

FISCAL NOTE
Requested by Legislative Council
02/16/2017

Amendment to: HB 1170

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$540,000	\$(540,000)	\$540,000	\$(540,000)
Expenditures				\$(540,000)		\$(540,000)
Appropriations				\$(540,000)		\$(540,000)

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill substantially reduces the amount of forfeitures/seizures law enforcement entities can retain when such forfeitures are the result of the commission of a crime. The State Treasurer is to sell such assets at public auction and deposit the funds in the general fund.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The bill contains fiscal impacts for law enforcement entities. Currently law enforcement can retain items involved or directly related to the commission of a crime. These monies are used by law enforcement for law enforcement related overtime and other law enforcement purposes.

Although the amount is unknown, this bill will also reduce resources available to use for local law enforcement purposes.

The State Treasurer recognizes there will be a fiscal impact on that office to sell forfeited assets at public auction and they're unable to estimate the impact since the amount of forfeiture sales are unknown.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

This bill reduces the revenues law enforcement has available to it to perform its work. For the Highway Patrol, this would result in revenue reductions up to \$300,000 per biennium. For the Office of Attorney General, this would result in revenue reductions up to \$200,000 per biennium. This bill reduces the Game and Fish Report All Poachers (RAP) revenues by an estimated \$40,000 per biennium. Revenue impacts to other law enforcement are unknown. This bill mandates the revenues from these seizures be deposited in the general fund.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Law enforcement expenditures will be reduced as a result of this bill. For the Office of Attorney General this could reduce expenditures up to \$200,000 per biennium. The Highway Patrol's expenditures could be reduced up to \$300,000 per biennium. The Game and Fish Report all Poachers (RAP) program's expenditures will be reduced by about \$40,000. Expenditure reductions for other law enforcement are unknown.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The Office of Attorney General and the Highway Patrol have continuing appropriations for the funds resulting from forfeitures due to the uncertainty of the availability of the funds and the needs for which the funds need to be spent. Game and Fish's appropriations will also be reduced due to this bill.

Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 328-3622

Date Prepared: 02/16/2017

FISCAL NOTE
Requested by Legislative Council
01/06/2017

Revised
 Bill/Resolution No.: HB 1170

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Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 328-3622

Date Prepared: 01/17/2017

FISCAL NOTE
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01/06/2017

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Agency: Office of Attorney General

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Date Prepared: 01/14/2017

2017 HOUSE JUDICIARY

HB 1170

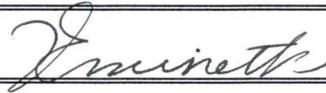
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1170
1/16/2017
26919

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to forfeiture proceedings, forfeiture disposition, seizure and transfer of forfeitable property, and actions to recover forfeitures.

Minutes:

1-4

Chairman K. Koppelman: Opened the hearing on HB 1170.

Rep. Rick Becker: (See handout 1)

Discussed difference in seizure and forfeiture. I am in support of civil liberties. This does not address seizure. These are two important things: 1. It changes it to criminal 2. Requires reporting. 3. Working with the federal government. There are billions of dollars forfeited with civil. ND and Massachusetts has an F rating. This bill wouldn't make us an A. This should not and does not directly affect law enforcement because it doesn't deal with seizer. This does deal with prosecution. It would make our state one of the very few examples of how it should be conducted in the nation where the forfeiture is done if you are convicted.

Rep. Simons: We have come across this many times. When I am talking to police officers from out of state they were appalled we weren't doing this. I have seen where this stuff was confiscated and they were found innocent and had a hard time getting things back.

Rep. Becker: In other states in the nation one way the agency or department is able to try and keep the budget leveled to where they want is by increasing the money and conducting more forfeitures and there are codes that would shock you about other states. Citizens have not been done right with forfeiture laws and hopefully you may hear some examples.

Rep. Klemin: When property gets seized, like under this bill and has been held. Say he has a vehicle that has been seized does he have to pay for storage charges?

Rep. Becker: I believe not if they are not guilty.

Rep. Klemin: If you park on a street and there is no parking and someone has parked there and if it is taken to storage you have to pay the towing charge and storage fees.

Rep. Becker: On that case someone is guilty of parking then.

Rep. Magrum: Is there any way we can make an amendment that any seizures or forfeiture that the money would go back to the county in which the seizure in which the forfeiture occurred in?

Rep. Becker: It does into the general fund now. It is my opinion that the legislature is responsible for appropriating monies for it. So the more we allow revenue to go into specific agencies the more we are abrogating our responsibility of the purse.

Rep. Satrom: Can you foresee any potential abuse on having the funds go back to the counties, if that were the case?

Rep. Becker: I think there is potential abuse any time whether it comes from the legislature or any specific department. The forfeiture abuse would be only for convicted people. I don't think that would be an issue.

Rep. Klemin: Page 23 HB Line 27 and 28 The law enforcement agency that holds the property is responsible for any damages, storage fees, and related costs applicable to property returned under subsection 1.

Chairman K. Koppelman: There seems to be no abuse going on now. When you have assets seized.

Vice Chairman Karls: On page 12 Section 8 talks about disposition of birds, animals' and birds and any part thereof. Would that effect our RAP program with Game and Fish?

Rep. Becker: My intent that it would not change that. Think it is trying to clarify that section of code. I am not sure.

Ryan Sanbird, Attorney in Minot: Am in favor of this bill. We have to be convicted before they can seize property. This bill makes it more specific about what they can and cannot do. (21:28- 25:25) Explained this in detail. Passing this law is more specific and then if you read all of it they can represent themselves on the civil proceeding because it is pretty specific. If you have to get an attorney to fight it, it is not worth it. I would like to answer the question "do you have to pay the storage fees" yes you do have to pay it even if you are not guilty you have to pay and the storage. Right now you have to pay to get your vehicle back. Some places will waive that and some don't. This will help protect them by passing this law.

Rep. Klemin: Where does this come from? Page 23, line 26-28 it says it is the law no nolle presequi?

Marty Riske: When I found out ND had an F rating on this I decided to make it my effort in the race to go to the doors that are open to do more research. The research that I have come across on the addiction side of what we are talking about here is that the addict is most likely to be able to abandon his addiction is when his family and friends are together with him. One of the problems we are having is that these people are going in and out of prison and

they are hang with a felony status. I hired a felon and he said right away "I am a felon" I asked him why he said that and he said "well I learned that as I go through ¾ of an application and they find out I am a felon they close the book and I am done. So I think we should get rid of the felony status, stop the in and out of prison, and the third thing not taking their assets before the trail. The money should go to the family rather than to the general fund because these people have to go on living. Looking at it from the family side this is a serious thing for us to be involved in.

Rep. Klemin: This new chapter 29-31.2. what is the source of this language?

Rep. Becker: Much of this is from New Mexico. There is a hand full of states that have a rating. Nolle presequi has to do with property disposal and the document of the paper to do that.

Rep. Magrum: Page 3, line 4 did you strike this part of the bill?

Rep. Becker: I believe any language pertaining to the money's forfeited property going into any other funds has been stricken because the intent of the bill is that the money should go into the general fund.

Vice Chairman: Karls: Is there anyone is Opposition to HB 1170?

Rosa Larson: States Attorney for Ward County: I am here for the North Dakota Association States Attorneys. A rebuttal to Mr. Sanburn with regard to defendant's rights to not be able to testify because their criminal matter is still going on. That is an easy fix, we already have that with probation ruminations.

There is specific court law now and rulings, if they testify at the ratification hearing and still have an open case those statements cannot be used against them in the state's case. It can be used for impeachment if they take the stand and say something different. The local prosecutors like us are the ones that are doing the hearings and serving the defendants and conducting the trails and yet if it all goes back into the state general fund it's not going to tinkle down to the local law enforcement that are using the manpower that is put into the drug cases. Within this bill you have the penalty going back to the local that are handling these cases if the assists were wrongfully taken the penalty's go back to us. Under 1903.1 this money can't be used to pay for personal. It has been used for surveillance equipment such as that are needed for controlled buys and not going into the pocket of the local law enforcement to use as they want. and that is where most of us for forfeiture occur.

Section 3, page 4, line 11 it says including a no contest plea; There is no such a plea in North Dakota. Going to Section 11 page 14 line 5 - 8 this is you are taking juvenile forfeiture action out of juvenile and putting them into district court. That is after there is a conviction.

Section 12, page 14 line 13 where it is talking about forfeiture of bonds that is done by the courts. When a person doesn't show up for court the state moves to have the bond forfeited. That is being taken out of there. After there is a conviction if you take the courts ability away to forfeit at that point a lot of times that is the only money we get on defense cases.

Page 15 lines 22 & 23 exemptions proposals for section 29-31.2-03 (stopped 51:00) where we would no longer be able to seize and forfeit vehicles less than \$10,000 or currency totaling \$200.00 or less these are put in place as a public deterrence for criminals to not do what they are doing. To put a cap of on less than \$200.00 means there can be a lot pills still sold for profit.

Having a jury trial of anything over \$10,000 would put a burden on the court system. I would ask this committee to leave the drug forfeiture section alone.

(went into great detail on this)

Rep. Vetter: The minor provision that you are talking about where is that located?

Rosa Larson: Section 11 page 14 lines 5-8.

Rep. Vetter: When you are talking about locating the alleged criminal, could that get changed by having more days?

Rosa Larson: The fix is not putting a timeline on there. The rules of civil procedure cover how you commence an action.

Rep. Roers Jones: When you are talking about the difficulty about serving people when they don't show up for their bond hearing, are you able to proceed in that instance as the property being abandoned?

Rosa Larson: Not the way this procedure is right now because you would have a known person, and so you would need to serve that known person generally on abandoned property. Generally, on abandoned property you have 7 days to start proceedings.

Chairman K. Koppelman: You talked about a commencement of an action 180 days.

Rosa Larson: That is a supreme court rule.

Chairman K. Koppelman: Would there be any harm in codifying that?

Rosa Larson: I would request this committee take title 1902.1 out of this procedure. And take those caps off. When there is an innocent owner they have a right to that weapon.

Chairman K. Koppelman: You gave Vice Chairman Karls a little heart burn when you said "lot of these weapons are destroyed."

Rosa Larson: We do have to try and find out if someone else is the owner they can come in and I have a right to this property.

Chairman K. Koppelman: If you can't find one an owner I think current law dictates that those need to be sold at auction unless it has been used in an murder.

Rosa Larson: I wish you would tell some of our judges that.

Rep. Simons: On page 15, 25,26 & 27 spells that out. Mainly this is trying to address that the court fees would be paid for by a drug dealer.

Rosa Larson: By not tying it to a criminal matter it could get you to court sooner.

Rep. Simons: I have seen this stretch out for months to get property back. I think they should get their they property back in a timely manner.

Rosa Larson: I don't disagree with you. In any criminal case the comes before the courts you will find a few of those exemptions much like the stories we heard in Marcy's Law.

Chairman K. Koppelman: Could you reduce those points to writing?

Julie Lawyer: (Attachment 2) Burleigh County States Attorney's Office Right now we have two types of asset forfeiture it is an effect tool to detour people from committing crimes. It is a civil process where they don't get to reap the benefits of the criminal activity.

Chairman K. Koppelman: Those folks who claim they cannot afford an attorney we want to be sure that they really can't afford an attorney. If they can't they are entitled to a public defender. The law appears to presume that there was no evidence of abuse there is no evidence of abuse and completed the law enforcement and the prosecutors in the state for that reason.

Rep. Simons: Without a conviction the pimp and the person suspected of selling drugs, we can seize their possessions without a conviction?

Julie Lawyer: This bill doesn't do anything regarding seizer. This deals with the actual forfeiture. This just deals with what happens after the seizure and how we go about doing the forfeiture.

Rep. Simons: Page 15,25,26,27 it already says we can take contraband so at point taking other possessions will fall to his own falling. Taking other possessions in times they self-govern themselves out of business. I don't understand why we are taking properties that are not going to direct cost of court fees?

Julie Lawyer: You are talking about the seizer of property. Sometimes we seize property like a meth lab. If we don't know if the things that are used to manufacture meth in that process, we will seize that. If we don't need it for evidence, we return it.

Rep. Simons: 1:23:95-1:14:30) Discussed an incident that had happened.

Julie Lawyer: We do not seize a large amount of money automatically. There must be something more with it.

Bruce Brukett: (attachment 3) On Page 12,13 it talks about the game and fish laws. The assets forfeiture is pretty clear.

Mike McEnroe: ND Wildlife Federation (See handout #4) (1:33:90-1:37:30) The Federation of North Dakota has approximately 1400 members and 18 affiliated clubs and organizations. We are concerned about sections 8, 9, and 10 dealing with the confiscation of property under chapter 20 of the century code for the game and fish department and its impact on its poachers on the RAP program.

Bill Helphrey: North Dakota Bow Hunters Assoc. We believe strongly in the RAP program. When that program started the game and fish wanted to build an exhibit trailer that they could take to different functions and show people what is happening is happening in our state and we helped finance that. This bill would remove funds from that program. We do not want to weaken the program. We don't like poachers.

Chairman K. Koppelman: Is there any neutral information? Meeting adjourned.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1170
1/17/2017
26988

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to forfeiture proceedings, forfeiture, disposition, seizure and transfer of forfeitable property, and actions to receiver forfeitures.

Minutes:

Chairman K. Koppelman: Reopened the HB 1170 because Rep. Becker wanted to have more information given so it will be recessed instead of closed.

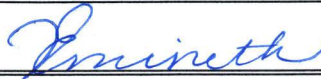
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1170
1/30/2017
27583

- Subcommittee
 Conference Committee

Committee Clerk Signature



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Minutes:

1

Chairman K. Koppelman: Reopened the hearing on HB 1170.

Rep. Rick C. Becker: Made introductions for Institute of Justice.

Lee McGrath: Legislative Council for the Institute of Justice: The Institute is a law firm we protect people's constitutional rights. Discussed the institute of Justice. It is a public interest law firm. We look at forfeiture through the same lens as we do economic domain. We support this bill because no one found the innocent should lose their property due to forfeiture. We support this bill because there are important principals at stake, the principle of property rights. You should not lose your car and your cash unless you are convicted. This bill changes what prosecutors do. It changes the transfer of title from the individual to the state. This is a modest bill that doesn't touch police. I helped write this bill so I am very familiar with it. Nebraska and New Mexico have enacted this bill. (9:30-11:30) Going through the bill.

Rep. Klemin: If the homestead is the site where the criminal activity takes place why do you exempt the homestead?

Lee McGrath: You except the homestead out of a public policy choice similar to the choice that you make in bankruptcy law.

Rep. Klemin: Isn't real property subject to forfeiture under federal law for government offenses?

Lee McGrath: This exemption does not exist in federal law. So are going beyond federal law. It exists in some states, but not in federal law. It restores the Legislatures authority to raise and appropriate funds. North Dakota like 39 other states has given to the executive branch one of the legislatures most powerful ways of setting priorities and that is by turning

over to the executive branch the power of the purse and letting law enforcement prosecutors combines it with the power of the sort.

Chairman K. Koppelman: You said New Mexico and Nebraska passed a similar bill earlier in testimony we heard. Now you are saying 39 other states did something to North Dakota which would imply that there is either 11 states that did this and earlier we heard that North Dakota is one of two states with a terrible rating in this category?

Lee McGrath: The biggest component of rating system is who gets control of the purse. We think state legislatures should control the purse. That is the biggest why we gave ND and Massachusetts and F rating. This bill informs you. Today you have a responsibility to set priorities to the state but you don't know how law enforcement is using this power. Minnesota has a slight advantage. They know that in their state there are 20 average securers a day. This bill gives you the basis of understanding more than you today of how this ability to take property is used. We know in ND there is a small amount of forfeiture going on through the federal courts of \$40,000. You should insure ND is subject to your laws; not the federal government. This would reestablish your sovereignty.

Vice Chairman Karls: Are you saying that ND citizens in federal court lose property or is this the result of fact that we have 5 reservations in North Dakota and they are a sovereign nation and they go to federal court?

Lee McGrath: I can check and report back to the committee. In Minnesota we have 13 reservations and I can tell you it is used mostly on non-reservation sovereignty. The institute for Justice supports this legislation and encourages the legislature to enact it is because it is not focused 1. on the work of the police and 2. the process of the litigation associated with the work of the prosecutors and the defense attorney.

Rep. Paur: How does it reaffirm sovereignty?

Lee McGrath: It allows law enforcement to collaborate with the federal government. It allows the local forces to team with DEA and they can seize the cash or car. This would change the requirement who does the forfeiture of litigation in court. If the amount of seizures is \$100,000 or less it must be litigated in state court. It draws that line and says to law you can continue to seize you can continue to subject assets to forfeiture litigation but they should be sent to North Dakota's Judicial System.

Rep. Paur: Once you reach the \$100,000 it would go to the federal courts?

Lee McGrath: If you do change your state law and the money is being returned to your authority of state legislators there will be a few cases. The majority of them will fall under the state law.

Rep. Nelson: How would this work with plea bargaining?

Lee McGrath: This bill has a septic grants clarity that the prosecutor and the defense attorney can reach plea agreement that might include jail time, loss of property, but it must be approved by the criminal court.

Rep. Nelson: I am familiar with forfeiture laws concerning game and fish is it used much in any other areas?

Lee McGrath: Illegal drugs and DWI and a small percentage for game and fish and shooting.

Chairman K. Koppelman: Went over the fiscal note.

Rep. Nelson: This doesn't mean we will have to return drugs?

Lee McGrath: There is no property right in contraband. Drugs, once they are seized the title is transferred then there is no need for forfeiture litigation associated with the drugs.

Chairman K. Koppelman: It is fair to say the bill is lengthy and that the bottom line is the objective of the bill as you see it is to ensure that before the property is seized that it must have been connected with the criminal activity?

Lee McGrath: Yes that is exactly right. It is about the process due every North Dakotan. That is the process being charged, getting a criminal trial and being convicted. This bill protects innocent people.

Chairman K. Koppelman: In earlier testimony we heard that this isn't being abused now in North Dakota that the people that deal with this area are responsible what is your respond to that?

Lee McGrath: You don't know. North Dakota does not have a reporting system. Your fiscal note suggested you have \$500,000 going on but you don't know. This ensures the North Dakota's only lose their property when they are found guilty. This is a legitimate government power that I allows to exits within guidelines that respects every North Dakotas due process.

Rep. Jones: Page 23 we have the word here that is "nolle presequi" what does that mean?

Lee McGrath: It means abandoned.

David Smith, National Association of Criminal Defense Lawyers: (no prepared testimony) Yes there is abuse going on where law enforcement is taking cash bribes. Every person who has their property seized will have a court appointed lawyer to defend their forfeiture. Very few people can defend themselves without a lawyer.

Rep. Klemin: Are you saying police are stopping someone and take some money keep it for themselves?

David Smith: I am not saying that the police in North Dakota are doing that but I am saying that is common in other places in the country. In the big city police depts. this is quite common.

Chairman K. Koppelman: So the instance you brought up in Minot for example, you are not sure that it did occur there?"

David Smith: I have heard from Ryan that it is common for police to seize cash from the oil field workers, I don't know what happens from there. They are saying it is drug money when it is not.

Rep. Klemin: How does this bill stop this from happening?

David Smith: It will protect the oil field worker if they bring it to court because then he will have a court appointed lawyer and that lawyer will be responsible for defending his property as well. I am more familiar with the federal system. This bill has \$200 minimum for seizure; I think that is too small, I would raise it to \$1000, its on page 15 lines 22-24. I have never seen a case originating in an Indian reservation.

Chairman K. Koppelman: David would you leave your business card with the clerk and we will take care of it for you.

Mark Friese: (attachment 1) I am an attorney from Fargo I am in support of HB 1170.

Pete Hannon: North Dakota farm bureau: We are in favor of this for the property rights and the prospective of it.

Chairman K. Koppelman: Is there any testimony in support in Opposition:

Aaron Birst: I am with the Association of Counties. I stand opposed to HB 1170. I would like to address the concept of the law enforcement offices taking money from oil workers. If that is happening I am calling on the people in the audience including Mr. Samberg to give me a name, and he officer and I will personally go to the post board and have them removed from their position. We have a process in place for criminal prosecution. If this bill gets turned into a hog house and a reporting thing we have no problem with that. We will submit every single penny that is taken by forfeiture to this committee. We have two separate systems because of OJ Simonson he was found not guilty of the crime and later sued for wrongful death and found responsible. The government under this bill would not have the same rights as those property owners who sued for wrongful death. I think it is premature to do this on the fly without hard data.

Rep. Hanson: Could you explain the different standard of proof of civil cases verses criminal cases?

Aaron Birst: The highest level of proof to find someone guilty on the criminal side Beyond a reasonable doubt. The highest legal standard under the law on the civil probable cause would be to take property. I never did ask for a forfeiture. Civil assets forfeiture is much lower burden of proof then the criminal case.

Rep. Roers Jones: Are you saying you are comfortable that if the courts can't meet there burden to convict someone for charges like drugs you are comfortable that there be a procedure for taking property from them?

Aatron Birst: Yes that is the current set up.

Rep. Roers Jones: From earlier testimony that we heard it sounds like the process that exists right now allows for the civil assets forfeiture to happen long before the criminal trial occurs. The way you are making it sound it would happen after the conviction fails but from the testimony and well before the criminal trial ever proceeds. Does that seem reasonable for someone to lose their property before they have a chance to be heard on those charges?

Aaron Birst: It can happen either way and it does happen either way. Many times we have a criminal conviction and then forfeiture will apply. We have two separate systems if it's all tied to the criminal conviction then you are going to have to say "if you don't get a criminal conviction the government can't use the civil forfeiture". If you don't get a criminal conviction, then you can't tie that to one specific person.

Rep. Nelson: Do people lose their property without a hearing?

Aaron Birst: Yes you could lose your property without a civil hearing if you didn't excise that option.

The option is there. In order to seize property, we have to go through the civil asset forfeiture. If someone doesn't show up there won't be a hearing.

Rep. Klemin: I understood from testimony previously if property is sized and stored and held then that offense still has to pay the storage fees?

Aaron Birst: I hear that to, I will find out the answer to that.

Rep. Magrum: Do you know of any cases where they took away their stuff and sold it and the property?

Aaron Birst: It did happen in a county in the South east.
yes, it could happen. It is not a routine thing, no.

Chairman K. Koppelman: It seems to me this seldom happens that property that is seized is forfeited unless there is a conviction and the point was made that sometime it is in the state court or in the federal court but the forfeiture occurs in the state court because of the agreement that occurred between the two levels of authority. There was one case of a copy right validation that would have been a civil issue and there was some issue about that someone indicated that is already contraband so its captured. Is that contraband?
What is the status of that?

Aaron Birst: I would assume that would fall under contraband. Guns are another example. That would be private property rights. That would be on the civil side.

Chairman K. Koppelman: You have discussed the possibility of an amendment and we will pursue that.

Aaron Birst: Prosecutors don't begrudge this discussion. The process change is a big one it will be up to the committee to decide to figure out if you need if that big of a change.

Chairman K. Koppelman: Is there any testimony in opposition, neutral?

Kelly Schmidt: State Treasurer, In HB 1170 Page 22 lines 2 -6 we find that the treasurer office is being asked to take on additional responsibilities that we have not taken on before. Your fiscal note does not include the additional responsibilities to our office however to bring you into the loop there is another HB 1386 which is front of the House of Political Subdivision Committee which would move unclaimed property from being on transplants department to the office of State Treasurer. I just wanted to come back and make you aware of this.

Chairman K. Koppelman: As you read **that** section of the bill is page 22 lines 2-6. How much additional work would that encompass?

Kelly Schmidt: As of right now our office does not do anything relating to unclaimed property. 39 States do take care of unclaimed properties in the office.

Chairman K. Koppelman: Hearing closed.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1170
2/14/2017
28332

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to forfeiture proceedings, forfeiture disposition, seizure and transfer of forfeitable property, and actions to recover forfeitures.

Minutes:

1

Chairman K. Koppelman: Reopened the meeting on HB 1170. (#1) Passed out a proposed amendment and went over the amendment. This area was dealt with a few years ago and we did limit the way these asset forfeitures are handled, especially in the Attorney General's office and some of the entities of state government. The bill changes the burden of proof to clear and convincing evidence. Right now it is preponderance of the evidence which is the lowest standard. The amendment would remove the state entities included in the bill. I think the amendment would improve the bill. I wanted to insure the burden of proof was stronger.

Representative Klemin: Where is the clear and convincing in the bill?

Chairman K. Koppelman: I did review that with Mr. Joseph and so I will call on him to go over it.

Chris Joseph, Legislative Counsel: On page 16, line 19 is a different standard. It has to be proven that there is property that is seizeable or forfeitable that is not within the jurisdiction of the court.

Representative Klemin: This would be easier to look at if we had a marked up bill.

Motion made to move the amendment .02001 by Representative Maragos: Seconded by Representative Vetter:

Voice vote carried.

Chairman K. Koppelman: Instructed intern to get a marked up bill for the committee to work on.

Closed.

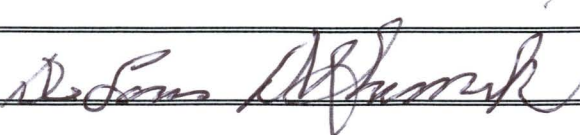
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1170
2/14/2017
28366

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to forfeiture proceedings, forfeiture disposition, seizure and transfer of forfeitable property, and actions to recover forfeitures.

Minutes:

1

Chairman K. Koppelman: Reopened the meeting on HB1170. Passed out a marked up bill to review. (#1)

Representative Vetter: We added all these amendments. By adding the AG in this whole deal and highway patrol, essentially we are gutting the bill if we are taking out the AG and highway patrol who is this law for if they are exempted?

Chairman K. Koppelman: It would be any other entity that has the authority to seize land that can be forfeited under law. There was a lot of opposition from the States Attorney's and others like Game & Fish. I don't know if the bill has a great chance of succeeding. The amendment is an attempt to make it more workable. There are some that want to do a study.

Representative Magrum: I thought Rep. Becker had an amendment to put the highway patrol back into it? There is really no abuse going on.

Representative Roers Jones: I think Rep. Becker was trying to remove certain lines and he was going to introduce an amendment.

Representative Klemin: It looks like the new chapter is intact here. That was the main issue on people who opposed this with all of this stuff. Somethings like if the property has to be returned the law enforcement agency is liable for damages and storage fees and costs related to the property that is returned. I don't know how that is going to work out. I don't think we are going to satisfy very many people with having all that new chapter in there.

Chairman K. Koppelman: If both sides don't like something you are probably striking a balance. The change in the burden of proof is good and the required reports. There has to be a conviction in state or federal court in order to forfeit property.

Representative Simons: I am thinking what you have given us and putting back in page 5, 14-29; page 6; 1-30. Basically the ag and highway patrol I think we should put back in. So on your amendment page 5,6,7 and 24 & 25. I would like to put all them back in.

Chairman K. Koppelman: The only thing you would be changing in the bill would be removing the Game & Fish essentially.

Rep. Simons: I would like the funding changed as well. Page 30; remove lines 28 & 29; page 31 remove lines 1-31; otherwise the bill isn't going to be anything.

Motion Made by Representative Paur: Seconded by Rep. Johnston to remove the amendment 17.0327.02001 previously adopted.

Discussion:

Representative Vetter: I think we are going backwards. I think we should amend the amended bill and to forward.

Motion Made by Representative Paur: Seconded by Rep. Johnston to remove the amendment 17.0327.02001 previously adopted was withdrawn.

Chairman K. Koppelman: We have the motion withdrawn so we have the amended bill which is the markup bill. If you want to look at the amendment to get your bearing that might help.

Motion made to further amend the amendment 17.0327.02001 by Representative Simons: I want to keep page 5, 6; 7,8; page 24 & 25, 30, 31, 32. Seconded by Representative Maragos:

Chairman K. Koppelman: Remove the overstrikes and returning Section 4, Section 14 and Section 16. I am going to resist the amendment because I think I can support without it.

Voice vote carried.

Do Pass as Amended Motion Made by Rep. Blum; Seconded by Rep. Johnston.

Discussion:

Rep. Satrom: I would like to hear you reasons for anyone who voted no.

Chairman K. Koppelman: I believe that the Attorney General's office and the highway patrol have a pretty responsible system for high they deal with this. I think there are some appearances of potential abuse in the system and some of those are the fact that property that is seized could be forfeited when there is no criminal conviction and when it is not contraband and it could be with a minimal burden of proof. I think we need to fix that. There is a threshold by which the money does flow into the general fund now. That is why my amendment excluded that. The bill also creates reporting requirements and I like that.

Representative Klemin: I am going to oppose the do pass as amended. I think the system is working fine. I don't see a reason for this bill in ND.

Rep. Karls: I don't feel the highway patrol and the attorney general are the bad actors in this situation; it is the criminals.

Chairman K. Koppelman: We seem to want to go after law enforcement as if they are somehow abusing something or doing something wrong. I have not seen that. I think this goes too far.

Representative Klemin: I don't like the \$10,000 exception.

Representative Roers Jones: I think this is important because if this is ever an issue where someone's property is seized and then taken away from them; those are the people who probably cannot afford to get it back. We need to make the change before it happens because these people don't have the ability to fight this. We have seen one instance recently from the Attorney General's office so that is why I agree it is important to add those sections back.

Representative Simons: I fully agree with some of the things that have been said. I have seen abuse with this program of forfeiture. When their stuff disappears. If your house gets raided your gun disappears and it is just a bad situation whether you are found guilty of a crime or not. I can tell you dozens of actual cases where this has happened. I like transparency.

