

Testimony of Larry Gamble of the Wisconsin GrandSons of Liberty speaking in favor of SB521
(2015) to the Senate Committee on Labor and Government Reform – 26 January 2016.

Chairman Nass, senators, thank you for the opportunity to speak in favor of SB521 today. In supporting SB521, this is NOT calling for the elimination of Criminal asset forfeiture which is an extremely powerful and necessary tool in the fight against organized crime. What we oppose, strongly and primarily, is the abandonment of Due Process that permeates current Civil asset forfeiture procedures which results in people never being charged or not being convicted of a crime with forfeiture as a penalty... but they are losing their private property.

Effective and proper Civil Asset forfeiture requires the charging and convicting of a crime which carries a forfeiture penalty and then the forfeiture penalty must be in proportion to the final monetary penalties imposed upon the person convicted of that crime authorizing a forfeiture penalty. If the evidence does not lead to charges and a conviction, then the person's seized property is immediately and automatically returned. Secondly, the use of civil forfeiture must not create incentives that lead to abuse by local and state law enforcement if they stand to reap a financial windfall from the forfeiture process. Equally important and currently severely lacking in Wisconsin's civil forfeiture statues need a requirement for transparency by tracking and reporting the asset forfeiture actions.

The egregious reputation of modern civil asset forfeiture lies in the way it is applied.

Because of the differences in personal rights and property rights; a person is entitled to certain constitutional protections. But, when it comes to cash or other property, the police merely need to have a suspicion that someone's property (usually cash) is involved with or is the proceeds of illicit activity, and they can seize it. Specifically, our modern judicial process separate people from their property and forces each into its own channel in the judicial process. Regarding carrying cash; this turns innocent people into suspected criminals just because they happen to carry a large amount of cash. Independent studies have shown most paper currency in circulation more than 90 days will have trace amounts of drugs; this means K-9 units have unfair advantage when encountering cash. Yet, this alert by a police dog can be the only supporting reason for the officer to suspect illicit activity and seize your savings, or just hard earned money.

In two years of closely following this issue, I have yet to find a defined amount that sets the lower limit of what is considered an unreasonably large amount of cash for anyone to have on their person. Every Federal Reserve Note printed carries the imprint that it is legal tender, so how does carrying legal tender become a quasi-illegal act? But the overriding point here is that once the person and their property are separated in the judicial process, the person must defend their cash or property at significant personal expense. Because of the expense of defending your property, it's not uncommon for the victim to forfeit the property rather incur the expense of defending the innocence of their property. The result is that it is easier to lose your property than fight for it.

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SB521/AB537 address the reform of Civil forfeiture and it is a bi-partisan issue. This common ground is how grass roots groups like Wisconsin GrandSons of Liberty and the Wisconsin chapter of the ACLU can be working together to support this much needed reform.

In 2015, Whitewater, WI; law enforcement lost an appeal regarding the forfeiture of an innocent third party's vehicle when the owner's grandson used the vehicle to travel to on three occasions to make a drug deal with undercover police officers. While the potential penalty for this young man was \$10,000 per offense, the final penalty was roughly \$3,000 dollars yet the Whitewater Police seized and forfeited a vehicle valued at over \$20,000 dollars. This highlights two major problems with Wisconsin's Civil Asset Forfeiture statutes. First, this case shows the lack of proportionality in the final penalty versus the forfeited property value. Secondly, the court ignored Wisconsin's Innocent Third Party provisions to hold that the vehicle user held a titled ownership interest in the property. At the risk of sound trite, I think we would be hard pressed to find anyone who would give their family member a vehicle to use at college and sent them off with the encouragement to "go to college, have fun, and use some drugs while you are there."

In 2012, Brown County made national news because of the way law enforcement parlayed bail money into civil asset forfeiture seizures. Money was seized and no criminal charges were filed. This was a national embarrassment for Wisconsin. Yet, this is one most highly repeated events feeding the Civil Asset Forfeiture reform movement burning across the country. The news reports of Civil Asset Forfeiture abuse by law enforcement, district attorneys, Attorneys General, and the governments they work for are rampant nationwide.

