

**REGULAR CALENDAR**

**March 3, 2022**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Majority of the Committee on Criminal Justice and Public Safety to which was referred HB 1296-FN,**

**AN ACT relative to money, coin, or currency which may be forfeited in connection with a drug offense. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.**

**Rep. John Burt**

**FOR THE MAJORITY OF THE COMMITTEE**

**MAJORITY  
COMMITTEE REPORT**

Committee:	<b>Criminal Justice and Public Safety</b>
Bill Number:	<b>HB 1296-FN</b>
Title:	<b>relative to money, coin, or currency which may be forfeited in connection with a drug offense.</b>
Date:	<b>March 3, 2022</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>OUGHT TO PASS WITH AMENDMENT 2022-0874h</b>

**STATEMENT OF INTENT**

In 2016 this legislature made a major step toward changing the process of civil asset forfeiture. That step required a criminal conviction in most cases prior to the forfeiture case proceeding. This bill as amended brings more efficiency and justice to the process. Instead of two separate but related cases, this bill ties the seized asset to the criminal case. It provides that in the event the prosecution fails to convict, the asset is released. In the event of a conviction on a felony charge, the forfeiture of the asset is treated as a part of sentencing. This bill also limits the process of adopting seized assets to the federal government for civil asset forfeiture. It will require that seizures made under state law remain within our criminal asset forfeiture laws.

Vote 11-10.

Rep. John Burt  
FOR THE MAJORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Criminal Justice and Public Safety

**HB 1296-FN**, relative to money, coin, or currency which may be forfeited in connection with a drug offense. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. John Burt for the **Majority** of Criminal Justice and Public Safety. In 2016 this legislature made a major step toward changing the process of civil asset forfeiture. That step required a criminal conviction in most cases prior to the forfeiture case proceeding. This bill as amended brings more efficiency and justice to the process. Instead of two separate but related cases, this bill ties the seized asset to the criminal case. It provides that in the event the prosecution fails to convict, the asset is released. In the event of a conviction on a felony charge, the forfeiture of the asset is treated as a part of sentencing. This bill also limits the process of adopting seized assets to the federal government for civil asset forfeiture. It will require that seizures made under state law remain within our criminal asset forfeiture laws. **Vote 11-10.**

Original: House Clerk

Cc: Committee Bill File

**REGULAR CALENDAR**

**March 2, 2022**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Minority of the Committee on Criminal Justice and Public Safety to which was referred HB 1296-FN,**

**AN ACT relative to money, coin, or currency which may be forfeited in connection with a drug offense. Having considered the same, and being unable to agree with the Majority, report with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.**

**Rep. David Meuse**

**FOR THE MINORITY OF THE COMMITTEE**

**MINORITY  
COMMITTEE REPORT**

Committee:	<b>Criminal Justice and Public Safety</b>
Bill Number:	<b>HB 1296-FN</b>
Title:	<b>relative to money, coin, or currency which may be forfeited in connection with a drug offense.</b>
Date:	<b>March 2, 2022</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>INEXPEDIENT TO LEGISLATE</b>

**STATEMENT OF INTENT**

While the time has come for a closer examination of New Hampshire's civil asset forfeiture laws, the minority feels that this bill goes too far and has the potential to lead to unintended consequences. Chief among them is the requirement for an attorney acting as a public defender for a defendant in a criminal case to also represent the accused during a post-seizure forfeiture hearing. While these hearings can be held separately or in conjunction with a probable cause determination hearing, post-arraignment hearing, or other pre-trial hearing, they will need to be handled by already overburdened courts and public defenders. This is problematic because the bill includes no provision to provide additional resources from the state to ease the burden. Also worth noting is the committee received an 11 page amendment superseding another 11 page (non-germane) amendment to the original 1/3 page original bill. The amendment includes significant procedural changes. The minority feels that more time is needed to properly vet the amendment, obtain stakeholder feedback, and quantify potential costs, which is why we cannot support the bill at this time.

Rep. David Meuse  
FOR THE MINORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Criminal Justice and Public Safety

**HB 1296-FN**, relative to money, coin, or currency which may be forfeited in connection with a drug offense. **INEXPEDIENT TO LEGISLATE.**

Rep. David Meuse for the **Minority** of Criminal Justice and Public Safety. While the time has come for a closer examination of New Hampshire's civil asset forfeiture laws, the minority feels that this bill goes too far and has the potential to lead to unintended consequences. Chief among them is the requirement for an attorney acting as a public defender for a defendant in a criminal case to also represent the accused during a post-seizure forfeiture hearing. While these hearings can be held separately or in conjunction with a probable cause determination hearing, post-arraignment hearing, or other pre-trial hearing, they will need to be handled by already overburdened courts and public defenders. This is problematic because the bill includes no provision to provide additional resources from the state to ease the burden. Also worth noting is the committee received an 11 page amendment superseding another 11 page (non-germane) amendment to the original 1/3 page original bill. The amendment includes significant procedural changes. The minority feels that more time is needed to properly vet the amendment, obtain stakeholder feedback, and quantify potential costs, which is why we cannot support the bill at this time.

Original: House Clerk

Cc: Committee Bill File

Amendment to HB 1296-FN

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to the forfeiture of items used in connection with a drug offense.

4

5 Amend the bill by replacing all after the enacting clause with the following:

6

7 1 Controlled Drug Act; Forfeiture of Items Used in Connection With Drug Offenses. Amend  
8 RSA 318-B:17-b to read as follows:

9 318-B:17-b Forfeiture of Items Used in Connection With Drug Offense.

10 I. Interests in the following property, upon petition of the attorney general, shall be subject  
11 to forfeiture to the state and said property interest shall be vested in the state:

12 (a) All materials, products and equipment of any kind, including, but not limited to,  
13 firearms, scales, packaging equipment, surveillance equipment and grow lights, which are used or  
14 intended for use in procurement, manufacture, compounding, processing, concealing, trafficking,  
15 delivery or distribution of a controlled drug in felonious violation of this chapter.

16 (b) Property interest in any conveyance, including but not limited to aircraft, vehicles, or  
17 vessels, which is used or intended for use in the procurement, manufacture, compounding,  
18 processing, concealing, trafficking, delivery or distribution of a controlled drug in felonious violation  
19 of this chapter.

20 (c) Any moneys, coin, currency, negotiable instruments, securities or other investments  
21 knowingly used or intended for use in the procurement, manufacture, compounding, processing,  
22 concealing, trafficking, delivery or distribution of a controlled drug in felonious violation of this  
23 chapter and all proceeds, including moneys, coin, currency, negotiable instruments, securities or  
24 other investments, and any real or personal property, traceable thereto. All moneys, coin, currency,  
25 negotiable instruments, securities and other investments found in proximity to controlled substances  
26 are presumed to be forfeitable under this paragraph. The claimant of the property shall bear the  
27 burden of rebutting this presumption.

28 (d) Any books, records, ledgers and research material, including formulae, microfilm,  
29 tapes and any other data which are used or intended for use in felonious violation of this chapter.

