

LEGISLATIVE COMMITTEE MINUTES

HB1296

Bill as Introduced

HB 1296-FN - AS AMENDED BY THE HOUSE

15Mar2022... 0874h

2022 SESSION

22-2475

04/08

HOUSE BILL ***1296-FN***

AN ACT relative to the forfeiture of items used 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

AMENDED ANALYSIS

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

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Explanation: Matter added to current law appears in *bold italics*.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 the forfeiture of items used 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 Offenses. Amend
 2 RSA 318-B:17-b to read as follows:

3 318-B:17-b Forfeiture of Items Used in Connection With Drug Offense.

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

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

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

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

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

24 (e) Any real property, including any right, title, leasehold interest, and other interest in
 25 the whole of any lot or tract of land and any appurtenances or improvements, which real property is
 26 knowingly used or intended for use, in any manner or part, in the procurement, manufacture,
 27 compounding, processing, concealing, trafficking, delivery or distribution of a controlled drug in
 28 felonious violation of this chapter.

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

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

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

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

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

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

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

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

31 *I-d. No waiver shall be accepted by the court, for purpose of seizure or forfeiture,*
32 *unless the court determines that it has been executed knowingly and voluntarily and has*
33 *not been requested, induced or required by a law enforcement officer. A document*
34 *purporting to waive interest or rights in seized property shall be void and inadmissible in*
35 *court.*

36 II.(a) Upon the seizure of any personal property under paragraph I, the person making or
37 directing such seizure shall inventory the items or property interests and issue a copy of the

1 resulting report to any person or persons having a recorded interest, or claiming an equitable
2 interest in the item within 7 days of said seizure.

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

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

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

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

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

- 22 (a) Place the property under seal; or
- 23 (b) Remove the property to a storage area for safekeeping; or
- 24 (c) Remove the property to a place designated by the court; or
- 25 (d) Request another agency to take custody of the property and remove it to an
26 appropriate location within the state; or

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

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

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

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

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

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

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

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

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

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

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

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

19 (A) *The seizure was invalid;*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (1) *A plea agreement; or*

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

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

33 (1) *Is deceased;*

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

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

36 (4) *Has fled the jurisdiction.*

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

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

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

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

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

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

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

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

17 *and*

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

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

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

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

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

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

36 (A) *The interest is invalid;*

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

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

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

6 (h)(1) *Property of an innocent owner shall not be forfeited. The prosecuting*
7 *authority summarily shall return property to such owner. Contraband shall not be*
8 *returned.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (1)(1) *If the prosecuting authority fails to meet its burden in the criminal or*
10 *forfeiture proceeding, the court shall enter judgment dismissing the forfeiture proceeding*
11 *and ordering the return of property to the innocent owner unless the owner's possession of*
12 *the property is illegal.*

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

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

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

22 (1) *Dissipated the property;*

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

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

26 (4) *Commingled property with other property that cannot be divided without*
27 *difficulty.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (1) Forty-five percent shall be returned to the fiscal officer or officers of the
28 municipal, county, state, or federal government which provided the law enforcement agency or
29 agencies responsible for the seizure. Moneys returned to each fiscal officer shall be deposited in a
30 special account and shall be used primarily for meeting expenses incurred by law enforcement
31 agencies in connection with drug-related investigations. Except as provided in RSA 31:95-b, such
32 funds shall be available for expenditure without further appropriation by the legislative body of the
33 municipal, county, state or federal government, and shall not be transferred or expended for any
34 other purpose. Moneys returned to a state law enforcement agency shall be deposited in a special
35 nonlapsing account established within the office of the state treasurer and shall be in addition to all
36 other state appropriations to such agency;

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

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

5 (b) Of any balance remaining:

6 (1) Ten percent shall be deposited in the manner prescribed in subparagraph
7 ~~IV(a)(2)~~ *IV(a)(2)* of this section; and

8 (2) Ninety percent shall be deposited in the manner prescribed in subparagraph
9 ~~IV(a)(3)~~ *IV(a)(3)* of this section.

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

16 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
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable	Indeterminable	Indeterminable
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input type="checkbox"/> General Forfeiture Fund	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other - Drug

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

Amendments

Amendment to HB 1296-FN

1 Amend RSA 318-B:17-b, I-d as inserted by section 1 of the bill by replacing it with the following:

2

3 ***I-d. A document purporting to waive or relinquish rights or interests in seized***
4 ***property shall be valid only if the document is obtained by the prosecuting authority and***
5 ***accepted by the superior court in conjunction with a plea or conviction. Before accepting***
6 ***the document, the superior court shall determine that the waiver was executed knowingly***
7 ***and voluntarily.***

8

9 Amend RSA 318-B:17-b, III as inserted by section 1 of the bill by replacing it with the following:

10

11 **III.** The court may order forfeiture of all items or property interests subject to the provisions
12 of paragraph I ~~[-except as follows:~~

13

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

15

~~(b) No items or property interests shall be subject to forfeiture unless involved in an
16 offense which may be charged as a felony]~~ ***as part of a criminal prosecution and following a***
17 ***conviction for a felony violation of this chapter pursuant to paragraph III-a. All***
18 ***forfeiture-related petitions shall be filed at and heard by the superior court that has***
19 ***jurisdiction over the criminal case.***

20

21 Amend RSA 318-B:17-b, III-a(a)-(j) as inserted by section 1 of the bill by replacing them with the
22 following:

23

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

27

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

30

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

32

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

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

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

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

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

7 (A) *The seizure was invalid;*

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

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

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

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

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

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

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

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

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

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

27 (3) *At the superior court's discretion, the court may allow the prosecuting*
28 *authority to amend the petition for forfeiture as required in the interest of justice.*

29 (4) *The prosecuting authority shall serve the indictment or information as*
30 *provided by the rules of the court.*

31 (5) *The prosecuting authority shall serve the petition for forfeiture:*

32 (A) *At arraignment;*

33 (B) *For cases initiated in the circuit court-district division, no later than*
34 *90 days after the underlying criminal case has been bound over to the superior court;*

35 (C) *For cases initiated in superior court, no later than 90 days after the*
36 *complaint has been filed;*

1 (D) As established by the superior court in its grant of a motion by the
2 prosecuting authority that seeks extension of the deadlines in subparagraphs (B) or (C) as
3 required in the interests of justice; or

4 (E) At the superior court's discretion.

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

8 (d) Discovery related to the forfeiture proceeding shall be subject to rules 12 and
9 13 in New Hampshire's rules of criminal procedure.

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

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

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

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

19 (g) Nothing in this paragraph shall prevent property from being forfeited as
20 part of:

21 (1) A plea agreement; or

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

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

29 (1) Is deceased;

30 (2) Was deported by the United States government;

31 (3) Has abandoned the property; or

32 (4) Has fled the jurisdiction.

33 (i) The defendant may petition the superior court to determine, before trial, at
34 trial or upon conviction, whether the forfeiture is unconstitutionally excessive under the
35 state or federal constitution. The defendant shall bear the burden of establishing the
36 forfeiture is unconstitutionally excessive by a preponderance of the evidence at a hearing
37 conducted by the court without a jury. In determining whether the forfeiture is

1 *unconstitutionally excessive, the court shall not consider the value of the property to the*
2 *state, but may consider other relevant factors including:*

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

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

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

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

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

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

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

12 *and*

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

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

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

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

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

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

31 *(A) The interest is invalid;*

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

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

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

1 Amend RSA 318-B:17-b, III-a (k)(2) as inserted by section 1 of the bill by replacing it with the
2 following:

3

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

UNAPPROVED

Amendment to HB 1296-FN

1 Amend RSA 318-B:17-b, I-d as inserted by section 1 of the bill by replacing it with the following:

2

3 ***I-d. A document purporting to waive or relinquish rights or interests in seized***
4 ***property shall be valid only if the document is obtained by the prosecuting authority and***
5 ***accepted by the superior court in conjunction with a plea or conviction. Before accepting***
6 ***the document, the superior court shall determine that the waiver was executed knowingly***
7 ***and voluntarily.***

8

9 Amend RSA 318-B:17-b, III as inserted by section 1 of the bill by replacing it with the following:

10

11 III. The court may order forfeiture of all items or property interests subject to the provisions
12 of paragraph I ~~except as follows:~~

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

15 ~~(b) No items or property interests shall be subject to forfeiture unless involved in an~~
16 ~~offense which may be charged as a felony] ***as part of a criminal prosecution and following a***~~
17 ***conviction for a felony violation of this chapter pursuant to paragraph III-a. All***
18 ***forfeiture-related petitions shall be filed at and heard by the superior court that has***
19 ***jurisdiction over the criminal case.***

20

21 Amend RSA 318-B:17-b, III-a(a)-(j) as inserted by section 1 of the bill by replacing them with the
22 following:

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25 ***or counsel appointed by the court, the public defender or appointed counsel shall represent***
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5 more than 10 days. Any motion may be supported by affidavits or other submissions.---

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24 sentencing consideration, or through other means for the court to oversee the forfeiture
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Amendment to HB 1296-FN

- Page 5 -

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Committee Minutes

SENATE CALENDAR NOTICE

Judiciary

Sen Sharon Carson, Chair
 Sen Bill Gannon, Vice Chair
 Sen Harold French, Member
 Sen Rebecca Whitley, Member
 Sen Jay Kahn, Member

Date: March 30, 2022

HEARINGS

Tuesday

04/05/2022

	(Day)	(Date)	
Judiciary		State House 100	1:00 p.m.
(Name of Committee)		(Place)	(Time)
1:00 p.m.	HB 1518-FN-LOCAL	relative to the requirements for appointed guardians.	
1:15 p.m.	HB 1431-FN-LOCAL	establishing the parental bill of rights.	
1:30 p.m.	HB 1592-FN	allowing parties in family court cases to create their own recordings of the proceedings.	
1:45 p.m.	HB 1612-FN	relative to the confidentiality of reports made to the division for children, youth, and families.	
2:00 p.m.	HB 1614-FN	requiring the recording and storing of digital video in all state-funded juvenile detention facilities.	
2:15 p.m.	HB 1425-FN	relative to the taking of real property by eminent domain.	
2:30 p.m.	HB 1296-FN	relative to the forfeiture of items used in connection with a drug offense.	

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 1518-FN-LOCAL

Rep. Belanger

HB 1431-FN-LOCAL

Rep. Terry

Rep. Hough

Rep. Silber

HB 1592-FN

Rep. Gay

Rep. Greeson

Rep. Weyler

HB 1612-FN

Rep. Spillane

Rep. Read

HB 1614-FN

Rep. Edwards

HB 1425-FN

Rep. Blasek

Rep. Gorski

HB 1296-FN

Rep. Sylvia

Rep. Greeson

Rep. Alliegro

Rep. Blasek

Rep. Hough

Rep. Langley

Rep. Post

Rep. Roy

Sen. Avard

Rep. Rice

Rep. Layon

Rep. Prout

Rep. True

Rep. Potucek

Rep. Ankarberg

Sen. Giuda

Rep. Stapleton

Rep. Kofalt

Rep. Bershtein

Rep. Yokela

Rep. Silber

Rep. Littlefield

Rep. Johnson

Rep. Bernardy

Rep. Rung

Rep. A. Lekas

Rep. Lanzara

Rep. Bailey

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 1296-FN, relative to the forfeiture of items used in connection with a drug offense.

Hearing Date: April 5, 2022

Time Opened: 4:10 p.m.

Time Closed: 5:15 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

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

Sponsors:

Rep. Sylvia

Rep. True

Rep. Silber

Rep. Bailey

Who supports the bill: 20 people sign up in support. Full sign in sheet available upon request.

Who opposes the bill: 34 people sign up in opposition. Full sign in sheet available upon request.

Who is neutral on the bill: 1 person sign up neutrally. Full sign in sheet available upon request.

Summary of testimony presented in support:

Representative Sylvia (provided written testimony)

- This bill with further reform asset forfeiture.
- In 2016, the State took its first step in reforming civil asset forfeiture, going instead with a criminal asset forfeiture system.
- That change added due process protections to citizens that are guaranteed by the constitution.
- Under the current law there is a two-track system where the seized asset is held aside for a separate civil trial until after the criminal process concludes .
- NH has three paths related to forfeiture.
- One, an in state process where state law enforcement makes a seizure in connection with a felony level drug crime, which is then run through NH courts under criminal asset forfeiture proceedings.

