



# Better balance on civil forfeiture

## With probable-cause requirement and new deadlines for prosecutors, Indiana can do more to protect property owners

by Indiana Sen. Rodric Bray (Senator.Bray@iga.in.gov)

It's no secret civil forfeiture is a valuable tool in fighting crime. By allowing our law enforcement officers to seize the property of criminals, gang members or drug dealers, police are able to diminish the opportunity for further crimes to be committed.

While civil forfeiture is a powerful tool, we must also acknowledge the personal property rights of individuals whose property has been seized.

Say I lend my car to someone, and that person commits a crime. My property has now been seized despite me not committing any crime. Is that fair? What if law enforcement wrongly seizes my property and I'm not able to recover my property for months? What recourse do I have?

In 2017, Indiana was already studying how to improve our civil forfeiture laws. During that process, a federal court struck down a portion of our law. Essentially, the court found Indiana law was lacking due process.

In that case, a plaintiff whose vehicle was seized in Indianapolis sued for a class of all owners with vehicles seized by Marion County law enforcement, claiming that Indiana's forfeiture laws didn't provide constitutional due-process protections. The court found in the plaintiff's favor.

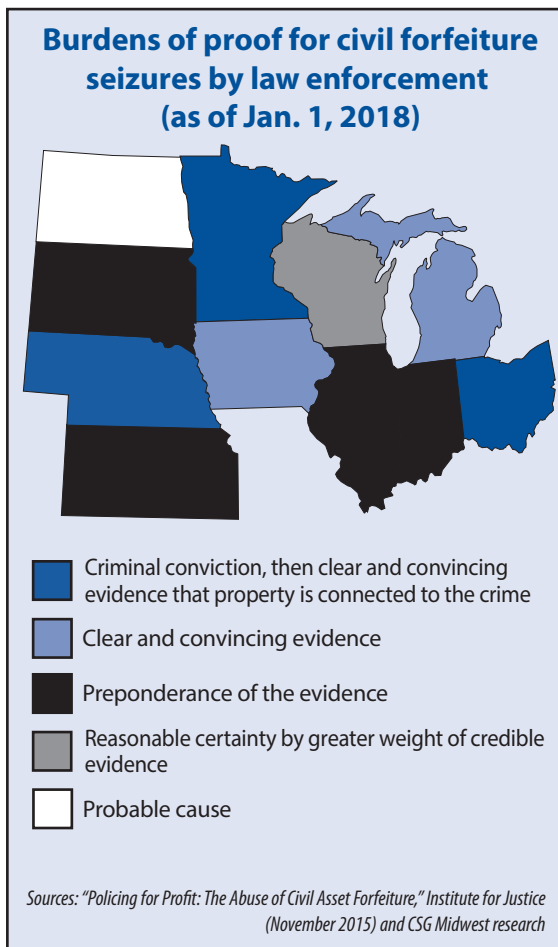
Specifically, the court found that far too much time passed before the property owner had the case reviewed by a judge, had a day in court or even before a formal petition needed to be filed in court.

Through this lens, the Indiana General Assembly has looked at reforming our civil forfeiture laws to balance the interests of law enforcement officers and property owners. If the legislature did not update our laws, the federal ruling could ultimately prevent law enforcement from conducting civil forfeitures entirely.

In light of this situation, I authored SB 99 this session to reform our civil forfeiture laws. This measure is the result of months of work by the Interim Study Committee on Courts and Judiciary, of which I served as chair. This bill recently passed the Indiana Senate and is now being considered by the House of Representatives. *(Editor's note: As of March 8, the bill had passed the legislature and was awaiting Gov. Eric Holcomb's signature.)*

### New timelines, notification procedures

Under this bill, a prosecutor will be required to file



an affidavit of probable cause within seven days of property being seized. The bill also requires property to be returned to the owner if a court does not find probable cause to believe the property was used in connection with a crime. Under the law that was partially struck down, there was no probable-cause requirement.

SB 99 also speeds up the timeline for forfeiture cases to move forward. Instead of 90 days for a prosecutor to file a forfeiture action, it must now be filed within 21 days if the owner has filed a written demand for return of the property. If a property owner has not filed a written demand for return of the property, the prosecutor must file the action for seized property within 90 days instead of 180 days.

If a prosecutor doesn't meet these deadlines, the property must be immediately returned to its owner, and the owner is not liable for the costs involved with storing or transporting the property.

The bill also establishes new procedures aimed at protecting the rights of a property owner if the owner was not in possession of the property when it was seized.

It requires a prosecutor to notify the owner within

seven days of the seizure, and the owner could then petition the court for custody of the property pending the outcome of the forfeiture action.

Currently, property owners have almost no recourse to reclaim their property in a timely manner if it was wrongly seized. They would have to wait months and months until the entire case was finished, even if the property shouldn't have been seized in the first place.

SB 99 also sets up parameters for how the proceeds from the sale of seized property can be used should the state win a forfeiture case.

The funds would first be used to pay attorney fees if outside counsel were used. After that, one-third would be deposited in the prosecutor's forfeiture fund in order to offset any expenses incurred during the investigation or prosecution.

Then, a percentage would be paid to either the state general fund, local general fund or county drug task force fund, as determined by the court. Any remainder would be deposited into the state common school fund, which is a constitutional requirement in Indiana.

The bill also prohibits prosecutors and deputy prosecutors from receiving contingency fees for handling forfeiture cases, and prohibits deputy prosecutors from being retained to represent the state in a forfeiture case.

In addition, SB 99 limits the amount of any contingency fees that an attorney can receive for representing the state in a forfeiture case.

Finally, we added reporting requirements so the Indiana General Assembly will better understand how civil forfeiture is playing out around our state rather than relying on anecdotal evidence.

I'm proud of the work the Interim Study Committee did in evaluating this issue and drafting a proposed bill. Throughout the process, I've met with many different agencies and people to address any concerns they had with the bill.

The end result is a bill that allows our law enforcement agencies to crack down on organized crime while outlining a way for citizens to get their property back.

Indiana Sen. Rodric Bray was first elected in 2012. He serves as majority floor leader and also serves as chair of the Senate Judiciary Committee.

### Submissions welcome

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