30 (e) Any real property, including any right, title, leasehold interest, and other interest in  
31 the whole of any lot or tract of land and any appurtenances or improvements, which real property is  
32 knowingly used or intended for use, in any manner or part, in the procurement, manufacture,

**Amendment to HB 1296-FN**  
**- Page 2 -**

1    compounding, processing, concealing, trafficking, delivery or distribution of a controlled drug in  
2    felonious violation of this chapter.

3           I-a. The state shall have a lien on any property subject to forfeiture under this section upon  
4    seizure thereof. Upon forfeiture, the state's title to the property relates back to the date of seizure.

5           I-b. Property may be seized for forfeiture by any law enforcement agency designated by the  
6    department of justice, as follows:

7           (a) Upon process issued by any justice, associate justice or special justice of the circuit or  
8    superior court. The court may issue a seizure warrant on an affidavit under oath demonstrating  
9    that probable cause exists for its forfeiture or that the property has been the subject of a previous  
10   final judgment of forfeiture in the courts of any state or of the United States. The application for  
11   process and the issuance, execution and return of process shall be subject to applicable state law.  
12   The court may order that the property be seized and secured on such terms and conditions as are  
13   reasonable in the discretion of the court. Such order may include an order to a financial institution  
14   or to any fiduciary or bailee to require the entity to impound any property in its possession or control  
15   and not to release it except upon further order of the court. The order may be made on or in  
16   connection with a search warrant;

17           (b) Physically, without process on probable cause to believe that the property is subject  
18   to forfeiture under this chapter; or

19           (c) Constructively, without process on probable cause to believe that the property is  
20   subject to forfeiture under this chapter, by recording a notice of pending forfeiture in the registry of  
21   deeds in the county where the real property is located or at the town clerk's office where the personal  
22   property is located stating that the state intends to seek forfeiture of the identified property  
23   pursuant to this chapter.

24           (d) A seizure for forfeiture without process under subparagraph (b) or (c) is reasonable if  
25   made under circumstances in which a warrantless seizure or arrest would be valid in accordance  
26   with state law.

27           (e) ***United States currency totaling \$200 or less, or a motor vehicle of \$2,000 or***  
28   ***less in market value shall be exempt from seizure and forfeiture. The department of justice***  
29   ***shall notify state, county, and municipal law enforcement agencies of the publications that***  
30   ***such agencies may use to establish the value of a motor vehicle in the prosecuting***  
31   ***authority's jurisdiction.***

32           I-c. Upon seizure of any items or property interests the property shall not be subject to  
33   alienation, sequestration or attachment but is deemed to be in the custody of the department of  
34   justice subject only to the order of the court.

35           ***I-d. No waiver shall be accepted by the court, for purpose of seizure or forfeiture,***  
36   ***unless the court determines that it has been executed knowingly and voluntarily and has***  
37   ***not been requested, induced or required by a law enforcement officer. A document***



1 *purporting to waive interest or rights in seized property shall be void and inadmissible in*  
2 *court.*

3 II.(a) Upon the seizure of any personal property under paragraph I, the person making or  
4 directing such seizure shall inventory the items or property interests and issue a copy of the  
5 resulting report to any person or persons having a recorded interest, or claiming an equitable  
6 interest in the item within 7 days of said seizure.

7 (b) Upon seizure of any real property under paragraph I, the person making or directing  
8 such seizure shall notify any person having a recorded interest or claiming an equitable interest in  
9 the property within 7 days of said seizure.

10 (c) The seizing agency shall cause an appraisal to be made of the property as soon as  
11 possible and shall promptly send to the department of justice a written request for forfeiture. This  
12 request shall include a statement of all facts and circumstances supporting forfeiture of the property,  
13 including the names of all witnesses then known, and the appraised value of the property.

14 (d) The department of justice shall examine the facts and applicable law of the cases  
15 referred pursuant to subparagraph (c), and if it is probable that the property is subject to forfeiture,  
16 shall cause the initiation of administrative or judicial proceedings against the property. If upon  
17 inquiry and examination, the department of justice determines that such proceedings probably  
18 cannot be sustained or that the ends of justice do not require the institution of such proceedings, the  
19 department shall make a written report of such findings and send a copy to the seizing agency, and,  
20 if appropriate, shall also authorize and direct the release of the property.

21 ~~[(e) The department of justice shall, within 60 days of the seizure, file a petition in the~~  
22 ~~superior court having jurisdiction under this section. If no such petition is filed within 60 days, the~~  
23 ~~items or property interest seized shall be released or returned to the owners.]~~

24 II-a. Pending forfeiture and final disposition, the law enforcement agency making the  
25 seizure shall:

26 (a) Place the property under seal; or

27 (b) Remove the property to a storage area for safekeeping; or

28 (c) Remove the property to a place designated by the court; or

29 (d) Request another agency to take custody of the property and remove it to an  
30 appropriate location within the state; or

31 (e) In the case of moneys, file a motion for transfer of evidence under RSA 595-A:6.  
32 Upon the court's granting of the motion the moneys shall be immediately forwarded to an interest-  
33 bearing seized asset escrow account to be administered by the attorney general. Upon resolution of  
34 the forfeiture proceeding the moneys deposited shall be transferred to the drug forfeiture fund or  
35 returned to the owners thereof as directed by the court. Unless otherwise ordered by a court in a  
36 specific case, interest on all moneys deposited in the seized asset escrow account shall be deposited  
37 annually into the drug forfeiture fund established under RSA 318-B:17-c.

1           III. The court may order forfeiture of all items or property interests subject to the provisions  
2 of paragraph I[, except as follows:

3           ~~(a) No item or property interest shall be subject to forfeiture unless the owner or owners~~  
4 ~~thereof were consenting parties to a felonious violation of this chapter and had knowledge thereof.~~

5           ~~(b) No items or property interests shall be subject to forfeiture unless involved in an~~  
6 ~~offense which may be charged as a felony] as part of a criminal prosecution and following a~~  
7 ~~conviction for a felony violation of this chapter pursuant to paragraph III-a.~~

8           ***III-a.(a)(1) If a defendant in a criminal matter is represented by a public defender***  
9 ***or counsel appointed by the court, the public defender or appointed counsel shall represent***  
10 ***the defendant in the forfeiture proceeding and any other related criminal proceeding.***

11           ***(2) Following seizure, a defendant or any other person with an interest in***  
12 ***the property shall have a right to a post-seizure hearing. The court shall give such post-***  
13 ***seizure hearings priority on the court's docket.***

14           ***(3) A person with an interest in the property may petition the court for a***  
15 ***hearing.***

16           ***(4) The court may hold a post-seizure hearing:***

17           ***(A) As a separate hearing; or***

18           ***(B) At the same time as a probable cause determination, a post-***  
19 ***arraignment hearing, or other pretrial hearing.***

20           ***(5) A party, by agreement or for good cause, may move for one extension of no***  
21 ***more than 10 days. Any motion may be supported by affidavits or other submissions.***

22           ***(6) The court shall order the return of property if it finds:***

23           ***(A) The seizure was invalid;***

24           ***(B) A criminal charge has not been filed and no extension of the filing***  
25 ***period is available;***

26           ***(C) The property is not reasonably required to be held as evidence; or***

