

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.159q Burden of proof; evidence; return or disposal of property; notice; estoppel from denial of allegations in civil trial; admissibility of testimony.

Sec. 159q.

(1) At the civil in rem forfeiture proceeding, the court shall act as trier of fact. The prosecuting agency has the burden of proving both of the following by clear and convincing evidence:

(a) The property is subject to civil in rem forfeiture under section 159m.

(b) The person claiming an ownership interest in the property had prior actual knowledge of the commission of an offense listed in the definition of racketeering.

(2) At the civil in rem forfeiture proceeding, the person claiming an ownership interest in the property has the burden of proving, by a preponderance of the evidence, that he or she served notice of the commission of the crime upon an appropriate law enforcement agency.

(3) At the civil in rem forfeiture proceeding, the prosecuting agency has the burden of proving, by a preponderance of the evidence, that a person claiming a security interest in the property or a person claiming an interest as a land contract vendor had prior actual knowledge of the commission of the racketeering activity.

(4) If the prosecuting agency fails to meet the burden of proof under subsection (1), or if the person claiming an ownership interest in the property meets his or her burden of proof under subsection (2), the property shall be returned to the owner within 28 days after a written order is entered to return the property, unless an appellate court stays the order. In addition, the prosecuting agency shall reimburse the owner for reasonable attorney fees and damages related to towing costs, storage fees and expenses, foreclosure costs, and other similar expenses.

(5) If the prosecuting agency meets the burden of proof under subsection (1) and the person claiming an ownership interest in the property does not meet the burden of proof under subsection (2), the property shall be disposed of pursuant to section 159r.

(6) Within 7 days after personal property is returned to the owner, or a lien filed against real property or a motor vehicle is discharged, the prosecuting agency that gave notice of the seizure of the property and the intent to forfeit and dispose of the property pursuant to section 159o shall give notice to the persons who received notice pursuant to section 159o that the property has been returned to the owner or that the lien has been discharged.

(7) The notice required under subsection (6) shall be a written notice delivered to the person or sent to the person by certified mail. If the name and address of the person are not reasonably ascertainable or delivery of the notice cannot reasonably be accomplished, the notice shall be published in a newspaper of general circulation in the county in which the personal property was seized or the real property is located for 10 successive publishing days.

(8) A defendant convicted in a criminal proceeding is estopped from subsequently denying in a civil action the essential allegations of the criminal offense of which he or she was convicted.

(9) The testimony of a person at a civil in rem forfeiture proceeding held under this chapter is not admissible against him or her, except for the purpose of impeachment, in a criminal proceeding other than a criminal prosecution for perjury. The testimony of a person at a civil in rem forfeiture proceeding held under this chapter does not waive the person's constitutional right against self-incrimination.

History: Add. 1995, Act 187, Eff. Apr. 1, 1996