

## Why Michigan Should End Civil Asset Forfeiture

By Jarrett Skorup

### Introduction

Civil asset forfeiture enables law enforcement to take the property of individuals they suspect are involved in criminal activity. The practice is easily and regularly abused. Over the past decade, Michigan policymakers responded by significantly changing the state's forfeiture laws. These changes resulted in fewer forfeitures overall and reduced efforts by law enforcement to take assets from people who were never charged with a crime. The law now requires the government to obtain a criminal conviction in some cases before an individual's property can be forfeited. But hundreds of people in Michigan still lose their property every year without being convicted of breaking the law.

The way to protect individuals' civil and property rights — even for those accused of criminal behavior — is to end civil forfeiture altogether. Four states — North Carolina, New Mexico, Nebraska and Maine — have done this.<sup>1</sup> Abolishing civil forfeiture would not allow criminals to keep money and property they gained illegally. Law enforcement could still seize such property, but only a criminal court could decide whether the property would be forfeited to the government permanently. This would ensure that the civil rights protections afforded individuals in the criminal court system apply in forfeiture cases as well.

### What is forfeiture?

Forfeiture refers broadly to the practice of transferring assets from individuals to the government. Law enforcement agencies typically sell these assets and keep the proceeds. This occurs most commonly when police seize cash, vehicles, homes, firearms, computers or other items in the process of investigating a potential crime.

If the owner of the property is later convicted beyond a reasonable doubt in criminal court, the assets seized by the police can be permanently forfeited to the government. This is known as criminal forfeiture.

Civil forfeiture is different, however. It operates outside the criminal court system, either in civil or administrative courts. People do not have to be convicted of a crime for their property to be forfeited to the government under civil forfeiture.

The way this works is that law enforcement agencies allege that a person's assets were involved in criminal activity — that is, they either were used in an illegal act or resulted from one. Police may seize property based on the standard of probable cause, meaning that their suspicion of criminality must be reasonably believable.

### ABOUT THE AUTHOR

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In civil court, prosecutors have a lower standard of evidence to meet compared to criminal court. This produces odd results. Some people are cleared of wrongdoing in criminal court, but their property is found “guilty” in civil court and taken from them.

In Michigan, there are five forfeiture statutes, though most forfeitures are connected to drugs or prostitution. The statutes are:

- The Public Health Code on controlled substances and illicit drugs.<sup>2</sup>
- The Revised Judicature Act on public nuisances, such as illegal gambling and prostitution.<sup>3</sup>
- The Identity Theft Protection Act.<sup>4</sup>
- The Michigan Vehicle Code on driving while intoxicated and reckless driving.<sup>5</sup>
- The Revised Judicature Act omnibus, listing dozens of crimes that make personal property subject to seizure and forfeiture.<sup>6</sup>

## Historical examples of civil asset forfeiture abuse

Michigan’s civil asset forfeiture laws have led to many instances where individuals lose their assets and property without ever being convicted of a crime. In some cases, property is forfeited despite the owner never even being charged with a crime.

The following section recounts some of these stories from the last 30 years in Michigan. This is only a glimpse into the mistreatment people have endured through asset forfeiture. There are likely several similar stories for each of the incidents retold here.

In December 2020, the mayor and chief of police in Highland Park inspected a building where medical marijuana was being grown. The chief seized the property and held it for a year and a half without prosecutors charging anyone with a crime. The city then tried to entice the owners of the property to buy two new vehicles for the police department in exchange for returning their assets to them.<sup>7</sup>

In May 2016, the Michigan State Police pulled over a man in Flint because they thought he had made a drug deal at a McDonald’s. The man had been stopped in the city the previous night and gave an “inconsistent account” of his destination. The police searched the car and found no drugs or illegal material but still seized \$2,035 in cash. Police did not arrest the man and prosecutors never charged him with a crime, but the money was forfeited to the state nevertheless.<sup>8</sup>

In September 2014, Wally Kowalski had his bank account frozen, and his power generator and tools seized by police. Kowalski has a doctorate in design engineering and lives in Van Buren County. He is a medical marijuana patient, who tries to grow the product legally under Michigan law. He was not arrested or charged with a crime until months later. His arrest occurred just hours after Michigan Capitol Confidential, a news site operated by the Mackinac Center, published a report about Kowalski’s plight.<sup>9</sup>

