

FISCAL NOTE
Requested by Legislative Council
04/25/2019

Amendment to: Engrossed HB 1286

- 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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 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 engrossed bill relates to the level of evidence needed as it relates to civil forfeitures, allows property owners to petition the court for seized property, and sets limits on seizures which may not be forfeited.

- 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.*

Section 1 of the engrossed bill identifies forfeiture proceedings as separate and distinct from any related criminal action. The bill changes the standard of proof from probable cause to clear and convincing evidence for instituting forfeiture actions.

Section 2 requires forfeited property or proceeds from the sale of forfeited property to be deposited in a political subdivision's civil asset forfeiture fund. In the event the political subdivision has no civil asset forfeiture fund the property/proceeds must be deposited in the Attorney General's asset forfeiture fund.

Section 3 deals with the property owner petitioning the court for property to be forfeited and to avoid the forfeiture being unconstitutionally excessive.

Section 4 of the bill requires each civil forfeiture judgment from a district court to be made publicly available. Annually, the prosecutor who litigated relevant cases shall provide a copy of each forfeiture judgment from the district court to the Attorney General.

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.*

Although the amount is unknown, the Attorney General's assets forfeiture fund will receive these revenues from the cities and counties without civil asset forfeiture funds.

- 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.*

No substantial expenditures are anticipated.

- 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.*

No appropriation amount is needed.

Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 701-328-3622

Date Prepared: 04/25/2019

FISCAL NOTE
Requested by Legislative Council
04/04/2019

Amendment to: Engrossed HB 1286

- 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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 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 engrossed bill relates to the level of evidence needed as it relates to civil forfeitures, allows property owners to petition the court for seized property, and sets limits on seizures which may not be forfeited.

- 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.*

Section 1 of the engrossed bill identifies forfeiture proceedings as separate and distinct from any related criminal action. The bill changes the standard of proof from probable cause to clear and convincing evidence for instituting forfeiture actions.

Section 2 requires forfeited property or proceeds from the sale of forfeited property to be deposited in a political subdivision's civil asset forfeiture fund. In the event the political subdivision has no civil asset forfeiture fund the property/proceeds must be deposited in the Attorney General's asset forfeiture fund.

Section 3 deals with proportionality of the property to be forfeited to avoid being unconstitutionally excessive.

Section 4 of the bill requires North Dakota law enforcement to report annually to the Attorney General regarding the departments' seizures and forfeitures.

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.*

Although the amount is unknown, the Attorney General's assets forfeiture fund will receive these revenues from the cities and counties without civil asset forfeiture funds.

- 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.*

No substantial expenditures are anticipated.

- 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.*

No appropriation amount is needed.

Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 701-328-3622

Date Prepared: 04/04/2019

FISCAL NOTE
Requested by Legislative Council
03/29/2019

Amendment to: Engrossed HB 1286

- 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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$42,336	\$0	\$0	\$0
Appropriations	\$0	\$0	\$42,336	\$0	\$0	\$0

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 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 engrossed bill relates to the level of evidence needed as it relates to civil forfeitures, allows property owners to petition the court for seized property, and sets limits on seizures which may not be forfeited.

- 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.*

Section 1 of the engrossed bill identifies forfeiture proceedings as separate and distinct from any related criminal action. The bill changes the standard of proof from probable cause to clear and convincing evidence for instituting forfeiture actions.

Section 2 requires forfeited property or proceeds from the sale of forfeited property to be deposited in a political subdivision's civil asset forfeiture fund. In the event the political subdivision has no civil asset forfeiture fund the property/proceeds must be deposited in the Attorney General's asset forfeiture fund.

Section 3 deals with proportionality of the property to be forfeited to avoid being unconstitutionally excessive.

Section 4 of the bill requires North Dakota law enforcement to report annually to the Attorney General regarding the departments' seizures and forfeitures. Providing an electronic system for law enforcement to report to the Attorney General is required in the bill. This system is estimated to cost the general fund \$42,336.

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.*

Although the amount is unknown, the Attorney General's assets forfeiture fund will receive these revenues from the cities and counties without civil asset forfeiture funds.

- 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.*

The Attorney General law enforcement reporting system is estimated to cost \$42,336 from the general fund.

- 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 electronic reporting system required by the bill is estimated to cost the general fund \$42,336. The Executive Recommendation did not include this cost.

Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 701-328-3622

Date Prepared: 04/01/2019

FISCAL NOTE
Requested by Legislative Council
02/14/2019

Amendment to: HB 1286

- 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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$2,384,376	\$0	\$2,384,376
Expenditures	\$0	\$0	\$211,680	\$0	\$0	\$0
Appropriations	\$0	\$0	\$211,680	\$0	\$0	\$0

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$(828,896)	\$(828,896)
Cities	\$0	\$(1,171,104)	\$(1,171,104)
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 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 engrossed bill relates to the level of evidence needed as it relates to civil forfeitures, allows property owners to petition the court for seized property, and sets limits on seizures which may not be forfeited.

- 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.*

Section 1 of the engrossed bill identifies forfeiture proceedings as separate and distinct from any related criminal action. The bill changes the standard of proof from probable cause to clear and convincing evidence for instituting forfeiture actions.

Section 3 allows the owner of the property seized to petition the court to determine if the forfeiture is unconstitutionally excessive and sets limits for seizures which may not be forfeited except in special cases.

Section 4 of the bill requires North Dakota law enforcement to report annually to the Attorney General regarding the departments' seizures and forfeitures. Providing a system for law enforcement to report to the Attorney General is required in the bill. This system is estimated to cost the general fund \$211,680.

Section 5 requires that all funds obtained through civil asset forfeiture under NDCC Section 19-03.1-36, relating to controlled substances, must be paid into the Attorney General's assets forfeiture fund. Section 6 of the bill increases the fund cap on deposits from \$200,000 to \$500,000 per biennium for this purpose. The \$1,396,176 currently received by cities and the \$988,200 currently received by the counties from asset forfeiture proceeds will be deposited in the Attorney General's assets forfeiture fund. This results in a loss of political subdivision revenues, expenditures, and appropriations. This fiscal note reflects the results of a political subdivision survey conducted to gather the estimated lost asset forfeiture moneys.

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.*

The cities and counties will experience a loss in asset forfeitures proceeds of up to \$2,384,376. The Attorney General's assets forfeiture fund will receive these revenues from the cities and counties.

- 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.*

The cities and counties will experience a loss in asset forfeitures expenditures of up to \$2,384,376. The Attorney General law enforcement reporting system is estimated to cost \$211,680 from the general fund.

- 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 cities and counties will experience a loss in asset forfeitures expenditures of up to \$2,384,376. The electronic reporting system required by the bill is estimated to cost the general fund \$211,680. The Executive Recommendation did not include this cost.

Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 701-328-3622

Date Prepared: 02/15/2019

FISCAL NOTE
Requested by Legislative Council
01/14/2019

Revised
 Bill/Resolution No.: HB 1286

- 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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$40,000	\$0	\$40,000	\$0
Appropriations	\$0	\$0	\$40,000	\$0	\$40,000	\$0

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$(988,200)	\$(988,200)
Cities	\$0	\$(1,396,176)	\$(1,396,176)
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 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 prohibits state and local entities keeping asset forfeiture proceeds and transfers the moneys to the Common Schools Trust 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.*

Sections 5-7 impact the Game and Fish Department. The proposed bill would require the department to conduct the auction of assets forfeited and deposit the revenue in the Common School Trust Fund. This will be a diversion of funds unless the department can deduct all costs of administering the auction from the proceeds. The department estimates asset forfeiture sale proceeds, after expenses, to be \$32,000. Section 41 repeals Section 20.1-10-04 which directs the department to turn over confiscated property to the ND Wildlife Federation to be sold and the proceeds remitted in the ND Wildlife Federation's report all poachers fund. Section 42 provides for a \$40,000 appropriation from the general fund to the department for providing a grant for administration of the report all poachers program.

Other sections, including Sections 12-15 have a negative impact on political subdivisions. The \$1,396,176 currently received by cities and the \$988,200 currently received by the counties from asset forfeiture proceeds will be eliminated. This results in a loss of political subdivision revenues, expenditures, and appropriations. This fiscal note reflects the results of a political subdivision survey conducted to gather the estimated lost asset forfeiture moneys.

Section 28 requires local law enforcement to report to the Office of Attorney General regarding assets forfeited and for the Office to include an aggregated report on its web site.

Section 30 prohibits the Highway Patrol from keeping asset forfeiture proceeds, which is anticipated to reduce revenues, expenditures, and appropriations by \$92,477.

Section 37 prohibits the Office of Attorney General from keeping asset forfeiture proceeds, which is anticipated to negatively impact revenues, expenditures, and appropriations by \$399,354. The moneys are currently used to purchase specialized equipment the Office cannot otherwise afford, match grant funds, pay overtime, and pay expenses for unusual criminal cases, etc.

Additionally, federal forfeitures the Office of Attorney General and political subdivisions receive for joint participation in criminal investigations would be lost to the state since federal rules disallow expenditures of those funds for non-law enforcement purposes. The amount of federal forfeitures the Office of Attorney General and political subdivisions receive varies.

Another impact of this bill is the Crime Laboratory will no longer receive forfeited weapons it uses for training and experimental purposes.

The estimated revenues which would be directed to the Common Schools Trust Fund from the entities shown above would be \$2,876,207 including state entities, cities, and counties identified here.

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.*

The Office of Attorney General will have a loss of asset forfeiture funding of an estimated \$399,354.

The Highway Patrol will have a loss of asset forfeiture funding of an estimated \$92,477.

The cities and counties will experience a loss in asset forfeitures proceeds of an estimated \$2,384,376.

The Common Schools Trust Fund will receive additional revenue estimated at \$2,876,207.

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.*

Since a \$40,000 general fund appropriation is contained in the bill for the Game & Fish Department there is no other impact.

The Highway Patrol's asset forfeiture expenditures will be reduced by an estimated \$92,477.

The Office of Attorney General expenditures will be reduced by an estimated \$399,354 from the loss of proceeds from asset forfeitures.

The cities and counties will experience a loss in asset forfeitures expenditures of an estimated \$2,384,376.

The Common Schools Trust Fund will receive an estimated \$2,876,207 from asset forfeiture proceeds.

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.*

Since a \$40,000 general fund appropriation is contained in the bill for the Game & Fish Department there is no other impact.

The Highway Patrol's asset forfeiture appropriations will be reduced by an estimated \$92,477.

The Office of Attorney General appropriations will be reduced by an estimated \$399,354 from the loss of proceeds from asset forfeitures.

The cities and counties will experience a loss in asset forfeitures expenditures of an estimated \$2,384,376.

The Common Schools Trust Fund will receive an estimated \$2,876,207 from asset forfeiture proceeds.

Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 701-328-3622

Date Prepared: 01/31/2019

FISCAL NOTE
Requested by Legislative Council
01/14/2019

Revised
 Bill/Resolution No.: HB 1286

- 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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$40,000	\$0	\$40,000	\$0
Appropriations	\$0	\$0	\$40,000	\$0	\$40,000	\$0

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$(604,200)	\$(604,200)
Cities	\$0	\$(596,176)	\$(596,176)
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 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 prohibits state and local entities keeping asset forfeiture proceeds and transfers the moneys to the Common Schools Trust 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.*

Sections 5-7 impact the Game and Fish Department. The proposed bill would require the dept. to conduct the auction of assets forfeited and deposit the revenue in the Common School Trust Fund. This will be a diversion of funds unless the department can deduct all costs of administering the auction from the proceeds. The department estimates asset forfeiture sale proceeds, after expenses, to be \$32,000. Section 41 repeals Section 20.1-10-04 which directs the department to turn over confiscated property to the ND Wildlife Federation to be sold and the proceeds remitted in the ND Wildlife Federation's report all poachers fund. Section 42 provides for a \$40,000 appropriation from the general fund to the department for providing a grant for administration of the report all poachers program.

Other sections, including Sections 12-15 have a negative impact on political subdivisions. The (\$596,176) currently received by cities and the (\$604,200) currently received by the counties relate to amounts received by the regional narcotics task forces from asset forfeiture proceeds. No impact is shown for other political subdivisions; a political subdivision survey is currently being conducted to gather the lost asset forfeiture income.

Section 28 requires local law enforcement to report to the Office of Attorney General regarding assets forfeited and for the Office to include an aggregated report on its web site.

Section 30 prohibits the Highway Patrol from keeping asset forfeiture proceeds, which is anticipated to reduce revenues, expenditures, and appropriations by \$92,477.

Section 37 prohibits the Office of Attorney General from keeping asset forfeiture proceeds, which is anticipated to negatively impact revenues, expenditures and appropriations by \$399,354. The moneys are currently used to purchase specialized equipment the Office cannot otherwise afford, match grant funds, pay overtime, and pay expenses for unusual criminal cases, etc.

Additionally, federal forfeitures the Office receives for joint participation in criminal investigations would be lost to the state since federal rules disallow expenditures of those funds for non-law enforcement purposes. The amount of federal forfeitures the Office receives varies.

Another impact of this bill is the Crime Laboratory will no longer receive forfeited weapons it uses for training and experimental purposes.

The estimated revenues which would be directed to the Common Schools Trust Fund from the entities shown above would be \$1,692,207 including state entities, cities, and counties identified here.

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.*

The Office of Attorney General will have a loss of asset forfeiture funding of an estimated \$399,354.

The Highway Patrol will have a loss of asset forfeiture funding of an estimated \$92,477.

The regional narcotics task forces will experience a loss in asset forfeitures proceeds of an estimated \$1,200,376.

The Common Schools Trust Fund will receive additional revenue estimated at \$1,692,207.

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.*

Since a \$40,000 general fund appropriation is contained in the bill for the Game & Fish Department there is no other impact.

The Highway Patrol's expenditures will be reduced by an estimated \$92,477.

The Office of Attorney General expenditures will be reduced by an estimated \$399,354 from the loss of proceeds from asset forfeitures.

The Common Schools Trust Fund will receive an estimated \$1,692,207 from asset forfeiture proceeds.

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.*

Since a \$40,000 general fund appropriation is contained in the bill for the Game & Fish Department there is no other impact.

The Highway Patrol's appropriations will be reduced by an estimated \$92,477.

The Office of Attorney General expenditures will be reduced by an estimated \$399,354 from the loss of proceeds from asset forfeitures.

The Common Schools Trust Fund will receive an estimated \$1,692,207 from asset forfeiture proceeds.

Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 701-328-3622

Date Prepared: 01/28/2019

FISCAL NOTE
Requested by Legislative Council
01/14/2019

Bill/Resolution No.: HB 1286

- 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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$40,000	\$0	\$40,000	\$0
Appropriations	\$0	\$0	\$40,000	\$0	\$40,000	\$0

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$(604,200)	\$(604,200)
Cities	\$0	\$(596,176)	\$(596,176)
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 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 prohibits state and local entities keeping asset forfeiture proceeds and transfers the moneys to the Common Schools Trust 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.*

Sections 5-7 impact the Game & Fish Department. The department would no longer be able to retain the proceeds from assets forfeited. In this case, the revenues currently received by the Wildlife Federation would instead be received by the department. Section 42 provides for a \$40,000 appropriation from the general fund for Report All Poachers grants administration. Section 41 repeals NDCC Section 20.1-10-04 which directs the department to turn over confiscated property to the ND Wildlife Federation and the net proceeds of the sales are currently deposited in the department's Report All Poachers fund. The department estimates the revenues from the asset forfeiture proceeds will be \$32,000.

Other sections, including Sections 12-15 have a negative impact on political subdivisions. The (\$596,176) currently received by cities and the (\$604,200) currently received by the counties relate to amounts received by the regional narcotics task forces from asset forfeiture proceeds. No impact is shown for other political subdivisions; a political subdivision survey is currently being conducted to gather the lost asset forfeiture income.

Section 28 requires local law enforcement to report to the Office of Attorney General regarding assets forfeited and for the Office to include an aggregated report on its web site.

Section 30 prohibits the Highway Patrol from keeping asset forfeiture proceeds, which is anticipated to reduce revenues, expenditures, and appropriations by \$92,477.

Section 37 prohibits the Office of Attorney General from keeping asset forfeiture proceeds, which is anticipated to negatively impact revenues, expenditures and appropriations by \$399,354. The moneys are currently used to purchase specialized equipment the Office cannot otherwise afford, match grant funds, pay overtime, and pay expenses for unusual criminal cases, etc.

Additionally, federal forfeitures the Office receives for joint participation in criminal investigations would be lost to the

state since federal rules disallow expenditures of those funds for non-law enforcement purposes. The amount of federal forfeitures the Office receives varies.

Another impact of this bill is the Crime Laboratory will no longer receive forfeited weapons it uses for training and experimental purposes.

The estimated revenues which would be directed to the Common Schools Trust Fund from the entities shown above would be \$1,692,207 including state entities, cities, and counties identified here.

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.*

The Office of Attorney General will have a loss of asset forfeiture funding of an estimated \$399,354.

The Highway Patrol will have a loss of asset forfeiture funding of an estimated \$92,477.

The regional narcotics task forces will experience a loss in asset forfeitures proceeds of an estimated \$1,200,376.

The Common Schools Trust Fund will receive additional revenue estimated at \$1,692,207.

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.*

Since a \$40,000 general fund appropriation is contained in the bill for the Game & Fish Department there is no other impact.

The Highway Patrol's expenditures will be reduced by an estimated \$92,477.

The Office of Attorney General expenditures will be reduced by an estimated \$399,354 from the loss of proceeds from asset forfeitures.

The Common Schools Trust Fund will receive an estimated \$1,692,207 from asset forfeiture proceeds.

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.*

Since a \$40,000 general fund appropriation is contained in the bill for the Game & Fish Department there is no other impact.

The Highway Patrol's appropriations will be reduced by an estimated \$92,477.

The Office of Attorney General expenditures will be reduced by an estimated \$399,354 from the loss of proceeds from asset forfeitures.

The Common Schools Trust Fund will receive an estimated \$1,692,207 from asset forfeiture proceeds.

Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 701-328-3622

Date Prepared: 01/24/2019

2019 HOUSE JUDICIARY

HB 1286

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1286
1/30/2019
31855

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Desarae Bergquist and Marjorie Conley

Explanation or reason for introduction of bill/resolution:

Relating to forfeiture proceedings, forfeiture disposition, and actions to recover forfeitures; and to provide an appropriation.

Minutes:

Attachments 1-6

Chairman K. Koppelman: Opened the hearing on HB 1286.

Representative Rick Becker: Introduced the bill. **(Attachment #1)** No written testimony. Discussed the fact that people who have forfeiture do not get their property back. Went into detail on this. This is not to cast judgement on law enforcement. I don't understand how we cannot do it a better way. We know this law is being abused in other states. This bill would require a guilty verdict. It does require reporting and transparency. It requires proportionality. This would move the fines to common schools trust fund. The opposition is; several agencies had me meet with them yesterday. Some of their concerns that they don't like this idea that they are probably guilty, but could not be proven. We are tasked with protecting people's rights. We are supposed to give the funds as legislatures when it is necessary. Our judicial system is based on laws and innocence until proven guilty. Went over the handouts. **(15:57-21:00)** Senator Cramer supports this bill. Went through the bill and fiscal note. **(20:02-30:00)** It is hard to not look at the drugs of society. Questions? (might get written testimony)

Chairman K. Koppelman: Do you have access to the written testimony later?

Representative Becker: I can recreate it.

Chairman K. Koppelman: Is this bill the house version from last time?

Representative Becker: By statute it differs tremendously.

Representative Simons: Did you get a chance to talk to Senator Armstrong about this bill? I know he was supportive about the bill but didn't like how it was written.

Representative Becker: Yes we spoke not long after last session. He is in full favor of this bill.

John Ward, attorney lobbyist, representing American Civil Liberty Union: We support the notion of due process and this bill would go a long way in installing public trust.

Lee McGrath, Attorney at the Institute for Justice: We support this bill. **(Attachment #2)** Stopped at 47:00. Discussed a case that he handled on forfeiture. It is completely legal for the state of ND to take someone's property. It is like an aggressive police officer and prosecutors. This bill is a process bill on how the state operates.

Representative Magrum: Do you have the statistics for North Dakota?

Lee McGrath: That is one of the greatest regrets, neither you nor I know how much property is being seized.

Chairman K. Koppelman: If this bill were to pass would it place ND in similar situations as neighboring states?

Lee McGrath: Need to put a criminal conviction before a civil.

Chairman K. Koppelman: What kinds of patch work are out there?

Lee McGrath: They have addressed the questions of the standard of proof and the burns of proof.

Mike Fedorchak, ND State Director of Americans for Prosperity: (Attachment #3)
(Stopped 55.45)

Pete Hanbrook, ND Farm Bureau: We support this bill.

Representative Jones: Where the owner of the livestock has to bear the livestock keeping costs?

Pete Hanbrook: I am not too worried about that. That concern is not that great for the bill pickup.

Representative Jones: Maybe we should put an amendment that there be a reasonable charge for the feed.

Representative Magrum: Does it track how much livestock is fed per year?

Pete Hanbrook: No we do not track that.

Opposition:

Wayne Stenehjem, Attorney General of ND: In 1991 when this forfeiture bill was enacted we paid particular attention to how this has been working. Went through what the funds are being used for in North Dakota. There are a lot of the provisions in this bill that are good. The change of the burden of proof is a step that will make it more difficult to prosecute a case like this and win. The reporting makes good sense. Please change the reporting date.

Convictions are required and there are cases where a conviction cannot be made. The statute requires all of the money going to the school trust fund. We use \$100,000 every year for important law enforcement related activities.

Representative Vetter: Why should the police department benefit from the more people you catch is the more you benefit?

Wayne Stenehjem: The benefit from permitting a process to take from people who are proven in court to have committed a crime, the benefit is not to the police department but to citizens of ND.

Representative Vetter: The citizens of ND don't benefit from the school trust fund.

Wayne Stenehjem: Certainly it could.

Representative Vetter: So you have not seen a conflict of interest by doing that?

Wayne Stenehjem: I haven't heard any conflict cases of abuse of the way that we are doing things.

Representative Paur: I believe the federal officers will entice support of local law enforcement by generally paying 50% of seized property and charring it with local law enforcement. Since they are not seized by us would it remain with them?

Wayne Stenehjem: We do cooperate with our federal and local counterparts and especially on drug cases but this bill will prohibit that.

Representative McWilliams: The fiscal note.

Wayne Stenehjem: That might be a benefit because then the reporting would give us specific information.

Representative Satrom: You mentioned there haven't been any abuses? The Bismarck Tribune stated that Mr. Dorman was acquitted at trial but his legal battle wasn't over and getting his truck back was an issue.

Wayne Stenehjem: I know of the case and someone is here that can talk about that particular case.

Representative Roers-Jones: You talked about your areas of concern on the conviction to occur? That seems like a limited situation. Couldn't something be amended in the bill to cover this.

Wayne Stenehjem: I hope you will address it someplace. You can't always get a conviction.

Representative Becker: As the bill is written that property would go to unclaimed property?

Wayne Stenehjem: Unclaimed property has to be given back to the person.

Representative Becker: We have a person who is supposed to go to court for criminal. What happens when they disappear?

Wayne Stenehjem: If they disappear, you can't charge it and they would get their property back.

Representative Becker: So someone has to be present?

Wayne Stenehjem: I am talking about someone who can't be found so they can't be charged.

Representative Becker: So if you are stopped and property are seized, and authorities are figuring things out and they determine what to charge the person; all you have to do is disappear?

Wayne Stenehjem: If no one is charged since they disappear then you can't charge them.

John Bradley, Executive Director, ND Law Game and Fish: (Attachment #4) Our concern is the RAP program; to be sold at public auction. We do a reporting on every year. We recommend removing the RAP program.

Representative Magrum: Do you agree the RAP bill is constitutional?

John Bradley: We don't get any profits for the RAP program is goes to support the events that educate the public. The ND Wildlife Federal doesn't get any of those funds.

Representative McWilliams: So the funds are used to fund the trailer?

John Bradley: Parts goes to education and other parts go to funding folks that call the direct line. It doesn't go directly to funding the trailer.

Chairman K. Koppelman: So your opinion these organizations should be funded by the violators not by the tax payers?

John Bradley: I would have to think on that but I wouldn't see a huge issue on that.

Representative Simons: So we are taking money from people that are not convicted of a crime and cannot afford to fight and they in return are getting anonymous money?

John Bradley: The RAP program works on anonymous tips and then it gets investigated by Game and Fish if the property gets confiscated. It still has to go through that law enforcement.

Representative Vetter: What kind of poaching work? What kind of assets are we taking here?

John Bradley: Mostly it is firearms. Could be a boat or rod and reels.

Representative Bob Paulson: If they are convicted of a wildlife crime. They are only sold after a conviction in court.

John Bradley: I would differ **Mr. Timiman**, I've only been on the job only three months.

Bill Hildfred, ND Bow's Association: We like the way the system is working now.

Robert Timiman, Chief Wildlife Officer, ND: Description of the RAP program. If property is seized it is held. The property has to go back to the person that it was seized from. All the seized property if forfeiture was asked for we have to go to the court. They are all open public records.

Representative McWilliams: Is there a financial threshold in which you do not seize property?

Robert Timinan: There is no threshold in our law. The court decides.

Representative Jones: How often do people sign the ticket automatically forfeits the property?

Robert Timinan: If it is a non-criminal citation, forfeiture is not an option. If it is a criminal offense, we do not have an option on it. That is up to the courts.

Representative Becker: The \$40,000 does make the RAP program whole in that it is as much or more than it has received on last couple biennium? Aside from everything taken a little loop, everything is the same is it not?

Robert Timinan: It is more complicated than that. Now when the property is given to the federation it is a private entity. Yes, it would cover the costs.

Representative Becker: When I re-read the bill and it says to provide a grant to the administration. I don't see where they are going to be required to give administrative stances a grant to continue to do what they've been doing.

Robert Timinan: The grant because it is a grant; there are rules imposed upon any agency both on the federal and state agencies.

Representative McWilliams: You reference between criminal and non-criminal? Clarification?

Robert Timinan: On the back of the citation it states that. Discussed differences on criminal and civil.

Jeremy Ensrud, Attorney General's office, based out of Minot, ND: (Attachment #5)
Reading testimony. **Stopped 1:49:00**

Representative Becker: If a felon possesses a firearm, does it not constitute contraband?

Jeremy Ensrud: Discussed possession of firearms and how it works.

Representative Becker: It is automatically forfeited. You testified that you don't like the conviction requirement. To the benefit of the person you may plead them down from a felony to a misdemeanor you'd have to give it back when in fact they are still guilty.

Jeremy Ensrud: Simple possession you cannot have forfeiture back.

Representative Becker: Previously the Attorney General testified and you testified that if someone absconds, you can't charge them. Is that your testimony because that is what is implied?

Jeremy Ensrud: We can charge them and the vehicle is kept forever if they cannot be located and police income.

Rep. Rick Becker: If the person absconds they can be charged in absentia? You can move for a default judgement?

Jeremy Ensrud: You cannot because you would need a conviction. We would file for paperwork and we would move for a default judgement. HB 1286 does not allow that because it requires a conviction in order to get the forfeiture. I know that we can charge people in absentia, but we cannot convict them in absentia.

Rep. Becker: That would be a simple fix in the bill.