- The second and third methods deal with the federal program, Equitable Sharing.
- Equitable Sharing has two branches: joint task force operations and adoptions.
- 70% of Equitable Sharing is through joint task forces; this bill does not affect them.
- This bill deals with adoptions.
- Adoptions are where the seizure is made under state law and if it meets the standards for a federal program, then the local/state department can adopt the seizure to the federal government, who would then prosecute that case, which does not ensure a criminal process.
- The state process gives further protections to those who are not able to have their own attorney because this is combing the cases and the public defender would also represent the asset at the same time as it could be a part of the sentencing.
- This is a small burden added to the Office of the Public Defender.
- In a three-year period, Manchester and Nashua had four adoptions total.
- The combining of this effort brings everything together with everyone involved increasing efficiencies for all.
- In the current process through the civil proceedings, legal representation is not required by law and often citizens default on the asset.
- This bill ensures in the forfeiture side of the procedure that the constitutional protections are there to make sure the penalty is proportional to the crime.
- Reviewed the legislative history of the bill.
- Understands that law enforcement is not interested in losing funds and this bill does take a small piece of their funding.
- When looking at a \$60million budget, that department might be looking at losing \$20,000 because of this bill.
- The Law Enforcement Action Partnership is supporting the bill.
- It is important for law enforcement to have the trust of the community that they are not just seizing property inappropriately.
- This will improve judicial economy, enhance due process protections, and restrict circumvention of our criminal asset forfeiture laws.

Honorable Dan McGuire

- Has worked on asset forfeiture reform for years.
- This bill does not change the policy that forfeiture happens after conviction of a crime.
- Currently there are two separate court procedures under state law, with the criminal case first and the civil forfeiture case after conviction.
- This merges it into one process.
- The forfeiture comes after the conviction by becoming part of the penalty of the crime.
- The court and the jury can consider what is the appropriate penalty including the forfeiture.

- This bill will also make NH law used a little more often than federal law.
- This has NH prosecutors use NH law.
- Senator Gannon stated that he does not have a problem with the separate treatment of property and person, or to have a lower evidentiary standard to take property. Asked if this is treating person and property the same.
 - Taking someone's property is a punishment to that person. You are not punishing property. If you are doing that the person should be guilty of something.
- Senator Gannon asked if they cannot reach the evidentiary burden to get a conviction, but they are pretty sure the individual did it, under current civil proceedings that money could probably still be seized.
 - That particular difference has nothing to do with this bill, because that it already in NH law. This is just saying let's use NH law.
- Senator Gannon asked if under this, joint task forces would be able to have the discretion as to decide what track to use.
 - This bill does not affect joint task forces; they will continue to use federal law.
- Senator French asked if this bill says that for forfeiture the State must use state law not federal, and the State must convict an individual in order to keep their property.
 - Correct, in cases where there is no federal officer involved in arresting anyone or working the crime to start with.
- Senator Gannon asked if there is currently a standard to take that property that it is lower than the criminal standard but that there still has to be proof.
 - Under NH law there has to be a criminal conviction first. This has nothing to do with seizure. When someone is arrested and there are drugs and cash that is all seized. The question is how the court deals with the assets at the end of the day.

Lee McGrath (Institute of Justice)

- It is a legitimate function for the State to take possession through seizure and title through forfeiture so as to ensure crime does not pay.
- This bill is changing a process, by changing the location where the title gets transferred and where forfeiture litigation takes place.
- Supports this bill because the costs are small and manageable, and the benefits are great.
- In the last three years, Nashua and Manchester only did four adoptions each.
- This puts this process in NH courts with NH values and NH standards of proof.
- Over the last three years there were only a total of 18 of these cases across the State.
- NH pays out to police departments at 45% in these cases, while the federal government pays out 80%.
- For Nashua, the \$25,000 they received for those four cases, would be reduced to \$12,000 under this bill.

- The pursuing of cases with the low levels of currency amounts of \$200 and vehicles of \$2,000 is uneconomical to the process, to litigate, and for the owner to pursue.
- This is the inherent problem in civil forfeiture.
- In criminal court a person gets a public defender, while in civil court a person does not.
- Nationwide, the median seizure is \$1,300.
- It is irrational for a Granite Stater to pay thousands of dollars for a civil attorney to get back those small amounts.
- The problem with civil seizures is the problem of civil defaults.
- Up to 80% of Americans walk away from their assets because it is uneconomical to try and get them back.
- It is already NH's policy to have a conviction as a prerequisite, but that does not always happen because people walk away in civil court from their property.
- That conviction even if it were to occur people have already defaulted and the title has already been transferred.
- This is not burdensome on the courts as this is a lot like a sentencing recommendation.
- 90% of the cases are going to be plead out, and in those plea bargains this will take an additional 90 seconds to determine whether the asset should be transferred.
- This is a little addition of incremental work to the public defender, the prosecutor, and a private criminal defense lawyer.
- In those 10% of the cases, this process says to the judge 'you have heard all the evidence, you can dismiss the jury and decide whether the car was an instrument or the cash was a proceed of the crime.'
- There are a number of new processes in this bill, but they come about because there are constitutional requirements for a criminal hearing.
- There is a process added for wives, girlfriends, Avis, and the bank to go to court, which must exist.
- The third process added is for excessive fines, which ensures there are not excessive fines.
- This ensures no one who is acquitted or not charged loses their property.
- This protects Avis, the Bank of NH, wives, girlfriends, spouses, etc.
- This lives up to the obligations ensuring representation for a criminal punishment.
- In too many states, the state's criminal codes are being circumvented by federal law.
- This will better implement the policy decisions the Legislature made in 2016.
- Senator Gannon asked if the chiefs are venue shopping to obtain more funds.
 - Yes. That is inconsistent with the policy the Legislature enacted in 2016 that required someone to be convicted as a pre-requisite. Fears the chiefs

may want to reverse the decision from 2016, and instead have a completely independent system. Thinks that would be a mistake.

Ross Connelly (Americans for Prosperity)

- The people most prepared to handle this are those who just adjudicated the criminal case; this will speed up the process.
- 19% of all federal forfeitures were through adoptions from 2018-2020; 81% were joint task forces.
- This is a low impact but sends a good message to residents that their property rights are being respected.
- Civil asset forfeiture is one of the driving factors for creating distrust between law enforcement and the public.

Frank Knaack (ACLU) (provided written testimony)

- Echoes the testimony from Americans for Prosperity and the Institute of Justice.
- This is not changing the standards of proof to take property.
- Codifying the guidelines of the DOJ will ensure that they are not simply changed tomorrow.
- Spoke to the importance of ensuring folks have access to counsel.
- Senator Gannon asked if a person goes the state route and does not get criminally convicted then there is no asset forfeiture, but if a person goes the federal route a preponderance of the evidence could result in the keeping of an asset with a whole procedure required around that.
 - There are some protections on paper, but in practice, especially for indigent individuals, that does not always exist. In the federal system it fails to require a criminal conviction and does not entitle individuals to counsel. These are small dollar amounts, and the cost of hiring counsel is more than the actual amount of cash. Forfeiture was originally sold as this tool to deal with drug kingpins living outside of the US like Pablo Escobar, who the government couldn't reach; however, the government could get to his property. Today we no longer have that problem, and the government is just trying to make this easier because they can't convict a person. We are a nation of laws, so it is important to have the State meet its burden of convicting someone before taking their property.
- Senator French asked if this amounts to about \$16,000 between two department over the course of four years.
 - Would have to look at the specific number but that is around his understanding.

Summary of testimony presented in opposition:

Senior Assistant Attorney General Danielle Sakowski (Department of Justice) (provided written testimony)

- This is trying to solve a problem that does not exist.
- Provided a copy of the NHDOJ's Asset Forfeiture Guidelines, which have a lot of the protections discussed in this bill already in place.

- The State already limits cash forfeitures to amounts over \$1,000 and a vehicle must be worth more than \$3,000 and less than five years old with some exceptions.
- Currently, if someone is acquitted of the underlying criminal offense or if a felony is reduced to a misdemeanor, unless it is part of the resolution, the State does not pursue the civil asset forfeiture.
- The bill suggests that there are violations of due process happening statewide, but that is just not the case.
- Individuals are given notice at the outset that their asset is potentially subject to asset forfeiture, and then the State has 60 days to file a petition, which is then served on the individual.
- A hearing is then scheduled whether or not the person responds to the petition.
- Pursuant to the current statute, someone can ask that their asset forfeiture case be continued until after their criminal case has concluded. The DOJ has a written policy that they do not object to those requests.
- Senator French asked if it is possible for the DOJ's in house policies to change.
 - Supposes they could. The DOJ has not changed these policies since 2017. Would expect a possible change would be the limit of the amount the State is willing to take could go up. Beyond that does not see those policies changing.
- Senator Gannon asked if there is a lower evidentiary standard to take property than there is to convict an individual.
 - Yes. It is a preponderance of the evidence standard to take property.
- Senator Kahn asked if the DOJ does not believe this bill will create efficiencies for the system.
 - Does not believe it will. Echoes Mr. Head's concerns about the confusion in the process. The proposed bill still has DOJ acting in some type of oversight capacity, but the majority of these impacted by this bill would go to the county. Does not know if it is more efficient to have two prosecuting agencies involved and weighing in.
- Senator Kahn asked if the DOJ is opposed to the county attorneys taking this on, assuming Felonies First is repealed.
 - Does not know if it would have anything to do with Felonies First being repealed, but a majority of the civil asset forfeiture the DOJ does, the corresponding criminal case is prosecuted by the county attorney's office. The DOJ has a handful of cases that they are the prosecuting agency on, but that is the minority.
- Senator Kahn asked her to provide to the Committee the page references to the relevant sections on the DOJ's policy that was referenced in testimony.
 - Happy to email the Committee.
- Senator Gannon asked if this was combined in one hearing, would the higher criminal evidentiary burden of beyond a reasonable doubt have to be reached for the taking of the asset.

- Thinks that is a good question. Does not know.

Detective Sargent Matthew McConnell (NH Association of Chiefs of Police)

- The Nashua Police Department relies on this money to purchase necessary equipment and maintain their drug operations.
- This bill appears to create more work for an already overburdened court system.
- Questions whether under this bill the county attorneys or the Attorney General is going to be handling the forfeitures.
- This confusion and delay could cause issues with the forfeiture funds.
- The department strictly follows the Attorney General's guidelines and if there is any confusion, the department reaches out to the Attorney General's Office for clarification.
- Having the amounts not set by law is beneficial.
- The bill lists \$200 for cash and \$2,000 for a vehicle, that is a very low threshold.
- The current amounts are \$1,000 for cash and \$3,000 for a vehicle, which is still pretty low.
- Allowing the DOJ to up those amounts on their own will allow for fewer cases to be brought.
- Law enforcement is not arbitrarily choosing homes to search and taking assets without reason.
- The assets are seized through investigations that show a nexus between drug activity and the assets that are seized.
- There is no reason to reinvent the wheel and the Drug Forfeiture Fund administered by the DOJ has served NH well and has helped the fight to keep dangerous drugs off the streets.

Kate Horgan (NH Association of Counties) (provided written testimony)

- This will create additional work for the county attorney's offices.
- The county attorney's offices already have very high caseloads and are understaffed.
- This bill fails to make any advancements in the system and the present system, which runs through the Attorney General's Office, works efficiently and effectively.
- Echoes the concerns of the Judicial Branch.

Neutral Information Presented:

Richard Head (Judicial Branch) (provided written testimony)

- The bill does have significant mechanical problems.
- It appears to be a model bill combined with existing state law and that merger is not clean.
- Page 4, line 2 moves the process to be a part of the criminal prosecution; this is shifting the process from an Attorney General function to a county attorney function for the most part.
- Page 4, line 4, makes this change a duty of the public defender. There are roughly 70-90 petitions that are currently being filed by the Attorney General.

We have all heard repeatedly about shortages in the Office of the Public Defender.