In November 2013, Thomas Williams of St. Joseph County said he spent 10 hours in handcuffs while police searched his home and property. They took his car, television, cell phone and \$11,000 in cash. As a result, he was stranded at his home for three days. Williams says he does not know why his assets were frozen for months, nor why the prosecutors working with the Southwestern Enforcement Team, a drug-focused task force, took more than a year to charge him with a crime.<sup>10</sup>

In January 2013, federal agents seized \$35,000 from the bank account of the Dehko family, who owned a grocery store in Fraser. The family made frequent cash deposits at their bank because their insurance policy only covered amounts up to \$10,000. Federal law requires banks to report transactions above \$10,000, and law enforcement suspected the family of intentionally preventing their transactions from being reported, which is illegal. The Dehkos were never charged with a crime, however. The Internal Revenue Service finally

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returned the money in November 2013 after the family's story attracted national media coverage.<sup>11</sup>

In November 2012, the Cheung family, restaurant owners living just outside Detroit, had \$135,000 frozen in their bank account. They presume this was because they were making routine deposits of slightly less than \$10,000, similar to the Dekhos. As a result, the Cheungs could not pay their property taxes or restaurant costs and got into financial trouble. No criminal charges were ever filed, but, fortunately, the money was eventually returned.<sup>12</sup>

In April 2008, law enforcement executed a search warrant in Shiawassee County and found marijuana plants grown by Steven Ostipow. The farmhouse and property were owned by Ostipow's parents, who lived down the street. Police seized thousands of dollars in assets owned by Gerald and Royetta Ostipow, including a classic car. Gerald and Royetta claimed they had no knowledge of the marijuana plants, and they were never charged with a crime. They spent more than a decade fighting for their property and eventually won a favorable court ruling. But many of their assets had already been sold or disbursed, and so they received little recompense.<sup>13</sup>

In 2004, Krista Vaughn was giving her friend and Red Cross coworker Amanda Odom a ride home from work. After dropping Odom off at a bank in Detroit, Vaughn circled the block before picking her back up. An officer with Wayne County Sheriff's Morality Unit accused Odom, while she was waiting for Vaughn to return, of making eye contact with nearby motorists, supposedly soliciting prostitution. Police issued Odom a ticket and seized Vaughn's 2002 Chrysler Sebring. Odom's ticket was eventually dropped and neither woman was charged with a crime, but police still forced Vaughn to pay \$1,400 to get her vehicle back. Vaughn reluctantly paid the fee, reasoning it would be less expensive than trying to fight the case in court.<sup>14</sup>

In 1993, Judy Enright of Ann Arbor had her art seized by U.S. Fish and Wildlife officials while it was on display at an art fair. She used feathers she found in her own backyard in this piece of art. However, according to the Federal Migratory Bird Act of 1918, it is illegal to sell certain types of bird feathers, a fact the federal officials used to justify their seizure of the art. Enright was never charged with a crime.<sup>15</sup>

In 1992, the homes of James Fouch and those owned by his two sons were raided by federal officials on suspicion that the family was engaging in loan fraud. Property worth over \$500,000 was seized and auctioned off within 21 months. The family's business — a credit union — was liquidated. No criminal charges were ever filed against any member of the Fouch family.<sup>16</sup>

In 1988, Joseph Haji, suspected of possessing illegal drugs, had his Detroit grocery market searched by police. They did not find any drugs, but drug sniffing dogs responded to a few \$1 bills in the cash register. That was enough for law enforcement to seize the \$4,384 in cash that was on hand in the store. Prosecutors never charged Haji with a crime, but police kept all the money.<sup>17</sup>

## Recent forfeiture reforms

The Michigan Legislature passed a package of laws in 2015 that raised the standard of evidence required before the state could take possession of property through civil asset forfeiture. The standard was changed from "preponderance of evidence" to "clear and convincing evidence."<sup>18</sup> This helps protect innocent people from forfeiture abuse by requiring the government to build a stronger case before an individual's private assets can be taken.