Jeremy Ensrud: I do believe in some type of safety valve. It only makes good sense if you are a drug dealer from California and you are going to bring 10 lbs. of meth to sell in North Dakota basically by removing the conviction requirement everyone knows what a drug mule is, someone who is not the kingpin but someone they use to transport the money or the drug proceeds, they would then send that clean person to North Dakota to pick up that \$100,000 cash and drive it back to California. There would be no crime on the part of that person who is just transporting that cash. In no way we could seize that cash. Drug dealers are very smart and sophisticated the higher you get up the system.

Chairman K. Koppelman: How many of the cases for civil forfeiture are no shows?

Jeremy Ensrud: I have not had a single one contested in the past year. Forfeiture is not abused. This bill does have a tracking system and I like that.

Chairman K. Koppelman: You said many of the seized guns are destroyed. Is it the assumption that the criminals would buy them back?

Jeremy Ensrud: I think that this is the judges thing. Most of them were hunting guns.

Rep. Jones: I am surprised that most of them are a few dollars in seizures and forfeitures?

Jeremy Ensrud: Nothing smaller than \$10,000. Vehicles are usually older.

Rep. Rick Becker: From all forfeitures what portion are from forfeitures?

Jeremy Ensrud: I am not aware of any.

Chairman K. Koppelman: We will go for another time for this bill Monday morning.

Ladd Erickson, McLean County States Attorney: (Attachment #6) Went through testimony. stopped 2:18:50 Doesn't like Section 29.

David Todd, Fargo, ND Police Chief's Association: We are in favor of liberty but oppose this bill. We agree with **Rep. Rick Becker** there are ways we can do things better rather than writing a bill and saying we agree to disagree. We do support the transparency for the reporting. No written testimony.

Chairman K. Koppelman: We will check the fiscal note.

Working group: Rep. Jones, Chair, Rep. Hanson and Rep. Satrom

Recessed hearing on HB1286 until Monday February 4 at 8:30AM.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1286
2/4/2019
32045

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to forfeiture proceedings, forfeiture disposition, and actions to recover forfeitures; and to provide an appropriation.

Minutes:

1-6

Chairman Koppelman: Reopened the hearing on HB 1286.

Neutral:

Kathy Roll, Financial Administration for the Office of Attorney General: Went over the fiscal note and changes (Attachment #1) It was updated after the hearing. Went over the information for the committee information.

Vice Chairman Karls: How much is in the common schools trust fund.

Kathy Roll: When we checked with the Dept. of Public Instruction the impact would be on them. They said it was negligible. There is so much money there.

Vice Chairman Karls: This would go into the principal and it is never spent?

Kathy Roll: I do not know.

Chairman K. Koppelman: This money goes back and forth. You are not making any statement that more or less funds would be collected?

Kathy Roll: Yes that is correct.

Rep. Paur: Local sheriff called me and asked me not to support this bill. He said if we passed this bill they wouldn't be doing as many asset forfeitures because it doesn't benefit them.

Support: No

Opposition:

Mike Bolme, Bismarck Police Department: (Attachment #2) Read testimony. (8:13-15:15)

Rep. Jones: One the first page you said I have personally given seize money back?

Mike Bolme: An investigator had seized a large amount of cash because it looked fishy at the onset; but that person later came to the station and spoke with me and actually had proof where that money came from. I personally went to evidence and got the money and gave it back to him. It is important to us to make sure we get it right too.

Rep. Jones: So you did have the authority to just go to the place where it was stored and give it back to him because he had proved to you that it was his and that was the end of it?

Mike Bolme: Yes, at the point it is evidence so it is easy for me to get it out of evidence and give it back.

Rep. Jones: Discussed an issue where a gentleman had sold everything he could sell back at home and he came to the bakken with a huge stash of cash. He got stopped and they came across his cash and seized it and it took him quite a while to get it back. So I am glad to hear your story.

Rep. Satrom: I read an article in Bismarck Tribune regarding a fellow that had his vehicle seized and he doesn't have his vehicle back yet? Can you give me some insight on that situation?

Mike Bolme: If you read the transcripts from that hearing it explains a lot. I think Mr. Burst is going to talk about that case specifically.

Rep. McWilliams: What amount of cash would be suspicious and what kind of evidence would one need to present to show that was legitimately gained?

Mike Bolme: There is no set amount. It goes on a case by case basis. We don't go by cash alone. Intelligence from people in the field and complaints from people in the field, Text messages are a huge part of narcotics trafficking so we will have some of that evidence. Things that collaborate that money is not legitimately earned money The average forfeiture amount is usually a small amount. The criminal asset forfeiture and civil asset forfeiture are different. The averages will be different. Your criminal asset forfeiture will be those smaller amounts. Those are the guys who get caught in traffic stops or outside their houses. The need for the civil asset forfeiture is for the large dollar amounts that we find.

Rep. McWilliams: My wife and I keep a cash in our account when we travel across the account. If someone stopped, you and asked you where you got that from; how do I go about proving that I came about that money legitimately when I saved it over a long period of time?

Mike Bolme: You probably won't have to provide that just because you have a large amount of cash. Most of the people we are seizing money from have no jobs or income.

Rep. Jones: I like the idea to have a good reporting system on asset forfeiture and it is accessible to the public.

Mike Bolme: I am already doing that. I have to report to my deputy chief and the chief and the fiscal with anything that goes on with that account. It would just mean one more report and that is not a problem.

Rep. McWilliams: When you conduct a civil asset forfeiture on a traffic stop; do you have to get a warrant for search and seizure at that time?

Mike Bolme: If it is on a traffic stop you probably won't need a warrant because the carol doctrine says we don't need a warrant for vehicles because of their inherent mobility. If we get a search warrant it is gotten through a judge.

Vice Chairman Karls: (Attachment #3) Referred to this email. This email mentioned the Dickinson Police Department has an armored personnel transport vehicle implying maybe this was purchased with asset forfeiture money. Do you have any knowledge of this?

Mike Bolme: I don't know what the Dickinson PD spends their asset forfeiture on. We are after evidence and not necessarily after forfeitures. Sometime s they come as a result of that evidence but we have to prove up those cases. There is a system in place for this.

Rep. Vetter: I have heard from a number of law enforcement that we need this because of drug seizures. We are hearing it is much lower amounts that seem to be seized. On the fiscal note here it seems pretty high. Would you have an issue if they put a cap on it; like everything over \$5000 is fair game. Anything under that it would not even pay for them to get an attorney to try to get this money back. Would that be an issue?

Mike Bolme: We do no civil asset forfeiture under \$400. Most of those smaller amounts will be obtained from the criminal judgement; not the civil judgements. I have a huge problem with giving elicited funds back to those that came by them illegally.

Rep. Jones: There is going to be a lot of money involved I see a problem with proportionality. Criminals might be carrying a lot of cash. The money you keep will be reduced. Have you got concerns about that?

Mike Bolme: This is something we discussed with Rep. Becker. An A felony carries a max amount of \$20,000. If I convict someone of conspiracy to deliver meth and I seize \$120,000 of it; that can still come through the criminal asset forfeiture because even though the proportionality writings in that bill state that the judge has to take that into account; I think there is still some leeway for the judge to have discursion.

Rep. Rick Becker: Can you clarify what happens in the courts and law enforcement. This bill doesn't change anything with regard to what you do when you are seizing something. There is a lot of discussion with regarding well you would have no reason to take the cash from Rep. McWilliams; but you have the discretion to do that if you so choose. There are several instances on false positive hits on money. We rely on the courts whether the money would be given back. How do you feel this hinders your job?

Mike Bolme: You are correct. There is day and night between seizures and forfeitures. Losing that dollar amount would directly affect my agency and especially my section. Mr. Erickson spelled out why we need the two mechanism; we need the criminal and civil asset forfeiture. There are consequences for it down the road.

Chairman K. Koppelman: No one in this committee would question the examples that have been given in this discussion. Some people like to deal in cash; merely the possession of the amount of cash should not be suspect. Went through some of the testimony on the funds. We struggle with the principals of not being deprived of life, liberty and property without due process of law and here comes law enforcement seizing something and saying now prove it is yours? Seems backwards; help me with that?

Mike Bolme: Maybe I didn't make it clear. I would have no reason in Rep. McWilliams case to seize that money. 99.9% of the time we have some prior intel that you are up to something no good. We have to have further collaboration. Burden of proof doesn't scare me at all.

Chairman K. Koppelman: We have taken steps in the legislature recently to keep and bear arms. Suppose someone in a situation similar to him has a large amount of money and they are also carrying a weapon; so they must be a drug dealer?

Mike Bolme: Cash and firearms together in this state is not illegal. I have to have some kind of evidence that that money was gained illegally.

Rep. McWilliams: We have medical marijuana about to become legal plus a large amount of cash plus a firearm. The scenario looks pretty bad. Is there ever a situation where the police department come in and take their cash and then that innocent person has to expend resources to try and get their property back. You reference that I would have W-2's to prove that. That is not necessarily true. In our dog grooming business we deal with cash all the time. So I would have no receipt for the cash accounting for that. I think the problem is an innocent person has to prove their innocence before they were proven guilty.

Mike Bolme: I would have no reason to seize that cash from you. The medical marijuana bill makes some things illegal under federal law which are now legal under state law. These are things we are going to have to sort out in a case by case basis.

Chairman K. Koppelman: If you had seized their property would you still be holding that property.

Mike Bolme: There is a huge difference between probable cause and beyond a reasonable doubt. We arrest people and seize their property sometimes at the probable cause level. You are still working that case to be sure everything is legitimate.

Chairman K. Koppelman: You would voluntarily give it back or the person would have to come in and prove it.

Mike Bolme: It is on the case by case basis. You have to leave some of this to discussion.

Rep. McWilliams: What is the time frame; then find that it did not have the evidence to hold that property. You are holding that case open and keeping that property for what length of time?

Mike Bolme: In a case like that, if I seize a large amount of cash from someone they are eager to get that money back. If I establish that trust immediately even though I have seized your cash, I will tell you if you can prove where this came from bring it to me and you will get it back right then and there. We air on the side of caution.

Rep. Paulson: Are you aware of a situation in ND where someone had property seized; was found specifically not guilty of a crime and had to fight to get their property back?

Mike Bolme: There are examples like that. I have had not so good interactions with representatives too. There is a system and it is not just me. Switching the burden of proof back on us doesn't scare me.

Rep. Rick Becker: It sounds like it is your discursion whether you seize something you're your discursion whether you give it back? Over the last five years several investigative journal type processes going on in different cities across the nation; and not in ND there have been ongoing seizures and forfeitures that have sky rocked. Studies showed law enforcement was focused on minorities were targeted and the objective was clearly not to take drugs off the street because the drugs go one way and the money goes another way. If drugs are going to the oil patch; the money is coming the other way. The studies showed that law enforcement was focusing almost exclusively on the money track going back; so these investigations have clearly shown abuse in other states. There are also situations where law enforcement will size cash and will do a roadside arbitration say you have \$50,000 in cash here; I will take \$10,000 and you take \$40,000. There are pretty bad people or plastic surgeons. There is nothing different about any vocation that excludes the possibility of a bad person being in that vocation. How do you not see that that is ripe for abuse in ND at some point in the future?

Mike Bolme: Why wouldn't I make it easier. Why wouldn't I give it back? Things don't always look as they seem. Show me where this has happened in North Dakota.

Chairman K. Koppelman: We have tried to get people talking to one another. We attempt to make law that we hope is just and protect the people in North Dakota. Our struggle is how to do this. We have not heard of this being abused in ND.

Rep. Vetter: Discussed money issue regarding cash? Lots of people come to my house and then you are reported and the police come and you have this cash and you can just seize it and I have to prove that?

Mike Bolme: You are way off. There would be no probable cause to go into your house and seize your cash.

Rep. Vetter: If you leave it open there is always a bad guy out there in every profession?

Mike Bolme: The good parts of this bill take care of any kind of opening there would be.

No system is perfect. I think there are parts of the bill that would make it better.

Rep. Vetter: You are with the reporting part; and you are ok with the part of them having to be found guilty on that side of things too?

Mike Bolme: Yes it is my preference that they be found guilty. There are occasions where that is not possible.

Chairman K. Koppelman: You were talking about vehicles; you still have to have probable cause?

Mike Bolme: Yes.

Rep. Jones: How long had that property been seized before it was turned back to the people.

Mike Bolme: A day or two.

Rep. Jones: In law enforcement; if I get into trouble and thrown into jail I have to go to court and be proven guilty or innocent. In the mean time I have lost all my liberties; not just my stuff.

Mike Bolme: There is a big difference in seizing someone's person and someone's property. And that is initially where the burden of proof in civil court was left probable cause and not beyond a reasonable doubt because the Supreme Court has recognized that difference.

Rep. McWilliams: We do appreciate your work.

Dustin Olson, Lt. Burleigh Co. Sheriff's Department: (Attachment #4) Went over testimony. (1:03:13-1:07)

Rep. Jones: What happens if they die or are deported? Is that the only example you have?

Dustin Olson: I try to keep it simple. Those are a couple specific instances I have been personally involved in.

Rep. Jones: If you catch somebody and the forfeiture hinges on them being convicted and found guilty if they plead and cooperate in the investigation and the charges are dropped against them have you seen that in any situations where they don't have anything criminal a conviction on them, but they were instrumental in getting somebody bigger in the organization?

Dustin Olson: That is something that occurs on a regular basis.

Chairman K. Koppelman: How do you know they are guilty? We have been hearing that a lot from law enforcement in respect to this bill. Suspicion is not the same thing as conviction?

Dustin Olson: They are providing statements and providing reasons why it was obtained illegally. We are going to continue to vet that information whether it is through text messages or other means. We are just one part of that process.

Vice Chairman Karls: If they agree the paperwork will be filed with district court and go before a district judge; a hearing will be held; if requested by the defendant? Does the innocent defendant have to hire an attorney for this and what would be the cost?

Dustin Olson: I have been part of both; where individual has testified without representation so I have been a part of both.

Chairman K. Koppelman: If someone does hire an attorney and he is found innocent is there anything to make that person whole in respect to the amount of money they have had to spend getting their own property back?

Dustin Olson: My experience is their property has been returned.

Rep. Jones: The previous testimony said if something was seized and realized it was a mistake we did not have a burden of proof. He drops the charges and if there is not a case; then everything has to go back. Is that the actual process?

Dustin Olson: My experience has been the criminal aspect of it. I am only speaking on my experiences and typically they all have the criminal side.

Chairman K. Koppelman: if someone has left the state and you are not going to extradite but you have some of their property. That is an example of where it may make sense. Is there property setting there and haven't been given back?

Dustin Olson: We will have to show that link to criminal activity.

Chairman K. Koppelman: Some of his local law enforcement Rep. Paur said some of his local law enforcement said if you change this we won't have any incentive to do this so we will do fewer of them because what is in it for us? That seems to contradict the assertion that there is never an incentive there.

Dustin Olson: I speak for my agency and we are going to keep doing our job to do the right thing.

Donnell Preskey, NDACo.: (Attachment #5) Went over testimony. (1:17:00-1:20:45)

Rep. McWilliams: Do have a percentage of what forfeiture was civil or criminal?

Donnell Preskey: I did ask that question. There was a large amount of misunderstanding so I could not get an answer.

Rep. Satrom: I was at the fair and they had an armored vehicle;

Donnell Preskey: I don't know.

Aaron Burst, Association of counties: (Attachment #6) Handed out for Tracy Peters since she could not be here.) When we are talking about law enforcement and officers testifying if they seize something and an individual comes in and proves to them it shouldn't go through the seizure process they have that discretion to give it back. They are saving the person having to go to the State Attorney's office and filing the formal complaint and fighting it out on the criminal or civil side. The state carries the burden of proof and the judge has to make the call that a seizure has to do with criminal activity. I have to prove that.

Rep. Rick Becker: Seizure requires probable cause right now. When law enforcement is still at the stage where they have the ability to say I am realizing this is not coming together here is your stuff back. This bill would not change that. When you go to civil court to get their stuff back an attorney is not assigned to them regardless of their income level; is that correct?

Aaron Burst: Yes that is correct.

Rep. Rick Becker: If the property is returned to the owner there are no damages awarded? Correct?

Aaron Burst: If the court wanted to impose sanctions on the civil side against the government they would have every ability to do so.

Rep. Rick Becker: If charges are dropped but the property was in the system; there is not an automatic that the person gets it back.

Aaron Burst: Yes that is correct.

Chairman K. Koppelman: How high should the burden of proof be?

Aaron Burst: Clear and convincing is good.

Chairman K. Koppelman: Would it be reasonable to say either a criminal conviction exists or a criminal charge exists. We keep hearing about these people who flee the state and there is an arrest warrant out for them; they are not going to extradite them and they leave the property because they don't want to face the criminal charge and come back and deal with that.

Aaron Burst: I 99% agree with that, but if you foreclose the possibility that you must be charged or convicted then again you are setting up a scenario where people will be convicted and charged with crimes that normally I as a prosecutor would not do.

Rep. Rick Becker: I am encouraged you are sure we are 100% going to have a good compromise. Are you currently working with legislators?

Aaron Burst: We are working on amendments.

Blair Thorson, Lobbyists for the ND Peace Officers Association: We do not support this bill as written.

Neutral: None

Hearing closed

Chairman K. Koppelman: The requirement for us to get the bill out of the committee today on the fiscal note rule deadline would be triggered by the direct appropriation. We do have a fiscal note on the bill but it is a local government fiscal note; not a state one so that would allow us to continue to work on this bill.

Motion Made by Rep. Satrom: Take out Section 42; which is the direct appropriations of \$40,000. Seconded by Rep. Hanson.

Discussion:

Voice vote carried.

Closed.

Formed a Subcommittee: Chairman, Rep. Jones. Rep. Satrom, Rep. Hanson.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1286
2/5/2019
32235

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to forfeiture proceedings, forfeiture disposition, and actions to recover forfeitures; and to provide an appropriation.

Minutes:

Chairman Koppelman: Opened the meeting on HB 1286.

We have a subcommittee formed: Rep. Jones, Chairman; Rep. Satrom and Rep. Hanson

Rep. Rick Becker: Does this have any potential of getting lost?

Chairman K. Koppelman: No the eyes of the whole committee will be on this because we know what is happening with this. I have a meeting with the majority leader to discuss this.

Rep. Jones: We do have an amendment that is pretty well done? Is it fair to the bill to give it a do not pass recommendation on something I think we are going to be able to work out?

Chairman K. Koppelman: The reason I suggested this is there are a lot of folks opposed to the bill as it stands. If we kick it out of committee without any other amendments other than the fiscal note amendment that we have done with a do pass we are going to be flooded with people trying to kill the bill.

Rep. Jones: If we put the amendment on it and then pass it out of committee is it then available for everyone to see?

Chairman K. Koppelman: I don't think the committee is prepared to do that today. We know what the bill is. We could send it out without committee recommendation, but we run the same risk. The only way to silence the opposition and allow the subcommittee and committee the time to work on this with a minimum of reaction.

Rep. Vetter: I don't care how much scrutiny I get I am going to vote yes to this.

Chairman K. Koppelman: A lot of discussion on the process to use on this bill.

Representative Simons: What is the urgency of moving this bill out?

Chairman K. Koppelman: The rule is yesterday was the deadline for referring bills out of standing committee to the appropriations committee if they meet two criteria; 1. Direct appropriation of \$5,000 or more. 2. A fiscal impact on a state agency of \$50,000 or more. The bill had a \$40,000 direct appropriation for the Game & Fish Department to make them whole with the WRAP program. It had no fiscal note for state agencies; had a large fiscal note for cities and counties. Yesterday that was revised and doubled. My thought was if we amended the appropriation out of the bill then we could work on the bill and it would not need to be referring out of the committee. We have until tomorrow. I will discuss this with leadership on this bill.

Rep. Paur: Wasn't it yesterday we received this? The explanation on the fiscal note.

Chairman K. Koppelman: The revised fiscal note shows no impact. Would you prefer I try to accomplish that?

Rep. Hanson: I would feel comfortable whatever you decide.

Closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1286
2/7/2019
32414

☒ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to forfeiture proceedings, forfeiture disposition, and actions to recover forfeitures; and to provide an appropriation.

Minutes:

1

Subcommittee members present: Rep. Jones, Chairman; Rep. Hanson; Rep. Satrom

Rep. Jones: Opened the subcommittee hearing on HB 1286.

Rep. Jones: These are Christmas Tree versions of the bill. This is a work in progress.

Robert Timinan: Chief Game Warden for Game & Fish: We would just want any reference to title 20.1 be removed from the bill. We like the system we have. The equipment is turned over to the Wildlife Federation and they retain the funds and by law they can only be used for the administration of the WRAP program. They do have to provide a financial account of those funds. We want to be removed from the bill.

Rep. Satrom: Anyone else concerned about 20.1.

Rep. Jones: We had an appropriation on the bill but we took that off by committee action.

Robert Timinan: That is appropriate that the appropriation goes away also. Our position is we want out of the bill. If the rest of law enforcement in this committee come to an agreement in this bill and for some reason we are the only hang up on moving it forward we could make it amended but that is not our choice.

Jeremey Ensrud, Attorney General's office: Page 13; you can't have a forfeiture without a conviction. I don't know how we could prove that. Maybe if they failed to attend a planned court date. When people are assisting law enforcement we don't want any violence here. If we say they are cooperating with law enforcement, then we would put someone at risk. Page 19: for a one-day jury trial is \$1000 or \$1500 not including the bailiff for a jury trial. You are adding a lot of cost to try to get \$1000. We should just have a bench trial. Maybe you should put on a higher threshold.

Rep. Jones: I understand what you want. I am considering doing a delayed bill.

Rep. Satrom: Where is our clear and convincing evidence?

Jeremy Ensrud: Section 15, page 17, line 23. This bill would raise the current standard. Maybe create a two track thing. Clear and convincing; or beyond a reasonable doubt.

Rep. Jones: We have seizures going on but the assets are forfeited or gone before you have a conviction. We are trying to take care of this. I Rep. McWilliams trying to take care of this before an initiated measure is put forward.

Rep. Hanson: Mr. Ensrud, can you speak to firearms seizures on page 35?

Jeremy Ensrud: When you are making this requirement upon conviction is subject to forfeiture in accordance with 29-31.1. Usually that is a felon in possession of a firearm.

Rep. Jones: I thought that 29 had the same steps. I will review the firearms and cigarette sections.

Rep. Satrom: Everything that is struck through gets unstruck and leave it to the judges discretion.

Rep. Hanson: Yes I agree.

Rep. Jones: They will have an opportunity in this section to make a valid claim and the judge has the opportunity to return that to them.

Jeremy Ensrud: I don't think anyone wants felonies or violent people with guns.

Robert Timinan: If all this were to change and if firearms would Page 37 lines 21-23 that those would be destroyed; generally, the family has an emotional issue with that weapon.

Blaine Erickson: Bill is full of meaningless provisions. You have pages of livestock and forfeiture on livestock. Game & Fish; there is no purpose for them to be in here. That is a misdemeanor land. (Attachment #1) Went over his handout.

Rep. Satrom: We write contracts for a company and every line has a reason an experience. I am nervous about this whole sale adjustments of the bill.

Rep. Hanson: I want to make our state a safe place to be.

Rep. Satrom: Does anyone have a response to what was just discussed.

Everyone agrees.

Rep. Jones: How can we make this draft work on the case of conviction and flee deals. There is no conviction, but there is forfeiture. Where does that fit in our current statute.

Blaine Erickson: Proof of that \$100,000 if hard to give back to the drug dealers. It makes sense to require conviction before forfeiture.

Rep. Satrom: Page 2 days we have more reporting; what is happening to the money?

Blaine Erickson: The money has to be spent for officer's safety, training and equipment. That does change in our draft. Under the amendments you have there then the Attorney General gets the money and logs it in and writes a check back to the county auditor.

Rep. Jones: There is a board that is governed by a five-member board.

Baine Erickson: That is for state agencies get a load of cash. Locals right now aren't sending that into that board.

Rep. Hanson: We can look up the reporting which is on this bill that goes to that AG board.

Kathy Roll, Financial Administration office of AG: Money come into the asset forfeiture fund and then granted out to entities. We could maybe use the Drug and Violent Crime Policy Board that already grants out moneys for federal funds and lottery funds that go to the narcotic's task forces.

Rep. Jones: Yes all that would go through that board?

Kathy Roll: Yes if that is the wishes of the committee.

Rep. Jones: Rep. Hanson's observation on having the reporting will provide a lot of insight to the public. Mr. Erickson said let's not make this so complicated that it causes more problems.

Rep. Hanson: The brief proposal from Mr. Erickson might help us with this.

Rep. Satrom: It might look better if we send the check to Bismarck and get it back; why go through that. I am concerned if the checks will go back where they should go through.

Rep. Jones: Legislative Counsel will work with Blaine Erickson and get back to us 19-03.01 will file and annual report. We will be getting rid of the livestock, reco stuff, chop saw industry is struck out of the back of the bill. Leave out the rest of it.

Rep. Hanson: Made a Motion we adopt the hog house amendment (Attachment #1) with the understanding we will make language on page 21. Seconded by Rep. Satrom

Discussion:

Rep. Jones: I am going to be looking into conviction.

Voice vote carried.

Rep. Jones: Will call another meeting to approve this.

2019 HOUSE SUBCOMMITTEE MINUTES

Judiciary Subcommittee

HB 1286

32577

Committee Clerk, Kathleen Davis

Explanation or reason for introduction of bill/resolution:

HB 1286 – relating to forfeiture proceedings, forfeiture disposition, and actions to recover forfeitures; and to provide an appropriation

Meeting location: House Conference Room, State Capitol

Date of meeting: 2/11/2019 4:15 PM

Members present: Rep. Jones, Chairman; Rep. Hanson; Rep. Satrom

Others present: Dustin Olson, Tom Iverson, Britta Demello Rice, Lonnie Grobowski, Jason Ziegler, Ladd Erickson, Dave Dravitch, Wade Kadrmas, Karla Rose Hanson, Jack Dina, Dennis Pathoff, Julie Ellingson, Donnell Preskey, Rep. Rick Becker

Topics discussed:

- Donnell Preskey, ND Association of Counties, if conviction requirement, they would oppose this bill
- As is this is not requiring a conviction
- If we don't address forfeiture the public could bring a referendum that would cause more issue
- Everyone is ok with clear and convincing evidence in Sec. 1
- Sec.2 too many situations that can't be covered in that list. Unclear how to fix this.
- Avoid the problem of real drug money going back into the hands of drug dealers
- How do we prove that so people can see if we seize and forfeit the money? The transparency covers that, the reporting requirements, go to the website and people can read
- Suggested to delete subsection 2-3-4; subsection 1 is clear and convincing evidence
- 2 things wrong, Sec.2,1 line says a valid seizure. The valid seizure needs a comma after it; Sec.3 should say in determining excessiveness, comma, strike out, so you're not making the court the test for excessiveness.
- Did change to put back into general fund instead of the school fund.

Motion and vote:

Time of Adjournment 4:55 pm

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1286
2/12/2019
32618

☒ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores Shimek

Explanation or reason for introduction of bill/resolution:

Relating to forfeiture proceedings, forfeiture disposition, and actions to recover forfeitures; and to provide an appropriation.

Minutes:

1

Members present: Rep. Jones, Chairman; Rep. Hanson; Rep. Satrom

Others present: Roberta Denelaise Spoke

Topics discussed:

Rep. Hanson: Am very satisfied with the amendments.

Rep. Satrom: We will be having a lot of drug money going back to drug people and we don't want to do that.

Rep. Hanson: Reporting elements we are adding will elevate concerns of the public. There are a lot of checks and balances and a process in place.