- Page 4, line 10 has a person with an interest in the process being able to petition the court for a hearing. This is a new filing, and it is not a part of the criminal docket. It is unclear as to where that petition would be filed.
- Page 4, line 12 states that the court may hold a post seizure hearing. None of this accounts for the potential repeal of Felonies First. The repeal of Felonies First would require that felonies be filed in circuit court and if they are not plead out in the initial stage, they would then get bound over to superior court.
- There various processes that are going to be filed relative to forfeiture that are not the criminal case, but the thing that gets bound over to superior court is the criminal case.
- It is unclear where these petitions are being filed and how they get hung on to a criminal case.
- In superior court they do not file petitions anymore, they file complaints for criminal proceedings.
- Page 4, line 26 the prosecuting officer shall file with the court a petition for forfeiture. Is not sure what that is relative to in the criminal proceeding. It appears to be a separate filing, separate docket, and is not sure which court that is being filed in.
- Page 5, line 9 says "The court shall order the return of the property to the owner if the prosecuting authority does not file an indictment or information as provided by the court's rules" but everything that has been said is that this is supposed to be tied to an indictment; not sure how the court can be involved with returning property when there has been no criminal case filed.
- Page 5, line 12 talks about discovery rules of criminal procedure. The criminal procedure rules in circuit and superior court do not have a forfeiture process. That would mean something new would need to be created to address that.
- Page 6, line 1 outlines the third type of petition that can be filed, where the defendant may file a petition to the court before trial, at trial, or upon conviction if the forfeiture is unconstitutionally excessive. The Branch is very unsure as to what that is? Is it a civil petition? It is not apparently tied to the criminal case because the people who allowed to file a petition are the prosecuting authority, anyone with an interest in the property, and now the defendant.
- Page 7, line 12 provides that an innocent person can file a simple statement. Does not know what a simple statement is or how that would get docketed. Thinks the simple statement may be a petition, but that is unclear.
- The overall concern is that this is a merger of processes that is not being merged cleanly, with the overlay of the repeal of Felonies First, which creates a very confusing procedural issue of felonies being filed in circuit court and then only those criminal cases being bound over to superior court along with these four types of petitions.

- From an implementation perspective the Branch is confused.
- The Branch has no objections to the concept, it is simply concerned about the implementation.

jch

Date Hearing Report completed: April 8, 2022

Speakers

Senate Judiciary Committee SIGN-IN SHEET

Page 1

Date: 04/05/2022 Time: 2:30 p.m.

HB 1296- AN ACT relative to the forfeiture of items used in connection with a drug
FN offense.

Name/Representing (please print neatly)

Name/Representing	Support	Oppose	Speaking?	Yes	No
Rep. Mike Sylvia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Former Rep. Dan McGuire	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lee McGrath - Institute for Justice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Richard Head - Judicial Branch	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep James Spillner Rock 2	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep Athena Lekas / Hills 37	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep Melissa Blusck	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Ross Connolly AFP-NH	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Matthew McConnell Nashua P.D.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Danielle Sakowski - NHDOJ	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
David Maca Governor's Office	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep Lex Bereshtny	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Elizabeth Sargent, NH Assoc of Chiefs of Police	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
David B. Goldstein Franklun PD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Kate Horgan, NHAC	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DENNIS WORGAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FRANK KMAACK, ACLU of NH	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
JR HOLL self	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Senate Remote Testify

Judiciary Committee Testify List for Bill HB1296 on 2022-04-05

Support: 9 Oppose: 28

<u>Name</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>
Howland, Curtis	A Member of the Public	Myself	Support
Medeiros, Jesse	A Member of the Public	Myself	Support
Sylvia, Mike	An Elected Official	Belknap 6	Support
WArden, Rep. Mark	An Elected Official	Myself	Support
Wallace, Scott	An Elected Official	Myself	Support
Levesque, Brian	A Member of the Public	Myself	Oppose
White, Nick	An Elected Official	Myself	Support
Cushman, Leah	An Elected Official	Myself	Support
Tarleton, Matthew	A Member of the Public	Myself	Oppose
Berube, Aaron	A Member of the Public	Myself	Oppose
Brace, James	A Member of the Public	Myself	Oppose
Osgood, Bradley	A Member of the Public	Myself	Oppose
Itse, Daniel	A Member of the Public	Myself	Support
Hackett, E	A Member of the Public	Myself	Oppose
Frank, Samuel	A Member of the Public	Myself	Oppose
Aldenberg, Chief Allen	A Member of the Public	Myself	Oppose
McGillen, Michael	A Member of the Public	Myself	Oppose
Sullivan, Patrick	A Member of the Public	Myself	Oppose
Kelley, Diane	An Elected Official	Myself	Support
Crowley, Timothy	A Member of the Public	Myself	Oppose
Jordan, Greg	A Member of the Public	NHACOP and Newmarket Police Department	Oppose
Dionne, Tad	A Member of the Public	Myself	Oppose
Wright, Bill	An Elected Official	Belknap County Sheriffs Office	Oppose
Hoebeke, Joseph	A Member of the Public	NH Association of Chiefs of Police	Oppose
Mone, Kathryn	A Member of the Public	Myself	Oppose
Connelly, Christopher	An Elected Official	Myself	Oppose
Croft, David	A Member of the Public	Myself	Oppose
Mangone, Steve	A Member of the Public	Myself	Oppose
Reams, Mark	A Member of the Public	Myself	Oppose
Miller, ken	A Member of the Public	Myself	Oppose
Shagoury, Andrew	A Member of the Public	Myself	Oppose
Boudreau, gary	A Member of the Public	Myself	Oppose
Fisher, Gary	A Member of the Public	Myself	Oppose
Lord, Brian	A Member of the Public	Myself	Oppose
Dolan, Joel	A Member of the Public	Myself	Oppose
SIELICKI, Michael	A Member of the Public	Myself	Oppose
Laurent, Tara	A Member of the Public	NH Chiefs Association & Greenland Police Department	Oppose

Testimony

Support HB 1296 – Better Protect Granite Staters’ Due Process Rights

Bill Summary:

- HB 1296 ends civil forfeiture.
- Replaces it with criminal forfeiture—requiring a conviction as a prerequisite to the loss of property.
- Ensures access to counsel.
- Better protects innocent owners, likes spouses, friends, parents and neighbors of defendants.
- Ends low-value seizures of currency of less than \$200 and vehicles worth less than \$2,000.
- Protects against excessive forfeitures by codifying 2019 Supreme Court case—*Timbs v. Indiana*.
- Ends potential for roadside negotiations by police officers.
- Stops outsourcing forfeiture litigation to the Federal Government on seizures made alone by NH law enforcement.

Civil forfeiture has strayed from its original purpose. Since the early 1980’s, law enforcement proponents have advocated for civil forfeiture laws as a tool confiscate the ill-gotten gains of drug kingpins. In practice, however, drug kingpins are rarely the target. As the Institute for Justice found in 21 states, the median currency forfeiture only is \$1,276. In some states, that amount is much smaller. Half of Pennsylvania’s currency forfeitures are less than \$369.ⁱ In Connecticut, the median currency forfeiture is \$665. HB 1296 begins to return forfeiture to its original purpose by prohibiting low-dollar seizures of \$200 in currency and motor vehicles worth less than \$2,000.

HB 1296 is fairer and more efficient by uniting processes in criminal court. Under current NH law, the government must hold a criminal proceeding to prove the defendant committed a crime. Then, the forfeiture litigation takes place in a separate civil proceeding. HB 1296 unites the two. By moving forfeiture into criminal court, the same attorneys and judge will be involved in both parts, thus saving judicial resources.

Civil forfeiture leaves NH’s most vulnerable with little recourse. Indigent property owners have no right to an attorney in their efforts to get back seized property. That’s because it is a civil process where public defenders cannot go. Thus, those who seek their property returned face the financial burden of hiring an attorney. By moving to a criminal forfeiture process, HB 1296 ensures that the indigent keep their attorneys in the property-related litigation. 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 recourse. As the low dollar values in Pennsylvania and Connecticut suggest, too often property owners just walk away because the cost of an attorney exceeds the value of the property seized

Civil forfeiture incentivizes the pursuit of profit over the fair administration of justice. Under NH law, the local or state government can keep up to 45% of forfeiture proceeds after reimbursements of litigation cost, liens, and a contribution to the police psychological stability screening fund.ⁱⁱ Under federal law, NH agencies receive back up to 80% of proceeds under the federal equitable sharing program, which includes (a) joint tasks forces and (b) adoptions.ⁱⁱⁱ Thus, law enforcement agencies have an incentive to seize as much property as possible and outsource the forfeiture litigation to U.S. Attorneys. Legislators should not put law enforcement in a position where agencies appear to be self-funding their budget by circumventing state law. This structure creates a perverse incentive to prioritize profit over justice. HB 1296 addresses this issue in various ways. First, as discussed above, it establishes minimum seizure amounts of \$200 currency and \$2,000 in value of motor vehicle seizures and forfeitures. Second, it ensures that people who cannot afford an attorney will get one. Third, it better protects innocent property

owners, such as spouses, friends, parents and neighbors by allowing them to go into court faster and flipping the burden of proof to the prosecutor. And fourth, as describes next, it prohibits adoptions.

State and local law enforcement should not circumvent state law. In 2016, NH legislators took a step toward ending civil forfeiture by enacted legislation that stayed forfeiture litigation in civil court until after a conviction in criminal court. This required prosecutors to first charge and convict the property owner and, if successful, then prove the seized property is the product of the crime.^{iv} Unfortunately, this has it flaws caused by property owners not engaging in civil litigation for the reasons described above. But additionally, the federal government has created a loophole that allows NH agencies to ignore that state law by asking the U.S. Attorney's Office to "adopt" seizures. Adoptions send the seizure into the federal forfeiture process that mostly does not require a charge and conviction before a person loses title to property in civil forfeiture litigation in civil court.^v And, under the federal program, the U.S. DOJ returns to the NH agency that seized the property up to 80 percent of the forfeiture proceeds—that's more than the 45% distribution rate under state law.^{vi} HB 1296 ends closes the portion of the federal loopholes caused by federal adoptions.

Most federal forfeiture does not require a conviction of a person. A cornerstone of the American justice system is that one is innocent until proven guilty. Yet, because of the federal forfeiture loophole, NH agencies can seize based on probable cause that the property is the fruit or instrument of a crime. Then, law enforcement can hand over the property to federal prosecutors whose work is made easier by a low civil standard of proof in civil court. U.S. attorneys only need to show by a preponderance of the evidence (51%) that the property has a connection to the alleged crime. HB 1296 does all it can to strengthen procedural protections by uniting the state forfeiture process with criminal prosecution and prohibiting adoptions.

It's time to call forfeiture what it properly is—a criminal sanction against those convicted. HB 1296 makes forfeiture, at least under NH law, part of the criminal prosecution. Only after a person is convicted beyond a reasonable doubt will his property be subject to forfeiture. And both processes will take place in the same court room in front of the same judge, and for some, with the help of a public defender.

Support HB 1296

**Ensure Granite Staters get the process they are due.
First a *criminal* conviction, and then a *criminal* forfeiture process.**

ⁱ 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/>.

ⁱⁱ RSA 318-B:17-b-V.

ⁱⁱⁱ 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.

^{iv} RSA 318-B:17-b.

^v 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; 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>.

^{vi} 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.

President
Wendy Piper
Grafton County Commissioner

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Bylaws Chair
Chris Coates
Cheshire County Administrator

April 4, 2022

The Honorable Sharon Carson
Chair
Senate Judiciary
State House
Concord, NH 03031

Chair Carson and Members of the Senate Judiciary Committee,

The NH Association of Counties would like to register its opposition to HB 1296, relative to the forfeiture of items used in connection with a drug offense.

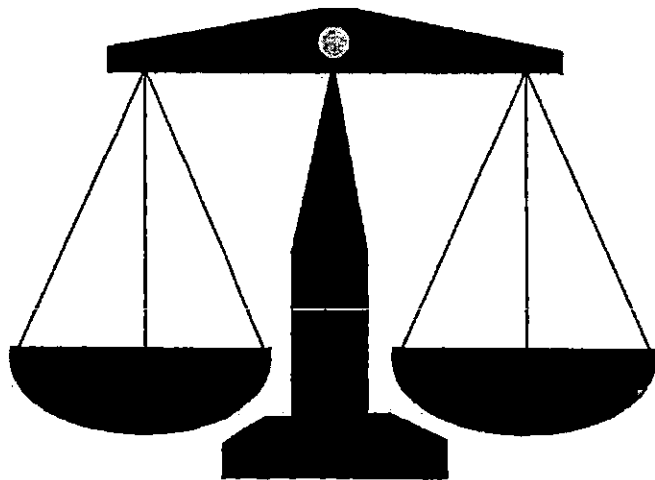
This bill would alter the way in which the return of real property would be handled in post-conviction. The amendment from the House would result in an increase in post-conviction litigation with the burden falling on the County Attorneys Offices, who already have extremely busy caseloads. This bill fails to make any advancement in the system and the present system, run by the Attorney General's Office, works efficiently and effectively.

