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To: The Honorable Rick Jones, Committee Chair, Senate Judiciary Committee
Members of the Senate Judiciary Committee

From: Prosecutor Kym L. Worthy
Wayne County Prosecuting Attorney's Office

Re: HB 4629 (Rep. P. Lucido) -Eliminates requirement for putative property owner to provide refundable cash bond to contest forfeiture of property legally seized under probable cause standard. Amends the Public Health Code; 333.7523 & 333.7524.

Date: May 10, 2016

The Wayne County Prosecuting Attorney's Office opposes HB 4629 in its current form. Nevertheless, we appreciate Representative Lucido's concerns for bringing this legislation and want to acknowledge the time Representative Lucido took to discuss his concerns with my office.

CONCERNS (As presented by Representative Lucido):

- a.) What is the purpose for requiring a bond in forfeiture cases?
- b.) Doesn't requiring a bond prevent many individuals, e.g. indigent individuals who may not be able to pay for a bond, from having their claims to seized property heard in court?
- c.) Is it wise to have the police assess the value of seized property, especially since the value of the seized property becomes the basis for the amount of bond required to be posted?

a.) What is the purpose for requiring a bond in forfeiture cases?

Cuts down the number of specious, spurious and baseless claims arising from seizures of property for which police had probable cause were related to drug crimes. Otherwise, the enormous volume of specious, spurious and baseless claims would overwhelm police, the legal system and the efficient use of the forfeiture law to combat the scourge of drug crimes.

- Requiring a bond ensures claimants are serious in contesting the seizure and have a good faith belief their claim is valid/worthy of the additional significant costs associated with forfeiture litigation.
 - For example, without a bond being required, many more specious, spurious and baseless claims to seized property would be made by “straw owners” – those who never truly had an ownership interest but were merely used to obtain the property in name only. Many drug dealers use straw owners to hide their illegitimate property.
- Without a bond the number of persons making claims against forfeiture of property, most of which will be specious, spurious and/or baseless claims, will dramatically increase.
- Eliminating the bond will simply permit anyone who merely wishes to contest the seizure to do so, regardless of whether their interest/claim is valid.
 - Other more obvious spurious and baseless claims, such as cases in which it is patently obvious to any reasonable person that the property was related to drug dealing, may be made by putative claimants just on the odd chance that they might get their property back either because it would fall through the cracks in the deluge of cases or because they have nothing to lose in trying.
- Without a bond this flood of increase in claimants will cause the following negative results:
 - Significantly increase the number of cases to be reviewed or filed by prosecutors for forfeiture of property, flooding and inundated the office with cases.
 - Based upon discussions with the Detroit Police Dept. forfeiture unit alone, there would be approximately well over a 200% increase in the number of cases that would need to be filed. Our office is already working at 200% over capacity. Though certainly the largest, this does not include the many other jurisdictions in Wayne County. Such a deluge of cases from the

Detroit Police Dept. alone will be overwhelming and make it impossible to operate.

- Require prosecutors to file more forfeiture lawsuits in circuit courts, adding to costs, time and energy for drafting and filing complaints and service of process on claimants.
- Increase court dockets and court clerks work.
- Increase litigation time before trials could be set, further clogging already overly busy prosecutors and court dockets, and delay and hamper the ability of prosecutors to deal with more serious and worthy cases in which bonds would have been posted by Claimants.
- Increase the number of trials because the flood of claimants who do not have any additional stake in the litigation (nothing to lose) and will demand more trials.
- More trials means officers who are witnesses will not be on the street to enforce the laws.
- More trials mean more clogged court dockets, longer waiting times and stifled justice for litigants to obtain justice/closure in their cases.
- Increased litigation costs all around for the prosecutor's offices, courts, and police, and even the claimants themselves.
- When police & prosecutors offices are flooded with the increase in cases, they will not be able to function properly; many cases will simply be dropped or fall through the cracks.
- Because of the flood of specious, spurious and baseless cases, the forfeiture law will be stifled and rendered ineffective as the valuable remedial tool it has been.

b.) Indigent claimants:

- The Wayne County Prosecutor's Office and the Third Circuit Court already permit a waiver of the bond from the court by signing an affidavit of indigency form.
- Compromise solution 1: Simply place this process expressly into the statute.

- **THE POSTING OF A BOND IS NOT REQUIRED IF THE VALUE OF THE SEIZED PERSONAL PROPERTY EXCEEDS \$50,000.00 OR IF THE PERSON CLAIMING THE PROPERTY PROVIDES PROOF OF BEING ON STATE AID AND A SWORN AFFIDAVIT IN SUPPORT THEREOF.**
 - Compromise solution 2: Reduce the amount of the bond required from the current 10% of the value of the property (under \$50,000) to essentially 1% through a two-tier bond rate.
 - **IN THE AMOUNT OF \$250.00 WHEN THE VALUE OF THE SEIZED PROPERTY IS LESS THAN \$25,000.00 OR \$500.00 WHEN THE VALUE OF THE SEIZED PROPERTY IS GREATER THAN \$25,000.00 BUT LESS THAN \$50,000.00.**
- c.) **Concern of police setting amount of the bond by assessing of the property value:**
- Rarely an issue in our experience, as our office consistently educates police on proper assessment of property values.
 - Compromise solution: Set a two-tier bond rate which significantly reduces police discretion in determining property value while maintaining integrity of contested claims. See “Compromise solution 2” above.

Conclusion: We oppose the bill as read for the above reasons but would be willing to work with the sponsor and others to reach compromises to address the concerns without the detrimental and very negative effects of eliminating the bond altogether. I hope this has helped in understanding our responses to these concerns with the legislation and we’d be happy to answer any questions. Thank you for your time and consideration.