

## Civil asset forfeiture or legalized theft?

### To the Editor:

While Shaun Willis sees reforms to Michigan's civil asset forfeiture laws as a step in the right direction ("Asset Seizures Under Scrutiny: Michigan Forfeiture Law Improved," December 2016 *Michigan Bar Journal*), the problem is that civil asset forfeiture amounts in practice to legalized theft, is of dubious constitutionality, and deserves to be abolished at both the federal and state levels.

According to the Fifth and Fourteenth amendments, no person can be deprived of his or her property without due process of law. But civil asset forfeiture stands all of this on its head in a fundamentally unfair, rigged, and abusive procedure that is a perfect example of when the law is asinine.

To begin, the defendant in a civil asset forfeiture case isn't the owner of the property in question, but the property itself, which is dishonest and absurd. Because it is a civil proceeding, property owners have no right to counsel and are often unable to contest the seizure because they can't afford the legal fees. Even though the owner may not have been charged with a crime—let alone been convicted—there is no presumption of innocence. The owner must not only prove that he or she is innocent, but that the property isn't involved in suspected criminal activity. Law enforcement faces no penalties for wrongful seizures. The United States Supreme Court has upheld civil asset forfeiture in *Austin v United*

*States*, 509 US 602; 113 S Ct 2801; 125 L Ed 2d 488 (1993).

The result has been systemic abuse and law enforcement corruption, especially when civil asset forfeiture has been applied to the futile, idiotic, and racist war on drugs. The war on drugs failed years ago, but law enforcement agencies continue to profit from it by stealing property under asset forfeiture. In the example of Willis's client, "Jim," he agreed to stop contesting the theft of two of his vehicles in exchange for dropping a felony charge. That amounted to legalized extortion.

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These shakedowns have also happened to medical marijuana caregivers. In 2008, the people of Michigan voted to legalize medical marijuana by a landslide margin of 63 to 37 percent, with the proposal carrying every county. But in a show of contempt for democracy, heavy-handed prosecutors have charged caregivers with felonies for minor technical violations of the Michigan Medical Marihuana Act, police officers have

served as uniformed thieves in stealing caregivers' assets, and judges have acted as their enablers. When law enforcement operates for profit instead of justice, who cares about convictions?

The use of asset forfeiture hasn't reduced support for medical marijuana and, as Willis observed, has increased public distrust of prosecutors and police. The reforms require detailed recordkeeping and a higher standard of proof, but abuse can still result given the premises of civil asset forfeiture.

Meanwhile, a 2016 proposal to legalize recreational marijuana failed to make it on the ballot because the rules were changed midstream. A federal lawsuit claims the rule change violated the rights of petition signers and circulators and that the proposal should go on the 2018 ballot. If the lawsuit fails, there will be a new petition drive to put this proposal on the 2018 ballot. According to polls, if the proposal gets on the ballot, it would have a good chance of passing. Ending the war on drugs is long overdue.

As for the stated purpose of asset forfeiture—punishing and deterring criminal activity—this could be accomplished through criminal asset forfeiture with a defendant who has already been convicted of a felony and the prosecution having the burden of proving beyond a reasonable doubt that the property in question was used in criminal activity for which the defendant was convicted.

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