

2015 HOUSE POLITICAL SUBDIVISIONS

HB 1297

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee

Prairie Room, State Capitol

HB 1297

1/30/2015

22896

☐ Subcommittee

☐ Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to the procedure for the disposition of property held by a peace officer.

Minutes:

Chairman Klemin Testimony #1
Mike Reitan Testimony #2

Chairman Klemin: Opened the hearing on HB 1297 I have passed out some information explaining the bill. (Testimony #1)

Representative Koppelman: this is one of a series of 3 at the request of my local police chief. The other two were heard by the judiciary committee. HB 1297 is repeals. Basically if a police seizes a piece of property would you prefer to have the police lock up your stolen item until the court case or would you prefer them to be able to take pictures for proof and return you your item? That is basically what this bill does. If passed it will not need to be held unless it is necessary for the court case.

Mike Reitan: Testimony #2

Representative Koppelman: Chief Reitan is correct in his testimony. The legislative history he was reading from is quite long if you would like to look at it.

Aaron Burst: We work with prosecutors and there is a conflict in law. The property is returned to the victim wait may be up to a year and is unfair. We support this bill.

Opposition:

Gerald Graff: Retired peace officer and it wasn't some morning someone woke up and decided that this law 290120 and 29012, this stuff being a big burden on the magistrate, I don't see the burden at all. If some winds up with stolen property I don't see why the judge can't say take pictures and say ok. We need the power of the people; we don't need a police state. A reasonable amount of time is a few days and that is what happens when the magistrate can get a look at it. I think this is an additional safe guard protection. Peace officers job is to preserve the peace, don't take away the right of the people by letting legislative and judiciary have a say it what happens.

The rest is inaudible

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Representative Zubke: Motioned for a do pass

Representative Toman: Seconded that motion

A Roll Call Vote Was Taken: Yes 13, No 0, Absent 1 (Klein)

Representative Toman will carry the bill

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1297**

House Political Subdivisions Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Zubke Seconded By Toman

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	X	
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh	X	
Rep. Thomas Beadle	X		Rep. Kylie Oversen	X	
Rep. Rich S. Becker	X		Rep. Marie Strinden	X	
Rep. Matthew M. Klein	---				
Rep. Kim Koppelman	X				
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman	X				
Rep. Denton Zubke	X				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Representative Toman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1297: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1297 was placed on the Eleventh order on the calendar.

2015 SENATE POLITICAL SUBDIVISIONS

HB 1297

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB 1297
3/6/2015
Job Number 24420

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the procedure of the disposition of property held by a police officer

Minutes:

Written testimony #1 Rep. Kim Koppleman
Written testimony # 2 Chief Reiten
Written testimony # 3 Erica Shively

Chairman Burckhard opened the hearing on HB 2197. All senators were present.

Representative Kim Koppelman sponsor of HB 1297. He also explained the bill. Written testimony #1 (1:00-5:00)

Chairman Burckhard So if in 1999 when the law was updated, this probably should've been repealed then? Rep. Kim Koppleman yes. I visited with Legislative Council about it and they looked at the Legislative history and it was really unclear whether or not it was an oversight or not, I suspect it probably was. When things are drafted sometimes we have to come back and do cleanup. So this is really a delayed cleanup effort.

Senator Grabinger Recently we've had a incident with a skid steer through a criminal investigation. Now, I am not privy to all of the details of that case, but it seems to me that is kind of what the law enforcement thought there they were giving back to the rightful owner and then there was a contention to it. Would by passing this would we be kind of putting the liability on those officers even more being responsible because it was probably given back to the wrong people?

Rep. Kim Koppelman I have not studied that case. I've heard what you just said, and I've heard the opposite perspective expressed. This bill has nothing to do with that case. It wasn't drafted in response to any particular case. It was more just an issue of having two conflicting piece of legislation in statute in law and so the intent is that in a circumstance such as you've described it would be up to law enforcement to decide. If I were in law enforcement, I would want to make sure that there's no question about ownership and that it clearly is not needed for some evidentiary reason or in some court case or something like that before I returned it. But you know I think the point is do we trust law enforcement to make those judgments hopefully and could a mistake ever be made? Of course, but it could now. The problem is now if your wallet is stolen technically the police should hold your

wallet. You shouldn't get it back until if you look only at that old section of law and not the one that was passed in the 1990's, technically they should hold on to that and until a court case is adjudicated then maybe you can get your driver's license and your credit cards back. To interpret the old statute strictly would be silly. The problem is we have this conflict in law so what do you do. I think the clearest thing to do, is again common sense, to say if there's a question they hold on to it, if there's not, if its' clearly yours there is no reason not to return it.

Senator Bekkedahl Was there any discussion with your other co-sponsors about an avenue of diminutiveness in other wise placing value to the confiscated property to say something of larger valuations would have to interpreted by the courts particularly if it involved multiple parties, LLC's and break-ups and all the other issues I've heard about? Was that ever discussed or could it ever be discussed?

Rep. Kim Koppelman That was not discussed. It could be discussed. I guess the precaution I would offer is that if you make this a dollar value issue it kind of defeats the purpose. Because again, if it were car that was stolen, and it's a valuable piece of property and you want it back. You wouldn't want it held for a months or year, while the thief was rounded up in Alabama and they extradited him back to ND and had the trial and meanwhile your car is kept in a shed somewhere instead of your garage. Obviously for a practical sense I don't think value should be the determining factor. However, I think you make another good point and that is if you look at these statutes that would stand, if this old one is repealed, and decided it needed some clarity there, I am certainly not opposed to the committee contemplating that and we could have a conference committee about that. I think that value is not the way to go in my analysis.

Chief Mike Reiten City of Fargo written testimony # 2 (9:47-16:16) in support of HB1297.

Senator Bekkedahl Referring to your testimony, in the dispute that did occur, was that matter resolved according to court procedures in NDCC 32-11?