Last year, New Mexico and Wyoming passed sweeping reforms. This year, both states are having problems breaking the cycle of civil asset forfeiture abuse. Wyoming is introducing a new bill to strengthen the requirement for a criminal conviction while New Mexico is having to sue the city of Albuquerque for failing to follow the new law. Since 2012, many states (NM, WY, GA, FL, MI, PA, OH, CA, to list a few) proposed bills to provide needed reforms only to meet stiff resistance from the law enforcement special interest lobby and government representatives who don't want the "pennies from heaven" to stop raining down into their budgets via civil asset forfeiture windfalls.

The abuses are so bad that the abuses overshadow the good seizures and righteous busts being dutifully investigated by our dedicated law enforcement personnel. Civil asset forfeiture is branded with the nicknamed, "Policing for Profit" and several news team investigations revealed the outrageous acts of "Drug Enforcement" Task Forces most notably in Tennessee and Oklahoma. Yet, here is Wisconsin we also have these drug task forces and the Dane County Narcotics Task Force benefited from Civil Asset Forfeiture by over \$407,000 in FY2014. Between the year 2000 and 2013, Wisconsin ranked 28th nationally for federal "Equitable Sharing" proceeds of \$51 Million dollars... of which 80% can go to local agencies.

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In a couple different interviews, law enforcement leaders have called the funds from Civil Asset Forfeiture “pennies from heaven” since it helps make up budgetary shortfalls as elected officials trim police budgets to spent those funds elsewhere. Milwaukee’s Journal Sentinel paper ran an article in 2012 on uses of the civil asset forfeiture proceeds by the Milwaukee Sheriff Department. The Fox Valley “Metro Enforcement Group” netted \$394,000 dollars in 2012. In an article from 2014, St. Croix County announced they were going to step up efforts to keep confiscated cash. The Milwaukee Police Department, in their annual report, used to report funds derived from civil asset forfeiture but that ceased with the arrival of Chief Flynn.

This highlights another issue with Wisconsin Civil Asset Forfeiture laws. The lack of mandatory tracking and reporting requirements makes it extremely difficult for citizens or citizens groups to uncover or understand the amount of funding being derived “off the official budget” from civil asset forfeiture. Michigan had to passed 8 bills to bring transparency and a conviction requirement to that state’s civil asset forfeiture processes.

In a perfect bill to reform Wisconsin’s Civil Forfeiture laws; it would:

1. Require conviction of a crime with forfeiture as a penalty to complete the forfeiture process.
2. Re-states the protection for third-party innocents and give a method to recover their property.
3. End forfeiture proceeds going back to Law Enforcement as an incentive to “Police for Profit.”
4. Mandatory reporting and tracking of civil forfeitures.
5. Enact Proportionality between the crime, the civil forfeiture penalty and the seizure’s value.

The only other thing we could hope for in a perfect bill would be automatically returning property seized if the person is not charged, the charges are dropped, or the person is acquitted.

As it is, Senate Bill 521 stands to make needed changes to Wisconsin’s Civil Asset Forfeiture statutes. It is a good bill. It preserves the means for law enforcement to reap the proceeds from good police work and solid convictions of real criminals. It removes the incentive to “Police for Profit” and adds a mechanism for transparency that should help disclose what the various levels of government are doing in the war on crime.

Bottom line: SB521 does the right things, while it protects the constitutional rights of the citizens and it preserves the dignity of our law enforcement officers. These reasons are why the Wisconsin GrandSons of Liberty support the bill and ask that this committee approve SB521.

Senators, once again, thank you for the opportunity to address you today.

Wisconsin GrandSons of Liberty

Civil Asset Forfeiture Reform

Purpose: Reform is needed to provide protections in the law which prevent abuse of the private property rights of innocent people and those who are not yet convicted of a crime. Basically, no one should have to fear losing their property unless they are convicted of a crime.