Roll Call Vote: 11 Yes 4 No 0 Absent Carrier: Rep. Johnston

Closed.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1170

- Page 1, line 3, replace "sections" with "section"
- Page 1, line 3, remove "and 12.1-06.1-06"
- Page 1, line 4, replace "sections" with "section"
- Page 1, line 4, remove "20.1-10-03,"
- Page 1, line 5, remove "20.1-10-04, and 20.1-10-07,"
- Page 1, line 5, remove "29-27-02.1, 39-03-18,"
- Page 1, line 6, remove "54-12-14,"
- Page 1, line 8, replace "remedies, forfeiture of property, forfeiture funds" with "of motor vehicles, forfeitures for violation of ordinances, seizure procedures"
- Page 5, remove lines 14 through 29
- Page 6, remove lines 1 through 30
- Page 7, remove lines 1 through 30
- Page 8, remove lines 1 through 9
- Page 12, remove lines 23 through 31
- Page 13, remove lines 1 through 27
- Page 14, remove lines 9 through 17
- Page 15, line 16, replace "When" with "Except as otherwise provided by law, when"
- Page 15, line 29, replace "Property" with "Except as otherwise provided by law, property"
- Page 17, line 2, replace "Personal" with "Except as otherwise provided by law, personal"
- Page 17, line 13, replace "Seizure" with "Except as otherwise provided by law, seizure"
- Page 18, line 2, replace "Following" with "Except as otherwise provided by law, following"
- Page 18, line 30, replace "The" with "Except as otherwise provided by law, the"
- Page 21, line 20, replace "A" with "Except as otherwise provided by law, a"
- Page 22, line 8, replace "Forfeited" with "Except as otherwise provided by law, forfeited"
- Page 22, line 11, replace "Proceeds" with "Except as otherwise provided by law, proceeds"
- Page 24, remove lines 18 through 30
- Page 25, remove lines 1 through 14
- Page 30, remove lines 28 and 29
- Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 13

Renumber accordingly

File
2/14/17
1 of 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1170

- Page 1, line 4, replace "sections" with "section"
 - Page 1, line 4, remove "20.1-10-03,"
 - Page 1, line 5, remove "20.1-10-04, and 20.1-10-07,"
 - Page 1, line 5, remove "29-27-02.1,"
 - Page 1, line 8, after "funds" insert "of motor vehicles, forfeitures for violation of ordinances, seizure procedures"
 - Page 12, remove lines 23 through 31
 - Page 13, remove lines 1 through 27
 - Page 14, remove lines 9 through 17
 - Page 15, line 16, replace "When" with "Except as otherwise provided by law, when"
 - Page 15, line 29, replace "Property" with "Except as otherwise provided by law, property"
 - Page 17, line 2, replace "Personal" with "Except as otherwise provided by law, personal"
 - Page 17, line 13, replace "Seizure" with "Except as otherwise provided by law, seizure"
 - Page 18, line 2, replace "Following" with "Except as otherwise provided by law, following"
 - Page 18, line 30, replace "The" with "Except as otherwise provided by law, the"
 - Page 21, line 20, replace "A" with "Except as otherwise provided by law, a"
 - Page 22, line 8, replace "Forfeited" with "Except as otherwise provided by law, forfeited"
 - Page 22, line 11, replace "Proceeds" with "Except as otherwise provided by law, proceeds"
- Renumber accordingly

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO 1170**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0327.02001

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 Rep Maragos Seconded By Rep Vetter

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Voice
 Vote
 carried*

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1170**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: **Remove 17.0327.02001**

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 Rep. Paur Seconded By Rep. Johnston

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Motion withdrawn.

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1170**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: 17.0327.02002

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 Rep. Blum Seconded By Rep. Johnston

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman		X	Rep. Hanson		X
Vice Chairman Karls		X	Rep. Nelson	X	
Rep. Blum	X				
Rep. Johnston	X				
Rep. Jones	X				
Rep. Klemin		X			
Rep. Magrum	X				
Rep. Maragos	X				
Rep. Paur	X				
Rep. Roers-Jones	X				
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter	X				

Total (Yes) 11 No 4

Absent 0

Floor Assignment Rep. Johnston

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

REPORT OF STANDING COMMITTEE

HB 1170: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1170 was placed on the Sixth order on the calendar.

Page 1, line 4, replace "sections" with "section"

Page 1, line 4, remove "20.1-10-03,"

Page 1, line 5, remove "20.1-10-04, and 20.1-10-07,"

Page 1, line 5, remove "29-27-02.1,"

Page 1, line 8, after "funds" insert "of motor vehicles, forfeitures for violation of ordinances, seizure procedures"

Page 12, remove lines 23 through 31

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Page 21, line 20, replace "A" with "Except as otherwise provided by law, a"

Page 22, line 8, replace "Forfeited" with "Except as otherwise provided by law, forfeited"

Page 22, line 11, replace "Proceeds" with "Except as otherwise provided by law, proceeds"

Re-number accordingly

2017 SENATE JUDICIARY

HB 1170

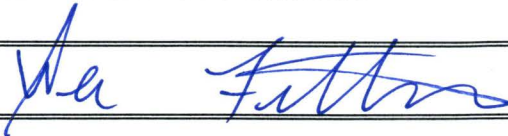
2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1170
3/21/2017
29498

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to criminal forfeitures; relating to forfeiture remedies, forfeiture of property, forfeiture funds of motor vehicles, forfeitures for violation of ordinances, seizure procedures, and forfeiture procedures; relating to forfeiture proceedings, forfeiture disposition, seizure and transfer of forfeitable property, and actions to recover forfeitures.

Minutes:

Testimony attached # 1,2,3,4,5,6,7

Chairman Armstrong called the committee to order on HB 1170. All committee members were present.

Rick Becker, North Dakota State Representative District 7 (1:05 – 6:30), testified in support of the bill. (see attachment 1,2,3)

Lee McGrath, Legislative Counsel for Institute for Justice (6:50 – 25:00), testified in support of the bill. No written testimony.

“This is a great bill that moves North Dakota from its current ranking, to one of the best rankings, in terms of protecting people’s property rights and their due process rights. Asset forfeiture is a legitimate government power. It is like eminent domain, in that the government has every authority to take property to fit a crime from those who have committed a crime. Nobody disputes that those who have committed crimes should be allowed to keep the fruits of that crime. The question is not whether the power is right or wrong; it’s where you set the safeguards. What this bill does is set the safeguards around criminal forfeiture. So at the heart of this bill, it removes civil forfeiture and focuses on criminal forfeiture. The very basis of civil forfeiture is flawed.

Last week, Associate Justice Thomas wrote an opinion on a Texas case calling in to question this idea that when law enforcement can get personal jurisdiction, can arrest someone; why are prosecutors engaged in this legal fiction that the car has mens rea? That the cash can be found guilty of a crime? The bill recognizes the inappropriate use of this 17th century idea and replaces it with a 21st century idea that has been adopted in Nebraska, New Mexico, and other states. I invite the committee to ask prosecutors why they are using 17th century admiralty law in the middle of the country that has no oceans and when you can get personal jurisdiction, they can get personal jurisdiction by arresting the suspect.”

Lee McGrath went over how the bill protects wives, neighbors, parents, and people who have not been charged with a crime but have an interest in the property – innocent owners.

Chairman Armstrong (14:20): “How does this bill deal with a situation where you have a forfeitable asset and you negotiate a plea to a charge that may not necessarily trigger a forfeiture, but it’s a negotiated plea?”

Lee McGrath: “This bill allows for all plea bargains.”

Chairman Armstrong: “Does that also include a plea bargain to dismissal?”

Lee McGrath: “It does.”

Senator Nelson asked for somebody to go over the bill for her. Representative Becker said he’d come back once Lee’s testimony is over.

Representative Becker came back to the podium to explain the bill. **(25:05 – 37:30)**

A lot of the bill is housekeeping, because there needs to be a lot of changes made to clean it up. Representative Becker went over the different sections of the bill.

“The bill goes over definitions, standards of proof, assets of unreachable property, hearings to get your stuff back, innocent owners, that’s where there are circumstances where the property is owned by somebody who is innocent and nobody contests that they’re innocent. This would allow them to not be additional victims of the offender.”

Chairman Armstrong (28:40): “Does that factor in if you have a car and the bank owns the title to the car? One of the issues with the car is that most often the person who is driving the car doesn’t technically own the car.”

Representative Becker: “It protects the banks interest.”

Senator Larson (32:35): “I noticed some of the crossed out language on page 23. They would have used some of that money to pay off auctioning a car or stuff like that. So if the money that is derived from that goes to the general fund, then who pays for putting on the auction and doing all the other stuff?”

Representative Becker: “Any of the money that we are now taking out of that fund and putting it in the general fund. We need to recognize that there are going to be costs associated, and then we can have that added appropriation to the various agencies; as just as a recognized new base line, if you will. My understanding, is that any cost that would have been transferred into the agency funds would no longer be there. If we can make a case that they need those funds, what we need to as a legislature is say that baseline funding previous included what was already there because of forfeiture proceeds, that’s now being diverted. The general fund is going up and the agency funds are going down. We need to recognize that and put those funds back if that’s the case.”

Senator Larson (34:40): “So you feel it’s more efficient to have funds go to general fund, then have agencies bring their case to the appropriations committee and say we need more funds because they are not getting it here?”

Representative Becker: “Nothing as I’m aware would be handled any differently.”

Chairman Armstrong (35:35): “That only accounts for state funded law enforcement agencies. We still have municipalities, and counties that would be completely new areas for how we would deal with this.”

Representative Becker: “I accept that.”

Jackson Lofgren, President of North Dakota Association of Criminal Defense Lawyers (37:50 – 44:30), testified in support of the bill. No written testimony.

“I would support this bill. I think the things that stand out to me, is that our forfeiture laws are somewhat of a mess. We’ve got them in multiple different titles and sections. There’s multiple different ways to have a forfeiture. The thing that stands out to me in North Dakota is that if you have a municipal traffic violation with a \$20 fine or more, you can demand a jury trial. Under our forfeiture laws, the state can take a million dollars from you and never put a juror in the box. The biggest thing that comes out of this bill, I think anyways, is that it creates some protections to the individual that currently aren’t in place, and it protects those innocent owners. For an example, the state could take my car if my kid got a DUI. I did nothing wrong besides give my kid the keys to the car. This protects against that”

Senator Larson (40:55): “Has that happened where the forfeiture happened to dad’s car when dad had nothing to do with kids drinking?”

Jackson Lofgren: “Often when you hear forfeiture proceeding you will hear a family member say that was my property. That’s not uncommon.”

Senator Larson (41:45): “So they say it was their car, do they get it back if they had no knowledge?”

Jackson Lofgren: “Sometimes yes; sometimes no.”

Lee McGrath came back to podium **(44:35 – 48:30)**

“To Senator Larson’s question: the non-personal cost associated with the disposition of property after it has been forfeited; I can tell you that forfeiture is hardly in the weeds. So these details get lost, but Representative Becker does take into consideration the non-personal cost associated with the disposition by the state agency, and those state agencies will be reimbursed for all the costs of disposing of the assets.

Senator Larson (45:40): “Where is that in the bill?”

Lee McGrath: “Page 20, starting on line 23.”

Wayne Stenehjem, North Dakota Attorney General (48:40 – 53:35), testified in opposition of the bill. No written testimony.

“This chapter in North Dakota law does not go back to 17th century admiralty law. This goes back to 1991 law. We’ve spent a lot of time working on that bill. We amended the bill which was brought in by the then Attorney General. We made sure there was protection in

the bill that protects the innocent co-owner/lean owner, and also ensure due process for those accused of a crime. One of the things we discussed was that if there were problems in 1991, we could come back in 1993 and fix it. Now its 26 years later and we have not seen a reason to change this law in any way. The reason is because law enforcement and courts have been diligent to make sure we aren't taking rights away from the citizens. There's no abuse, so it makes me wonder why we are changing this law? The bill has some logistical issues as well because it requires that property in forfeiture gets sent to the state treasurer."

Chairman Armstrong (53:35): "Is probable cause the right standard?"

AG Stenehjem: "I think so. That standard has withstood scrutiny for a quarter of a century."

Rosa Larson, States Attorney for Ward County (55:00 – 1:20:40), testified in opposition of the bill. No written testimony. Rosa went over some things she didn't like about the bill.

"An example the proponents gave was that money was just taken without a nexus. That's not true. There has to be a nexus to criminal activity. Tip money and a small amount of marijuana, that's obvious that's not from that, so that wouldn't be enough. There has to be some kind of nexus to prove that before they can even take it, that it is indeed drug asset money, as opposed to tip money. Some of these scare tactics and other anecdotes they are telling just simply aren't happening in North Dakota. This bill is a boiler plate bill. A square peg they are trying to put into a round hole. Page 3 line 4 is a perfect example, where it says they are including a No Contest plea. North Dakota doesn't have a No Contest plea. Some other issues I have that remain in this bill are juvenile forfeitures. If you're recalling a conviction or adjudication of a juvenile, and when moving a forfeiture process up to district court; now you're in open court. Everything that happens in juvenile court is confidential. The public doesn't have access to that information. If you're taking a forfeiture action out of juvenile court, or taking that adjudication and bringing it up to district court, now you got that in the public eye and open records, and we can't have that. Anything that involves juvenile forfeitures needs to stay in juvenile courts.

On page 14, some exemptions they have, well, first, let's talk about innocent owners. Currently, as the Attorney General had indicated, innocent owners are protected, and lean holders are protected. When vehicles, for example, are taken, they are seized for criminal activity first. One of the first things they do is run a title check on that to see if there's a lean on that, see who the registered owner is, etc. A lot of times the drug dealers are not driving their own vehicles so they know they are not going to be able to seize and forfeit that vehicle. Homesteaded real property forfeiture doesn't seem to make sense to me. What if you have a situation like Breaking Bad, where my dad, who was a homesteaded, decides to have a meth lab. The government should have a right to take that property as part of the criminal or civil action. Civil forfeiture is used to prevent criminals from profiting from their crimes. This bill allows those criminals to profit from that. It is giving those assets back to the criminals to profit from."

Chairman Armstrong (1:03:20): "I understand the nexus, but it's the same nexus as is to win a prelim hearing. I get the timing, but let's not overemphasize the nexus either. Probable cause is in the legal setting the 2nd lowest burden we have."

Rosa Larson: "Correct. It is the 2nd lowest burden. However, I think the nexus of probable cause is to show that this is from drug sales. What we tell our officers, in our office at least,

is that you better have more than just the presence of drugs. You better have scales, packaging, proof of drug connections, etc. They better have something else besides just presence of drugs.”

Senator Myrdal (1:05:05): “You just said civil forfeiture is in place to prevent criminals from profiting. So replacing criminal, if I replaced that with accused, isn’t that a different? Criminal means that you are convicted already, that makes me question that.”

Chairman Armstrong: “We have to change language that’s accurate.”

Rosa Larson continued her testimony.

“In my world the people we are trying in court; they don’t have stuff in their name already. There is no bite to them on asset forfeiture. The joint and several liability is already seized for forfeiture and they are getting notice of that forfeiture. It comes to our office and we have a certain amount of time where we serve them with a summons and complaint. Regarding line 20 page 16, This adds an additional burden on to the judiciary as well and what is the legislation going to do on that. I think it’s naïve that if you give them their money back that they will use it for an attorney. I think they are going to do other things. I talked about the timeline that some are in seven days and some aren’t. I disagree with counsel when he said it should be by jury. Especially, given the time of burdens that need to be met, I think it should be in front of the judge who understands the nexus. I think anytime you have a floor or ceiling on price of forfeiture it just leaves it open for people to modify their actions to avert that.”

Jason Olson, Chief of Police Minot (1:20:48 – 1:25:40), testified in opposition. No written testimony.

“I see this bill as a win-win for drug criminals and not law enforcement. If it’s not broken, then don’t fix it. We’re told the reason this bill is needed is to prevent the government from stealing your stuff without due process. As you heard from others, and I hope you understand, that is just not the case. The Institute of Justice gave North Dakota an F rating, I guess I would ask them what do they give judges and prosecutors in North Dakota for ratings? I’d like to add that if there was indeed abuse of this then you should have examples of how this was abused. I asked the people in the House and nobody could give me any examples; with the exception of a BCI case involving a pay loader that was being used as an example of the abuse of the current law. In reality, it had nothing to do with asset forfeiture. It was a completely separate issue in that case.”

Chairman Armstrong (1:23:40): “Isn’t that the concern, especially in the time of shrinking budgets and the way we’re going, that if you need a new radio that there will be more asset forfeitures? Policing for profit?”

Chief Olson: “I’ve heard that concern. One of the things that this bill asks for is enhanced reporting and transparency of what the funding is used for. I think law enforcement across the board would be in favor of a requirement saying you need to give that information to the Attorney General who can provide an annual/biennial reporter on which agency seizes money and what that money was spent on. We’d have no problem with that.”

Dallas Carlson, Bureau of Criminal Investigation, briefly testified in opposition of the bill. (see attachment 4)

Julie Lawyer, Burleigh County Prosecutor (1:26:45 – 1:28:50) testified in opposition of the bill. (see attachment 5)

Bill Wocken, North Dakota League of Cities, testified in opposition of the bill. (see attachment 6)

Chairman Armstrong (1:29:25): “Do you track through municipalities?”

Bill Wocken: “Not to my knowledge.”

Land Erickson, McClain and Sheridan County States Attorney (1:29:50 – 1:33:50), testified in opposition of the bill. No written testimony.

“I just want to focus primarily on the differences between the bill and current law.”

Land Erickson discussed how requiring a conviction makes sense on a surface level, but many of the forfeitures they take part in don't have that.

“It depends on how we discover money during busts. Is the money stored in a package? Is it stored in an unusual manner? I could send you complaints where it's in air cleaners, it's in coolers underneath ice; different things like that. What you would then have to do is log in the complaints of why you think it's drug money, and that oftentimes comes down these days to the phone records.”

Chairman Armstrong (1:33:50): “Is money ever considered contraband?”

Land Erickson: “Not that I'm aware of.”

Chairman Armstrong: “What is the percent of those who don't contest the amount when you seize the cash?”

Land Erickson: “Very high percentage.”

Chairman Armstrong (1:35:05): “The way the feds proceed on these crimes, they may take 3-5 years of investigation before they charge. I assume some of those things are being built in the middle of your local law enforcement situation, and if you have to force a conviction then you're going to have to make a choice of either letting them keep the money or run into a conviction situation which may be counterintuitive to what the Federal Government's case is building.”

Land Erickson: “I believe the DNA of almost every federal drug case is a patrol officer that's out there being observant; does a stop; gets a large amount of drugs; that person flips and turns it into a federal drug case. But if you go back and look at those press releases when they arrest 20 people and stuff, you'll find it's usually a street cop at the beginning of it all.”

Chairman Armstrong (1:36:25): “Do you have any clearing house where you report what you seize to the county commission or how does that work?”

Land Erickson: "We set up two forfeiture accounts in the auditor's office. All money runs through the auditor's office. It's accounted in a separate accounting area. That's not necessarily a law, it's just best procedures for that."

Travis Finck, Deputy Director of North Dakota Commission on Legal Counsel for Indigents (1:37:25 – 1:39:00), testified in neutrality of the bill. (see attachment 7)

Chairman Armstrong closed the hearing on HB 1170.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1170 Committee Work
3/28/2017
29752

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to criminal forfeitures; relating to forfeiture remedies, forfeiture of property, forfeiture funds of motor vehicles, forfeitures for violation of ordinances, seizure procedures, and forfeiture procedures; relating to forfeiture proceedings, forfeiture disposition, seizure and transfer of forfeitable property, and actions to recover forfeitures.

Minutes:

Attachments

1,2

Chairman Armstrong began the discussion on HB 1170. All committee members were present.

Proposed amendments were reviewed by the committee. (see attachment 1,2)

Chairman Armstrong: "I reached out to the auditor's office and they were not consulted in the drafting of these amendments. which is what I want the committee to be aware of. I'm not sure they are comfortable doing them without extra funding. If we ask for this amendment the first thing I think we should do is, ask for a fiscal note to be drawn up."

Senator Myrdal: "If the auditor is going to be that involved, are we going to have them look into something that is feasible? To me the whole concept of the bill and the amendments are more of a study to me."

Senator Luick (3:00): "I feel the same way, we are getting into something here that yes there are bad actors in this avenue also, but if we change it over to what the amendment is doing than I feel we are better off in putting it into a study to see what we are doing."

Senator Larson: "My notes say that North Dakota doesn't have an issue of this. Then the AG said why would we try to fix a problem that doesn't exist. Because what we are doing in North Dakota with asset forfeiture like it was stated, I guess why should we let crime pay? I don't know why we wouldn't want to let the bill keep doing the same.'

Senator Myrdal (4:40): "I think the concept behind the bill is right. The issue to me is that it is written so comprehensively and it will affect so many agencies on a spur of the moment

without consulting those agencies or the auditor. I do have a comment that one of the people who testified said they are criminals, not accused criminals, and I found issue with that.”

Chairman Armstrong: “This is an expansive policy shift, at the end of the day, this becomes criminal asset forfeiture and not civil asset forfeiture. A thing that I noticed is that when there is a criminal forfeiture of say 8,000 dollars, most of those people don’t come into court to try to defend it. If it was my money and I earned in legitimately, I would be in court defending it. If there are abuses in our system, we have a statutory code there where we can go in and deal with the code and we can show them what we see.”

Senator Luick motioned Do Not Pass. **Senator Osland** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Larson carried the bill.

Chairman Armstrong ended the discussion on HB 1170.

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1170**

Senate Judiciary 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 Senator Luick Seconded By Senator Osland

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Larson

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

REPORT OF STANDING COMMITTEE

**HB 1170, as engrossed: Judiciary Committee (Sen. Armstrong, Chairman) recommends
DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).**
Engrossed HB 1170 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

HB 1170

#1
1170
1-16-17

Foreword

Civil forfeiture threatens the constitutional rights of all Americans. Using civil forfeiture the government can take your home, business, cash, car or other property on the mere suspicion that it is somehow connected to criminal activity—and without ever convicting or even charging you with a crime. Most people unfamiliar with this process would find it hard to believe that such a power exists in a country that is supposed to recognize and hold dear rights to private property and due process of law.

Civil forfeiture has all the hallmarks of an inviting target for public-interest litigation and advocacy: a cutting-edge legal controversy, sympathetic property owners who have little or no involvement in criminal activity, and simple, outrageous facts that show ordinary Americans facing the loss of their property.

The Institute for Justice has made combatting civil forfeiture a top priority in our work to restore constitutional protections for private property rights. And with the publication of this new edition of *Policing for Profit: The Abuse of Civil Asset Forfeiture*, we document in the greatest detail possible the sweep of the forfeiture power.

The seeds of forfeiture abuse were sown in 1984 when Congress expanded federal civil forfeiture laws and created a financial incentive for law enforcement to forfeit property. Before then, all forfeited cash and proceeds from forfeited property had gone to the general fund of the U.S. Treasury. But starting in the mid-1980s, forfeiture revenue instead went to a newly created fund controlled by federal law enforcement. As a result, all federal forfeiture revenue can go back to the very agencies charged with enforcing the law, giving them a financial stake in forfeiture efforts. State and local agencies can also participate in forfeiture with the feds and receive a cut of the revenue through the benign-sounding “equitable sharing” program. Around the same time, many states followed Congress’ lead and broadened their own state forfeiture laws while also adding incentives to police for profit.

Not surprisingly, the use of forfeiture at the federal and state levels exploded once profit incentives kicked in. And tales of abuse began to pour in. Throughout the early 1990s, newspapers such as the *Pittsburgh Press* and *Orlando Sentinel* and news programs like *20/20* featured investigative series and exposés highlighting the confiscation of property from owners never convicted of or even charged with a crime.

IJ’s involvement with civil forfeiture began only two years after our founding when we filed an *amicus* brief with the U.S. Supreme Court in *United States v. James Daniel Good*, critiquing civil forfeiture from a property rights perspective. In 1993, the Court issued an important ruling protecting the due process rights of certain property own-

Every year, police and prosecutors across the United States take hundreds of millions of dollars in cash, cars, homes and other property—regardless of the owners' guilt or innocence. Under civil forfeiture laws, the government can seize this property on the mere suspicion that it is connected to criminal activity. No charges or convictions are required. And once property is seized, owners must navigate a confusing, complex and often expensive legal process to try to win it back. Worst of all, most civil forfeiture laws give law enforcement agencies a powerful incentive to take property: a cut, or even all, of forfeiture proceeds.

This second edition of *Policing for Profit* examines civil forfeiture laws and activity nationwide, demonstrating how financial incentives to seize property, in combination with weak protections for property owners, put people's property at risk. The report grades the civil forfeiture laws of each state and the federal government, documents remarkable growth in forfeiture activity across the country, and highlights a worrisome lack of transparency surrounding forfeiture activity and expenditures from forfeiture funds. Key findings include:

Forfeiture activity has exploded, particularly in the new millennium.

Forfeited cash and proceeds from the sale of forfeited property generate revenue for the government—and provide an important measure of law enforcement's forfeiture activity.

- * In 1986, the Department of Justice's Assets Forfeiture Fund took in \$93.7 million in revenue from federal forfeitures. By 2014, annual deposits had reached \$4.5 billion—a 4,667 percent increase.
- The forfeiture funds of the DOJ and Treasury Department together took in nearly \$29 billion from 2001 to 2014, and combined annual revenue grew 1,000 percent over the period.
- Total annual forfeiture revenue across 14 states more than doubled from 2002 to 2013. Those 14 states were the only states for which the Institute for Justice could obtain forfeiture revenues for an extended period.

Civil forfeiture far outpaces criminal forfeiture.

* Criminal forfeiture requires a criminal conviction to deprive people of their property. By contrast, civil forfeiture allows law enforcement to take property from innocent people never convicted of or even charged with a crime, making it easier for the government to forfeit property and harder for property owners to fight back.

- Just 13 percent of Department of Justice forfeitures from 1997 to 2013 were criminal forfeitures; 87 percent were civil forfeitures.
- Among DOJ civil forfeitures, 88 percent took place "administratively." Administrative forfeitures happen automatically when a property owner fails to challenge a seizure in court for any reason, including the inability to afford a lawyer or a missed deadline to file a claim. The seized property is simply presumed "guilty" without a neutral arbiter such as a judge determining whether it should be permanently taken from its owner.

Federal and most state civil forfeiture laws put innocent property owners at risk.

ND and MA
are the only
states with an
'F' rating

This report's grades for state and federal civil forfeiture laws indicate the threat they pose to innocent property owners. Laws that earn poor grades provide law enforcement with lucrative incentives to pursue forfeitures and afford weak protections to property owners. High grades signify laws that limit or ban forfeiture proceeds directed to law enforcement and offer stronger protections against unjust forfeitures.

- 35 states earn grades of D+ or worse.
- Federal civil forfeiture laws are among the nation's worst, earning a D-.
- New Mexico and the District of Columbia earn the highest grades, thanks to 2015 reforms that eliminated financial incentives for civil forfeiture and improved property rights protections.

State and local law enforcement's participation in federal "equitable sharing" has soared, and 2015 policy changes are unlikely to reverse the trend.

Equitable sharing allows state and local law enforcement to team with the federal government to forfeit property under federal law instead of state law. Participating agencies receive up to 80 percent of proceeds, creating a strong incentive to use equitable sharing to circumvent more restrictive state laws. The Department of Justice announced new policies in January 2015 intended to curb one type of equitable sharing—federal "adoptions" of locally seized assets. But the changes and subsequent clarifications largely left intact another vehicle for equitable sharing—joint task forces and investigations involving federal law enforcement.

- Between 2000 and 2013, annual DOJ equitable sharing payments to state and local law enforcement more than tripled, growing from \$198 million to \$643 million. In all, the DOJ paid state and local agencies \$4.7 billion in forfeiture proceeds from 2000 to 2013.
- Only 18 percent of those proceeds resulted from federal adoptions of locally seized assets. The lion's share—82 percent—resulted from joint task forces and investigations, procedures largely unaffected by new DOJ rules.
- In a nationwide ranking, Rhode Island, California, New York and Florida rank worst for equitable sharing participation, even after accounting for the rate of drug arrests by state. South Dakota, North Dakota and Wyoming rank at the top for their less frequent use of equitable sharing.
- New Mexico's 2015 reform effectively ends equitable sharing participation in the state, and the District of Columbia's reform will do the same in the nation's capital by 2018.

Most state and federal civil forfeiture laws lack even basic transparency requirements, leaving the public in the dark about most forfeiture activity.

Poor public reporting about law enforcement's use of civil forfeiture makes it difficult, if not impossible, for lawmakers and the public to hold agencies accountable.

- * NOT ND
- Only 11 states and the federal government make any kind of forfeiture information publicly accessible online. Another three states and the District of Columbia will put forfeiture records online in 2016. Obtaining information elsewhere requires public records requests, which are often arduous and ineffective.
 - The limited information available is plagued by missing data and typically lacks key details, such as whether a forfeiture was civil or criminal or, in some cases, the type of property seized.
 - Although the Department of Justice's forfeiture database tracks more than 1,300 variables about cash and property seizures, not one indicates whether a criminal charge or conviction accompanied a forfeiture. The DOJ carefully tracks and reports forfeiture revenue, but fails to publicly report whether forfeitures target proven criminals.

* **Nearly all expenditures of forfeiture proceeds are hidden from public view.**

Forfeiture laws typically place few limits on law enforcement spending of forfeiture proceeds and impose even fewer checks to ensure that expenditures are proper or legal. Scant reporting requirements heighten the risk of abuse by shielding expenditures from public scrutiny.

- The few data available for the federal government and a handful of states indicate only broad categories of spending, making it impossible to evaluate individual expenditures.
- When expenditures were provided by category, most known spending by state and local agencies was listed under equipment, "other," and salaries and overtime. Only tiny fractions went toward substance abuse or crime prevention programs.
- In 2007, law enforcement agencies in eight states spent more than \$42 million in equitable sharing payments on "other" items. In 2012, agencies in four states spent \$13.7 million in state forfeiture money on "other."

Civil forfeiture laws pose one of the greatest threats to property rights in the nation today. They encourage law enforcement to favor the pursuit of property over the pursuit of justice, and they typically give the innocent little recourse for recovering seized property. And without meaningful transparency, law enforcement faces little public accountability for its forfeiture activity or expenditures from forfeiture funds.

LEO'S ARE NOT
ABUSING LIKE
THIS IN ND

The best solution would be to simply abolish civil forfeiture. Short of that, lawmakers should eliminate financial incentives to take property, bolster property rights and due process protections, and demand transparency for forfeiture activity and spending. No one should lose property without being convicted of a crime, and law enforcement agencies should not profit from taking people's property.