Rep. Satrom: Places that will have the most forfeiture is the place where they are having the most problems.

Rep. Hanson: There is due process in courts. I don't like the conviction; the reporting will be able to be used.

Rep. Jones: Cross jurisdiction prosecution problems.

Rep. Hanson: Can't entities do this today? Problems with coordination and cooperation.

Rep. Jones: Attorney General said they can do it today.

Motion and vote: Rep. Hanson Motioned to amend to add the words if there was one after the word defense, subject to the word forfeiture; at the end of b. Seconded by Rep. Satrom. Carried

Motion made to amend Page 1, Section 1 take out 2,3,4, Section 2, after the word seizure insert, and; Page 2 b. should read in determining excessiveness the court shall determine the fair market value of the property subject to forfeiture, the extent to which the owner or person participated in the offense; the extent to which the property was used or received in committing the offense amendment 4007 by Rep. Hanson; Seconded by Rep. Satrom; Carried.

House Judiciary Committee
HB 1286
February 12, 2019
Page 2

Rep. Hanson moved a Do Pass as Amended using 19.0345.04007 by Rep. Hanson; Seconded by Rep. Satrom; Carried.

Roll call vote: 3 Yes 0 No

Closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1286
2/13/2019
32708

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to forfeiture proceedings, forfeiture disposition, and actions to recover forfeitures; and to provide an appropriation.

Minutes:

1, 2

Chairman Koppelman: Opened the meeting on HB 1286.

Rep. Jones: (Attachment #1) Proposed amendment. Went through the bill history and forfeiture and seizure. This is a hog house from our subcommittee. Went through the proposed amendment.

Rep. Rick Becker: Constitutionally disproportionate refers back to one of the amendments on excessive fines and that is the one that has not be upheld yet regarding the actual ten amendments.

Rep. Jones: Continued going through the amendment. Reporting is in the bill. Clear and convincing proof came out of the subcommittee, both in seizure and the court proceedings. Testimony said the average seizure and forfeiture was \$1600-\$1800. That causes me concern and this report will be filed annually so we can see what is going on.

Motion Made to amend using 19.0345.04009 by Rep. Jones; Seconded by Rep. Hanson

Discussion:

Rep. Rick Becker: I would like to oppose that motion. What is here is what law enforcement submitted and it was adopted by the committee. What you have is the reporting; second was requiring conviction. The monies: There is an indication that bad things are going on in other states. The more you seize the more money they get. It is an incentive and remains so. We suggested the subcommittee has a problem with all the law enforcement there. The amendment at hand is wholly unacceptable and it comes from people who are not legislators so I resist the motion.

Rep. Hanson: All subcommittees were public and all people interested had the opportunity to come to the table.

Rep. Satrom: We did not have a problem and I think the bill was in search of a problem. I think in ND we have a good process and good people and we have not seen excesses in my opinion and I think our bill is a reasonable solution that has lots of accountability and transparency.

Rep. Bob Paulson: Rep. Paur related that telephone call that he had with his sheriff; who made the comment that we won't be doing this anymore because there is no incentive for us to do that. I don't see that fixed.

Rep. Jones: We did have a lot of input at the subcommittee meetings. Law enforcement did have a lot of influence, but I wanted this to get to the Senate side. The questions and concerns are far less damaging as that solution would provide. I passed out the other version that I was putting together as I was going forward and it includes the other things that would strengthen the proponents of the bills concerns specifically on the first page.

Chairman K. Koppelman: I stand behind our subcommittee's and support our work. The purpose of a subcommittee is not to reopen a hearing on a bill. The purpose is to drill down deeper on the detail of the bill. I believe in law enforcement here in this state. Our legislation is to try and make legislation that has the rights of everyone.

Rep. Paur: I am going to support the amendment and ask for a further amendment that all proceeds be turned over to the Attorney General for grants for police use.

Chairman K. Koppelman: As I read the amendment we are debating .04009; it does a couple of things law enforcement said was sunshine is good; a clear and convincing standard of proof is better than a preponderance.

Rep. Hanson: There is some concern about the lack of conviction requirement and how could this happen. There is strong due process in place for civil asset forfeiture. The law enforcement officer doesn't just do this on their own. If the evidence is there; then notice is provided to show up at a hearing. There is strong due process. Now there is clear and convincing evidence. The judge has the final say and there is now clear and convincing evidence now that is the highest standard of evidence in civil court.

Representative Simons: If there is an issue of people not coming back for their assets; lets address them in the bill. Let's not ruin the bill. We have re-elections and I can't wait to see the flyers that come out on this.

Rep. Vetter: The fiscal impact contradicts what we hear. We heard \$2.9 million. I don't like the assets forfeiture amounts and seizure. Then we hear we are going to lose all those programs.

Rep. McWilliams: I was wondering from Rep. Jones what the difference was between number 10 and number 9 in the amendments. I see we have two different ones?

Rep. Jones: Number .04009 came out of the subcommittee. Number 10 version was one I had worded up as we were going along includes the things the sponsor tried to get worked

in. It basically includes the things the sponsor of the bill was trying to get worked in. It has a conviction requirement; encourages because we can't tell the judiciary branch what to do.

Chairman K. Koppelman: Let's just discuss the .04009 amendment now.

Vice Chairman Karls: I don't like this phasing of all this money and property being taken with no conviction. When we look at this fiscal impact statement we don't know how much is taken with or without a conviction may be sixty or seventy percent of the time. I would like to see a number?

Rep. Satrom: The way the process works they bring drugs here; but when they sell the drugs they take the money back. They may not have a conviction for that money however we have pretty clear and convincing evidence that that is drug money. If we don't do this and let that other option go, your representative believes it is ok to give drug money back to the drug dealers so they can go and do their damage. That is the rebuttal I would have to all of this. I am frustrated with some of the personal comments. We can have our opinions, but we don't have to be demonstrative about it.

Chairman K. Koppelman: No one can get a handle on their elusive money. On one hand we are hearing just because someone has a lot of money in their pocket which might look suspicious all of a sudden they are going to lose it until they go into court and demonstrate that they have a right to keep it. The flip side is it is hard to pin this down with the amount of money where they may be hiding it in their vehicle. I would love to see if that is a problem and we can't track it; let's solve that problem. I hope we follow this through as it goes to the Senate.

Rep. Jones: We did look into having the money a crime and there is only one state in the country that does this and that is California. They have a \$100,000 threshold on property. I want to make it clear that there was a comment on the police and law enforcement in the subcommittee and I want to make clear that I invited them to come. I don't want them to feel bad.

Rep. Hanson: Money is not seized and later forfeiture on the fact there is a large amount of money along. There is not just money alone that caused them to take it. They also have other evidence.

Rep. Jones: We need to get something that will pass.

Rep. Paur: I am going to withdraw my support on the amendment. I don't think we are going to be dealing with the perverse incentive. If we do fine.

Rep. Rick Becker: I want to address commits for the process. There are no personal attacks whatsoever. I reinforced to the Chair of the subcommittee absolutely nothing was personal and I know only the best of intent was there. Were amendments or amendment content provided by lobbyist and law enforcement? Is the amendment we have at hand substantially similar or the same to what you were provided by states attorneys, law enforcement or lobbyist thereof?

Rep. Jones: Yes

Representative Simons: Due process is an emotional process.

Rep. Jones: I had been working with the State's Attorney to help me come to a solution that was workable. The stuff that ended up in the bill was stuff that was very similar with what he came up with.

Chairman K. Koppelman: We will be voting on .04009 and it creates transparency and changes the burden of proof from preponderance of the evidence to clear and convincing evidence and provides some safe guards against disproportionate seizure.

Voice Vote Failed

Rep. Jones: Went over .04010 amendments, see attachment 2. Law enforcement doesn't like this bill because of the conviction. That is why the subcommittee decided not to put it in. Subsection 3. Is an attempt to encourage two or more agencies may cooperate. Attorney General said they can do that now. I wanted to show legislative intent that we encourage that.

Chairman K. Koppelman: If the conviction standard is unachievable; might it be appropriate be to say either convicted of a crime or that there is a warrant out for their arrest and they are charged with a crime. Maybe subsection 2 accomplishes that.

Rep. Jones:(51:00) In this one all the money will go to the AG's office in the forfeiture fund. The judges will have the opportunity to allow the highway patrol or whoever is involved in tis they can petition to request to allow us a percentage of that to continue our fight against drugs. Discussed jurisdictional problems. Continuing going through amendment.

Chairman K. Koppelman: If we are dealing with \$2.3 million starts going into this fund. If this money starts going into this fund that balloons the amount. Last session it was that it goes into the general fund. I think putting this fund into the Attorney General's office makes sense or capping it with the overage going into the general fund. I think the capping is way too low. That would create a situation where there are more eyes on it.

Rep. Paur: That \$200,000 cap in seizing property is they can't keep and it is an incentive I believe according to one testimony to spend the money so they don't reach that cap.

Chairman K. Koppelman: There is a fund in the Attorney General's office already to use. Those dollars now don't go into this fund. If this amendment was adopted, then the amendment would have these assets after the expenses are subtracted; anything over that would flow into this fund. Those dollars now don't go into this fund. They stay with the agencies that do the seizures.

Rep. Jones: When I was working with this idea; if we are going to put it all into that fund, they already have quite a bit of money coming into that fund from other things. We probably would have to cap it at \$5 million if we were going to put it all into there. There is a board that oversees this account right now and now they only meet once a year. This board will

have to be restructured and the cap it going to have to be \$5 million. If we are just going to flow through there we will only leave \$300,000 in that account; and it goes into the general fund. Then the legislator's appropriate it the next time we meet.

Rep. Rick Becker: The money going into the Attorney General's account is after the expenses?

Motion Made to amend the bill using .04010 with the change the last page from \$300,000 to \$2.5 million by Rep. Jones; Seconded by Rep. McWilliams

Representative Simons: What makes you do \$2.5 million?

Rep. Jones: Explained the other funds coming into the account and we have to let those flow in and out.

Rep. Rick Becker: I was going to support the amendment but I will oppose it now. \$2.5 million upends it. This is not durable for me now.

Motion withdrawn.

Rep. Jones: Discussed need to review motion and decide on the caps so that the money simply flows through there.

Motion Made to amend using .04010 by Rep. Rick Becker; Seconded by Rep. Bob Paulson

Voice vote carried.

Motion Made to amend to delete item 2, page 2 by Rep. Paur; No second.

Motion Made to amend on page 1, Section 1; subsection 2. line 3 add or the individual has died, add or fled the jurisdiction by Rep. Rick Becker; Page 2, subsection 2 of Sec. 2, line 3 include the word reasonable after including. Section 3 sub. 2 after an add a currency with the value of \$750 US or less may not be forfeited. This would be subsection b. c. would be real property constituting a homestead may not be forfeited. Reletter after that. Page 4, line 8 change to \$500,000. Seconded by Rep. Vetter

Rep. Hanson: Section 1, subsection 2 concerns about the conviction requirement? Flood the jurisdiction is difficult to prove. Currently a part of that paragraph a reduced sentence in exchange for testifying or assisting law enforcement investigations. There is concern that would put a target on the back of confidential informants.

Rep. Rick Becker: I am fine with leaving the portion of the amendment off. I was trying to address the concerns brought up by law enforcement when they were very concerned about fleeing or absconding as well as the specific concern of people that plead down from drug dealing to drug possession so suddenly they wouldn't qualify to have their stuff seized and forfeiture.

Voice Vote Carried.

Motion Made to amend to add in Sect 1. 2. or fled the jurisdiction means for a period of more than one year, by Rep. Jones; Seconded by Vice Chairman Karls

Voice Vote Carried.

Do Pass as Amended Motion Made by Rep. Bob Paulson; Seconded by Rep. Rick Becker

Roll Call Vote: 11 Yes 3 No 0 Absent Carrier: Rep. Jones

Closed.

Sixty-fifth
Legislative Assembly
Of North Dakota

Introduced by

A BILL for an Act to amend and reenact subsection 5 of section 19-03.1-36 and section 19-03.1-36.2 relating civil asset forfeiture.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

5. When property is forfeited under this chapter, the board or a law enforcement agency may:
 - a. Retain it for official use or transfer the custody or ownership of any forfeited property to any federal, state, or local agency. The board shall ensure the equitable transfer of any forfeited property to the appropriate federal, state, or local law enforcement agency so as to reflect generally the contribution of that agency participating directly in any of the acts that led to the seizure or forfeiture of the property. A decision to transfer the property is not subject to review.
 - b. Sell that which is not required to be destroyed by law and which is not harmful to the public.
- The proceeds must be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs, with any remaining proceeds to be deposited, subject to section 54-12-14, in the appropriate state, county, or city general fund. When two or more law enforcement agencies are involved in seizing a conveyance, the remaining proceeds may be divided proportionately.

c. Require the attorney general to take custody of property and remove it for disposition in accordance with law.

d. Forward it to the bureau for disposition.

e. Use the property, including controlled substances, imitation controlled substances, and plants forfeited under subsections 6 and 7, in enforcement of this chapter. However, in a case involving the delivery of a forfeited controlled substance by a law enforcement officer or a person acting as an agent of a law enforcement officer, no prosecution or conviction for simple possession of a controlled substance under subsection 6 of section 19-03.1-23 may be based upon the forfeited controlled substances supplied by the law enforcement officer or the officer's agent.

f. Any law enforcement agency that forfeits property under this chapter or 29-31.1 shall file an annual report with the Attorney General indicating any pending forfeiture or completed forfeiture action. The report must include the types of property and dollar amount of the forfeited property, the jurisdiction which received the property and any other information as required by the Attorney General. The report shall be subject to the open records provision of chapter 44-04, and the Attorney General may enact rules to implement this subsection.

SECTION 2. REPEAL. Section 19-03.1-36.2 of the North Dakota Century Code is repealed.

SECTION 3. AMENDMENT. Section 19-03.1-36.6 of the North Dakota Century Code is created and enacted as follows:

19-03.1-36.6. Hearing on contested forfeiture--Order releasing or forfeiting property

If an answer is filed within the time limits in this chapter, the forfeiture proceedings must be set for hearing before the court. At the hearing, the state shall establish a constitutionally valid seizure of the property and clear and convincing evidence ~~probable cause~~ for instituting the forfeiture action following which any owner or person with a legal interest in the property to be forfeited who has filed an answer to the complaint has the burden of proving that the property to be forfeited is not subject to

forfeiture under this chapter. If the court finds that the property is not subject to forfeiture under this chapter, the court shall order the property released to the owner or other person with a legal interest in the property as that person's right, title, or interest appears. The court shall order the property forfeited if it determines that such property or an interest therein is subject to forfeiture.

SECTION 4. AMENDMENT. Section 19-03.1-36.7 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.7. Legal interest in property Proportionality hearing.

1. A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.

2. At any time following determination of forfeiture by the Court, the interested party may request the court to determine whether the forfeiture is unconstitutionally excessive under the state or federal constitution. Vehicles valued less than two thousand dollars cannot be forfeited unless the court finds they have been modified to conceal contraband or currency. In determining the value of property subject to forfeiture the court shall determine fair market value of the property, the extent the interested party participated in the offense, and the extent to which the property was used or received in committing the offense. The court shall not consider the value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1286

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 19-03.1-36.8 of the North Dakota Century Code, relating to law enforcement agencies reporting seizures and forfeitures; and to amend and reenact sections 19-03.1-36.2, 19-03.1-36.6, and 19-03.1-36.7 of the North Dakota Century Code, relating to forfeiture proceedings, contested forfeiture hearings, and legal interests in forfeited property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-36.2 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.2. Forfeiture proceeding as civil action - Standard of proof.

1. Forfeiture proceedings are civil actions against the property to be forfeited and the standard of proof is a preponderance of the evidence ~~clear and convincing evidence.~~
2. Forfeiture proceedings are separate and distinct from any related criminal action, and may not be initiated until the owner of the property has been convicted of or pled guilty to a criminal offense, or the individual has died, been deported by the United States government, been granted immunity or a reduced sentence in exchange for testifying or assisting a law enforcement investigation or prosecution, or has abandoned the property as established by not appearing for two hearings in the forfeiture proceedings.
3. Forfeitures under this chapter must be proportional. A forfeiture with a value not exceeding the maximum financial penalty for its companion criminal charge is presumptively proportional.
4. Two or more law enforcement agencies from different jurisdictions may coordinate, cooperate, and engage in interjurisdictional prosecution under this section.

SECTION 2. AMENDMENT. Section 19-03.1-36.6 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.6. Hearing on contested forfeiture - Order releasing or forfeiting property.

If an answer is filed within the time limits in this chapter, the forfeiture proceedings must be set for hearing ~~before~~ the court. At the hearing, the state shall establish ~~probable cause~~ a valid seizure by clear and convincing evidence for instituting the forfeiture action following which any owner or person with a legal interest in the property to be forfeited who has filed an answer to the complaint has the burden of proving that the property to be forfeited is not subject to forfeiture under this chapter. If

the court finds that the property is not subject to forfeiture under this chapter, the court shall order the property released to the owner or other person with a legal interest in the property as that person's right, title, or interest appears. The court shall order the property forfeited if it determines that such property or an interest therein is subject to forfeiture.

SECTION 3. AMENDMENT. Section 19-03.1-36.7 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.7. Legal interest in property.

1. A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.
2. Upon a determination by the court that property is subject to forfeiture, the owner of the property to be forfeited or any other person with a legal interest in the property may petition the court to determine whether the forfeiture is unconstitutionally excessive.
 - a. A vehicle valued at less than two thousand dollars may not be forfeited unless the court finds the vehicle has been modified to conceal contraband or currency.
 - b. In determining the value of property subject to forfeiture, the court shall consider the fair market value of the property, the extent to which the owner or person participated in the offense, the extent to which the property was used or received in committing the offense, and the sentence imposed for committing the offense subject to forfeiture.
 - c. The court may not consider the value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

subject to def.

excessively effective, the court shall determine

SECTION 4. Section 19-03.1-36.8 of the North Dakota Century Code is created and enacted as follows:

19-03.1-36.8. Reporting.

1. As used in this section, "law enforcement agency" means a nonfederal public agency authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law, including the authority to conduct or engage in seizure and forfeiture.
2. Annually, each law enforcement agency shall compile the following information regarding seizures and forfeitures pending or completed by the agency under this chapter:
 - a. The types of property and dollar amount of the forfeited property;
 - b. The jurisdiction that received the property; and

- c. The total number of seizures of currency.
3. The attorney general may require the reporting of additional information not specified in this section. The attorney general shall develop standard forms, processes, and deadlines for electronic data entry for annual submission of forfeiture data by law enforcement agencies.
 4. Each law enforcement agency shall file with the attorney general a report of the information compiled under subsection 2 for the law enforcement agency and the corresponding prosecutor. A law enforcement agency that did not engage in seizures or forfeitures during the reporting period shall file a null report. The attorney general shall compile the submissions and issue an aggregate report of all forfeitures in the state.
 5. If a law enforcement agency fails to file a report within thirty days after the report is due, the attorney general may compel compliance by any means until the report is filed.
 6. The attorney general shall make available on the attorney general's website the reports submitted by law enforcement agencies and the attorney general's aggregate report. The reports must be updated annually."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1286

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 19-03.1-36.8 of the North Dakota Century Code, relating to law enforcement agencies reporting seizures and forfeitures; and to amend and reenact sections 19-03.1-36.2, 19-03.1-36.6, and 19-03.1-36.7 of the North Dakota Century Code, relating to forfeiture proceedings, contested forfeiture hearings, and legal interests in forfeited property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-36.2 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.2. Forfeiture proceeding as civil action - Standard of proof.

Forfeiture proceedings are civil actions against the property to be forfeited and the standard of proof is ~~a preponderance of the evidence~~ clear and convincing evidence.

SECTION 2. AMENDMENT. Section 19-03.1-36.6 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.6. Hearing on contested forfeiture - Order releasing or forfeiting property.

If an answer is filed within the time limits in this chapter, the forfeiture proceedings must be set for hearing before the court. At the hearing, the state shall establish ~~probable cause~~ a valid seizure, and by clear and convincing evidence for instituting the forfeiture action following which any owner or person with a legal interest in the property to be forfeited who has filed an answer to the complaint has the burden of proving that the property to be forfeited is not subject to forfeiture under this chapter. If the court finds that the property is not subject to forfeiture under this chapter, the court shall order the property released to the owner or other person with a legal interest in the property as that person's right, title, or interest appears. The court shall order the property forfeited if it determines that such property or an interest therein is subject to forfeiture.

SECTION 3. AMENDMENT. Section 19-03.1-36.7 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.7. Legal interest in property.

1. A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence

that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.

2. Upon a determination by the court that property is subject to forfeiture, the owner of the property to be forfeited or any other person with a legal interest in the property may petition the court to determine whether the forfeiture is unconstitutionally excessive.
 - a. A vehicle valued at less than two thousand dollars may not be forfeited unless the court finds the vehicle has been modified to conceal contraband or currency.
 - b. In determining whether a forfeiture is excessive, the court shall determine the fair market value of the property subject to forfeiture, the extent to which the owner or person participated in the offense, the extent to which the property was used or received in committing the offense, and, if any, the sentence imposed for committing the offense subject to forfeiture.
 - c. The court may not consider the value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

SECTION 4. Section 19-03.1-36.8 of the North Dakota Century Code is created and enacted as follows:

19-03.1-36.8. Reporting.

1. As used in this section, "law enforcement agency" means a nonfederal public agency authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law, including the authority to conduct or engage in seizure and forfeiture.
2. Annually, each law enforcement agency shall compile the following information regarding seizures and forfeitures pending or completed by the agency under this chapter:
 - a. The types of property and dollar amount of the forfeited property;
 - b. The jurisdiction that received the property; and
 - c. The total number of seizures of currency.
3. The attorney general may require the reporting of additional information not specified in this section. The attorney general shall develop standard forms, processes, and deadlines for electronic data entry for annual submission of forfeiture data by law enforcement agencies.
4. Each law enforcement agency shall file with the attorney general a report of the information compiled under subsection 2 for the law enforcement agency and the corresponding prosecutor. A law enforcement agency that did not engage in seizures or forfeitures during the reporting period shall file a null report. The attorney general shall compile the submissions and issue an aggregate report of all forfeitures in the state.

5. If a law enforcement agency fails to file a report within thirty days after the report is due, the attorney general may compel compliance by any means until the report is filed.
6. The attorney general shall make available on the attorney general's website the reports submitted by law enforcement agencies and the attorney general's aggregate report. The reports must be updated annually."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1286

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 19-03.1-36.8 of the North Dakota Century Code, relating to law enforcement agencies reporting seizures and forfeitures; and to amend and reenact sections 19-03.1-36.2, 19-03.1-36.6, 19-03.1-36.7, 29-27-02.1, and subsection 1 of section 54-12-14 of the North Dakota Century Code, relating to forfeiture proceedings, contested forfeiture hearings, legal interests in forfeited property, disposition of statutory fees, fines, forfeitures, and the attorney general assets forfeiture fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-36.2 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.2. Forfeiture proceeding as civil action - Standard of proof.

1. Forfeiture proceedings are civil actions against the property to be forfeited and the standard of proof is ~~a preponderance of the evidence~~ clear and convincing evidence.
2. Forfeiture proceedings are separate and distinct from any related criminal action, and may not be initiated until the owner of the property has been convicted of or pled guilty to a criminal offense, or the individual has died, been deported by the United States government, been granted immunity or a reduced sentence in exchange for testifying or assisting a law enforcement investigation or prosecution, or has abandoned the property. As used in this subsection, "abandoned the property" means for a period of more than one year, the owner has not responded to any of the reasonable efforts made by the seizing agency to contact the owner.
3. Two or more law enforcement agencies and courts from different jurisdictions may coordinate, cooperate, and engage in interjurisdictional prosecution under this section.

SECTION 2. AMENDMENT. Section 19-03.1-36.6 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.6. Hearing on contested forfeiture - Order releasing or forfeiting property.

1. If an answer is filed within the time limits in this chapter, the forfeiture proceedings must be set for hearing before the court. At the hearing, the state shall establish ~~probable cause~~ a valid seizure of the property to be forfeited, and by clear and convincing evidence for instituting the forfeiture action following which any owner or person with a legal interest in the property to be forfeited who has filed an answer to the complaint has the burden of proving that the property to be forfeited is not subject to forfeiture under this chapter. If the court finds that the property is not subject to

forfeiture under this chapter, the court shall order the property released to the owner or other person with a legal interest in the property as that person's right, title, or interest appears. The court shall order the property forfeited if it determines that such property or an interest therein is subject to forfeiture.

2. A court ordering property forfeited under subsection 1 may order the proper costs and expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, sales, and court costs with any remaining proceeds to be deposited as provided in subsection 2 of section 29-27-02.1.

SECTION 3. AMENDMENT. Section 19-03.1-36.7 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.7. Legal interest in property.

1. A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.
2. Upon a determination by the court that property is subject to forfeiture, the owner of the property to be forfeited or any other person with a legal interest in the property may petition the court to determine whether the forfeiture is unconstitutionally excessive.
 - a. A vehicle valued at less than two thousand dollars may not be forfeited unless the court finds the vehicle has been modified to conceal contraband or currency.
 - b. In determining whether a forfeiture is excessive, the court shall determine the fair market value of the property, the extent to which the owner or person participated in the offense, the extent to which the property was used or received in committing the offense, and the sentence imposed for committing the offense subject to forfeiture.
 - c. The court may not consider the value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

SECTION 4. Section 19-03.1-36.8 of the North Dakota Century Code is created and enacted as follows:

19-03.1-36.8. Reporting.

1. As used in this section, "law enforcement agency" means a nonfederal public agency authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law, including the authority to conduct or engage in seizure and forfeiture.

2. Annually, each law enforcement agency shall compile the following information regarding seizures and forfeitures pending or completed by the agency under this chapter:
 - a. The types of property and dollar amount of the forfeited property;
 - b. The jurisdiction that received the property;
 - c. The total number of seizures of currency; and
 - d. The amount the court has ordered to be paid toward the costs and expenses of the proceedings for forfeiture and sale under section 19-03.1-36.6.
3. The attorney general may require the reporting of additional information not specified in this section. The attorney general shall develop standard forms, processes, and deadlines for electronic data entry for annual submission of forfeiture data by law enforcement agencies.
4. Each law enforcement agency shall file with the attorney general a report of the information compiled under subsection 2 for the law enforcement agency and the corresponding prosecutor. A law enforcement agency that did not engage in seizures or forfeitures during the reporting period shall file a null report. The attorney general shall compile the submissions and issue an aggregate report of all forfeitures in the state.
5. If a law enforcement agency fails to file a report within thirty days after the report is due, the attorney general may compel compliance by any means until the report is filed.
6. The attorney general shall make available on the attorney general's website the reports submitted by law enforcement agencies and the attorney general's aggregate report. The reports must be updated annually.

SECTION 5. AMENDMENT. Section 29-27-02.1 of the North Dakota Century Code is amended and reenacted as follows:

29-27-02.1. Disposition of statutory fees, fines, forfeitures, pecuniary penalties, and bond forfeitures.

1. Except as otherwise provided by law, all statutory fees, fines, forfeitures, and pecuniary penalties prescribed for a violation of state laws, when collected, must be paid into the treasury of the proper county to be added to the state school fund. When any bail bond or other property or money deposited as bail is forfeited to the state, the proceeds collected therefrom must be paid over to the proper state official and credited to the state general fund.
2. Funds obtained through civil asset forfeiture under section 19-03.1-36 must be paid into the attorney general assets forfeiture fund.

