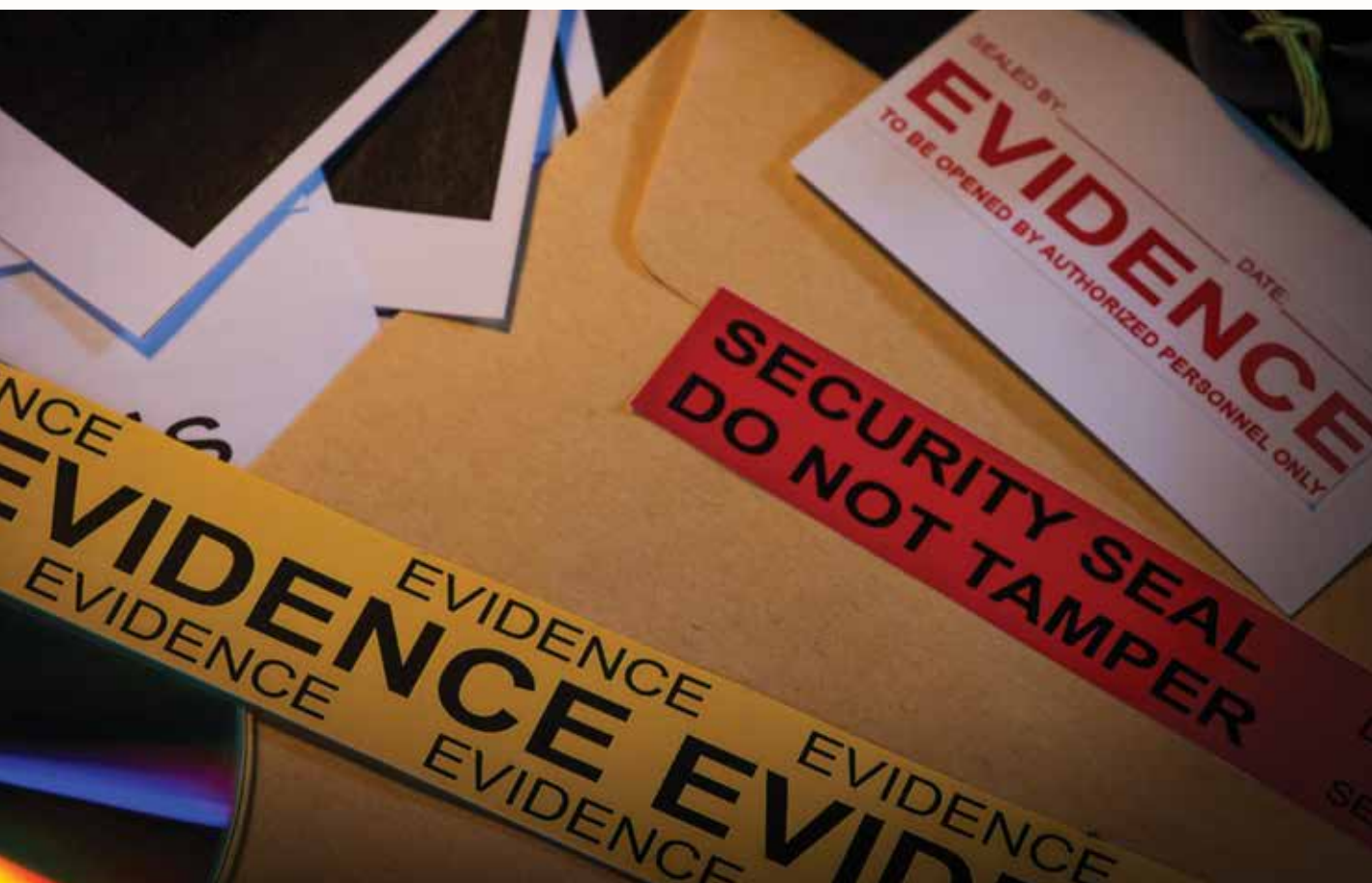


Asset Seizures Under Scrutiny

Michigan Forfeiture Laws Improved

By Shaun Patrick Willis



My cell phone rang one weekend in August 2010. A gentleman from southwest Michigan told me he had been arrested for felony possession with intent to deliver marijuana. During a subsequent meeting with Jim (his name has been changed for privacy), I learned that vehicles had been seized during his arrest, including a new Dodge truck, a 10-year-old Chevy truck, and a hot rod he had built with his son. These vehicles were purchased before Jim had any activity with marijuana.

Jim explained that the vehicles had been seized by the local drug enforcement team because he had admitted during

a voluntary discussion that from time to time, marijuana had been transported or stored in the vehicles. After the case concluded, one of the trucks was returned to him, but the deal offered by the prosecution was fashioned on the premise that Jim's agreement to abstain from objecting to the drug team seizures would result in dismissal of the felony charge.

Having to choose between his freedom and his possessions, Jim opted for freedom and a clean record. Although the outcome was dismissal of a felony, the confiscation of Jim's legally obtained personal property left me feeling that something was amiss with the seizure process, and frankly,

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it upset me. Jim retained his freedom, but the government retained his possessions.

This is one reason I was eager to learn about modifications to Michigan's civil asset forfeiture laws, which were championed by a broad field of elected leaders, including Kalamazoo State Rep. Brandt Iden.

Before these modifications, law enforcement could seize residents' property simply on the *suspicion* that it was obtained through criminal activity and only had to demonstrate such a claim by a preponderance of evidence. Combined with a lack of transparency and oversight in the process, it's a recipe for mistrust between residents and the law enforcement agencies and prosecutors tasked with the duty to protect and serve.

Police officers have started to recognize distrust and unease caused by these outdated laws, which provided inadequate transparency and protections for citizens. Perhaps this is why the Michigan Association of Police Organizations endorsed the reforms to these laws. The commonsense reforms that have worked their way through the legislature created the Uniform Forfeiture Reporting Act and bring necessary transparency to the civil asset forfeiture processes. The act, which went into effect February 1, 2016,¹ requires law enforcement agencies to keep detailed records of what they have seized and how the proceeds from the seizures are being used.

The new reforms also change the standard of evidence required to seize an individual's property. Instead of a simple "preponderance of the evidence" standard, seizing agencies must now meet a standard of clear and convincing evidence. While not reaching the same level required for a criminal conviction, raising the evidentiary standard lets law enforcement use what can be a vital tool in the fight against criminal activity while further providing safeguards for private property that is not being used for illegal purposes.

These reforms will do more to protect the property rights of all Michigan citizens, and I was pleased they were approved by Governor Rick Snyder. These are important measures that create real change and bring balance to the interests of law enforcement, Michigan residents, and our clients. ■



Shaun Patrick Willis is the managing partner and founder of Willis Law, with offices in Grand Rapids, Kalamazoo, and Paw Paw. His practice focuses on state and federal court business litigation as well as construction, estate, real estate, and criminal litigation.

ENDNOTE

1. 2015 PA 148, creating Uniform Forfeiture Reporting Act, MCL 28.111 et seq.