The reforms also mandated new reporting requirements. Every law enforcement entity in Michigan must file a report stating how many forfeitures it processed, the types of assets forfeited and the value of these assets. The report must also

state the charges associated with these seizures and any subsequent convictions, among other things.<sup>19</sup>

Gov. Rick Snyder signed into law a bill in 2016 that eliminated upfront bond requirements for challenging improper seizure of property. Individuals no longer must pay 10% of the value of the property they claim was wrongfully seized. This unnecessary financial barrier prevented people whose property had been seized from using the courts to try and get their belongings back.<sup>20</sup>

In 2019, Michigan began requiring the government to obtain a conviction in criminal court for certain crimes before someone’s property could be forfeited.

Lawmakers passed House Bills 4001 and 4002 and Senate Bill 2 to that effect.<sup>21</sup> These bills still left several loopholes in place, however, which are described in a later section of this report.

The Michigan Legislature backtracked on some of the above reforms in 2022. Policymakers changed the 2019 law to permit forfeitures without a criminal conviction of assets valued at more than \$20,000 at airports. The law had permitted forfeitures of this type but only for seizures of \$50,000 or more in cash.

In legislative testimony, law enforcement and airport authorities argued that keeping cash seized at airports was “one of their most effective tools against drug trafficking.” They claimed criminals were able to move illicit money and drugs, and then slip away before being convicted.<sup>22</sup>

### The latest forfeiture data

The aforementioned changes in Michigan law and increased media coverage of forfeiture seem to have had an effect, according to annual reports filed by law enforcement entities.<sup>23</sup> The number of total forfeitures was typically between 10,000 and 11,000 each year prior to these changes. That number dropped by about one-third after the 2015 reporting requirements went into effect. This figure was then nearly cut in half after the 2019 reform that required a conviction before assets could be forfeited in certain cases. This is a significant decrease: There were nearly five times fewer forfeitures in 2020 and 2021 as there were in 2013.

**Graphic 1: Civil asset forfeiture statistics, 2009-2021**

Year	General statistics			Judicial outcomes					Forfeited property				
	Amount	Forfeitures	Agencies	Criminal Charge	No Criminal Charge	No Conviction	In court	No court	Homes	Money	Weapons	Vehicles	Other
2009	\$33,933,668												
2010	\$21,286,841												
2011	\$25,727,494	11,407	306				1,390	10,017	8	\$15,189,280		2,411	
2012	\$22,368,143	10,325	286				1,177	9,148	23	\$13,777,858		2,724	
2013	\$20,229,080	16,703	272				1,249	15,454	11	\$13,658,931		2,691	
2014	\$20,457,538	10,724	332				2,166	8,558	8	\$11,123,646		2,212	
2015	No report												
2016	\$15,288,514	9,575	266	4,682	523	196	1,083	4,784	8	\$12,279,654	806	2,037	15,160
2017	\$13,137,829	6,667	278	5,244	736	220	1,782	4,979	8	\$11,843,061	711	7,999	16,827
2018	\$15,176,886	6,616	236	5,466	514	124	1,314	4,382	13	\$13,481,835	672	3,545	39,402
2019	\$12,082,743	5,574	218	4,431	513	261	953	3,602	2	\$8,958,930	557	1,975	890
2020	\$11,278,010	3,412	209	2,686	458	73	805	1,912	2	\$12,948,268	521	1,343	4,742
2021	\$12,351,376	3,353	201	2,053	489	89	784	1,781	7	\$11,356,429	504	1,051	693

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The number of people who lost their assets but were either not charged with or not convicted of a crime declined significantly as well. There were 956 such cases in 2017, but only 578 in 2021, a 40% reduction. And the overall value of all forfeitures in Michigan — cash, homes, cars, firearms, etc. — steadily declined from \$25 million in 2011 to \$12 million 10 years later.

It should also be noted that Michigan legalized recreational marijuana through a ballot proposal in 2018 that went into effect a year later. It is likely that this had an effect on forfeitures as well. Forfeiture reports from the years prior to Michigan's legalization of marijuana showed that law enforcement cited the state's marijuana law frequently as a reason to seize assets.<sup>24</sup>

### **One solution for three remaining problems with current forfeiture laws**

The recent reforms made to Michigan's forfeiture laws have led to fewer cases being litigated, fewer people losing their property without being charged with a crime and, seemingly, fewer instances of lawful property owners being treated improperly. But there are still too many cases of Michiganders losing their assets without being convicted of, or even charged with, a crime.