Facts:

- Asset forfeiture removes the tools, equipment, cash flow, profit, and, sometimes the product itself, from the criminals and criminal organization, rendering the criminal organizations powerless to operate.
- Asset forfeiture inappropriately targets the casual user or more recently the medical marijuana user in the mistaken ideal of thwarting illegal drug distribution channels.
- Police target the least likely to have resources to fight the government and seek to keep their property
- Cash currency is improperly the prime target of police departments since estimates are that 90% of all paper currency in circulation has trace amounts of Cocaine residue
- Asset forfeiture, when used properly, can provide a valuable tool for law enforcement officials, as it helps strike at the economic foundations of criminal activity
- Civil Forfeiture can be independent of criminal proceedings and it is estimated over 60% of civil forfeitures are not accompanied by criminal charges
- Forfeiture actions are driven by shrinking local budget politics rather than standards of criminal activity and objective criteria for seizing property of convicted criminals

Proper Protections:

- Require the level of proof to be “Clear and Convincing Evidence” of criminal activity not Probable Cause
- Criminal Charges must accompany the Administrative Forfeiture process; protects the “Righteous Bust”
- Hold confiscating agency responsible for returning the seized property in the same condition as when confiscated, and in the case of cash the agency must return 100% of the value of the seized cash
- Prohibit the singular basis of seizure being a drug dog keying on cash; require corroborating physical evidence to confiscate any amount of cash money
- Automatic return of seized property, without petitioning a court, if not convicted or charges dropped
- Allow for legal cost reimbursement for innocent parties that must defend, protect or recover their property in court
- Provide an exemption for property in use by another person for illicit activity without the consent or knowledge of the actual property owner (known as an “innocent third party”).
- Transparency at all levels of government with ability to see what law enforcement seizes and forfeits. With searchable database kept at the state level.

For more information, go to www.wisconsingrandsonsofliberty.com

Civil Asset Forfeiture in the news:

Rep Sensenbrenner – Jan 2015 - Congress to reform outdated and unfair civil forfeiture laws
<http://1.usa.gov/1QgBiWa>

Policing for Profit: Institute for Justice “Ending Forfeiture Abuse”: <http://bit.ly/1QmctWb>
Jon Stossel: <http://bit.ly/1K6QkeD> Washington Post: <http://bit.ly/1I8GwOZ>
TN I-40 Shakedown: <http://bit.ly/1M0rxYb> CATO report: <http://bit.ly/1G1uBTE>

Why It’s Nearly Impossible To Get Your Stuff Back After The Cops Seize it
<http://read.bi/1PM7umu>

Wisconsin: 5/21/2012: WI Brown County specifically tells family to bring cash for bail money
<http://huff.to/1DK61V0> and here <http://bit.ly/1J45bWo> and again here <http://bit.ly/1HvIWFP>

Fox Valley: Metro Enforcement Group nets \$325,000 from \$394,000 in seizures during 2012
<http://bit.ly/1HKikT5>

Kenosha: 01/25/2015: Sheriff Dan Ruth said “the old way was to just seize it”
<http://bit.ly/1DK6pTy>

St. Croix County: 9/22/2014: County Steps Up Efforts to Keep Confiscated Cash
<http://bit.ly/1dwsWv0>

Heritage Foundation: 4/20/2015: Good intentions gone awry
<http://herit.ag/1DzIP8U>

Forbes - 4/16/2015: Disabled Vet loses \$60,000 after traffic stop where he did not get a ticket
<http://onforb.es/1b55JOs>

Philadelphia: 2002 - 2012, over 1,000 homes, 3,200 vehicles and \$44 million in cash seized
<http://bit.ly/1DzMOCl>

New Mexico: 4/10/2015: Gov. signs legislation requiring conviction of a crime to take property
<http://bit.ly/1NrL3C1>

Florida: 4/8/2015: Florida legislature to introduce Civil Asset Reform Legislation
<http://dailysign.al/1Ocaqlz>