Chief Reiten I believe that matter is under review. I have a personal opinion on that. I believe that the incident could have been handled under 32-11 or was in the process of being handled within that chapter. Whether the outcome follows that particular part of the Century Code, that is being reviewed at this time.

Senator Anderson What is the definition of a magistrate is that still a current definition in the law or is that just include all judges or what?

Chief Reiten My understanding is as an officer of the court. I didn't look up the definition of a magistrate to make sure that I was quite right.

Erica Shively Officer of law in Bismarck, ND (18:07- 30:39) stood in opposition to HB 1297. She handed out a newspaper article as part of her testimony. Written testimony # 3. I rise in opposition on my own behalf and also on behalf of the North Dakota Association of Criminal Defense Lawyers. I am also a registered lobbyist. Our concern is whether or not law enforcement is able, has the time, and is properly trained to deal with some of these property issues. My experience with property has been much different than what has been

spoken too. The process of stolen property is what this section is asking to repeal is essentially if there is a defense authority or prosecutor that would need to happen the property is returned timely. Rep. Koppelman went into the timeliness, 6 months to a year you have to go to a magistrate. I think that is probably inaccurate. Typically, what is done, if there is an issue they can have an order on the judges desk and the judge signs the order if nobody opposed it within a date. So it's actually been fairly quick turn-around in all of my experience. (Lengthy explanation continued).

Senator Judy Lee First of all I would appreciate it if you would summarize your remarks in some written testimony for us. Secondly, you want us to understand, we understand a fair amount of stuff here, so don't underestimate the committee. The third thing, is the article in the paper is obviously as is often true based on one person talking to somebody who writes an article, and I have read articles about meetings at which I presided, which I didn't recognize, so that doesn't quite do it for me. But my question is, are you suggesting that the law enforcement officers don't have the judgment to decide whether or not it's something that should be held until future appropriate disposition if there is going to be any kind of conflict rather than. Everything doesn't involve attorneys and so it seems to me you're continuing to suggest that all of them will be treated in the same way, all of them are going to have attorneys involved in it as defense and prosecuting attorneys. I am not hearing that and seeing that. There is statute in place that would apply to the folks who where we do have a legitimate dispute and where there might be liens and all of those kinds of things. But there are others in which it is a pretty simple and clear cut thing. Perhaps it is appropriate for law enforcement to be able to make those judgment calls. I am hearing you saying that there maybe not capable of doing that. So would you like to explain why?

Erica Schively I didn't mean to insinuate that the committee wouldn't understand that's why I apologize. I am used to speaking in a court and of course it got the best of me. I don't want to say that there not capable of having a judgment. I work with law enforcement again. I like law enforcement. Some people think that that isn't a natural relationship being a defense attorney. They make me better at my job. For that reason I don't want to say that don't have a judgment. It is a little difficult for me because I can't speak to West Fargo's problem. I work out west in Stark County, Burleigh County, some in Ward County, where law enforcement is very taxed. What I question is whether their trained or have the time to appropriately train them to examine some of the title issues I am speaking too. Maybe the chief can get up and testify that all law enforcement is trained in that and that is something they can do. Again I am not saying that they can't do it or that they are not capable of executing good judgment that is not my question. I speak to overtaxed agencies and whether or not they are going to sit down and examine title, and all the things that go with it. I do typically look at that as more of a job of a judge or of an attorney examining the title and things of that nature.

Senator Anderson How do you think we should handle this scenario where Senator Lee's purse has been stolen and was stolen in Turtle Lake where the judges only is going to come for 2 days a month and how are we going to handle that and how is she going to get to drive home and use her credit cards? In the meantime if the police don't have the authority to give her back her purse?

Erica Shively This is a two part answer. I am going to give you a two part answer. Practically speaking how I think it is handled and then I'll tell you maybe a side comment on this bill. I think practically speaking that is the charges right away. Where I do certainly agree with the Chief is, is that if this law was followed strictly that shouldn't be happening. I think he is right about that. I think the bicycles often go in that right away. I think that is what we see happening. I think when we get into some these bigger items; obviously I think they should be held. I also do think in many scenarios especially when if it is evidence but it is not deemed evidence and not necessary to review further or something of that nature. The State's Attorney is authorizing or speaking with law enforcement and getting an order on the judges. I don't know that there is a lot of officials hearing some. Certainly in my area they are not. Practically speaking I think it goes back to her today. This portion that is being asked to be repealed specifically deals with stolen property. If you have abandoned property, non-receivable property or items that don't need to be seized or forfeited under criminal law because they easy to apply to something of that nature. (lengthy explanation)

Senator Anderson I think the public expects and they have confidence in their local law enforcement officers. The public expects their property to be returned. There is a reasonable expectation that is some stolen property. Now, your scenario about the lady with the car, who might have been stolen some place, what is that lady do in the meantime? Is it her responsibility or law enforcement responsibility to make the claim that this property might be stolen? It seems to me that the person who lost the property in the first place should be reporting that, it's easy for law enforcement to look up and see if that car has been reported stolen or not and then they can make that decision to hold that. Other scenarios for example where you talk about where somebody might have liens and so forth, it would seem to me that it's a responsibility of the lien holder to make a claim. If that claim is not on record, say somebody took my property, then shouldn't the law enforcement worry to sort that out before they return it to the apparent rightful owner? The lien-holder can still make a claim and whether its damaged or not could happen before the law enforcement officer took it or after. So, I guess I don't see why we need to extend this for those scenarios that are kind of imaginary.

Erica Shively The first example of the car in Texas. **Senator Anderson** It was your example of the lady who had this car and was her only car, and now they took it away from her and are going to hold it. What is she going to do in the meantime?

Erica Shively What does she do with property seized and given back to the owner in Texas or wherever out of state? **Senator Anderson** No they took this car and it was the lady's car, is what the initial law enforcement officer was saying and now you want them to check to see if it was stolen in Texas. It seems like the person in Texas out to be making that claim. **Erica Shively** If the car is stolen out of state, come here and sold it to her, then it is a bona fide purchaser. I think we have a dispute that a judge needs to decide.