Introduction

In February 2014, 24-year-old Charles Clarke lost his entire life savings—not to identity theft or a bad investment, but to law enforcement officials in the Cincinnati/Northern Kentucky International Airport.¹ After visiting relatives in Cincinnati, Clarke was preparing to board a flight home to Florida. He carried with him \$11,000 in cash. Over five years, Clarke had saved this money from financial aid, various jobs, gifts from family, and educational benefits based on his mother's status as a disabled veteran. His bank had no physical branches in his area, so Clarke kept his money at home. He had taken it with him to Ohio because he and his mother were moving to a new apartment, and he did not want to risk its getting lost in the move.

Just as Clarke was about to board the plane, law enforcement officials seized his money, claiming his checked bag smelled of marijuana. Although Clarke was a recreational smoker at the time, the officers found no drugs or anything else illegal on him or in his carry-on or checked bag. In other words, the officers found no evidence that he was guilty of any crime before seizing his money. In the upside-down world of civil forfeiture, they did not have to.

It has been called “one of the most controversial practices in the American criminal justice system.”² But civil forfeiture was, until the 2010s, largely unknown to the public, to pundits and even to elected officials, despite hundreds of millions of dollars in property being seized and forfeited every year across the United States.

Civil forfeiture is a mechanism by which law enforcement agencies can seize and keep property on the mere suspicion that it is connected to a crime.³ In contrast to criminal forfeiture, where property is taken only after a criminal conviction, civil forfeiture allows law enforcement to take property from innocent people who have never been formally accused of a crime, let alone convicted of one. This evasion of the criminal justice system is based on a legal fiction in which property thought to be connected to an alleged crime is considered “guilty” of having somehow assisted in the commission of that crime. In criminal forfeiture, the government proceeds against a person charged with a crime; in civil forfeiture, the government proceeds against property.

The civil forfeiture process generally includes two distinct actions: seizure and forfeiture. Seizure occurs

when law enforcement officials—police officers, sheriff's deputies, federal agents—confiscate property they suspect is related to criminal activity. Practically anything can be seized by law enforcement—cash, vehicles, airplanes, jewelry, homes, musical instruments, farm implements, home furnishings, electronics and more. Once property has been seized, prosecutors file civil actions against it in order to forfeit, or keep, it. This process that often produces odd-sounding case names like *State of Texas v. One 2004 Chevrolet Silverado*⁴ or *United States v. One Solid Gold Object in Form of a Rooster*.⁵

Because such actions are against property, not people, and because they are civil actions, not criminal, owners caught up in civil forfeiture proceedings lack rights afforded the criminally accused, such as the right to counsel. And under civil forfeiture, the government usually faces a lower evidentiary threshold to forfeit property than it does to convict a person of a crime. Even people who had nothing to do with an alleged crime can lose their property through civil forfeiture unless they can prove their innocence—flipping the American legal tradition of innocent until proven guilty on its head. Most troublingly, civil forfeiture laws in most states and at the federal level give law enforcement agencies a financial stake in forfeitures by awarding them some, if not all, of the proceeds. This financial incentive creates a conflict of interest and encourages the pursuit of property instead of the pursuit of justice.

North Dakota earns an **F** for its civil forfeiture laws:

- Lowest bar to forfeit and no conviction required
- Poor protections for innocent third-party property owners
- As much as 100% of forfeiture proceeds go to law enforcement

State Civil Forfeiture Laws

Along with Massachusetts, North Dakota has the worst civil forfeiture laws in the country, scoring an F. In North Dakota, law enforcement only needs to meet the lowest possible standard of proof—probable cause—to forfeit property. And when property has been used for illegal activity without the owner’s knowledge, the burden is on the owner to prove her innocence in order to recover it. Finally, North Dakota law enforcement agents operate under a particularly dangerous financial incentive: Agencies receive up to 100 percent of forfeiture proceeds up to \$200,000. If the government’s forfeiture fund exceeds \$200,000 over any two-year budget period, the excess must be deposited in

the general fund—encouraging law enforcement agencies to adopt a use-it-or-lose-it mentality.

The story of Adam Bush illustrates the hazards these laws pose to property owners. In August 2013, Bush was charged with stealing a safe full of cash. A jury later found him innocent of any wrongdoing, and the state’s attorney even admitted the evidence against Bush was “highly circumstantial.” Nonetheless, county sheriffs were able to forfeit Bush’s alleged getaway car. Unfortunately, it is impossible to get a good picture of the extent of forfeitures in North Dakota because law enforcement agencies are not required to track or report their forfeitures.

State Forfeiture Data

No data available. Law enforcement agencies are not required to track or report their forfeitures.

North Dakota is the 2nd best state for federal forfeiture, with \$550,000 in Department of Justice equitable sharing proceeds from 2000 to 2013.

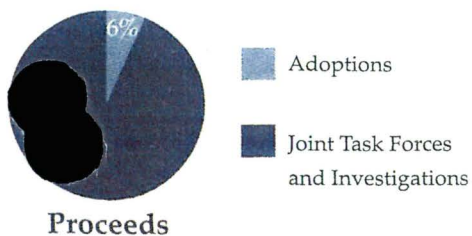
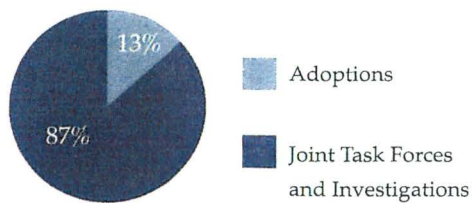
Federal Equitable Sharing

North Dakota has made such little use of the Department of Justice's equitable sharing program that the only state with a better track record is its neighbor South Dakota. Between 2000 and 2013, North Dakota law enforcement agencies received \$550,000 in equitable sharing proceeds, averaging nearly \$40,000 per calendar year. Just 75 assets were seized during this period, which averages out to five equitable sharing assets seized each calendar year. Eighty-seven percent of assets seized and 94 percent of proceeds received resulted from joint task forces and investigations, equitable sharing practices largely untouched by the DOJ policy intended to curb equitable sharing. North Dakota agencies also received almost \$1.4 million in Treasury Department forfeiture funds between 2000 and 2013, averaging out to over \$97,000 each fiscal year.

DOJ and Treasury Equitable Sharing Proceeds

Year	DOJ (calendar years)	Treasury (fiscal years)
2000	\$50,660	\$711,000
2001	\$15,705	\$2,000
2002	\$34,384	\$0
2003	\$7,353	\$0
2004	\$19,167	\$296,000
2005	\$40,874	\$0
2006	\$49,348	\$0
2007	\$78,824	\$0
2008	\$12,568	\$349,000
2009	\$91,410	\$0
2010	\$8,524	\$0
2011	\$26,582	\$0
2012	\$96,481	\$2,000
2013	\$18,604	\$0
Total	\$550,483	\$1,360,000
Average per year	\$39,320	\$97,143

DOJ Equitable Sharing, Adoptive vs. Joint, 2000–2013



DOJ Equitable Sharing Proceeds, 2000–2013 (in millions)

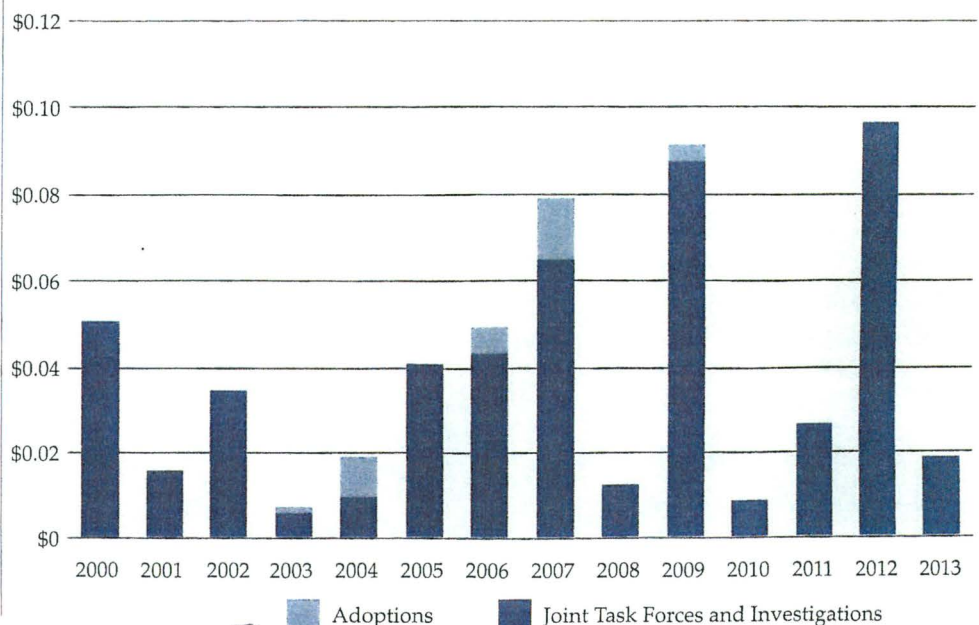
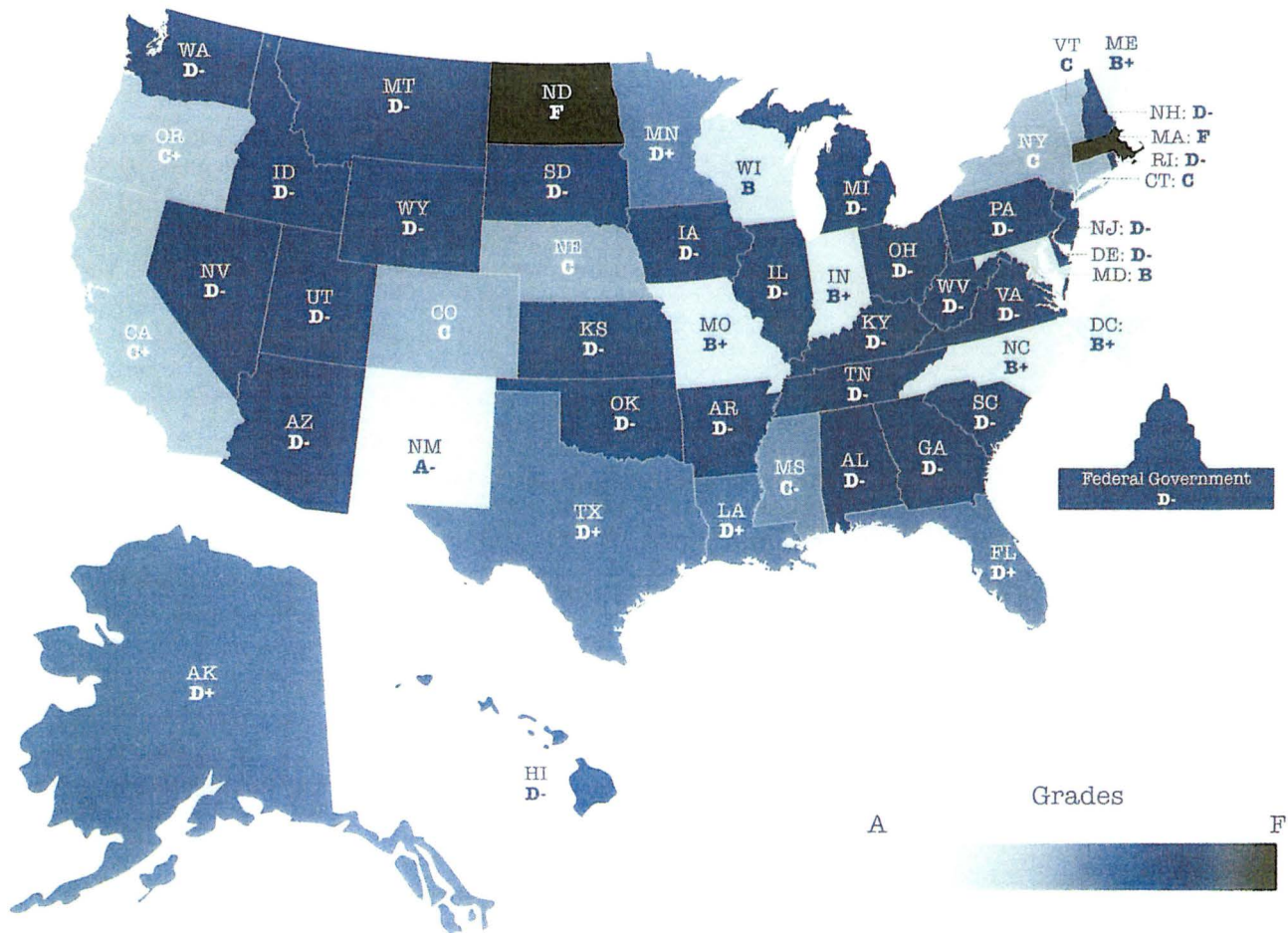


Figure 9: Civil Forfeiture Law Grades



A scan down the list in Table 1 reveals the poor state of affairs in civil forfeiture across the United States. Only 14 states and the District of Columbia earned grades of C or better, and 35 states earned grades of D+ or worse. The federal government earned a D-, putting its civil forfeiture laws among the nation's worst and exposing all Americans to yet another threat to their property rights. These results make it clear that significant reform is needed.

Yet, thus far, reform has been slow in coming. When the first edition of *Policing for Profit* was released in 2010, civil forfeiture was little known among members of the public and even elected officials. As awareness grew, calls for reform increased, resulting in efforts in 2013, 2014 and 2015 in at least 14 states and in Congress. To date, however, only four states—New Mexico,⁵⁴ Nevada,⁵⁵ Montana⁵⁶ and Minnesota⁵⁷—and the District of Columbia⁵⁸ have substantively reformed their laws to increase protections for property owners. A fifth state, Vermont,⁵⁹ also reformed its laws but offset improvements by giving law enforcement a new financial incentive to seize.

Of these changes, New Mexico's were the most sweeping. The reform was supported by a bipartisan group of legislators and reluctantly signed into law by Gov. Susana

civil forfeiture and replaced it with criminal forfeiture. Previously, forfeiture entailed civil litigation independent of criminal prosecution; now the government must first convict a suspect in criminal court. Then the same judge and jury determine if the property in question was linked to that crime. As for innocent owner claims, now the government must also prove that the person claiming to be an innocent owner had actual knowledge of the crime giving rise to the forfeiture—a significant change from the previous law, which, in most instances, placed the burden on property owners to prove their own innocence. The new law of the Land of Enchantment also eliminated law enforcement's financial incentive to pursue forfeitures. Now all forfeiture monies must be deposited in the state's general fund rather than in agency accounts, where 100 percent of forfeiture funds had gone previously. Due to these changes, the state's grade jumped from a D- to an A-. New Mexico's reforms set a clear example for other states to follow in protecting people from unjust forfeitures.

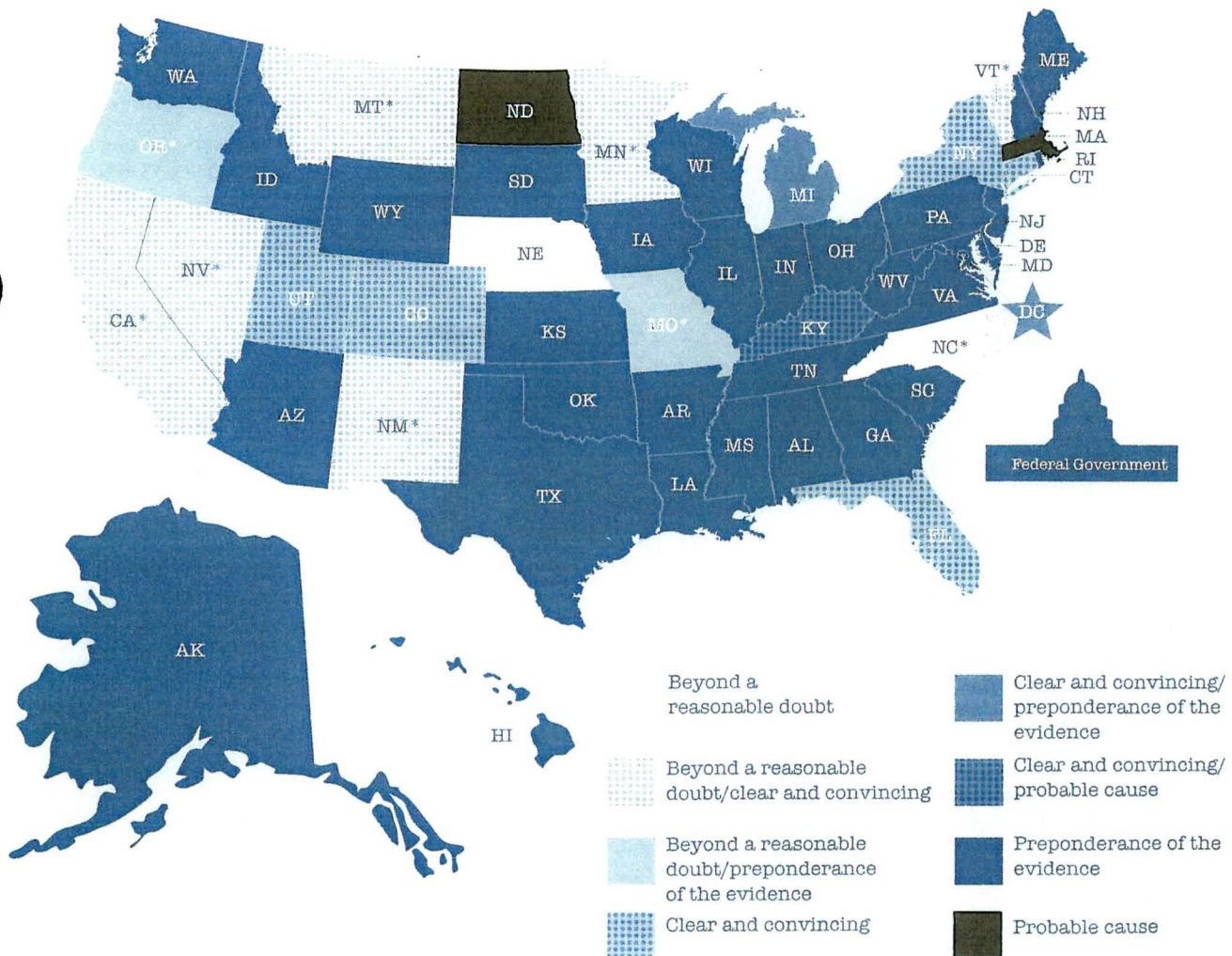
Nevada's and Montana's new laws now require a conviction in criminal court as a prerequisite to forfeiture of property in civil court, increasing protections for property owners. Reforms in Montana also shifted the

proof beyond a reasonable doubt for most civil forfeitures, and North Carolina requires criminal convictions in most cases. California sets a standard of beyond a reasonable doubt to forfeit most kinds of property, with a criminal conviction required (though not necessarily the owner's conviction). In 2015, New Mexico abolished civil forfeiture. It now requires a criminal conviction with proof beyond a reasonable doubt for all forfeitures; after securing a conviction, the government must prove in the same criminal proceeding that seized property is connected to the crime by "clear and convincing evidence," a standard lower than reasonable doubt but higher than preponderance of the evidence. Minnesota, Montana, Nevada and Vermont now also demand criminal convictions, followed by civil trials linking seized property to the crime by clear

and convincing evidence. Missouri requires a criminal conviction and proof by a preponderance of the evidence that seized property is connected to the crime; Oregon law is similar for forfeitures of personal property (which account for most forfeitures) but sets a higher standard of clear and convincing evidence to forfeit real property.

Five states—Colorado, Connecticut, Florida, New York and Utah—demand that the government provide clear and convincing evidence of a property's connection to criminal activity for most or all civil forfeitures. The remaining states and the District of Columbia apply different standards to different types of property or under different circumstances. The State Profiles and Appendix B provide greater detail.

Figure 7: Standards of Proof for Civil Forfeiture



conviction required for most or all forfeitures.

States with multiple standards apply different standards of proof to different types of property or under certain circumstances. Oregon requires a conviction and clear and convincing evidence to forfeit real property. See Appendix B for sources.

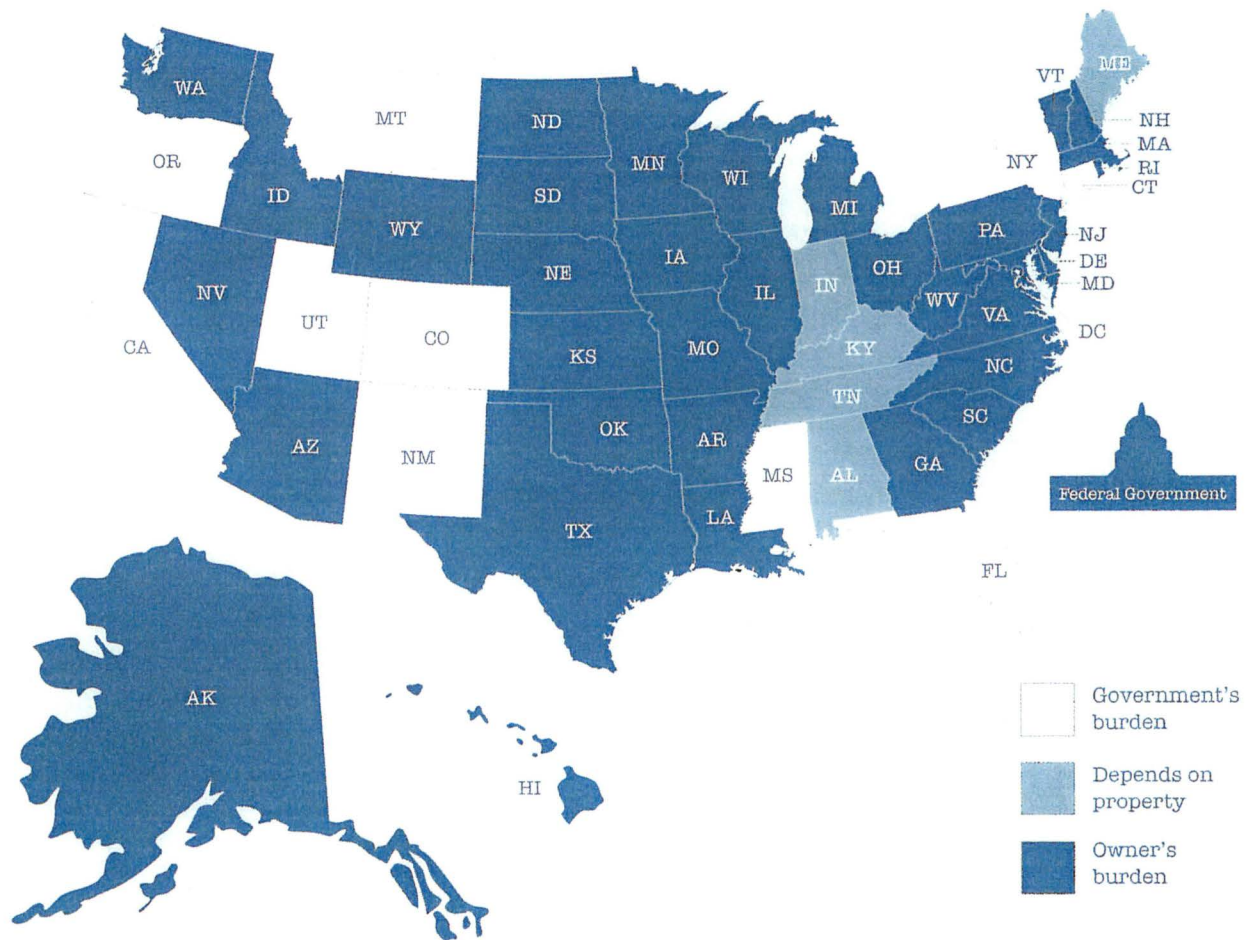
Cox lost her truck without ever having been accused of a crime and without ever having gotten her day in court. Innocent third-party owners who do make it to court will often face a bizarre and almost impossible task: proving their own innocence.

As shown in Figure 8, innocent owner provisions in federal law and 35 states place the burden of proof on owners, meaning that owners must prove they had nothing to do with the alleged crime. In essence, most civil forfeiture laws presume that people are connected to any criminal activity involving their property and force them to prove otherwise to recover it. This is precisely the opposite of what happens

in criminal trials, where the accused is presumed innocent until proven guilty by the government. It also often poses a practical impossibility, as it requires people to prove negative—that they did not know about or consent to the illegal use of their property.

Only 10 states and the District of Columbia demand that the government prove owners did something wrong before forfeiting their property. In the remaining states, whether the burden of proof falls on the owner or the government generally depends on the type of property involved. The State Profiles and Appendix B provide greater detail.

Figure 8: Innocent Owner Burdens in Civil Forfeiture Laws



Note: See Appendix B for sources.

Chair Koppelman and Members of the Committee:

My name is Julie Lawyer and I am prosecutor with the Burleigh County State's Attorney's Office. I have been a prosecutor for 17 years. I am here this morning in opposition of House Bill 1170.

Asset forfeiture is an effective tool used to deter people from committing offenses. From my experience, asset forfeiture is used primarily in cases of drug trafficking, human trafficking, and sex crimes against children. In drug cases, prosecutors forfeit money derived from drug sales, property exchanged for drugs, and vehicles used to transport drugs for sale. In human trafficking cases, prosecutors forfeit money derived from the trafficking of victims sold for sex, vehicles used to transport victims sold for sex, and computers or other electronic devices used to advertise victims for sex. In sex crimes against children, prosecutors forfeit computers or other electronic devices used to send pornography to children, lure children for sexual purposes, or devices that have been used to create, distribute, or store child pornography.

The statutes we have now for asset forfeiture are not broken and yet, House Bill 1170 would throw out the current law and completely rewrite it. This whole bill is problematic, but there were a few provisions that stuck out most.

First, proposed in this bill is that asset forfeiture would be tied to a criminal prosecution. If the criminal case were dismissed or resulted in an acquittal, the property would have to be returned. There are many reasons a case may be charged, or may be dismissed or result in an acquittal. For example, we don't have a money laundering statute, so we may not be able to charge the person who is laundering drug money, but that shouldn't be a bar to forfeiting that drug money. In human trafficking cases, we typically have non-cooperative victims who are too afraid to testify and disappear before trial, requiring us to dismiss the case, or go to trial and risk acquittal because the main witness is not available to testify. This bill would require us to return money derived from prostitution and vehicles used to transport victims for sex because we were unable to secure that conviction. Also, the burden of proof is higher in a criminal case. While we may not be able to prove that the defendant was trafficking a victim for sexual purposes to a jury's satisfaction, but we may be able to prove, under our lesser burden for forfeiture, that the money was derived from human trafficking.

Another problem is the provision that would require a judge to order return of money or property for the person to hire an attorney to defend against criminal charges or asset forfeiture if the proceeds from the person's illegal activity is the only reasonable means for a defendant to pay for an attorney. While in theory, this may sound like a good idea so the State doesn't have to pay

for indigent counsel, allowing a drug dealer to use profits from drug sales or a pimp to use profits from sex sales to his or her benefit does not deter the crime. In fact, it encourages it. I had a specific case where a drug dealer told a judge through the presentence investigation, that work was for chumps and he was selling cocaine so he could make a quick buck. Allowing him to use that drug money to his benefit would only solidify his mentality that drug sales was a great way to make money quickly, especially since he could keep it.

Another provision of this bill states that after forfeiture is ordered, a defendant can petition the court to determine if the forfeiture was unconstitutionally excessive or grossly proportionate to the crime. I had a case where a man was found in possession of over \$10,000 and about three grams of methamphetamine. Through our investigation, we learned that the \$10,000 came from the sale of methamphetamine and the last three grams he had saved for himself. He was going to use the \$10,000 from profits to purchase more methamphetamine to sell. When confronted with the evidence, he admitted that was what was happening. He was charged with possession of methamphetamine and we forfeited his \$10,000 drug money. Under this bill, if the defendant didn't have the methamphetamine with him, there would have been no criminal charges and we would not have been able to forfeit the drug money. On its face, losing \$10,000 seems grossly disproportionate with possession of three grams of methamphetamine. However, a drug dealer who is going to use \$10,000 in drug money to purchase more drugs should not be able to keep it. At that time, with \$10,000, he would have been able to purchase about one-quarter pound of methamphetamine.

There is a section that states property with a bond fide security interest cannot be forfeited and also any lien on the property must be paid first. The current statute provides for protection of a secured creditor or lien holder but only for a security interest or lien was perfected before the property was seized or subject to forfeiture. I had a drug case where the defendant had transporting several pounds of methamphetamine to North Dakota from out of state using several vehicles. We seized those vehicles for forfeiture. We negotiated a plea deal where he would forfeit his vehicles. The day after he agreed to forfeit them, he took out a loan using the vehicles as collateral, of course, not telling the bank that they were in possession of law enforcement and that he had agreed to forfeit them. He was headed to prison and intended to default on the loan. If this bill were in place, the State would be unable to forfeit the property and even if the property were forfeited, the State would have to provide all money from the sale of the vehicles to the bank and, in this case, the loan was in excess of the vehicles' worth. The defendant would have made even more money cheating the bank and the State.

This bill seems to presume that the current asset forfeiture law is being abused. I do not know of any cases where asset forfeiture was not warranted. Asset forfeiture is supposed to be a means to

House Judiciary Committee
House Bill 1170
Testimony of Julie Lawyer, Assistant Burleigh County State's Attorney
January 16, 2017

dissuade persons from committing crimes by taking away the profits and benefits associated with criminal offenses which is the incentive for people to commit certain offenses. Asset forfeiture isn't a criminal penalty and it shouldn't be treated like one.

Thank you.

CHAPTER 20.1-10
CONFISCATION

#3
1170
1-16-17

20.1-10-01. Property unlawfully taken, transported, or used to be confiscated by certain game and fish officials - Procedure.