27           ***(D) The final judgment likely shall be in favor of the defendant or any***  
28 ***other person with an interest in the property.***

29           ***(7) The provisions of this section shall not apply to contraband.***

30           ***(b) In a case in which the state seeks forfeiture of property the prosecuting***  
31 ***authority shall file with the court a petition for forfeiture. The petition shall be a separate***  
32 ***document and accompany the initial or a subsequent indictment or information. It shall***  
33 ***include the following information:***

34           ***(1) A description of the property seized;***

35           ***(2) The time, date, and place of the seizure; and***

36           ***(3) A description of how the property was used in or derived from the alleged***  
37 ***crime.***

1           (c)(1) *The prosecuting authority may allege, in the petition, the forfeiture of*  
2 *property as a sanction related to the crime for which the defendant is charged, as part of*  
3 *sentencing consideration, or through other means for the court to oversee the forfeiture*  
4 *proceeding.*

5           (2) *The petition shall not be read to the jury.*

6           (3) *The prosecuting authority may amend the petition at any time before*  
7 *trial.*

8           (4) *The prosecuting authority shall serve the indictment or information,*  
9 *amendment, and petition as provided by the rules of the court.*

10          (5) *The court may grant an unlimited number of 30-day extensions for the*  
11 *filing of a petition if, for each extension, the court determines probable cause is shown and*  
12 *additional time is warranted.*

13          (6) *The court shall order the return of the property to the owner if the*  
14 *prosecuting authority does not file an indictment or information as provided by the court's*  
15 *rules, the period of an extension expires, or the court does not grant an extension.*

16          (d) *Discovery related to the forfeiture proceeding shall be subject to the rules of*  
17 *criminal procedure.*

18          (e) *The court shall consider the loss of property subject to forfeiture as a*  
19 *criminal sanction as part of and following the prosecution of the underlying crime.*  
20 *Property may be forfeited if:*

21           (1) *The state secures a conviction under this chapter; and*

22           (2) *The state establishes by a preponderance of the evidence that the*  
23 *property is an instrumentality of, or proceeds derived directly from, the crime for which the*  
24 *state secured a conviction.*

25          (f) *After the defendant's conviction, the court shall hold the forfeiture*  
26 *proceeding at its discretion. It shall be conducted by the court without a jury.*

27          (g) *Nothing in this paragraph shall prevent property from being forfeited as*  
28 *part of:*

29           (1) *A plea agreement; or*

30           (2) *A grant of immunity or reduced punishment, with or without the filing of*  
31 *a criminal charge, in exchange for testifying or assisting a law enforcement investigation*  
32 *or prosecution.*

33          (h) *The court may waive the conviction requirement and grant title to the*  
34 *property to the state if the prosecuting authority files a motion no fewer than 90 days after*  
35 *seizure and shows by a preponderance of the evidence that, before conviction, the*  
36 *defendant:*

37           (1) *Is deceased;*

1                   (2) *Was deported by the United States government;*

2                   (3) *Has abandoned the property; or*

3                   (4) *Has fled the jurisdiction.*

4                   (i) *The defendant may petition the court to determine, before trial, at trial or*  
5 *upon conviction, whether the forfeiture is unconstitutionally excessive under the state or*  
6 *federal constitution. The defendant shall bear the burden of establishing the forfeiture is*  
7 *unconstitutionally excessive by a preponderance of the evidence at a hearing conducted by*  
8 *the court without a jury. In determining whether the forfeiture is unconstitutionally*  
9 *excessive, the court shall not consider the value of the property to the state, but may*  
10 *consider other relevant factors including:*

11                   (1) *The seriousness of the crime and its impact on the community, including*  
12 *the duration of the activity, use of a firearm, and harm caused by the defendant;*

13                   (2) *The extent to which the defendant participated in the crime;*

14                   (3) *The extent to which the property was used in committing the crime;*

15                   (4) *Whether the crime was completed or attempted;*

16                   (5) *The sentence or fine to be imposed for committing the crime;*

17                   (6) *The hardship to the defendant if the forfeiture of a motor vehicle would*  
18 *deprive the defendant of the defendant's livelihood;*

19                   (7) *An unjust hardship to the defendant's family if the property is forfeited;*

20 *and*

21                   (8) *All relevant factors related to the fair market value of the property.*

22                   (j)(1) *Property encumbered by a security interest shall not be forfeited. The*  
23 *prosecuting authority shall return property to a secured interest holder, other than the*  
24 *defendant or rightful owner, up to the value of the interest. Contraband shall not be*  
25 *returned.*

26                   (2) *If the property is not returned, the secured interest holder may petition*  
27 *the court at any time before the court enters judgment in the criminal prosecution or*  
28 *grants the motion in subparagraph (h).*

29                   (3) *The court shall hear the petition within 30 days after its filing or at the*  
30 *court's discretion. The hearing shall be held before the court without a jury. The court*  
31 *may consolidate the hearing on the petition with any other hearing before the court in the*  
32 *case.*

33                   (4) *The secured interest holder shall establish by a preponderance of the*  
34 *evidence the validity of the security interest, mortgage, lien, leasehold, lease, rental*  
35 *agreement, or other agreement.*

1           (5) *If the secured interest holder alleges a valid interest but the prosecuting*  
2 *authority seeks to proceed, the prosecuting authority shall prove by a preponderance of the*  
3 *evidence that:*

4                   (A) *The interest is invalid;*

5                   (B) *The interest resulted from a fraudulent conveyance; or*

6                   (C) *The secured interest holder consented to the use of the property in the*  
7 *crime for which the defendant is charged.*

8           (6) *If the state fails to meet its burden under subparagraph (5), the court*  
9 *shall order the state to relinquish claims to the property, up to the value of the interest,*  
10 *and return the interest to the secured interest holder.*

11           (k)(1) *Property of an innocent owner shall not be forfeited. The prosecuting*  
12 *authority summarily shall return property to such owner. Contraband shall not be*  
13 *returned.*

14           (2) *If the property is not summarily returned, an innocent owner may*  
15 *petition the court at any time before the court enters judgment in the criminal prosecution*  
16 *or grants the motion in subparagraph (h).*

17           (3) *An innocent owner shall file with the court a simple statement that sets*  
18 *forth:*

19                   (A) *The owner's interest or regular use of the property;*

20                   (B) *Additional facts supporting the owner's claim; and*

21                   (C) *The relief sought by the owner.*

22           (4) *The court shall hear the petition within 30 days after its filing or at the*  
23 *court's discretion. The hearing shall be held before the court alone without a jury. The*  
24 *court may consolidate the hearing on the petition with any other hearing before the court*  
25 *in the case.*

26           (5) *The innocent owner shall establish by a preponderance of the evidence*  
27 *the validity of interest or regular use of the property.*

28           (6) *If the innocent owner meets the burden under subparagraph (5) and the*  
29 *prosecuting authority seeks to proceed, the prosecuting authority shall prove by a*  
30 *preponderance of the evidence that the innocent owner is not entitled to the property*  
31 *because:*

32                   (A) *The innocent owner's interest in the property is invalid;*

33                   (B) *The innocent owner did not regularly use the property;*