The Association asks for your opposition to HB 1296. If you have any questions, please feel free to reach out to our Executive Director, Kate Horgan at khorgan@dupontgroup.com.

Sincerely,

Wendy Piper
President
NH Association of Counties

NEW HAMPSHIRE
ATTORNEY GENERAL'S
ASSET FORFEITURE MATERIALS



June 26, 2007

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**OFFICE OF THE ATTORNEY GENERAL
CRIMINAL JUSTICE BUREAU**

DRUG PROSECUTION AND ASSET FORFEITURE UNIT

**OFFICE TELEPHONE 271-3671
FAX 271-2110**

**JAMES C. VARA
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**JANE E. YOUNG
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**MELISSA S. LOGEMANN
PARALEGAL**

**NEW HAMPSHIRE ATTORNEY GENERAL
DRUG ASSET FORFEITURE GUIDELINES**

July 1, 1996

These guidelines set forth an internal policy established by the Attorney General's Office (AGO) regulating its handling of asset forfeiture pursuant to RSA 318-B:17-b and RSA 318-B:17-d. These guidelines are not intended to create any right or cause of action in any person other than those found in existing law. Variances from these guidelines require the prior approval of the Attorney General. These guidelines supercede all previous guidelines.

- I. **Initial Acceptance of Case:** The AGO will examine the following factors when deciding whether to proceed with a forfeiture action:
 - A. **How was the asset seized?**
 1. Was a warrant used to accomplish the seizure of the property? Does the affidavit appear to establish probable cause to support the seizure of the asset?
 2. If a warrant was not used to accomplish the seizure, do the facts and circumstances presented in the police reports appear to meet the requirements of a recognized search warrant exception?
 - B. **Has the seizing agency sent the 7 day notice letter to all identified interested parties? Does time permit the AGO to direct the seizing agency to provide appropriate notice to any interested party within the time limit?**
 - C. **Is there evidence to support the conclusion that the asset was used or intended to be used to facilitate a felony drug offense or was the proceeds of a felony drug offense?**
 1. **The nexus between the asset and the drug felony offense must be substantial and clearly evident from the police reports where the seizure is based upon the asset's use to facilitate a drug felony.**
 - a. **For purposes of these guidelines, with respect to houses in felony marijuana cases, forfeiture will ordinarily be sought in cases where the number of plants seized exceeds 21.**

- i. A general rule of thumb used by law enforcement is that one plant of marijuana equals one pound. The federal sentencing guidelines consider a single marijuana plant will equal 1 kilogram of smokeable marijuana. The AGO will ordinarily apply a conservative estimate of one plant equals 1/4 pound.
 - ii. The presence of large sums of cash, or drug distribution paraphernalia such as scales, baggies, drug ledgers, and weapons, are factors to be considered in determining if seizure is appropriate when there are fewer than 21 plants present.
- b. **Firearms:** Unless the weapon is actually possessed during a felony drug offense or intended to be used to facilitate a felony drug offense, the AGO will not institute a forfeiture action. Nothing in these guidelines should be interpreted to in any way curtail the authority of a police officer to seize a firearm pursuant to a validly authorized search warrant or warrant exception to assess the weapon for its evidentiary value in the pending drug case or forfeiture action. The AGO will recommend condemnation of any firearms seized upon conviction pursuant to RSA 595-A:6.
- c. Vehicle forfeiture actions will not be sought where the evidence indicates the controlled drug was solely for the personal consumption of the owner.
- d. Cash forfeiture actions will be instituted where there is sufficient evidence in the police reports to indicate that the money was used or intended to be used to purchase a controlled drug in a felony offense, including but not limited to:
 - i. The proximity of money to the controlled drug;
 - ii. The denominations of the bills;
 - iii. The packaging of the bills;
 - iv. The presence of marked bills used in prior documented drug sales;

v. Admissions by those involved in the felony drug offense.

2. Proceeds as a general rule: Forfeiture actions against assets constituting proceeds require the approval of DPAFS staff prior to seizure of the asset.

a. When assets are seized without the prior approval of DPAFS, a forfeiture action will not be instituted against the asset unless the police reports establish a direct and traceable link between the acquisition of the asset and felony drug trafficking.

D. What is the value of the property seized? Minimum value requirements:

1. Cash: No forfeiture action will be instituted where there is less than \$1,000.00.

2. Vehicles: No forfeiture action will be instituted where there is less than \$3,000.00 of equity (based upon an appraisal from a NADA blue book or by an appraisal from a garage). Except in the case of an antique automobile or a restored automobile, as a general rule the AGO will not forfeit automobiles that are more than five years old.

3. Houses: No forfeiture action will be instituted where there is less than \$50,000.00 of equity based upon a "windshield" appraisal performed by a real estate expert designated by the AGO. Each case will be reviewed by DPAFS before filing a seizure warrant at the registry of deeds.

E. As a general rule, the seizing agency must investigate the claims of innocent spouses/owners/dependents when notified of such claims.

1. The agency shall report to DPAFS the result of any investigation into such claims.

2. The agency shall limit its investigation of claims of innocent spouses/owners/dependants to activities that would be permissible under the State and Federal Constitutions as well as state law.

3. DPAFS will review the claims of "innocent" parties based upon the information available from the police investigation and

make a preliminary determination as to whether to institute forfeiture action against a party's secured interest in the asset. Nothing in the initial decision to proceed shall bind the AGO to continuing with a forfeiture action if in the event that further information becomes available through discovery and/or further investigation, it becomes clear that the secured party was not a knowing or a consenting party to the use of the asset in a drug felony offense or was unaware that the asset was a proceed from drug sales.

II. Asset Management Pending Forfeiture.

A. Unless otherwise directed by AGO, all seized assets will be secured and safeguarded by the seizing agency pending disposition of any and all criminal cases and the conclusion of any forfeiture action.

1. Cash:

- a. Unless the seized drug-related money is released by the court pursuant to an order issued under RSA 595-A:6, the money will be maintained by the seizing agency or prosecutor's office until introduced as an exhibit at trial.
- b. If the court issues an order pursuant to RSA 595-A:6, the money will be forwarded to the AGO and placed in an interest-bearing account maintained by the AGO for that purpose, pending the disposition of the forfeiture action.

2. Vehicles: The seizing agency must hold vehicles in a secured area to avoid vandalism or theft.

3. Houses: Under RSA 318-B:17-b, law enforcement does not ordinarily take physical custody of real estate.

B. DPAFS will make all reasonable efforts to protect the interest of innocent secured lienholders or owners.

1. Use of Interlocutory Sales

- a. In the event that an asset owner defaults on a secured loan or enters bankruptcy, the AGO will not object to motions filed by the secured creditor or bankruptcy trustee for a foreclosure sale so long as the proceeds are placed in an escrow account pending settlement of the forfeiture action.

- b. In the event that a real property owner fails to redeem a tax lien, DPAFS shall either:
 - i. Pay the outstanding lien and recoup the cost as a part of the disposition of the forfeiture action, or
 - ii. Not object to a tax sale so long as all moneys in excess of the outstanding tax lien are deposited into an escrow account pending settlement of the forfeiture action.

III. Post Filing Forfeiture Proceedings

A. Administrative forfeiture

- 1. The AGO will not use the administrative process to forfeit a person's interest in an asset which:
 - a. Is real estate;
 - b. Is proceeds, or
 - c. Exceeds \$75,000 in value.
- 2. A person claiming an interest in an asset subject to administrative forfeiture action will not be subject to default solely for missing the filing deadlines by 10 days or less when contact with DPAFS staff is ongoing.
- 3. Petitions for remission or mitigation of an asset subject to administrative forfeiture will be reviewed by the staff of DPAFS. (See also Section IV. A.)
 - a. In reviewing petitions, the DPAFS staff should attempt to develop all the pertinent facts surrounding a claim recognized under RSA 318-B:17-b or 318-B:17-d.
 - b. In developing such facts, the staff may:
 - i. Request additional information from the claimant which may bear on the claimant's standing or the nature and extent of the claim;

- ii. Request that the seizing agency perform further investigative work concerning standing or the nature and extent of claim;
 - iii. Develop information from public sources which might bear on the validity of the claim.
 - c. DPAFS should attempt to resolve the facts surrounding the claim within 60 days of its receipt but it will not terminate inquiry until the pertinent facts are fully developed. In the event that the inquiry of DPAFS will apparently exceed 60 days from receipt of the claim, DPAFS will comply with provisions of RSA 318-B:17-d, II(f) and notify the claimant of the need to extend the review period and provide an anticipated date of completion.
- 4. The AGO will not object to a request for transfer of a forfeiture action from the administrative process to the judicial process if:
 - a. There is a timely made request for transfer, and
 - b. The claimant either:
 - i. Posts a cost bond, or
 - ii. Files an affidavit of indigency with the AGO and a request for waiver of the cost bond because of indigency.
 - d. The AGO will accept as fulfilling the requirements of III.A.3.b.i) either:
 - i. An affidavit prepared by claimant or counsel;
 - ii. A certified copy of the claimant's request for court-appointed counsel; or
 - iii. A financial affidavit form supplied by DPAFS.
 - e. If DPAFS staff finds that a cost bond is required due to the financial circumstances of the claimant, the claimant may appeal the finding to the chief of the Criminal Justice Bureau (CJB) in the first instance and finally to the Attorney General.

B. Judicial Forfeitures

1. When required by RSA 318-B:17-b or when a claimant with a claim which is cognizable under the law has requested the transfer of an administrative forfeiture to a judicial forum, the AGO will file a forfeiture petition in the superior court and request that the petition be served on all known persons with protected interests.

a. DPAFS will assist the sheriff's office when possible in making service of the petition upon an interested party.

b. Service by order of notice for publication shall be utilized only as a last resort.

2. Default judgments.

a. If a person listed in the petition as a potential claimant fails to file an appearance and a responsive pleading to the forfeiture petition in accordance with the orders of notice, the DPAFS will file a motion to default that person's interest in the asset.

b. Unless specifically authorized by the Attorney General, DPAFS will not object to a motion to defer filing an answer or other responsive pleading until the conclusion of any related criminal case brought against the claimant.

3. Continuances.

a. The AGO will not object to a continuance of the hearing date for the forfeiture action until the conclusion of any pending criminal case against a claimant who has filed an appearance and requested such a continuance unless the Attorney General has specifically authorized proceeding in advance of a criminal conviction. Any such approval must be in writing.

i. As a condition of a continuance until resolution of pending criminal cases, the claimant shall agree that in the event he fails to appear in answer to the pending criminal charges, the AGO may request the court set a hearing date on the forfeiture

petition notwithstanding the assented to continuance.

- ii. When a claimant fails to appear in connection with pending criminal cases, the AGO will request a hearing be scheduled unless there is at least one other claimant for the asset who has requested a stay pending resolution of the criminal charges who has not defaulted in the pending criminal case.

4. Discovery.

- a. DPAFS will utilize all authorized discovery techniques, including but not limited to written interrogatories and depositions, to narrow the issues to be litigated in the forfeiture action.
- b. Where a claimant has a pending related criminal charge and has not objected to proceeding to hearing prior to the disposition of that charge or the Attorney General has authorized the AGO to go forward on a forfeiture prior to conclusion of a criminal case, the AGO will:
 - i. Not object to the granting of a protective order preventing disclosure of information obtained in the forfeiture discovery process to the prosecutor in the related pending criminal case; or
 - ii. Stay all discovery until the conclusion of the related criminal charge involving the claimant.

5. Motions for summary judgment

- a. The AGO will file a motion for summary judgment when after the discovery process there is no genuine issue as to any material fact and the AGO is entitled to judgment against that party's interest in the asset which is the subject of the action.
- b. The AGO may file a motion for summary judgment after a claimant has been found guilty in the related criminal case if:

- i. Together with the information amassed in the discovery process would demonstrate that the asset was:
 - a. used or intended for use to facilitate a felony drug offense, or
 - b. the proceeds from felony drug dealing, and
- ii. The AGO has an affidavit from the arresting officers as well as a certified copy of the conviction.