The director, deputy director, or any bonded game warden shall seize all wild birds, wild animals, or fish, or any part thereof, taken, killed, or possessed, or transported contrary to law, and shall seize all dogs, guns, seines, nets, boats, lights, automobiles, vehicles, instrumentalities, appliances, and devices unlawfully used, or held with intent to be unlawfully used, in pursuing, taking, or attempting to take, concealing, or disposing of wild birds, wild animals, or fish, or any part thereof. Property used or held with the intent to be used unlawfully in pursuing, taking, attempting to take, concealing, or disposing of wild birds, wild animals, or fish may not be confiscated when the violation is a noncriminal offense. All property seized must be held subject to the order of a court of competent jurisdiction. When property is confiscated, the confiscating officer shall bring the alleged offender before a court of competent jurisdiction for the purpose of determining disposition. However, if the court having nominal jurisdiction over the alleged wrongdoer determines that the value of the confiscated property exceeds the court's jurisdictional limitations, the matter may, upon the motion of either party, be removed to district court for determination. If the alleged offender desires an attorney, a reasonable time must be given to secure counsel. If it is not feasible to bring the alleged offender immediately before the court, the property may not be seized or confiscated if the alleged offender gives a receipt to the officer assuring delivery before the court when the matter comes up. The receipt must contain the provisions of this section to advise the alleged offender of the law.

20.1-10-02. Wildlife packed or commingled with contraband must be confiscated.

If any wildlife, or parts thereof, is packed, stored, or contained in the same shipment, bag, or other receptacle or is otherwise commingled, and one or more has been taken in violation of this title, the entire contents must be confiscated.

20.1-10-03. Confiscated property - Courts having jurisdiction - Requisites for disposition.

A court having jurisdiction of an alleged offense against this title may order the disposition of all birds, animals, or fish, or any part thereof, or other property that has been confiscated. This order may be entered only after a hearing duly had upon proper notice to the owner and after due and proper finding by the court that the property:

1. Was taken, killed, possessed, or being transported contrary to law by the person from whom it was seized.
2. Was being used in violation of this title at the time it was seized.
3. Had been used in violation of this title within six months previous to the time it was seized.

20.1-10-04. Who to sell confiscated property - Bills of sale - Disposition of proceeds of sale.

All confiscated property that a court has ordered to be disposed of by the director must be turned over to the North Dakota wildlife federation to be sold for the highest price obtainable. On any sale of animals, birds, or fish, or parts thereof, the seller shall issue to each purchaser a bill of sale on forms prepared and furnished by the director. The sale proceeds, after the expenses of the seizure and the sale are deducted, must be remitted to the North Dakota wildlife federation report all poachers fund. The remittance must be accompanied by a complete and certified report of the sale supported by proper vouchers covering all deductions made for expenses. This report must be filed for record with the director.

20.1-10-05. Confiscated perishable property may be sold without court order - Who may sell.

Perishable property confiscated pursuant to this chapter may be sold without a court order by the officer making the seizure for the highest price obtainable. The proceeds of such sale must be deposited in a court of competent jurisdiction to await disposition by the court.

20.1-10-06. Search warrants - Issuance - Contents.

Whenever any person makes a complaint to any judge having authority to issue warrants in criminal cases that the person knows or has good reason to believe that any wild animal, bird, or fish, or any part thereof, taken, killed, or possessed contrary to this title, is concealed in any particular house or place, or in the living quarters of any person, the judge shall examine such complainant on oath, reduce the complaint to writing, describing as particularly as possible the place where such wild animal, bird, or fish, or part thereof, is alleged to be concealed, and cause such written complaint to be subscribed by the complainant. If it appears to the judge there is reasonable cause to believe that the facts alleged in the complaint are true, the judge shall issue a warrant containing the substance of the complaint and the description of the premises. This warrant must require the officer to whom it is directed forthwith to search such premises; to seize any wild animal, bird, or fish, or part thereof, found on such premises; and to bring them and the person in whose possession they are found, before the judge who issued the warrant, or before some other judge having jurisdiction.

20.1-10-07. Property seized under warrant - Officer's return to describe - Safekeeping - Disposal.

Any officer executing a warrant issued pursuant to section 20.1-10-06 shall, in the officer's return, describe the property seized with as much particularity as possible. The seized property must be safely kept upon direction of the judge as long as necessary to use as evidence. If a conviction is obtained, either by trial or by plea of guilty, the seized property must be disposed of under an order of the court before whom the prosecution was brought.

North Dakota Wildlife Federation

Ensuring abundant wildlife, wildlife habitat, and access to wildlife recreational opportunities



TESTIMONY OF MICHAEL McENROE NORTH DAKOTA WILDLIFE FEDERATION HOUSE BILL 1170 HOUSE JUDICIARY COMMITTEE JANUARY 16, 2017

Chairman Koppelman and Members of the House Judiciary Committee:

For the record, I am Mike McEnroe and I am representing the North Dakota Wildlife Federation. The Federation has 1,400 members in eighteen affiliated clubs and organizations across the State of North Dakota. The Federation is the largest sportsmen's club in the State.

Our concern with HB 1170 is Sections 8, 9, and 10 found on pages 12 and 13 of the bill, dealing with the disposition of confiscated property under Chapter 20 of the Century Code, for the North Dakota Game and Fish Department.

The Report All Poachers program (RAP program) was created by the State Legislature in 1989. According to the Century Code, the Report All Poachers program was created to allow citizens who witnessed an alleged game and fish violation to report the incident and remain anonymous. If the tip or phone call results in a conviction, the caller is



eligible for a reward from the RAP program. The Century Code also provides that forfeited property is to be turned over to the North Dakota Wildlife Federation, sold at public auction for the highest price and used to fund the RAP program. After a successful conviction, the Game and Fish Department warden calls the Federation's Treasurer and provides the name and address of the informant to receive the reward. One of the advantages of the Federation's administering the RAP program is the anonymity of the caller or reporter is guaranteed. The Federation's records on rewards are not open to public disclosure. The warden and our Treasurer are the only two people who know the identity of the informant.

Proceeds from the periodic public auction (about once in four years) of seized property provide the majority of the 90 percent of the funding for the RAP program. The RAP program also receives court directed fines from convicted game and fish violators and a small amount in tax deductible contributions. In 2014, the last auction netted \$ 36,124 in income. Court directed fines in 2016 generated \$ 6,425, and donations have totaled \$ 1,400. Income from the public auction remains the prime source of funding to maintain the RAP program.

Rewards to date paid in 2016 include about \$ 7,200 in rewards, and \$ 9,000 in promotional materials. He Federation annually budgets \$ 10,000 for rewards, and \$ 8-10,000 for promotional materials. Without the funds from the periodic public auction, there will be no sustainable funding for the RAP program.

According to the Policy and Guidelines Agreement for the RAP program between the North Dakota Game and Fish Department and the Federation, any confiscated property needed by the Department is retained by the Department for its needs and uses. Seized equipment has been used in undercover law enforcement operations and for public education. Under HB 1170, the Game and Fish Department would lose this option. All seized and forfeited property would revert to the State Treasurer.

While HB 1170 does allow birds, animals and fish to be transferred to the Federation for sale at public auction, the last two RAP auctions have had no bird, fish or animals or mounts.

The North Dakota Wildlife Federation respectfully requests that Sections 8, 9, and 10 of HB 1170 be removed and deleted from consideration.

I would stand for any questions the Committee may have.

Seizure vs Forfeiture

Civil Asset vs Criminal Asset Forfeiture

Seizure is the law enforcement officer side of things.

Forfeiture is the prosecution side of things.

- 1) Because this bill doesn't change anything with regard to seizure, it will not affect LEO's at all. They will continue to seize assets when they see fit, and with probable cause.
- 2) This bill DOES change what happens after that. Forfeiture litigation would take place only AFTER a person is convicted of a crime. If a person is not convicted, the assets are returned. If it is found there is no cause to charge a person with a crime, the assets will be returned.
- 3) When the assets are forfeited, the resulting funds will be directed to the state's General Fund, rather than to Agency funds. Because our Law Enforcement has NOT been abusing our terrible forfeiture laws, this will not be a significant impact for them at all. The legislative body is responsible for appropriating revenue to the state. Not only does placing forfeiture in agency funds create a perverse incentive for law enforcement (if we had bad actors), but it abrogates our legislative responsibility of "the power of the purse".
- 4) This bill helps to establish the right of ND citizens to ND laws, rather than blindly acquiescing to Federal Forfeiture programs.

ATT00001 (00000002)

Thank you.

Rick Becker
District 7
Bismarck

Att #1
HB 1170

Mark A. Friese

1-30-2017
mfriese@vogellaw.com

January 23, 2017

Rep. Kim Koppleman
Chairman, ND House Judiciary Committee

VIA EMAIL ONLY
KKOPPELMAN@ND.GOV

Re: HB 1170

Dear Chairman Koppleman and members of the House Judiciary Committee:

I write in support of House Bill 1170, which proposes long-overdue and thoughtful revisions to existing civil asset forfeiture laws. I am a resident of District 45, and I am providing a copy of this letter to my district legislators. I am an attorney in private practice in Fargo, and I represent individuals subject to forfeiture laws and those charged with crimes. I routinely represent police officers in civil lawsuits, disciplinary matters, and critical incidents. I am a citizen member of the Interim Alternatives to Incarceration Committee, and in that capacity have gained the privilege of meeting you and several of your colleagues. I served in the North Dakota Army National Guard for 24 years, and as a Bismarck Police Officer between 1992 and 1997. Having worked "on both sides," I am hopeful that my background provides a measure of objectivity and insight to assist you and your Committee.

National trends are resulting in major revisions to civil asset forfeiture laws at both the state and national level. The following link provides a significant compilation of national and state reform efforts, testimony, supportive letters, and related materials:

<https://www.nacdl.org/forfeiture/>

House Bill 1170 is consistent with national trends. I agree that asset forfeiture is an essential component of effective law enforcement and sound public policy. If approved, House Bill 1170 will retain this essential component, but with protections for citizens and police alike. Currently, our law places police in the untenable position of "policing for a profit." This bill provides proceeds of forfeitures will be deposited in the State Treasury, rather than being distributed to the seizing agencies. This protects the police from claims of impropriety, and appearances of bias. It assures citizens that police are not forfeiting property for an ulterior motive—i.e., for their own benefit. Further, the bill provides for return of non-contraband property if an accused is acquitted or the criminal charges are dismissed. Accordingly, in instances in which illegal seizures occur, or in instances in which there is insufficient evidence to sustain a conviction, property is returned.

Critically, this bill provides procedural protections that have been overlooked: a right to trial by jury for significant forfeitures, innocent owner defenses, the right to a pretrial replevin hearing, the

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January 23, 2017

Page 2

ability for a court to determine that forfeiture is disproportionate, transparency and accountability provisions, and others. This law will provide consistency, predictability, accountability, and protections for citizens and police. Far too many young adults have lost their cars for minor offenses, like possessing marijuana or items of drug paraphernalia. Far too many police officers have been openly or subtly encouraged to seize all property, while other officers decline to do so, recognizing the lack of fairness of existing procedures.

The criminal courts are fully capable of fashioning fair, just, and proportionate sentences. This bill properly balances the utility of civil asset forfeiture with protections for those whose property is seized. This bill properly divides accountability and responsibility between executive and judicial officers. This bill is worthy of your consideration and approval. The citizens and law enforcement of this state deserve these meaningful improvements to existing law.

Thank you for considering my comments. Thank you for your commitment and service to North Dakota and its citizens.

Respectfully submitted,

/s/ Mark A. Friese

Mark A. Friese

cc: Rep. Karen Karls kkarls@nd.gov
Rep. Jake Blum jblum@nd.gov
Rep. Karla Hanson krhanson@nd.gov
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Rep. Tom Kading tkading@nd.gov

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#1
1170
2-14-17

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1170

- Page 1, line 3, replace "sections" with "section"
- Page 1, line 3, remove "and 12.1-06.1-06"
- Page 1, line 4, replace "sections" with "section"
- Page 1, line 4, remove "20.1-10-03,"
- Page 1, line 5, remove "20.1-10-04, and 20.1-10-07,"
- Page 1, line 5, remove "29-27-02.1, 39-03-18,"
- Page 1, line 6, remove "54-12-14,"
- Page 1, line 8, replace "remedies, forfeiture of property, forfeiture funds" with "of motor vehicles, forfeitures for violation of ordinances, seizure procedures"
- Page 5, remove lines 14 through 29
- Page 6, remove lines 1 through 30
- Page 7, remove lines 1 through 30
- Page 8, remove lines 1 through 9
- Page 12, remove lines 23 through 31
- Page 13, remove lines 1 through 27
- Page 14, remove lines 9 through 17
- Page 15, line 16, replace "When" with "Except as otherwise provided by law, when"
- Page 15, line 29, replace "Property" with "Except as otherwise provided by law, property"
- Page 17, line 2, replace "Personal" with "Except as otherwise provided by law, personal"
- Page 17, line 13, replace "Seizure" with "Except as otherwise provided by law, seizure"
- Page 18, line 2, replace "Following" with "Except as otherwise provided by law, following"
- Page 18, line 30, replace "The" with "Except as otherwise provided by law, the"
- Page 21, line 20, replace "A" with "Except as otherwise provided by law, a"
- Page 22, line 8, replace "Forfeited" with "Except as otherwise provided by law, forfeited"
- Page 22, line 11, replace "Proceeds" with "Except as otherwise provided by law, proceeds"
- Page 24, remove lines 18 through 30
- Page 25, remove lines 1 through 14
- Page 30, remove lines 28 and 29
- Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 13

Renumber accordingly

#1
1170
2-24-17

Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1170

Introduced by

Representatives Rick C. Becker, Dockter, B. Koppelman, Simons, Toman

Senators O. Larsen, Luick, Vedaa

1 A BILL for an Act to create and enact chapter 29-31.2 of the North Dakota Century Code,
 2 relating to criminal forfeitures; to amend and reenact subsection 4 of section 4-24-12,
 3 subsection 4 of section 5-01-16, sectionssection 12.1-06.1-05 ~~and 12.1-06.1-06~~, subsection 7 of
 4 section 12.1-23-16, subsection 4 of section 12.1-28-02, sectionssection 19-03.1-36, ~~20.1-10-03,~~
 5 ~~20.1-10-04, and 20.1-10-07~~, subsection 1 of section 27-20-03, sections ~~29-27-02.1, 39-03-18,~~
 6 39-08-01.3, 39-30-04, 40-11-13, ~~54-12-14~~, and 57-36-14, subsection 2 of section 57-36-33,
 7 section 62.1-01-02, and subsection 2 of section 62.1-05-01 of the North Dakota Century Code,
 8 relating to forfeiture ~~remedies, forfeiture of property, forfeiture funds~~ of motor vehicles, forfeitures
 9 for violation of ordinances, seizure procedures, and forfeiture procedures; and to repeal
 10 sections 19-03.1-36.1, 19-03.1-36.2, 19-03.1-36.3, 19-03.1-36.4, 19-03.1-36.5, 19-03.1-36.6,
 11 19-03.1-36.7, and 28-01-20, and chapters 29-31.1 and 32-14 of the North Dakota Century
 12 Code, relating to forfeiture proceedings, forfeiture disposition, seizure and transfer of forfeitable
 13 property, and actions to recover forfeitures.

14 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

15 **SECTION 1. AMENDMENT.** Subsection 4 of section 4-24-12 of the North Dakota Century
 16 Code is amended and reenacted as follows:

17 4. Any vehicle used to transport a purple coneflower removed or possessed in violation
 18 of this section is forfeitable property under chapter ~~29-31.1~~ 29-31.2.

19 **SECTION 2. AMENDMENT.** Subsection 4 of section 5-01-16 of the North Dakota Century
 20 Code is amended and reenacted as follows:

21 4. The alcoholic beverage transported in violation of this section and the vehicle used in
 22 violation of this section are forfeitable property under chapter ~~29-31.1~~ 29-31.2.

23 **SECTION 3. AMENDMENT.** Section 12.1-06.1-05 of the North Dakota Century Code is
 24 amended and reenacted as follows:

1 **12.1-06.1-05. Racketeering - Civil remedies.**

- 2 1. A person who sustains injury to person, business, or property by a pattern of
3 racketeering activity or by a violation of section 12.1-06.1-02 or 12.1-06.1-03 may file
4 an action in district court for the recovery of treble damages and the costs of the suit,
5 including reasonable attorney fees. The state may file an action in behalf of those
6 persons injured or to prevent, restrain, or remedy a pattern of racketeering activity or a
7 violation of section 12.1-06.1-02 or 12.1-06.1-03.
- 8 2. The district court has jurisdiction to prevent, restrain, and remedy a pattern of
9 racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03 after making
10 provision for the rights of all innocent persons affected by the violation and after
11 hearing or trial, as appropriate, by issuing appropriate orders.
- 12 3. Prior to a determination of liability, orders may include entering restraining orders,
13 receivership orders or prohibitions or other actions, including the acceptance of
14 satisfactory performance bonds, in connection with any property or other interest
15 subject to damages, ~~forfeiture~~, or other restraints pursuant to this section.
- 16 4. Following a determination of liability, orders may include:
- 17 a. Ordering any person to divest himself of any interests, direct or indirect, in any
18 enterprise.
- 19 b. Imposing reasonable restrictions on the future activities or investments of any
20 person, including prohibiting any person from engaging in the same type of
21 endeavor as the enterprise engaged in, the activities of which affect the laws of
22 this state, to the extent the constitutions of the United States and this state
23 permit.
- 24 c. Ordering dissolution or reorganization of any enterprise.
- 25 d. Ordering the payment of treble damages and appropriate restitution to those
26 persons injured by a pattern of racketeering activity or a violation of section
27 12.1-06.1-02 or 12.1-06.1-03.
- 28 e. Ordering the payment of all costs and expenses and reasonable attorneys' fees
29 concerned with the prosecution and investigation of any offense included in the
30 definition of racketeering if upon application for the order it is shown to the
31 satisfaction of the court that the racketeering offense has occurred as a part of a

- 1 pattern of racketeering activity or a violation of section 12.1-06.1-02 or
2 12.1-06.1-03, civil and criminal, incurred by the state or county as appropriate to
3 be paid to the general fund of the state or county that brings the action.
- 4 f. ~~Forfeiture, pursuant to chapter 32-14, to the state school fund of the state or~~
5 ~~county as appropriate under section 29-27-02.1, to the extent not already ordered~~
6 ~~to be paid in other damages:~~
- 7 (1) ~~Any property or other interest acquired or maintained by a person in~~
8 ~~violation of section 12.1-06.1-02 or 12.1-06.1-03.~~
- 9 (2) ~~Any interest in, security of, claims against, or property or contractual right of~~
10 ~~any kind affording a source of influence over any enterprise that a person~~
11 ~~has established, operated, controlled, conducted, or participated in the~~
12 ~~conduct of in violation of section 12.1-06.1-02 or 12.1-06.1-03.~~
- 13 (3) ~~All proceeds traceable to an offense included in the definition of~~
14 ~~racketeering and all moneys, negotiable instruments, securities, and other~~
15 ~~things of value used or intended to be used to facilitate commission of the~~
16 ~~offense if upon application for the order it is shown to the satisfaction of the~~
17 ~~court that the racketeering offense has occurred as a part of a pattern of~~
18 ~~racketeering activity.~~
- 19 g.f. Payment to the state school fund of the state or county as appropriate under
20 section 29-27-02.1 of an amount equal to the gain a person has acquired or
21 maintained through an offense included in the definition of racketeering if upon
22 application for the order it is shown to the satisfaction of the court that the
23 racketeering offense has occurred as a part of a pattern of racketeering activity.
- 24 5. ~~In addition to or in lieu of an action under this section the state may file an action for~~
25 ~~forfeiture to the state school fund of the state or county as appropriate under section~~
26 ~~29-27-02.1, to the extent not already ordered paid pursuant to this section, of:~~
- 27 a. ~~Any interest acquired or maintained by a person in violation of section~~
28 ~~12.1-06.1-02 or 12.1-06.1-03.~~
- 29 b. ~~Any interest in, security of, claims against, or property or contractual right of any~~
30 ~~kind affording a source of influence over any enterprise that a person has~~

- 1 ~~established, operated, controlled, conducted, or participated in the conduct of in~~
2 ~~violation of section 12.1-06.1-02 or 12.1-06.1-03.~~
- 3 ~~e. All proceeds traceable to an offense included in the definition of racketeering and~~
4 ~~all moneys, negotiable instruments, securities, and other things of value used or~~
5 ~~intended to be used to facilitate the commission of the offense if upon application~~
6 ~~for the order it is shown to the satisfaction of the court that such racketeering~~
7 ~~offense has occurred as a part of a pattern of racketeering activity.~~
- 8 6-5. A defendant convicted in any criminal proceeding shall be precluded from
9 subsequently denying the essential allegations of the criminal offense of which he was
10 subsequently denied in any civil proceeding. For purposes of this subsection, a conviction may
11 result from a verdict or plea including a no contest plea.
- 12 7-6. Notwithstanding any law to the contrary, the initiation of civil proceedings related to
13 violations of any offense included in the definition of racketeering or a violation of
14 section 12.1-06.1-02 or 12.1-06.1-03 must be commenced within seven years of
15 actual discovery of the violation.
- 16 8-7. This state may, in a civil action brought pursuant to this section, file with the clerk of
17 the district court a certificate stating that the case is of special public importance. A
18 copy of that certificate shall be furnished immediately by the clerk to the presiding
19 judge of the district court in which the action is pending and, upon receipt of the copy,
20 the judge shall immediately designate a judge to hear and determine the action. The
21 judge designated shall promptly assign the action for hearing, participate in the
22 hearings and determination, and cause the action to be expedited.
- 23 9-8. The standard of proof in actions brought pursuant to this section is the preponderance
24 of the evidence.
- 25 10-9. A person other than the attorney general or state's attorney who files an action under
26 this section shall serve notice and one copy of the pleading on the attorney general
27 within thirty days after the action is filed with the district court. The notice shall identify
28 the action, the person, and the person's attorney. Service of the notice does not limit
29 or otherwise affect the right of the state to maintain an action under this section or
30 intervene in a pending action nor does it authorize the person to name the state or the
31 attorney general as a party to the action.

1 ~~41-10.~~ Except in cases filed by a state's attorney, the attorney general may, upon timely
2 application, intervene in any civil action or proceeding brought pursuant to this section
3 if the attorney general certifies that in his opinion the action is of special public
4 importance. Upon intervention, the attorney general may assert any available claim
5 and is entitled to the same relief as if the attorney general had instituted a separate
6 action.

7 ~~42-11.~~ In addition to the state's right to intervene as a party in any action under this section,
8 the attorney general may appear as amicus curiae in any proceeding in which a claim
9 under this section has been asserted or in which a court is interpreting any provisions
10 of this chapter.

11 ~~43-12.~~ A civil action under this section is remedial and does not limit any other civil or criminal
12 action. Civil remedies provided under this section are supplemental and not mutually
13 exclusive.

14 ~~— SECTION 4. AMENDMENT. Section 12.1-06.1-06 of the North Dakota Century Code is~~
15 ~~amended and reenacted as follows:~~

16 ~~— 12.1-06.1-06. Racketeering lien - Content - Filing - Notice - Effect.~~

17 ~~— 1. The state, upon filing a civil action under section 12.1-06.1-05 or upon charging an~~
18 ~~offense included in the definition of racketeering if the offense is committed as a part~~
19 ~~of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or~~
20 ~~12.1-06.1-03, may file a racketeering lien. A filing fee or other charge is not required~~
21 ~~for filing a racketeering lien.~~

22 ~~— 2. A racketeering lien shall be signed by the attorney general or the state's attorney~~
23 ~~representing the state in the action and set forth the following information:~~

24 ~~— a. The name of the defendant whose property, interests in property, or other~~
25 ~~interests are to be subject to the lien.~~

26 ~~— b. In the discretion of the attorney general or state's attorney filing the lien, any~~
27 ~~aliases or fictitious names of the defendant named in the lien.~~

28 ~~— c. If known to the attorney general or state's attorney filing the lien, the present~~
29 ~~residence or principal place of business of the person named in the lien.~~

- 1 ~~— d. — A reference to the proceeding pursuant to which the lien is filed, including the~~
2 ~~name of the court, the title of the action, and the court's file number for the~~
3 ~~proceeding.~~
- 4 ~~— e. — The name and address of the attorney representing the state in the proceeding~~
5 ~~pursuant to which the lien is filed.~~
- 6 ~~— f. — A statement that the notice is being filed pursuant to this section.~~
- 7 ~~— g. — The amount which the state claims in the action or, with respect to property or~~
8 ~~other interests which the state has requested forfeiture to the state or county, a~~
9 ~~description of the property or interests sought to be paid or forfeited.~~
- 10 ~~— h. — If known to the attorney general or state's attorney filing the lien, a description of~~
11 ~~property which is subject to forfeiture to the state or property in which the~~
12 ~~defendant has an interest which is available to satisfy a judgment entered in favor~~
13 ~~of the state.~~
- 14 ~~— i. — Such other information as the attorney general or state's attorney filing the lien~~
15 ~~deems appropriate.~~
- 16 ~~— 3. — The attorney general or the state's attorney filing the lien may amend a lien filed under~~
17 ~~this section at any time by filing an amended racketeering lien in accordance with this~~
18 ~~section which identifies the prior lien amended.~~
- 19 ~~— 4. — The attorney general or the state's attorney filing the lien shall, as soon as practical~~
20 ~~after filing a racketeering lien, furnish to any person named in the lien a notice of the~~
21 ~~filing of the lien. Failure to furnish notice under this subsection does not invalidate or~~
22 ~~otherwise affect a racketeering lien filed in accordance with this section.~~
- 23 ~~— 5. — A~~Subject to chapter 29-31.2, a racketeering lien is perfected against interests in
24 ~~personal property by filing the lien with the secretary of state, except that in the case of~~
25 ~~titled motor vehicles it shall be filed with the director of the department of~~
26 ~~transportation. A racketeering lien is perfected against interests in real property by~~
27 ~~filing the lien with the county recorder of the county in which the real property is~~
28 ~~located. The state may give additional notice of the lien.~~
- 29 ~~— 6. — The~~Subject to chapter 29-31.2, the filing of a racketeering lien in accordance with this
30 ~~section creates a lien in favor of the state in:~~

- 1 ~~_____ a. Any interest of the defendant in real property situated in the county in which the~~
2 ~~lien is filed, then maintained or later acquired in the name of the defendant~~
3 ~~identified in the lien.~~
- 4 ~~_____ b. Any interest of the defendant in personal property situated in this state, then~~
5 ~~maintained or later acquired in the name of the defendant identified in the lien.~~
- 6 ~~_____ c. Any property identified in the lien to the extent of the defendant's interest in the~~
7 ~~property.~~
- 8 ~~_____ 7. The Subject to chapter 29-31.2, the filing of a racketeering lien under this section is~~
9 ~~notice to all persons dealing with the person or property identified in the lien of the~~
10 ~~state's claim. The lien created in favor of the state in accordance with this section is~~
11 ~~superior and prior to the claims or interests of any other person, except a person~~
12 ~~possessing:~~
- 13 ~~_____ a. A valid lien perfected prior to the filing of the racketeering lien.~~
- 14 ~~_____ b. In the case of real property, an interest acquired and recorded prior to the filing of~~
15 ~~the racketeering lien.~~
- 16 ~~_____ c. In the case of personal property, an interest acquired prior to the filing of the~~
17 ~~racketeering lien.~~
- 18 ~~_____ 8. Upon entry of judgment in favor of the state, the state may proceed to execute the~~
19 ~~judgment as in the case of any other judgment, except that in order to preserve the~~
20 ~~state's lien priority as provided in this section the state shall, in addition to notice as~~
21 ~~required by law, give at least thirty days' notice of execution to any person possessing~~
22 ~~at the time notice is given, an interest recorded after the date the state's lien was~~
23 ~~perfected.~~
- 24 ~~_____ 9. Upon the entry of a final judgment in favor of the state providing for forfeiture of~~
25 ~~property to the state, the title of the state to the property:~~
- 26 ~~_____ a. In the case of real property, or a beneficial interest in real property, relates back~~
27 ~~to the date of filing the racketeering lien with the county recorder of the county~~
28 ~~where the real property is located, or if no racketeering lien is filed, then to the~~
29 ~~date of recording of the final judgment with the county recorder of the county~~
30 ~~where the real property is located.~~

1 ~~b. In the case of personal property or a beneficial interest in personal property,~~
2 ~~relates back to the date the personal property was seized by the state, or the~~
3 ~~date of filing of a racketeering lien in accordance with this section, whichever is~~
4 ~~earlier, but if the property was not seized and no racketeering lien was filed then~~
5 ~~to the date the final judgment was filed with the secretary of state, or in the case~~
6 ~~of a titled motor vehicle, with the director of the department of transportation.~~
7 ~~10. This section does not limit the right of the state to obtain any order or injunction,~~
8 ~~receivership, writ, attachment, garnishment, or other remedy authorized under section~~
9 ~~12.1-06.1-05 or available under other applicable law.~~

10 **SECTION 4. AMENDMENT.** Subsection 7 of section 12.1-23-16 of the North Dakota
11 Century Code is amended and reenacted as follows:

- 12 7. An automated sales suppression device, zapper, or phantom-ware, and the cash
13 register or other device containing the device or the software, is contraband and
14 subject to forfeiture in accordance with chapter ~~29-31.1~~29-31.2.

15 **SECTION 5. AMENDMENT.** Subsection 4 of section 12.1-28-02 of the North Dakota
16 Century Code is amended and reenacted as follows:

- 17 4. a. As used in subsection 3 but with the exceptions provided by subdivision b of this
18 subsection, the term "coin-operated gaming device" means any machine that is:
19 (1) A so-called "slot" machine that operates by means of the insertion of a coin,
20 token, or similar object and which, by application of the element of chance,
21 may deliver, or entitle the person playing or operating the machine to
22 receive cash, premiums, merchandise, or tokens; or
23 (2) A machine that is similar to machines described in paragraph 1 and is
24 operated without the insertion of a coin, token, or similar object.
25 b. The term "coin-operated gaming device" does not include a bona fide vending or
26 amusement machine in which gambling features are not incorporated as defined
27 in section 53-04-01, or an antique "slot" machine twenty-five years old or older
28 that is collected and possessed by a person as a hobby and is not maintained for
29 the business of gambling.
30 c. A law enforcement officer may seize any device described in subdivision a upon
31 probable cause to believe that the device was used or is intended to be used in

1 violation of this chapter or chapter 53-06.1. The court shall order the device
2 forfeited in the same manner and according to the same procedure as provided
3 under chapter ~~29-31.1~~29-31.2.

