

AGENDA

Eau Claire County
Committee on Judiciary and Law Enforcement
Thursday, March 2, 2017 at 4:00 p.m.
Courthouse – Room 1273

1. Call Meeting to Order
2. Public Comment- Discussion/Action
3. Approve Minutes from February 2, 2017 meeting- Discussion/Action Pg. 2-3
4. CJCC Questions- Discussion/Action
5. State forfeiture and federal forfeiture- Sheriff Department- Discussion/Action Pg. 4-10
6. Future Agenda Item(s)
7. Adjourn

Posted 02/24/17

Copy: Committee Members
Media

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MINUTES

Eau Claire County
Committee on Judiciary and Law Enforcement
Thursday, February 2, 2017 at 4:00 p.m.
Courthouse – Room 1301

Members Present: Sue Miller, Brandon Buchanan, Doug Kranig, and Sandra McKinney.

Other Present: Alynia Froelich, Todd Tollefson, Keith Zehms, Detective Don Henning, Detective Ryan Greener, and Sheriff Ron Cramer.

Call Meeting to Order

The meeting was called to order by Committee Chair Sue Miller at 4:00 pm.

Public Comment

No public comments presented.

Approve Minutes from December 1st, 2016 meeting

Motion made by Brandon Buchanan to approve the 12/01/16 minutes. Motion approved 4-0.

TRY Mediation's 4th Quarter Report

Materials previously provided.

Increased voluntary mediation for 2016 and so far in 2017.

2016 revenue ahead by \$5,500.

2016 county cases closed - 1,124.

CJCC-Monthly Reports

Materials previously provided.

A number of questions presented by committee. Questions to be passed along to Tiana Glenna for answers.

CTC Monthly Report

Materials previously provided.

Community Service Monthly Report

Materials previously provided.

Pawnbrokers Ordinance

Materials previously provided.

Detective Henning presents updated ordinance and answers questions.

Motion to pass amendment for Pawnbroker Ordinance by Brandon Buchanan. Motion passes 3-1.

Future Agenda Item(s)

Update regarding funeral director fees unpaid to county.

Gary King- update on meth task force for next meeting.

State forfeiture and federal forfeiture for next meeting- Sheriff Department.

Tiana Glenna- to address questions rose at February meeting.

Adjourn

The meeting was adjourned by Committee Chair Sue Miller at 4:21 pm.

Respectfully Submitted by,

Alynia Froelich- Clerk

Bill would radically reform civil asset forfeiture

Bruce Vialmetti, Milwaukee Journal Sentinel Published 12:58 p.m. CT Jan. 23, 2017 | Updated 4:18 p.m. CT Jan. 23, 2017



(Photo: Courtesy Discover Wisconsin)

Civil asset forfeiture law, an effective crime-fighting tool to some, a mechanism for civil rights abuse by others, faces radical reform in Wisconsin under a bipartisan legislative proposal in Madison.

Hartland Police Chief Robert Rosch, president of the Wisconsin Chiefs of Police Association, said it opposes the bill in its current form and will track it closely through the legislative process.

Civil asset forfeitures gained traction in the 1980s when law enforcement agencies used it to go after the fruits and tools of organized drug traffickers. Laws allowed agencies to seize all kinds of property, from commercial real estate to boats and jewelry, that they believed was used in crimes or obtained with crime proceeds. In many Florida counties, the sheriff would drive around in a luxury car marked, "This car was seized from a drug

dealer."

But well-publicized abuses (<http://dailycaller.com/2015/01/30/the-7-most-egregious-examples-of-civil-asset-forfeiture/>) of the process led to a long-running reform movement among lawmakers on both the federal and state levels.

RELATED ARCHIVE: [Jim Sensenbrenner targets asset forfeitures in bill \(/story/news/crime/2016/05/19/jim-sensenbrenner-targets-asset-forfeitures-in-bill/84994742/\)](#)

Asset forfeiture turns the common concept of due process on its head: Police can seize property even when its owner is not even charged, much less convicted of, a crime police suspect is related to the property. Then the burden falls on the owner to prove their belongings are not criminally tainted.