IV. Forfeiture Resolution Guidelines

A. Administrative Forfeiture Actions

1. When the asset which is subject to administrative forfeiture is wholly owned by a claimant charged with a felony drug offense and the claimant has not filed a petition in mitigation or remission or taken action to transfer the matter to the superior court, the asset will be forfeited.
2. When a claimant to an interest in an asset subject to administrative forfeiture files a petition in remission and after thorough and complete review the claim is unsubstantiated, then that interest will be forfeited.
 - a. If a thorough and complete review of the claim is thwarted by the claimant's refusal to cooperate with the reasonable requests of the DPAFS staff or its designated investigators, then the claim may be found to be unsubstantiated.
 - b. Where a claimant asserts his state and federal constitutional rights against self-incrimination and unreasonable search and consequently thwarts the efforts of DPAFS to thoroughly investigate the case, the claim may be found unsubstantiated.
3. When a claimant to an interest in an asset subject to administrative seizure files a petition in mitigation, it shall be thoroughly and completely reviewed by DPAFS staff.

- a. In assessing whether to mitigate the forfeiture, the following factors should be considered:**
- i. The nexus between the asset and the criminal activity:**
 - a. Did the asset significantly contribute to the functioning of the drug enterprise?**
 - b. Was the asset substantially connected to the commission of a felony drug offense?**
 - c. Were the criminal activities conducted by the defendant/s by and through the use of the property extensive?**
 - d. What was the non-drug related use of the asset?**
 - e. Is the asset one that is commonly used for drug trafficking?**
 - ii. Will the forfeiture of the asset serve a remedial purpose?**
 - a. What is the value and quantity of the controlled drug involved in the defendant/s criminal activity?**
 - b. Will the forfeiture of the property serve to disrupt or prevent recurrence of the underlying drug offense?**
 - c. What were the costs of the investigation and prosecution of the defendant?**
 - d. What is the value of the asset to be forfeited?**
 - e. Is there evidence of significant community impact such as:**
 - 1. Long term trafficking in controlled drugs?**

2. Is there evidence of widespread or indiscriminant distribution of drugs?

3. Is there evidence that the decimation of drugs involves persons who are particularly susceptible, such as minors or intellectually challenged individuals?

d. Are there collateral impacts to the forfeiture?

1. Are there other "innocent" interest claimants?

2. What would the effect of forfeiture be on the interest of the "innocent" claimants or "innocent" spouses or dependants?

B. Judicial Forfeiture

1. The AGO will proceed with a forfeiture action against the interests of parties who were knowing and consenting parties to the use or intended use of the asset in a drug felony offense or when the asset is the proceeds of a felony drug trafficking after disposition of related criminal cases that were pending at the time of the seizure.

a. Decisions on resolution of forfeiture cases shall be made on their own merits and independent of the pending related criminal cases to avoid any inference of a claimant/defendant "buying" his way out of prison.

i. Joint negotiations or global settlements will be undertaken only if there are written waivers of claims by the claimant/defendant.

ii. In global settlement negotiations, the criminal and civil forfeiture cases must be independently analyzed by the lawyers involved.

- b. Absent a global settlement, disposition of a claimant's felony offense to a reduced misdemeanor charge shall result in discontinuation of the forfeiture action.
- c. The AGO will not proceed with a forfeiture action against an interest in an asset after the acquittal of a claimant on the related criminal charge.

2. Settlement of Forfeiture Actions

- a. In all cases DPAFS will consider partial forfeitures or a settlement of the forfeiture action which would result in the return of the seized asset to a claimant and a payment of cash to be distributed in accordance with RSA 318-B:17-b, IV.
- b. Where the asset subject to forfeiture exceeds \$7,500 in value or is real estate, the attorney handling the forfeiture will prepare a settlement memo for the Chief of the CJB. The memo will:
 - i. Detail the admissible evidence in the case;
 - ii. Discuss important factors which would influence the disposition of the asset;
 - iii. Outline any offer made by the claimant;
 - iv. Assess the trial risks; and
 - v. Make a recommendation concerning the resolution of the case.
- c. The following factors may be considered in arriving at a settlement position:
 - i. All the factors listed in Section IV.A.3.a of these guidelines, as well as the factors set forth in RSA 318-B:17-b, IV(e);
 - ii. In the case of real estate:
 - a. Is the real estate a primary residence? Are there family or dependants who are not knowing and consenting parties who

would be seriously disadvantaged by the forfeiture of the asset?

- b. What is the title in the property? What are the costs and problems associated with the partitioning of interests between parties who have forfeitable and non-forfeitable interests?
 - c. Was the asset purchased directly or indirectly with monies derived from drug trafficking?
 - d. Was the asset maintained directly or indirectly by monies derived from drug trafficking?
 - e. What is the cost financially and collaterally to innocent third parties of a forced sale following forfeiture?
 - f. Can a settlement be structured so as to accommodate the interest of the claimant in light of the other factors and the State?
- d. Information from a variety of sources which might not be admissible in a forfeiture hearing may be considered in formulating a settlement position, including but not limited to:
- i. All information developed in the investigation of the criminal case and the forfeiture action.
 - a. Any rationale and reasonable inferences which can be drawn from that evidence.
 - b. Example: If a person is charged with selling a kilogram of cocaine, it is a rationale and reasonable inference that the person has a long-term involvement in drug trafficking.
 - ii. Information developed from confidential sources which the AGO has determined cannot be used at the hearing without endangering the safety of the

informant or compromising long-term narcotics operations.

iii. The statements of co-defendants and unindicted co-conspirators.

iv. Information from other law enforcement authorities.

c. Approval of settlement authority:

i. The Attorney General must approve all settlement offers concerning:

a. Real estate, or

b. Other property with a net equity value in excess of \$50,000.

ii. The Chief of the CJB may approve all settlement offers where the asset is not real estate and the value is less than \$50,000.

§ 318-B:17-b. Forfeiture of Items Used in Connection with Drug Offense.

Statute text

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

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

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

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

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

(e) Any real property, including any right, title, leasehold interest, and other interest in the whole of any lot or tract of land and any appurtenances or improvements, which real property is knowingly used or intended for use, in any manner or part, in the procurement, manufacture, compounding, processing, concealing, trafficking, delivery or distribution of a controlled drug in felonious violation of this chapter.

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

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

(a) Upon process issued by any justice, associate justice or special justice of the municipal, district or superior court. The court may issue a seizure warrant on an

affidavit under oath demonstrating that probable cause exists for its forfeiture or that the property has been the subject of a previous final judgment of forfeiture in the courts of any state or of the United States. The application for process and the issuance, execution and return of process shall be subject to applicable state law. The court may order that the property be seized and secured on such terms and conditions as are reasonable in the discretion of the court. Such order may include an order to a financial institution or to any fiduciary or bailee to require the entity to impound any property in its possession or control and not to release it except upon further order of the court. The order may be made on or in connection with a search warrant;

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

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

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

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

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

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

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

(d) The department of justice shall examine the facts and applicable law of the cases referred pursuant to subparagraph (c), and if it is probable that the property is subject to forfeiture, shall cause the initiation of administrative or judicial proceedings against the property. If upon inquiry and examination, the department of justice determines that such proceedings probably cannot be sustained or that

the ends of justice do not require the institution of such proceedings, the department shall make a written report of such findings and send a copy to the seizing agency, and, if appropriate, shall also authorize and direct the release of the property.

(e) The department of justice shall, within 60 days of the seizure, either file a petition in the superior court having jurisdiction under this section or seek administrative forfeiture pursuant to RSA 318-B:17-d. If no such petition is filed or administrative procedure initiated within 60 days, the items or property interest seized shall be released or returned to the owners.

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

(a) Place the property under seal; or

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

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

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

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

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

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

(b) No items or property interests shall be subject to forfeiture unless involved in an offense which may be charged as a felony.

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

(b) Such proceeding shall be deemed a civil suit in equity in which the state shall have the burden of proving all material facts by a preponderance of the evidence

and in which the owners or other persons claiming an exception pursuant to paragraph III shall have the burden of proving such exception.

(c) The court shall issue orders of notice to all persons who have a recorded interest or claim an equitable interest in said items or property interests seized under this chapter and shall schedule a hearing on the petition to be held within 90 days of the return date on said petition.

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

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

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

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

(3) The value of the property to be forfeited greatly outweighs the value of the drugs that were or would have been likely to be distributed, the costs of the investigation and prosecution, and the harm caused by the criminal conduct.

The court shall, thereupon, make a final order, from which all parties shall have a right of appeal.

V. Final orders for forfeiture of property under this section or under RSA 318-B:17-d shall be implemented by the department of justice and shall provide for disposition of the items or property interests by the state in any manner not prohibited by law, including retention for official use by law enforcement or other public agencies or sale at public auction. The department of justice shall pay the reasonable expenses of the forfeiture proceeding, seizure, storage, maintenance of custody, advertising, court costs and notice of sale from any money forfeited and from the proceeds of any sale or public auction of forfeited items. All outstanding recorded liens on said items or property interests seized shall be paid in full upon conclusion of the court proceedings from the proceeds of any sale or public auction of forfeited items. The balance remaining shall be distributed by the department of justice as follows:

(a) Of the first \$500,000:

(1) Forty-five percent shall be returned to the fiscal officer or officers of the municipal, county, state, or federal government which provided the law enforcement agency or agencies responsible for the seizure. Moneys returned to each fiscal officer shall be deposited in a special account and shall be used primarily for meeting expenses incurred by law enforcement agencies in connection with drug-related investigations. Except as provided in RSA 31:95-b, such funds shall be available for expenditure without further appropriation by the legislative body of the municipal, county, state or federal government, and shall not be transferred or expended for any other purpose. Moneys returned to a state law enforcement agency shall be deposited in a special nonlapsing account established within the office of the state treasurer and shall be in addition to all other state appropriations to such agency;

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

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

(b) Of any balance remaining:

(1) Ten percent shall be deposited in the manner prescribed in subparagraph V(a)(2) of this section; and

(2) Ninety percent shall be deposited in the manner prescribed in subparagraph V(a)(3) of this section.

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

History

History

Source. 1981, 166:2. 1983, 292:15. 1985, 327:1-4. 1986, 232:1. 1988, 94:1. 1989, 380:1, 2. 1992, 182:1. 1994, 343:1-3, eff. Aug. 7, 1994. 1995, 310:177, eff. Nov. 1, 1995.

Annotations

Amendments--1995. Paragraph V: Substituted "department of health and human services" for "office of alcohol and drug abuse prevention" in subpar. (a)(2) and in the first sentence of the concluding paragraph.

-1994. Paragraph III(a): Deleted "it shall appear that" following "unless".
Paragraph IV(d): Added the second sentence.
Paragraph IV(e): Rewritten to the extent that a detailed comparison would be impracticable.

-1992. Rewritten to the extent that a detailed comparison would be impracticable.

-1989. Paragraph IV: Substituted "\$200,000" for "\$50,000" in the introductory clause of subpar. (a), added "except as provided in RSA 31:95-b" following "investigations" in the second sentence of subpar. (a)(1), and substituted "\$400,000" for "\$200,000" in the first and second sentences and "\$1,000,000" for "\$300,000" in the third and fourth sentences of the unnumbered concluding paragraph.

-1988. Paragraph IV: Rewritten to the extent that a detailed comparison would be impracticable.

-1986. Paragraph I: Substituted "interest" for "interests" in the introductory clause and rewrote subpar. (b).
Paragraph II: Substituted "interest" for "interests" following "items or property" in the third sentence.
Paragraph III: Substituted "interest" for "interests" following "property" in subpar. (a) and "may be charged as" for "constitutes" preceding "a felony" in subpar. (b) and deleted subpar. (c).
Paragraph IV: Rewritten to the extent that a detailed comparison would be impracticable.

-1985. Paragraph I: Rewrote subpar. (c), added subpars. (e) and (f), and made other minor stylistic changes.
Paragraph III(c): Added.
Paragraph IV: Inserted "which could be" preceding "brought" in the second sentence, rewrote the fourth and tenth sentences, and added the fifth and eleventh sentences.

-1983. Paragraph III(b): Deleted "at the time of seizure" following "felony" at the end of the paragraph.
Paragraph IV: Deleted "any provision of" preceding "this chapter" at the end of the second sentence, substituted "the" for "said" preceding "hearing" at the beginning of the fifth sentence, "the" for "said" preceding "items" in the sixth sentence, and "the" for "said" preceding "seized" in the last sentence and made other minor changes in style.

Applicability of 1988. 1988, 94:3, eff. July 1, 1988, provided that the amendment to this section shall apply only to items or property interests related to drug offenses seized on or after July 1, 1988.