One remaining problem with Michigan's forfeiture laws is that too many cases are still processed through the civil forfeiture system. Legal rules and deadlines used in civil forfeitures create many hoops people must jump through when their assets have been seized.

Civil litigation is complex. Most Michiganders do not know how it works. In order for property owners to require the government to get a criminal conviction before forfeiting their property, they must officially answer a civil forfeiture complaint. That answer must be filed in civil court within 20 days of the property owner receiving a copy of the complaint.<sup>25</sup> Many property owners fail to respond in time.

Other states have addressed this problem by ending civil forfeiture altogether and requiring all forfeitures be conducted through the criminal forfeiture process. This puts the onus on the government, not individual citizens, and ensures the accused of access to an attorney who can fight for their property rights.

Another reason why many forfeitures still happen in civil court is that Michigan's forfeiture laws do not require a criminal conviction if the assets in question are valued at more than \$50,000.<sup>26</sup> In other words, if law enforcement seizes more than \$50,000 in cash, or an expensive car, or a home, they can forfeit these assets through the civil process without ever convicting (or even charging) a person with a crime.

In addition, the criminal conviction requirement only applies to illegal activities involving controlled substances, or illicit drugs. Other forfeiture statutes related to nuisances, identity theft, driving while intoxicated, drag racing and other crimes do not require a criminal conviction prior to forfeiture.

Another problem is that Michigan's forfeiture laws still don't fully protect people from abuse. For instance, law enforcement may seize property when it has probable cause that the property is associated with criminal activity. But this low evidence standard means that police can retain possession of someone's property while waiting for the slow gears of justice to move. This can happen even when prosecutors only have a remote chance of mounting a criminal case.

This can drag on for a long time, especially if law enforcement is not proceeding in a prompt and fair way. In the Highland Park example highlighted above, police apparently seized this family's entire business and thousands of dollars in assets and held them for well over a year without prosecutors charging anyone with a crime.

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Michigan's forfeiture laws do not require prosecutors to prove a person is guilty of a crime and that the property resulted from or was instrumental to the crime. In Wayne County, for instance, law enforcement seized 2,600 vehicles over two years through an operation targeting neighborhoods with high drug and prostitution use.<sup>27</sup> Even if people were breaking the law, that does not mean that their vehicles were involved in or instrumental to this illegal activity. In other words, just because a person violates a drug law does not entitle law enforcement to take their vehicle and cash. These could have been gained through legal means and should only be considered for forfeiture if prosecutors can prove a link between the property and the criminal act.

These remaining problems with Michigan's forfeiture law may seem daunting, but there is a rather simple solution that several states are using. Like Nebraska, New Mexico, Maine and North Carolina, Michigan should eliminate civil asset forfeiture altogether and only allow criminal forfeiture. This would require the government to prove first that someone was guilty of a crime and then show, in that same criminal court, that the seized assets were gained through or used in the crime. In criminal court, prosecutors would have to demonstrate a person's guilt beyond a reasonable doubt and prove the link to the property by a preponderance of the evidence.

## Conclusion

Michigan lawmakers should put an end to civil asset forfeiture. Recent reforms have improved the procedure and reduced its harms, but there are still too many problems with this practice. It is easily abused, and innocent people are hurt by it.

Short of eliminating the civil forfeiture, policymakers must ensure that all forfeiture activity is thoroughly and consistently reported annually and made available to the public. If this practice is allowed to persist, it must be transparent. Further, lawmakers should expand the requirement that government secure a criminal conviction before assets may be forfeited to include more crimes. This will help protect individuals from some types of forfeiture abuse.

Civil asset forfeiture may have once been a legitimate tool used by law enforcement to protect the public. But that is no longer the case. Forfeiture is routinely misused, as shown by the large number of people who have been treated unjustly by it. Michigan policymakers should end this practice, or, at a minimum, close the legal loopholes that prevent Michigan residents from being fully protected from forfeiture abuse.

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## Endnotes

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