Iowa: 3/28/2015: Iowa Forfeiture “A system of legal thievery” <http://dmreg.co/1I14gco>

Georgia: 3/26/2015: IRS seizes \$940k from Veteran and Gun Shop Owner
<http://bit.ly/1yPIhkW>

Forbes: 3/25/2015: Feds want Banks to notify them if you withdraw \$5,000 or more
<http://onforb.es/1G1jad3>

Equitable Sharing Payments FY2014

Agency Name	Agency Type	Cash Value	Sale Proceeds	Totals
Appleton Police Department	Local	\$6,907	\$0	\$6,907
Barron County Sheriff's Department	Local	\$0	\$29,580	\$29,580
Brown County Sheriff Drug Task Force	Local	\$65,274	\$35,977	\$101,251
Brown County Sheriff's Office	Local	\$1,340	\$0	\$1,340
City Of Beloit Police Department	Local	\$876	\$969	\$1,845
City Of Oconomowoc Police Department	Local	\$4,724	\$0	\$4,724
City Of Waukesha Police Department	Local	\$3,982	\$0	\$3,982
Columbia County Sheriff's Department	Local	\$3,600	\$0	\$3,600
Cudahy Police Department	Local	\$10,982	\$547	\$11,529
Dane County Narcotics Task Force	Task Force	\$356,518	\$50,907	\$407,425
Dane County Sheriff's Office	Local	\$7,301	\$0	\$7,301
Door / Kewaunee Drug Task Force	Task Force	\$5,172	\$0	\$5,172
Door County Sheriff's Department	Local	\$3,775	\$0	\$3,775
Douglas County Sheriff	Local	\$13,602	\$0	\$13,602
Eau Claire County Sheriff's Department	Local	\$2,553	\$0	\$2,553
Eau Claire Police Department	Local	\$525	\$0	\$525
Fitchburg Police Department	Local	\$3,124	\$0	\$3,124
Franklin Police Department	Local	\$16,237	\$0	\$16,237
Grand Chute Police Department	Local	\$4,388	\$0	\$4,388
Green Bay Police Department	Local	\$3,868	\$7,161	\$11,029
Greenfield Police Department	Local	\$4,012	\$0	\$4,012
Janesville Police Department	Local	\$0	\$41,955	\$41,955
Jefferson County Drug Task Force	Task Force	\$24,953	\$0	\$24,953
Kenosha Drug Operations Group	Task Force	\$43,832	\$18,271	\$62,103
Kenosha Police Street Crimes Unit	Local	\$3,139	\$0	\$3,139
Ladysmith Police Department	Local	\$1,516	\$0	\$1,516
Lake Winnebago Area Metropolitan Enforcement Group (MEG) - Drug Unit	Task Force	\$59,295	\$43,004	\$102,299
Madison Police Department	Local	\$5,513	\$0	\$5,513
Manitowoc County Metropolitan Drug Unit	Task Force	\$8,072	\$7,400	\$15,472
Marathon County Sheriff's Department	Local	\$6,606	\$0	\$6,606
Marinette County Sheriff's Department	Local	\$12,900	\$0	\$12,900
Marquette County District Attorney's Office	Local	\$111	\$0	\$111
Marquette County Sheriff's Office	Local	\$222	\$0	\$222
Milwaukee County Sheriff's Office	Local	\$135,629	\$20,124	\$155,753
Milwaukee Metropolitan Drug Enforcement Group	Task Force	\$68,963	\$0	\$68,963

