

Wisconsin Institute for Law & Liberty: Testifies on Civil Forfeiture Reform

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Bill safeguards civil liberties, increases transparency

February 20, 2018 - Milwaukee, WI - Wisconsin Institute for Law & Liberty (WILL) Research Fellow Collin Roth testified Tuesday on [AB 122/SB 61](#), a bill to reform Wisconsin's civil forfeiture laws, in the Assembly Committee on State Affairs. Civil forfeiture is a practice whereby a law enforcement agency can seize, litigate, and retain certain assets, like cash or a car, without a criminal conviction. The practice of civil forfeiture has earned increased scrutiny as a result of attention to abuses and concerns about civil liberties.

WILL issued a policy brief on civil forfeiture in 2017, [Civil Forfeiture 101](#), to highlight some of the fundamental problems with the current law.

- Wisconsin does not require a criminal charge, much less a criminal conviction prior to initiating a civil forfeiture proceeding. 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 property due to the prohibitive cost of fighting in court.
- 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.
- 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.

AB 122/SB 61 includes important reforms that address these three critical problems with current state law.

- Criminal Forfeiture - AB 122/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. AB 122 requires the court to return any property subject to forfeiture within 30 days of acquittal or dismissal of charges.

- Raises the Burden of Proof - AB 122/SB 61 requires the state to prove with clear and convincing evidence that property is subject to forfeiture.

- Uniform and Consistent Transparency - AB 122/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.

"It's encouraging to see civil forfeiture reform move in the legislature with bipartisan support," said Research Fellow Collin Roth. "Moving Wisconsin from a state with civil forfeiture to criminal forfeiture and instituting reforms that require transparency will better safeguard civil liberties in the Badger State."

AB 122/SB 61 passed out of the Senate Committee on Labor and Regulatory Reform in 2017 with bipartisan support.

WILL's testimony can be found [here](#).