Senator Anderson But possession of stolen property is a crime anyway whether you got it from somebody who legitimately sold it to you, you thought or not. Still possession of that property is a crime and that can be followed up later or whatever. **Erica Schively** It is a crime certainly. I also think that if you're a pure bona fide purchaser of stolen property and you didn't have any reason to believe that it was stolen, I think you certainly have a defense

of possession of stolen property. Law enforcement would try to sort through that, and probably not charge it out.

Senator Dotzenrod Your suggesting that the committee not pass this bill. If we don't pass the bill and it dies, then were going to have these sections in law which conflict with each other. One section saying that you should have this judge make the decision and another section saying that they may return it. So, we're going to have a law or value of law which sections that say different things about the same subject which seems to me not to be the way we would like to have things be. We should say what we want rather than say have two pieces of law that say different things. I don't think we really have the choice here of killing the bill. I think we have to say, we want it A or B, but I don't think we have the choice. I just wanted to know as an attorney would you really want us to have the law in this condition and I would appreciate if you could keep the answer under 60 seconds.

Erica Shively I see a small distinguishment although it does overlap of stolen property which is what the bill you have before you. I think the section you are all referring to is 29-31:02 disposition of Non-Profitable property. The distinguishment, I see is when I think of non-profitable property I am thinking of things confiscated by law enforcement that may deal with the commission of a crime. Stolen property is stolen property. Seized property is property that is forfeited, I don't think so.

Chairman Burckhard Don't these two provisions of the law conflict with each other and isn't that a bad thing to have conflicting statutes? I think that was the original question.

Erica Shively I think it is a bad thing to have conflicting statutes. I am not sure exactly conflicting because one deals with stolen property and one deals with non-forsidible property. I see that as being collected in the legal process

Senator Hogue shared his neutral response. (44:45-) When I read the bill I thought exactly what has been discussed. I think there should be a middle ground, something short of an appealing of these statutes that the committee could consider. I don't like the dollar amount or fund personal property like that. I wanted to give the committee a typical fact patterns but they have been enough in my practice that appealing these two statutes would cause me concern. One is the entrepreneurs that get together and they all control property into a LLC or into an informal partnership and they don't arrange themselves as partners. Things are going well for the first couple of years and then all of a sudden they start to have a dispute. What typically happens in some of those situations is they don't go and get lawyers they just start taking their profits and separate themselves. It is rolling stock it can be transported across state lines. Sometimes, most of the time law enforcement will hold up their hands and says this is still a matter I don't want to get involved. Sometimes they do get involved and they do take possession of the property. So there is an ongoing dispute and so by repealing the statute, the concern that has been raised would allow the law enforcement to decide who gets that property. Senator Anderson's comment well you can't pay assert that well and after their property is gone, after possession and it is across state lines, there is really no affective remedy for that other party to gain partnership or LLC. The reason they didn't get a lawyer or both get lawyers because they want to resolve this on their own terms and maybe the equipment doesn't lend itself to having a judicial involvement of multiple lawyers. In another case several weeks ago, where an implement

dealer leased equipment to somebody in the oil patch for \$500,000. The person who was leasing it was not making the payments and now the implement dealer wants to repossess it and they go out and they have evidence of ownership of that but the person not making the lease payments tries to engage the police officer and get the police officer to take custody of this under the assumption that hey the property has been stolen from him and, no it hasn't been stolen but the basic problem is who is now going to make the determination of whether that property is stolen or not. So I think there are enough different fact patterns where I don't think repeal of the statute is the answer. Maybe in some monetary threshold, maybe it's a description of property that is used in a trade or commercial profession and not personal property like purses, pizzas, or personal items. There should be some way to deal with the issue that I think that Chief Reiten is encountering in West Fargo. It doesn't repeal the statute but still provides protection of individuals who have the stealing of claims to substantial amounts of equipment or other personal property.

Senator Anderson Don't you think that scenario you described about the property and the police officer has been invited out there to take possession of the property, wouldn't give him enough information to know that he should hold it for the court case?

Senator Hogue you would like to think so. Because like I said that in most cases, a police officer will make it a civil matter and will want nothing to do with it. But that doesn't happen in every case.

Senator Dotzenrod My concern again is do you feel we have an option just to kill the bill because it seems to me if we took that option and killed this bill we would have these sections in the Century Code that really kind of spell out two different approaches or two different routes for law enforcement that we say in the statute that we're requiring you to do both A & B. It seems to me that we have to figure out a way to solve this without killing the bill. It seems like maybe the threshold idea or just passing the bill, but don't you think we have a problem here?

Senator Hogue I am not aware of the concept. I just listened to the testimony and the two statutes that we're dealing with relate to property that is alleged to be stolen. Somebody is saying this property disappeared, it's stolen. The fact pattern I described to you, we used to be partners, we're no longer partners, I put that piece of equipment into the partnership and its mine and you took it from me. The other partner says well, it is clearly the partnership's property, it's not your property or my property, it is the partnerships. So, I don't think it is a big issue when the dollar amount is low. But when the dollar amount is a large amount it could be a problem. There are two things that trigger the statute somebody allegedly stole them and it comes into the custody of the police officer, and when those two things happen I agree with the opponent, that the peace officer or law enforcement should not be deciding who owns the lost property.

Senator Bekkedahl This just seems to deal a lot with judiciary issues. In your opinion, would a best case scenario will be to kill the bill and work on making the incongruences come into play for the next session in another bill or is it best to pass the bill and work through it with the bill in place until the next session?

Senator Hogue I think there is something that has to be done short of repealing the statute because when you repeal it, then the statute applies to this broad spectrum of fact pattern, with the pizza, the person, the bicycle all the way up to the large dollar equipment item. So, I am happy to defer to the expertise to the committee.