4 **SECTION 6. AMENDMENT.** Section 19-03.1-36 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **19-03.1-36. Forfeitures.**

7 1. The following are subject to forfeiture:

8 a. All controlled substances which have been manufactured, distributed, dispensed,
9 or acquired in violation of this chapter.

10 b. All imitation controlled substances as defined by sections 19-03.2-01 and
11 19-03.2-02.

12 c. All raw materials, products, and equipment of any kind which are used, or
13 intended for use, in manufacturing, compounding, processing, delivering,
14 importing, or exporting any controlled substance in violation of this chapter.

15 d. All property which is used, or intended for use, as a container for property
16 described in subdivision a, b, or c.

17 e. All conveyances, including aircraft, vehicles, or vessels, which are used, or
18 intended for use, to transport, or in any manner to facilitate the transportation, for
19 the purpose of sale or receipt of property described in subdivision a, b, or c, but:

20 (1) No conveyance used by any person as a common carrier in the transaction
21 of business as a common carrier is subject to forfeiture under this section
22 unless it appears that the owner or other person in charge of the
23 conveyance is a consenting party or privy to a violation of this chapter.

24 (2) No conveyance is subject to forfeiture under this section by reason of any
25 act or omission established by the owner thereof to have been committed or
26 omitted without the owner's knowledge or consent.

27 (3) A conveyance is not subject to forfeiture for a violation of subsection 7 of
28 section 19-03.1-23 or subsection 3 of section 19-03.2-03.

29 (4) A forfeiture of a conveyance encumbered by a bona fide security interest is
30 subject to the interest of the secured party if the secured party neither had
31 knowledge of nor consented to the act or omission.

- 1 f. All books, records, and research products and materials, including formulas,
2 microfilm, tapes, and data which are used, or intended for use, in violation of this
3 chapter.
- 4 g. All drug paraphernalia as defined in chapter 19-03.4.
- 5 h. All money, coin, currency, and everything of value furnished, or intended to be
6 furnished, in exchange for a controlled substance in violation of this chapter or an
7 imitation controlled substance in violation of chapter 19-03.2, and all real and
8 personal property, assets, profits, income, proceeds, or an interest therein,
9 acquired or derived from the unlawful purchase, attempted purchase, delivery,
10 attempted delivery, manufacturing, or attempted manufacturing of any controlled
11 substance or imitation controlled substance.
- 12 2. Property subject to forfeiture ~~under this chapter, except conveyances, described in~~
13 subdivisions a, b, and g of subsection 1 may be seized by the board upon process
14 issued by any district court having jurisdiction over the property. ~~A conveyance subject~~
15 ~~to forfeiture under this chapter may be seized by a state, county, or city law~~
16 ~~enforcement agency upon process issued by any district court having jurisdiction over~~
17 ~~the conveyance. All other property subject to forfeiture under this chapter must be~~
18 seized and forfeited pursuant to chapter 29-31.2. Seizure of property described in
19 subdivisions a, b, and g of subsection 1 without process may be made if:
- 20 a. The seizure is incident to an arrest or a search under a search warrant or an
21 inspection under an administrative inspection warrant.
- 22 b. The property subject to seizure has been the subject of a prior judgment in favor
23 of the state in a criminal injunction or forfeiture proceedings based upon this
24 chapter.
- 25 c. The board or a law enforcement agency has probable cause to believe that the
26 property is directly or indirectly dangerous to health or safety.
- 27 d. The board or a law enforcement agency has probable cause to believe that the
28 property was used or is intended to be used in violation of this chapter.
- 29 3. In the event of seizure pursuant to subsection 2, proceedings under subsection 4 must
30 be instituted promptly.

- 1 4. Property described in subdivisions a, b, and g of subsection 1 which is taken or
2 detained under this section is not subject to replevin, but is deemed to be in custody of
3 the board or a law enforcement agency subject only to the orders and decrees of the
4 district court having jurisdiction over the forfeiture proceedings as set out in
5 subsection 2. When property described in subdivisions a, b, and g of subsection 1 is
6 seized under this chapter, the board or a law enforcement agency may:
- 7 a. Place the property under seal.
8 b. Remove the property to a place designated by it.
9 c. Require the attorney general to take custody of the property and remove it to an
10 appropriate location for disposition in accordance with law.
- 11 5. When property described in subdivisions a, b, and g of subsection 1 is forfeited under
12 this chapter, the board or a law enforcement agency may:
- 13 a. Retain it for official use or transfer the custody or ownership of any forfeited
14 property to any federal, state, or local agency. The board shall ensure the
15 equitable transfer of any forfeited property to the appropriate federal, state, or
16 local law enforcement agency so as to reflect generally the contribution of that
17 agency participating directly in any of the acts that led to the seizure or forfeiture
18 of the property. A decision to transfer the property is not subject to review.
- 19 b. Sell that which is not required to be destroyed by law and which is not harmful to
20 the public. The proceeds must be used for payment of all proper expenses of the
21 proceedings for forfeiture and sale, including expenses of seizure, maintenance
22 of custody, advertising, and court costs, with any remaining proceeds to be
23 deposited, subject to section 54-12-14, in the appropriate state, county, or city
24 general fund. When two or more law enforcement agencies are involved in
25 seizing a conveyance, the remaining proceeds may be divided proportionately.
- 26 c. Require the attorney general to take custody of property and remove it for
27 disposition in accordance with law.
- 28 d. Forward it to the bureau for disposition.
- 29 e. Use the property, ~~including controlled substances, imitation controlled~~
30 ~~substances, and plants~~ forfeited under subsections 6 and 7, in enforcement of
31 this chapter. However, in a case involving the delivery of a forfeited controlled

1 substance by a law enforcement officer or a person acting as an agent of a law
2 enforcement officer, no prosecution or conviction for simple possession of a
3 controlled substance under subsection 6 of section 19-03.1-23 may be based
4 upon the forfeited controlled substances supplied by the law enforcement officer
5 or the officer's agent.

6 6. Controlled substances as defined in this chapter and imitation controlled substances
7 as defined in chapter 19-03.2 that are possessed, transferred, sold, or offered for sale
8 in violation of this chapter and drug paraphernalia as defined in chapter 19-03.4 are
9 contraband and must be seized and summarily forfeited to the state. Controlled
10 substances as defined in this chapter and imitation controlled substances as defined in
11 chapter 19-03.2, which are seized or come into the possession of the state and drug
12 paraphernalia as defined in chapter 19-03.4, the owners of which are unknown, are
13 contraband and must be summarily forfeited to the state.

14 7. Species of plants from which controlled substances in schedules I and II may be
15 derived which have been planted or cultivated in violation of this chapter, or of which
16 the owners or cultivators are unknown, or which are wild growths, may be seized and
17 summarily forfeited to the state.

18 8. The failure, upon demand by the board, or its authorized agent, of the person in
19 occupancy or in control of land or premises upon which the species of plants are
20 growing or being stored to produce an appropriate registration, or proof that the
21 person is the holder thereof, constitutes authority for the seizure and forfeiture of the
22 plants.

23 ~~SECTION 8. AMENDMENT. Section 20.1-10-03 of the North Dakota Century Code is~~
24 ~~amended and reenacted as follows:~~

25 ~~20.1-10-03. Confiscated property - Courts having jurisdiction - Requisites for~~
26 ~~disposition.~~

27 ~~A court having jurisdiction of an alleged offense against this title may order the disposition of~~
28 ~~all birds, animals, or fish, or any part thereof, or other property that has been confiscated. The~~
29 ~~disposition of all other confiscated property must be in accordance with chapter 29-31.2. This~~
30 ~~The order may be entered only after a hearing duly had upon proper notice to the owner and~~
31 ~~after due and proper finding by the court that the property:~~

1 — 1. ~~Was taken, killed, possessed, or being transported contrary to law by the person from~~
2 ~~whom it was seized.~~

3 — 2. ~~Was being used in violation of this title at the time it was seized.~~

4 — 3. ~~Had been used in violation of this title within six months previous to the time it was~~
5 ~~seized.~~

6 — **SECTION 9. AMENDMENT.** Section 20.1-10-04 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 — **~~20.1-10-04. Who to sell confiscated property animals, birds, or fish - Bills of sale -~~**
9 **~~Disposition of proceeds of sale.~~**

10 — ~~All confiscated property animals, birds, or fish that a court has ordered to be disposed of by~~
11 ~~the director must be turned over to the North Dakota wildlife federation to be sold for the highest~~
12 ~~price obtainable. On any sale of animals, birds, or fish, or parts thereof, the seller shall issue to~~
13 ~~each purchaser a bill of sale on forms prepared and furnished by the director. The sale~~
14 ~~proceeds, after the expenses of the seizure and the sale are deducted, must be remitted to the~~
15 ~~North Dakota wildlife federation report all poachers fund. The remittance must be accompanied~~
16 ~~by a complete and certified report of the sale supported by proper vouchers covering all~~
17 ~~deductions made for expenses. This report must be filed for record with the director.~~

18 — **SECTION 10. AMENDMENT.** Section 20.1-10-07 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 — **~~20.1-10-07. Property seized under warrant - Officer's return to describe - Safekeeping~~**
21 **~~-Disposal.~~**

22 — ~~Any officer executing a warrant issued pursuant to section 20.1-10-06 shall, in the officer's~~
23 ~~return, describe the property seized with as much particularity as possible. The seized property~~
24 ~~must be safely kept upon direction of the judge as long as necessary to use as evidence. If a~~
25 ~~conviction is obtained, either by trial or by plea of guilty, the seized property must be disposed of~~
26 ~~under an order of the court before whom the prosecution was brought forfeited pursuant to~~
27 ~~chapter 29-31.2.~~

28 **SECTION 7. AMENDMENT.** Subsection 1 of section 27-20-03 of the North Dakota Century
29 Code is amended and reenacted as follows:

30 1. The juvenile court has exclusive original jurisdiction of the following proceedings,
31 which are governed by this chapter:

- 1 a. Proceedings in which a child is alleged to be delinquent, unruly, or deprived;
- 2 b. Proceedings for the termination of parental rights except when a part of an
- 3 adoption proceeding; and
- 4 c. Proceedings arising under section 27-20-30.1; and
- 5 d. ~~Civil forfeiture proceedings arising under chapter 19-03.1 or section 29-31.1-04~~
- 6 ~~for which a child is alleged to have possessed forfeitable property. The juvenile~~
- 7 ~~court shall conduct the proceedings in accordance with the procedures provided~~
- 8 ~~for under sections 19-03.1-36 through 19-03.1-37.~~

9 ~~—~~ **SECTION 12. AMENDMENT.** ~~Section 29-27-02.1 of the North Dakota Century Code is~~
10 ~~amended and reenacted as follows:~~

11 ~~—~~ **29-27-02.1. Disposition of statutory fees, fines, forfeitures, pecuniary penalties, and**
12 **bond forfeitures.**

13 ~~—~~ ~~Except as otherwise provided by law, all statutory fees, fines, forfeitures, and pecuniary~~
14 ~~penalties prescribed for a violation of state laws, when collected, must be paid into the treasury~~
15 ~~of the proper county to be added to the state school fund. When any bail bond or other property~~
16 ~~or money deposited as bail is forfeited to the state, the proceeds collected therefrom must be~~
17 ~~paid over to the proper state official and credited to the state general fund.~~

18 **SECTION 8.** Chapter 29-31.2 of the North Dakota Century Code is created and enacted as
19 follows:

20 **29-31.2-01. Definitions.**

21 As used in this chapter:

- 22 1. "Abandoned property" means personal property left by an owner who intentionally
23 relinquishes all rights to the property control. The term does not include real property.
- 24 2. "Actual knowledge" means direct and clear awareness of information, a fact, or a
25 condition.
- 26 3. "Contraband" means goods that are unlawful to import, export, or possess, including
27 scheduled drugs without a valid prescription.
- 28 4. "Constructive knowledge" means knowledge that is imputed to family or household
29 members of the defendant if, three or more times for the same or similar offense, as
30 specified in statute, in the ten years before the alleged offense, the defendant admitted
31 guilt or was adjudicated guilty.

1 5. "Conveyance" means a device used for transportation and includes a motor vehicle,
2 trailer, snowmobile, airplane, vessel, and any equipment attached to the device. The
3 term does not include property that is stolen or taken in violation of the law.

4 6. "Instrumentality" means property otherwise lawful to possess which is used in the
5 furtherance or commission of an offense of a law subject to forfeiture. The term
6 includes land, buildings, a container, a conveyance, equipment, materials, products, a
7 tool, a computer, computer software, a telecommunications device, a firearm, or
8 ammunition.

9 7. "Law enforcement agency" means a non-federal police force or other local, county, or
10 state agency that has the authority under state law to engage in seizure and forfeiture.

11 8. "Law subject to forfeiture" means a state law that explicitly includes forfeiture as a
12 punishment or sanction for the offense.

13 9. "Proceeds" means money, securities, negotiable instruments, or other means of
14 exchange obtained by the sale of property.

15 **29-31.2-02. Criminal forfeiture - Property subject to forfeiture.**

16 When Except as otherwise provided by law, when a person is convicted of violating a law
17 subject to forfeiture, the court, consistent with this chapter, may order the person to forfeit:

- 18 1. Proceeds the person derived from the commission of the crime;
- 19 2. Property directly traceable to proceeds derived from the commission of the crime; and
- 20 3. Instrumentalities the person used in the commission of the crime.

21 **29-31.2-03. Exemption.**

22 Homesteaded real property, a motor vehicle of less than ten thousand dollars in market
23 value, and United States currency totaling two hundred dollars or less are exempt from
24 forfeiture.

25 **29-31.2-04. Contraband.**

26 No property right exists in contraband. Contraband is subject to seizure and must be
27 disposed of according to state law. Contraband is not subject to forfeiture under this chapter.

28 **29-31.2-05. Conviction required - Standard of proof.**

- 29 1. Property Except as otherwise provided by law, property may be forfeited if:
 - 30 a. The offense is of a state law subject to forfeiture;
 - 31 b. The offense is established by proof of a criminal conviction; and

- 1 c. The state establishes the property is forfeitable under this chapter by clear and
2 convincing evidence.
- 3 2. This chapter does not prevent property from being forfeited by plea agreement
4 approved by the court.
- 5 3. The court may waive the conviction requirement if the prosecutor shows by clear and
6 convincing evidence that the defendant:
- 7 a. Died;
- 8 b. Was deported by the United States government;
- 9 c. Is granted immunity in exchange for testifying or otherwise assisting a law
10 enforcement investigation or prosecution; or
- 11 d. Fled the jurisdiction after being arrested, charged with a crime that includes the
12 forfeiture of property, and released on bail.
- 13 4. Notwithstanding the prosecutor's motion for a waiver, the property remains subject to
14 claims by innocent owners, creditors, and other third parties pursuant to this chapter.

15 **29-31.2-06. Substitution of assets.**

16 Upon the state's motion following conviction, the court may order the forfeiture of substitute
17 property owned by the defendant up to the value of unreachable property that is beyond the
18 court's jurisdiction or cannot be located through due diligence only if the state proves by a
19 preponderance of the evidence the defendant intentionally transferred, sold, or deposited
20 property with a third party to avoid the court's jurisdiction.

21 **29-31.2-07. No additional remedies.**

22 The state may not seek personal money judgments or other remedies not provided for in
23 this chapter.

24 **29-31.2-08. No joint and several liability.**

25 A defendant is not jointly and severally liable for forfeiture awards owed by other
26 defendants. When ownership is unclear, a court may order each defendant to forfeit property on
27 a pro rata basis or by another means the court finds equitable.

28 **29-31.2-09. Seizure of personal property with process.**

29 At the request of the state at any time, a court may issue an ex parte preliminary order to
30 attach, seize, or secure personal property for which forfeiture is sought and to provide for its
31 custody. Application, issuance, execution, and return are subject to state statute or court rules.

1 **29-31.2-10. Seizure of personal property without process.**

2 Personal Except as otherwise provided by law, personal property subject to forfeiture may
3 be seized at any time without a court order if:

- 4 1. The seizure of personal property is incident to a lawful arrest or a search lawfully
5 conducted;
- 6 2. The personal property subject to seizure has been the subject of a prior judgment in
7 favor of the state;
- 8 3. The state has probable cause to believe the delay occasioned by the necessity to
9 obtain process would result in the removal or destruction of the personal property and
10 the personal property is forfeitable under this chapter; or
- 11 4. Mere presence or possession of United States currency, without other indicia, is
12 insufficient probable cause for seizure.

13 **29-31.2-11. Seizure of real property with process.**

- 14 1. Seizure Except as otherwise provided by law, seizure of real property requires a court
15 order. A court may issue an order to seize or secure real property for which forfeiture is
16 sought only after proper notice to property owners and an opportunity for a hearing to
17 determine the sufficiency of probable cause for the seizure.
- 18 2. This section does not prohibit a prosecutor from seeking a lis pendens or restraining
19 order to hinder the sale or destruction of the real property.
- 20 3. Application, issuance, execution, and return of any order are subject to state law.

21 **29-31.2-12. Receipt.**

22 When property is seized, the law enforcement officer shall give an itemized receipt to the
23 person possessing the property; or in the absence of any person, leave a receipt in the place
24 where the property was found, if reasonably possible.

25 **29-31.2-13. Title.**

- 26 1. At the time of seizure or entry of a restraining order, the state acquires provisional title
27 to the seized property. Provisional title authorizes the state to hold and protect the
28 property.
- 29 2. Title to the property vests with the state when the trier of fact renders a final forfeiture
30 verdict and relates back to the time when the state acquired provisional title. However,
31 this title is subject to claims by third parties adjudicated under this chapter.

1 **29-31.2-14. Pretrial replevin hearing.**

- 2 1. ~~Following~~ Except as otherwise provided by law, following the seizure of property, a
3 defendant or a third party claimant has a right to a pretrial hearing to determine the
4 validity of the seizure.
- 5 2. The claimant may claim at any time prior to sixty days before trial of the related
6 criminal offense the right to possession of property by motion to the court to issue a
7 writ of replevin.
- 8 3. The claimant shall file a motion establishing the validity of the alleged interest in the
9 property.
- 10 4. The court shall hear the motion no more than thirty days after the motion is filed.
- 11 5. The state shall file an answer showing probable cause for the seizure, or cross
12 motions at least ten days before the hearing.
- 13 6. Either party, by agreement or for good cause, may move the court for an extension of
14 no more than ten days. The motion may be supported by affidavits or other
15 submissions.
- 16 7. The court shall issue a writ of replevin if the court finds:
- 17 a. It is likely the final judgment will require the state to return the property to the
18 claimant;
- 19 b. The property is not reasonably required to be held for evidence or investigatory
20 reasons; or
- 21 c. The property is the only reasonable means for a defendant to pay for legal
22 representation in the forfeiture or criminal proceeding. Under subdivision b, the
23 court may order the return of funds or property sufficient to obtain legal counsel
24 but less than the total amount seized, and require an accounting.
- 25 8. In lieu of ordering the issuance of the writ, the court may order the state to give
26 security or written assurance for satisfaction of any judgment, including damages,
27 which may be rendered in the action, or order other relief as may be just.

28 **29-31.2-15. Discovery.**

29 Discovery is subject to the North Dakota Rules of Criminal Procedure.

1 **29-31.2-16. Trial proceedings.**

- 2 1. The Except as otherwise provided by law, the litigation related to the forfeiture of
3 property must be held in a single proceeding following the trial of the related alleged
4 offense. The litigation of whether property of less than ten thousand dollars in value is
5 to be forfeited must be conducted by the court without a jury.
- 6 2. Within seven days of the seizure of property or simultaneously upon filing a related
7 criminal indictment, information, or complaint, the state shall file a forfeiture charge
8 that must include:
- 9 a. A description of the property seized;
10 b. The date and place of seizure of the property;
11 c. The name and address of the law enforcement agency making the seizure;
12 d. The specific statutory and factual grounds for the seizure;
13 e. Whether the property was seized pursuant to an order of seizure, and if the
14 property was seized without an order of seizure, an affidavit from a law
15 enforcement officer stating the legal and factual grounds why an order of seizure
16 was not required; and
17 f. The names of persons known to the state who may claim an interest in the
18 property and the basis for each person's alleged interest.
- 19 3. The forfeiture charge must be served upon the person from whom the property was
20 seized, the person's attorney of record, and all persons known or reasonably believed
21 to claim an interest in the property.

22 **29-31.2-17. Proportionality hearing.**

- 23 1. At any time following determination of forfeiture by the trier of fact, the defendant may
24 petition the court to determine whether the forfeiture is unconstitutionally excessive
25 under the state or federal constitution.
- 26 2. The defendant has the burden of establishing the forfeiture is grossly disproportional
27 to the seriousness of the offense by a preponderance of the evidence at a hearing
28 conducted by the court without a jury.
- 29 3. In determining whether the forfeiture of an instrumentality is unconstitutionally
30 excessive, the court may consider all relevant factors, including:

- 1 a. The seriousness of the offense and its impact on the community, including the
- 2 duration of the activity and the harm caused by the defendant;
- 3 b. The extent to which the defendant participated in the offense;
- 4 c. The extent to which the property was used in committing the offense;
- 5 d. The sentence imposed for committing the crime subject to forfeiture; and
- 6 e. Whether the offense was completed or attempted.
- 7 4. In determining the value of the instrumentality subject to forfeiture, the court may
- 8 consider all relevant factors, including:
- 9 a. The fair market value of the property;
- 10 b. The value of the property to the defendant including hardship to the defendant if
- 11 the forfeiture is realized; and
- 12 c. The hardship from the loss of a primary residence, motor vehicle, or other
- 13 property to the defendant's family members or others if the property is forfeited.
- 14 5. The court may not consider the value of the instrumentality to the state in determining
- 15 whether the forfeiture of an instrumentality is constitutionally excessive.

16 **29-31.2-18. Secured interest.**

- 17 1. Property encumbered by a bona fide security interest is not subject to forfeiture. A
- 18 person claiming a security interest must establish by a preponderance of the evidence
- 19 the validity of the interest perfected under chapter 41-09, or a lease or rental
- 20 agreement.
- 21 2. The prosecutor shall summarily return property to the person with a bona fide security
- 22 interest.
- 23 3. If the person alleges a valid security interest but the state seeks to proceed with the
- 24 forfeiture against the property, the state shall prove by a preponderance of the
- 25 evidence the person had actual knowledge of the underlying crime giving rise to the
- 26 forfeiture.

27 **29-31.2-19. Innocent owner.**

- 28 1. The property of an innocent owner may not be forfeited.
- 29 2. A person who has an ownership interest in property subject to forfeiture existing at the
- 30 time the illegal conduct giving rise to forfeiture occurred and who claims to be an

1 innocent owner bears the burden of proving by clear and convincing evidence that the
2 person has a legal right, title, or interest in the property seized under this chapter.

3 3. If subsection 2 is satisfied and the state seeks to proceed with the forfeiture against
4 the property, the burden is on the state to prove by clear and convincing evidence the
5 person had actual or constructive knowledge of the underlying crime giving rise to the
6 forfeiture.

7 4. A person who acquired an ownership interest in property subject to forfeiture after the
8 commission of a crime giving rise to the forfeiture and who claims to be an innocent
9 owner bears the burden of proving by clear and convincing evidence that the person
10 has legal right, title, or interest in the property seized under this chapter.

11 5. If subsection 4 is satisfied and the state seeks to proceed with the forfeiture against
12 the property, the state bears the burden of proving by clear and convincing evidence
13 that at the time the person acquired the property the person:

14 a. Had actual or constructive knowledge that the property was subject to forfeiture;
15 or

16 b. Was not a bona fide purchaser without notice of any defect in title and for
17 valuable consideration.

18 6. If the state fails to meet its burden in subsection 3 or 5, the court shall find that the
19 person is an innocent owner and shall order the state to relinquish all claims of title to
20 the property.

21 7. The defendant or convicted offender may invoke the right against self-incrimination or
22 the marital privilege during the forfeiture-related stage of the prosecution.

23 **29-31.2-20. Appeal.**

24 Except as otherwise provided by law, a party to forfeiture litigation may appeal the district
25 court's decision regarding the seizure, forfeiture, and distribution of property under this chapter.

26 **29-31.2-21. Disposition of property and proceeds.**

27 1. At any time unclaimed property or contraband held for evidentiary purposes is no
28 longer needed for that purpose, the court may order it be delivered to the state
29 treasurer within thirty days, or, in the case of contraband, be destroyed within thirty
30 days.

- 1 2. If the forfeiture is granted, the court may order the property be delivered to the state
- 2 treasurer within thirty days.
- 3 3. Upon motion, the court may order a portion of the currency seized or proceeds from
- 4 public auction be used to pay reasonable nonpersonnel expenses of the seizure,
- 5 storage, and maintenance of custody of any forfeited items.
- 6 4. All abandoned property must be delivered to the state treasurer within thirty days.
- 7 5. The state treasurer shall dispose of all noncurrency forfeited and abandoned property
- 8 at public auction. The auction proceeds and forfeited currency first must be used to
- 9 pay all outstanding recorded liens on the forfeited property, then to comply with an
- 10 order of the court to pay reasonable nonpersonnel expenses, with all remaining funds
- 11 to be deposited into the state's general fund.

12 **29-31.2-22. Disposition of property and proceeds from another jurisdiction.**

- 13 1. ~~Forfeited~~Except as otherwise provided by law, forfeited property received from another
- 14 jurisdiction, including the federal government, must be transferred to the state
- 15 treasurer, sold by the state treasurer or designee, and deposited in the state's general
- 16 fund.
- 17 2. ~~Proceeds~~Except as otherwise provided by law, proceeds from the sale of forfeited
- 18 property received from another jurisdiction, including the federal government, must be
- 19 transferred to the state treasurer and deposited in the state's general fund.
- 20 3. If federal law prohibits compliance with subsections 1 and 2, state and local law
- 21 enforcement agencies are prohibited from seeking or accepting forfeited property or
- 22 proceeds from the federal government.

23 **29-31.2-23. Prohibition on retaining property - Sale restrictions.**

24 A law enforcement agency may not retain forfeited or abandoned property for its own use or
25 sell it directly or indirectly to any employee of the agency, to a person related to an employee by
26 blood or marriage, or to another law enforcement agency.

27 **29-31.2-24. Reporting.**

- 28 1. On an annual basis, each law enforcement agency shall compile the following
- 29 information about seizures and forfeitures completed by the agency under state
- 30 forfeiture law and federal forfeiture law:
- 31 a. The total number of seizures of currency;

- 1 b. The total number of seizures and the number of items in each class of property
2 seized including vehicles, houses, and other types of property seized;
3 c. The market value of each class of property seized including currency, vehicles,
4 houses, and other types of property seized; and
5 d. The total number of occurrences of each class of crime underlying the forfeitures
6 including controlled substances, driving while intoxicated, and other crimes.
7 2. The attorney general may require additional information be reported which is not
8 specified in this section. The attorney general shall develop standard forms,
9 processes, and deadlines for electronic data entry for annual submission of forfeiture
10 data by law enforcement agencies.
11 3. Each law enforcement agency shall file with the attorney general a report of the
12 information compiled under subsection 1 for the law enforcement agency and the
13 corresponding prosecutor. The law enforcement agency shall file separate reports for
14 forfeitures completed under state forfeiture law and federal forfeiture law. A law
15 enforcement agency that did not engage in seizures or forfeitures during the reporting
16 period shall file a null report. The attorney general shall compile the submissions and
17 issue an aggregate report of all forfeitures in the state.
18 4. If a law enforcement agency fails to file a report within thirty days after the report is
19 due, the attorney general may compel compliance by any means until the report is
20 filed.
21 5. By April first of each year, the attorney general shall make available on the attorney
22 general's website the reports submitted by law enforcement agencies and the attorney
23 general's aggregate report.

24 **29-31.2-25. Return of property - Damages and costs.**

- 25 1. The law enforcement agency that holds the property shall return property to the owner
26 within a reasonable period of time not to exceed five days after:
27 a. The court finds the owner had a bona fide security interest;
28 b. The court finds the owner was an innocent owner;
29 c. The acquittal of or dismissal of the owner of the criminal charge that is the basis
30 of the forfeiture proceedings; or

1 d. The dismissal of the criminal charge that is the basis of the forfeiture proceedings
2 by nolle prosequi.

3 2. The law enforcement agency that holds the property is responsible for any damages,
4 storage fees, and related costs applicable to property returned under subsection 1.

5 **29-31.2-26. Transfer of forfeitable property to federal government.**

6 1. A state, county, or municipal law enforcement agency or prosecutor may not enter an
7 agreement to transfer or refer seized property to a federal agency directly, indirectly,
8 by adoption, through an intergovernmental joint task force, or by other means for the
9 purposes of forfeiture litigation unless the seized property includes United States
10 currency in excess of one hundred thousand dollars.

11 2. All state, county, or municipal law enforcement agencies shall refer seized property to
12 the appropriate state, county, or municipal prosecutor for forfeiture litigation under this
13 chapter unless the seized property includes United States currency in excess of one
14 hundred thousand dollars. If seized property includes United States currency in excess
15 of one hundred thousand dollars, the state, county, or municipal law enforcement
16 agency may refer or transfer the seized property to a federal agency for forfeiture
17 litigation under federal law.

18 3. Subsections 1 and 2 may not be construed to restrict state, county, or municipal law
19 enforcement agencies from collaborating with a federal agency to seize contraband or
20 property that the law enforcement agency has probable cause to believe is the
21 proceeds or instruments of a crime through an intergovernmental joint task force.