Purpose. 1981, 166:1, eff. Aug. 1, 1981, provided: "The purpose of this bill is to allow the attorney general to seize any money, books, records, ledgers and research

material, any materials, products and equipment, and any vehicle, aircraft or vessel used in connection with a felonious drug offense and to provide an equitable proceeding to determine the disposition of the goods seized by the attorney general. This act is intended also to provide that all persons holding liens on seized property be compensated in full for the amount of their liens and to protect all innocent owners from having any items forfeited to the state."

Construction of amendments--1995. 1995, 310:187, eff. Nov. 1, 1995, provided: "Nothing in this act is intended to, nor shall it be construed as, mandating or assigning any new, expanded, or modified program or responsibility for any political subdivision in violation of part I, article 28-a of the constitution of the state of New Hampshire."

1995 amendment 1995, 310, which amended this section, was subject to a severability clause. See 1995, 310:186.

CROSS REFERENCES

Administrative forfeiture of items used in connection with drug offense, see RSA 318-B:17-d.

Classification of crimes, see RSA 625:9.

Drug forfeiture fund, see RSA 318-B:17-c.

Forfeiture of controlled drugs, see RSA 318-B:17-a.

Properties and places deemed common nuisances generally, see RSA 318-B:16.

Sentences, see RSA 651.

Annotations

Analysis

1. Jurisdiction.
2. Burden of proof.
3. Sufficiency of evidence.
4. Double jeopardy.
5. Nonpunitive nature of statute.

1. Jurisdiction.

Proceedings under this section with respect to motorcycle seized in connection with drug offenses were in the nature of in personam, and therefore were not of such type or character as to prevent federal court, by medium of the doctrine of "adoptive forfeiture" from claiming prior jurisdiction over motorcycle and issuing warrant in rem under federal forfeiture statute. *United States v. Certain Real Property Known as Lot B*, 755 F. Supp. 487 (D.N.H. 1990).

2. Burden of proof.

In forfeiture proceeding, state has burden to prove by a preponderance of the evidence that property owner knowingly used or intended to use his real property for activities proscribed by this chapter. In re Parcel of Land Located in Effingham, 132 N.H. 1, 561 A.2d 1061 (1989).

3. Sufficiency of evidence.

Paragraph I(c) of this section, providing for forfeiture of moneys used or intended for use in felonious violation of this chapter, does not require proof connecting the money to be forfeited with a particular narcotics transaction. In re Two Hundred Seven Thousand Five Hundred Twenty-Three Dollars & Forty-Six Cents in United States Currency, 130 N.H. 202, 536 A.2d 1270 (1987).

In order to justify a forfeiture under paragraph I(c) of this section, the state is not required to demonstrate that the moneys were associated with drug transactions occurring after the 1981 effective date of the section statute. In re Two Hundred Seven Thousand Five Hundred Twenty-Three Dollars & Forty-Six Cents in United States Currency, 130 N.H. 202, 536 A.2d 1270 (1987).

4. Double jeopardy.

By failing to contest forfeiture, defendant never became a party to proceeding and effectively renounced any interest in property forfeited, and as a result, there was no judicial determination that the property was his; defendant therefore could not claim that forfeiture of property punished him, and without punishment there was no former jeopardy, and thus double jeopardy did not bar defendant's prosecution on indictment for conspiracy to sell cocaine. State v. Natalcolon, 140 N.H. 689, 671 A.2d 556 (1996).

Civil forfeiture did not implicate double jeopardy, where defendant's forfeiture of property was purely voluntary and not the result of any State-initiated forfeiture proceeding, and thus no civil sanction was imposed by State. State v. Guenzel, 140 N.H. 685, 671 A.2d 545 (1996).

5. Nonpunitive nature of statute.

New Hampshire's in rem forfeiture statute was a civil, nonpunitive measure, and thus forfeiture of defendant's vehicle did not constitute a second punishment for double jeopardy purposes. In re 1994 Chevrolet Cavalier, 142 N.H. 705, 708 A.2d 397 (1998).

Library References

NH Practice 2 N.H.P. Criminal Practice & Procedure §§ 737, 1059.

NH Admin Rules of the Department of Justice, Jus 301.01 et seq., New Hampshire Code of Administrative Rules.

CJS Drugs and Narcotics §§ 139-148:

ALR Forfeitability of property held in marital estate under uniform controlled substances act or similar statute. 84 ALR4th 620.

Relief to owner of motor vehicle subject to state forfeiture for use in violation of narcotics laws. 50 ALR3d 172.

Timeliness of drug forfeiture proceedings. 90 ALR4th 493.

§ 318-B:17-c. Drug Forfeiture Fund.

Statute text

I. There is hereby established within the office of the state treasurer a special revolving fund to be designated as the drug forfeiture fund. This fund shall be administered by the attorney general and may be used to pay the costs of local, county and state drug related investigations, as well as drug control law enforcement programs within New Hampshire. The fund may also be used to pay extraordinary costs of local, county and state drug prosecutions and trial expenses.

II. Law enforcement agencies may apply to the department of justice for grants from the forfeiture fund. Such grants shall be utilized exclusively for meeting expenses associated with drug related investigations. The attorney general shall report on or before December 31 of each calendar year to the governor and council and to the fiscal committee a summary of the grants provided to law enforcement agencies under this paragraph for the preceding fiscal year.

III. The attorney general shall adopt rules, pursuant to RSA 541-A, relative to:

(a) The administration of the drug forfeiture fund.

(b) The grant application procedures and forms to be used by law enforcement agencies.

History

History

Source. 1985, 327:5. 1986, 232:2. 1989, 380:3, eff. June 5, 1989.

Annotations

Amendments—1989. Paragraph I: Added the third sentence.

—1986. Rewritten to the extent that a detailed comparison would be impracticable.

CROSS REFERENCES

Department of justice, see RSA 21-M.

Library References

NH Admin Rules of the Department of Justice, Jus 301.01 et seq., New Hampshire Code of Administrative Rules.

CJS Drugs and Narcotics §§ 139-148.

ALR Forfeitability of property held in marital estate under uniform controlled substances act or similar statute. 84 ALR4th 620.

Relief to owner of motor vehicle subject to state forfeiture for use in violation of narcotics laws. 50 ALR3d 172.

Timeliness of drug forfeiture proceedings. 90 ALR4th 493.

§ 318-B:17-d. Administrative Forfeiture of Items Used in Connection With Drug Offenses.

Statute text

- I. Interests in property subject to forfeiture under the provisions of RSA 318-B:17-b, subparagraphs I(a), I(b), I(c) excepting proceeds and I(d), but not real property, shall be subject to administrative forfeiture by the department of justice provided that the total amount or value of such property does not exceed \$75,000. The provisions of RSA 318-B:17-b shall apply in any case of administrative forfeiture except as otherwise provided in this section.
- II. The department of justice may administratively forfeit property seized under paragraph I of this section as follows:
- (a) The department of justice shall provide a notice of intent to forfeit property administratively by publication for 3 consecutive weeks in a local newspaper of general circulation where the property was seized.
 - (b) In addition, to the extent practicable, the department of justice shall provide notice by certified mail return receipt addressee only requested, of intent to forfeit the property administratively to all persons having a recorded interest or claiming an equitable interest in the property seized.
 - (c) Notice by publication and by mail shall include:
 - (1) A description of the property;
 - (2) Its appraised value;
 - (3) The date and place of seizure;
 - (4) The violation of law alleged against the subject property;
 - (5) Instructions for filing a claim and posting bond or filing a petition for remission or mitigation; and
 - (6) Notice that the property will be forfeited to the state if a petition for remission or mitigation has not been filed in a timely manner or a claim has not been filed and bond has not been posted in a timely manner.
 - (d) Persons claiming an interest in the property may file petitions for remission or mitigation of forfeiture or file a claim and post bond with the department of justice within 30 days of the first notice by publication or 30 days from the receipt of written notice, whichever is later.
 - (e) It shall be the duty of the department of justice to inquire into the facts and circumstances surrounding petitions for remission or mitigation of forfeiture.
 - (f) The department of justice shall provide the seizing agency and the petitioner a written decision on each petition for remission or mitigation within 60 days of receipt of such petition unless the circumstances of the case require additional time in which case the department of justice shall notify the petitioner in writing and

with specificity within the 60-day period that the circumstances of the case require additional time, and further notify the petitioner of the expected decision date.

(g) Any person claiming an interest in seized property may institute judicial review of the seizure and proposed forfeiture by timely filing with the department of justice a claim and bond to the state in the amount of 10 percent of the appraised value or in the penal sum of \$2,500, whichever is less, with sureties to be approved by the department of justice, upon condition that in the case of forfeiture the claimant shall pay all costs and expenses of the proceedings at the discretion of the court. A sworn affidavit of indigency may be filed in lieu of a cost bond. Upon receipt of the claim and bond, or, if the department of justice otherwise so elects, the department shall file with the court a petition in rem to order forfeiture of items or property interests subject to forfeiture under the provisions of this section. All judicial proceedings thereafter shall be conducted in accordance with the provisions of RSA 318-B:17-b, IV. Any bonds received by the department of justice shall be held by the department pending final disposition of the case.

(h) If no petitions or claims with bonds are timely filed, the department of justice shall prepare a written declaration of forfeiture of the subject property to the state and dispose of the property in accordance with this section and the department of justice rules, if any, relative to this section.

(i) If the petition is denied, the department of justice shall prepare a written declaration of forfeiture to the state and dispose of the property in accordance with this section and the department of justice rules, if any, relative to this section.

(j) A written declaration of forfeiture signed by the attorney general or designee pursuant to this chapter shall be deemed good and sufficient title to the forfeited property.

History

History

Source. 1988, 94:2. 1989, 207:6; 1992, 182:2, eff. June 11, 1992.

Annotations

Amendments--1992. Rewritten to the extent that a detailed comparison would be impracticable.

--1989. Paragraph VI(g): Substituted "less" for "greater" following "whichever is" in the first sentence and added the second sentence.

Applicability of enactment. 1988, 94:3, eff. July 1, 1988, provided that this section shall apply only to items or property interests related to drug offenses seized on or after July 1, 1988.

Annotations

Voluntary forfeiture.

Civil forfeiture did not implicate double jeopardy, where defendant's forfeiture of property was purely voluntary and not the result of any State-initiated forfeiture proceeding, and thus no civil sanction was imposed by State. *State v. Guenzel*, 140 N.H. 685, 671 A.2d 545 (1996).

Library References

NH Practice 2 N.H.P. Criminal Practice & Practice §§ 737, 1057.

NH Admin Rules of the Department of Justice, Jus 301.01 et seq., New Hampshire Code of Administrative Rules.

CJS Drugs and Narcotics §§ 139-148.

ALR Forfeiture of property held in marital estate under uniform controlled substances act or similar statute. 84 ALR4th 620.

Relief to owner of motor vehicle subject to state forfeiture for use in violation of narcotics laws. 50 ALR3d 172.

Timeliness of drug forfeiture proceedings. 90 ALR4th 493.

Date

Addressee

Re: Property description

Dear :

Pursuant to RSA 318-B:17-b, II(a), enclosed please find a copy of the Inventory filed by (Police department) upon seizure of the above-described property on (date of seizure). This property may be forfeited to the State upon petition by the Attorney General pursuant to New Hampshire RSA 318-B:17-b or RSA 318-B:17-d.

As owner of the above-described property, you will receive notice of the forfeiture action, either from the Office of the Attorney General pursuant to New Hampshire RSA 318-B:17-d, or from the court having jurisdiction over this property pursuant to New Hampshire RSA 318-B:17-b.

Sincerely yours,

Signature block

enclosure

Served in hand to Addressee on Date of service by Police officer.

Mailed to Addressee by certified mail, return receipt requested, on Date mailed by Police officer.

Mailed to Property owner/interested party/lienholder's name by certified mail, return receipt requested, on Date mailed by Police officer.

Voluntary Forfeiture

I, _____, do hereby knowingly and voluntarily forfeit all my rights, interest, and title to the following item (s) listed below to the State of New Hampshire in consideration of being allowed to cooperate and assist the State of New Hampshire.

- a. _____
- b. _____
- c. _____

The undersigned further states as follows:

1. I hereby acknowledge that the above described item (s) were knowingly used of intended for use by me in the procurement, manufacture, compounding, processing, delivery or distribution of a controlled drug or were the profits or proceeds of my drug trafficking activities in felonious violation of RSA 318-B of the laws of the State of New Hampshire.