Senator Grabinger We have heard testimony about the small cases and if they follow the letter of the law they can't do that and that is where I struggle with this. I realize the conflict, but at the same time do we put this through a process of a bicycle. You talk about how much a dollar figure should be, how do you judge that? I think I struggle with that too, saying it's okay it's alright for law enforcement up to \$2500. \$2500 to one person is a lot of money, to another it's nothing. So, I just struggle with how we do that. I have to agree that I think we have a conflict here. Maybe we don't repeal both. It is a tough call. I guess my question is if law enforcement does adhere to the letter of the law they can't do this and they are doing it now anyway, so, essentially if we left it the way it is, is it posing a problem for law enforcement? They are not following the letter of the law anyway but it's worked.

Senator Hogue We had this discussion last session about recreational vehicles that Senator Grabinger deals with, the titles and the licensing. At that time we weren't dealing with the issue of theft, but maybe you could limit it to consumer products. That is something that occurred to me, because those are all things that I think the chief was talking about. We want to get those back to the owner obviously. Consumer products would be anything that you would use for your personal consumption like a car, purse, electronics stuff, but that is why I am new neutral because it is a difficult issue.

Senator Judy Lee When my Father was in an assisted living facility, the final gift that my Mother gave to him was a very valuable diamond ring which was stolen by a staff member at the assisted living facility. It was taken to a pawn shop and we know what pawn shop it is and they would not release any information which they ought to have to keep for something like this. We would've paid to get it back because of the sentimental value. I don't know whether you would call that necessarily, it isn't like a car or something that you have to have but, honestly the value of that was more than \$2500. I don't know that judges need to decide as it was pretty clear cut. There was no question that this had been stolen and we never did get it back. Somebody is wearing it. I have a personal stake in this from a long time ago now that continues to be a part of my background when we're talking about this which is why I understand why Senator Grabinger is saying the dollar amount are a part of the concern as well. I don't know the answer I realize you didn't come here to give us the answer but I think as you say it's really kind of complicated.

Senator Hogue It is, that is a great example. So the pawn shop owner is going to say I had no idea that this thing was stolen, I paid money for this.

Senator Judy Lee Never mind that there are judicial sides that are different from what the person bringing it in, and who says I don't have to keep any records because North Dakota state law does require that you keep any records.

Senator Hogue If the police office had shown up at the pawn shop, to take possession of that ring, if you repeal the statute now, now the police officer gets to decide who gets the ring, the pawn shop or the family. I don't think that is a good result.

Senator Judy Lee I would also mention that it wasn't a West Fargo police officer or pawn shop that was involved.

Chairman Burckhard Thanked Senator Hogue for his comments and insight into this bill.

Chief Mike Reiten Chief of the West Fargo Police Department There was a question that was brought up about notification of the property owner and lien holders. I failed to provide the complete statute of 31.102 that I have on my cover sheet there. If you look at the complete statute there is notification to all known owners of property over \$250 so when there is a question about lien holders such as cars or other filings where there are liens on property, the police department looks at motor vehicle records and other records for those lien holders. So, if you were to look at all of 31.102 you would see that requirement of notification that an agency does and then also 31:09, 29:31.109 has some additional information about civil process to determine ownership, orders of the court and some additional information that is important as to how this property is handled. To understand that there is a reference to forfeited property and going back up to the definition is property that has been stolen and there should be some clarification to some of the questions that you asked.

Senator Dotzenrod If we pass this bill and it turns out that the police do give something to the person that turns out to be a mistake; who should be liable for that loss if they can't recover the property after they have made a decision and something is worth \$1000. They give it to the wrong, say the police hands it over to the wrong person and the property disappears have you thought about who should be liable for that \$1000?

Chief Mike Reiten In the past when we had made a mistake we paid for it. Chapter 32:11 that I spoke of earlier has the civil process. If there is a dispute over that ownership, and it needs to be resolved under 32-11, there is a filing with the courts. There is someone in court who decides that. Otherwise if we have had property in our possession and we do not safeguard it the way we are, that is why we have liability insurance and our agency pays for it.

Senator Anderson Can Femi make us a packet with the relevant statutes so we can look it all of those and see if there is a resolution we can clearly see or if we want to go ahead and pass this or work it out over the interim?

Chairman Burckhard closed the hearing on HB 1297.

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB 1297
3/13/2015
Job Number 24742

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the procedure for the disposition of property held by a peace officer

Minutes:

"Click to enter attachment information."

Chairman Burckhard opened the committee for discussion on HB 1297. All senators were present.

Chairman Burckhard asked Femi for information for an amendment for HB 1297.

Femi replied I drafted the amendment the way you requested last week and Vonette looked at it and they won't amend the 29:09:31.1 part of it and then the part that the committee had requested me to amend and so I then brought up some point about, well the one part talked about seized property and this part that we are trying to amend talks about stolen property. She said that was a party to all of that and she said well, she is not sure how it fits into the scheduling and they are working and looking at it and will get back to us.

Chairman Burckhard replied then we are not ready for that yet?

Femi replied no.

Senator Bekkedahl Femi was this discussion with the Legislative Council also dealing with the definition of consumable goods versus other goods for stolen or property.

Femi replied the amendment I drafted made reference to consumer goods.

Senator Bekkedahl consumer goods okay.

Femi They even have a section on consumer goods because that is what you actually asked me to do. So she saw that and she said well that she actually could not do the amendment because it would be in a different class of code. But then when I numbered the issue of that part of which you referenced in to talk about seized goods she is actually talking about stolen goods and the definition of seized goods in that section of code was and did not appear to include. The Legislative Council told him not to worry about the amendment because the LC was going to do the amendment, because it was in a different section of code.

Chairman Burckhard closed the discussion on HB 1297.

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB 1297
3/13/2015
Job number 24835

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the procedure of the disposition of property held by a police officer

Minutes:

"Click to enter attachment information."

Chairman Burckhard opened the committee for discussion. All the senators were present except for Senator Dotzenrod

Chairman Burckhard mentioned that Rep. Koppelman and Senator Hogue were working on something for this bill. Femi is still working on some amendment. I don't think we are ready to act on that.