22 **29-31.2-27. Preemption.**

23 This chapter preempts laws by any political subdivision in the state which regulate civil and
24 criminal forfeiture.

25 ~~—SECTION 14. AMENDMENT. Section 39-03-18 of the North Dakota Century Code is~~
26 ~~amended and reenacted as follows:~~

27 ~~—39-03-18. Highway patrol – Assets forfeiture fund – Purpose – Continuing~~
28 ~~appropriation.~~

29 ~~—1. There is created a fund to be known as the highway patrol assets forfeiture fund. The~~
30 ~~fund consists of funds obtained from moneys, assets, and proceeds seized and~~
31 ~~forfeited pursuant to section 19-03.1-36, amounts received through court proceedings~~

1 ~~as restitution, and amounts remaining from the forfeiture of property after the payment~~
2 ~~of expenses for forfeiture and sale authorized by law. The total amount of deposits into~~
3 ~~the fund may not exceed three hundred thousand dollars within a biennium and any~~
4 ~~moneys in excess of that amount must be deposited in the general fund. The funds~~
5 ~~are appropriated as a continuing appropriation to the highway patrol for the following~~
6 ~~purposes:~~

7 ~~1. For paying expenses necessary to inventory, safeguard, maintain, advertise, or sell~~
8 ~~property seized, detained, or forfeited, pursuant to section 19-03.1-36, or of any other~~
9 ~~necessary expenses incident to the seizure, detention, or forfeiture of the property.~~

10 ~~2. a. For paying overtime compensation incurred as a result of investigations or~~
11 ~~violations of any state criminal law or law relating to the control of drug abuse.~~

12 ~~3. b. For purchasing equipment related to criminal interdiction.~~

13 ~~4. c. For paying matching funds required as a condition for receipt of funds from a~~
14 ~~federal government program awarding monetary grants or assistance for the~~
15 ~~investigation or apprehension of persons violating the provisions of chapter~~
16 ~~19-03.1.~~

17 ~~2. The superintendent of the highway patrol, with the concurrence of the director of~~
18 ~~the office of management and budget, shall establish the necessary accounting~~
19 ~~procedures for the use of the fund and shall personally approve, in writing, all requests~~
20 ~~for the use of the fund.~~

21 **SECTION 9. AMENDMENT.** Section 39-08-01.3 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **39-08-01.3. Alcohol-related traffic offenses - Seizure, forfeiture, and sale of motor**
24 **vehicles.**

25 A motor vehicle owned and operated by an individual upon a highway or upon public or
26 private areas to which the public has a right of access for vehicular use may be seized,
27 forfeited, and sold or otherwise disposed of pursuant to an order of the court at the time of
28 sentencing and forfeited pursuant to chapter 29-31.2 if the individual is in violation of section
29 39-08-01, 39-08-01.2, or 39-08-01.4, or an equivalent ordinance and has been convicted of
30 violating section 39-08-01 or an equivalent ordinance at least one other time within the seven
31 years preceding the violation.

1 **SECTION 10. AMENDMENT.** Section 39-30-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **39-30-04. Forfeiture of property.**

4 1. The following are subject to forfeiture ~~unless obtained by theft, fraud, or conspiracy to~~
5 ~~defraud and the rightful owner is known or can be identified and located~~pursuant to
6 chapter 29-31.2:

7 a. Any tool;

8 b. Any implement; or

9 c. Any instrumentality, including any motor vehicle or motor vehicle part, ~~whether~~
10 ~~owned or unowned by the person from whose possession or control it was~~
11 ~~seized, which that~~ is used or possessed either in violation of section 39-30-02 or
12 to promote or facilitate a violation of section 39-30-02.

13 2. ~~Any motor vehicle, other conveyance, or motor vehicle part used by any person as a~~
14 ~~common carrier is subject to forfeiture under this section if the owner or other person~~
15 ~~in charge of the motor vehicle, other conveyance, or motor vehicle part is a consenting~~
16 ~~party to a violation of section 39-30-02.~~

17 3. ~~Any motor vehicle, motor vehicle part, other conveyance, tool, implement, or~~
18 ~~instrumentality is not subject to forfeiture under this section by reason of any act or~~
19 ~~omission that the owner proves to have been committed or omitted without the~~
20 ~~owner's knowledge or consent.~~

21 4.2. a. Seizing agencies shall utilize their best efforts to identify any seized motor vehicle
22 or motor vehicle part to determine ownership or the identity of any other person
23 having a right or interest in it. In its reasonable identification and owner location
24 attempts, the seizing agency shall cause the stolen motor vehicle files of all law
25 enforcement agencies to be searched for stolen or wanted information on motor
26 vehicles similar to the seized motor vehicle or consistent with the seized motor
27 vehicle part.

28 b. If a motor vehicle or motor vehicle part has an apparent value in excess of one
29 thousand dollars:

30 (1) The seizing agency shall consult with an expert of the type specified in
31 subsection 4 of section 39-30-01; and

1 (2) The seizing party shall request searches of the online and offline files of the
2 national crime information center and the national automobile theft bureau
3 when files have been searched with negative results.

4 5. ~~A forfeiture of a motor vehicle, motor vehicle part, or other conveyance encumbered by~~
5 ~~a bona fide security interest is subject to the interest of the secured party if the~~
6 ~~secured party neither had knowledge of nor consented to the act or omission forming~~
7 ~~the ground for the forfeiture.~~

8 6. ~~Property, described in subsection 1, seized and held for forfeiture, is not subject to~~
9 ~~replevin and is subject only to the order and judgments of a court of competent~~
10 ~~jurisdiction hearing the forfeiture proceedings.~~

11 7. a. ~~A state's attorney in the county where the seizure occurs shall bring an action for~~
12 ~~forfeiture in a court of competent jurisdiction. The forfeiture action must be~~
13 ~~brought within sixty days from the date of seizure except when the state's~~
14 ~~attorney in the sound exercise of discretion determines that no forfeiture action~~
15 ~~should be brought because of the rights of property owners, lienholders, or~~
16 ~~secured creditors, or because of exculpatory, exonerating, or mitigating facts and~~
17 ~~circumstances.~~

18 b. ~~The state's attorney shall give notice of the forfeiture proceeding by mailing a~~
19 ~~copy of the complaint in the forfeiture proceeding to each person whose right,~~
20 ~~title, or interest is of record maintained in the department of transportation, or any~~
21 ~~other department of the state, or any other state or territory of the United States,~~
22 ~~or of the federal government if the property is required to be registered in any~~
23 ~~such department.~~

24 c. ~~Notice of the proceeding must be given to any other person as may appear, from~~
25 ~~the facts and circumstances, to have any right, title, or interest in or to the~~
26 ~~property.~~

27 d. ~~The owner of the property, or any person having or claiming right, title, or interest~~
28 ~~in the property may within sixty days after the mailing of such notice file a verified~~
29 ~~answer to the complaint and may appear at the hearing on the action for~~
30 ~~forfeiture.~~

- 1 e. ~~The state's attorney must show at a forfeiture hearing, by a preponderance of the~~
2 ~~evidence, that the property was used in the commission of a violation of section~~
3 ~~39-30-02 or was used or possessed to facilitate such violation.~~
- 4 f. ~~The owner of property may show by a preponderance of the evidence that the~~
5 ~~owner did not know, and did not have reason to know, that the property was to be~~
6 ~~used or possessed in the commission of any violation or that any of the~~
7 ~~exceptions to forfeiture are applicable.~~
- 8 g. ~~Unless the state's attorney makes the required showing, the court shall order the~~
9 ~~property released to the owner. If the state's attorney has made such a showing,~~
10 ~~the court may order:~~
- 11 (1) ~~The property be destroyed by the agency that seized it or some other~~
12 ~~agency designated by the court;~~
- 13 (2) ~~The property be delivered and retained for use by the agency that seized it~~
14 ~~or some other agency designated by the court; or~~
- 15 (3) ~~The property be sold at public sale.~~
- 16 8. ~~A copy of a forfeiture order must be filed with the sheriff of the county in which the~~
17 ~~forfeiture occurs and with each federal or state department with which the property is~~
18 ~~required to be registered. The order, when filed, constitutes authority for the issuance~~
19 ~~to the agency to which the property is delivered and retained for use or to any~~
20 ~~purchaser of the property of a title certificate, registration certificate, or other special~~
21 ~~certificate as may be required by law considering the condition of the property.~~
- 22 9. ~~Proceeds from the sale at public auction, after payment of all reasonable charges and~~
23 ~~expenses incurred by the agency designated by the court to conduct the sale in~~
24 ~~storing and selling the property, must be paid to the general fund of the county of~~
25 ~~seizure.~~
- 26 10. ~~No motor vehicle, either seized under section 39-30-03 or forfeited under this section,~~
27 ~~may be released by the seizing agency or used or sold by an agency designated by~~
28 ~~the court unless any altered, counterfeited, defaced, destroyed, disguised, falsified,~~
29 ~~forged, obliterated, or removed vehicle identification number is corrected by the~~
30 ~~issuance and affixing of either assigned or replacement vehicle identification number~~
31 ~~plates as may be appropriate under laws of this state.~~

- 1 ~~11. No motor vehicle part having any altered, counterfeited, defaced, destroyed,~~
2 ~~disguised, falsified, forged, obliterated, or removed vehicle identification number may~~
3 ~~be disposed of upon forfeiture except by destruction. This subsection does not apply~~
4 ~~to any motor vehicle part that is assembled with and constitutes part of a motor~~
5 ~~vehicle.~~
- 6 ~~12. No motor vehicle or motor vehicle part may be forfeited under this section solely on~~
7 ~~the basis that it is unidentifiable. Instead of forfeiture, any seized motor vehicle or~~
8 ~~motor vehicle part that is unidentifiable must be the subject of a written report sent by~~
9 ~~the seizing agency to the department of transportation. The report must include a~~
10 ~~description of the motor vehicle or motor vehicle part, its color, if any, the date, time,~~
11 ~~and place of its seizure, the name of the person from whose possession or control it~~
12 ~~was seized, the grounds for its seizure, and the location where it is held or stored.~~
- 13 ~~13. When a seized unidentifiable motor vehicle or motor vehicle part has been held for~~
14 ~~sixty days or more after the notice to the department of transportation specified in~~
15 ~~subsection 12 has been given, the seizing agency, or its agent, shall cause the motor~~
16 ~~vehicle or motor vehicle part to be sold at public sale to the highest bidder. Notice of~~
17 ~~the time and place of sale must be posted in a conspicuous place for at least thirty~~
18 ~~days prior to the sale on the premises where the motor vehicle or motor vehicle part~~
19 ~~has been stored.~~
- 20 ~~14. If a seized unidentifiable motor vehicle or motor vehicle part has an apparent value of~~
21 ~~one thousand dollars or less, the seizing agency shall authorize the disposal of the~~
22 ~~motor vehicle or motor vehicle part, provided that no such disposition may be made~~
23 ~~less than sixty days after the date of seizure.~~
- 24 ~~15. The proceeds of the public sale of an unidentifiable motor vehicle or motor vehicle part~~
25 ~~must be deposited in the general fund of the state or other governmental unit after~~
26 ~~deduction of any reasonable and necessary towing and storage charges.~~
- 27 ~~16.3.~~ Seizing agencies shall utilize their best efforts to arrange for the towing and storing of
28 motor vehicles and motor vehicle parts in the most economical manner possible. The
29 owner of a motor vehicle or a motor vehicle part may not be required to pay more than
30 the minimum reasonable costs of towing and storage.

1 17. ~~A seized motor vehicle or motor vehicle part that is neither forfeited nor unidentifiable~~
2 ~~must be held subject to the order of the court in which the criminal action is pending or,~~
3 ~~if a request for its release from such custody is made, until the state's attorney has~~
4 ~~notified the defendant or the defendant's attorney of such request and both the~~
5 ~~prosecution and defense have been afforded a reasonable opportunity for an~~
6 ~~examination of the property to determine its true value and to produce or reproduce,~~
7 ~~by photographs or other identifying techniques, legally sufficient evidence for~~
8 ~~introduction at trial or other criminal proceedings. Upon expiration of a reasonable time~~
9 ~~for the completion of the examination, which may not exceed fourteen days from the~~
10 ~~date of service upon the defense of the notice of request for return of property, the~~
11 ~~property must be released to the person making such request after satisfactory proof~~
12 ~~of the person's entitlement to possession. Notwithstanding the foregoing, upon~~
13 ~~application by either party with notice to the other, the court may order retention of the~~
14 ~~property if it determines that retention is necessary in the furtherance of justice.~~

15 18. ~~When a seized vehicle is forfeited, restored to its owner, or disposed of as~~
16 ~~unidentifiable, the seizing agency shall retain a report of the transaction for a period of~~
17 ~~at least one year from the date of the transaction.~~

18 19. ~~When an applicant for a certificate of title or salvage certificate presents to the~~
19 ~~department of transportation proof that the applicant purchased or acquired a motor~~
20 ~~vehicle at a public sale conducted pursuant to this section and such fact is attested to~~
21 ~~by the seizing agency, the department of transportation shall issue a certificate of title,~~
22 ~~salvage certificate for the motor vehicle upon receipt of the statutory fee, properly~~
23 ~~executed application for a certificate of title, or other certificate of ownership, and the~~
24 ~~affidavit of the seizing agency that a state-assigned number was applied for and~~
25 ~~affixed to the motor vehicle prior to the time that the motor vehicle was released by the~~
26 ~~seizing agency to the purchaser.~~

27 **SECTION 11. AMENDMENT.** Section 40-11-13 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **40-11-13. Fines and forfeitures for violation of ordinances paid into treasury.**

30 All fines, and penalties, ~~and forfeitures~~ collected for offenses against the ordinances of a
31 city, including those fines, and penalties, ~~and forfeitures~~ collected as a result of a judgment of a

1 district court rendered pursuant to section 40-18-19, must be paid into the city's treasury at
2 suchthe time and in suchthe manner as may be prescribed by ordinance.

3 ~~— SECTION 16. AMENDMENT. Section 54-12-14 of the North Dakota Century Code is~~
4 ~~amended and reenacted as follows:~~

5 ~~— 54-12-14. Assets forfeiture fund – Created – Purpose – Continuing appropriation.~~

6 ~~— 1. The attorney general assets forfeiture fund consists of funds appropriated by the~~
7 ~~legislative assembly and additional funds obtained from moneys, assets, and~~
8 ~~proceeds seized and forfeited pursuant to section 19-03.1-36, amounts received~~
9 ~~through court proceedings as restitution, amounts remaining from the forfeiture of~~
10 ~~property after the payment of expenses for forfeiture and sale authorized by law, and~~
11 ~~amounts received from a multijurisdictional drug task force as defined in section~~
12 ~~54-12-26. The amount of deposits into the fund which do not come from legislative~~
13 ~~appropriation or from a multijurisdictional drug task force and are not payable to~~
14 ~~another governmental entity may not exceed two hundred thousand dollars within a~~
15 ~~biennium and any moneys in excess of that amount must be deposited in the general~~
16 ~~fund. The funds are appropriated, as a standing and continuing appropriation, to the~~
17 ~~attorney general for the following purposes:~~

18 ~~— a. For obtaining evidence for enforcement of any state criminal law or law relating to~~
19 ~~the control of drug abuse.~~

20 ~~— b. For repayment of rewards to qualified local programs approved under section~~
21 ~~12.1-32-02.2, if the information that was reported to the qualified local program~~
22 ~~substantially contributed to forfeiture of the asset, and for paying, at the discretion~~
23 ~~of the attorney general, rewards for other information or assistance leading to a~~
24 ~~forfeiture under section 19-03.1-36 chapter 29-31.2.~~

25 ~~— c. For paying, at the discretion of the attorney general, any expenses necessary to~~
26 ~~seize, detain, inventory, safeguard, maintain, advertise, or sell property seized,~~
27 ~~detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary~~
28 ~~expenses incident to the seizure, detention, or forfeiture of such property.~~

29 ~~— d. For equipping, for law enforcement functions, forfeited vessels, vehicles, and~~
30 ~~aircraft retained as provided by law for official use by the state board of pharmacy~~
31 ~~or a law enforcement agency.~~

1 ~~e.d. For paying, at the discretion of the attorney general, overtime compensation to~~
2 ~~agents of the bureau of criminal investigation incurred as a result of~~
3 ~~investigations of violations of any state criminal law or law relating to the control~~
4 ~~of drug abuse.~~

5 ~~f.e. For paying matching funds required to be paid as a condition for receipt of funds~~
6 ~~from a federal government program awarding monetary grants or assistance for~~
7 ~~the investigation, apprehension, or prosecution of persons violating the~~
8 ~~provisions of chapter 19-03.1.~~

9 ~~2. The attorney general shall, with the concurrence of the director of the office of~~
10 ~~management and budget, establish the necessary accounting procedures for the use~~
11 ~~of the fund, and shall personally approve, in writing, all requests from the director of~~
12 ~~the bureau of criminal investigation or the director of the drug enforcement unit for the~~
13 ~~use of the fund.~~

14 ~~3. Notwithstanding subsection 1, the amount of deposits into the fund related to~~
15 ~~human trafficking are appropriated, as a standing and continuing appropriation, to the~~
16 ~~attorney general for awarding grants to organizations providing prevention and~~
17 ~~treatment services for human trafficking victims.~~

18 **SECTION 12. AMENDMENT.** Section 57-36-14 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **57-36-14. Procedure in case of seizure - Determination - Judgment.**

21 The procedure in case of seizure of cigarettes, equipment, or any other product taxed
22 pursuant to this chapter must be as follows:

23 1. Upon the seizure of any cigarettes and within two days thereafter, the officer making
24 ~~such~~the seizure shall deliver an inventory of the property seized to the person from
25 whom ~~such~~the seizure was made, if known, and shall file a copy thereof with the tax
26 commissioner.

27 2. Within ten days after the date of the service of ~~such~~that inventory, the person from
28 whom the seizure was made, or any other person claiming an interest in the
29 ~~property~~cigarettes, equipment, or any other product taxed pursuant to this chapter
30 seized, may file a demand for a judicial determination of the question as to whether
31 ~~such~~that seized property was, or lawfully is, subject to seizure and forfeiture.

1 Thereupon the tax commissioner, within thirty days, shall institute an action in the
2 district court of the county where ~~such~~the seizure was made to determine the issue of
3 forfeiture. ~~Such~~The action must be brought in the name of the state of North Dakota
4 and must be prosecuted by the state's attorney, the tax commissioner, or the attorney
5 general. The district court shall hear ~~such~~the action as a court case and shall try and
6 determine the issues of law and fact involved.

7 3. In case a judgment of forfeiture is entered, the tax commissioner, unless the judgment
8 is stayed pending an appeal to the supreme court, as soon as convenient, shall
9 destroy the forfeited property.

10 4. In case a demand for a judicial determination is made and no action is commenced as
11 provided in this section, such property must be released by the tax commissioner and
12 redelivered to the person entitled thereto.

13 5. ~~In the event that~~If no demand for judicial determination is made, the seized property
14 must be deemed forfeited to the state by operation of law, and the tax commissioner
15 shall destroy the same.

16 6. In case of the seizure of an automobile, truck, boat, airplane, conveyance, vehicle, or
17 other means of transportation pursuant to the provisions of this chapter, ~~the officer~~
18 ~~making the seizure shall file an inventory, and upon a demand for a judicial~~
19 ~~determination as provided in this section, the tax commissioner, within thirty days~~
20 ~~thereafter, shall commence an action in the district court of the county where such~~
21 ~~seizure was made to declare a forfeiture of such vehicle or other means of~~
22 ~~transportation, and such action~~forfeiture proceedings must be heard and determined
23 ~~as other forfeiture actions instituted under this chapter~~pursuant to chapter 29-31.2.

24 7. Whenever the tax commissioner is satisfied that any person from whom
25 ~~property~~cigarettes, equipment, or any other product taxed pursuant to this chapter is
26 seized was acting in good faith and without intent to evade the revenue provisions of
27 this chapter, the tax commissioner shall release the property seized without further
28 legal proceedings.

29 **SECTION 13. AMENDMENT.** Subsection 2 of section 57-36-33 of the North Dakota
30 Century Code is amended and reenacted as follows:

- 1 2. All cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products in the
2 possession of the person who violates any provision of this chapter, or in the place of
3 business of the person, may be confiscated by the tax commissioner as provided
4 under section 57-36-14 and forfeited to the state. Any cigarette-making machine that is
5 maintained or operated in violation of sections 57-36-05.3, 57-36-05.4, or 57-36-06.1
6 must be confiscated by the tax commissioner and forfeited to the state in accordance
7 with chapter ~~29-31.1~~29-31.2.

8 **SECTION 14. AMENDMENT.** Section 62.1-01-02 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **62.1-01-02. Forfeiture of dangerous weapon or firearm by person arrested and**
11 **convicted of crime.**

- 12 1. Any firearm or dangerous weapon used or possessed while in the commission of a
13 felony or a misdemeanor involving violence or intimidation must be seized and, upon
14 conviction ~~and by motion, forfeited to the jurisdiction in which the arrest was made or~~
15 ~~the jurisdiction in which the charge arose. Except as provided in chapter 29-01 for~~
16 ~~stolen property, the forfeited dangerous weapon may be, pursuant to court order, sold~~
17 ~~at public auction, sold or traded to other law enforcement agencies or dealers,~~
18 ~~retained for use, or destroyed~~forfeited pursuant to chapter 29-31.2.
19 2. ~~Notwithstanding any other provision of law; and subject to the duty to return firearms~~
20 ~~to innocent owners under this section, section 29-31.1-02, and as provided in chapter~~
21 ~~29-01 for stolen property; all firearms, as defined in section 62.1-01-01, which are~~
22 ~~forfeited, recovered as stolen and unclaimed, or abandoned to any law enforcement~~
23 ~~agency of this state or a political subdivision of this state, including the game and fish~~
24 ~~department, or that are otherwise acquired by the state or a political subdivision of the~~
25 ~~state and are no longer needed, shall be disposed of as provided in this section.~~
26 ~~Except as provided in chapter 29-01 for stolen property, this section does not apply to~~
27 ~~firearms that are seized or confiscated and disposed of under chapter 20.1-10.~~
28 3. a. ~~Before the disposal of any firearm under this section, the agency with custody of~~
29 ~~the firearm shall use its best efforts to determine if the firearm has been lost by,~~
30 ~~or stolen or otherwise unlawfully obtained from, an innocent owner and, if so,~~

- 1 shall provide notification to the innocent owner of its custody of the firearm. An
2 innocent owner may also notify the agency to claim a firearm.
- 3 b. After notification, the agency shall return the firearm to its innocent owner
4 provided the owner submits sufficient proof of ownership, as determined by the
5 agency, and pays the costs, if any, of returning the firearm to the innocent owner.
6 Costs are limited to the actual costs of shipping to the innocent owner and
7 associated costs from any transfer and background check fees charged when
8 delivering the firearm to the innocent owner.
- 9 e. If six months elapse after notification to the innocent owner of the custody of the
10 firearm by an agency and the innocent owner fails to bear the costs of return of
11 his or her firearm or fails to respond to the agency notification, or if six months
12 elapse after notice of a claim by an innocent owner and the innocent owner fails
13 to bear the costs of return of the innocent owner's firearm or take away the
14 innocent owner's firearm, then the agency shall dispose of the firearm as
15 provided in this section.
- 16 4. a. Except as provided in subdivision b of subsection 3 or subsection 5, the agency
17 shall dispose of the firearms that it receives under subsection 2 by sale at public
18 auction to persons that may lawfully possess a firearm and persons licensed as
19 firearms collectors, dealers, importers, or manufacturers under the provisions of
20 18 U.S.C. section 921 et seq., and authorized to receive such firearms under the
21 terms of the licenses.
- 22 b. The auction required by this subsection may occur online on a rolling basis or at
23 live events, but in no event may the auction occur less frequently than once every
24 year during any time the agency has an inventory of saleable firearms. The
25 agency shall establish a procedure to notify persons of its auctions.
- 26 e. The agency may not retain proceeds above that which are necessary to cover
27 the costs of administering this subsection, with any surplus to be transferred to
28 the general fund of the jurisdiction in which the agency is located, provided that
29 an agency may be reimbursed for any firearms formerly in use by the agency that
30 are sold under this section.

- 1 d. ~~Employees of the agency are not eligible to bid on the firearms at an auction~~
2 ~~conducted under this subsection, and except for the amounts authorized under~~
3 ~~subdivision c of this subsection, neither the agency nor its employees may retain~~
4 ~~any proceeds from any sale required by this subsection, nor may the agency or~~
5 ~~its employees retain any firearm required to be sold under this subsection.~~
- 6 5. a. ~~The requirements of subsection 4 do not apply to a firearm if there are not any~~
7 ~~bids from eligible persons received within six months from when bidding opened~~
8 ~~on the firearm, or if the agency director, sheriff, chief of police, or a designee of~~
9 ~~the official certifies that the firearm is unsafe for use because of wear, damage,~~
10 ~~age, or modification or because any federal or state law prohibits the sale or~~
11 ~~distribution of the firearm. The agency director, sheriff, chief of police, or a~~
12 ~~designee of the official, may transfer any of these firearms to the attorney~~
13 ~~general's crime laboratory for training or experimental purposes, or to a museum~~
14 ~~or historical society that displays these items to the public and is lawfully eligible~~
15 ~~to receive the firearm, or the firearm may be destroyed. The requirements of~~
16 ~~subsection 4 do not apply to a firearm and an agency director, sheriff, chief of~~
17 ~~police, or a designee of the official may destroy the firearm, if:~~
- 18 (1) ~~The firearm was used in a violent crime, in an accidental shooting, or a~~
19 ~~self-inflicted shooting resulting in the death of an individual;~~
- 20 (2) ~~There is not a claim for the firearm by an innocent owner; and~~
- 21 (3) ~~A family member of the deceased individual makes a written request for the~~
22 ~~destruction of the firearm.~~
- 23 b. ~~Agencies subject to the provisions of this subsection may establish a procedure~~
24 ~~to destroy firearms and may expend necessary funds for that purpose.~~
- 25 6.2. All agencies subject to the provisions of this section shall keep records of the firearms
26 ~~acquired and disposed or~~forfeited ~~as provided in this section, as well as the proceeds~~
27 ~~of the sales and the disbursement of the proceeds, and shall maintain these records~~
28 ~~for not less than ten years from the date on which a firearm is disposed of or on which~~
29 ~~a disbursement of funds is made, as the case may be~~forfeited.
- 30 7. ~~Neither the state nor any political subdivision of the state, nor any of their officers,~~
31 ~~agents, and employees, is liable to any person, including the purchaser of a firearm,~~

1 for personal injuries or damage to property arising from the sale or disposal of a
2 firearm under subsection 4 or 5 of this section, unless an officer, agent, or employee of
3 the state or political subdivision acted with gross negligence or recklessness.

4 8. As used in this section, the term "innocent owner" means a person who:

5 a. Did not beforehand know or in the exercise of ordinary care would not have
6 known of the conduct which caused that person's firearm to be forfeited, seized,
7 or abandoned to any law enforcement agency of the state or any political
8 subdivision of the state, including the game and fish department;

9 b. Did not participate in the commission of a crime or delinquent act involving that
10 person's firearm;

11 c. Legally owned and presently owns the firearm forfeited, seized, or abandoned;
12 and

13 d. Is authorized by state and federal law to receive and possess his or her firearm.

14 **SECTION 15. AMENDMENT.** Subsection 2 of section 62.1-05-01 of the North Dakota
15 Century Code is amended and reenacted as follows:

16 2. A person who violates this section is guilty of a class C felony. Upon arrest of that
17 person, the firearm or dangerous weapon must be seized. Upon conviction of the
18 person and motion to the court in which the conviction occurred, the firearm or
19 dangerous weapon must be forfeited to the jurisdiction in which the arrest was made.
20 The firearm or dangerous weapon may be sold at public auction, retained for use, or
21 destroyed pursuant to the court's order. If a qualified local program as defined under
22 section 12.1-32-02.2 has paid a reward for information that resulted in forfeiture of the
23 item and the item has been sold, the jurisdiction shall, after payment of expenses for
24 forfeiture and sale, repay the qualified local program for the reward that it has paid
25 pursuant to chapter 29-31.2.

26 **SECTION 16. REPEAL.** Sections 19-03.1-36.1, 19-03.1-36.2, 19-03.1-36.3, 19-03.1-36.4,
27 19-03.1-36.5, 19-03.1-36.6, 19-03.1-36.7, and 28-01-20, and chapters 29-31.1 and 32-14 of the
28 North Dakota Century Code are repealed.

Seizure vs Forfeiture
Civil Asset vs Criminal Asset Forfeiture

Seizure is the law enforcement officer side of things.

Forfeiture is the prosecution side of things.

- 1) Because this bill doesn't change anything with regard to seizure, it will not affect LEO's at all. They will continue to seize assets when they see fit, and with probable cause.
- 2) This bill DOES change what happens after that. Forfeiture litigation would take place only AFTER a person is convicted of a crime. If a person is not convicted, the assets are returned. If it is found there is no cause to charge a person with a crime, the assets will be returned.
- 3) When the assets are forfeited, the resulting funds will be directed to the state's General Fund, rather than to Agency funds. Because our Law Enforcement has NOT been abusing our terrible forfeiture laws, this will not be a significant impact for them at all. The legislative body is responsible for appropriating revenue to the state. Not only does placing forfeiture in agency funds create a perverse incentive for law enforcement (if we had bad actors), but it abrogates our legislative responsibility of "the power of the purse".
- 4) This bill helps to establish the right of ND citizens to ND laws, rather than blindly acquiescing to Federal Forfeiture programs.

Virginia General Assembly Unanimously Passes Civil Asset Forfeiture Reform

TONY BERGIDA/MARCH 11, 2016



On March 10, 2016, the Virginia House of Delegates unanimously voted to reform a certain aspect of their civil asset forfeiture system by passing [SB 457](#). The bill changes the burden of proof outlined by the Virginia State Crime Commission from “preponderance of the evidence” to “clear and convincing evidence.” This bill would make it more difficult for the government to obtain a judgment of forfeiture because it requires a higher burden of proof for the Commonwealth in the forfeiture proceeding against the property owner. The bill also allows an owner whose property was seized to request a trial by jury during the forfeiture proceeding, should the Commonwealth seek to have the property forfeited.