2. I hereby knowingly and voluntarily waive my rights under 318-B:17-b&d in this matter. In addition, I understand and acknowledge that the State of New Hampshire may enact its right to initiate the Administrative Forfeiture Procedure pursuant to RSA 318-B:17-d or the Judicial Forfeiture Procedure pursuant to RSA 318-B:17-b within sixty (60) days if I attempt to withdraw from this voluntary forfeiture.

3. I hereby agree to transfer title, to the State of New Hampshire and provide the State of New all documents that are required in this matter.

4. The above-described item (s) is/are not subject to any liens or encumbrances. Those encumbrance (s) and lien (s) is/are _____
_____ It is agreed that these obligations will be disposed of as follows: _____

5. No threats or promises have been made to me by the (Police Department) or their agents in this matter, aside from any agreement contained in a memorandum of understanding between myself and the State which has been signed on _____
_____ and is attached hereto.

Defendant

STATE OF NEW HAMPSHIRE
COUNTY OF _____

On this _____ day of _____, 20____,
before me, personally appeared the above named _____,
known to me (or satisfactorily proven) to be the person whose name is subscribed to
the foregoing instrument and acknowledged that he/she executed the same for the
purpose therein contained.

Notary Public/Justice of the Peace

My Commission Expires:

OFFICE OF THE ATTORNEY GENERAL
ASSET FORFEITURE SECTION

SEIZED VEHICLE FORFEITURE REQUEST

To request the forfeiture of a vehicle, please forward the following information to the Asset Forfeiture Section, along with the investigative reports, within 14 days of seizure.

POLICE DEPARTMENT _____

SEIZING OFFICER _____

TELEPHONE NUMBER _____

CASE NUMBER # _____

OWNER _____

TITLE HOLDER _____

LIEN HOLDER AND LIEN AMOUNT \$ _____

BLUEBOOK VALUE \$ _____

YEAR _____

MAKE _____

MODEL _____

MILEAGE _____

ACCESSORIES

A/C	_____	AM/FM	_____
CASSETTE	_____	CD	_____
POWER WINDOWS	_____	POWERLOCKS	_____
POWER MOONROOF	_____	SECURITY	_____
POWER SEATS	_____	REMOTE START	_____
LEATHER INTERIOR	_____	4 X 4	_____

ADDITIONAL _____

VISIBLE RUST

VISIBLE DAMAGE

APPRAISED VALUE

\$ _____

AMOUNT OF EQUITY

\$ _____

**OFFICE OF THE ATTORNEY GENERAL
ASSET FORFEITURE SECTION**

SEIZED CURRENCY FORFEITURE REQUEST

To request the forfeiture of currency please forward the following information to the Asset Forfeiture Section along with the investigative reports within 14 days of seizure.

POLICE DEPARTMENT _____

SEIZING OFFICER _____

TELEPHONE NUMBER _____

CASE NUMBER _____

OWNER (S) _____

AMOUNT OF CURRENCY \$ _____

DENOMINATION OF CURRENCY _____

AMOUNT OF BUY MONEY INCLUDED _____

LOCATION OF CURRENCY WHEN SEIZED _____

MONEY LOCATED NEAR DRUGS

YES

NO

VOLUNTARY FORFEITURE FORM

_____, do hereby knowingly and voluntarily forfeit all my rights, interest and title to the following item(s) below that were seized on _____ to the State of New Hampshire.

- A.
- B.
- C.

The undersigned further state as follows:

I hereby acknowledge that the above-described item(s) were knowingly used or intended for use by me in the procurement, manufacture, compounding, processing, delivery or distribution of a controlled drug or were the profits or proceeds of drug trafficking activities in felonious violation of RSA 318-B of the laws of the State of New Hampshire. _____ (Initial).

I understand that RSA 318-B:17-b requires the State to initiate a forfeiture action within sixty days of the date of the seizure of the property. I hereby knowingly and voluntarily waive my rights under RSA 318-B:17-b and I understand that this property will be forfeited to the State of New Hampshire and disbursed pursuant to the provisions of RSA 318-B:17-b, V. _____ (Initial).

I hereby agree to transfer title to the State of New Hampshire and provide the State of New Hampshire all documents that may be required to transfer title in this matter. _____ (Initial).

The above-described item(s) is/are not subject to any liens or encumbrances. _____ (Initial)

The items listed in this voluntary forfeiture form are subject to the following encumbrance(s) and lien(s): _____

It is agreed that these obligations will be disposed of as follows: _____

No threats or promises have been made to me by the _____ or its agent in this matter, aside from any agreements which may have been made with respect to my underlying criminal charges.

STATE OF NEW HAMPSHIRE
COUNTY OF _____

On this ___ day of _____, 20____, _____, personally appeared before me and executed this voluntary forfeiture form.

Witness Date & Time
(Print name and agency below the signature)

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to the forfeiture of items used 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 Offenses. Amend
2 RSA 318-B:17-b to read as follows:

3 318-B:17-b Forfeiture of Items Used in Connection With Drug Offense.

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

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

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

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

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

24 (e) Any real property, including any right, title, leasehold interest, and other interest in
25 the whole of any lot or tract of land and any appurtenances or improvements, which real property is
26 knowingly used or intended for use, in any manner or part, in the procurement, manufacture,
27 compounding, processing, concealing, trafficking, delivery or distribution of a controlled drug in
28 felonious violation of this chapter.

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

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

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

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

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

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

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

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

31 *I-d. No waiver shall be accepted by the court, for purpose of seizure or forfeiture,*
32 *unless the court determines that it has been executed knowingly and voluntarily and has*
33 *not been requested, induced or required by a law enforcement officer. A document*
34 *purporting to waive interest or rights in seized property shall be void and inadmissible in*
35 *court.*

These waivers are routinely filed when a criminal case is resolved by plea. This sentence makes it unclear as to whether such waivers can be accepted.

36 II.(a) Upon the seizure of any personal property under paragraph 1, the person making or
37 directing such seizure shall inventory the items or property interests and issue a copy of the

1 resulting report to any person or persons having a recorded interest, or claiming an equitable
2 interest in the item within 7 days of said seizure.

3 (b) Upon seizure of any real property under paragraph I, the person making or directing
4 such seizure shall notify any person having a recorded interest or claiming an equitable interest in
5 the property within 7 days of said seizure. This 7 day letter in current practice is not consistent
with new language.

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

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

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

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

- 22 (a) Place the property under seal; or
- 23 (b) Remove the property to a storage area for safekeeping; or
- 24 (c) Remove the property to a place designated by the court; or
- 25 (d) Request another agency to take custody of the property and remove it to an
26 appropriate location within the state; or

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

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

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

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

Shifts from AG to County Attorney

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

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

Current shortage of public defenders

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

(Petition 1) In the criminal case? Superior or Circuit Court?

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

Procedure does not account for HB 1597, Felonies First Repeal.

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

14 (B) **At the same time as a probable cause determination, a post-**
15 **arrest hearing, or other pretrial hearing.**

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

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

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

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

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

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

Procedure does not account for HB 1597, Felonies First Repeal. How does this relate to the 7 day letter?

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

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

(Petition 2) In the criminal case? Superior or Circuit Court?

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

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

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

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

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

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

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

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

How does this relate to the fact the new process is tied to the criminal case?

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

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

Neither Superior nor Circuit Court criminal rules governing forfeiture.

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

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

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

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

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

25 (1) *A plea agreement; or*

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

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

33 (1) *Is deceased;*

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

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

36 (4) *Has fled the jurisdiction.*

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

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

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

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

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

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

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

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

17 *and*

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

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

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

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

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

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

36 (A) *The interest is invalid;*

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

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

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

6 (h)(1) *Property of an innocent owner shall not be forfeited. The prosecuting*
7 *authority summarily shall return property to such owner. Contraband shall not be*
8 *returned.*

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

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

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

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

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

Is the "simple statement the same as the petition in (4)

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

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

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

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

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

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

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

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

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

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

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

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

9 (1)(1) *If the prosecuting authority fails to meet its burden in the criminal or*
10 *forfeiture proceeding, the court shall enter judgment dismissing the forfeiture proceeding*
11 *and ordering the return of property to the innocent owner unless the owner's possession of*
12 *the property is illegal.*

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

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

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

22 (1) *Dissipated the property;*

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

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

26 (4) *Commingled property with other property that cannot be divided without*
27 *difficulty.*

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

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

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

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

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

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

6 (g) *No law enforcement agency shall sell forfeited property directly or indirectly*
7 *to any employee of the law enforcement agency, to a person related to an employee by blood*
8 *or marriage, or to another law enforcement agency.*

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (1) Forty-five percent shall be returned to the fiscal officer or officers of the
28 municipal, county, state, or federal government which provided the law enforcement agency or
29 agencies responsible for the seizure. Moneys returned to each fiscal officer shall be deposited in a
30 special account and shall be used primarily for meeting expenses incurred by law enforcement
31 agencies in connection with drug-related investigations. Except as provided in RSA 31:95-b, such
32 funds shall be available for expenditure without further appropriation by the legislative body of the
33 municipal, county, state or federal government, and shall not be transferred or expended for any
34 other purpose. Moneys returned to a state law enforcement agency shall be deposited in a special
35 nonlapsing account established within the office of the state treasurer and shall be in addition to all
36 other state appropriations to such agency;

HB 1296-FN - AS AMENDED BY THE HOUSE

- Page 11 -

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

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

5 (b) Of any balance remaining:

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

8 (2) Ninety percent shall be deposited in the manner prescribed in subparagraph
9 ~~V(a)(3)~~ **IV(a)(3)** of this section.

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

16 2 Effective Date. This act shall take effect January 1, 2023.

April 5, 2022

Rep. Mike Sylvia
Belknap 6
Belmont

Senate Judiciary Committee
Re: HB1296

Chairwoman Carson and committee members,

In 2016 the New Hampshire legislature shifted from civil asset forfeiture to criminal asset forfeiture which sensibly provides the necessary due process protections guaranteed by our constitution. While the policy decision was in the best interest of justice, the implementation left room for improvement. This bill improves the application of the policy by uniting two judicial tracks into one. By joining the criminal case with any seized asset, which might be forfeited, we can improve judicial economy and better protect innocent citizens.

Asset forfeiture is a good tool in slowing criminal enterprises in the business of illegal drug distribution. As with many tools it can be misused or abused. Civil asset forfeiture is a step too far and ripe for abuse.

Currently in New Hampshire there are three paths for property seized in relation to felony drug cases.

First are seizures made in state and prosecuted in state courts. Since we began our criminal asset forfeiture policy, the property seized is held (in most cases) until the criminal case is concluded. The forfeiture proceeds in a civil action only after the conviction (or plea). Note that this involves two cases (one criminal and one civil) which have a loose linkage.

The second and third paths run through the Federal equitable sharing program. The bulk of these are seizures made by joint task force operations. These represent about 70% of seizures processed through equitable sharing and do not require criminal convictions and may not even result in a criminal accusation. Notice that this bill has no effect on this large portion of seizures.

The other path through equitable sharing is by adoption. In this process, the asset is seized by New Hampshire law enforcement under state laws. The seized asset is then 'adopted' to the equitable sharing program and forfeiture is done in the federal system. This process circumvents our state's policy requiring a criminal conviction. Instead of receiving 45% of the forfeiture upon conviction, law enforcement is incentivized to use the equitable sharing program and may received up to 80% of the forfeiture in a case which lacks the due process protections of a criminal case.

HB1296 leaves untouched the vast majority of asset forfeiture cases, concerns of harming budgets of law enforcement are unwarranted. Those cases that are affected by this policy assure that innocent individuals are not being caught up in a system which might unjustly take property without a conviction. Further, the resulting 'revenue' to police is not zero but a reduction from 80% to 45% of the forfeiture.

This bill does add a slight burden to public defenders as they will be called on to include the forfeiture in the criminal cases in which the defendant is without funds to defend himself. This inclusion of the forfeiture defense will be a de minimus addition to those cases. There is little data available to show how few cases would be added. We do know that approximately 90% of such cases will be plead out and this bill allows the forfeiture to be considered a penalty for the offense.

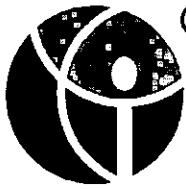
On the other side of the fiscal consideration is the savings to the court system. While, once again, there will be few cases going to trial, instead of two processes there will be just one criminal case with the forfeiture being part of sentencing in that case.