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB1297
3/20/2015
Job Number 25213

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the procedure for the disposition of property held by a peace officer

Minutes:

"Click to enter attachment information."

Chairman Burckhard opened the committee for discussion on HB 1297. All senators were present.

Senator Anderson I know this is a breach of protocol because no bill should come through one of our committees without being made better. But I am going to move a do pass on this bill as it is, 1297.

Senator Judy Lee 2nd

Chairman Burckhard Any discussion on 1297, relating to the procedure for the disposition of property held by peace officer.

Senator Anderson I think what we should do is go ahead and pass this legislation now and if the attorneys find that there's things that they need in here that aren't covered by these changes they can bring them to us next time.

Senator Grabinger I would agree and we can get our police officers to quit breaking the law.

Senator Dotzenrod The only thought I had is that when Senator Hogue was talking to us he expressed a concern about turning over to the law enforcement people, these large big ticket items, some \$600,000 machine that they needs to be repossessed by the lender. I think and it seems to me that current law does have sort of cautionary things for the police that if they get into something you know and they use words like if the person's possession of the property is not prohibited by law, the property is not forfeitable property, and there is no forfeiture proceeding, well I think that if they should come into something like that I do think that we are counting sort of a little common sense on the part of the law enforcement to recognize well this isn't something that we're going to run across the town and bring it

back to so and so today, I just think they would sense that this is not like a stolen bike. So I don't think we have to say it as far as our direction to the police.

Senator Bekkedahl To piggyback on what Senator Dotzenrod said, I think with the publicity that the case in question has acquired, every police department on this issue is going to appreciate the clarity with the bill, but they will also appreciate the issue that they have even more due diligence to our responsibility to make sure it is done right.

Senator Dotzenrod I think also one additional item. The question came up for Mr. Reiten here what happens if they give that back to the wrong person and if I remember right he said they are liable for that, so that I think there's some breaking mechanism in here I think already that we don't really need to worry about Senator Hogue's concern. I think we're okay.

Roll call vote
6-0-0 passes

Carrier: **Senator Anderson**

Date: 3.20.15
Roll Call Vote: /

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1297

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Anderson Seconded By Sen. Judy Lee

Senators	Yes	No	Senators	Yes	No
Chairman Burckhard	X				
Senator Anderson	X		Senator Dotzenrod	X	
Senator Bekkedahl	X		Senator Grabinger	X	
Senator Judy Lee	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Anderson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1297: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1297 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1297

HB 1297
1/30/2015 1.1

29-01-20. Stolen property to be held by peace officer.

When property alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof.

History.

C. Crim. P. 1877, § 538; R.C. 1895, § 8424; R.C. 1899, § 8424; R.C. 1905, § 10233; C.L. 1913, § 11089; R.C. 1943, § 29-0120.

29-01-21. Magistrate to give order for delivery.

On satisfactory proof of the title of the owner of the property, the magistrate before whom the complaint is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner on the owner's paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

History.

C. Crim. P. 1877, § 539; R.C. 1895, § 8425; R.C. 1899, § 8425; R.C. 1905, § 10234; C.L. 1913, § 11090; R.C. 1943, § 29-0121.

§ 29-31.1-02. Disposition of nonforfeitable property, ND ST 29-31.1-02

West's North Dakota Century Code Annotated
Title 29. Judicial Procedure, Criminal
Chapter 29-31.1. Property Forfeiture and Disposition

NDCC, 29-31.1-02

§ 29-31.1-02. Disposition of nonforfeitable property

Currentness

Seized property that is not required as evidence or for use in an investigation may be returned to the owner without the requirement of a hearing, if the person's possession of the property is not prohibited by law, the property is not forfeitable property, and there is no forfeiture proceeding filed on behalf of the seizing agency. The seizing agency shall send notice by regular mail, if the value of the property is less than two hundred fifty dollars, or certified mail, if the value of the property is equal to or greater than two hundred fifty dollars, to the last-known address of any person having an ownership or possessory right in the property stating that the property is released and must be claimed within thirty days. Notice is deemed to have been made upon the mailing of the notice. The notice must state that if no written claim for the property is made upon the seizing agency within thirty days after the mailing of the notice, the property will be deemed abandoned and disposed of accordingly. If there is more than one party who may assert a right to possession or ownership of the property, the seizing agency may not release the property to any party until the expiration of the date for filing claims unless all other claimants execute a written waiver. If there is more than one claim filed for the return of property under this section, at the expiration of the period for filing claims the seizing agency shall file a copy of all such claims with the clerk of the district court and deposit the property with the court in accordance with the provisions of chapter 32-11. If no owner can be located or no claim is filed under this section, the property is deemed abandoned and the seizing agency becomes the owner of the property and may dispose of it in any reasonable manner.

Credits

S.L. 1991, ch. 346, § 2; S.L. 2009, ch. 282, § 1, eff. Aug. 1, 2009.

NDCC 29-31.1-02, ND ST 29-31.1-02

Current through chapter 522 (end) of the 2013 Regular Session of the 63rd Legislative Assembly.

End of Document

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House Bill 1297

Sixty-fourth Legislative Assembly

Testimony of Mike Reitan, Chief of Police, West Fargo Police Department

Good morning Chairman Klemin, Vice Chair Hatlestad and members of the Political Subdivisions Committee.

My name is Mike Reitan and I am the Chief of Police of the West Fargo Police Department. I ask your support of House Bill 1297.

There exists within the Century Code a conflict of statute between a territorial law of 1885 which appears as NDCC 29-01-20 and 29-01-21 and a statute adopted during the 52nd Legislative Assembly in 1991 titled NDCC 29-31.1-02. For clarity I have included two definitions from NDCC 29-31.1-01.

29-01-20. Stolen property to be held by peace officer.

When property alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof.

29-01-21. Magistrate to give order for delivery.