34                   (C) *The innocent owner had actual knowledge the property was used in*  
35 *or derived directly from the crime for which the defendant is charged;*

36                   (D) *The innocent owner was willfully blind to the crime for which the*  
37 *defendant is charged; or*

1           (E) *The innocent owner was not a bona fide purchaser without notice of*  
2 *any defect in title and for valuable consideration.*

3           (7) *If the prosecuting authority fails to meet its burden in subparagraph (6),*  
4 *the court shall order the state to relinquish all claims and return the property to the*  
5 *innocent owner.*

6           (8) *No information in the innocent owner's statement shall be used as*  
7 *evidence in the criminal portion of the case.*

8           (9) *Nothing in this paragraph shall prohibit the innocent owner from*  
9 *providing information to any party or testifying in any trial as to facts the innocent owner*  
10 *knows.*

11           (10) *The defendant or convicted offender may invoke the right against self-*  
12 *incrimination or the marital privilege during the forfeiture proceeding. The trier of fact*  
13 *may draw an adverse inference from the invocation of the right or privilege.*

14           (1)(1) *If the prosecuting authority fails to meet its burden in the criminal or*  
15 *forfeiture proceeding, the court shall enter judgment dismissing the forfeiture proceeding*  
16 *and ordering the return of property to the innocent owner unless the owner's possession of*  
17 *the property is illegal.*

18           (2) *If the prosecuting authority meets its burden in the criminal and*  
19 *forfeiture proceeding, the court shall enter judgment forfeiting the property.*

20           (3) *A court may enter judgment following a hearing, pursuant to a*  
21 *stipulation or plea agreement, or at the court's discretion.*

22           (m) *Upon the prosecuting authority's motion following conviction or at the*  
23 *court's discretion, the court may order the forfeiture of substitute property owned solely by*  
24 *the defendant up to the value of property that is beyond the court's jurisdiction or cannot*  
25 *be located through due diligence, only if the state proves by a preponderance of the*  
26 *evidence that the defendant intentionally:*

27                   (1) *Dissipated the property;*

28                   (2) *Transferred, sold, or deposited property with a third party to avoid*  
29 *forfeiture;*

30                   (3) *Diminished substantially the value of property; or*

31                   (4) *Commingled property with other property that cannot be divided without*  
32 *difficulty.*

33           (n) *A defendant shall not be jointly and severally liable for forfeiture awards*  
34 *owed by other defendants. When ownership is unclear, a court may order each defendant*  
35 *to forfeit property on a pro rata basis or by another means the court finds equitable.*

36           (o)(1) *A party to forfeiture proceeding, other than the defendant, may appeal the*  
37 *court's decision.*

1           (2) *The defendant may appeal the court's decision regarding the seizure or*  
2 *forfeiture of property following final judgment in the forfeiture proceeding.*

3           (p)(1) *If the court orders the return of property, the law enforcement agency that*  
4 *holds the property shall return the property to the rightful owner within a reasonable*  
5 *period not to exceed 5 days after the date of the order.*

6           (2) *The rightful owner shall not be subject to any expenses related to towing,*  
7 *storage or preservation of the property.*

8           (3) *The law enforcement agency that holds the property shall be responsible*  
9 *for any damages, storage fees, and related costs applicable to property returned under this*  
10 *section.*

11           (q) *No law enforcement agency shall sell forfeited property directly or indirectly*  
12 *to any employee of the law enforcement agency, to a person related to an employee by blood*  
13 *or marriage, or to another law enforcement agency.*

14           (r)(1) *No state or local law enforcement agency shall transfer or offer for*  
15 *adoption property, seized under state law, to a federal agency for the purpose of forfeiture*  
16 *under the federal Controlled Substances Act, Public Law 91-513.*

17           (2) *Subparagraph (1) shall only apply to a seizure by state and or local law*  
18 *enforcement agencies pursuant to their own authority under state law and without*  
19 *involvement of the federal government. Nothing in this paragraph shall be construed to*  
20 *limit state and local agencies from participating in joint task forces with the federal*  
21 *government.*

22           (3) *No state, county, or local law enforcement agency shall accept payment*  
23 *of any kind or distribution of forfeiture proceeds from the federal government in violation*  
24 *of subparagraph (1). Any such law enforcement agency that violates this subparagraph*  
25 *shall forfeit such proceeds to the state's general fund.*

26           ~~IV.(a) The department of justice may petition the superior court in the name of the state in~~  
27 ~~the nature of a proceeding in rem to order forfeiture of items or property interests subject to~~  
28 ~~forfeiture under the provisions of this section. Such petition shall be filed in the court having~~  
29 ~~jurisdiction over any related criminal proceedings which could be brought under this chapter.~~

30           ~~(b) Such proceeding shall be deemed a civil suit in equity in which the state shall have~~  
31 ~~the burden of proving all material facts by a preponderance of the evidence and in which the owners~~  
32 ~~or other persons claiming an exception pursuant to paragraph III shall have the burden of proving~~  
33 ~~such exception.~~

34           ~~(c) The court shall issue summonses to all persons who have a recorded interest or claim~~  
35 ~~an equitable interest in said items or property interests seized under this chapter and shall schedule~~  
36 ~~a hearing on the petition to be held within 90 days of the date specified by the court on the~~  
37 ~~summonses.~~

1 ~~(d) At the request of any party to the forfeiture proceeding, the court may grant a~~  
2 ~~continuance until the final resolution of any criminal proceedings which were brought against a~~  
3 ~~party under this chapter and which arose from the transaction which gave rise to the forfeiture~~  
4 ~~proceeding. No asset forfeiture may be maintained against a person's interest in property if that~~  
5 ~~person has been found not guilty of the underlying felonious charge.~~

6 ~~(e) At the hearing, the court shall hear evidence and make findings of fact and rulings of~~  
7 ~~law as to whether the property is subject to forfeiture under this chapter. Except in the case of~~  
8 ~~proceeds, upon a finding that the property is subject to forfeiture the court shall determine whether~~  
9 ~~the forfeiture of the property is not excessive in relation to the underlying criminal offense. In~~  
10 ~~making this determination the court shall consider whether in addition to any other pertinent~~  
11 ~~considerations:~~

12 ~~(1) There is a substantial connection between the property to be forfeited and the~~  
13 ~~underlying drug offense;~~

14 ~~(2) Criminal activities conducted by or through the use of the property were~~  
15 ~~extensive; and~~

16 ~~(3) The value of the property to be forfeited greatly outweighs the value of the drugs~~  
17 ~~that were or would have been likely to be distributed, the costs of the investigation and prosecution,~~  
18 ~~and the harm caused by the criminal conduct. The court shall, thereupon, make a final order, from~~  
19 ~~which all parties shall have a right of appeal.~~

20 ~~V.]~~ Final orders for forfeiture of property under this section shall be implemented by the  
21 department of justice and shall provide for disposition of the items or property interests by the state  
22 in any manner not prohibited by law, including retention for official use by law enforcement or other  
23 public agencies or sale at public auction. The department of justice shall pay the reasonable  
24 expenses of the forfeiture proceeding, seizure, storage, maintenance of custody, advertising, court  
25 costs, and notice of sale from any money forfeited and from the proceeds of any sale or public auction  
26 of forfeited items. All outstanding recorded liens on said items or property interests seized shall be  
27 paid in full upon conclusion of the court proceedings from the proceeds of any sale or public auction  
28 of forfeited items. The balance remaining shall be distributed by the department of justice as  
29 follows:

30 (a) Of the first \$600,000, \$100,000 shall be credited to the police psychological stability  
31 screening fund established in RSA 106-L:16 and from the remainder:

32 (1) Forty-five percent shall be returned to the fiscal officer or officers of the  
33 municipal, county, state, or federal government which provided the law enforcement agency or  
34 agencies responsible for the seizure. Moneys returned to each fiscal officer shall be deposited in a  
35 special account and shall be used primarily for meeting expenses incurred by law enforcement  
36 agencies in connection with drug-related investigations. Except as provided in RSA 31:95-b, such  
37 funds shall be available for expenditure without further appropriation by the legislative body of the



**Amendment to HB 1296-FN**  
**- Page 11 -**

1 municipal, county, state or federal government, and shall not be transferred or expended for any  
2 other purpose. Moneys returned to a state law enforcement agency shall be deposited in a special  
3 nonlapsing account established within the office of the state treasurer and shall be in addition to all  
4 other state appropriations to such agency;

5 (2) Ten percent shall be deposited into a special nonlapsing account established  
6 within the office of the state treasurer for the department of health and human services; and

7 (3) Forty-five percent shall be deposited in a revolving drug forfeiture fund,  
8 administered by the department of justice pursuant to RSA 318-B:17-c; and

9 (b) Of any balance remaining:

10 (1) Ten percent shall be deposited in the manner prescribed in subparagraph  
11 ~~[V(a)(2)]~~ **IV(a)(2)** of this section; and

12 (2) Ninety percent shall be deposited in the manner prescribed in subparagraph  
13 ~~[V(a)(3)]~~ **IV(a)(3)** of this section.

14 (c) The total amount of payments made to the special account for the department of  
15 health and human services pursuant to subparagraphs ~~[V(a)(2) and V(b)(1)]~~ **IV(a)(2) and IV(b)(1)**  
16 of this section shall not exceed \$400,000 in any fiscal year and any excess over \$400,000 which would  
17 otherwise be paid to such special account under this section shall be deposited in the general fund.  
18 The revolving drug forfeiture fund shall at no time exceed \$1,000,000. All sums in the revolving  
19 drug forfeiture fund in excess of \$1,000,000 shall be credited to the general fund.

20 2 Effective Date. This act shall take effect January 1, 2023.

2022-0874h

AMENDED ANALYSIS

This bill establishes a procedure for the forfeiture of items used in connection with a drug offense.

**HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY**

**EXECUTIVE SESSION on HB 1296-FN**

**BILL TITLE:** (New Title) relative to the forfeiture of items used in connection with a drug offense.

**DATE:** March 2, 2022

**LOB ROOM:** 202-204

**MOTIONS: OUGHT TO PASS WITH AMENDMENT**

Moved by Rep. Burt                                  Seconded by Rep. Wallace                                  AM Vote: 11-10  
Amendment # 2022-0874h

Moved by Rep. Burt                                  Seconded by Rep. Wallace                                  Vote: 11-10

**CONSENT CALENDAR: NO**

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Scott Wallace, Clerk



## 2022 SESSION

## Criminal Justice and Public Safety

 Bill #: HB1296 Motion: OTP AM #: 08744 Exec Session Date: 3.2.22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Abbas, Daryl A. Chairman	16		
Roy, Terry Vice Chairman	1		
Welch, David A.	2		
Burt, John A.	3		
Hopper, Gary S. <u>PEARSON</u>	4		
Green, Dennis E.	5		
Wallace, Scott Clerk	6		
Testerman, Dave <u>BORREY</u>	7		
True, Chris	8		
Pratt, Kevin M.	9		
Marston, Dick	10		
Harriott-Gathright, Linda C.	11		
Pantelakas, Laura C. <u>S. NEWMAN</u>	12		
O'Hearne, Andrew S.	13		
Bordenet, John		1	
Meuse, David		2	
Newman, Ray E.	14		
Bouldin, Amanda C. <u>HEATH</u>		3	
Conley, Casey M.		4	
Bradley, Amy <u>LAFLANNE</u>	15		
Espitia, Manny <u>HAMBLETT</u>		5	



2/8/2022 3:07:34 PM  
Roll Call Committee Registers  
Report

2022 SESSION

Criminal Justice and Public Safety

Bill #: HB 1296 Motion: OTP AM #: 0874H Exec Session Date: 3.2.22

TOTAL VOTE: 

		
16	5	



2022 SESSION

Criminal Justice and Public Safety

Bill #: HB1296 Motion: OTPA AM #: 0874H Exec Session Date: 3-2-22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Abbas, Daryl A. Chairman	11		
Roy, Terry Vice Chairman	1		
Welch, David A.	2		
Burt, John A.	3		
<del>Hopper, Gary S.</del> PEARSON	4		
Green, Dennis E.	5		
Wallace, Scott Clerk	6		
<del>Testerman, Dave</del> BERRY	7		
True, Chris	8		
Pratt, Kevin M.	9		
Marston, Dick	10		
Harriott-Gathright, Linda C.		1	
<del>Pantelakos, Laura C.</del> S. NEWMAN		2	
O'Hearne, Andrew S.		3	
Bordenet, John		4	
Meuse, David		5	
Newman, Ray E.		6	
<del>Bouldin, Amanda C.</del> HEATH		7	
Conley, Casey M.		8	
<del>Bradley, Amy</del> LAFLAMME		9	
<del>Espitia, Manny</del> HAMBLETT		10	
	11	10	



2/8/2022 3:07:34 PM  
Roll Call Committee Registers  
Report

2022 SESSION

Criminal Justice and Public Safety

Bill #: HB 1296 Motion: OTPA AM #: 0874H Exec Session Date: 3.2.22

TOTAL VOTE:

11  10  0

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 1296-FN

**BILL TITLE:** relative to money, coin, or currency which may be forfeited in connection with a drug offense.

**DATE:** January 12, 2022

**LOB ROOM:** 204                      **Time Public Hearing Called to Order:** 11:15am

**Time Adjourned:** 12:50pm

**Committee Members:** Reps. Abbas, Roy, Wallace, Welch, Burt, Hopper, Green, Testerman, True, Pratt, Marston, Harriott-Gathright, Pantelakos, O'Hearne, Bordenet, Meuse, R. Newman, Amanda Bouldin, Conley and Bradley

**Bill Sponsors:**

Rep. Sylvia

Rep. True

Rep. Silber

Rep. Bailey

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Michael Sylvia**

- Introduced bill

**Rep. Testerman**

- Asks: "Why is he focus on drug cases.?"

**Rep. Sylvia**

- Answers: "The law requires the defendant to prove that the money is lawfully acquired and held."

**Rep. Lang**

- Asks for clarification on - "If the defendant is convicted does he then have to prove the money was lawfully held?"

**Rep. Roy**

- Asks- "If the seized money should be returned automatically upon a not guilty verdict?"