Equitable Sharing Payments FY2014

Agency Name	Agency Type	Cash Value	Sale Proceeds	Totals
Milwaukee Police Department	Local	\$449,453	\$124,658	\$574,111
Mount Pleasant Police Department	Local	\$600	\$0	\$600
New Berlin Police Department	Local	\$5,438	\$35,126	\$40,564
New London Police Department	Local	\$16,646	\$0	\$16,646
Northeast Tri-County Drug Enforcement Group	Task Force	\$11,664	\$0	\$11,664
Oak Creek Police Department	Local	\$46,194	\$3,142	\$49,336
Ozaukee County Sheriff's Office	Local	\$31,998	\$0	\$31,998
Pierce County Sheriff's Department	Local	\$1,145	\$0	\$1,145
Polk County Sheriff's Department	Local	\$2,591	\$29,580	\$32,171
Portage County Sheriff's Office	Local	\$13,457	\$0	\$13,457
Racine County District Attorney	Local	\$6,615	\$262	\$6,877
Racine County Sheriff's Office	Local	\$600	\$0	\$600
Racine County Sheriff's Office - Metropolitan Drug Unit	Task Force	\$63,593	\$10,782	\$74,375
Racine Police Department	Local	\$13,810	\$39,231	\$53,041
Richland-Iowa-Grant Drug Task Force	Task Force	\$27,389	\$0	\$27,389
River Falls Police Department	Local	\$7,560	\$0	\$7,560
Rock County Sheriff's Office	Local	\$2,628	\$1,938	\$4,566
Rusk County Sheriff's Department	Local	\$3,436	\$0	\$3,436
Saint Croix County District Attorney's Office	Local	\$289	\$0	\$289
Saint Croix County Sheriff's Office	Local	\$1,866	\$0	\$1,866
Sauk County Sheriff's Department	Local	\$37,408	\$3,090	\$40,498
Sheboygan County Sheriff's Department	Local	\$15,647	\$7,880	\$23,527
Sheboygan Police Department	Local	\$5,888	\$0	\$5,888
Somerset Police Department	Local	\$4,250	\$0	\$4,250
Stevens Point Police Department	Local	\$16,474	\$0	\$16,474
Stoughton Police Department	Local	\$28,157	\$0	\$28,157
Sun Prairie Police Department	Local	\$2,989	\$0	\$2,989
Superior Police Department	Local	\$13,602	\$0	\$13,602
Town Of Madison Police Department	Local	\$3,090	\$0	\$3,090
University Of Wisconsin - Whitewater Police Services	Local	\$2,600	\$0	\$2,600
University Of Wisconsin-La Crosse Police Department	Local	\$2,660	\$0	\$2,660
Vilas County Sheriff's Department	Local	\$4,240	\$0	\$4,240
Village Of Brown Deer Police Department	Local	\$3,200	\$0	\$3,200
Walworth County Drug Enforcement Unit	Task Force	\$12,864	\$17,913	\$30,777
Walworth County Sheriff's Office	Local	\$1,608	\$1,990	\$3,598

Equitable Sharing Payments FY2014

Agency Name	Agency Type	Cash Value	Sale Proceeds	Totals
Washington County Multi-Jurisdiction Drug Enforcement Group (MJDG)	Local	\$95,456	\$0	\$95,456
Waukesha County Metropolitan Drug Unit	Task Force	\$16,855	\$3,670	\$20,525
Waukesha County Sheriff's Department	Local	\$49,561	\$57,731	\$107,292
Waushara County Sheriff's Office	Local	\$15,802	\$0	\$15,802
Wauwatosa Police Department	Local	\$4,800	\$3,012	\$7,812
West Allis Police Department	Local	\$79,428	\$38,655	\$118,083
West Central Drug Task Force	Task Force	\$32,212	\$0	\$32,212
West Central Metropolitan Enforcement Group	Task Force	\$30,118	\$322	\$30,440
Whitewater Police Department	Local	\$3,900	\$0	\$3,900
Wisconsin Dells Police Department	Local	\$3,706	\$0	\$3,706
Wisconsin Department Of Justice	State	\$1,547,819	\$77,419	\$1,625,238
Wisconsin Department Of Natural Resources, Bureau Of Law Enforcement	State	\$0	\$2,882	\$2,882
Wisconsin National Guard Drug Control Program	State	\$161,826	\$18,772	\$180,598
Wisconsin State Patrol / Department Of Transportation	State	\$63,087	\$5,106	\$68,193
Totals		\$3,855,730	\$739,056	\$4,594,786