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"Civil asset forfeiture reform is an important step to ensure that no person is, 'deprived of life, liberty or property, without due process of law' as guaranteed by the Fifth Amendment," said Sen. Dave Craig, (R-Town of Vernon), chief sponsor of the bill.

"Criminal justice policy should focus on punishing the convicted, not raising revenue. Our bill accomplishes that."

Craig is joined by Sens. Stephen Nass (R-Whitewater) and Robert Wirch (D-Kenosha) along with Assembly members Gary Tauchen (R-Bonduel), Adam Jarchow (R-Balsam Lake), and Frederick Kessler (D-Milwaukee). They are circulating the bill for co-sponsorship.

The bill would alter some fundamental aspects of current asset forfeiture practice. For one, forfeitures would have to be tied to a criminal conviction, and even then, the forfeiture would have to be proportional to the offense, meaning, for example, a semi-truck couldn't be taken because the driver had sold a personal amount of marijuana to another driver inside the cab.

Proceeds to schools

Another key change: All proceeds from forfeitures would go to Wisconsin's schools fund. Now, law enforcement agencies can keep various portions, <http://www.jsonline.com/story/news/politics/2017/01/23/bill-would-radically-reform-civil-asset-forfeitur...> 1/27/2017

Craig's group says many of the bill's reforms would track those introduced by U.S. Rep. Jim Sensenbrenner (R-Wis.) last year in something he calls The DUE PROCESS Act (<http://archive.jsonline.com/news/crime/ilm-sensenbrenner-targets-asset-forfeitures-in-bill-b99728863z1-380147641.html>). Among other things, it would offer property owners the opportunity to contest seizures and regain illegally seized property immediately.

It also would increase the amount of notice given to owners and make it easier for them to be heard by a judge while raising the burden of proof that the government must meet to seize suspect property. Currently, prosecutors must only show a criminal connection by a preponderance of the evidence, a much lower standard than in a criminal case.

Wisconsin actually fared pretty well among all states in a 2015 study of civil asset forfeiture by the Institute for Justice, earning a B grade (<http://archive.jsonline.com/news/wisconsin/wisconsin-scores-b-in-overall-critical-report-on-civil-forfeitures-b99620523z1-352815301.html>), just one of five in the nation. Only one state got an A — New Mexico, because it did away with civil asset forfeiture entirely.

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July 13, 2016

TO: Representative Mark Born
Room 312 North, State Capitol

FROM: Erin Probst, Fiscal Analyst

SUBJECT: Common School Fund Revenues: Fiscal Years 2013-14 and 2014-15

At your request, this memorandum provides information on the Common School Fund managed by the Board of Commissioners of Public Lands (BCPL). Specifically, it includes information regarding the balance of the Common School Fund on June 30, 2015, revenues to the Common School Fund in fiscal years 2013-14 and 2014-15, including revenues from fines and forfeitures, and school library aids provided in fiscal years 2013-14, 2014-15, and 2015-16.

The Board of Commissioners of Public Lands (BCPL), which consists of the Secretary of State, the State Treasurer, and the Attorney General, was established to accept public lands granted to Wisconsin by the federal government, which included over 10 million acres, of which approximately 3.7 million acres were granted as trust lands. BCPL was responsible for the sale of the trust lands and the investment of the proceeds for the benefit of schools and libraries. The Wisconsin Constitution also gives the Board the power to withhold land from sale. Most of the school trust lands were sold, with proceeds used to establish the school trust funds. The trust funds include the Common School Fund (with a June 30, 2015 balance of approximately \$976 million), the Normal School Fund (closing fiscal year 2014-15 balance of approximately \$26.6 million), University Fund (\$234,000 balance) and Agricultural College Fund (\$305,000 balance).