SECTION 6. AMENDMENT. Subsection 1 of section 54-12-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The attorney general assets forfeiture fund consists of funds appropriated by the legislative assembly and additional funds obtained from moneys,

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

- a. For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse.
- b. For repayment of rewards to qualified local programs approved under section 12.1-32-02.2, if the information that was reported to the qualified local program substantially contributed to forfeiture of the asset, and for paying, at the discretion of the attorney general, rewards for other information or assistance leading to a forfeiture under section 19-03.1-36.
- c. For paying, at the discretion of the attorney general, any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property.
- d. For equipping, for law enforcement functions, forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the state board of pharmacy or a law enforcement agency.
- e. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation incurred as a result of investigations of violations of any state criminal law or law relating to the control of drug abuse.
- f. For paying matching funds required to be paid as a condition for receipt of funds from a federal government program awarding monetary grants or assistance for the investigation, apprehension, or prosecution of persons violating the provisions of chapter 19-03.1."

Renumber accordingly

February 13, 2019

DP 2/13/19
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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1286

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 19-03.1-36.8 of the North Dakota Century Code, relating to law enforcement agencies reporting seizures and forfeitures; and to amend and reenact sections 19-03.1-36.2, 19-03.1-36.6, 19-03.1-36.7, 29-27-02.1, and subsection 1 of section 54-12-14 of the North Dakota Century Code, relating to forfeiture proceedings, contested forfeiture hearings, legal interests in forfeited property, disposition of statutory fees, fines, forfeitures, and the attorney general assets forfeiture fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-36.2 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.2. Forfeiture proceeding as civil action - Standard of proof.

1. Forfeiture proceedings are civil actions against the property to be forfeited and the standard of proof is a preponderance of the evidence clear and convincing evidence.
2. Forfeiture proceedings are separate and distinct from any related criminal action, and may not be initiated until the owner of the property has been convicted of or pled guilty to a criminal offense, or the individual has died, fled the jurisdiction, been deported by the United States government, been granted immunity or a reduced sentence in exchange for testifying or assisting a law enforcement investigation or prosecution, or has abandoned the property. As used in this subsection, "abandoned the property" or "fled the jurisdiction" means for a period of more than one year, the owner has not responded to any of the reasonable efforts made by the seizing agency to contact the owner or has not contacted the seizing agency.
3. Two or more law enforcement agencies and courts from different jurisdictions may coordinate, cooperate, and engage in interjurisdictional prosecution under this section.

SECTION 2. AMENDMENT. Section 19-03.1-36.6 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.6. Hearing on contested forfeiture - Order releasing or forfeiting property.

1. If an answer is filed within the time limits in this chapter, the forfeiture proceedings must be set for hearing before the court. At the hearing, the state shall establish probable cause a valid seizure of the property to be forfeited, and by clear and convincing evidence for instituting the forfeiture action following which any owner or person with a legal interest in the property to be forfeited who has filed an answer to the complaint has the

DP 2/13/14
2 of 4

burden of proving that the property to be forfeited is not subject to forfeiture under this chapter. If the court finds that the property is not subject to forfeiture under this chapter, the court shall order the property released to the owner or other person with a legal interest in the property as that person's right, title, or interest appears. The court shall order the property forfeited if it determines that such property or an interest therein is subject to forfeiture.

2. A court ordering property forfeited under subsection 1 may order the proper costs and expenses of the proceedings for forfeiture and sale, including reasonable expenses of seizure, maintenance of custody, advertising, sales, and court costs with any remaining proceeds to be deposited as provided in subsection 2 of section 29-27-02.1.

SECTION 3. AMENDMENT. Section 19-03.1-36.7 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.7. Legal interest in property.

1. A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.
2. Upon a determination by the court that property is subject to forfeiture, the owner of the property to be forfeited or any other person with a legal interest in the property may petition the court to determine whether the forfeiture is unconstitutionally excessive.
 - a. A vehicle valued at less than two thousand dollars may not be forfeited unless the court finds the vehicle has been modified to conceal contraband or currency.
 - b. Currency with the value of seven hundred and fifty United States dollars or less may not be forfeited.
 - c. Real property constituting a homestead may not be forfeited.
 - d. In determining whether a forfeiture is excessive, the court shall determine the fair market value of the property, the extent to which the owner or person participated in the offense, the extent to which the property was used or received in committing the offense, and the sentence imposed for committing the offense subject to forfeiture.
 - e. The court may not consider the value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

SECTION 4. Section 19-03.1-36.8 of the North Dakota Century Code is created and enacted as follows:

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19-03.1-36.8. Reporting.

1. As used in this section, "law enforcement agency" means a nonfederal public agency authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law, including the authority to conduct or engage in seizure and forfeiture.
2. Annually, each law enforcement agency shall compile the following information regarding seizures and forfeitures pending or completed by the agency under this chapter:
 - a. The types of property and dollar amount of the forfeited property;
 - b. The jurisdiction that received the property;
 - c. The total number of seizures of currency; and
 - d. The amount the court has ordered to be paid toward the costs and expenses of the proceedings for forfeiture and sale under section 19-03.1-36.6.
3. The attorney general may require the reporting of additional information not specified in this section. The attorney general shall develop standard forms, processes, and deadlines for electronic data entry for annual submission of forfeiture data by law enforcement agencies.
4. Each law enforcement agency shall file with the attorney general a report of the information compiled under subsection 2 for the law enforcement agency and the corresponding prosecutor. A law enforcement agency that did not engage in seizures or forfeitures during the reporting period shall file a null report. The attorney general shall compile the submissions and issue an aggregate report of all forfeitures in the state.
5. If a law enforcement agency fails to file a report within thirty days after the report is due, the attorney general may compel compliance by any means until the report is filed.
6. The attorney general shall make available on the attorney general's website the reports submitted by law enforcement agencies and the attorney general's aggregate report. The reports must be updated annually.

SECTION 5. AMENDMENT. Section 29-27-02.1 of the North Dakota Century Code is amended and reenacted as follows:

29-27-02.1. Disposition of statutory fees, fines, forfeitures, pecuniary penalties, and bond forfeitures.

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

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2. Funds obtained through civil asset forfeiture under section 19-03.1-36 must be paid into the attorney general assets forfeiture fund.

SECTION 6. AMENDMENT. Subsection 1 of section 54-12-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The attorney general assets forfeiture fund consists of funds appropriated by the legislative assembly and additional funds obtained from moneys, assets, and proceeds seized and forfeited pursuant to section 19-03.1-36, amounts received through court proceedings as restitution, amounts remaining from the forfeiture of property after the payment of expenses for forfeiture and sale authorized by law, and amounts received from a multijurisdictional drug task force as defined in section 54-12-26. The amount of deposits into the fund which do not come from legislative appropriation or from a multijurisdictional drug task force and are not payable to another governmental entity may not exceed ~~two~~five hundred thousand dollars within a biennium and any moneys in excess of that amount must be deposited in the general fund. The funds are appropriated, as a standing and continuing appropriation, to the attorney general for the following purposes:
 - a. For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse.
 - b. For repayment of rewards to qualified local programs approved under section 12.1-32-02.2, if the information that was reported to the qualified local program substantially contributed to forfeiture of the asset, and for paying, at the discretion of the attorney general, rewards for other information or assistance leading to a forfeiture under section 19-03.1-36.
 - c. For paying, at the discretion of the attorney general, any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property.
 - d. For equipping, for law enforcement functions, forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the state board of pharmacy or a law enforcement agency.
 - e. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation incurred as a result of investigations of violations of any state criminal law or law relating to the control of drug abuse.
 - f. For paying matching funds required to be paid as a condition for receipt of funds from a federal government program awarding monetary grants or assistance for the investigation, apprehension, or prosecution of persons violating the provisions of chapter 19-03.1."

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1286**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Remove Section 42 from the bill.

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. Satrom Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
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

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1286**

House Judiciary Committee

☒ Subcommittee

Amendment LC# or Description: Hoghouse amendment- A bill for an Act to amend and reenact subsection 5 of section 19-03.1-36 and section 19-03.1-36.2 relating civil asset forfeiture.

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. Hanson Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Rep. Terry Jones					
Rep. Karla Rose Hanson					
Rep. Satrom					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote: Motion Carried.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1286**

House Judiciary Committee

☒ Subcommittee

Amendment LC# or Description: amend to add the words if there was one after the word
defense, subject to the word forfeiture; at the end of b.

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. Hanson Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Rep. Jones					
Rep. Satrom					
Rep. Hanson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote carried.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1286**

House Judiciary Committee

☒ Subcommittee

Amendment LC# or Description: amend Page 1, Section 1 take out 2,3,4, Section 2, after the word seizure insert, and; Page 2 b. should read in determining excessiveness the court shall determine the fair market value of the property subject to forfeiture, the extent to which the owner or person participated in the offense; the extent to which the property was used or received in committing the offense amendment 4007

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. Hanson Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Rep. Jones					
Rep. Satrom					
Rep. Hanson					

Total (Yes) _____ No _____

Absent _____

Voice vote carried

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

Voice vote carried.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1286**

House Judiciary Committee

☒ Subcommittee

Amendment LC# or Description: 19.0345.04007

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. Hanson Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Rep. Jones	X				
Rep. Satrom	X				
Rep. Hanson	X				

Total (Yes) 3 No 0

Absent 0

Floor Assignment _____

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

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1286

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 19.0345.04009

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. Jones Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote Failed

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1286**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 19.0345.04010

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. Becker Seconded By Rep. Paulson

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote Carried.

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1286

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: **on page 1, Section 1; subsection 2. line 3 add or the individual has died, add or fled the jurisdiction by Rep. Rick Becker; Page 2, subsection 2 of Sec. 2, line 3 include the word reasonable after including. Section 3 sub. 2 after an add a currency with the value of \$750 US or less may not be forfeited. This would be subsection b. c. would be real property constituting a homestead may not be forfeited. Reletter after that. Page 4, line 8 change to \$500,000**

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. Becker Seconded By Rep. Vetter

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment

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

Voice Vote Carried.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1286**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: **add in Sect 1. 2. or fled the jurisdiction means for a period of more than one year,**

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. Jones Seconded By Rep. Karls

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote Carried.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1286**

House 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 Rep. Paulson Seconded By Rep. Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Representative Buffalo		X
Vice Chairman Karls	X		Representative K. R. Hanson		X
Representative Becker	X				
Representative Terry Jones	X				
Representative Magrum	X				
Representative McWilliams	X				
Representative B. Paulson	X				
Representative Paur	X				
Representative Roers Jones	X				
Representative Satrom		X			
Representative Simons	X				
Representative Vetter	X				

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep. Jones

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

Voice Vote Carried.

REPORT OF STANDING COMMITTEE

HB 1286: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1286 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 19-03.1-36.8 of the North Dakota Century Code, relating to law enforcement agencies reporting seizures and forfeitures; and to amend and reenact sections 19-03.1-36.2, 19-03.1-36.6, 19-03.1-36.7, 29-27-02.1, and subsection 1 of section 54-12-14 of the North Dakota Century Code, relating to forfeiture proceedings, contested forfeiture hearings, legal interests in forfeited property, disposition of statutory fees, fines, forfeitures, and the attorney general assets forfeiture fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-36.2 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.2. Forfeiture proceeding as civil action - Standard of proof.

1. Forfeiture proceedings are civil actions against the property to be forfeited and the standard of proof is ~~a preponderance of the evidence~~ clear and convincing evidence.
2. Forfeiture proceedings are separate and distinct from any related criminal action, and may not be initiated until the owner of the property has been convicted of or pled guilty to a criminal offense, or the individual has died, fled the jurisdiction, been deported by the United States government, been granted immunity or a reduced sentence in exchange for testifying or assisting a law enforcement investigation or prosecution, or has abandoned the property. As used in this subsection, "abandoned the property" or "fled the jurisdiction" means for a period of more than one year, the owner has not responded to any of the reasonable efforts made by the seizing agency to contact the owner or has not contacted the seizing agency.
3. Two or more law enforcement agencies and courts from different jurisdictions may coordinate, cooperate, and engage in interjurisdictional prosecution under this section.

SECTION 2. AMENDMENT. Section 19-03.1-36.6 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.6. Hearing on contested forfeiture - Order releasing or forfeiting property.

1. If an answer is filed within the time limits in this chapter, the forfeiture proceedings must be set for hearing before the court. At the hearing, the state shall establish ~~probable cause~~ a valid seizure of the property to be forfeited, and clear and convincing evidence for instituting the forfeiture action following which any owner or person with a legal interest in the property to be forfeited who has filed an answer to the complaint has the burden of proving that the property to be forfeited is not subject to forfeiture under this chapter. If the court finds that the property is not subject to forfeiture under this chapter, the court shall order the property released to the owner or other person with a legal interest in the property as that person's right, title, or interest appears. The court shall order the property forfeited if it determines that such property or an interest therein is subject to forfeiture.

2. A court ordering property forfeited under subsection 1 may order the proper costs and expenses of the proceedings for forfeiture and sale, including reasonable expenses of seizure, maintenance of custody, advertising, sales, and court costs with any remaining proceeds to be deposited as provided in subsection 2 of section 29-27-02.1.

SECTION 3. AMENDMENT. Section 19-03.1-36.7 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.7. Legal interest in property.

1. A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.
2. Upon a determination by the court that property is subject to forfeiture, the owner of the property to be forfeited or any other person with a legal interest in the property may petition the court to determine whether the forfeiture is unconstitutionally excessive.
 - a. A vehicle valued at less than two thousand dollars may not be forfeited unless the court finds the vehicle has been modified to conceal contraband or currency.
 - b. Currency with the value of seven hundred and fifty United States dollars or less may not be forfeited.
 - c. Real property constituting a homestead may not be forfeited.
 - d. In determining whether a forfeiture is excessive, the court shall determine the fair market value of the property, the extent to which the owner or person participated in the offense, the extent to which the property was used or received in committing the offense, and the sentence imposed for committing the offense subject to forfeiture.
 - e. The court may not consider the value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

SECTION 4. Section 19-03.1-36.8 of the North Dakota Century Code is created and enacted as follows:

19-03.1-36.8. Reporting.

1. As used in this section, "law enforcement agency" means a nonfederal public agency authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law, including the authority to conduct or engage in seizure and forfeiture.
2. Annually, each law enforcement agency shall compile the following information regarding seizures and forfeitures pending or completed by the agency under this chapter:
 - a. The types of property and dollar amount of the forfeited property;
 - b. The jurisdiction that received the property;

- c. The total number of seizures of currency; and
- d. The amount the court has ordered to be paid toward the costs and expenses of the proceedings for forfeiture and sale under section 19-03.1-36.6.
3. The attorney general may require the reporting of additional information not specified in this section. The attorney general shall develop standard forms, processes, and deadlines for electronic data entry for annual submission of forfeiture data by law enforcement agencies.
4. Each law enforcement agency shall file with the attorney general a report of the information compiled under subsection 2 for the law enforcement agency and the corresponding prosecutor. A law enforcement agency that did not engage in seizures or forfeitures during the reporting period shall file a null report. The attorney general shall compile the submissions and issue an aggregate report of all forfeitures in the state.
5. If a law enforcement agency fails to file a report within thirty days after the report is due, the attorney general may compel compliance by any means until the report is filed.
6. The attorney general shall make available on the attorney general's website the reports submitted by law enforcement agencies and the attorney general's aggregate report. The reports must be updated annually.

SECTION 5. AMENDMENT. Section 29-27-02.1 of the North Dakota Century Code is amended and reenacted as follows:

29-27-02.1. Disposition of statutory fees, fines, forfeitures, pecuniary penalties, and bond forfeitures.

1. Except as otherwise provided by law, all statutory fees, fines, forfeitures, and pecuniary penalties prescribed for a violation of state laws, when collected, must be paid into the treasury of the proper county to be added to the state school fund. When any bail bond or other property or money deposited as bail is forfeited to the state, the proceeds collected therefrom must be paid over to the proper state official and credited to the state general fund.
2. Funds obtained through civil asset forfeiture under section 19-03.1-36 must be paid into the attorney general assets forfeiture fund.

SECTION 6. AMENDMENT. Subsection 1 of section 54-12-14 of the North Dakota Century Code is amended and reenacted as follows:

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

- a. For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse.
- b. For repayment of rewards to qualified local programs approved under section 12.1-32-02.2, if the information that was reported to the qualified local program substantially contributed to forfeiture of the asset, and for paying, at the discretion of the attorney general, rewards for other information or assistance leading to a forfeiture under section 19-03.1-36.
- c. For paying, at the discretion of the attorney general, any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property.
- d. For equipping, for law enforcement functions, forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the state board of pharmacy or a law enforcement agency.
- e. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation incurred as a result of investigations of violations of any state criminal law or law relating to the control of drug abuse.
- f. For paying matching funds required to be paid as a condition for receipt of funds from a federal government program awarding monetary grants or assistance for the investigation, apprehension, or prosecution of persons violating the provisions of chapter 19-03.1."

Renumber accordingly

2019 HOUSE APPROPRIATIONS

HB 1286

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

HB 1286
2/18/2019
32886

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Risa Bergquist

Explanation or reason for introduction of bill/resolution:

Minutes:

Chairman Delzer: Called the meeting to order for HB 1286.

1:30 Representative K. Koppelman: We had an original fiscal note and we took that out to avoid re referral. The fiscal note as the attorney general's office added to the bill 200 thousand dollars and they think that is what it will cost them to have a system for the law enforcement to report to the attorney general's office. This is the asset forfeiture bill, we had a bill on this topic last session. The issue right now is that law enforcement can seize assets, keep them or the proceeds from them when no one has been convicted of a crime.

Everyone seems to agree to two things, North Dakota we are not abusing this and we are trying to fix things so it can't be abused. Rather than allowing the police department agencies to keep the profits we are letting them keep the costs that are acquired during the seizure, over that the profits would go into a fund at the attorney general's that already exists, the civil assets forfeiture fund to the point of the cap and then it would flow over to the general fund.

7:05 Chairman Delzer: You had no discussion with the attorney general about the fiscal note?

Representative K. Koppelman: I didn't get a chance.

Chairman Delzer: You're raising it from 200 thousand to 500 thousand before anything flows to the general fund? And you are leaving it there to do grants?

Representative K. Koppelman: Correct, and right now this money doesn't even flow into that fund and money typically stays with the law enforcement agencies.

Representative Martinson: Was this a delayed billed or did you have this the whole session and hold it until today?

Representative K. Koppelman: It was not a delayed bill; we didn't think this would come to appropriations.

10:45 Representative Mock: I would make a motion to send this without committee recommendation.

Representative Howe: Second

Chairman Delzer: Is there any further discussion on the bill before us? Not seeing anything more we will call the roll.

A Roll Call vote was taken. Yea: 12 Nay: 9 Absent: 0

Motion Carries, Representative Jones will carry the bill

Chairman Delzer: With that we will close this meeting.

Date: 2/18/2019
Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1286**

House Appropriations 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 Representative Mock Seconded By Representative Howe

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X				
Representative Kempenich	X				
Representative Anderson	X		Representative Schobinger	X	
Representative Beadle		X	Representative Vigesaa	X	
Representative Bellew	X				
Representative Brandenburg	X				
Representative Howe	X		Representative Boe		X
Representative Kreidt	X		Representative Holman	X	
Representative Martinson		X	Representative Mock	X	
Representative Meier		X			
Representative Monson		X			
Representative Nathe		X			
Representative J. Nelson		X			
Representative Sanford		X			
Representative Schatz		X			
Representative Schmidt	X				

Total (Yes) 12 No 9

Absent 0

Floor Assignment Representative Jones

Motion Carries

REPORT OF STANDING COMMITTEE

HB 1286, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)
recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION**
(12 YEAS, 9 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1286 was
placed on the Eleventh order on the calendar.

2019 SENATE JUDICIARY

HB 1286

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1286
3/26/2019
#34240 (1:39:01)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel / Marne Johnson

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact section 19-03.1-36.8 of the North Dakota Century Code, relating to law enforcement agencies reporting seizures and forfeitures; and to amend and reenact sections 19-03.1-36.2, 19-03.1-36.6, and 19-03.1-36.7 of the North Dakota Century Code, relating to forfeiture proceedings, contested forfeiture hearings, legal interests in forfeited property, disposition of statutory fees, fines, forfeitures, and the attorney general assets forfeiture fund.

Minutes:

7 Attachments

Chair Larson opens the hearing on HB 1286.

Rick Becker, District 7 Representative, testifies in favor (see attachment #1)

Representative Becker: The civil asset forfeiture reform bill before you has had a very interesting course. When this bill came before this committee two years ago, to the vast majority of legislators and the public at large, the concept of civil asset forfeiture was not known or understood. This reform is specifically for forfeitures. The process that we think about in forfeiture is actually a combination of seizure and forfeiture. This bill does not deal with seizure. Once property is seized, an individual needs to go through a civil asset forfeiture proceeding to get their property back. I bring this reform before you because I was blown away by the concept that if you were not charged or found guilty, you still had to go to court to get your stuff back. If you're not found guilty, one would assume you'd just get your stuff back. But that is not the case, one must go to court and fight. The burden is on the state to prove you deserve to get your stuff back. Nevertheless, you have to go through that process, which usually involves hiring an attorney. One would need to do a cost analysis and if the value of the seized property is less than what it would cost to hire an attorney, one no longer bothers to go to court to get their stuff back. There is a gross error in our statute that permitted this. North Dakota has been rated as one of only two states in the nation by the Institute for Justice with an 'F' rating. People across the nation are becoming acutely aware of this aspect of civil asset forfeiture, where one is guilty until proven innocent. Reform is taking place across the nation.

There are three major components to getting good reform: the first is transparency and reporting. North Dakota has none. Not to say we can't come up with some reports, individual departments do keep some aspect of records. But there is no transparency and reporting requirements. Which is why a lot people will say, how badly is it being abused in North Dakota? Is this something where we've got a solution looking for a problem. Partly the answer is we don't know because there's no reporting requirements. The second aspect is the requirement of a conviction. To me, as someone who cares about constitutional liberties, this should be manifestly obvious. If you haven't been convicted of a crime, you should not have to fight to get your property back from the state. Law enforcement and the Attorney General's Office brought up some good points in the hearings on the House side, we incorporated those into our amendment, that is that we can say it should require a conviction, or if the person dies or flees the country, absconds; those are all circumstances, what are you going to do? Go ahead and forfeit the property. The third thing is where the money goes. This is the number one reason why the large number of uniformed people are behind me, and understandably so. The proceeds from forfeiture augment the funds of the various agencies and departments. They will probably report to you that approximately \$2 million in the various departments and agencies around the state is from forfeitures. They use those to buy equipment, pay overtime, but the problem is that that's not the proper way to conduct good governance. One should not, in any executive type agency, be able to fine or add fees to supplant the activity which they're conducting. The appropriation of money to law enforcement, to the executive agencies, to the cities, is the legislature's job. If, to do their job properly they need that degree of funding, it's our job to provide that funding. But when they get that money back, when they see the opportunity to seize something, because someone may be committing a crime, there's always the potential for the perverse incentive to come into play.

A perverse incentive, used frequently in economics, means that there is an undesirable behavior, we're not talking morally undesirable, we're talking about something that incentivizes a person to act in a manner which is not what was intended by the incentive. There's nothing moral, this is not an admonishment nor an accusation of law enforcement. I understand the reaction to have this be about anti-law enforcement versus pro-law enforcement. That's a misdirection and a gross misunderstanding of what I'm trying to say. There are stark laws in place for physicians to not refer patients to facilities that they own, because there's a perverse incentive; it's human nature to lean toward referring patients to lab facilities that you may own, because you could benefit financially. In other states in the nation, it has been proven that this type of law has been abused severely. I'm not suggesting that it is being abused in North Dakota, however, the possibility exists. I don't know if every single officer in North Dakota is an upstanding, law abiding, constitution respecting person. They probably are. Are they going to be in 20 years? I don't know. It would be quite naïve, to believe that will always be the case. As I just referenced with physicians, I would like to think that every single physician is a good, moral, upstanding person, and that they would never refer a patient to benefit themselves financially, however, we have laws in place to prevent even the possibility of that occurring. To be able to take this perverse incentive away also protects law enforcement. As it stands now, anytime any kind of seizure and forfeiture occurs, they can be accused of policing for profit. We take this bad law away, and we take away the possibility for them to be wrongly accused of policing for profit. That's the third of the three major aspects of civil asset forfeiture reform. There are a couple of minor aspects as well. The first is proportionality. Coincidentally, the supreme court the out with a ruling on the day that the House took a vote on the bill. The proportionality is required. It's in the bill, that may

now be a moot point now, but it simply means if you get stopped for something for which there is a maximum \$1000 fine, it would be unconstitutional for the forfeiture of a \$60,000 vehicle. There can't be that disproportionality. That's a minor point taken care of by the supreme court. The second minor point, the increasing of the evidentiary standard to clear and convincing, would seem to be critically important. I like the idea, the state should have to have clear and convincing to take your property. The vast majority of seizures are for small amounts of money. There's a listing of what forfeitures there are. The vast majority are under a thousand dollars. If someone seized your property with a value of \$700, you're not going to hire an attorney for \$5,000 to get that back. The vast majority of seizures will proceed to forfeiture despite increasing the evidentiary standard. I like the evidentiary standard in place, because when you have the large seizures, it's proper for the state to have to prove its case. That's good, but that's why I say that it's minor.

With regard to conviction, here's where I think there's a disparate understanding of the proper roles of the three branches of government. Law enforcement's job is to enforce the laws. Because they're on the ground, their primary job is the security and protection of our citizenry, the viewpoint of law enforcement is somewhat different than legislature. Legislators view their job as protecting freedoms, protecting the citizen from a different end of things, and sometimes those views don't quite come together. With law enforcement being on the ground and seeing all the effects of drugs and so forth, there's a strong desire to eradicate that, to do whatever is necessary for eradicate that for the betterment of our society and protection of our citizens. What we've heard over and over is not wanting a guilty conviction because they know the person is guilty. They may not be found guilty in court, but they know the person is guilty. The examples given are usually high level drug dealers and human traffickers. Two cases in which we can very emotionally involve ourselves to say, yeah, whatever is necessary to keep them off the street. We have to keep in mind those types of cases are miniscule compared to the rest. It's a very slippery slope. When we can act to take, in this case, the state takes someone's property because you know they're guilty. I contend, we don't know they're guilty. That's the whole basis of our judicial system. They're not guilty until they're found guilty. I've handed out Blackstone's ratio. As a legislator that is very concerned about the freedoms of the citizens of North Dakota, I believe very much in Blackstone's ratio. It'd be better to allow the property of ten guilty people to not be taken than it would be to take the property of one innocent person. But I think in the zealotry, the desire to eradicate this behavior, such as drugs, we reverse that ratio. When I listen to the State's Attorneys and law enforcement, that can't fathom the idea of being willing to deprive someone of their property whom they believe to be guilty, I understand that ratio to be reversed, and that perspective seems to be it's better to take an innocent person's property than it is to have the possibility of allowing a guilty person to keep their property. If we believed in that ratio, there would be no concern whatsoever about that second part of the three major components to civil asset forfeiture reform. This has been a very interesting process. I know you have amendments, I don't know what they are, I don't know that it's necessary for me to go through the bill. I know the bill you have before you is a hodgepodge of my original bill. The version I am happiest with is version .04006.

