



**House
Legislative
Analysis
Section**

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PROSTITUTION OFFENSE: FORFEIT PROPERTY

House Bill 4356
Sponsor: Rep. Michael J. Bennane
Committee: Judiciary

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A SUMMARY OF HOUSE BILL 4356 AS INTRODUCED 3-7-89

The bill would amend the Michigan Penal Code to authorize the seizure and forfeiture to the government of property used in or obtained through the commission of a prostitution offense. Its procedures would be much like those established in the recently-enacted general forfeiture law, Public Act 104 of 1988.

Scope. Generally, property would be subject to forfeiture if it was used in or obtained through the commission of a prostitution offense. However, property would not be subject to forfeiture if its owner neither knew of nor consented to the crime. Forfeiture of property encumbered by a bona fide security interest or by an unpaid balance on a land contract would be subject to the interest of the secured party or land contract vendor.

Seizure. Personal property could be seized under an order issued by the district court upon a showing of probable cause to believe that the property was subject to forfeiture. Personal property could be seized without process if any of the following applied: the seizure was incident to a lawful arrest; the seizure was made under a valid search warrant; exigent circumstances precluded the obtaining of process and there was probable cause to believe that the property was subject to forfeiture; or the property was the subject of a prior judgment in favor of the state in a forfeiture proceeding.

Real property could be "seized" through the filing of a lien against it. The court, upon a showing of probable cause from the attorney general, local prosecutor, or municipal attorney, could authorize the filing of the lien.

Notices. Within seven days after seizure of personal property, the seizing agency (that is, the police) would notify various interested parties of the seizure and pending forfeiture and disposal of the property. For real property, the notices would be sent by the attorney general, local prosecutor, or city attorney. The police would have to immediately notify the prosecutor, or if applicable, the attorney general, of the seizure of personal property.

Return of Property. A person who received a notice could ask the court to return the property or discharge the lien on the grounds that the property was illegally seized, that the property was not subject to forfeiture under the bill, or that the person had an ownership or security interest in the property and neither knew of nor consented to the offense. The court would hold a hearing on the matter at the earliest possible time.

At that hearing, the prosecutor (or attorney general or city or township attorney) would have the burden of establishing probable cause to believe that the property was subject to forfeiture and that the person seeking return knew of or consented to the offense, and, if illegal seizure was claimed, that the property was properly seized. If the prosecutor failed to sustain the burden of proof, the court would order the property returned or lien discharged.

For a seized motor vehicle, the owner could ask the court to require the police to file a lien on the vehicle and return it, and the court would have to hold a hearing on the matter at the earliest possible time. If the owner established that he or she held legal title and that use of the vehicle was necessary for the owner or his or her family, the court could order that the vehicle be returned. If it ordered a vehicle returned, the court also would have to order the police to place a lien on the vehicle.

Property would have to be returned or a lien discharged within seven days after one of the following occurred: a warrant was not issued within seven days after the seizure or lien filing; all charges were dismissed; all persons involved were acquitted; or the court ordered the property returned or lien discharged.

A person's testimony at a hearing on property return could not be used against him or her in a criminal proceeding other than perjury. The testimony would not constitute a waiver of the right against self-incrimination.

Forfeiture Procedures. Forfeiture proceedings could not commence until after conviction for the offense. Separate procedures would apply to property with a total value of less than \$100,000 and for property valued at over \$100,000. For property of less than \$100,000, the state or local unit of government would give notice to interested parties and if no claim was filed within 21 days, would declare the property forfeited. If a claim was filed, or if the property was worth more than \$100,000, the unit of government seeking forfeiture would have to file a civil action.

To prevail at a forfeiture proceeding, the government would have to prove by a preponderance of the evidence that the property was subject to forfeiture, and, if someone other than the convicted defendant was claiming ownership or a security interest, that the person either knew of or consented to the offense. If the government failed to meet its burden of proof, the property would be returned within seven days. However, property would not be returned to a person whose security interest in the property was less than the market value unless the person paid the government the difference between the market value and the secured interest.

Distribution of Proceeds. The government could sell any property obtained through forfeiture and distribute the proceeds and any other money or thing of value obtained under the bill in the following descending order of priority:

- **to pay any order of restitution in the prosecution for the prostitution offense;

- **to pay the claim of each person who showed that he or she was a victim of the prostitution offense to the extent that the claim was not covered by an order of restitution;

- **to pay the expenses of the proceedings for forfeiture and sale, including expenses incurred during the seizure process, maintenance of custody, advertising, and court costs.

Any balance remaining would go to the Crime Victims Compensation Fund.

Receivers. In the course of selling forfeited real property, the government could request the court to appoint a receiver to dispose of the property. The receiver would be entitled to reasonable compensation and would be authorized to maintain and sell the property.