The Common School Fund (CSF) was established with the proceeds from the sale of lands granted to Wisconsin by the federal government (the 16th section of each township). Further, the principal of the CSF grows due to the constitutional provision specifying that the clear proceeds of all fines and forfeitures (including unclaimed and escheated property) that accrue to the state be deposited in the principal of the CSF. Earnings on the CSF are provided by BCPL to the Department of Public Instruction, and DPI distributes the funds to all Wisconsin school districts as public library aids (\$30.2 million in 2013-14, \$35.5 million in fiscal year 2014-15, and \$37.7 million in 2015-16). Table 1 shows revenues to the common school fund in fiscal years 2013-14 and 2014-15.

TABLE 1

**Common School Fund Revenues
Fiscal Years 2013-14 and 2014-15**

<u>Revenue Source</u>	<u>2013-14</u>	<u>2014-15</u>
Fines and Forfeitures	\$16,938,6000	\$12,647,400
Unclaimed Property	36,649,600	2,709,600
Timber Sales	107,500	45,400
Land Sales/Purchases	-1,209,500	0
Other Revenue	<u>3,400</u>	<u>15,900</u>
Total	\$52,489,600	\$15,418,300

Total common school fund revenues can vary significantly from year to year. From fiscal year 1994-95 to 2014-15, annual revenues ranged from a high of \$52.5 million in fiscal year 2013-14 to a low of \$18.3 million in fiscal year 1995-96. As shown in Table 1, fines and forfeitures made up \$16.9 million or 32% of the total 2013-14 revenues to the CSF and \$12.6 million or 82% of the total \$15.4 million in fiscal year 2014-15 revenues. It should be noted that the negative \$1.2 million in 2013-14 shown for land sales/purchase reflects land purchases BCPL made utilizing revenues from previous land sales. Current law specifies that the total acreage of public lands managed by the Board may not exceed the 77,845 acres of public lands managed by the Board on May 3, 2006. As of June 28, 2016, BCPL owned approximately 75,900 acres. Also, since the passage of 2005 Act 352, BCPL is allowed to "bank" proceeds from land sales and may only use them for acquisitions (as long as the total acreage managed does not exceed the acreage managed on May 3, 2006) that meet certain criteria including: (a) improving timberland management, (b) decreasing forest fragmentation, or (c) increasing public access to the land.

Table 2 shows the fines and forfeitures deposited in the CSF in fiscal years 2013-14 and 2014-15.

TABLE 2

Fine & Forfeiture Revenue to the Common School Fund

	<u>Fiscal Year</u>	
	<u>2014</u>	<u>2015</u>
Department of Administration- from County Circuit Courts:		
Fines and Forfeitures	\$8,689,500	\$4,434,500
Vehicle Forfeitures (Chapters 341 - 349, and 351)	6,590,900	6,473,200
Department of Health Services:		
Medical Facility Violations	765,200	1,293,400
Commissioner of Insurance:		
Insurance Violations	593,900	83,200
Department of Safety and Professional Services:		
Licensing Violations	38,300	64,200
Department of Administration:		
Parking Fines	28,500	34,700
Elections Board:		
Campaign Finance Violations	23,600	9,900
Department of Natural Resources:		
Confiscated Weapons/Equipment	14,200	37,700
Department of Revenue:		
Confiscated Liquor	13,400	9,000
Department of Justice:		
Fines & Forfeitures	4,000	34,300
Other Municipal:		
Fines & Forfeitures	13,700	18,800
Drug Forfeitures (cash and property)	<u>163,400</u>	<u>154,400</u>
Total	\$16,938,600	\$12,647,400

I hope this information is useful. Please contact me with any additional questions.