Vice Chairman Dwyer: You introduced a bill, the subcommittee proposed a hodgepodge, and then the full committee hodgepoded that?

Representative Becker: Yes. The process didn't proceed as desired. Everyone on all sides had the best intentions to come up with something, but I think we let the train get away from

the station a little bit. The chairman of the Judiciary committee asked the subcommittee to pull back from what they were doing. Very good intentions and ideas. It turned out that in essence, the hoghouse bill was created by law enforcement, that's not the proper way to do things. The Judiciary committee adopted a strongly amended version of the hoghouse. Representative Jones added in reporting to what degree he thought was best to have conviction and some of the money issues. In my original bill, all of the money would have gone to the school's trust fund. I changed it to the general fund, with the intent to increase their funding to replace what would no longer be seen by forfeiture. In the bill that you have before you, it's an entirely different situation, where it goes to the Attorney General's forfeiture fund. There's another process for where the money goes.

Senator Bakke: I would like a copy of the original bill. When law enforcement seizes property, isn't it usually because it provides evidence for the court cases?

Representative Becker: I imagine that a lot times the seizure would be that if they are going to proceed with something, they may need the evidence. But it's taken from an aspect of we believe criminal activity is going on, and whatever we can do within our power to put a dent in that, we want to do that. Let's take that car and cash, to try to put a damper on that activity. I'm not being derogatory, that's what seizure is. Furthermore, there may be times when charges are dropped, or charges aren't filed, or they are acquitted, but that property still remains as seized property to go through the forfeiture proceeding.

Senator Luick: This Blackstone reference you've given us; 'It is better that 10 guilty persons escape than that 1 innocent suffer.' What side of the law was he on?

Representative Becker: He was one of the most prominent judges in England during the time of judicial reform. In large part what the founders of our country based the setup of our judicial system on. He advocated for proper law. In a way in which he felt it was necessary to protect innocent people, because what had been going on in England.

(24:30) Pete Hanebutt, North Dakota Farm Bureau, testifies in favor

Hanebutt: Our policy book is very straightforward and clear on this. I'll read from it here. 'NDFB supports the end of civil forfeiture in North Dakota.' I remember the discussion on our delegate floor, a county leader had an issue in their area, brought it to the delegate floor. This was placed in our policy a few years ago. We testified in support in the House and support it still.

(25:25) Terry Jones, Representative District 4, testifies in favor

Representative Jones: I have some amendments. I will work with you during your committee work.

(26:00) Wayne Stenehjem, Attorney General, testifies in opposition

Attorney General Stenehjem: I want to give some background. In 1989 when Nick Spaeth was the Attorney General. He came in with the bill for civil asset forfeiture. We were cautious and put in additional protections to make sure that innocent co-owners of homes, for

example, weren't deprived because their spouse was engaged in illegal activities. We knew we'd be back in future sessions to address it again. Transparency, our reporting requirement to my office is just fine. It will give the kind of information to the public they need; I think it will also resolve the question of what abuses are there. I am not aware of any abuses that have happened in North Dakota because of this. The second is the burden of proof. Right now the burden of proof is simply a preponderance of evidence. There's a higher standard than that, that's clear and convincing evidence, that was in the original and would be in whatever amendments that are coming. Then the proportionality, to make sure that you are not taking items of huge value from people for minor offenses. The supreme court did rule that the Eighth Amendment, the prohibition on excessive fines applies to the states not just the federal government. Those are three things that make great sense. I would suggest you look carefully at them when you take a look at them. I want to make it clear that while we talk about perverse incentives for law enforcement, what this really is attempting to eliminate is the perverse incentive for drug dealers and other criminals to keep the illegal gains from their illegal activity. Police officers don't go out on the street, take drug money and put it in their pockets. There is a process that is outlined in the statute that assures all the due process rights, notice and an opportunity for a hearing and then a court to make a determination of whether that property should be forfeited. State's attorneys are very careful when they bring in a case, because they know they have to take it to a judge, and whether the person has a lawyer, or appears or not, that matter still comes to the judge who makes an ultimate determination on whether the property should be forfeited. The people behind me will talk about the process you actually have to go through in order to forfeit property.

Senator Luick: The federal government is working on some similar language in civil forfeiture, do you know what they are and how they are similar?

Attorney General Stenehjem: I don't.

Vice Chairman Dwyer: You stated that there haven't been abuses. The supreme court ruled on the proportionality, which takes care of a major issue going forward. Is there a need for a bill? Do we need to do anything?

Attorney General Stenehjem: The supreme court did. In bringing cases in North Dakota, the state's attorneys consider those things before they even decide to proceed with the matter. We do have that ruling and it does make sense to have some kind of a bill, to have our statute reflect what the U.S. supreme court said. The other items are just fine. You'll get the information in two years that the kinds of abuses that are worried about just don't happen.

(32:35) Aaron Birst, North Dakota Association of Counties, testified in opposition

Birst: When I testified on the House side, I was convinced that we were going to be able to find a way to work through this. We do not oppose a bill in its entirety, and we have worked very hard to try to find something that we could support. Those subcommittee meetings were announced on the floor, everybody had the ability to be there, and we certainly were. I agree with Representative Becker that Blackstone is correct. Prosecutors agree, we do not want to send one innocent person to jail, even if that means ten guilty people go free. In fact, you can look at my criminal record in Cass County, its full of declines where I said the same thing, I have looked mothers in the eye, and said I can't do anything for you, because the evidence

is not there. Prosecutors throughout the state believe that. One thing that's been short circuited is this not a prosecutor's decision, this is not a law enforcement decision, this is a judge. A judge has to look at the civil asset forfeiture. It is not me perversely saying that I want to keep this because I believe them guilty, a judge has to make that determination. A legislature has every right to change the law. That's why the prosecutors have been supportive of this. There were three things we supported, a proportionality test, if the crime is minor, you don't take something major; higher level burdens of proof; and more transparency the better. If that requires the state to have the state and political subdivisions to have transparency, we agree. That being said, we still oppose the bill, but we are awfully close. I have some proposed amendments. **(see attachment #2)** Briefly, the prosecutors have always maintained that although it's a nice sound bite to say we can't take somebody's property if they aren't convicted, this is more complicated. There are times when you do not convict someone for whatever reason, we work with them, they're a confidential informant. We as prosecutors do not want to charge that individual. Yet they still have the drugs, the drug, money or the contraband. If we want to do something like a college kid who is a mule for major drug dealers. We don't want to prosecute them for transporting drugs, we want to keep them in society. We're going to work with them, but they can't then keep transferring the drugs. It is much more complicated than that. In fairness, the subcommittee and the sponsors of this bill were willing to work to work with us, and we did. That's why we went from a 40-page bill down to a 5-page bill. What our amendments would do is essentially add on to the subcommittee's bill, that essentially says, there are times where a criminal conviction is not necessary. We're suggesting that a criminal conviction wouldn't be necessary, but in those rare cases, we would need beyond a reasonable doubt to prove the contraband was subjected to some sort of criminal activity. Beyond a reasonable doubt. That is what we need for a conviction, except we aren't convicting an individual, we are proving to a judge that beyond a reasonable doubt, this stuff was used in criminal activity and should not be returned to the person. That is on page 1, line 18, establish beyond reasonable doubt, adding to the exemptions.

Chair Larson: I also handed out a Christmas tree version.

Birst: That's the green language. Page 1, the green language would say there is one more safety valve that law enforcement and prosecutors could use to convince a judge the property should not be returned, absent a criminal conviction.

Vice Chairman Dwyer: Paragraph one is clear and convincing and paragraph two is beyond a reasonable doubt, could you explain that.

Birst: Even without my proposal, they raised the level of proof required for civil asset forfeiture. That is the clear and convincing. Under the current law it's probable cause. Now under the House version, all civil asset forfeiture goes to clear and convincing, now we're also saying that there is one more safety valve, if you can prove beyond a reasonable doubt, and there is no conviction, and it doesn't fall under one of these House exceptions, but you can prove beyond a reasonable doubt for those narrow set of cases, those then would be able to be used, regardless of the criminal conviction.

Chair Larson: For example?

Birst: Let's say you had a car that's transporting drugs, you don't know the owner, you can't prove that the individual actually knew they were transporting drugs, they were a mule. You can't criminally convict the individual, but you could still seize the drugs and the money that was in the car. That happens all the time, this is why it's particular to drug cases, you're not going to say oh, by the way, the \$250,000 in cash in the back seat, that's mine; you're not going to say that, you'll say I have no idea that was there. Whether or not we could prove that case, can we prove that that contraband should not be given back to that individual.

Page 2, we address what gets at this perverse incentive. Law enforcement shouldn't be seizing and keeping the asset. There should be oversight. This is what is happening in practice. We are now saying that this seized asset, and provided the court transfers the property, that would have to either the attorney general's office or the political subdivision would have to establish a civil fund that the elected boards oversee the funds. A law enforcement officer couldn't say I seized \$50,000, I get to spend \$50,000 this next year on uniforms. This would go to the county or city commission, deposited in those funds, and those with the ability to spend the money would dictate how that gets spent. We think that this is good, this would address the perceived perverse incentive. This is elected body oversight. Finally, the reporting process to the AG. We report everything to the Attorney General. Crime data all goes to the Attorney General, this is no different, and we would suggest that that gets put in too. I talked to Representative Jones on why we can get rid of sections 5 and 6. We can work with the committee on that, my understanding is, if we're not changing the law, we don't need it in there, so we can just remove it. We don't agree with the bill that's currently in front of you, but we are close.

Senator Myrdal: On page 2, where you talk about the political subdivisions, the language seems to leave it up to the political subdivisions whether they want to or not. Is that political subdivision limited to the county commissioners?

Birst: In fact, the way that this is written, is the political subdivision could say we don't want to create a civil asset forfeiture fund. We don't think it's worth the time or responsibility, therefore we are not doing it. Then the money flows into the Attorney General's Office. Law enforcement is not making that decision. The political subdivision that would create that makes that decision. There might be many jurisdictions. A small county may not have the expertise to put together a separate fund, they don't want the responsibility, they may not create a civil asset forfeiture fund. If you stop someone, and see something, and the court allows it, then that's going to flow to the AG's office, we're not going to have that oversight responsibility. Law enforcement under my proposal will not get to make the decision, someone else does.

Chair Larson: It is the local jurisdiction that funds the police department in the first place and has their budget; they can decide then what goes back?

Birst: Because there's no examples in North Dakota where this has run afoul, but that's fine. Just because there's no examples doesn't mean we shouldn't work on a bill. We agree, let's place it with the elected officials that are non-law enforcement related. This all comes after a judge who is elected, and a district has made the determination that it should go away. We are so close to getting good policy. It's more complicated than those little sound bites.

(45:35) Jeremy Ensrud, Attorney General's Office, testified in opposition

Ensrud: I am in favor of the amendments provided in attachment #2. I've worked with him. I here to provide information on the nuts and bolts of how this actually works. When I first got into prosecution I was in Minot as a local assistant state's attorney, now I'm in the Attorney General's office where I do drug prosecution for larger out of state interests. When we look at this bill, I think we need this bill. The reporting requirements are great. If we don't get the reporting requirements and this bill fails, we'll be back next session. In the past 30 years we haven't had any violations. They said we don't have any because there is no reporting. I think the reporting will put those fears to rest. If there were examples, they would have them. I spoke to some of the defense attorneys working on this bill, and asked them to give us an example. They did not provide one.

Do we need this bill? Yes. The reporting requirement is great. Some of the other things, such as the amendments you have before you, I think those are things we can live with. It gives us a slightly higher burden, that's something we can stand by, I think 99% of the time we are already there. If that's the compromise, that's something we can live with. Lad Erickson is here; he has some great examples. Good drug dealers who are responsible for bringing the largest amount of drugs into the state, never step foot in this state. How do you seize someone's property who isn't in the state, or who's property is seized, but not in the jurisdiction where the drugs are sold? Lad Erickson represents McLean County; we've had cases by Detroit organizations who come to Minot. They have to get the profits back to Detroit. If you try to wire the money out, that's where us prosecutors come in with search warrants and subpoenas for those bank records, then we have a really easy case. They don't want to give us that paper trail, so they transport the money, usually by hiding it. We get an informant that tells us that the drug dealers are transferring a lot of money, they've got it hidden in the engine compartment, and they'll be making their way down to Bismarck. Law enforcement is able to get that vehicle stopped, to find that large amount of money hidden in the air filter of that car. What crime happened in McLean County where that money could be seized? What conviction can you get on that money? The drugs were sold in Minot. If you have this requirement that there's a conviction, you can't take that money. The amendments today 'Prove beyond a reasonable doubt.' That's an easy case. He can bring the informant, he can present to the judge, 'Who transports \$20,000 in the air filter of their car? Who was just in California, and was just passing through?'

When we look at this bill, the sponsors let the mask slip there, when they said, 'We want to end all civil asset forfeiture.' There are no problems or abuses. I think this bill does a lot to put those fears to rest. It's a higher burden, but it's something we can meet.

The other issue we see is the good drug dealers never step foot in the state. When they send someone here with a vehicle, we're going to take that vehicle. When you talk to any prosecutor or look at a press release; whenever we seize these large amounts of drugs, it's rental vehicles. The drug dealers know the game, they're sophisticated, they know we're not going to try to take a vehicle from the rental company. If we adopted this bill where if you only have money and no drugs and get stopped in Dickinson with \$100,000 in cash proceeds, it cannot be forfeited, because there is no crime, the drug dealers will seize on that. The law says if you don't have any drugs, and there is no crime, they can't take your money, you know they're going to be giving orders to their mules, transport only the money. They will adapt. That's my take on this bill.

Senator Myrdal: I'm glad you say we need this. We've heard that we don't have a problem, we don't do it here, but this committee deals with all the time. We don't have slavery here, but we have laws against it. Could you go more in to detail on the overstrike on section 5 and 6?

Ensrud: I don't have an answer; I did not work on the draft of this.

Senator Bakke: It has a fiscal note. Do these amendments change that fiscal note?

Ensrud: I don't have knowledge of that.

Vice Chairman Dwyer: Please explain, the standard of proof in current law is preponderance of evidence, now it's being changed to clear and convincing evidence. How does that connect to the next paragraph that we're adding which talks about beyond a reasonable doubt?

Ensrud: In my mind, it's like a two track system. I have some forfeitures pending, where we don't have a crime charge. We have the crimes charged out federally and we have people from out of state who are arrested and their bond is \$10,000 cash. A California supplier needs that person out of jail so they can get back on the street. So they post bond. We flip cooperators and they tell us that money is from my drug dealers and they did it to get me back out. We seize that money. Was there a crime committed? No, it was proceeds of drugs used to get a drug dealer out. We seize that money, and I know that I'm never going to be able to charge a crime. If I could charge a crime, and get them convicted, this bill could be clear and convincing, that's fine. I know I will never be able to charge a crime with that money, so I need to prove beyond a reasonable doubt. That's a way out for those circumstances where we don't have a crime or there's a jurisdictional issue. Operatively, that's how I see it functioning, when you know you aren't going to get a conviction, that's going to be your standard of proof. Beyond a reasonable doubt is what we need for a criminal conviction. It's a higher burden, but I think it's something we can live with. 99% of the time, we're already there.

Chair Larson: Can someone address the fiscal note question?

Attorney General Stenehjem: When the bill was introduced, it had certain requirements for a website for reporting of all of this money. There were specific requirements that would require a rewrite of much of our uniform crime reports. What I envision once these amendments are adopted, it will simply have every jurisdiction that has one of these funds send it in a paper report to us and the fiscal note would go away.

(58:10-1:05:30) Sergeant Mike Bolme, Bismarck Police Department, testifies in opposition (see attachment #3)

Senator Bakke: Have you read the amended bill? Do you feel that it is better?

Sergeant Bolme: The amended version is a good compromise. I definitely think we can work with it.

Vice Chairman Dwyer: When you say there are some things that need to be worked out, what specifically would you include in that?

Sergeant Bolme: There are still some logistical things, as far as mechanisms where the money goes, how it pings back to us things like that. Otherwise, the burden of proof, the reporting, none of that scares me, we're already doing that stuff.

Chair Larson: I've had the honor to work with Sergeant Bolme, I'm proud of the testimony you put together.

Senator Bakke: Do you have any thoughts about how you would like those sections that define where the money goes, about how you'd like that to be changed?

Sergeant Bolme: Bismarck already has an asset forfeiture fund set up. We're already doing what this bill would propose. Someone mentioned that some of these smaller cities may not have these funds set up or they may not even choose to participate. That may have to be worked out. This bill as written, other than increasing the burden of proof, will not have a lot of effect on us.

Chair Larson: For those smaller communities, that don't want to have an asset forfeiture fund, they would just then be required to send it to the attorney general's office, and it would be put into his asset forfeiture fund. They would have the option, even with a multi-jurisdictional drug task force to request the use of some of those funds, it would be granted based on merit.

(1:08:40) Scott Edinger, Chief of Police, City of Jamestown; Vice President, North Dakota Chiefs of Police Association, testifies in opposition

Chief Edinger: I would support the amended bill. I believe that this is a solution looking for a problem. I have been in law enforcement for 28 years. 10 of those years was in a drug task force. I have been a party to thousands of cases, thousands of asset forfeitures of different sizes and amounts. Just about anything you can imagine that would be evidence of a crime. I have never seen any kind of abuse in any of the agencies I've worked with, and I've worked with hundreds of agencies. They do happen, we've seen them in the news, however, the way we handle this in North Dakota, the law as it is written provides a lot of protections. The way the asset forfeiture is handled specifically in Jamestown follows this amended bill almost exactly. We have an asset forfeiture fund, we have oversight, when an asset forfeiture is made, it's looked at by a supervisor. If we don't think we can follow through, it will maybe go to a state's attorney and a judge following that. If we do get that asset forfeiture, it then goes to the city council, who allocates that money where they would like. Most often it goes into the fund, then if my department wants to spend money out of that fund, I have to go to the city administrator to get those funds allocated. There's multiple layers of protection. Based upon that, I would support the added transparency and I think the cities do a wonderful job with transparency, I would like to see that continue.

Senator Luick: Can you walk me through the process if someone is arrested and assets acquired. Let's say that value is a \$1,000. The individual case is dropped, but the assets

are still held. Is it true they have to go to court to get those assets back? How does that process work?

Chief Edinger: It depends on the specific case. If there is a lot of circumstantial evidence that wasn't allowed in court, but would be allowed in the civil forfeiture, that's possible that it may still go to court. Most of the time, if it's a vehicle that's worth \$1000, we'd give that back without going to court.

Senator Luick: In what cases would you keep that? I'm arrested I get \$1,000 in cash that I had on me and it is taken as evidence. Now I'm found that I'm not guilty. I'm wondering of the process will I ever see that again?

Chief Edinger: If you were found not guilty, you would probably get that money back.

Senator Luick: Probably?

Chief Edinger: There are so many variables, I can't say definitely; but I can't think of a situation where you would not if you were found not guilty.

Senator Luick: What if that case was dropped?

Chief Edinger: It would depend on why the case was dropped. If it's an individual who's cooperating and providing evidence and testifying against other defendants. If we have a significant amount of evidence to say that your property was proceeds of criminal activity, then you would have to go to court to get it back.

Senator Luick: This is why I think this bill is here. There are a lot of the smaller cases here where the forfeiture of the proceeds are disappearing. They're going into the system, maybe not in the right way. I think this is the meat about why this is being brought up.

Chief Edinger: I think there's a number of reasons why this is being brought up. That is probably one of the concerns that Representative Becker and the other sponsors would have had. Those cases, when this does happen, it's clear that there is a mountain of evidence that would say that that forfeiture is based upon criminal activity. Those are direct benefits because of criminal activity. In 90% of those cases, that's where a cooperative person was involved. That's where that case would go.

Senator Luick: Is this evidence only taken in drugs and sex trafficking cases?

Chief Edinger: The one case I was involved in that is outside of those two circumstances was a credit card fraud case. That was where a person got proceeds because they had a credit card machine that they could duplicate credit cards. Those are the only times that I've ever seized property that wasn't evidence, stolen property or something like that.

(1:17:15) Jerry Kerzmann, Sheriff for McLean County, testifies in opposition (see attachment #4)

Seriff Kerzmann: One thing about McLean County that makes us unique is we're not populated like the bigger cities. However, we do have one of the main arteries that pushes drugs from Bismarck, they are in transit to Minot, Williston, etc. They come back through, they are stopped, the drugs aren't in the vehicle, they're happy. There's a number of times we're stopped these vehicles and we've seized their cash, we don't have a crime, as was said before. Our asset forfeiture funds, when it's drug money or related to drug money, is we bring in a trainer once a month for our K-9 program. McLean County has three drug dogs; we've been able to gain those dogs off asset forfeitures from drug money. One thing we've also been able to do is we host a training that's free to other departments. We host free training to keep their dogs as efficient as possible to keep deterring the drug problem that North Dakota is facing. This money is not being misused, we have a process with our county commission.

To go the other way with this would only empower the problem that we already have with drug dealers in the state.

Senator Luick: This goes back to the smaller amounts of seized properties, I think that has more of a touching thing with this bill, as far as the larger quantities, I don't think this bill has a problem with that. It is the smaller amounts that no one's going to hire an attorney to get back \$1000 worth of property that they have had taken away, and they were never charged with the crime. The bigger takes, I don't think we're looking at that with this.

Sheriff Kerzmann: I don't see that being an issue, in McLean County, it's definitely not. If you were charged with a crime and it was dismissed, and we took \$1000 from you, that money will go back to you, if we can't prove why we need to hold it. That system is already in place in so many ways. I don't see that as an issue.

(1:21:20) Lad Erickson, McLean County State's Attorney, testifies in opposition

Erickson: I would like to clarify a few things. First, what's bringing this bill is a national movement by a group called the Institute of Justice. They have a cause to get rid of civil asset forfeiture. They have a grading system for states they target, they lower grade them. If you look on their website on why they graded us an 'F', they are factually wrong about our law and our history. If you look at states that did buy in, there were 15 states that originally did what they asked, some are going back to revisit it because of the problems they caused. It moved all the forfeitures to federal court. The original bill as it came into the House they had a ban, law enforcement cannot work with the federal government as if North Dakota was an island. We had to take that out. We have international drug trades. If you squeeze the state system, it was leaking into the federal system. So the original bill was a vice that wasn't logical.

To answer Senator Luick's questions about due process, it's a very important thing. We do have an issue here. People do not qualify for court appointed attorneys but they're not rich enough to hire attorneys. The way that our current system works in this case, a judge always has to approve forfeiture before ownership of the property changes. A common example is the burden is on the state to allege a forfeiture is forfeitable property. We serve that on the defendant or the owner of the property. If they don't respond, it's defaulted. But if they write a note to the judge, it changes all the burdens to the state to prove the forfeiture, whether they show up or not. That's how our civil rules work on this. If I seize

\$500, it's certainly not worth an attorney. I serve the paper on the person, they have to write a note to the judge that I put the state to their burden to prove that \$500 was drug money. That's how our system works. What the amendments do is move that up to the clear and convincing standard as opposed to preponderance of the evidence. The system isn't perfect; I wish everybody could have attorneys. It's not that they're helpless. They aren't required to write fancy legal documents to contest a forfeiture.

To Senator Dwyer's question, I think it's very important to pass the bill for a couple reasons. We want to back before the legislature with evidence showing what's going on. Some other states had legitimate things that we would be concerned about. Burdens on the people; once the cops took the stuff, it was your burden to show it wasn't criminal activity, as opposed to what our current law is. The state will have the burden to show it is forfeitable. In the states where the person has the burden, yes, it leads to serious problems. Secondly, we do very little, it is extremely difficult to do real estate. Some of the states have very liberal real estate forfeiture stuff. If drug dealing is happening out of a house, the real estate gets forfeited. In North Dakota, the only way to forfeit real estate is you prove that 100% of the proceeds that were used to purchase the real estate were derived from criminal activity. We have innocent owner exceptions already in the law, which other states don't have. A third party let someone use their vehicle, unbeknownst to them, that vehicle is used in a crime, that cannot be forfeited under current law. Other states didn't have that stuff, the Institute of Justice claimed on their website that we don't have that stuff and gave us an 'F'. They use that 'F' as a media trick. We have a good forfeiture system.

The supreme court had a recent case. When the Bill of Rights passed, it only applied to the federal government. After the Civil war, the Fourteenth Amendment passed and certain rights in the Bill of Rights applied to the states. The excessive fine clause of the Eighth Amendment has never applied to the states. We don't have grand juries to indict people in North Dakota, that only applies to federal court. Tim's Case was about should that excessive fine clause apply to the states, and the supreme court agreed that it should be. They gave no definitions on what that means in the context of forfeitures. If you look at the bill and the amendments and how proportionality is defined; I read every brief that was filed in that supreme court case. My concern with not addressing this in the bill is we have fifty some district judges who will have to figure out how to determine proportionality. It would be better for the legislature to set the standard for this is what we want your district courts to look at so that it is uniform across the state. Look at the value of the property, the extent to which the owner participated in the events. The market value of the property versus the crime committed. That language came out of the briefs. I think it would be good to have the legislature say to the district judges, uniformly test the state's forfeiture, if this is excessive, here is the language. It's the best thing we could come up with because it's what was briefed to the US supreme court.

My last point is about Blackstone. Blackstone is being misquoted. He's talking about criminal convictions, which we totally agree with, but he also said 'property should never be taken from someone without due process of law.' Which is all that we are suggesting, that we stay with the system that was created. That we have to do due process of law, not conflate that with ten innocent people. That's a different doctrine he's talking about.

Vice Chairman Dwyer: The proportionality standards that we have in the amendments are appropriate in your mind?

Erickson: That's the best we could come up with. I think it creates a process for uniformity.

Vice Chairman Dwyer: On page 1, the standard of proof was preponderance, and now we're going to clear and convincing, then we're adding this beyond a reasonable doubt. Is there a conflict there?

Erickson: No. 80% of the time we do the forfeiture through the criminal system. For example, a car comes in, goes in the oil patch, you get the car going in, it's full of dope, no money. It gets in the oil patch, it's dealing. The way we prove that is the phones. Then the drugs are gone, and the car is full of money. When the car is going back out, you stop it with the money. Is it drug money or is it not. When we have a case, that's frequently why there's not a charge. The crimes occurred in Montana or a different county, you can't charge. You get the car halfway through, it's drug running, you have half drugs and half money. You have a criminal case where the stop happened, possession with intent to deliver the drugs. You charge them, go through the process. They get convicted by a jury or plead guilty. The standard in that case is clear and convincing evidence. Now, if you get the car where it's all money, and stopped in McLean. It's strictly non-criminal, because there's not crime, there's no possession with intent to deliver anymore. If the state wants to move under the amendment to forfeit that, because there isn't going to be a conviction, because of the jurisdictional issue, the state has to prove beyond a reasonable doubt that that is drug money. The reason that is in there is because of this conviction issue. We can't get a conviction if the crimes were in Montana, but the car was coming down I-94 with the money. That's why we have the two standards. We think there's an issue about public perception. If the public thinks they risk losing property on a lower standard without being convicted, we are asking the legislature, our cases have overwhelming proof. Having that high burden should not affect forfeitures. We have admissions and phone evidence.

(1:33:15-1:36:45) Donnell Preskey, Executive Director for the Sheriff's and Deputies Association, testifies in opposition (see attachment #5)

There was a question earlier about section 5 and 6. Those are eliminated because the amended version no longer allows for the funds from forfeited property to be deposited into the asset forfeiture fund at the attorney general's office, because we've now inserted the language to have those funds deposited into civil asset forfeiture funds at the political subdivision level.