**Rep. Conley**

Asks "What is the standard to find guilt" Criminally clear and convincing evidence - forfeiture - preponderance of evidence.

**Joshua Albert-**

- NH Association of Chiefs of Police
- Opposed to bill

**Rep. Roy**

- Asks, press=drugs in other room in a safe, with a warrant with co-mingled funds would that cause a seizure? - yes-



**Rep Conley**

- Would you seize legitimate funds with illegal money? Yes. What would be the harm to have a hearing to determine the source of money?

**Joshua Albert**

- That already exists.

**Rep. Roy**

- On the warrant, does the warrant say "shall" seize or "may" seize? No clear answer

**Rep. Meuse**

- What percentage of budget would go away with this bill?

**Joshua Albert**

- 100% of Narco is funded by forfeitures, exclusive of gas and uniforms.
- 100% **one** year in Nashua

**Rep. Knight**

- "How much of the budget is forfeiture money? See previous question 100% of Narco activities."

**Rep. Bouldin**

- "If you can't plan the amount, how do you budget?"

**Joshua Albert**

- "We adjust as needed".

**Rep. Bouldin**

- "Why not remove proximity?"

**Dennis Corrigan**

- Supports bill
- There is some confusion - not always a warrant
- The property can be judged "Guilty" independent of the outcome at he arrest. Many seizures are small amounts and not worth the legal battle costs.
- Some seizures are not brought to court and money is kept absent of conviction.

**Rep. Knight**

- How often does roadside confiscation occur? No hard numbers available in N.H.
- Would body cameras help?

**Dennis Corrigan**

- Yes

**Rep Pantelakos**

- Do roadside stops result in confiscations?

**Dennis Corrigan**

- Yes, Economics of case.

**Dan McGuire**

- Supports bill
- "This is consistent with change in law
- Currently this is "Guilty until proven innocent", must be changed to burden the prosecutor.

**Rep. Bouldin**

- Asks - "Why would the police be so against this bill?"

**Dan McGuire**

- "The current system generally allows for forfeiture to occur and the proceeds go to the seizing agency."

**Rep. Roy**

- "How can L.E. prove the funds are actually fruits of a crime?"

**Dan McGuire**

- Discovery is conducted
- Business records, payroll records etc. are produced.

**Rep. Newman**

- "Does "Felony violation" mean more than \$1,000.00?"

**Dan McGuire**

- Any amount. (c)

**Lee McGrath**

- Institute for Justice
- Supports the bill
- \$300k/ year/ NH forfeited. "The bureau should be on the Government."
- Currently it's 51/49% on the defendant to 49/51 on the defendant.

**Ross Connolly**

- AFP-NH
- Supports bill
- corrects language to ensure burden is on the State

**Sheriff Bill Wright**

- Opposes the bill
- "There has to be a nexus to the drug trade" to effect a seizure."

Respectfully submitted,

Rep. Scott Wallace





# House Remote Testify

## Criminal Justice and Public Safety Committee Testify List for Bill HB1296 on 2022-01-12

Support: 3 Oppose: 6 Neutral: 0 Total to Testify: 0

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Howland, Curtis	Manchester, NH howland@priss.com	A Member of the Public	Myself	Support	No	No	1/10/2022 1:02 PM
Bryfonski, John	Bedford Police Chief, NH jbryfonski@bedfordnh.org	A Member of the Public	Myself	Oppose	No	No	1/11/2022 12:46 PM
knaack, frank	Concord, NH fknaack@aclu-nh.org	A Lobbyist	ACLU of New Hampshire	Support	No	No	1/12/2022 8:19 AM
Hoebeke, Joseph	Hollis, NH jhoebeke@hollisnh.org	A Member of the Public	NH Association of Chiefs of Police	Oppose	No	No	1/12/2022 9:12 AM
Hannon, Joe	Lee, NH Joehannon4nh@gmail.com	A Member of the Public	Myself	Support	No	No	1/12/2022 9:14 AM
Parsons, John	Grantham, NH jwporp@gmail.com	A Member of the Public	Myself	Oppose	No	No	1/12/2022 9:14 AM
Wright, william	Belmont, NH wwright@belknapcounty.org	An Elected Official	Belknap County Sheriff's Office	Oppose	No	No	1/12/2022 9:18 AM
Levesque, Brian	Manchester, NH blevesque@merrimacknh.gov	A Member of the Public	Myself	Oppose	No	No	1/12/2022 9:30 AM
Reams, Mark	Amherst, NH mreams@amherstnh.gov	A Member of the Public	Myself	Oppose	No	No	1/12/2022 10:46 AM

## Support HB 1296 – Rein in Policing for Profit

### Bill Summary: HB 1296 Amendment would:

- Require the forfeiture process to occur within the criminal case.
- Better protect against roadside waivers.
- Protect against excessive forfeitures.
- Better protect innocent owners.
- Exempt certain low value property from seizure and forfeiture.
- Ensure access to counsel.
- Prohibit state and local law enforcement agencies from using the federal civil asset forfeiture adoption program, which allows state and local law enforcement officers, at their discretion, to request that federal authorities take control of assets seized under state law and outsource the forfeiture to U.S. attorneys to litigate under the federal civil forfeiture standard that lacks basic due process protections.

P 9  
ln 14-25

\*

**Civil asset forfeiture has strayed far from its alleged purpose.** Civil asset forfeiture was sold to the public as a tool for taking the ill-gotten gains of drug kingpins. In practice, drug kingpins are rarely the target. As the Institute for Justice found, “[i]n the 21 states with available data, most currency forfeited in recent years was under \$2,000, an average of \$1,276 across all states. In most of the 21 states, the median forfeiture is even smaller—often much smaller. For example, half of Michigan’s currency forfeitures were less than \$423; half of Pennsylvania’s were less than \$369.”<sup>i</sup> This legislation would begin to address this abuse by creating a floor of \$200 for currency and \$2,000 for motor vehicles, under which property is not subject to seizure or forfeiture. In practice civil asset forfeiture in has not targeted drug kingpins, and this legislation offers a starting point to reining in this abuse.

**This legislation would streamline the forfeiture process.** Under current law, the government must hold a criminal proceeding to prove that the individual whose property was taken committed an eligible crime. Then, the forfeiture takes place in a separate civil proceeding. By moving to a criminal forfeiture process, the same court actors (attorneys and judge) would be involved in both phases, thus limiting the number of people who must get up to speed on the facts in the case and streamlining the judicial process.

**Civil asset forfeiture leaves New Hampshire’s most vulnerable with little recourse.** Victims of forfeiture abuse have no right to an attorney because it is a civil process. Thus, those who seek to have their property returned not only bear the burden of proving their property was lawfully obtained, but also the financial burden of hiring an attorney. By moving to a criminal forfeiture process, this legislation would ensure that people who cannot afford an attorney will not have to defend their property without an attorney. While no one should bear the cost of having their lawfully obtained property returned, the most vulnerable who cannot afford an attorney are often left without any true recourse at all.