ER/sas

W D A A

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TO: Chairperson Joel Kleefisch
Members, Assembly Committee on Criminal Justice
and Public Safety

FROM: Wisconsin District Attorneys Association (WDAA) Board

DATE: January 28, 2016

RE: **Opposition to Assembly Bill 537, Forfeiture of property seized in
relation to a crime**

Dear Chairperson Kleefisch and Committee members:

The WDAA is opposed to AB 537, which would impose unreasonable and unnecessary restrictions on state law governing the forfeiture of crime-related money and property.

Laws regarding the forfeiture of money and property used in or derived from criminal activity were enacted in the 1980s in part to remove financial incentives from criminal activity. These statutes have proven to be valuable tools to fight crime; they have been used to cripple or disrupt criminal activity, including drug trafficking, across the state. Drug cartels and most criminal enterprises run on money. Civil forfeiture hits drug cartels and other criminals where it hurts most – their wallet. Civil forfeiture is a valuable and effective tool because it in part shifts the costs of crime fighting from taxpayers to criminals by taking away criminals' property and proceeds and re-dedicating them to public safety and other purposes. We are not aware of any widespread or even isolated abuses of the current forfeiture laws that would warrant the proposed changes, and we see no need for current law to be changed as proposed by SB 521/AB 537.

There are various misconceptions that underlie the bill.

A person whose property has been seized does not have to prove they are innocent. Instead the burden is and always has been on the government to prove that the money or property was used in or derived from criminal activity. Forfeiture actions are heard before a judge, individuals whose property has been seized are given notice, and the individuals can present evidence and be represented by an attorney under established rules of civil procedure. People do not legally possess property rights in property derived from criminal activity. Forfeitures under federal law are also subject to various safeguards. While there may be reforms that could be enacted, the proposed bill simply removes a valuable crime fighting tool for law enforcement.

Innocent persons are protected under existing law. Current law specifically provides that all forfeitures shall be made with the rights of innocent persons in mind and requires that property not subject to a forfeiture proceeding, except that needed as evidence or contraband, be returned to the owner. *See Wis. Stat. §§ 973.075(5) and (5m).* Indeed, if a defendant charged with a crime is concerned about property being wrongly forfeited, he or she may petition the court to adjourn the forfeiture proceeding until the criminal case is concluded; the court is required to grant that motion if it is made. *Wis. Stat. § 973.076(1)(b)1.*

Requiring a criminal conviction before forfeiture will allow criminals to escape with their ill-gotten gains. Forfeiture is designed as a civil action precisely because it targets illegal activity in which a criminal conviction would either be impossible or ineffective in stopping criminal conduct. As one example, a drug cartel courier would be able to simply claim he was unaware of the drugs and cash stashed in his truck to foil a criminal prosecution and prevent law enforcement from seizing the drug money.

Forfeiture is not “profit” for law enforcement. Under Wisconsin forfeiture law and proceedings, all money and most property proceeds – after deducting for the costs of seizure, storage and sale or disposal – are turned over to the state school fund to aid in education efforts, thus reducing the tax burden on Wisconsin citizens. *See Wis. Stat. § 973.075(4).* Even where funds are forfeited under federal law, which also has safeguards for innocent persons, the funds are used for law enforcement purposes; this process also reduces the financial burden on the public. Limiting the ability to seize such funds will greatly impair the work of specialized drug task forces to fight the epidemic of heroin and other drugs plaguing our communities. The bill eliminates any incentive for law enforcement to go after money and property from criminal activity by preventing the recovery of costs associated with seizures.

Enactment of this new law may affect prosecutors’ ability to effectively prosecute cases. Under the new law, defendants or others may petition for the return of property seized by law enforcement, even if it is evidence necessary for the prosecution of an on-going criminal case. Without an exemption for these situations, the courts will be bogged down unnecessarily. If evidence is returned prior to completion of a criminal case, we may no longer be able to effectively prosecute those crimes.

The WDAA is joined in opposing SB 521/AB 537 by the Attorney General and law enforcement groups across the state.

Sincerely,

David O’Leary
WDAA Board President