Chair Larson: Correct, except when a jurisdiction did not want to set one up. Then in that situation, they would be put into the attorney general's fund.

Preskey: We would need to review and make sure they are covered, or add that additional language in. We support the amendments brought in today.

(1:38:10) Blair Thoreson, North Dakota Peace Officers Association, testifies in opposition

Thoreson: We support the amendments.

Chair Larson closes the hearing on HB 1286.

Further testimonies were provided to committee (see attachments #6-7)

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1286
3/27/2019
#34288 (14:20)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact section 19-03.1-36.8 of the North Dakota Century Code, relating to law enforcement agencies reporting seizures and forfeitures; and to amend and reenact sections 19-03.1-36.2, 19-03.1-36.6, and 19-03.1-36.7 of the North Dakota Century Code, relating to forfeiture proceedings, contested forfeiture hearings, legal interests in forfeited property, and forfeitures.

Minutes:

1 Attachment

Chair Larson begins discussion on HB 1286.

(see attachment #1)

Vice Chairman Dwyer: Motions to adopt amendment 19.0345.05002.
Senator Bakke: Seconds.

Chair Larson: There was a lot of work done on these amendments from a lot of people. We had several meetings to discuss them and try to come up with something that addressed the purposes for the bill in the first place. Representative Becker talked about transparency in reporting, requirement for a conviction, being more clear on where the money goes and addressing proportionality. All of those things were addressed with these amendments in a way that is going to work a lot better with the people that are going to be using it. Even though we heard that this is not being abused in North Dakota, everybody was in agreement with codifying the process.

Senator Myrdal: It was a little frustrating during the hearing because it seemed like most of the audience had seen the amendments even though we and the sponsor hadn't. It was difficult to follow who was supporting what. I felt for the sponsor because he didn't have it. Half of the testimony we got from the opposition mentioned the amendments.

Chair Larson: In fairness, most of the people that had the amendments got it because some of the people were in the meetings to try to come up with amendments that would work, so

they saw the final draft. I didn't have the amendments or the Christmas version until the night before. I made the decision not to hand that out to distract everybody on the committee while the Representative was explaining what the contents of his bill were. I wasn't planning to talk about how it could be amended until after we had heard his reasons for proposing the bill. That was my decision, and if you have a problem with that, I apologize.

Senator Myrdal: It was difficult to understand some of the opposition. They were flipping back and forth because they had been part of the process, and I hadn't. I think half of the people who opposed the bill actually now support the bill with this amendment.

Chair Larson: They do. They were opposed to the bill as it was written, but they worked on amendments and if amended, they were all in favor.

Senator Myrdal: That's what was confusing to me because many of them flipped back and forth between the original bill and the amended bill while the sponsor didn't have that opportunity. I'm not saying you did it wrong, but to me, it was confusing.

Senator Bakke: Attorney General Wayne Stenejem testified in opposition. Did he comment on the amendments?

Chair Larson: I don't remember whether he did yesterday, but he has talked with me and is supportive of the amendments. He's supportive of the bill as amended.

Senator Myrdal: Page 2 subsection 2 was the political subdivision issue. I thought that was a little unclear.

(7) Chair Larson: For example, the sheriff's department. They are answerable to, hired by and their budget is approved by the county commissioners. Many of those local jurisdictions, the county commission already has established an asset forfeiture fund and the same for the cities. That is what they're using now, and it's working well for them. There are some smaller counties that don't have this set up, and there may be some that don't want to get involved in it. If that happens and they end up being involved in the asset forfeiture, then either their local jurisdiction can establish a fund so that it all goes through that budgetary process, or they can send it into the attorney general's asset forfeiture fund to be dispersed through that.

Senator Myrdal: If I was sitting in any political subdivision, I would surely want to keep it because if I give it to the attorney general, I have to go through a long process to seek a grant for it again likely. Are we changing anything? There's just one more step of accountability, but we still have the concern that I think the sponsor had of human nature.

Chair Larson: Yes, that was offensive to me.

Senator Myrdal: It wasn't to me because I don't think he's going against police; I think he's just talking about humanity in general. I've had a sheriff say to me, "you can't take this away because we need that money". I'm not saying they're doing it, but is this really changing it then? Instead of putting it in this cup, I'm just putting it in a different cup.

Chair Larson: For instance, In Bismarck we have Bismarck police, Burleigh County sheriff, Mandan police and Morton County sheriff with a combined drug task force. If they're doing that together and getting these drug dealers held accountable, it only makes sense that if some things are going to be spent, they're the ones that are expending the funds to hire those people in the first place. It makes sense for it to be handled at that local level for the local people that are doing it. I spoke with the attorney general's office, and he said that it is his practice anyway to continue to fund those things back; it just takes it into another obstacle which then creates more work in his office which then creates a fiscal note. These local jurisdictions are handling those local jurisdictional budgets anyway. It makes more sense for that local accountability at that local level. I'm a strong advocate for these amendments.

Senator Myrdal: I see how it works for law enforcement, and this bill is not against law enforcement like it is created on social media to be. We also have to look at it from the constituent's point of view. A lot of what we deal with here is perception and optics, whether it happens or not. I can tell you it happened to my family with assets that disappeared after my son was arrested for underage drinking. He lost \$370 of personal items that we never got returned, so it does happen. There are bad actors everywhere, and I hope none of us have it in law enforcement here. That part of the amendment, I think you did a great job; it's just ambiguous to me.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent. Amendment is adopted.

Vice Chairman Dwyer: Motions for a Do Pass as Amended.

Senator Luick: Seconds.

A Roll Call Vote Was Taken: 5 yeas, 1 nay, 0 absent. Motion carries.

Chair Larson will carry the bill.

SK
1502
3/27

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1286

Page 1, line 3, after the second comma insert "and"

Page 1, line 3, remove ", 29-27-02.1, and subsection 1 of"

Page 1, line 4, remove "section 54-12-14"

Page 1, line 5, remove "disposition of statutory fees,"

Page 1, line 6, replace "fines," with "and"

Page 1, line 6, remove ", and the attorney general assets forfeiture fund"

Page 1, line 17, remove the third "or"

Page 1, line 18, after the first "property" insert ", or it can be established beyond a reasonable doubt the property was used in the commission of a crime or constituted the proceeds of criminal activity"

Page 1, remove lines 22 and 23

Page 2, line 6, remove "clear and convincing"

Page 2, line 7, remove "evidence"

Page 2, line 7, overstrike "for instituting the forfeiture action following which" and insert immediately thereafter "the forfeited property meets the requirements of subsection 2 of section 19-03.1-36.2. Following the state's case,"

Page 2, line 15, remove "order the proper costs and"

Page 2, remove lines 16 and 17

Page 2, line 18, replace "remaining proceeds to be deposited as provided in subsection 2 of section 29-27-02.1" with "order only the forfeited property or proceeds from the sale of forfeited property to be deposited with a political subdivision if the political subdivision has created a civil asset forfeiture fund. If the political subdivision does not have a civil asset forfeiture fund, any forfeited property and proceeds from the sale of forfeited property must be deposited in the attorney general's asset forfeiture fund."

3. This section does not prohibit the state and a political subdivision from entering an agreement to divide forfeited property and the proceeds from the sale of forfeited property

Page 3, line 3, remove "Currency with the value of seven hundred and fifty United States dollars or less"

Page 3, remove line 4

Page 3, line 5, remove "c."

Page 3, line 6, replace "d." with "c."

Page 3, line 9, remove "sentence imposed for committing the offense"

Page 3, line 10, replace "subject to forfeiture" with "possible penalty that could be imposed for the alleged or committed offense subject to forfeiture"

Page 3, line 11, replace "e." with "d."

Page 3, line 24, after the underscored semicolon insert "and"

Page 3, line 25, remove "; and"

Page 3, remove line 26

Page 3, line 27 remove "the proceedings for forfeiture and sale under section 19-03.1-36.6"

Page 4, remove lines 13 through 31

Page 5, remove lines 1 through 29

Renumber accordingly

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1286**

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 19.0345.05002

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 Vice Chairman Dwyer Seconded By Senator Bakke

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Lemm	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1286**

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 Vice Chairman Dwyer Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal		X			
Senator Lemm	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Chair Larson

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

REPORT OF STANDING COMMITTEE

HB 1286, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1286 was placed on the Sixth order on the calendar.

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Page 4, remove lines 13 through 31

Page 5, remove lines 1 through 29

Renumber accordingly

2019 CONFERENCE COMMITTEE

HB 1286

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1286
4/15/2019
34734

☐ Subcommittee
☒ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to forfeiture proceedings, contested forfeiture hearings, legal interests in forfeited property, and forfeitures.

Minutes:

1,2

Members present: Rep. Koppelman, Rep. Jones, Rep. Satrom; Senator Larson, Senator Dwyer, Senator Bakke

Senator Dwyer: Senator Larson worked with House members and she is here to explain them.

Senator Larson: Looking at .05004 amendments. This amendment on page 1, line 18, 19 and 20 is the standard of proof for seizing assets or it can be established beyond a reasonable doubt that the property was used in the commission of a crime that constituted the proceeds of criminal activity. If they can prove the drugs and the drug money were used in the commission of a crime, but the individual says it isn't mine; then they can use the standard of proof on the asset itself and no one the person who did it.

Chairman K. Koppelman: Is it easier for you if you just go through all the amendments first and then we come back and ask questions? Why don't you just go through them then.

Senator Larson: On page 2, we did delete lines 1 & 2 because that is already something that can happen and it seemed redundant. The forfeited property meets the requirements of Section 2; which is that first part on the first page. This is where we moved it into a political subdivision rather than going to the Attorney General's office. Having all assets being forfeited to the Attorney General's office created a whole new level of work from that office where they would have to do a lot of things. We also deleted the last part of the bill for the same reasons. It went into all the types of electronic listing of things. This instead creates a situation where forfeited property goes to that political subdivision where law enforcement is working in. Most of the larger jurisdictions already have an asset forfeiture fund set up in their political subdivision. That is what they would be able to use for this. Some don't and maybe won't want to because they are very small. In this it is provision so that it can go to the Attorney General's office into their already established forfeiture fund. On to page 3, this deals with that proportionality that the Supreme Court was taking action on and announcing

the very day you had this on your floor. It doesn't say there is any particular dollar amount, if it is used in the insurance of a crime. If the person is going to be charged with dealing drugs and the maximum penalty could be \$10,000 and however long in jail; if instead that sentence is reduced and they are able to make a deal and plead to something lessor; it is the thing they would have been charged with that these would lose those assets that they had in committing of that crime. The rest of it has to do with all the stuff that goes into setting up a way of reporting into the Attorney General's office. The Attorney General said he will continue to post on their website; the annual reporting is still in place. The political subdivisions have to report their asset forfeiture to the Attorney General. He does not have to have a whole new program with drop down boxes etc. Because of these changes we were able to do away completely with the fiscal note on this bill. The things the bill sponsor said that he wanted in this bill were: wanted to make sure there was transparency in reporting; we are keeping that and it is going to be listed in the Attorney General's office. secondly, he said requirement for conviction be left in the bill what you had put into the bill initially. The only addition we made to that was to take the assets if it proven beyond a reasonable doubt that they were also used in commission of a crime. Third thing is an accounting of where that money goes. All of those things are still in the bill and amended to be more workable. A lot of things are being done this way in most areas, but not everywhere in ND. To make sure everyone comes up to that same level of standard of practice I think this does a great deal to take care of all the concerns.

Chairman K. Koppelman: The reason for this bill is because our law is lacking a few things and creates a potential for impropriety. The problem is in 20 years none of us may be here. It is our job to make good public policy and that is how we tried to view this bill.

Rep. Satrom: Page 3, you talked about the possible penalty imposed to alleged offense and there is some discussion about the fines. Let's say there is \$50,000 that is confiscated and let say the fine is \$5000; does that mean we give them back the \$45,000?

Senator Larson: If they can prove that those dollars were used specifically in the commission of a crime; otherwise, yes that goes back.

Rep. Satrom: They get it back?

Senator Larson: The provision on the previous page said if it can be proven that money was used in the commission of a crime. For example; this is mostly drugs and human trafficking dealings. If they find stacks of \$20 bills wrapped and people's names; then they could probably prove that that was used in a commission of a crime so then they don't get that money back.

Rep. Satrom: I have problems with drug related things going back to the people.

Senator Larson: If it is drug money and they can show it is; then the judge can transfer all of that money.

Senator Dwyer: In that paragraph there are four factors and the court has the discretion to factor in those. On page 3, lines 17 through 22 so adding the possible penalty. So adding the penalty is one of four factor that the court has the discretion to use.

Rep. Jones: In civil cases normally the burden of proof doesn't go beyond a reasonable doubt. It was our intention and this amendment that they bring forward to introduce the burden of proof beyond a reasonable doubt to answer the one question in the case where there is not a criminal conviction and there are assets seized, we are trying to set the stage so the judge will look at that particular question; is this asset related to criminal activity? Then apply the standard of proof beyond a reasonable doubt just to that question in the civil proceedings that are going on with the rest of the case. It has caused a lot of consternation. I have got people saying you can't use the burden of proof beyond reasonable doubt in a civil case. We felt that it is appropriate to apply that burden of proof to that one question in the civil proceeding. Are these assets beyond a reasonable doubt associated with criminal activity? I am very proud of this bill.

Chairman K. Koppelman: Beyond a reasonable doubt standard in a civil proceeding; as you point out, is a unique animal. How do we see that playing out in a civil court of law?

Senator Larson: I have asked some questions about this too. There would be some things that would be quite easy. For example, if there was a gun used they could look at the bullets; when they are doing drug deals usually they find things like the person in business of dealing drugs has their records and so it can be tied very clearly like that. In human trafficking they could use that in court and it would be beyond a reasonable doubt that this was used in this crime. I would be comfortable using that level because we are talking about assets and the person leases so they just use the assets.

Rep. K. Koppelman: We are talking about two different things here; seizure and forfeiture and obviously when law enforcement seizes something that doesn't necessarily mean that it is going to be forfeited. One thing we discussed at length was the original intent of the sponsor was to say that it should be a standard of conviction. The questions come when a conviction doesn't happen and that is what we are discussing here. When there isn't a defendant involved at all; the only thing I can think of is grand jury's. This will mostly occur when someone had fled the state and you don't have a defendant, and you don't have a conviction, but you have clear evidence that a crime was committed. I do appreciate the efforts of both the House and Senate to raise the standard of proof. I am trying to figure out how this will really work?

Senator Larson: It would have the standard of having a conviction, if the person were there.

Rep. K. Koppelman: But with no defense presented. Do you foresee cases where there would be a defense presented?

Senator Dwyer: It could be contested and they could try to get their assets back because they were notified of the proceedings. This probably going to be used because of all the other provisions.

Rep. K. Koppelman: On top of page 2 we had inserted this language in the House about because we continued to hear during the House testimony from states attorneys and prosecutors saying the conviction was not enough. They were saying we know these people are guilty of dealing drugs etc. and we held their feet to the fire and asked why can't you

convict them then? Answered we were given was we checked cell phones etc. and we are in county x in western ND and now they have fled to county y in eastern ND and we can't deal with them. What we were presented with was we can't work together; we can't work with other jurisdictions to get these folks and that is why we inserted the language on top of page two and now you are saying it is redundant, but they told us that was the problem.

Senator Larson: We didn't hear that type of testimony in our side. There are multi-jurisdictional drug task forces that are formed and used. I would not mind looking more into this portion and seeing what we can give you a better answer. I don't know if just putting this language in it would make the difference or not. I would certainly look into this.

Rep. Jones: When we put this in we understand it is just showing legislative intent. We cannot tell the judiciary what to do. We heard in committee over and over there was a problem of drugs being sold in one place; the money on its way back; but there are too many times when the amounts are smaller. It does show clear legislative intent that we encourage law enforcement and judiciary to use whatever tools in their tool box to prosecute across jurisdictions in any of these things. It is not telling anyone they have to and does not have any control over them. We don't want them to use this legislature in any way because we have this problem because we can't prosecute these things.

Chairman K. Koppelman: The language does give specific instruction. The beyond a reasonable doubt standard. How do we see that playing out in the court of law?

Rep. Jones: Handed out proposed amendment .05007. (Attachment 1 & 2)

Senator Larson: I have appreciated having been on your committee that you have already respected law enforcement.

Adjourned.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1286
4/16/2019
34763

☐ Subcommittee
☒ Conference Committee

Committee Clerk: DeLores D. Shimek by Marjorie Conley

Explanation or reason for introduction of bill/resolution:

Relating to forfeiture proceedings, contested forfeiture hearings, legal interest in forfeited property, and forfeitures.

Minutes:

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Members present: Rep. K. Koppelman, Chairman, Rep. Jones, Rep. Satrom
Senator K. Larson, Chairman, Sen. Dwyer, Sen Bakke

Chairman K. Koppelman: Looking at the .05007 version. An amendment was passed out prematurely yesterday. Need .05004 version to work from.

Senator Larson: If we look at the .05007 that would be in red with our version.

Chairman K. Koppelman: The other difference is a subsection. Using .05004 version.

Senator Larson: I don't think this would change anything. I don't think we would have a problem putting it back in but had not talked with my other members.

Chairman K. Koppelman: The way the bill originally came to be would have required a conviction to access these funds. We were to not go that far because the concern or problem with a conviction we were told by a prosecutor is that they moved to different jurisdictions.

Senator Dwyer: I concur with what Sen Larson said that.

Chairman K. Koppelman: In section 2, subsection 1 we were talking earlier about the idea burden of proof. Current law is clear and convincing evidence. We talked yesterday that when these matters are before the court, most typically it is a situation where a case is being made by a seizing entity for forfeiture and there is no other side of the case presented. Do we think this language spell that out to you?

Senator Dwyer: When you go back to page 1, section 1, all these situations addressed and the times when you have beyond a reasonable doubt are going to be very rare because

most of these situations have occurred under those situations where the persons have fled, they are granted immunity, already been convicted, but the defendant would have the right to hire counsel and have them appear if you ended up having to establish beyond a reasonable doubt.

Rep. Jones: In Section 1, under subsection 1 it establishes that the proceedings for forfeiture are a civil action and the burden of proof would be clear and convincing evidence. Then on page 2, where it is referenced, this is also clear and convincing. Then it goes on further to say that if there is a situation where there is not a conviction the judge is going to review the evidence to determine whether the assets that are in question. Is this a product of criminal activity or was it involved in criminal activity?

Chairman K. Koppelman: That is helpful. If the property was used in committing a crime or whether it constituted the proceeds of criminal activity. If a situation in section 1; we are we looking at two cases here. If a person has fled the area, has died, whatever it might be or that these assets or property was used in the commission of a crime or constitutes the proceeds of criminal activity. After that fact this contemplates somebody with a legal interest in that property coming back for another court action?

Senator Dwyer: That is current law.

Chairman K. Koppelman: So nobody shows up in the first step. They come back later and say by the way, this is mine and shouldn't be forfeited.

Rep. Jones: What we are talking about is if a car is stolen and the police seize some property they notify everyone that may have an interest in that property; then they have a hearing called contested forfeiture and they have an opportunity to make a claim.

Chairman K. Koppelman: Looking at the bottom of page 2, the new language here is subsection 3 says it does not prohibit the state and political subdivision from entering into an agreement to divide forfeited property and the proceeds from the sale of forfeited property.

Senator Larson: It is what it says. If there is a Burleigh – Morton task force and they get the proceeds from a drug deal, they can go ahead and split those proceeds to go to their political subdivision rather than all of them having to go exactly where the bust took place. Then it could go into their local jurisdictions. They could come into an agreement that we are just going to split them between us.

Chairman K. Koppelman: The House made the change these forfeitures would go the attorney general's civil asset forfeiture fund and law enforcement agencies could make application for grants or it could remain with the political subdivision.

Senator Larson: It doesn't remain with the law enforcement agency. It goes to the political subdivision to become part of their budgetary process and that is reported to

the attorney general so there is that transparency and that accountability and it is handled by someone separate from that law enforcement agency and deposited into that and only to be disbursed out from that based whatever criteria that political subdivision has for allocating their funds.

Chairman K. Koppelman: If the House does agree with that change; then it should be a clear process, if it is going to stay with that political subdivision that is should be a clear process.

The law enforcement has to apply for that money to be granted or appropriated and the governing body would make that decision.

Senator Larson: That is already a part of the process. If the state collects taxes, that is a part of the process.

Chairman K. Koppelman: Political subdivisions could create a civil asset forfeiture fund. If they don't have that fund then it would go to the attorney general.

Senator Dwyer: Rep. Jones has a proposal that maybe we can agree on that now.

Chairman K. Koppelman: I believe he does.

Rep. Jones: The big change here is having the asset forfeiture going to the political subdivision; on this particular step I was concerned after I read your amendments.

Chairman K. Koppelman: On page 3 lines 14-17; the House had a limit of the amount that could be seized which was \$750.

Senator Larson: The thinking was what Rep. Satrom mentioned yesterday. There should not be proceeds that they can profit from the crime. Putting a dollar amount on it doesn't seem to make sense.

Rep. Jones: The sponsor of the bill brought that forward in our committee. The concern was if it is a small amount or cash it is going to cost more to fight and get it back; then they were worried that it would not be economical to fight it. That is why the minimum was being discussed.

Senator Larson: I have checked with several people on getting your assets back once it was seized; they give it back. They do not keep that money. It has felt to me like with some of these things we are this year really demanding a person is innocent until they are considered guilty, but police are not afforded that and I think that is twisted. I have asked several people do they have to go and hire an attorney to back things that were actually their property and was not used in the crime and they said no. It is given back. Because some things are happening to some people in other states, doesn't mean that our law enforcement should be painted with that same brush.

Rep. Jones: In testimony we had a case where there was a large amount of cash. The law enforcement said that the father of the person that the money had been

seized from showed up and said that that was his cash. Law enforcement said that was interesting because are you sure that was your cash because the bills were marked when the drug sales were being done. They let him know that the money had been marked and was directly associated with the crime. He left immediately. But the point was made and that is why we put that in on the house side was to protect the citizens.

Chairman K. Koppelman: We have found common ground so we will adjourn pending rescheduling.

Adjourned,.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1286
4/17/2019
34794

☐ Subcommittee
☒ Conference Committee

Committee Clerk: DeLores D. Shimek by Marjorie Conley

Explanation or reason for introduction of bill/resolution:

Relating to forfeiture proceedings, contested forfeiture hearings, legal interest in Forfeited property, and forfeitures.

Minutes:

--

Members present: Rep. K. Koppelman, Chairman, Rep. Jones, Rep. Satrom
Senator D. Larson, Chairman, Sen. Dwyer, Sen Bakke

Rep. K. Koppelman: There is a revision to the amendment so the amendment isn't ready. Look back to the .05004 version we left off on the issue of the minimum amount that was in the House bill for seizure. Anything under that amount could not be seized. Would there be an objection to a minimum unless there is a conviction? Because of the amount of costs for fighting this.

Senator Larson: That is the procedure so I don't think we need to add anything to that. it says when that person isn't convicted the assets are just given back. There have been some abuses in other states; but that has not happened here. The cash, if it is used in a crime it should be taken, if it isn't used in a crime then it is given back. I don't think that we need any clarification on that item.

Rep. Jones: The reason I am looking at that at all I will share my experience. Shared his experience.

Senator Larson: I don't think there is enough paper in the world to try to come up with contingencies of when somebody might do something wrong. I don't see that it is pertinent here.

Rep. K. Koppelman: In committee, Rep. Jones did share a story about something that did occur in North Dakota.

Rep. Jones: Told story about a friend of his that had money seized.

Rep. K. Koppelman: We talked about at subdivision c of subsection 2 on page 3;

The amount on page 4, lines 4-8 looks like there was an amendment there. What was the Senates thinking on that?

Senator Larson: That section is all about reporting to the Attorney Generals Office. These were the things from the Attorney General's office that would be reporting requirements and for public use. Some discussion on the reporting. The IT reporting would require a more difficult program. If you look at it there is a lot in here that will be reported.

Rep. K. Koppelman: So they objected to the reporting amount that the court is to be paid for class and expenses of the proceedings.

Senator Larson: I don't know. I think that it had to do more with the reporting type. Doing some of this reporting without some of the details that would require more difficult program. They are required to within 30 days after the report is due, they have to be in compliance. The Attorney General then shall make available on the Attorney General's website reports submitted by those law enforcement agencies. These reports must be updated annually. It seems to me that what is really wanted in this is let's have a report of everything that is confiscated or forfeited so that we can use it to know what's going on in the state. The type of detail and the type of reporting was something that was created a large fiscal note.

Chairman K. Koppelman: Transparency is important to all of us, but I know that that was one of the things that the house looked at.

Senator Dwyer: Could you identify what you are looking at and considering.

Rep. Jones: We are looking through the amendment and especially checking on the reporting part.

Senator Dwyer: Can you will be more specific on what you are looking at. I do know there is one more reporting with law enforcement. That deals with the courts.

Rep. K. Koppelman: Does the Attorney General Office glean all that information in their report? I do not think there is any desire to hoghouse this bill.

Adjourned,

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1286
4/23/2019
34933

☐ Subcommittee
☒ Conference Committee

Committee Clerk: DeLores D. Shimek by Marjorie Conley

Explanation or reason for introduction of bill/resolution:

Relating to forfeiture proceedings, contested forfeiture hearings, legal interest in forfeited property and forfeitures.

Minutes:

--

Members Present: Rep. K. Koppelman, Rep. Jones, Rep. Satrom
Senator D. Larson, Senator Dwyer, Senator Bakke.

Rep. K. Koppelman opened the conference committee meeting on HB 1286.

Senator Larson: I know there are even more amendments that are being considered. I don't know if you know what the thin blue line stands for in the gap on my bracelet. It stands for law enforcement, and they stand in the gap between law abiding citizens and those that would do them harm and they voluntarily do this honorable job every day knowing that it is important and dangerous and yet they do it. I went through our amendments on our first meeting and that was the product of 100s of people meeting for many hours trying to get the right product to you. As we are now trying to change this. This is not the thing the states attorney from the association of counties and law enforcement and so many groups that came together to put together something that would respectfully look at what the intentions of the bill were plus do something that they felt would be workable.

Senator Larson: Made Motion to accede to the Senate Amendments.

Senator Bakke: Seconded.

Senator Larson: I just think that is too important to be playing games with and pushing back and forth and maybe we can tweak this word or that line. I believe that everything that we have put into this is going to address the need in any of the other things that we have been looking at amending are not going to improve the bill, but just further tweak with it and I just don't think that the people that worked so hard towards this bill deserve that. I hope that we will support that amendment.

Rep. K. Koppelman: I think what has happened this session; that some of them feel threatened; but I don't believe that is the dynamic.

I don't want anything anybody does in this process to be viewed through that lens. We differ on all kinds of things. There are a lot of people interested in the process that we have here and there are a lot of them.

I think we need to leave with the best product we can. I think what you folks have done is meaningful. The amendments do deal with the reporting part. What law enforcement does on the street every day is a part of this.

Senator Larson: Rep. Jones told me that he was looking at the Attorney General reporting portion of it. In the version .05004 on the 4th page, line 9 the Attorney General may require additional information. I did mention all these people who have had input into this bill. I feel the House and Senate has done its due diligence. I think that what we have here is a great product and I would really like us to just adopt this amendment.