The modifications to state code signal a shift in Virginia politicians’ attitude towards civil asset forfeiture. The [Institute for Justice](#) and [FreedomWorks](#) both gave the Old Dominion’s asset forfeiture laws a “D-” grade for past performance. Although the Virginia Senate rejected a proposed [amendment](#) requiring a criminal conviction for the state to secure a judgement of forfeiture, SB 457 is nevertheless sure to improve that “D-” grade. The bipartisan sponsorship and support of the bill is a good sign moving forward. Additionally, Virginia can continue to improve its civil asset forfeiture laws. The ALEC model [Asset Forfeiture Process and Private Property Protection Act](#) lays out additional reforms that states can undertake, including requiring a criminal conviction in order for an owner’s property to be forfeited in favor of the state.

2/21/17

2

HB 1170

Foreword

Civil forfeiture threatens the constitutional rights of all Americans. Using civil forfeiture the government can take your home, business, cash, car or other property on the mere suspicion that it is somehow connected to criminal activity—and without ever convicting or even charging you with a crime. Most people unfamiliar with this process would find it hard to believe that such a power exists in a country that is supposed to recognize and hold dear rights to private property and due process of law.

Civil forfeiture has all the hallmarks of an inviting target for public-interest litigation and advocacy: a cutting-edge legal controversy, sympathetic property owners who have little or no involvement in criminal activity, and simple, outrageous facts that show ordinary Americans facing the loss of their property.

The Institute for Justice has made combatting civil forfeiture a top priority in our work to restore constitutional protections for private property rights. And with the publication of this new edition of *Policing for Profit: The Abuse of Civil Asset Forfeiture*, we document in the greatest detail possible the sweep of the forfeiture power.

The seeds of forfeiture abuse were sown in 1984 when Congress expanded federal civil forfeiture laws and created a financial incentive for law enforcement to forfeit property. Before then, all forfeited cash and proceeds from forfeited property had gone to the general fund of the U.S. Treasury. But starting in the mid-1980s, forfeiture revenue instead went to a newly created fund controlled by federal law enforcement. As a result, all federal forfeiture revenue can go back to the very agencies charged with enforcing the law, giving them a financial stake in forfeiture efforts. State and local agencies can also participate in forfeiture with the feds and receive a cut of the revenue through the benign-sounding "equitable sharing" program. Around the same time, many states followed Congress' lead and broadened their own state forfeiture laws while also adding incentives to police for profit.

Not surprisingly, the use of forfeiture at the federal and state levels exploded once profit incentives kicked in. And tales of abuse began to pour in. Throughout the early 1990s, newspapers such as the *Pittsburgh Press* and *Orlando Sentinel* and news programs like *20/20* featured investigative series and exposés highlighting the confiscation of property from owners never convicted of or even charged with a crime.

IJ's involvement with civil forfeiture began only two years after our founding when we filed an *amicus* brief with the U.S. Supreme Court in *United States v. James Daniel Good*, critiquing civil forfeiture from a property rights perspective. In 1993, the Court issued an important ruling protecting the due process rights of certain property own-

Every year, police and prosecutors across the United States take hundreds of millions of dollars in cash, cars, homes and other property—regardless of the owners’ guilt or innocence. Under civil forfeiture laws, the government can seize this property on the mere suspicion that it is connected to criminal activity. No charges or convictions are required. And once property is seized, owners must navigate a confusing, complex and often expensive legal process to try to win it back. Worst of all, most civil forfeiture laws give law enforcement agencies a powerful incentive to take property: a cut, or even all, of forfeiture proceeds.

This second edition of *Policing for Profit* examines civil forfeiture laws and activity nationwide, demonstrating how financial incentives to seize property, in combination with weak protections for property owners, put people’s property at risk. The report grades the civil forfeiture laws of each state and the federal government, documents remarkable growth in forfeiture activity across the country, and highlights a worrisome lack of transparency surrounding forfeiture activity and expenditures from forfeiture funds. Key findings include:

Forfeiture activity has exploded, particularly in the new millennium.

Forfeited cash and proceeds from the sale of forfeited property generate revenue for the government—and provide an important measure of law enforcement’s forfeiture activity.

- * In 1986, the Department of Justice’s Assets Forfeiture Fund took in \$93.7 million in revenue from federal forfeitures. By 2014, annual deposits had reached \$4.5 billion—a 4,667 percent increase.
- The forfeiture funds of the DOJ and Treasury Department together took in nearly \$29 billion from 2001 to 2014, and combined annual revenue grew 1,000 percent over the period.
- Total annual forfeiture revenue across 14 states more than doubled from 2002 to 2013. Those 14 states were the only states for which the Institute for Justice could obtain forfeiture revenues for an extended period.

Civil forfeiture far outpaces criminal forfeiture.

* Criminal forfeiture requires a criminal conviction to deprive people of their property. By contrast, civil forfeiture allows law enforcement to take property from innocent people never convicted of or even charged with a crime, making it easier for the government to forfeit property and harder for property owners to fight back.

- Just 13 percent of Department of Justice forfeitures from 1997 to 2013 were criminal forfeitures; 87 percent were civil forfeitures.
- Among DOJ civil forfeitures, 88 percent took place “administratively.” Administrative forfeitures happen automatically when a property owner fails to challenge a seizure in court for any reason, including the inability to afford a lawyer or a missed deadline to file a claim. The seized property is simply presumed “guilty” without a neutral arbiter such as a judge determining whether it should be permanently taken from its owner.

Federal and most state civil forfeiture laws put innocent property owners at risk.

ND and MA
are the only
states with an
'F' rating

This report's grades for state and federal civil forfeiture laws indicate the threat they pose to innocent property owners. Laws that earn poor grades provide law enforcement with lucrative incentives to pursue forfeitures and afford weak protections to property owners. High grades signify laws that limit or ban forfeiture proceeds directed to law enforcement and offer stronger protections against unjust forfeitures.

- 35 states earn grades of D+ or worse.
- Federal civil forfeiture laws are among the nation's worst, earning a D-.
- New Mexico and the District of Columbia earn the highest grades, thanks to 2015 reforms that eliminated financial incentives for civil forfeiture and improved property rights protections.

State and local law enforcement's participation in federal "equitable sharing" has soared, and 2015 policy changes are unlikely to reverse the trend.

Equitable sharing allows state and local law enforcement to team with the federal government to forfeit property under federal law instead of state law. Participating agencies receive up to 80 percent of proceeds, creating a strong incentive to use equitable sharing to circumvent more restrictive state laws. The Department of Justice announced new policies in January 2015 intended to curb one type of equitable sharing—federal "adoptions" of locally seized assets. But the changes and subsequent clarifications largely left intact another vehicle for equitable sharing—joint task forces and investigations involving federal law enforcement.

- Between 2000 and 2013, annual DOJ equitable sharing payments to state and local law enforcement more than tripled, growing from \$198 million to \$643 million. In all, the DOJ paid state and local agencies \$4.7 billion in forfeiture proceeds from 2000 to 2013.
- Only 18 percent of those proceeds resulted from federal adoptions of locally seized assets. The lion's share—82 percent—resulted from joint task forces and investigations, procedures largely unaffected by new DOJ rules.
- In a nationwide ranking, Rhode Island, California, New York and Florida rank worst for equitable sharing participation, even after accounting for the rate of drug arrests by state. South Dakota, North Dakota and Wyoming rank at the top for their less frequent use of equitable sharing.
- New Mexico's 2015 reform effectively ends equitable sharing participation in the state, and the District of Columbia's reform will do the same in the nation's capital by 2018.

Most state and federal civil forfeiture laws lack even basic transparency requirements, leaving the public in the dark about most forfeiture activity.

Poor public reporting about law enforcement's use of civil forfeiture makes it difficult, if not impossible, for lawmakers and the public to hold agencies accountable.

- * • **NOT ND** Only 11 states and the federal government make any kind of forfeiture information publicly accessible online. Another three states and the District of Columbia will put forfeiture records online in 2016. Obtaining information elsewhere requires public records requests, which are often arduous and ineffective.
- The limited information available is plagued by missing data and typically lacks key details, such as whether a forfeiture was civil or criminal or, in some cases, the type of property seized.
- Although the Department of Justice's forfeiture database tracks more than 1,300 variables about cash and property seizures, not one indicates whether a criminal charge or conviction accompanied a forfeiture. The DOJ carefully tracks and reports forfeiture revenue, but fails to publicly report whether forfeitures target proven criminals.

* **Nearly all expenditures of forfeiture proceeds are hidden from public view.**

Forfeiture laws typically place few limits on law enforcement spending of forfeiture proceeds and impose even fewer checks to ensure that expenditures are proper or legal. Scant reporting requirements heighten the risk of abuse by shielding expenditures from public scrutiny.

- The few data available for the federal government and a handful of states indicate only broad categories of spending, making it impossible to evaluate individual expenditures.
- When expenditures were provided by category, most known spending by state and local agencies was listed under equipment, "other," and salaries and overtime. Only tiny fractions went toward substance abuse or crime prevention programs.
- In 2007, law enforcement agencies in eight states spent more than \$42 million in equitable sharing payments on "other" items. In 2012, agencies in four states spent \$13.7 million in state forfeiture money on "other."

Civil forfeiture laws pose one of the greatest threats to property rights in the nation today. They encourage law enforcement to favor the pursuit of property over the pursuit of justice, and they typically give the innocent little recourse for recovering seized property. And without meaningful transparency, law enforcement faces little public accountability for its forfeiture activity or expenditures from forfeiture funds.

LEO'S ARE NOT
ABUSING LIKE
THIS IN ND

The best solution would be to simply abolish civil forfeiture. Short of that, lawmakers should eliminate financial incentives to take property, bolster property rights and due process protections, and demand transparency for forfeiture activity and spending. No one should lose property without being convicted of a crime, and law enforcement agencies should not profit from taking people's property.

Introduction

In February 2014, 24-year-old Charles Clarke lost his entire life savings—not to identity theft or a bad investment, but to law enforcement officials in the Cincinnati/Northern Kentucky International Airport.¹ After visiting relatives in Cincinnati, Clarke was preparing to board a flight home to Florida. He carried with him \$11,000 in cash. Over five years, Clarke had saved this money from financial aid, various jobs, gifts from family, and educational benefits based on his mother's status as a disabled veteran. His bank had no physical branches in his area, so Clarke kept his money at home. He had taken it with him to Ohio because he and his mother were moving to a new apartment, and he did not want to risk its getting lost in the move.

Just as Clarke was about to board the plane, law enforcement officials seized his money, claiming his checked bag smelled of marijuana. Although Clarke was a recreational smoker at the time, the officers found no drugs or anything else illegal on him or in his carry-on or checked bag. In other words, the officers found no evidence that he was guilty of any crime before seizing his money. In the upside-down world of civil forfeiture, they did not have to.

It has been called "one of the most controversial practices in the American criminal justice system."² But civil forfeiture was, until the 2010s, largely unknown to the public, to pundits and even to elected officials, despite hundreds of millions of dollars in property being seized and forfeited every year across the United States.

Civil forfeiture is a mechanism by which law enforcement agencies can seize and keep property on the mere suspicion that it is connected to a crime.³ In contrast to criminal forfeiture, where property is taken only after a criminal conviction, civil forfeiture allows law enforcement to take property from innocent people who have never been formally accused of a crime, let alone convicted of one. This evasion of the criminal justice system is based on a legal fiction in which property thought to be connected to an alleged crime is considered "guilty" of having somehow assisted in the commission of that crime. In criminal forfeiture, the government proceeds against a person charged with a crime; in civil forfeiture, the government proceeds against property.

The civil forfeiture process generally includes two distinct actions: seizure and forfeiture. Seizure occurs

when law enforcement officials—police officers, sheriff's deputies, federal agents—confiscate property they suspect is related to criminal activity. Practically anything can be seized by law enforcement—cash, vehicles, airplanes, jewelry, homes, musical instruments, farm implements, home furnishings, electronics and more. Once property has been seized, prosecutors file civil actions against it in order to forfeit, or keep, it. This process that often produces odd-sounding case names like *State of Texas v. One 2004 Chevrolet Silverado*⁴ or *United States v. One Solid Gold Object in Form of a Rooster*.⁵

Because such actions are against property, not people, and because they are civil actions, not criminal, owners caught up in civil forfeiture proceedings lack rights afforded the criminally accused, such as the right to counsel. And under civil forfeiture, the government usually faces a lower evidentiary threshold to forfeit property than it does to convict a person of a crime. Even people who had nothing to do with an alleged crime can lose their property through civil forfeiture unless they can prove their innocence—flipping the American legal tradition of innocent until proven guilty on its head. Most troublingly, civil forfeiture laws in most states and at the federal level give law enforcement agencies a financial stake in forfeitures by awarding them some, if not all, of the proceeds. This financial incentive creates a conflict of interest and encourages the pursuit of property instead of the pursuit of justice.

North Dakota earns an **F** for its civil forfeiture laws:

- Lowest bar to forfeit and no conviction required
- Poor protections for innocent third-party property owners
- As much as 100% of forfeiture proceeds go to law enforcement

State Civil Forfeiture Laws

Along with Massachusetts, North Dakota has the worst civil forfeiture laws in the country, scoring an F. In North Dakota, law enforcement only needs to meet the lowest possible standard of proof—probable cause—to forfeit property. And when property has been used for illegal activity without the owner's knowledge, the burden is on the owner to prove her innocence in order to recover it. Finally, North Dakota law enforcement agents operate under a particularly dangerous financial incentive: Agencies receive up to 100 percent of forfeiture proceeds up to \$200,000. If the government's forfeiture fund exceeds \$200,000 over any two-year budget period, the excess must be deposited in

the general fund—encouraging law enforcement agencies to adopt a use-it-or-lose-it mentality.

The story of Adam Bush illustrates the hazards these laws pose to property owners. In August 2013, Bush was charged with stealing a safe full of cash. A jury later found him innocent of any wrongdoing, and the state's attorney even admitted the evidence against Bush was "highly circumstantial." Nonetheless, county sheriffs were able to forfeit Bush's alleged getaway car. Unfortunately, it is impossible to get a good picture of the extent of forfeitures in North Dakota because law enforcement agencies are not required to track or report their forfeitures.

State Forfeiture Data

No data available. Law enforcement agencies are not required to track or report their forfeitures.

North Dakota is the 2nd best state for federal forfeiture, with \$550,000 in Department of Justice equitable sharing proceeds from 2000 to 2013.

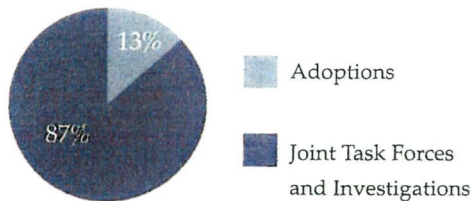
Federal Equitable Sharing

North Dakota has made such little use of the Department of Justice's equitable sharing program that the only state with a better track record is its neighbor South Dakota. Between 2000 and 2013, North Dakota law enforcement agencies received \$550,000 in equitable sharing proceeds, averaging nearly \$40,000 per calendar year. Just 75 assets were seized during this period, which averages out to five equitable sharing assets seized each calendar year. Eighty-seven percent of assets seized and 94 percent of proceeds received resulted from joint task forces and investigations, equitable sharing practices largely untouched by the DOJ policy intended to curb equitable sharing. North Dakota agencies also received almost \$1.4 million in Treasury Department forfeiture funds between 2000 and 2013, averaging out to over \$97,000 each fiscal year.

DOJ and Treasury Equitable Sharing Proceeds

Year	DOJ (calendar years)	Treasury (fiscal years)
2000	\$50,660	\$711,000
2001	\$15,705	\$2,000
2002	\$34,384	\$0
2003	\$7,353	\$0
2004	\$19,167	\$296,000
2005	\$40,874	\$0
2006	\$49,348	\$0
2007	\$78,824	\$0
2008	\$12,568	\$349,000
2009	\$91,410	\$0
2010	\$8,524	\$0
2011	\$26,582	\$0
2012	\$96,481	\$2,000
2013	\$18,604	\$0
Total	\$550,483	\$1,360,000
Average per year	\$39,320	\$97,143

DOJ Equitable Sharing, Adoptive vs. Joint, 2000-2013



Seizures



Proceeds

DOJ Equitable Sharing Proceeds, 2000-2013 (in millions)

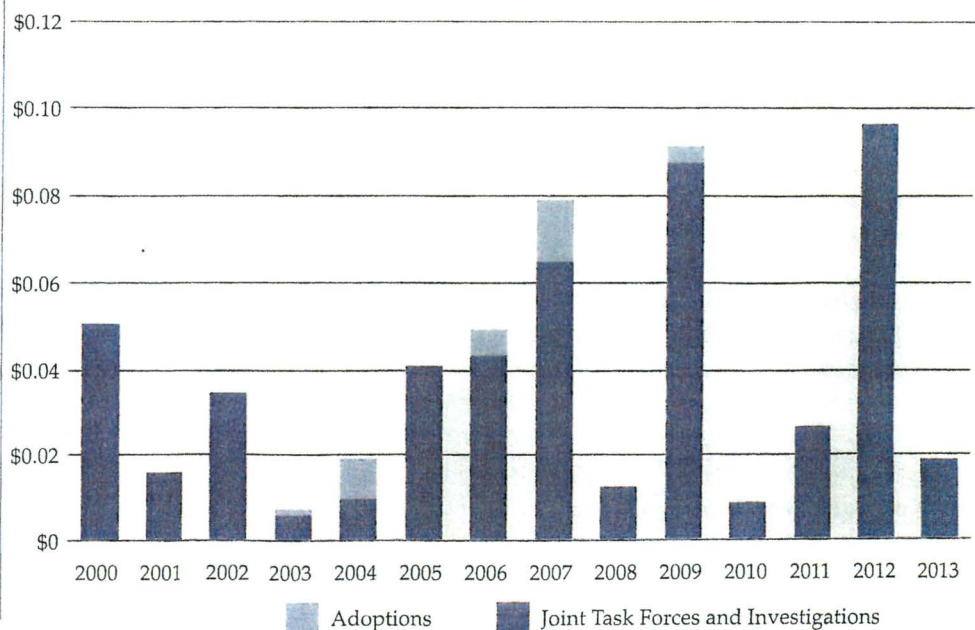
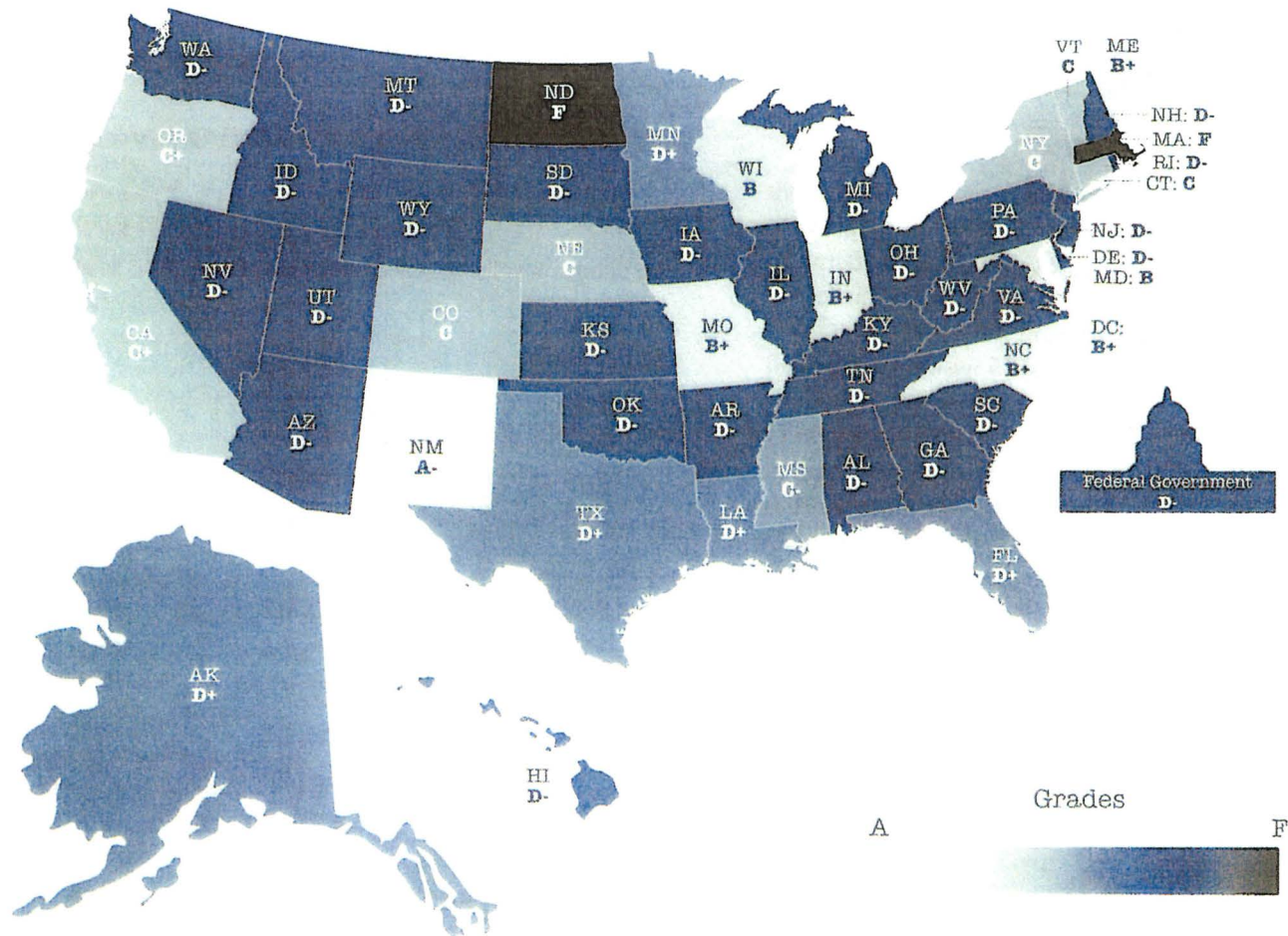


Figure 9: Civil Forfeiture Law Grades



A scan down the list in Table 1 reveals the poor state of affairs in civil forfeiture across the United States. Only 14 states and the District of Columbia earned grades of C or better, and 35 states earned grades of D+ or worse. The federal government earned a D-, putting its civil forfeiture laws among the nation’s worst and exposing all Americans to yet another threat to their property rights. These results make it clear that significant reform is needed.

Yet, thus far, reform has been slow in coming. When the first edition of *Policing for Profit* was released in 2010, civil forfeiture was little known among members of the public and even elected officials. As awareness grew, calls for reform increased, resulting in efforts in 2013, 2014 and 2015 in at least 14 states and in Congress. To date, however, only four states—New Mexico,⁵⁴ Nevada,⁵⁵ Montana⁵⁶ and Minnesota⁵⁷—and the District of Columbia⁵⁸ have substantively reformed their laws to increase protections for property owners. A fifth state, Vermont,⁵⁹ also reformed its laws but offset improvements by giving law enforcement a new financial incentive to seize.

Of these changes, New Mexico’s were the most sweeping. The reform was supported by a bipartisan group of legislators and reluctantly signed into law by Gov. Susana

civil forfeiture and replaced it with criminal forfeiture. Previously, forfeiture entailed civil litigation independent of criminal prosecution; now the government must first convict a suspect in criminal court. Then the same judge and jury determine if the property in question was linked to that crime. As for innocent owner claims, now the government must also prove that the person claiming to be an innocent owner had actual knowledge of the crime giving rise to the forfeiture—a significant change from the previous law, which, in most instances, placed the burden on property owners to prove their own innocence. The new law of the Land of Enchantment also eliminated law enforcement’s financial incentive to pursue forfeitures. Now all forfeiture monies must be deposited in the state’s general fund rather than in agency accounts, where 100 percent of forfeiture funds had gone previously. Due to these changes, the state’s grade jumped from a D- to an A-. New Mexico’s reforms set a clear example for other states to follow in protecting people from unjust forfeitures.

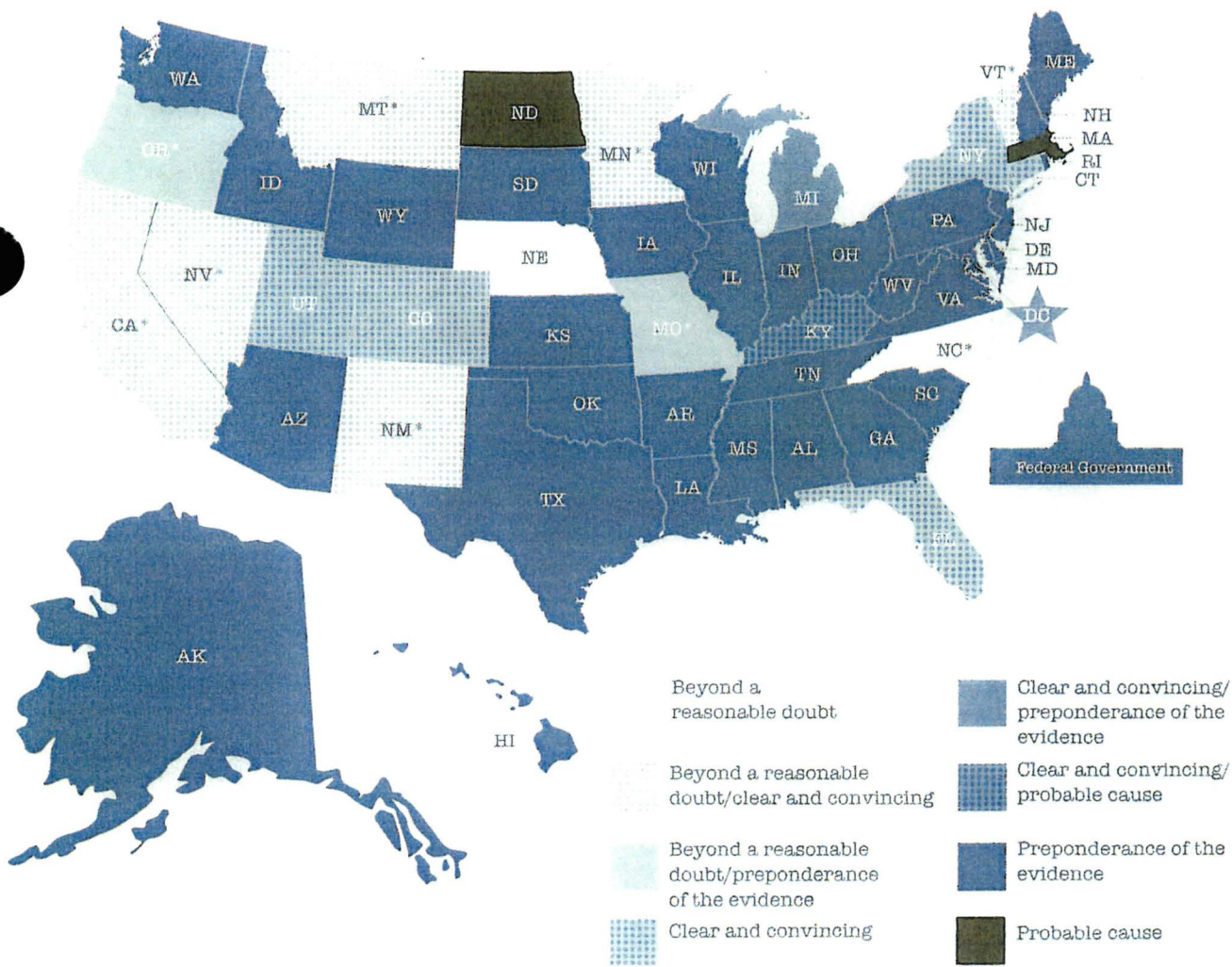
Nevada’s and Montana’s new laws now require a conviction in criminal court as a prerequisite to forfeiture of property in civil court, increasing protections for property owners. Reforms in Montana also shifted the

proof beyond a reasonable doubt for most civil forfeitures and North Carolina requires criminal convictions in most cases. California sets a standard of beyond a reasonable doubt to forfeit most kinds of property, with a criminal conviction required (though not necessarily the owner's conviction). In 2015, New Mexico abolished civil forfeiture. It now requires a criminal conviction with proof beyond a reasonable doubt for all forfeitures; after securing a conviction, the government must prove in the same criminal proceeding that seized property is connected to the crime by "clear and convincing evidence," a standard lower than reasonable doubt but higher than preponderance of the evidence. Minnesota, Montana, Nevada and Vermont now also demand criminal convictions, followed by civil trials linking seized property to the crime by clear

and convincing evidence. Missouri requires a criminal conviction and proof by a preponderance of the evidence that seized property is connected to the crime; Oregon law is similar for forfeitures of personal property (which account for most forfeitures) but sets a higher standard of clear and convincing evidence to forfeit real property.

Five states—Colorado, Connecticut, Florida, New York and Utah—demand that the government provide clear and convincing evidence of a property's connection to criminal activity for most or all civil forfeitures. The remaining states and the District of Columbia apply different standards to different types of property or under different circumstances. The State Profiles and Appendix B provide greater detail.

Figure 7: Standards of Proof for Civil Forfeiture



Standard of proof required for most or all forfeitures.

*States with multiple standards apply different standards of proof to different types of property or under certain circumstances. Oregon requires a criminal conviction and clear and convincing evidence to forfeit real property. See Appendix B for sources.