On satisfactory proof of the title of the owner of the property, the magistrate before whom the complaint is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner on the owner's paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

29-31.1-02. Disposition of non-forfeitable property.

Seized property that is not required as evidence or for use in an investigation may be returned to the owner without the requirement of a hearing, if the person's possession of the property is not prohibited by law, the property is not forfeitable property, and there is no forfeiture proceeding filed on behalf of the seizing agency.

29-31.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Forfeitable property" means any of the following:
 - a. Property that is illegally possessed or is contraband.
 - b. Property that has been used or is intended to be used to facilitate the commission of a criminal offense or to avoid detection or apprehension of a person committing a criminal offense. For purposes of this subdivision, property does not include a residence or other real estate where a co-owner, whether by joint tenancy, tenancy in common, or tenancy by the entireties, of the residence or other real estate, has not been convicted of the criminal offense that was facilitated by the use or intended use of the property.
 - c. Property that is acquired as or from the proceeds of a criminal offense.
 - d. Property offered or given to another as an inducement for the commission of a criminal offense.
 - e. A vehicle or other means of transportation used in the commission of a felony, the escape from the scene of the commission of a felony, or in the transportation of property that is the subject matter of a felony.

f. Personal property used in the theft of livestock or the transportation of stolen livestock.

2. "Seized property" means property taken or held by any law enforcement agency in the course of that agency's official duties with or without the consent of the person, if any, who had possession or a right to possession of the property at the time it was taken into custody.

Almost daily the officers of the West Fargo Police Department come into custody of property belonging to another person. It may be property which is abandoned, found, seized as evidence or at times stolen. With abandoned or found property the officer will practice due diligence in an attempt to locate the owner and return the property. Property which must be held as evidence is stored until the disposition of the case is made. The property held as evidence is returned to the owner or disposed of according to the order of the court. The process is fairly straight forward and without complication under NDCC 29-31.1-02.

Property alleged to have been stolen or embezzled is another matter in that all such property that comes into the custody of a peace officer must be held until its disposition is determined by a magistrate under NDCC 29-01-20 even if that property will not be held as evidence or for use in the investigation. This is contrary to NDCC 29-31.1-02 which allows property seized by a peace officer that will not be used as evidence or as part of the investigation to be returned to the owner without the requirement of a hearing.

NDCC 29-01-20 sets up an impractical scenario wherein all stolen or embezzled property is held until a hearing has occurred. The current court case load would not allow for the number of required hearings necessary to determine ownership and direct the return of the property. Law enforcement agencies do not have the storage capabilities to store all property alleged stolen or embezzled. Holding property which is not required as evidence or will not be used in an investigation denies the owner the possession and use of their property.

If we were to literally follow the direction of NDCC 29-01-20 we would need to hold a frozen pizza lifted from the convenience store. We would be required to hold your purse or laptop computer taken from your car. We would hold your stolen car. We would be required to hold the valuables taken from your business. All these items would be held until a hearing is convened and the magistrate makes a ruling directing their return.

To follow NDCC 29-31.1-02 we could take a photo of the pizza and give it back to the clerk. We could take photos of your purse and computer and return them to you. We would look for evidence from the suspects that had taken your vehicle and have you pick the car up. We would verify with you the ownership of the valuables, photograph and return them to you. If there was any question as to ownership of a piece of property, it would be held the short time necessary to confirm the rightful owner through some form of documentation.

NDCC 29-31.1-02 provides for a reasonable practice which safeguards a person's property rights and returns the property to the owner most expediently. The conditions set out in NDCC 29-01-20 and 29-01-21 are no longer relevant; are burdensome on the law enforcement agencies and the courts; and deny the rightful owner the enjoyment of their property.

I thank you for your time and ask for your fair consideration in support of HB 1297. I can make myself available by telephone or e-mail to respond to any questions you may have.

HB 1297 1/30/2015 2.3



Michael D Reitan
Chief of Police, West Fargo
701-433-5500
Mike.reitan@westfargond.gov



NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Kim Koppelman

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513 First Avenue NW
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COMMITTEES:

Judiciary, Chairman
Political Subdivisions

3-6-15

Testimony on House Bill 1297 - Senate Political Subdivisions Committee

Mr. Chairman and Members of the Committee, HB 1297 simply removes an old section of law, dating from statehood, from the North Dakota Century Code. That section requires a hearing before a magistrate, before law enforcement can return property seized by or coming into the possession of a peace officer. That's appropriate, if the property's proper ownership is in question or subject to a dispute, or if it is needed for evidence in a court case.

Another section of law, enacted in 1991 and amended slightly in 2009, established a better process which allows property that doesn't fit the description above to be returned to the rightful owner in a timely fashion. The repeal of this old section (which probably should have been repealed in 1991, when the new law was enacted) is necessary because it potentially conflicts with the other section of law, so HB 1297 is needed to avoid confusion and resolve any conflict.

An example: If your car were stolen and recovered, you'd want it returned to you as soon as possible. An officer should be able to take any finger prints, photos, VIN number, etc., necessary for any court case against the thief, but to then promptly return your car. Under the old law, which this bill would repeal, it could be argued that the car should be confiscated, impounded and held until a court hearing could be conducted and a judge could order it returned to you, which could take months or even a year. A strict interpretation of this old section of law could require that, but the newer section would allow it to be returned in a timely fashion, as previously described.

Strict interpretation of, and adherence to, this old section of law is a burden which would deprive citizens of their property unjustly, would clog our court dockets, creating even longer waiting periods, and would place an unnecessary, undue burden for storage costs on law enforcement agencies, prosecutors, and the tax payers.

The conflict should be removed and confusion should be cleared up by repealing this old section of law will. I respectfully ask for your "Do Pass" recommendation of HB 1297

*H.B. 1297
3.6.15
#1*

H.B. 1297
3.6.15
#2

House Bill 1297

Sixty-fourth Legislative Assembly

Testimony of Mike Reitan, Chief of Police, West Fargo Police Department

Good morning Chairman Burckhart, Vice Chair Anderson and members of the Political Subdivisions Committee. My name is Mike Reitan and I am the Chief of Police of the West Fargo Police Department. I ask your support of House Bill 1297.