Rep. K. Koppelman: I appreciate your position on that and I would note that what you just referred to I think you are right that there is language there that is open ended that would allow the Attorney General to do some things. There is nothing wrong the legislature in my view being more prescriptive about that.

Senator Dwyer: No matter what we do likely we will probably be back in two years to make more changes. I hope we don't have this feeling like what we pass out of here has to be perfect, so we would never have to deal with it again.

Rep. Koppelman: There is a motion on the floor for the house to accede to the senate amendments.

Roll Call Vote taken. Yes 3 No 3 Roll Call Vote failed.

Rep. Jones: I fully agree with everything that Senator Larson is saying. I fully support law enforcement. This is not an effort to say anything negative about what they do. It is my understanding that we gave some amendments to the Attorney General's office and they are working on those. I am pleased with the direction they are going and it is going to be reduced down and very usable. I think that going the extra mile will be beneficial to law enforcement.

Rep. K. Koppelman: This is not adversative, we are just trying to get out of here with something that we think is complete.

Senator Dwyer: We have been working on this more than a week. It is worrisome when amendments are talked about but aren't ready. I hope we can have something when we meet again.

Rep. K. Koppelman: I thought that we would have. We thought it only proper to have the Attorney General's Office look at things that involve their office and that's why we are paused here a little bit.

Senator Larson: I wasn't saying anything negative. The people I have been talking to have been in cooperation, not defensiveness or anything.

House Judiciary Committee

HB 1286

April 23, 2019

Page 3

Rep. K. Koppelman: I don't want to be accused at playing games because I don't see anybody doing that.

Adjourned

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1286
4/24/2019
34987

☐ Subcommittee
☒ Conference Committee

Committee Clerk: DeLores D. Shimek typed by Mary Brucker

Explanation or reason for introduction of bill/resolution:

Relating to forfeiture proceedings, contested forfeiture hearings, legal interest in forfeited property and forfeitures.

Minutes:

1,2

Members Present: Rep. K. Koppelman, Rep. Jones, Rep. Satrom
Senator D. Larson, Senator Dwyer, Senator Bakke.

Rep. K. Koppelman opened the conference committee meeting on HB 1286.

Rep. Jones: Distributed proposed amendments 19.0345.05011, see attachments 1 and 2. Went over the amendments. This is an attempt to write in additional reporting.

Rep. K. Koppelman: The .05004 version is the last one we should be working from. You can compare it to version 19.0345.05011. Went through the proposed amendments. As I'm looking at the two the amendments it restores the language at the top of page two which is what we reached general agreement on earlier. On the top of page three of the Christmas tree amendment version is to allow some flexibility.

Senator Bakke: That is number three in the 2004 version. They added a new number three and number four was already in there.

Rep. K. Koppelman: You're right.

Rep. Jones: We wanted to make sure everybody understood there was a process to get this from the political subdivision that didn't automatically flow back to them. We had words in there before that were cumbersome so we used the word "appropriation" for the political subdivision.

Rep. K. Koppelman: This bill shines some light on this process. This would mean when a law enforcement entity seizes property that is forfeited it doesn't end up in their account; if it's a county commission or something then they would have a process whereby the law enforcement entity could apply for an application and the act of that governing body would appropriate that back.

Rep. Jones: This is what they are already doing. All we're doing is trying to put into code what is already being done in practice so they don't get accused of doing something.

Rep. K. Koppelman: I think people have looked at our law and saw what appeared to be a problem. We are simply codifying what is already being done but is just clearer to anybody looking at what we do here in North Dakota as our process.

Senator Bakke: On page three, line 21 where is the real property?

Rep. K. Koppelman: The B would revert to real property and the C would be the next. In section 4 reporting is where most of the changes occur.

Senator Larson: What we already had in here was that the Attorney General could make these rules anyway and the House decided to specify exactly what that was rather than leave it all up to the Attorney General's office.

Rep. Jones: In section two under the reporting the Attorney General has said that if this is all made public and we specifically put all these items in then it will be accessible for him to request that from the courts. He will instruct the courts so when there's a forfeiture judgement then he will either have them send that to him at the time the judgement is complete or on an annual basis.

Senator Larson: Does this mean in the new reporting process the police departments will not be required to make any reports but that it will only come from the courts?

Rep. K. Koppelman: Most of the reporting requirements are for the courts and for the state's attorneys.

Rep. Jones: Continued reviewing the proposed amendment.

Rep. K. Koppelman: The Attorney General said he would communicate to the court what they need to do if this passes.

Senator Larson: What about letter h? Does that mean a drug dealer with \$100,000 can hire a \$100,000 attorney and all of that would be paid to his attorney's fees rather than him forfeiting it he will benefit from that property?

Rep. Jones: The stuff that was seized are proceeds of contraband and are not on the table here. This is contemplating if a young man is in the middle of a drug deal and using his mother's car she would have to prove it was her car and had no way of knowing it was going to be used in illegal activity then she would be able to have some legal fees back. In no way do we want contraband or the proceeds of criminal activity to go back to criminals.

Rep. K. Koppelman: Nothing in this amendment tells the court to do anything differently than it's already doing. If the court chooses to award attorney's fees for whatever reason they just have to report it.

Senator Dwyer: It doesn't change the law; it is just reporting.

Rep. Jones: Continued going through the proposal. We were concerned about cost and not having a fiscal note with this legislation. The Attorney General felt pretty comfortable that he could draw out of the forfeiture fund enough money to pay for the extra labor to get that stuff brought forward. Law enforcement will have some extra costs for reporting so this is to compensate for that.

Senator Larson: When we are talking about not being exempt from disclosure will we run into situations where we're going to have a problem with Marcy's Law? If we have somebody that's a victim and the perpetrator then they claim Marcy's Law confidentiality, is this going to be a conundrum for the courts?

Rep. K. Koppelman: If there is a conflict Marcy's Law would prevail.

Rep. Jones: When you look at the list of information we're gathering I doubt there will be much of a conflict. Continued to review the proposed amendments. The goal of this is to get usable information into the website and into the public's eyes so that it's giving true transparency. We want to do it in such a way that it's not cumbersome. If there's some information that's not coming through the Attorney General can consider that and do it.

Rep. K. Koppelman: The two things Rep. Jones referred to was in subsection three on page four of the .05004 version and that's the language that's retained in subsection eight on page five of the amendments. In subsection four on page four of the Senate bill, .05004, that reporting requirement for of law enforcement as the bill came to us from the Senate is removed from this bill. We are requiring the court to do more in terms of reporting information, we're requiring prosecutors to do more in reporting, we're requiring the Attorney General to compile that information and make it available publicly and on his website, and we're requiring less of the law enforcement agencies in this amendment.

Rep. Jones: Made a motion to for the Senate recede from Senate amendments and amend as follows with amendment .05011.

Rep. Satrom: Seconded.

Rep. Larson: I believe this doesn't make it as clean of a bill as it was when it was sent to you. I think the people I want to represent can live with it.

Rep. Satrom: I think what we're doing here is not onerous on anybody. Law enforcement will find some of the trends and information to be very good insight on what is happening and may end up being a tool for them.

Rep. Jones: Thank you for where we are going with this. I appreciate your patience. When I was looking at the information we were going to get before it was just numbers so it would have been on the website but it wouldn't have been very useful for somebody to give them a level of comfort. This protects law enforcement and gives information to people who are looking into this. This is a good addition to the bill and I appreciate everybody working with on this.

Rep. K. Koppelman: The motion is for the Senate to recede from Senate amendments and amend as follows with the 19.0345.05011 version.

Roll call vote: 6 Yes 0 No 0 Absent

Motion carried.

Meeting adjourned.

Do 4/27/19
1083

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1286

That the Senate recede from its amendments as printed on page 1419 and pages 1659 and 1660 of the House Journal and pages 1172 and 1173 and page 1185 of the Senate Journal and that Engrossed House Bill No. 1286 be amended as follows:

Page 1, line 3, after the second comma insert "and"

Page 1, line 3, remove ", 29-27-02.1, and subsection 1 of"

Page 1, line 4, remove "section 54-12-14"

Page 1, line 5, remove ", disposition of statutory fees,"

Page 1, line 6, remove "fines, forfeitures, and the attorney general assets forfeiture fund"

Page 1, line 17, remove the third "or"

Page 1, line 18, after the first "property" insert ", or it can be established beyond a reasonable doubt the property was used in the commission of a crime or constituted the proceeds of criminal activity"

Page 2, line 6, remove "clear and convincing"

Page 2, line 7, remove "evidence"

Page 2, line 7, overstrike "for instituting the forfeiture action following which" and insert immediately thereafter "the property meets the requirements of subsection 2 of section 19-03.1-36.2. Following the state's case."

Page 2, line 15, remove "order the proper costs and"

Page 2, remove lines 16 and 17

Page 2, line 18, replace "remaining proceeds to be deposited as provided in subsection 2 of section 29-27-02.1" with "order only the forfeited property or proceeds from the sale of forfeited property to be deposited with a political subdivision if the political subdivision has created a civil asset forfeiture fund. If the political subdivision does not have a civil asset forfeiture fund, any forfeited property and proceeds from the sale of forfeited property must be deposited in the attorney general's asset forfeiture fund."

3. A political subdivision that has a civil asset forfeiture fund shall establish an application process, including eligibility criteria, to accept and process applications from law enforcement agencies within the political subdivision's jurisdiction for an appropriation from the civil asset forfeiture fund.

4. This section does not prohibit the state and a political subdivision from entering an agreement to divide forfeited property and the proceeds from the sale of forfeited property"

Page 3, line 3, remove "Currency with the value of seven hundred and fifty United States dollars or less"

DB 4/29/11
2 of 3

Page 3, remove line 4

Page 3, line 5, remove "c."

Page 3, line 6, replace "d." with "c."

Page 3, line 6, replace "determine" with "consider all factors, including"

Page 3, line 9, remove "sentence imposed for committing the offense"

Page 3, line 10, replace "subject to forfeiture" with "possible penalty that could be imposed for the alleged or committed offense subject to forfeiture"

Page 3, line 11, replace "e." with "d."

Page 3, line 19, after "forfeiture" insert "of property or to collaborate with a federal agency under federal law to conduct or engage in seizure and forfeiture of property. The term includes a multijurisdictional task force"

Page 3, line 20, remove "Annually, each law enforcement agency shall compile the following information"

Page 3, remove lines 21 through 27 with "Every civil forfeiture judgment issued by a district court must be made publicly available and include the following information in the findings of fact:

- a. Case number of the forfeiture proceeding and the district court where the case was filed.
- b. Who filed a claim or counterclaim for the seized property, if any.
- c. Date the forfeiture order was issued.
- d. Whether a forfeiture settlement agreement was reached.
- e. The date and the final disposition of the property.
- f. Estimated value of the forfeited property.
- g. Estimate of the total costs accrued by the law enforcement agency for storage and disposal of the civilly forfeited property.
- h. Amount of any attorney fees awarded to owners of seized and forfeited property."

Page 3, line 28, after "3." insert "Annually, a prosecutor who litigates the criminal case and forfeiture proceeding shall provide to the attorney general a copy of the judgment that includes the information required under subsection 2 and the total value of the forfeited property held by the agency at the end of the reporting period.

4. By November first of each year, the attorney general shall submit to the legislative management and the governor a written report summarizing activity in the state for the preceding fiscal year, the type, approximate value, and disposition of any civilly forfeited property, and the amount of proceeds received.
 - a. Summary data and civilly forfeited property must be disaggregated by agency.

DA 9/27/19
3 of 3

- b. The attorney general shall make the report available on the attorney general's website.
5. The attorney general may recover any costs under this section by withdrawing money from the asset forfeiture fund.
6. A law enforcement agency may use forfeiture proceeds to pay the costs of compiling and reporting data under this section.
7. The data and reports compiled under this section are public information and not exempt from disclosure.
- 8."

page 3, line 30, remove "electronic data entry for"

Page 4, remove lines 1 through 6

page 4, line 7, replace the "5." with "9."

Page 4, remove lines 10 through 31

Page 5, remove lines 1 through 29

Renumber accordingly

**2019 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES**

HB 1286 as (re) engrossed

House Judiciary Committee

- Action Taken** ☐ **HOUSE accede to Senate Amendments**
☐ **HOUSE accede to Senate Amendments and further amend**
☐ **SENATE recede from Senate amendments**
☐ **SENATE recede from Senate amendments and amend as follows**
- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: _____ Seconded by: _____

Representatives	4/15	4/16	4/17	Yes	No		Senators	4/15	4/16	4/17	Yes	No
Rep. K. Koppelman, Chairman	✓	✓	✓				Senator D. Larson, Chairman	✓	✓	✓		
Rep. Jones	✓	✓	✓				Senator Dwyer	✓	✓	✓		
Rep. Satrom	✓	✓	✓				Senator Bakke	✓	✓	✓		
Total Rep. Vote							Total Senate Vote					

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Date: 4/23/2019
Roll Call Vote #: 1

2019 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

HB 1286 as (re) engrossed

House Judiciary Committee

- Action Taken ☒ HOUSE accede to Senate Amendments
☐ HOUSE accede to Senate Amendments and further amend
☐ SENATE recede from Senate amendments
☐ SENATE recede from Senate amendments and amend as follows

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Sen. Larson Seconded by: Sen. Bakke

Representatives	4/23			Yes	No		Senators	4/23			Yes	No
Rep. K. Koppelman, Chairman	✓				✓		Senator D. Larson, Chairman	✓			✓	
Rep. Jones	✓				✓		Senator Dwyer	✓			✓	
Rep. Satrom	✓				✓		Senator Bakke	✓			✓	
Total Rep. Vote							Total Senate Vote					

Vote Count Yes: 3 No: 3 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Motion Failed.

2019 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

HB 1286 as (re) engrossed

House Judiciary Committee

- Action Taken ☐ HOUSE accede to Senate Amendments
☐ HOUSE accede to Senate Amendments and further amend
☐ SENATE recede from Senate amendments
☒ SENATE recede from Senate amendments and amend as follows

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Jones Seconded by: Rep. Satrom

Representatives	<u>4/24</u>		Yes	No		Senators	<u>4/24</u>		Yes	No
Rep. K. Koppelman, Chairman	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			Senator D. Larson, Chairman	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Rep. Jones	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			Senator Dwyer	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Rep. Satrom	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			Senator Bakke	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Total Rep. Vote			3			Total Senate Vote			3	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Koppelman Senate Carrier LARSON

LC Number 19.0345 . 05011 of amendment

LC Number 08000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Insert LC: 19.0345.05011
House Carrier: K. Koppelman
Senate Carrier: Larson

REPORT OF CONFERENCE COMMITTEE

HB 1286, as engrossed: Your conference committee (Sens. D. Larson, Dwyer, Bakke and Reps. K. Koppelman, Jones, Satrom) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1419, adopt amendments as follows, and place HB 1286 on the Seventh order:

That the Senate recede from its amendments as printed on page 1419 and pages 1659 and 1660 of the House Journal and pages 1172 and 1173 and page 1185 of the Senate Journal and that Engrossed House Bill No. 1286 be amended as follows:

Page 1, line 3, after the second comma insert "and"

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Page 1, line 4, remove "section 54-12-14"

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Page 2, line 15, remove "order the proper costs and"

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Page 2, line 18, replace "remaining proceeds to be deposited as provided in subsection 2 of section 29-27-02.1" with "order only the forfeited property or proceeds from the sale of forfeited property to be deposited with a political subdivision if the political subdivision has created a civil asset forfeiture fund. If the political subdivision does not have a civil asset forfeiture fund, any forfeited property and proceeds from the sale of forfeited property must be deposited in the attorney general's asset forfeiture fund."

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4. This section does not prohibit the state and a political subdivision from entering an agreement to divide forfeited property and the proceeds from the sale of forfeited property"

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Page 3, line 5, remove "c."

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Page 3, remove lines 21 through 27 with "Every civil forfeiture judgment issued by a district court must be made publicly available and include the following information in the findings of fact:"

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- c. Date the forfeiture order was issued.
- d. Whether a forfeiture settlement agreement was reached.
- e. The date and the final disposition of the property.
- f. Estimated value of the forfeited property.
- g. Estimate of the total costs accrued by the law enforcement agency for storage and disposal of the civilly forfeited property.
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4. By November first of each year, the attorney general shall submit to the legislative management and the governor a written report summarizing activity in the state for the preceding fiscal year, the type, approximate value, and disposition of any civilly forfeited property, and the amount of proceeds received.
 - a. Summary data and civilly forfeited property must be disaggregated by agency.

Insert LC: 19.0345.05011
House Carrier: K. Koppelman
Senate Carrier: Larson

- b. The attorney general shall make the report available on the attorney general's website.
- 5. The attorney general may recover any costs under this section by withdrawing money from the asset forfeiture fund.
- 6. A law enforcement agency may use forfeiture proceeds to pay the costs of compiling and reporting data under this section.
- 7. The data and reports compiled under this section are public information and not exempt from disclosure.

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Page 4, remove lines 1 through 6

page 4, line 7, replace the "5." with "9."

Page 4, remove lines 10 through 31

Page 5, remove lines 1 through 29

Renumber accordingly

Engrossed HB 1286 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

HB 1286

Mark A. Friese

mfriese@vogellaw.com

#1
HB 1286
1-30-19
P71

January 27, 2019

Dr. Rick Becker
District 7 Representative
Member, ND House Judiciary Committee

VIA EMAIL ONLY
rcbecker@nd.gov

Re: HB 1286

Dear Dr. Becker:

I write in support of House Bill 1286, which proposes long-overdue, moderate, 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 lawmakers as well. 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 formerly served as a citizen member of the Interim Alternatives to Incarceration Committee, and in that capacity have gained the privilege of meeting 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 1286 is consistent with national trends. I agree that when used correctly, asset forfeiture is an essential component of effective law enforcement, and sound public policy. If approved, House Bill 1286 will retain this 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 Common Schools Trust Fund, rather than being distributed to the seizing agencies. This provision would finally place asset forfeitures in compliance with longstanding North Dakota statutory and constitutional law, which has long protected the police from claims of impropriety, and appearances of bias by protecting the police from citizen claims of ulterior motives—i.e., policing for a profit. Further, the bill provides for return of non-contraband property if an accused is acquitted or the criminal charges are dismissed.

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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 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 alike. Current law allowing police to seize and convert property from citizens for minor offenses, like possessing marijuana or items of drug paraphernalia, is draconian. Current law results in some police seizing all property, while other officers who recognize the lack of fairness of existing procedures wholly decline to do so,

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 approval. The citizens and law enforcement of this state deserve these meaningful improvements to existing law.

I am personally aware of the substantial amount of time that you and other lawmakers have spent researching and drafting this bill. I am personally aware of the contacts you and others have had with attorneys, lawmakers, law enforcement, and executive branch officials. Simply, I am aware this proposal results from substantial input and substantial effort.

Correspondingly, I am aware previous efforts at reform have been unsuccessful. This comprehensive bill seems to eliminate those portions of previous reform efforts which were objectionable. Recognizing the work effort, balancing of competing interests, and substantial input you solicited in formulating this bill, I am optimistic that this measured, reasonable approach at reform will be adopted. Thank you for considering my comments.

Respectfully submitted,

/s/ Mark A. Frieese

Mark A. Frieese

cc: Rep. Mary Johnson marycjohnson@nd.gov
Rep. Tom Kading tkading@nd.gov
Sen. Ronald Sorvaag rsorvaag@nd.gov

Blackstone's ratio

☆A

In [criminal law](#), **Blackstone's ratio** (also known as **the Blackstone ratio** or **Blackstone's formulation**) is the idea that:

It is better that ten guilty persons escape than that one innocent suffer.^[1]

As expressed by the English jurist [William Blackstone](#) in his seminal work, *[Commentaries on the Laws of England](#)*, published in the 1760s.

The idea subsequently became a staple of legal thinking in Anglo-Saxon jurisdictions and continues to be a topic of debate. There is also a long pre-history of similar sentiments going back centuries in a variety of legal traditions. The message that government and the courts must err on the side of innocence has remained constant.^[*citation needed*]



Statue of [William Blackstone](#)

☰ Contents ▾

^ In Blackstone's *Commentaries*

The phrase, repeated widely and usually in isolation, comes from a longer passage, the fourth in a series of five discussions of policy by Blackstone:

Fourthly, all presumptive evidence of felony should be admitted cautiously, for the law holds that it is better that ten guilty persons escape than that one innocent suffer. And Sir Matthew Hale in particular lays down two rules most prudent and necessary to be observed: 1. Never to convict a man for stealing the goods of a person unknown, merely because he will give no account how he came by them, unless an actual felony be proved of such goods; and, 2. Never to convict any person of murder or manslaughter till at least the body be found dead; on account of two instances he mentions where persons were executed for the murder of others who were then alive but missing.

The phrase was absorbed by the British legal system, becoming a maxim by the early 19th century.^[2] It was also absorbed into American common law, cited repeatedly by that country's Founding Fathers, later becoming a standard drilled into law students all the way into the 21st century.^[3]

Other commentators have echoed the principle; [Benjamin Franklin](#) stated it as, "it is better 100 guilty

"It is impossible to introduce into society a greater change and a greater evil than this: the conversion of the law into an instrument of plunder."

- Frédéric Bastiat

The term "plunder" often conjures images of criminals ravaging the streets. It may remind us of pirates or bandits. What it doesn't bring to mind is legal activities by trusted institutions. Yet, that is exactly the meaning meant by French philosopher Frederic Bastiat, who coined the term "legal plunder" in his most famous work The Law (1850). This concept asserts the ability of the law to be weaponized as a tool of injustice, or plunder.

Legal plunder today takes the form of civil asset forfeiture. Civil asset forfeiture allows law enforcement officials at various levels of government to seize private property without due process. While these laws were enacted to restrict illegal trade and fight organized crime, they have been weaponized against law abiding citizens with increasing frequency.

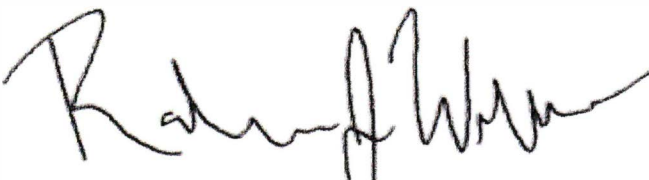
In my policy paper, Legal Plunder: Civil Asset Forfeiture in North Dakota, I examined North Dakota's forfeiture laws. I discovered North Dakota's laws heavily favor law enforcement and offer few citizen protections. In fact, in a 2014 study by the Institute for Justice, North Dakota received an "F" grade for citizen protections.

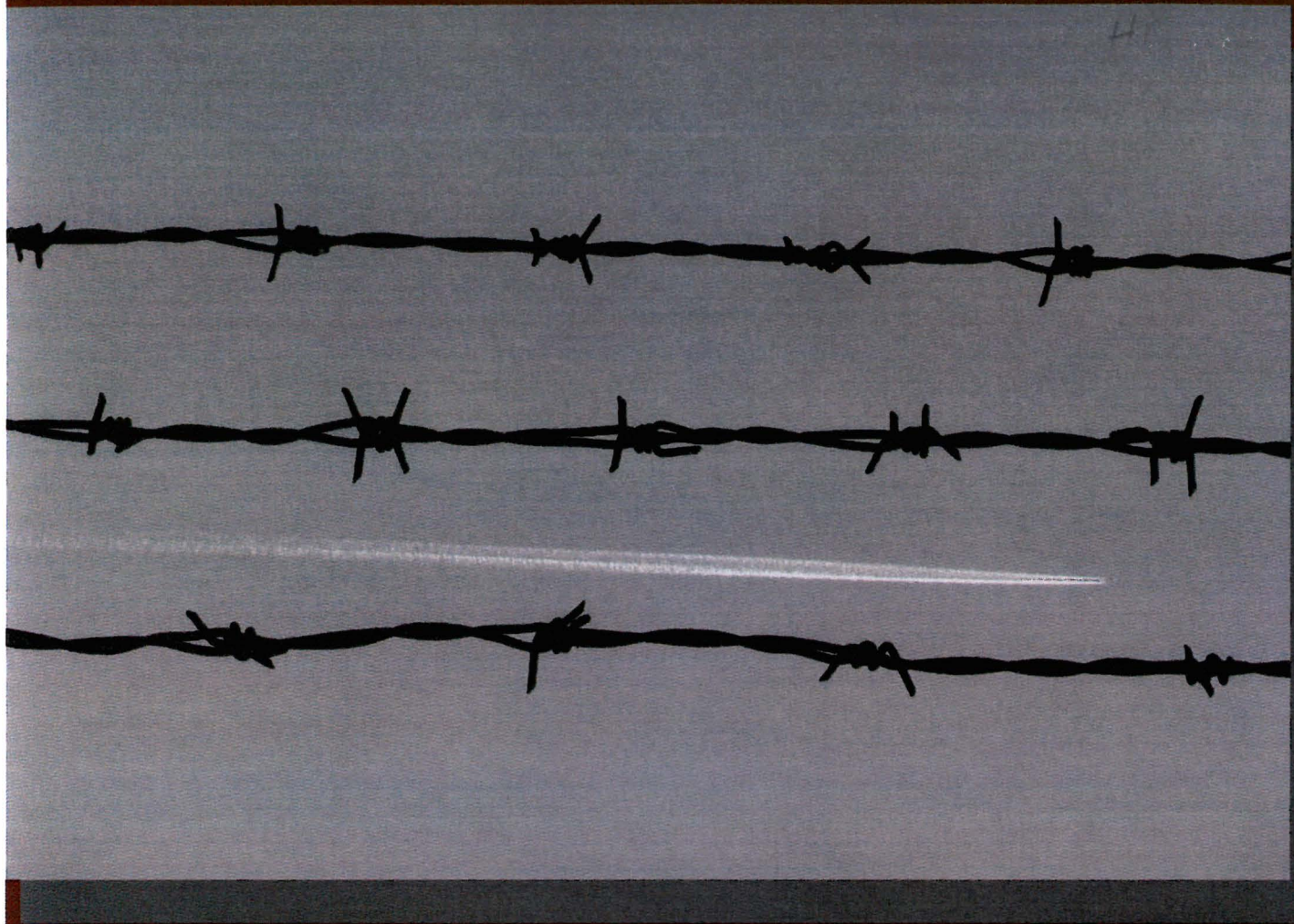
I want to highlight the two biggest findings from my report: lack of due process and lack of transparency. First, state law shifts the burden of proof to the accused. In North Dakota, law enforcement officials can seize private property as long as they have probable cause that it was involved in illegal activity. To regain possession, a citizen must appeal to the court and prove the innocence of his or her property, even if the citizen has not been found guilty of a crime.

For example, if you borrowed your car to your roommate and law enforcement have probable cause to believe it was used to transport drugs, they can confiscate and even sell your car. This is without you knowing or committing a crime, or sometimes, even without your roommate being found guilty of a crime. While this is an extreme example, it illustrates the lack of due process rights afforded in these cases. Second, state law does not require confiscated assets to be tracked. This can arguably create incentives for law enforcement to "police for profit." In North Dakota, law enforcement receives up to 100 percent of the proceeds from civil asset forfeiture. Given the lack of available data on this issue, it is difficult to measure the impact, if any, civil asset forfeitures have on North Dakota's citizens and the state economy. While there is no evidence to condemn or accuse state and local law enforcement officials of any wrongdoing, the state should consider making reforms to increase citizen protections and improve transparency.

North Dakota consistently ranks among the worst states in the country when it comes to civil asset forfeiture. The state should bring an end to instruments of legal plunder by strengthening private property rights and transparency.