**Civil asset forfeiture incentivizes the pursuit of profit over the fair administration of justice.** Under New Hampshire law, the local or state government which provided the law enforcement agency or agencies responsible for the seizure can keep up to 45 percent of the remaining proceeds from property forfeited after initial disbursements to cover the costs of the process, debts associated with the property, and a set amount to the police psychological stability screening fund.<sup>ii</sup> Under federal law, state and local law enforcement can keep up to 80 percent of the proceeds from property forfeited under the federal equitable sharing program, which includes adoptions.<sup>iii</sup> Thus, law enforcement agencies have an incentive to seize as much property as possible and have a federal agency “adopt” the seizure, knowing that the property owner doesn’t even need to be arrested, let alone convicted, to have their property

forfeited. Law enforcement should not be put in a position where they appear to value funding their budget over the protection of individual rights. This structure creates a perverse incentive for law enforcement to prioritize profit. By creating a floor for currency and motor vehicle seizures and forfeitures, ensuring that people who cannot afford an attorney will have one, better protecting innocent property owners, and prohibiting abuse of the federal adoption program this legislation would help to mitigate the harms created by this perverse incentive. Law enforcement should not be put in a position where they appear to value funding their budget over the protection of individual rights.

**State and local law enforcement should not be allowed to circumvent state law.** In 2016 New Hampshire took a major step toward ending civil asset forfeiture, a program that allows the government to take and keep the property of Granite Staters without even charging them with a crime. Since 2016, New Hampshire law has required the state to first charge and convict the property owner and then show by clear and convincing evidence that the seized property was the product of the crime before the forfeiture can occur.<sup>iv</sup> Unfortunately, a loophole exists that allows state and local law enforcement to ignore the due process protections under state law by simply asking a federal law enforcement agency to “adopt” the seizure, sending the seizure into the federal forfeiture regime that does not require the government to charge, let alone convict, a person before taking and keeping their property.<sup>v</sup> And, under the federal program the state or local law enforcement agency that originally seized the property gets to keep up to 80 percent of the proceeds from the forfeiture.<sup>vi</sup> New Hampshire lawmakers must eliminate this perverse incentive by closing the federal adoption loophole.

**Civil asset forfeiture turns the presumption of innocence on its head.** A cornerstone of the American justice system is the principle that one is innocent until proven guilty. Yet, because of the federal forfeiture loophole, state and local law enforcement agencies can seize and confiscate private property, including cash, on the mere suspicion that it was either involved in a crime or derived from criminal activity. Then, they can hand it over to the federal government and benefit from the fact that the property owner must hire an attorney or proceed without legal counsel and challenge the seizure of their property in court, where the government enjoys a low burden (preponderance of the evidence) and the full power of the U.S. Attorney’s office. In reality, this requires the property owner to prove their property’s innocence. It’s time to place the burden where it belongs - on the government.

### **Support HB 1296: Ensure the presumption of innocence is not flipped on its head.**

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<sup>i</sup> Institute for Justice, *Big-Time Criminals or Small-Time Forfeitures?*, available at <https://ij.org/report/policing-for-profit-3/pfp3content/forfeiture-is-lucrative-for-governments-nationwide/big-time-criminals-or-small-time-forfeitures/>.


<sup>ii</sup> RSA 318-B:17-b-V.

<sup>iii</sup> Jennifer McDonald, *Civil Forfeiture, Crime Fighting and Safeguards for the Innocent: An Analysis of Department of Justice Forfeiture Data*, Institute for Justice, Dec. 2018, p.2, available at [https://ij.org/wp-content/uploads/2018/11/Forfeiture-White-Paper\\_Final.pdf](https://ij.org/wp-content/uploads/2018/11/Forfeiture-White-Paper_Final.pdf).

<sup>iv</sup> RSA 318-B:17-b.

<sup>v</sup> Jennifer McDonald, *Civil Forfeiture, Crime Fighting and Safeguards for the Innocent: An Analysis of Department of Justice Forfeiture Data*, Institute for Justice, Dec. 2018, p.2, available at [https://ij.org/wp-content/uploads/2018/11/Forfeiture-White-Paper\\_Final.pdf](https://ij.org/wp-content/uploads/2018/11/Forfeiture-White-Paper_Final.pdf); see also Todd Bookman, ‘Loophole’ Helps N.H. Law Enforcement Net Millions Through Civil Asset Forfeiture, New Hampshire Public Radio, Mar. 5, 2018, available at <https://www.nhpr.org/nh-news/2018-03-05/loophole-helps-n-h-law-enforcement-net-millions-through-civil-asset-forfeiture>.

<sup>vi</sup> Jennifer McDonald, *Civil Forfeiture, Crime Fighting and Safeguards for the Innocent: An Analysis of Department of Justice Forfeiture Data*, Institute for Justice, Dec. 2018, p.2, available at [https://ij.org/wp-content/uploads/2018/11/Forfeiture-White-Paper\\_Final.pdf](https://ij.org/wp-content/uploads/2018/11/Forfeiture-White-Paper_Final.pdf).

**Archived:** Thursday, March 10, 2022 2:37:51 PM  
**From:** [Dan Greenberg](#)  
**Sent:** Tuesday, February 8, 2022 3:48:28 PM  
**To:** ~[House Criminal Justice and Public Safety](#)  
**Subject:** Comments on Amendment 2022-0264 to HB 1296 (forfeiture reform)  
**Importance:** Normal  
**Attachments:**  
[amendment \(1296\) statement.pdf](#) 

---

I have attached my comments on Amendment 2022-0264 to HB 1296 (forfeiture reform). This amendment will be considered in tomorrow's hearing of the House Committee on Criminal Justice and Public Safety. I have also reproduced my comments as text immediately below.

In the statement below, I discuss several ways that **Amendment 2022-0264 to HB 1296** will improve New Hampshire's justice system. The House Committee on Criminal Justice and Public Safety is currently scheduled to consider this amendment tomorrow (February 9, 2022). I would like to express my appreciation to the General Court of New Hampshire for the measures it has taken to allow the public to express views about pending legislation.

This amendment would address several deep problems of New Hampshire's justice system. In the statement below, I describe those problems, how the proposed amendment would address them, and the other legislative changes that the General Court has recently made in this area.

There is a fundamental tension between the government's use of civil forfeiture and the property rights of its citizens. Civil forfeiture allows police officers to seize property, and that seizure only requires probable cause to believe that the property is related to crime; prosecutors then can shift the ownership of the property to the government through litigation in civil court, even if the property owner never faced criminal conviction or even criminal charges. The danger that civil forfeiture poses to property rights and due process raises significant questions about forfeiture fairness.

The median size of a cash seizure in America today is around a few hundred dollars to a little over a thousand dollars. (Medians vary by state.) Revenues from New Hampshire forfeitures average roughly \$1.3 million yearly. The extraordinarily high rate of default judgments in these matters – around 80% of the owners of seized property never show up in court to contest the seizure – suggests barriers to access to justice. There are three substantial concerns about fairness that arise here.

*First*, property owners face a one-two punch: they lose possession of their property through seizure, then they discover that they'll have to pay for their own representation in order to recover it in civil court. When they discover that they must bear litigation costs that are larger than the value of the property seized from them in order to win, and when they consider the odds that they might fail, they often give up – in other words, there are many instances of seizure and forfeiture in which no rational litigant would pursue recovery.