There exists within the Century Code a conflict of statute between a territorial law of 1885 which appears as NDCC 29-01-20 and 29-01-21 and a statute adopted during the 52nd Legislative Assembly in 1991 titled NDCC 29-31.1-02. For clarity I have included two definitions from NDCC 29-31.1-01.

29-01-20. Stolen property to be held by peace officer.

When property alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof.

29-01-21. Magistrate to give order for delivery.

On satisfactory proof of the title of the owner of the property, the magistrate before whom the complaint is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner on the owner's paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

29-31.1-02. Disposition of non-forfeitable property.

Seized property that is not required as evidence or for use in an investigation may be returned to the owner without the requirement of a hearing, if the person's possession of the property is not prohibited by law, the property is not forfeitable property, and there is no forfeiture proceeding filed on behalf of the seizing agency.

29-31.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Forfeitable property" means any of the following:

- a. Property that is illegally possessed or is contraband.
- b. Property that has been used or is intended to be used to facilitate the commission of a criminal offense or to avoid detection or apprehension of a person committing a criminal offense. For purposes of this subdivision, property does not include a residence or other real estate where a co-owner, whether by joint tenancy, tenancy in common, or tenancy by the entireties, of the residence or other real estate, has not been convicted of the criminal offense that was facilitated by the use or intended use of the property.
- c. Property that is acquired as or from the proceeds of a criminal offense.
- d. Property offered or given to another as an inducement for the commission of a criminal offense.
- e. A vehicle or other means of transportation used in the commission of a felony, the escape from the scene of the commission of a felony, or in the transportation of property that is the subject matter of a felony.

f. Personal property used in the theft of livestock or the transportation of stolen livestock.

2. "Seized property" means property taken or held by any law enforcement agency in the course of that agency's official duties with or without the consent of the person, if any, who had possession or a right to possession of the property at the time it was taken into custody.

Almost daily the officers of the West Fargo Police Department come into custody of property belonging to another person. It may be property which is abandoned, found, seized as evidence or at times stolen. With abandoned or found property the officer will practice due diligence in an attempt to locate the owner and return the property. Property which must be held as evidence is stored until the disposition of the case is made. The property held as evidence is returned to the owner or disposed of according to the order of the court. The process is fairly straight forward and without complication under NDCC 29-31.1-02.

Property alleged to have been stolen or embezzled is another matter in that all such property that comes into the custody of a peace officer must be held until its disposition is determined by a magistrate under NDCC 29-01-20 even if that property will not be held as evidence or for use in the investigation. This is contrary to NDCC 29-31.1-02 which allows property seized by a peace officer that will not be used as evidence or as part of the investigation to be returned to the owner without the requirement of a hearing.

NDCC 29-01-20 sets up an impractical scenario wherein all stolen or embezzled property is held until a hearing has occurred. The current court case load would not allow for the number of required hearings necessary to determine ownership and direct the return of the property. Law enforcement agencies do not have the storage capabilities to store all property alleged stolen or embezzled. Holding property which is not required as evidence or will not be used in an investigation denies the owner the possession and use of their property.

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To follow NDCC 29-31.1-02 we could take a photo of the pizza and give it back to the clerk. We could take photos of your purse and computer and return them to you. We would look for evidence from the suspects that had taken your vehicle and have you pick the car up. We would verify with you the ownership of the valuables, photograph and return them to you. If there was any question as to ownership of a piece of property, it would be held the short time necessary to confirm the rightful owner through some form of documentation. If a dispute remains, the matter may be resolved before the court in procedures set forth in NDCC 32-11.

NDCC 29-31.1-02 provides for a reasonable practice which safeguards a person's property rights and returns the property to the owner most expediently. The conditions set out in NDCC 29-01-20 and 29-01-21 are no longer relevant; are burdensome on the law enforcement agencies and the courts; and deny the rightful owner the enjoyment of their property.

I thank you for your time and ask for your fair consideration in support of HB 1297. I make myself available to respond to any questions you may have.

Michael D Reitan
Chief of Police, West Fargo
701-433-5500
Mike.reitan@westfargond.gov

An unneeded duty for law enforcement

FEBRUARY 05, 2015 3:15 AM

A bill that would allow law enforcement officers to decide what happens to allegedly stolen property should be rejected.

Judges should retain the authority to determine who gets the property. This is best for the public and law enforcement. The House has approved HB1297, 85-6, and it now goes to the Senate.

Rep. Kim Koppelman, R-West Fargo, said West Fargo Police Chief Mike Reitan asked to have the bill introduced, but Koppelman indicated he didn't know if the request was related to a specific case.

"The example he (Reitan) used with me, is if someone steals your bicycle out of your garage, and you call the police, we catch him at the end of the block. ... I know that's your bike, we shouldn't have to go court and get a judge to go through all the red tape and delay you getting your bike back for weeks or months," Koppelman told the Associated Press. "It's just more of a logistical thing as I understand it."

However, a recent case was more than a "logistical thing."

Fargo attorney Mark Friese handled a case involving a payloaders seized by state officers when they discovered it was stolen. Officers later gave the payloaders to someone else. However, a judge ordered the payloaders returned to the man who had it when it came to light he didn't know it was stolen and had paid for it.

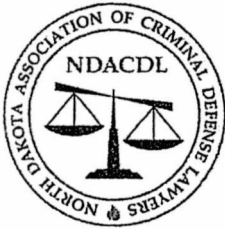
Friese argues police are good at investigating cases and helping prosecutors, but not necessarily at resolving disputes. That, Friese said, should be up to a judge.

He's right. We have courts to decide legal issues, that's not the function of law enforcement. And law enforcement shouldn't want the authority to decide something like the payloaders issue, because it could inadvertently give property to the wrong entity.