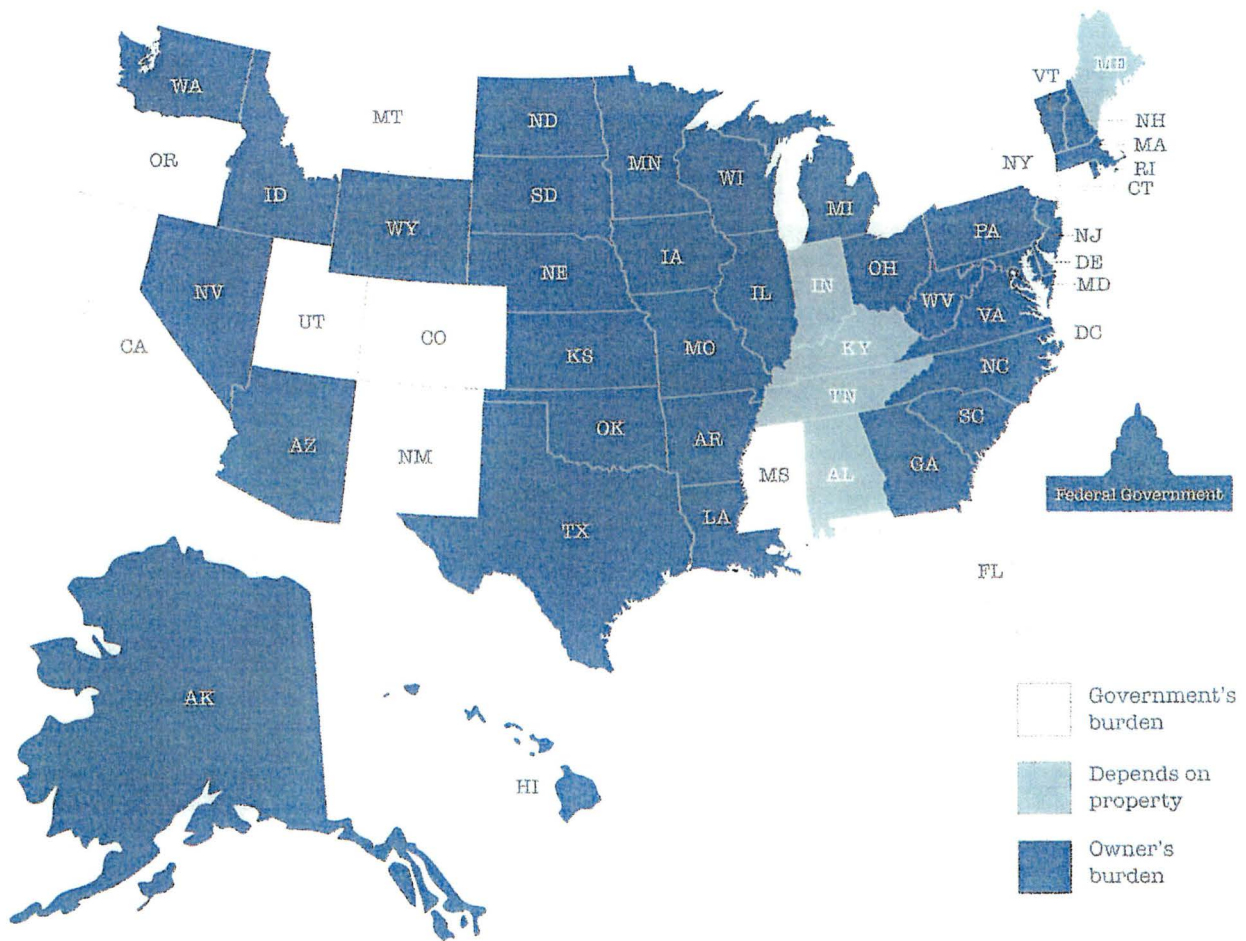
Cox lost her truck without ever having been accused of a crime and without ever having gotten her day in court. Innocent third-party owners who do make it to court will often face a bizarre and almost impossible task: proving their own innocence.

As shown in Figure 8, innocent owner provisions in federal law and 35 states place the burden of proof on owners, meaning that owners must prove they had nothing to do with the alleged crime. In essence, most civil forfeiture laws presume that people are connected to any criminal activity involving their property and force them to prove otherwise to recover it. This is precisely the opposite of what happens

in criminal trials, where the accused is presumed innocent until proven guilty by the government. It also often involves a practical impossibility, as it requires people to prove a negative—that they did not know about or consent to the illegal use of their property.

Only 10 states and the District of Columbia demand that the government prove owners did something wrong before forfeiting their property. In the remaining states, whether the burden of proof falls on the owner or the government generally depends on the type of property involved. The State Profiles and Appendix B provide greater detail.

Figure 8: Innocent Owner Burdens in Civil Forfeiture Laws



Note: See Appendix B for sources.

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HB 1170

Trump Should Be Appalled by Police Asset Forfeiture
Cops can seize cash, cars and real estate without its owner ever being charged or convicted of a crime.

By LEE MCGRATH and NICK SIBILLA

March 5, 2017 5:11 p.m. ET

America's sheriffs have given President Trump a woefully inaccurate view of civil asset forfeiture—the process through which police seize, and prosecutors literally sue, cash, cars and real estate that they suspect may be connected to a crime.

“People want to say we're taking money and without due process. That's not true,” a Kentucky sheriff told the president last month at a White House meeting. Critics of forfeiture, the sheriff added, simply “make up stories.”

In fact, thousands of Americans have had their assets taken without ever being charged with a crime, let alone convicted. Russ Caswell almost lost his Massachusetts motel, which had been run by his family for more than 50 years, because of 15 “drug-related incidents” there from 1994-2008, a period through which he rented out nearly 200,000 rooms.

Maryland dairy farmer Randy Sowers had his entire bank account—roughly \$60,000—seized by the IRS, which accused him of running afoul of reporting requirements for cash deposits. Mandrel Stuart had \$17,550 in receipts from his Virginia barbecue restaurant confiscated during a routine traffic stop. A manager of a Christian rock band had \$53,000 in cash—profits from concerts and donations intended for an orphanage in Thailand—seized in Oklahoma after being stopped for a broken taillight. All of the property in these outrageous cases was eventually returned, but only after an arduous process.

This kind of abuse has united reformers on all sides of the political debate: progressives, conservatives, independents, even a few former drug warriors. Since 2014 nearly 20 states and the District of Columbia have enacted laws limiting asset forfeiture or increasing transparency. Nearly 20 other states are

considering similar legislation. Last week a reform bill passed

the Indiana Senate 40-10. It would require a criminal conviction before a court can declare a person's assets forfeited.

Another good step for state and federal legislators would be to bar agencies from keeping the money they seize. Today more than 40 states and the federal government permit law-enforcement agencies to retain anywhere from 45% to 100% of forfeiture proceeds. As a result, forfeiture has practically become an industry.

The Institute for Justice, where we work, has obtained data on asset forfeiture across 14 states, including California, Texas and New York. Between 2002 and 2013, the revenue from forfeiture more than doubled, from \$107 million to \$250 million. Federal confiscations have risen even faster. In 1986 the Justice Department's Assets Forfeiture Fund collected \$93.7 million. In 2014 the number was \$4.5 billion.

Allowing police and prosecutors to keep part of what they confiscate gives them an incentive to target cash instead of criminals. In 2011 a Nashville TV news station investigated seizures on nearby interstate highways. Drugs usually came in on the eastbound lanes, while the money would flow out on the westbound lanes. The reporters found that police made "10 times as many stops on the money side." They were less focused on stopping the drugs than on grabbing the cash.

Or consider a program under the Drug Enforcement Administration for paying confidential sources, the subject of a blistering federal audit last fall. An informant who provides intelligence resulting in forfeiture can receive as much as 25% of the confiscated property's value—up to \$500,000. The audit examined nine DEA informants in the parcel industry who offered tips in 205 cases. That led to \$5.8 million in seizures and \$1.2 million in payments to sources, but only a single confiscation of an illegal substance.

To prevent these abuses, lawmakers in Alaska, Connecticut, North Dakota and Texas have sponsored legislation that would send confiscated proceeds directly to the general fund of the state or county. Similar measures in Arizona and Hawaii would restrict forfeiture proceeds to being used to compensate crime victims and their families.

Yet sometimes police circumvent state restrictions by routing forfeitures through a federal program known as “equitable sharing.” By cooperating with the feds they can seize property for forfeiture under federal law, and then receive a cut—up to 80% of the proceeds. From 2001-14 nearly 62,000 people had \$2.5 billion confiscated under equitable sharing, according to the Washington Post. All of those seizures occurred “without search warrants or indictments.”

Fortunately, states are now closing this loophole, too. Last fall California Gov. Jerry Brown signed a bill that, in most cases, requires a criminal conviction before any California agency can receive equitable-sharing proceeds. In January Ohio Gov. John Kasich approved legislation to ban his state’s police and prosecutors from transferring seized property to federal agencies unless its value is more than \$100,000. Similar reforms have been introduced in Colorado, New Hampshire and a handful of other states.

Interest in stopping civil forfeiture has never been greater, and it isn’t based on fables. We hope Mr. Trump will take a fresh look and seize the opportunity to defend American property rights—and return law enforcement’s focus to prosecuting criminals.

Mr. McGrath is senior legislative counsel and Mr. Sibilla is a communications associate at the Institute for Justice.

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March 17, 2017

North Dakota State and Local Intelligence Center

Asset Forfeiture Summary



Asset Forfeiture Summary

	Sum Returned to Subject	Sum of Cash Forfeited	Amount Seized in Case
Northwest Narcotics Task Force			
Case: 27-2016-CV-00269	7,524.00	30,000.00	37,524.00
Case: 27-2013-CV-00277	85,101.00	21,631.00	106,732.00
Case: 53-2014-CV-01115	19,000.00	10,265.00	29,265.00
Case: 53-2013-CV-02129	23.00		23.00
Case: 53-2013-CV-02155	100.00		100.00
Case: 53-04-K-0046	12.00		12.00
Case: 53-2016-CR-00109.2	205.00		205.00
Case: WIL-02-139	183.00		183.00
Grand Forks Narcotics Task Force			
Case: 16-111	40,888.00		40,888.00
Case: 16-045	12,275.00	12,275.00	24,550.00
Bottineau BCI Office			
Case: 13-0363	1 vehicle	5,190.00	5,190.00
Case: 13-0157	510.00	500.00	1,010.00
Southwest Narcotics Task Force			
Case: TF15-078	1,792.00		1,792.00
Case: TF15-013	3,711.00		3,711.00
Case: TF15-040	9,126.00	1,500.00	10,626.00
Case: TF13-065	12,776.00		12,776.00
Case: TF13-064	7,126.00		7,126.00
Fargo Police Department			
Case: 16-14459	1,264.00		1,264.00
Case: 16-15968	1,436.00		1,436.00
Case: 15-13437	453.00		453.00
Case: 15-52942	5,457.00		5,457.00
Case: 14-62209	210.00		210.00
Case: 14-7104	1,250.00		1,250.00
Case: 13-18906	33,540.00		33,540.00

Stutsman County Narcotics Task Force			
Case: 14-2016-CV-00425	4,525.00		4,525.00
Case: 47-2016-CV-374	333.00		333.00
Case: TF16-88	475.00		475.00
Case: TF16-68	2,480.00		2,480.00
Case: 2014-CV-00515	1,640.00		1,640.00
Case: 47-2014-CV-00706	2 vehicles, 3 trailers, misc tools and supplies	33,882.00	33,882.00
Case: 47-2013-CV-548	1,030.00		1,030.00
Metro Area Narcotics Task Force			
Case: TF 2015-72 and 74	8,500.00		8,500.00
Case: TF 2013-110	1 vehicle	18,000.00	18,000.00

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HB 1170

Senate Judiciary Committee
House Bill 1170
Testimony of Julie Lawyer

Chair Armstrong and Members of the Committee:

My name is Julie Lawyer and I am prosecutor with the Burleigh County State's Attorney's Office. I have been a prosecutor for 17 years. I am here this morning in opposition of House Bill 1170.

Asset forfeiture is an effective tool used to deter people from committing offenses. When I think asset forfeiture, I think primarily of drug trafficking, human trafficking, and sex crimes against children. In drug cases, prosecutors forfeit money derived from drug sales, property exchanged for drugs, and vehicles used to transport drugs for sale. In human trafficking cases, prosecutors forfeit money derived from the trafficking of victims sold for sex, vehicles used to transport victims sold for sex, and computers or other electronic devices used to advertise victims for sex. In sex crimes against children, prosecutors forfeit computers or other electronic devices used to send pornography to children, lure children for sexual purposes, or devices that have been used to create, distribute, or store child pornography.

There are some problems with some of the provisions of this bill. First, asset forfeiture would be tied to a criminal prosecution. If the criminal case were dismissed or resulted in an acquittal, the property would have to be returned. There are many reasons a case may be dismissed or the defendant may be acquitted. First, the burden of proof is higher in a criminal prosecution than in an asset forfeiture proceeding. For example, we don't have a money laundering statute, so we may not be able to charge the person who is laundering drug money, but that shouldn't be a bar to forfeiting that drug money. In human trafficking cases, we typically have non-cooperative victims who are too afraid to testify and disappear before trial, requiring us to dismiss the case, or go to trial and risk acquittal because the main witness is not available to testify. This bill would require us to return money derived from prostitution and vehicles used to transport victims for sex because we were unable to secure that conviction.

An example is a college student who was travelling from Wisconsin to Seattle to go to school. His drug dealer asked him to take a package with him and contact a number when he reached Seattle. He was given \$1,000 and some marijuana for his trouble. The dealer brought him to someone the student didn't know who put a hard-sided rifle case in the trunk of his car. In Bismarck, police got a call of the odor of marijuana in his hotel room. They found four marijuana joints and the rifle case. There were knick knacks in the case, no gun. Under the foam insert, officers found over \$300,000 in vacuum-sealed bags. A K-9 alerted to the odor of narcotics on the money. He cooperated with our investigation and we didn't file the marijuana possession charges on him. As a college student, drug charges would have prevented him from getting financial aid. This bill would REQUIRE us to have charged this student, jeopardizing his college funding and future.

Another provision of this bill states that after forfeiture is ordered, a defendant can petition the court to determine if the forfeiture was excessive or grossly proportionate to the crime. The case illustrated above shows how this provision doesn't work. We know the student was a mule for the drug dealers in transporting the money. Forfeiture of \$300,000 of drug proceeds on a case of possession of marijuana is grossly disproportionate, but again, if criminals are not able to keep the proceeds of their crimes, there is a deterrent factor from engaging in the crime.

I had another case where a man was found in possession of over \$10,000 and about 3 grams of methamphetamine. Through our investigation, we learned that the \$10,000 came from the sale of methamphetamine and the last 3 grams he had saved for himself. He was going to use the \$10,000 from profits to purchase more methamphetamine to sell. When confronted with the evidence, he admitted that was what was happening. He was charged with possession of methamphetamine and we forfeited his \$10,000 drug money. Under this bill, if the defendant didn't have the methamphetamine with him, I couldn't have charged him for the possession and therefore, would not have been able to forfeit the drug money. On its face, losing \$10,000 may seem grossly disproportionate on a charge of possession of 3 grams of methamphetamine. However, a drug dealer who is going to use \$10,000 in money derived from drug sales to purchase more drugs to sell should not be able to keep it. At that time, with \$10,000, he would have been able to purchase about ¼ pound of meth.

Another problem is the provision that would require a judge to order return of money or property for the person to hire an attorney to defend against criminal charges or asset forfeiture. While in theory, this may sound like a good idea, allowing a drug dealer to use profits from drug sales or a pimp to use profits from sex sales to his or her benefit does not deter the crime. In fact, it encourages it. I had a specific case where a drug dealer told a judge through the presentence investigation, that work was for chumps and he was selling cocaine so he could make a quick buck. Allowing him to use his drug money to his benefit would encourage him to continue to make that quick buck.

There is a section that states property with a bond fide security interest cannot be forfeited and also any lien on the property must be paid first. The current statute provides for protection of a secured creditor or lien holder but only for a security interest or lien that was perfected before the property was seized or subject to forfeiture. I had a drug case where the defendant was transporting pounds of methamphetamine to North Dakota from out of state using several vehicles. We seized those vehicles for forfeiture. We negotiated a plea deal where he would forfeit his vehicles. The day after he agreed to forfeit them, he took out a loan using the vehicles as collateral, of course, not telling the bank that they were in possession of law enforcement and that he had agreed to forfeit them. He was headed to prison and intended to default on the loan. If this bill were in place, the State would be unable to forfeit the property and, even if the

Senate Judiciary Committee
House Bill 1170
Testimony of Julie Lawyer

property were forfeited, the State would have to provide all money from the sale of the vehicles to the bank as, in this case, the loan was in excess of the vehicles' worth. The defendant would have made even more money cheating the bank and the State.

Thank you.

Testimony in Opposition of House Bill 1170
March 21, 2017
Senate Judiciary
Bill Wocken on behalf of North Dakota League of Cities

Good Afternoon Mr. Chairman and members of the Senate Judiciary Committee. For the record, my name is Bill Wocken, appearing on behalf of the North Dakota League of Cities in opposition of House Bill 1170.

House Bill 1170 seeks to rewrite North Dakota's forfeiture laws that have been in place and have been working since 1991. Current law in NDCC 29-31.1 provides a court process for disposing of property that has been used or intended to be used to facilitate the commission of a criminal offense or is acquired from the proceeds of a criminal offense. To forfeit property, a prosecutor must prove in front of a judge by a preponderance of the evidence that the property is forfeitable.

Under current law, any proceeds that come from a forfeiture must first pay for the costs and expenses of the forfeiture proceedings. Once those expenses are covered, it goes to the state, county or city general fund of the seizing agency.

This distribution makes sense as the seizing agency is the one that would have incurred the costs of investigating the crime and processing the forfeiture. In other words, it offsets the costs of the seizing agency.

From a different perspective, these law enforcement agencies are already accustomed to dealing with this process and doing what needs to be done to process forfeited

properties. HB 1170 inserts the State Treasurer into the process. It does not make sense to add another entity to a process that is already working smoothly.

Accordingly, please give HB 1170 a DO NOT PASS recommendation.

HB 1170



3/21/17

House Bill 1170
Senate Judiciary Committee

Testimony of Travis W. Finck
Deputy Director N. D. Comm. On Legal Counsel for Indigents
March 21, 2017

Good Morning, Chairman Armstrong, and members of the Committee. For the record, my name is Travis Finck. I am the Deputy Director of the North Dakota Commission on Legal Counsel for Indigents.

The North Dakota Commission on Legal Counsel for Indigents is the agency in North Dakota tasked with providing counsel to indigent persons when there is a statutory, rule or constitutional guarantee to counsel at public expense. This bill does not provide whether or not an attorney would be appointed to represent an indigent defendant in a forfeiture action. Currently, there is not a Constitutional, Statutory or Rule based right to an attorney in a forfeiture action. In the event it is determined there is a right to indigent counsel, we would like the committee to understand there would be increased costs.

However, at the current time, we are unable to accurately predict the costs to the agency in providing attorneys for forfeiture hearings. We can however, aver the attorneys who provide the services will see an increased number of case assignments and the attorneys will need to be trained on new areas of law. In short, it will cost more money for our agency.

If it is the direction of the Legislative Assembly to have a right to indigent counsel, we will once again, as we have in the past, rise to meet the challenge. However, that challenge will necessarily mean increased costs to the agency at a level we simply are not able to predict.

Respectfully Submitted:

Travis W. Finck, Deputy Director
N.D. Comm. On Legal Counsel
tfinck@nd.gov
(701) 845-8632

March 21, 2017
House Judiciary
Rep. Kim Koppleman, Chair
HB 1170

HB1170 will have a significant impact on the effectiveness of law enforcement in North Dakota, particularly in combating the on-going narcotics epidemic that Dickinson and southwest North Dakota has been embattled with.

The Dickinson Police Department currently has one officer assigned to the Southwest Narcotics Task Force. The Southwest Narcotics Task Force currently services ten jurisdictions in Southwest North Dakota including Stark, Adams, Bowman, Slope, Golden Valley, Hettinger, and Billings County and those municipalities located within.

The Southwest Narcotics Task Force has seen a significant increase in large scale drug trafficking organizations moving to and operating in Southwest North Dakota, including the city of Dickinson. These organizations frequently have direct ties to the southern border and involve pounds of narcotics, firearms, and people being trafficked into our communities.

The Dickinson Police Department, in cooperation with the Southwest Narcotics Task Force, has made significant seizures of illicit substances in an effort to curb their steady flow into our communities. These seizures have included methamphetamine, heroin, cocaine, and fentanyl to name a few. Traffickers realize the loss of their product by way of law enforcement intervention is expected. Their product is replaceable as are those employed to distribute it.

Where law enforcement makes the most significant impact, is in the seizure and forfeiture of the assets of their profession. The easiest example of this is currency from the trade of illicit substances. The markup on methamphetamine from its purchase at the Mexican border to when it reaches the City of Dickinson is approximately 1,300%. Traffickers of illicit substances can't afford to operate when law enforcement is able to effectively seize and forfeit assets of these illegal transactions.

The changes to the seizure and forfeiture process HB 1170 suggests would make the forfeiture process more time consuming and less effective. The court system in Southwest North Dakota is already taxed. Adding additional processes to the court proceedings and to entities such as the States Attorney's offices leads me to believe these additional hearings and requirements will lead to far less forfeiture proceedings, particularly considering the assets from these forfeitures won't stay within the local jurisdictions.

Law enforcement in North Dakota is very conservative when it comes to asset forfeiture. I am not aware of a seizure and/or forfeiture in Dickinson where there were not significant indicators of criminal conduct.

The Dickinson Police Department relies heavily on the teamwork and working relationship it has with the Southwest Narcotics Task Force to combat and attempt to control illicit drugs in our community.

The Southwest Narcotics Task Force has come to rely on these forfeitures to maintain its mission in southwest North Dakota. Federal grant dollars, overtime, salaries, training, and equipment are paid by asset forfeiture.

Dickinson Police Department Officers and agents of the task force are careful not to abuse the power associated with taking a person's assets.

If forfeitures are required to be turned over to the state general fund, I believe we will see a significant decrease in seizures and forfeitures. Drug traffickers may recognize their assets are more secure in North Dakota and law enforcement entities such as the Southwest Narcotics Task Force that rely on forfeited assets to maintain their existence could be eliminated.

The City of Dickinson Police Department respectfully requests a DO-NOT-PASS.

17.0327.03001
Title.

Prepared by the Legislative Council staff for
Representative Rick C. Becker
March 24, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1170

Page 1, line 3, replace "sections 12.1-06.1-05 and" with "subdivision f of subsection 4 of section 12.1-06.1-05, section"

Page 1, line 5, remove "39-03-18,"

Page 1, line 5, remove ", 54-12-14"

Page 1, remove lines 22 and 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 30

Page 4, remove lines 1 through 31

Page 5, replace lines 1 through 13 with:

"SECTION 3. AMENDMENT. Subdivision f of subsection 4 of section 12.1-06.1-05 of the North Dakota Century Code is amended and reenacted as follows:

- f. Forfeiture, pursuant to ~~chapter 32-14~~, to the state school fund of the state or county as appropriate under section 29-27-02.1, to the extent not already ordered to be paid in other damages:
- (1) Any property or other interest acquired or maintained by a person in violation of section 12.1-06.1-02 or 12.1-06.1-03.
 - (2) Any interest in, security of, claims against, or property or contractual right of any kind affording a source of influence over any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 12.1-06.1-02 or 12.1-06.1-03.
 - (3) All proceeds traceable to an offense included in the definition of racketeering and all moneys, negotiable instruments, securities, and other things of value used or intended to be used to facilitate commission of the offense if upon application for the order it is shown to the satisfaction of the court that the racketeering offense has occurred as a part of a pattern of racketeering activity."

Page 20, line 16, after "delivered" insert "within thirty days"

Page 20, line 17, replace "treasurer within thirty days" with "school fund or county treasury, as appropriate under section 29-27-02.1, after the payment of all costs and expenses and reasonable attorney's fees related to the prosecution and investigation of the criminal offense or after required by law to be paid to the general fund of the jurisdiction in which the seizing agency is located"

Page 20, remove lines 27 through 31

Page 21, remove lines 1 through 6

Page 21, line 7, replace "29-31.2-23" with "29-31.2-22"

Page 21, line 11, replace "29-31.2-24" with "29-31.2-23"

Page 22, line 9, replace "29-31.2-25" with "29-31.2-24"

Page 22, line 20, replace "29-31.2-26" with "29-31.2-25"

Page 23, line 7, replace "29-31.2-27" with "29-31.2-26"

Page 23, remove lines 10 through 30

Page 24, remove lines 1 through 6

Page 29, remove lines 20 through 31

Page 30, remove lines 1 through 30

Page 31, remove lines 1 through 4

Page 34, line 13, overstrike "c." and insert immediately thereafter "2."

Page 34, line 13, remove the overstrike over "The agency may not retain proceeds above that
which are necessary to cover"

Page 34, line 14, remove the overstrike over "the costs of administering this"

Page 34, line 14, after "subsection" insert "section"

Page 34, line 14, remove the overstrike over ", with any surplus to be transferred to"

Page 34, remove the overstrike over lines 15 through 17

Page 35, line 11, replace "2." with "3."

Page 35, line 12, remove the overstrike over "disposed of"

Page 35, line 12, remove "forfeited"

Page 35, line 12, remove the overstrike over "as well as the proceeds"

Page 35, line 13, remove the overstrike over "of the sales and the disbursement of the
proceeds,"

Page 35, line 14, remove the overstrike over "disposed of or on which"

Page 35, line 15, remove the overstrike over "a disbursement of funds is made, as the case
may be"

Page 35, line 15, remove "forfeited"

Page 35, line 16, after "7." insert "4."

Page 35, line 16, remove the overstrike over "Neither the state nor any political subdivision of
the state, nor any of their officers,"

Page 35, remove the overstrike over lines 17 through 20

Re-number accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1170

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 54-10-01.2 of the North Dakota Century Code, relating to seizure and forfeiture reporting.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 54-10-01.2 of the North Dakota Century Code is created and enacted as follows:

54-10-01.2. Seizure and forfeiture reporting - Reports.

1. As used in this section "law enforcement agency" means any police force, multijurisdictional task force, fire department, or other city, county, or state agency that:
 - a. Has authority under state law to seize and forfeit property; or
 - b. Collaborates with a federal agency under federal law to seize and forfeit property.
2. This section is applicable to property seized and forfeited under any provision of law that authorizes a law enforcement agency to seize property used in the commission of a criminal offense.
3. The state auditor shall establish and maintain a case tracking system and searchable public website that includes the following information about property seized and forfeited under state law and under any agreement with the federal government:
 - a. Name of the law enforcement agency that seized the property;
 - b. Date of the seizure;
 - c. Type and description of property seized, including the make, model, year, and serial number, if applicable;
 - d. Place of seizure;
 - e. Estimated value of the seizure;
 - f. Criminal offense alleged that led to the seizure;
 - g. Crime for which suspect was charged;
 - h. Criminal case number;
 - i. The outcome of suspect's criminal case;
 - j. If forfeiture is sought under federal law, reason for the federal transfer;

- k. Forfeiture case number;
 - l. If a property owner filed a claim or counterclaim, who by;
 - m. Method of final forfeiture proceeding, whether criminal, civil-judicial, or civil-administrative;
 - n. Date of forfeiture decision;
 - o. Whether there was a forfeiture settlement agreement;
 - p. Property disposition;
 - q. Date of property disposition;
 - r. Amount of the attorney fees awarded to property owners;
 - s. Value of the property forfeited, or if forfeited under federal law, the amount of proceeds received from the federal government; and
 - t. Estimate of total costs to the agency:
 - (1) To store property in impound lots or evidence rooms;
 - (2) To pay for law enforcement personnel and prosecutors' time and expenses to litigate forfeiture cases; and
 - (3) Cost to sell or dispose of forfeited property.
4. The state auditor shall establish and maintain a searchable public website that includes:
- a. The total amount of funds expended, which resulted from property seized, forfeited, and reported, in each of the following:
 - (1) Drug abuse, crime, and gang prevention programs;
 - (2) Victim reparations;
 - (3) Investigation costs, including witness protection, informant fees, and controlled buys;
 - (4) Salaries, overtime, and benefits, as permitted by law;
 - (5) Professional outside services, including auditing, court reporting, expert witness fees, outside attorney fees, and membership fees paid to trade associations;
 - (6) Travel, meals, entertainment, conferences, training, and continuing education;
 - (7) Other operating expenses, including office supplies, postage, and printing;
 - (8) Capital expenditures, including vehicles, firearms, equipment, computers, and furniture; and
 - (9) Other expenditures of forfeiture proceeds.
 - b. The total value of seized and forfeited property held by the agency at the end of the reporting period.

5. The law enforcement agency that seizes property and prosecutors that litigate related criminal cases and forfeiture proceedings shall update the state auditor's website with the information required under subsection 3 at the end of the month following each seizure of property. A multijurisdictional task force may appoint an agency to report its seizures. If an agency has not made any seizures during the previous year, a null report shall be filed by the agency specifying that the agency did not engage in seizures or forfeitures under this section during the reporting period.
6. The law enforcement agency that expends forfeiture-related proceeds shall update the state auditor's website with the information required under subsection 4 within thirty days after the end of the fiscal year. A multijurisdictional task force may appoint an agency to report its expenditures.
7. The state auditor shall perform an annual financial audit of records related to inventory of seized property and expenditures of forfeiture proceeds. A copy of the final audit report shall be submitted no later than ninety days after the end of the fiscal year and must be made public.
8. The state auditor, one hundred twenty days after the close of the fiscal year, shall submit to the legislative management, attorney general, and governor a written report summarizing activity in the state, for the preceding fiscal year, the type, approximate value, and disposition of the property seized and the amount of any proceeds received or expended at the state and local levels. The report must provide a categorized accounting of all proceeds expended and be made available on the state auditor's website.
9. The state auditor may include in the aggregate report required by subsection 8, recommendations to improve statutes, rules, and policies to better ensure seizures, forfeitures, and expenditures are done and reported in a manner that is fair to crime victims, innocent property owners, secured interest holders, citizens, law enforcement, and taxpayers.
10. The state auditor may recoup the costs of this section by charging a fee to the law enforcement agency filing a report. The agency may use forfeiture proceeds to pay the costs of compiling and reporting data under this section and to pay any fees imposed by the state auditor.
11. The state auditor may adopt rules necessary to implement this section.
12. The data and reports compiled and prepared under this section are public records."

Renumber accordingly