Most of our asset forfeiture bills start in the house judiciary committee where the committee members are very familiar with the issue. This is very much a bi-partisan issue strongly supported by most in the house. This bill started in the criminal justice and public safety committee where members were unfamiliar. The vote out of committee showed a bit of concern from the Democratic members. While a debate was planned for the house floor, conversations with the Democratic members led by NH-ACLU eased their concerns. Ultimately the bill passed on a voice vote with support from a strong majority.

While some take this legislation to be an assault on funding sources, I'm encouraged to see the support of Law Enforcement Action Partnership. They clearly see that this bill has benefits to law enforcement and their efforts toward community engagement. We, the legislative bodies of government, are responsible for properly funding public safety. We should not put police in a position of seeking funding sources other than that which is budgeted.

HB1296 will improve judicial economy, enhance due process protections, and restrict circumvention of our criminal asset forfeiture laws. Savings in the judicial system will offset the minimal work added to public defenders. It will further assist law enforcement in their community relations efforts. The time is right to send this bipartisan bill to the governor for his signature.

Respectfully,
Rep. Mike Sylvia



Written testimony on Amendment 2022-0264 to HB 1296 (forfeiture reform)

House Committee on Criminal Justice and Public Safety, Hearing of February 9, 2022

STATEMENT OF DAN GREENBERG, CEI Senior Attorney

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 or (202) 331-2263.

February 8, 2022



LAW ENFORCEMENT ACTION PARTNERSHIP

ADVANCING JUSTICE AND PUBLIC SAFETY SOLUTIONS

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Detective Sergeant Neil Woods, Ret.
Derbyshire, England, LEAP UK

Date: April 5th, 2022

Re: HB 1296 - An act relative to money, coin, or currency which may be forfeited in connection with a drug offense

Position: SUPPORT

To: The New Hampshire Senate Judiciary Committee

Distinguished Members of the Committee,

Thank you for the opportunity to submit testimony. My name is Joe Lachance, and I served for ten years with the Bedford Police Department. As a former officer and as a representative of the Law Enforcement Action Partnership, I support HB 1296, it would improve our state's trust in police by preventing unjustified seizures of private property.

The Law Enforcement Action Partnership (LEAP) is a nonprofit group of police, prosecutors, and corrections officials who speak on efforts to strengthen public safety from our firsthand experience. Our mission is to make communities safer by focusing law enforcement resources on the most serious priorities, addressing the root causes of crime, and healing police-community relations.

Today, one of the greatest threats to public safety is lack of trust in police. Police are only as strong as the tips we receive and witnesses we can bring forward from the community. If community members do not trust us, they won't call for help, even when they themselves are the victim of a crime. Right now, many people fear and distrust police more than they believe we can help solve crime.

One major source of police-community distrust is property seizures by law enforcement. I served in Bedford, which meant conducting a lot of traffic stops and searches on Route 101. We were expected to seize cash tied to drug sales. But unlike a criminal case, we didn't have to prove why someone had cash in their car. We could seize the cash without charging the driver with a crime, and the burden of proof would fall on the driver, to say

LawEnforcementActionPartnership.org

Formerly known as Law Enforcement Against Prohibition

nothing of the cost of a court case. Most drivers give up and go home, where their story spreads distrust in the police through neighborhoods and generations.

In fact, research provides evidence that distrust from seizures can prevent police from solving crime. A 2018 study found that police departments that focus on revenue generation do so at the expense of crime clearance rates. For every one-percent increase in revenue a department brings in from fines, fees, and forfeitures, violent crime clearance rates drop by 3.7%. This means victims are left without justice and perpetrators are free to prey on new victims.

Our legislators have already recognized the importance of building public trust by stopping unjustified seizures. We strengthened transparency and requirements in 2016 and 2018, and yet seizures have not decreased since then. Police can also seize assets through the federal Equitable Sharing Program, and New Hampshire ranks 11th in the country for federal asset seizures despite our small population.

Thankfully, there is a solution. HB 1296 would move these asset seizures from civil court into criminal court, respecting our belief in “innocent until proven guilty.” Drivers would no longer be subjected to a long, expensive, and complicated process to recover their property. In addition, the bill would stop police from circumventing state law by using the federal asset seizure program.

HB 1296 would also stop cash seizures under \$200. If someone is involved in drug sales, we all know that seizing \$200 will have no real impact. Yet for some families, losing a few hundred dollars could be an entire week’s pay. Losing that money could mean the difference between seeing a doctor or putting food on the table. These small seizures are never worth the potential cost in terms of community trust and collaboration.

I believe this bill is an important opportunity to protect against unjustified actions that can blow up in our face. Based on my own experience in a patrol car, I know that the bill will not prevent officers from doing our jobs. It will begin to reestablish trust, which will help us prevent and solve crime.

Thank you for your time and for considering this important piece of legislation, which can finally nail shut the loopholes in previous efforts to fix this problem.

Respectfully,

Joe Lachance
Former Police Officer
Bedford Police Department
Speaker, Law Enforcement Action Partnership

LawEnforcementActionPartnership.org

Formerly known as Law Enforcement Against Prohibition

Jennifer Horgan

From: Sakowski, Danielle <Danielle.H.Sakowski@doj.nh.gov>
Sent: Tuesday, April 5, 2022 5:31 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Cc: Ward, Geoffrey
Subject: NHDOJ Asset Forfeiture Guidelines

Good Evening Members of the Judiciary Committee,

Thank you for the opportunity to testify on behalf of NHDOJ at this afternoon's hearing on HB-1296. At the conclusion of my testimony, I indicated that I would email with the specific page numbers within the NHDOJ Asset Forfeiture Guidelines on which the policies I discussed appear. They are as follows: page 6 (minimum thresholds for cash forfeitures and value of vehicle forfeitures), page 10 (NHDOJ general policy not to object to a request for a continuance of the civil asset forfeiture until the conclusion of the corresponding criminal case), page 15 (DOJ's policy to not pursue civil asset forfeiture where there has been an acquittal of the corresponding crime or where, absent an agreement, a corresponding felony has been reduced to a misdemeanor for purposes of case resolution). Please feel free to contact myself, or Criminal Bureau Chief Geoffrey Ward (copied here), if you have additional questions.

Thank you,
Danielle

Danielle H. Sakowski
Senior Assistant Attorney General
Criminal Justice Bureau – Drug Prosecution Unit
33 Capitol Street
Concord, NH 03301
603-271-3671

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Jennifer Horgan

From: Richard W. Head <RHead@courts.state.nh.us>
Sent: Tuesday, April 26, 2022 7:33 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Cc: Richard Lehmann
Subject: HB 1296 (forfeiture of items used in connection with a drug offense)

Good evening Senator Carson and the Senate Judiciary Committee – I am writing this email to follow up on conversations I have had with several of you regarding House Bill 1296 and a request to change the vote on the floor from OTP-A to Interim Study due to a number of procedural flaws that exist within the bill (both as passed by the House and the Senate Committee amendment). I have agreed to work with the advocates supporting this legislation to correct the procedural flaws so it can be reintroduced next year. After speaking with Senators French, Whitley and Kahn, I have been asked to write a short explanation of why Interim Study is the better motion. The basic reasons are as follows:

1. Overall there are a number of procedural flaws that create significant roadblocks to the Court's ability to implement the bill. Interim Study would allow the Judicial Branch to work with the advocates supporting the bill to develop a logical, clear process that can be fully implemented. Some, but not all, of the issues in the bill include the following:
 - a. The bill has inconsistent filing provisions – The bill would require the forfeiture petition be filed with the criminal complaint (Circuit Court with the repeal of Felonies First) while it also explicitly requires that it be filed in Superior Court.
 - b. The bill requires separate filings by the prosecutor, defendant, innocent property owner, and lien holder. Procedurally this is inconsistent with how New Hampshire courts would address this. It should instead be a filing by the prosecuting authority with the right to intervene by other interested parties.
 - c. The Attorney General has been left in the bill with a residual role, but would rarely be the prosecuting authority. It is unclear if this is deliberate or accidental, and if deliberate how the Attorney General and the prosecuting authority would relate.
 - d. The bill requires the prosecuting authority file the forfeiture complaint with the criminal complaint. That could be a local police prosecutor, a county attorney or Attorney General. Given that county attorneys and local police do not have experience with forfeiture actions, an approach that the committee consider leaving the process with the Attorney General but require the public defender remain involved. The Committee may also want to consider withdrawing the requirement that it be filed with the criminal case, but have it remain in Superior Court as an independent action with all interested parties to intervene.

I would be happy to discuss this in further detail.

Thank you for your consideration.

Richard

Richard W. Head
Government Affairs Coordinator
New Hampshire Judicial Branch
One Granite Place, Suite N400
Concord, NH 03301
rhead@courts.state.nh.us
Cell: 603-716-8235

Voting Sheets

sent

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # 1296

Hearing date: _____

Executive Session date: _____

Motion of: 1415 Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: OTPA Vote: 4-1

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: French

Notes: 1 pg 2 31-35 waivers

revised waiver language

17-19 for ~~legature~~ superior court

Issue raised by the court
better address the process in court
rules
address concerns raised by court
well defined process that protects
due process

unlike the process
get representation
lines up w/ NH process

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Wednesday, April 20, 2022

THE COMMITTEE ON Judiciary

to which was referred **HB 1296-FN**

AN ACT

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

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 4-1

AMENDMENT # 2022-1677s

Senator Harold French
For the Committee

Jennifer Horgan 271-7875

JUDICIARY

HB 1296-FN, relative to the forfeiture of items used in connection with a drug offense.

Ought to Pass with Amendment, Vote 4-1.

Senator Harold French for the committee.

HB1296-FN

Bill Details

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

Sponsors: (Prime) Sylvia (R), True (R), Silber (R), Bailey (R)

LSR Number: **22-2475**

General Status: **SENATE**

House:

Committee: Criminal Justice and Public Safety

Due Out: 3/10/2022

Status: PASSED/ADOPTED WITH AMENDMENT

Senate:

Committee: Judiciary

Floor Date: 4/28/2022

Status: INTERIM STUDY

Bill Docket

Body	Description
H	Introduced 01/05/2022 and referred to Criminal Justice and Public Safety
H	Public Hearing: 01/12/2022 11:15 pm LOB 202-204
H	Public Hearing on Amendment # 2021-0264h: 02/09/2022 09:45 am LOB 202-204
H	Executive Session: 03/02/2022 10:00 AM LOB 202-204
H	Majority Committee Report: Ought to Pass with Amendment # 2022-0874h (NT) <u>(Vote 11-10: RC)</u>
H	Minority Committee Report: Inexpedient to Legislate
H	Amendment # 2022-0874h: AA VV 03/15/2022 <u>HJ 6</u>
H	Ought to Pass: MA VV 03/15/2022 <u>HJ 6</u>
S	Introduced 03/17/2022 and Referred to Judiciary; <u>SJ 6</u>
S	Hearing: 04/05/2022, Room 100, SH, 02:30 pm; <u>SC 14</u>
S	Committee Report: Ought to Pass with Amendment # 2022-1677s, 04/28/2022; <u>SC 17</u>
S	Committee Amendment # 2022-1677s, AF, VV; 04/28/2022; <u>SJ 10</u>
S	Ought to Pass: MF, VV; 04/28/2022; <u>SJ 10</u>
S	Sen. French Moved Inexpedient to Legislate; 04/28/2022; <u>SJ 10</u>
S	Sen. French Withdraws motion of Inexpedient to Legislate; 04/28/2022; <u>SJ 10</u>
S	Sen. French Move to Refer to Interim Study, MA, VV; 04/28/2022; <u>SJ 10</u>

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB1296

Senate Committee: Judiciary

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

- Bill version as it came to the committee
- All Calendar Notices
- Hearing Sign-up sheet(s)
- Prepared testimony, presentations, & other submissions handed in at the public hearing
- Hearing Report
- Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

- amendment # 1413s - amendment # 1677s
- amendment # _____ - amendment # _____
- Executive Session Sheet
- Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

- amendment # _____ - amendment # _____
- amendment # _____ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

- Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):
- Enrolled Bill Amendment(s)
- Governor's Veto Message

All available versions of the bill: {Clerk's Office}

- as amended by the senate as amended by the house
- final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

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Committee Aide

8/12/22
Date

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