It's best for law enforcement to let the courts decide so there are no doubts cast on them.

In smaller cases, like the theft of a bike, there should be ways to expedite the return of a stolen item.

Just like we have separation of powers in government we should have a separation of authority when it comes to law and order. It benefits law enforcement and the public.



NORTH DAKOTA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Re: Testimony in opposition to HB 1297

Dear Members of the Committee:

The North Dakota Association of Criminal Defense Lawyers respectfully urges the committee to adopt a "do not pass" recommendation for HB1297. The proposal would abolish statutes that have existed since statehood, and removes judges from the process of returning stolen property to its rightful owner. The proposal is neither beneficial to the police nor to the public. In urging the rejection of this legislation, the Bismarck Tribune describes the proposal as creating an "unneeded duty" for police:

http://bismarcktribune.com/news/opinion/editorial/an-unneeded-duty-for-law-enforcement/article_83a844bf-58cf-54e4-b797-dc57b5c5ea8e.html

Further, the Tribune's urged rejection succinctly and accurately outlines the ill-conceived nature of HB1297. Only a handful of police support this proposal, and the limited support is apparently out of perceived administrative convenience for the police. The majority of police agencies do not support this proposal, and do not want to assume duties traditionally conducted by prosecutors and courts. The limited supporters claim N.D.C.C. §§ 29-01-20 and 29-01-21 (the statutes that would be abolished by HB1297) "conflict" with N.D.C.C. Ch. 29-31.1, which permits police to return property without judicial involvement. The claim is incorrect. The statutes at issue apply only to property that is "allegedly stolen." As a result, under existing law, routine property collection by police (found property, abandoned property, or property seized for investigative purposes) can be returned without court involvement. But, the court must approve the return of "allegedly stolen" property. This makes sense. "Allegedly stolen" property oftentimes is not stolen at all. Instead, there may be security interests, possessory liens, disputed claims of ownership, title disputes, or competing ownership interests. Police are well-suited to investigate crimes, but lack the training, education, and understanding necessary to resolve sometimes complex property law concepts. Recent history establishes this point. In Dickey County, North Dakota, a Bureau of Criminal Investigation Agent unlawfully transferred ownership of "allegedly stolen" property. The property was seized based on a search warrant, and should not have been released without a court order. The agent ignored N.D.C.C. § 29-01-20 and N.D.C.C. § 29-01-21, and gave the property to a company that the agent thought owned the loader. The agent was completely wrong, and a North Dakota citizen was irreparably harmed by the agent's unlawful actions. Had the agent followed existing law, the Dickey County resident would not have been harmed, and the agent would not have been held in contempt:

<http://sayanythingblog.com/entry/mark-friese-judges-not-cops-control-disputed-property/>

The limited supporters of HB1297 are seeking to remove longstanding statutory protections, needed to protect the police from claims of impropriety, and needed to protect citizens from abuses of law enforcement authority.

Examples used by the limited supporters are illogical. They claim a police officer should not have to get a judge's approval to return a bicycle if the thief is caught in the act. Or, return of a

perishable food item taken by a shoplifter should not require judicial approval for return to the store owner. The supporters fail to point out that the police do not have to seize the bicycle or the food item in the first instance. If the police photograph the bicycle or food item and do not take it into police custody, there is no requirement to obtain judicial approval for the property's return. Instead, existing law rightfully provides that when police take possession of "allegedly stolen" property, a judge—not the police—determines to whom the property will be released.

Limited supporters erroneously suggest it takes months or a year to get a court order, and that a hearing is required, before "allegedly stolen" property is returned. This is patently false. The supporters have not presented, and cannot present, a single example where police have presented a proposed order for property return where the judiciary has failed to act promptly. Daily, courts across North Dakota issue hundreds of orders, and most are issued promptly and without a hearing. I urge this Committee to inquiry of the state's judiciary. Claims of delays by the judiciary are unfounded, unfair, and untrue. The courts, like the majority of criminal justice practitioners, oppose this proposal. Limited supporters should be embarrassed by their unfounded claims of judicial delays.

Another unspoken but substantial concern is that repeal of N.D.C.C. §§ 29-01-20 and 29-01-21 results in "allegedly stolen" property becoming property of the police. Stated differently, under current law (N.D.C.C. § 29-01-24) unclaimed stolen property is sold, with proceeds going to the county treasurer. If HB1297 is adopted, unclaimed stolen property can be retained, used, or sold by the police, with proceeds staying with the police. N.D.C.C. § 29-31.1-06. Some might suggest the limited supporters are urging adoption of this proposal so that police can take possession and use or convert the proceeds of property that does not belong to them. Adopting HB1297 creates an enormous appearance of impropriety—one which the Legislature should not allow to occur.

Adoption of this proposal places police in a position which undermines public confidence. Under existing statutes, as outlined above, courts play a necessary and vital role. Likewise, prosecutors should be making the legal determination of whether property is needed for trial, or should be released. See N.D.C.C. § 29-31.1-08. This proposal would have the police investigate the crime, make the determinations typically reserved for a prosecutor, and then pick and choose to whom and when property will be released, all without judicial oversight or involvement. This is a treacherous proposition.

There is neither proof nor truth to the claim that the existing process is burdensome or delaying return of property to its rightful owner. Limited proponents have not presented a single supporting example. The judiciary has not been consulted. Existing law establishes a necessary process to protect both citizens and the police. This proposal removes the judiciary from oversight and its traditional role. This proposal places police in the judicial role. If adopted, police—who are ill-equipped to understand and resolve the complexities of property ownership law—will hurt more citizens, like the Dickey County resident who has incurred a loss of more than \$50,000.00 solely because police failed to follow existing law.

On behalf of the North Dakota Association of Criminal Defense Lawyers, and in the interest of maintaining necessary protections for the citizens of North Dakota, I urge this Committee to adopt a "do not pass" recommendation for HB1297.

Erica J. Shively
North Dakota Association of Criminal Defense Lawyers
Lobbyist #275