*Second*, many Americans know that proof of criminal liability requires the showing of guilt beyond a reasonable doubt. Indeed, the heavy burden that prosecutors shoulder is often



understood as a device that furthers important moral values in the criminal justice system – more precisely, the requirement of proof beyond a reasonable doubt is seen as protecting innocent parties who for one reason or another become ensnared in the criminal justice system. In contrast, the low standard of proof (typically “more likely than not,” or greater than 50%) with which wrongdoing is proven in civil court – even though that proof is the trigger for what appears to be punishment for criminal acts – strikes many as fundamentally unfair.

*Third*, the nature of seizure and forfeiture as it is practiced today is pockmarked with evidence that revenue concerns drive the behavior of law enforcement officers and other government agents – thus distracting them from focusing on public safety and crime control. Forcing law enforcement officers to serve as their own revenue collectors creates troublesome pressures and incentives that are likely to distract them from their central mission.

In 2016, New Hampshire legislators passed SB 522 into law: that measure was an attempt to address some of the problems described above. SB 522 temporarily suspended civil forfeiture litigation by delaying it until after criminal prosecution occurred. But this change in litigation timing was a flawed solution. The policy of SB 522 still requires multiple litigation forums of litigation, which translates to more court procedures and prohibitive litigation expenses borne by property owners. Furthermore, because those owners are still likely to default in civil court due to litigation expenses, SB 522 still leaves property owners without the benefit of the higher standard of proof that is enjoyed by criminal defendants. I would add that New Hampshire deserves credit for what it did two years later in enacting SB 498, which significantly improved the transparency requirements of the forfeiture process.

Amendment 2022-0264’s proposed changes to state law would transform civil forfeiture proceedings to criminal forfeiture proceedings. It will thereby give property owners the same kinds of procedural protections that are assigned to criminal defendants. This change would almost completely eliminate the failures of public policy that are described above. Although there are other improvements to the forfeiture process that New Hampshire might also make (such as directing all forfeiture proceeds to the state’s general fund, which would allow the General Court to include seized funds in its budget deliberations), substituting criminal forfeiture for civil forfeiture would be a giant step forward for fairness. Four states now rely on criminal forfeiture proceedings (Nebraska, North Carolina, New Mexico, and neighboring Maine), and the General Court can protect the rights of the Granite State’s property owners by making New Hampshire the fifth state to enact these reforms.

*Dan Greenberg, senior attorney at the Competitive Enterprise Institute, is a former state legislator and the author of [“They’re Taking My Stuff!”: What You Need to Know about Seizure and Forfeiture](#). He is reachable at [dan.greenberg@cei.org](mailto:dan.greenberg@cei.org) or (202) 331-2263.*

February 8, 2022

Dan Greenberg,  
Senior Attorney, Competitive Enterprise Institute  
(202) 331-2263 / [dan.greenberg@cei.org](mailto:dan.greenberg@cei.org)



**Archived:** Thursday, March 10, 2022 2:49:11 PM  
**From:** [Frank Knaack](#)  
**Sent:** Wednesday, January 12, 2022 8:29:04 AM  
**To:** ~House Criminal Justice and Public Safety  
**Cc:** [Mike Sylvia](#)  
**Subject:** Please Support HB 1296  
**Importance:** Normal  
**Attachments:**  
Fact Sheet - HB 1296 .pdf ;

---

Dear Members of the Criminal Justice and Public Safety Committee,



I write from the ACLU of New Hampshire in strong support of HB 1296, which will be before your committee this morning at 11:15am. Please find attached our fact sheet on the bill, which includes a summary of the bill and why we strongly support it.

Thank you for your time and consideration. I would be happy to discuss the bill at your convenience.

Best,  
frank

**Frank Knaack**

Pronouns: he, him, his

Policy Director  
American Civil Liberties Union of New Hampshire  
18 Low Avenue, Concord, NH 03301  
603.545.0433 | [fknaack@aclu-nh.org](mailto:fknaack@aclu-nh.org)  
[aclu-nh.org](http://aclu-nh.org)  



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**Archived:** Thursday, March 10, 2022 2:16:12 PM  
**From:** [redelson@hotmail.com](mailto:redelson@hotmail.com)  
**Sent:** Tuesday, March 1, 2022 5:37:04 PM  
**To:** ~House Criminal Justice and Public Safety  
**Subject:** Support of HB 1296  
**Importance:** Normal

---

Dear House Members,

I am writing to urge you to support HB 1296 with its amendment regarding eliminating civil asset forfeiture.

Thank you for your service to our community.

Sincerely,  
Rachel Edelson  
Nashua NH

HB 1296-FN - AS INTRODUCED

2022 SESSION

22-2475

04/08

HOUSE BILL            ***1296-FN***

AN ACT                relative to money, coin, or currency which may be forfeited in connection with a drug offense.

SPONSORS:            Rep. Sylvia, Belk. 6; Rep. True, Rock. 4; Rep. Silber, Belk. 2; Rep. Bailey, Straf. 1

COMMITTEE:          Criminal Justice and Public Safety

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ANALYSIS

This bill limits the scope of money, coin, currency, and other property which is presumed to be subject to forfeiture under the controlled drug act.

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Explanation:        Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears ~~[in brackets and struckthrough.]~~  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Two*

AN ACT                   relative to money, coin, or currency which may be forfeited in connection with a drug offense.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           1 Controlled Drug Act; Forfeiture of Items Used in Connection With Drug Offense. Amend RSA  
2 318-B:17-b, I(c) to read as follows:

3                   (c) Any moneys, coin, currency, negotiable instruments, securities or other investments  
4 knowingly used or intended for use in the procurement, manufacture, compounding, processing,  
5 concealing, trafficking, delivery or distribution of a controlled drug in felonious violation of this  
6 chapter and all proceeds, including moneys, coin, currency, negotiable instruments, securities or  
7 other investments, and any real or personal property, traceable thereto. ~~[All moneys, coin, currency,  
8 negotiable instruments, securities and other investments found in proximity to controlled substances  
9 are presumed to be forfeitable under this paragraph. The claimant of the property shall bear the  
10 burden of rebutting this presumption.]~~

11           2 Effective Date. This act shall take effect January 1, 2023.

**HB 1296-FN- FISCAL NOTE  
 AS INTRODUCED**

AN ACT relative to money, coin, or currency which may be forfeited in connection with a drug offense.

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Funding Source:</b>	<input type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Drug Forfeiture Fund			

**METHODOLOGY:**

This bill limits the scope of money, coin, currency, and other property which is presumed to be subject to forfeiture under the controlled drug act.

The Department of Safety indicates the law as currently written puts the burden of proof of legitimacy of funds on the suspect. The proposed law would place the burden on the state. The Division of State Police cannot predict how this will affect the Forfeiture Account and therefore the fiscal impact is indeterminable.

The Department of Justice states this bill could have an impact on how much forfeiture money is ultimately returned to the State following contested evidentiary hearings. It is uncertain how many evidentiary proceedings will be heard, therefore, the overall revenue and expenditure impact cannot be determined.

**AGENCIES CONTACTED:**

Departments of Justice and Safety