shut down the allegedly illegal fundraiser, the police arrested everyone who was there (over 100 patrons) merely for being present and confiscated all of their cars (about 45 in total) for forfeiture under the nuisance abatement law.

Although the nuisance abatement statute says that cars are a nuisance only if they are “used for” illegal activity, the police argued that the cars could be forfeited because they “contributed” to the nuisance because they were used to drive innocent people to a fundraising event hosted by an

organization that did not obtain the proper permits in advance. One individual's car was taken even though he had parked it at a friend's house nearly a mile away.

The police did not pursue any criminal charges, but they insisted on \$1000 "redemption fee" payments before returning the cars. In the ACLU's civil rights lawsuit about the incident, it was revealed that the city keeps \$600 from the fee paid for each car, and that Detroit had used the nuisance abatement law to generate over \$1 million in revenue over a five-year period.

After several years of costly litigation, a federal judge ruled that the seizure of the cars was unconstitutional.

Conclusion

Reporting requirements will hopefully deter some of the more egregious abuses of the nuisance abatement law, and if they don't then the legislature will have the data they need to justify further reform.

Civil asset forfeiture reforms are badly needed all over the country, and this is an issue that unites voices on the left and the right. Thank you for be willing to take a solid first step in restoring the civil liberties of Michigan citizens when it comes to forfeiture abuse.

