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STATE SENATOR

Senate Committee on Committee on Labor and Regulatory Reform,
30 May 2017
Senate Bill 61
Senator David Craig, 28th Senate District

Chairman Nass and Committee Members,

Thank you for hearing testimony on Senate Bill 61. My testimony will focus on Substitute Amendment 1.

The Fifth Amendment of the Constitution states that no person shall “be deprived of life, liberty, or property, without due process of law”. However, modern processes of civil asset forfeiture ignore due process rights by allowing forfeiture of property absent criminal conviction. Wisconsin statutes dictate that in forfeiture cases, the burden of proof need only be: “satisfying or convincing to a reasonable certainty by the greater weight of the credible evidence that the property is subject to forfeiture” (961.555(3)) – a standard that falls far short of the standard needed to convict someone of a crime or even charge with wrongdoing.

To be clear, Senate Bill 61 does not abolish the forfeiture of property used in illegal activity. If a person has been convicted of wrongdoing, it is proper and just to punish them by forfeiting the property used to conduct that illegal activity. However, forfeitures absent convictions lead to widespread and well documented abuse in the criminal justice system and are clearly antithetical to the due process clause. Recently, Supreme Court Justice Clarence Thomas stated: “I am skeptical that this historical practice is capable of sustaining, as a constitutional matter, the contours of modern practice . . .”

Substitute Amendment 1 requires criminal conviction prior to the forfeiture of property while maintaining the tools law enforcement needs to pursue criminal convictions. The substitute amendment would prevent forfeiture of property belonging to innocent owners – where the property owner is unaware of how another person (often a family member) is using property, codify current caselaw on proportionality to ensure that forfeitures are proportional to crime committed, raise the burden of proof in forfeiture cases to a “clear and convincing” standard, allow judges to award reasonable attorney fees to those who prevail against forfeiture actions, and require the return of property within 30 days of an acquittal or the dismissal of charges.



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Additionally, the amendment would require that forfeiture funds returned to law enforcement agencies as part of the federal equitable sharing program be tied to a federal criminal conviction, allow law enforcement agencies to keep forfeited vehicles if a 30% of the vehicles value is paid to the Common School Fund, allow forfeiture proceedings to commence at the time of seizure but not conclude without a criminal conviction, and require forfeiture reporting to the Department of Administration. If reporting requirements are met, forfeiting agencies would be allowed to keep 50% of the actual forfeiture expenses of each forfeiture.

In recent years over a dozen states have reformed their civil asset forfeiture laws to restore constitutional protections and federal reform legislation has been introduced by Congressman Jim Sensenbrenner with bipartisan support. These common sense compromises will maintain tools needed by law enforcement to protect our communities while ensuring that constitutional rights are protected in Wisconsin. It is time for Wisconsin to move forward and fix forfeiture.

Again, I appreciate your hearing of this bill today and I look forward to answering any questions you may have.