The Center for the Study of Public Choice and Private Enterprise at NDSU
Former Research Economic Specialist
Raheem J Williams





LEGAL PLUNDER: CIVIL ASSET FORFEITURE IN NORTH DAKOTA

Released April 2018

Researchers:
Raheem Williams, M.A.

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***“It is impossible to introduce into society a greater change
and a greater evil than this: the conversion of the law into an
instrument of plunder.” – Frédéric Bastiat ¹***

¹ Bastiat, Frederic. (1850). The Law. Library of Economics and Liberty. Retrieved from <http://econlib.org/library/Bastiat/basLaw.html>

Introduction

Secure private property rights encourage economic growth. Studies have found that nations that protect private property rights experience more economic growth (Knack & Keefer, 1995; Leblang, 1996; Svensson, 1998; Weingast, 1995). Therefore, ensuring a strong system of private property rights and protections should be considered a pre-requisite to achieving growth and higher living standards. Modern civil asset forfeiture practices weaken private property rights by allowing the state to seize property without due process or public transparency. While these laws were originally intended to help police crackdown on organized crime, they create perverse economic incentives that can lead to abuse.

A renewed focus on this issue by national organizations has sparked citizen protection reforms in some states, but meaningful reforms have not been enacted in North Dakota. With civil asset forfeiture laws that heavily favor law enforcement, the strength of North Dakota's private property rights could be in question. This policy paper will review the definition of civil asset forfeiture, clarify the laws in North Dakota, examine recent legislative attempts at reform, and, finally, make policy recommendations.

Background

Civil asset forfeiture is a legal procedure that allows law enforcement officials at various levels of government to seize private property without due process. It was first introduced to the rule of law through a series of early Supreme Court cases involving illegal trade (*The Palmyra*, 1827; *United States v. The Brig Malek Adhel*, 1844). It was intended to help law enforcement restrict trade related to illicit activities and fight organized crime. Ideally, the Fifth Amendment's due process clause would protect citizens against unlawful civil asset forfeiture (Cheh, 1998; Kim, 1997; Piety, 1990; Ross, 2000). In reality, civil asset forfeiture opens the door to corruption and policing for profit.

The constitutionality of this practice has been increasingly scrutinized by leading legal advocacy organizations across the political spectrum, including the American Civil Liberties Union and the Institute for Justice. Law enforcement abuses are being exposed with greater frequency due to the work of these legal watchdog groups, leading states to weigh the benefits of civil asset forfeiture against upholding citizens' constitutional liberties.

North Dakota

In a national study of state civil asset forfeiture laws by the Institute for Justice, North Dakota tied for worst in the country, receiving an “F” grade for citizen protections (Institute for Justice, 2014). North Dakota state law only requires “probable cause” to seize assets. This is the lowest possible standard of proof for government seizures (Institute for Justice, 2014). Additionally, when property is seized for illegal activity without the owner’s knowledge, the burden of proof is placed on the owner to prove his or her innocence in order to recover the seized property. If the notion of “innocent until proven guilty” is to be preserved, the burden of proof should be on the state.

Current Law

Chapter 29-31.1 of the North Dakota Century Code defines forfeitable property as:

- a. Property that is illegally possessed or is contraband.
- b. Property that has been used or is intended to be used to facilitate the commission of a criminal offense or to avoid detection or apprehension of a person committing a criminal offense.
- c. Property that is acquired as or from the proceeds of a criminal offense.
- d. Property offered or given to another as an inducement for the commission of a criminal offense.
- e. A vehicle or other means of transportation used in the commission of a felony, the escape from the scene of the commission of a felony, or in the transportation of property that is the subject matter of a felony.
- f. Personal property used in the theft of livestock or the transportation of stolen livestock (N.D. Cent. Code §§ 29-31.1-10, 1991 & 2009).

This broad definition allows the state almost unlimited power to confiscate property. The law in its current form allows law enforcement to make judgment decisions on the “intended use” of property. It also allows the sale of seized assets and the retention of the proceeds from such sales (Williams, 2002). Agencies in North Dakota receive up to 100 percent of civil asset forfeiture proceeds, and if the forfeiture fund exceeds \$200,000 during the two-year budgetary period, excess proceeds are deposited in the General Fund (Institute for Justice, 2014). This creates a use-it-or-lose incentive that could encourage the seizure of assets (Institute for Justice, 2014).

In its current form, North Dakota's civil asset forfeiture law tips the scale too far in favor of law enforcement. While there is no evidence that law enforcement officials are abusing this power, there is a troubling lack of transparency.

Tracking Civil Asset Forfeiture

The North Dakota Century Code does not require local law enforcement to track civil asset forfeiture proceeds, making it difficult to understand the degree to which North Dakotans are affected. The most accessible data available comes from the Department of Justice, which tracks the use of Equitable Sharing Agreements (ESA). ESAs outline how the proceeds of civil asset forfeitures are split between local, state, and federal law enforcement in cases involving multiple agencies (Carpenter, Salzman, & Knepper, 2011).

A quick look at the data compiled from the Department of Justice shows that North Dakota law enforcement rarely utilize ESAs. The state received only \$550,483 in equitable sharing proceeds from 2000-2013. This makes North Dakota the second best state in terms of federal civil asset forfeiture, according to rankings by the Institute for Justice (Carpenter, Knepper, Erickson, & McDonald, 2015). However, this seemingly good news could be deceptive. North Dakota's civil asset forfeiture laws are favorable enough to local and state law enforcement that there is little incentive to collaborate with federal officials. In theory, local law enforcement keep more of the proceeds from asset forfeiture by not including federal law enforcement.

Legislative Reform

In order to discourage the possibility of abuse, H.B. 1170 was introduced during the most recent legislative session (North Dakota Legislative Assembly, 2017a, p. 70). This bill would have amended North Dakota Century Code Chapter 29.31.1. The amendment, Chapter 29.31.2, required a conviction before seizing property in most cases. However, the amendment did allow police to immediately seize property when there was "probable cause to believe the delay occasioned by the necessity to obtain process would result in the removal or destruction of the personal property." Additionally, it allowed the courts to collect the equivalent in forfeitable property if the intended property was purposely hidden to avoid seizure. The bill also allowed for the immediate seizure of property from persons with a known criminal history.

In regards to protecting the property rights of the citizens of North Dakota, Chapter 29.31.2 guaranteed defendants or third party claimants the right to challenge the validity of a seizure in a pre-trial hearing. Citizens could request a court hearing for property seized any time prior to 60 days before the relevant trial. Such hearings would be held within 30 days of the motion being filed. Lastly, the amendment forbid the retention of forfeited property by law enforcement, substantially reducing the risk of corruption (Malcolm, 2016; Williams, 2002). Instead, the bill proposed that proceeds from civil asset forfeiture sales would go into the General Fund. H.B. 1170 passed in the North Dakota House (North Dakota Legislative Assembly, 2017a, p. 767) but failed in the Senate (North Dakota Legislative Assembly, 2017b, p. 1018). No civil asset forfeiture reforms were enacted in the 2017 Legislative Assembly.

Conclusion

Property rights and economic growth are intrinsically linked (Knack & Keefer, 1995; Leblang, 1996; Svensson, 1998; Weingast, 1995). The state should reinforce such rights whenever possible. The people of North Dakota deserve to be secure in their persons and the protection of their property. Given the lack of available data on this issue, it is difficult to measure the impact, if any, civil asset forfeitures have on the state economy. While there is no evidence to condemn or accuse state and local law enforcement officials of any wrongdoing, lawmakers should reconsider instituting reforms and protections such as those in H.B. 1170. Secure property rights are vital for promoting trust in the state's institutions and ensuring the people of North Dakota are treated fairly under the law.

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January 30, 2019

House Judiciary Committee
North Dakota Legislature
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

Subject: H.B. 1286

Dear Committee Members:

Liberty Initiative Fund urges your support of House Bill 1286, a statute to reform civil asset forfeiture. Civil forfeiture, which allows courts to forfeit property without a criminal conviction (or oftentimes even a charge), violates two important American principles: (1) our property rights and (2) the foundational justice concept of "innocent until proven guilty."

This legislation sponsored by Rep. Rick Becker is a solid, sensible reform that fixes the problem while being pro-law enforcement.

As a national organization, we work with citizens across the country to *Hold Government Accountable*, *Fight Crony Capitalism* and *Protect Our Liberties*, primarily through state and local ballot initiatives. Liberty Initiative Fund was a supporter of Measure 2 on last November's ballot, which North Dakota voters passed by a roughly two to one margin.

Thank you for your consideration of this reform.

Sincerely,

Paul Jacob
President

January 29, 2019

Letter in Support of HB 1286 and Reforming Civil Forfeiture

Dear members of the North Dakota Legislature:

On behalf of the undersigned organizations, we write in support of HB 1286, a bill that would substantially overhaul one of the greatest threats to private property rights in North Dakota: civil forfeiture. Through civil forfeiture, law enforcement agencies can confiscate property suspected of involvement in criminal activity. Unlike *criminal* forfeiture, with *civil* forfeiture, the government can permanently seize and keep property without charging, let alone convicting, anyone of a crime. In fact, North Dakota has the worst civil forfeiture laws in the nation, a dubious honor it shares only with Massachusetts.¹ By enacting HB 1286, the legislature can rectify serious flaws in state law and establish significant safeguards for the innocent.

First and foremost, HB 1286 would deposit all civil forfeiture proceeds into the state school fund, redirecting those funds away from law enforcement coffers. Currently, after property has been forfeited, agencies can retain up to 100 percent of the proceeds. This creates a perverse incentive to pursue forfeiture cases, a practice widely criticized as “policing for profit.” According to the bill’s fiscal note, state law enforcement and regional task forces have generated an estimated \$1.62 million in forfeiture funding.²

Law enforcement’s retention of forfeiture proceeds violates two key constitutional principles: due process and separation of powers. Giving law enforcement a direct financial stake in seizures violates the basic due process requirement of impartiality in the administration of justice—a bedrock principle of the American legal system. Allowing state and local law enforcement to directly benefit from forfeiture proceeds dangerously shifts law enforcement priorities from fairly and impartially administering justice to generating revenue.

Moreover, funding agencies outside the legislative process violate the separation of powers. State legislators are responsible for raising and appropriating funds. By retaining forfeiture proceeds, police departments and prosecutors’ offices—members of the executive branch—become

¹ See Dick M. Carpenter II, Lisa Knepper, Angela C. Erickson & Jennifer McDonald. *Policing for Profit: The Abuse of Civil Asset Forfeiture*, 2nd Edition, Inst. for Justice (2015), available at <http://ij.org/report/policing-for-profit/>

² “Fiscal Note,” January 14, 2019, available at <https://www.legis.nd.gov/assembly/66-2019/fiscal-notes/19-0345-04000-fn.pdf>



self-financing agencies, unaccountable to members of the North Dakota legislature, and, by extension, to the public at large.

Second, HB 1286 would strengthen due process for property owners facing civil forfeiture. The bill would require a conviction in criminal court before property can be forfeited in civil court. Today, only 12 states (including Minnesota and Montana) have similar protections for property owners. Another three states (Nebraska, New Mexico and North Carolina) have abolished civil forfeiture entirely, and replaced it with criminal forfeiture.³ To further shield owners, HB 1286 would raise the standard of proof from probable cause to clear and convincing evidence. In addition, the bill would create a new proportionality hearing that would allow owners to challenge “unconstitutionally excessive” forfeitures.

Finally, HB 1286 would implement the state’s first-ever reporting requirements for civil forfeiture. Transparency is in short supply. North Dakota is one of just six states that does not require any tracking of seizures and forfeitures whatsoever. That earned the state failing grades across the board in a recent report by the Institute for Justice.⁴ To shine a light on law enforcement’s seizure and forfeiture activity, the bill would require agencies to annually report the total number of seizures by value and property type, the underlying crimes that led to the seizure, and any additional information the attorney general may require. Reports would then be aggregated and compiled by the attorney general and published online. These disclosure requirements would play a vital role in keeping both the public and legislators well-informed about civil forfeiture in North Dakota.

HB 1286 would enact simple, commonsense but vitally needed changes in civil forfeiture law and procedures to protect innocent property owners from being unjustly deprived of their property. Passing the bill would go a long way toward restoring public trust in law enforcement, and the belief—so vital to our Republic—that we are a nation ruled by laws and not by men.

Sincerely,

Lee McGrath
Senior Legislative Council
Institute for Justice

Chris Harelson
Executive Director
Hazlitt Policy Center

Michael Fedorchak
State Director - North Dakota
Americans for Prosperity

Cliff Maloney
President
Young Americans For Liberty

Heather Smith
Executive Director
ACLU - North Dakota

³ “Civil Forfeiture Reforms on the State Level,” Institute for Justice. Accessed: January 28, 2019, *available at* <https://ij.org/activism/legislation/civil-forfeiture-legislative-highlights/>

⁴ See Angela C. Erickson, Jennifer McDonald and Mindy Menjou. “Forfeiture Transparency and Accountability: State-by-State and Federal Report Cards,” *available at* <https://ij.org/report/forfeiture-transparency-accountability/?state=US-ND>

Chairman Koppelman and House Judiciary committee members.

The following is information put together by the Heartland Institute for HB 1286, thank you for your consideration.

Research & Commentary: North Dakota's civil asset forfeiture laws and the need for reform.

In recent years, states have taken many steps toward limiting the ability of law enforcement agencies to seize property from criminal suspects without conclusive evidence a crime was committed, a process known as civil asset forfeiture. Civil asset forfeiture can also be completed without bringing criminal charges against those whose assets have been seized. The standard of proof permitting seizure differs from state to state. Since 2014, 24 states have comprehensively reformed their forfeiture laws, with 14 states now requiring a criminal conviction before assets are seized. Three states have even banned the practice altogether.

Along with Massachusetts, North Dakota has the worst civil forfeiture laws in the country, with analysts at the nonpartisan Institute for Justice giving the state an "F" grade in their report card of state civil asset forfeiture laws. In many states, a much higher standard of evidence is required to seize property – generally a conviction or a preponderance of the evidence. In North Dakota, law enforcement agencies are allowed to seize property if they have probable cause that the property was involved in illegal activity.

The state also shifts the burden of proof to the accused. To regain property, a citizen must appeal to the court to prove his or her innocence in order to recover the property, even if it was used without the owner's knowledge. Another glaring issue with North Dakota forfeiture laws is that there is a near-total lack of transparency in the forfeiture process; the state does not require confiscated assets to be tracked. This makes identifying and tracking abuses much more difficult.

Another notable problem with North Dakota's forfeiture laws is related to how proceeds are spent. Under current law, North Dakota law enforcement agencies may retain 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 funds are deposited in the state's general fund.

Proponents of forfeiture argue it allows law enforcement agencies to use seized assets toward their enforcement efforts, transforming property illicitly gained by criminals into resources to be used for public benefit. Critics of the process note it gives law enforcement agencies economic incentives to seize property.

Assets should be seized only for criminal reasons, and law enforcement should not have incentives to seize any more property than is necessary and justified.

The following documents provide additional information about civil asset forfeiture.

<http://web.archive.org/web/20181205132529/https://ij.org/pfp-state-pages/pfp-North-Dakota/>
www.heritage.org/research/reports/2014/03/civil-asset-forfeiture-7-things-you-should-know
<https://www.heritage.org/crime-and-justice/report/overview-recent-state-level-forfeiture-reforms>

Thank you.

Matthew Glans
The Heartland Institute
Sr. policy analyst

Bette Grande
The Heartland Institute
Research Fellow

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January 30, 2019

Representative Kim Koppelman
Chairman
Judiciary Committee
House of Representatives
State of North Dakota
600 East Boulevard Avenue
Bismarck ND 58505

Re: Testimony in Support of HB 1286

Dear Chairman Koppelman and Members of the Judiciary Committee:

Thank you for the opportunity to submit written testimony in support of HB 1286.

My name is Lee McGrath. I am the Senior Legislative Counsel for the Institute for Justice (IJ). It is a pleasure to return to Bismarck to support the efforts of Representative Rick Becker and his co-authors before this Committee.

The Institute for Justice is a public interest law firm that is the nation's leading advocate for forfeiture reform. My colleagues and I have helped numerous state legislators enact reforms similar to those in HB 1286. Since 2014, 29 states and the District of Columbia have reformed their civil forfeiture laws. I have testified in more than two dozen states. And many sponsors based their bills on IJ's model legislation, including the most comprehensive reforms in New Mexico and Nebraska.

The Committee also may be interested to learn that my colleague, Wesley Hottot, stood before the U.S. Supreme Court on November 28, 2018 and argued the forfeiture case of *Timbs v. Indiana*. The case involved the question of whether the Eighth Amendment's prohibition against excessive fines is incorporated against the states. We are optimistic about the court's ruling for our client. Although justices' questions are not always good predictors, Wesley was encouraged by his interactions with the Court. (HB 1286 more than adequately addresses that issue of proportionality in section 20. By enacting this bill, you will not have to change your law should the Supreme Court rule in favor of IJ's client and incorporation.)

In my duties, I have worked closely with advocates from organizations from across the political spectrum. As in other states, it is a pleasure to stand in support of HB 1286 with the ACLU, Americans for Prosperity, the Hazlitt Policy Center of Young Americans for Liberty and other organizations.

PERSPECTIVE:

My colleagues and I agree with members of law enforcement and prosecutors on many things. They include:

- Crime should not pay.
- No one convicted of a crime has a right to the fruit of that crime.
- It is a legitimate function of government to confiscate the fruit and instruments of crime.

There is no disagreement that North Dakota police and prosecutor should do seizures and forfeitures.

This bill does not raise an question of **IF**. It addresses a question of **HOW**.

In other words, the Committee is considering a **PROCESS** question, as are some many issues before this committee and in Anglo-American law.

Diving into the details of HB 1286, this bill does not change how police, sheriffs and highway patrolmen seize and take possession of property.

Yesterday, today and the day this bill goes into effect, members of law enforcement will continue to seize property the same way.

The two major changes in his bill relate to:

- How prosecutors litigate the transfer of title to assets from the property owner to the State of North Dakota.
- How legislators allow forfeiture proceeds to be distributed.

REASONS FOR SUPPORT:

My colleagues and I support HB 1286 for many reasons. Here are the two reasons most important:

First, no one acquitted of a crime in criminal court should be punished with the loss of property through forfeiture litigation in civil court. This bill codifies that belief. It requires a conviction in criminal court as a prerequisite to forfeiture litigation--the transferring the property's title to the state.

In other words, no one should be considered a "bad guy" until he is convicted of crime. Only after a conviction, should a person be punished with the loss of property.

In this regard, permit me to observe there are no "technicalities" about which guilty people are freed. We are blessed with a Constitution that protects an individual from punishment by (1) presuming he is

innocent until a prosecutor proves his guilt beyond a reasonable doubt and (2) putting reasonable restraints on law enforcement and prosecutors including Miranda warnings and prohibitions against unreasonable searches.

Secondly, HB 1286 redirects forfeiture proceeds into a neutral account. This vitally important. Police and prosecutors should be funded fully by tax revenues. They should not go begging for dollars. Moreover, they should not distort priorities to emphasize the pursuit of crimes that produce revenue for equipment, training and overtime.

There is another reason for putting forfeiture proceeds in a neutral account. It is your job as legislators to raise and appropriate funds. Your greatest power is the power of the purse. North Dakota's current forfeiture law weakens your authority. The laws give your power to the execute branch--specifically members of law enforcement and prosecutors.

That is dangerous and it violates the separation of powers. Current state law allows law enforcement and prosecutors to have both the power of purse and the sword. You should take back your power of the purse.

For these two reasons and others, my colleagues and I ask you to support HB 1286. I stand ready to answer your questions at any time during the legislative session.

Thank you.

Very truly yours,

Lee U. McGrath
Senior Legislative Counsel
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Minneapolis MN 55402

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**AMERICANS FOR
PROSPERITY**

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January 29, 2019

Testimony in Support of HB 1286

Chairman Koppelman and members of the Committee thank you for the opportunity to speak today. My name is Michael Fedorchak, the North Dakota State Director of Americans for Prosperity. On behalf of AFP activists across North Dakota, I urge you to support House Bill 1286, which makes long-overdue reforms to our civil forfeiture system.

Civil asset forfeiture allows law enforcement agencies to take and keep property that they suspect is connected to criminal activity, or that represents the profits of wrongdoing—all without convicting or even charging the property owner with a crime. Cash, cars, and even houses have been seized under this program. Unfortunately, North Dakota's civil asset forfeiture policies bypass basic due process more than any state but Massachusetts.

North Dakota requires no conviction to permanently forfeit property. In other words—law enforcement can take and keep the property of legally innocent people that may have been used in a crime without their knowledge or consent. What's more, law enforcement need only meet the standard of probable cause to seize property, a standard that would never be enough to render a verdict in a criminal trial.

Due to our low forfeiture threshold, local law enforcement agencies can keep up to 100% of forfeiture proceeds. This provides an incentive to seize property that goes far beyond the original intent of the policy. Left unchecked in other states, law enforcement has even used civil forfeiture to acquire margarita machines and Zambonis.¹ North Dakota does not require law enforcement agencies to track their forfeitures or account for how proceeds are used, a basic due diligence practice common elsewhere which should be uncontroversial standard practice.

H.B. 1286 establishes common-sense reporting requirements about seizures and forfeitures to add needed transparency and accountability. The legislation also takes the crucial step of redirecting proceeds from forfeitures to the state schools fund rather than to local police departments, removing due process-undermining incentives currently in place. By requiring a criminal conviction as a pre-requisite for forfeiture and raising the standard of

¹ See: Renée C. Lee, "Montgomery County DA says funds used for liquor at cook-off." *Houston Chronicle*, March 18, 2008. <https://www.chron.com/neighborhood/humble-news/article/Montgomery-DA-says-funds-used-for-liquor-at-1757341.php>;

Laura Krantz and Jessica Trufant, "Audit: Worcester DA's office bought Zamboni, lawn gear with forfeited drug money." *The Metro West Daily News*, February 13, 2013.

<https://www.metrowestdailynews.com/x1522323792/Audit-Worcester-DAs-office-bought-Zamboni-lawn-gear-with-forfeited-drug-money>

proof that property was knowingly involved in a crime to “clear and convincing evidence,” H.B. 1286 better protects innocent North Dakotans.

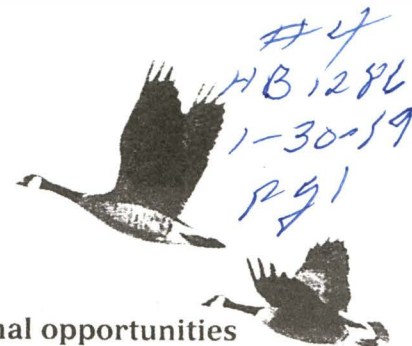
Lastly, I want to stress that nothing in H.B. 1286 impedes the important work that our dedicated law enforcement officials do every day to keep our communities safe. Law enforcement will still be able to seize assets from suspected criminals in the course of investigations, H.B. 1286 simply ensures that reasonable due process requirements are met before the state can keep the property. By ensuring that North Dakotans’ constitutional rights are upheld, H.B. 1286 will improve trust in our state’s law enforcement, helping them do their jobs more easily.

For these reasons, I urge you to support House Bill 1286. Thank you. Sincerely,

Michael Fedorchak
State Director
Americans for Prosperity-North Dakota

North Dakota Wildlife Federation

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



TESTIMONY OF JOHN BRADLEY NORTH DAKOTA WILDLIFE FEDERATION HOUSE BILL 1286 JUDICIARY COMMITTEE JANUARY 30, 2019

Chairman Koppelman, members of the House Judiciary Committee:

For the Record, I am John Bradley, Executive Director of the North Dakota Wildlife Federation (NDWF). I'm here today representing our 1,500 members in 15 affiliated wildlife and sportsmen's club across North Dakota.

The North Dakota Wildlife Federation rises in support of the Department of Game and Fish in opposition to HB 1286. Our chief concern with the bill is the inclusion of the RAP program. RAP was created by Legislature in 1987, and named the NDWF to be the recipient of the fish and wildlife violation forfeited property, to be sold at public auction, with proceeds used for the RAP program.

We keep and manage the funds in a separate bank account, do an internal audit every year, and provide report annually to the Game and Fish Department. The RAP account is managed on recommendations from the RAP Committee comprised under agreement with Game and Fish Department, and comprised of five members; three from NDWF and two named by the Game and Fish at least one of whom has to be in Law Enforcement.

Annual expenses are rewards (about \$ 10-12 K per year), advertising (\$1,000 per year), and furnishing the RAP trailer with RAP give away items; pens, pads, fish rulers, bumper stickers, pocket calendars and refurbishing mounts or displays for the RAP trailer. The tow-behind RAP trailer was purchased with NDWF donated funds and remodeled into an exhibit trailer. NO RAP funds went into purchase of trailer, owned by NDWF, but leased at no charge to Game and Fish so they can haul it to sport shows and exhibits, and it is insured as long as it is towed by Game and Fish vehicle.



PO Box 1091 • Bismarck, North Dakota 58502 • E-mail: ndwf@ndwf.org • Fax: 701-223-4645
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HOUSE BILL 1286 TESTIMONY
SENATE JUDICIARY COMMITTEE
JANUARY 29, 2019
PRAIRIE ROOM

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By Jeremy Ensrud, Assistant Attorney General

Mr. Chairman and Members of the Committee:

My name is Jeremy Ensrud and I appear on behalf of the Attorney General. I wish to testify in opposition to House Bill 1286.

Asset forfeiture is a tool commonly used by law enforcement and prosecutors in the battle against drug dealers. Asset forfeiture is useful to deprive criminals and criminal organizations from their ill-gotten gains. House Bill 1286 would severely hamper law enforcements ability to both seize and forfeit the proceeds and tools of the drug world.

House Bill 1286 would amend NDCC 19-03.1-36 so that law enforcement would not be able to seize conveyances or currency until after a criminal conviction. While this may sound good in theory, it would seriously undermine seizures. Larger currency seizures are the proceeds of local narcotics sales that will be paid to out of state narcotics traffickers who are closer to the source. If law enforcement is unable to seize the currency, the local drug dealer will be able to pay back their source and the only one to benefit will be the larger drug dealers.

The inability to seize conveyances without a conviction will also allow drug dealers to protect the very vehicles they use to transport illegal narcotics. Drug dealers are generally quite sophisticated in their knowledge of narcotics prosecutions. If a drug dealer is arrested while transporting a large amount of narcotics, it is common knowledge that law enforcement will attempt to seize the vehicle. As a result, it is extremely common for traffickers of narcotics to use rental vehicles instead of their

personal vehicles when transporting narcotics. If a drug dealer is given a large amount of time between their arrest and the seizure of the vehicle it would allow them to return the vehicle out of state or sell the vehicle to avoid forfeiture.

The inability to forfeit currency without a conviction will also prevent the seizure of the proceeds of narcotics sales as they are leaving North Dakota. Generally illegal narcotics are transported into North Dakota, and the proceeds are transported to source states such as California. An individual returning the proceeds of their narcotics sales will have sold all of their narcotics. When a known drug trafficker is stopped by law enforcement with a large amount of currency, but without a large amount of narcotics, forfeiture would not be possible.

The requirement for a conviction would also tie prosecutor's hands as to the outcomes of cases. Prosecutors commonly plead felony drug dealing charges to lower level offenses or may dismiss altogether. This happens both in cases of leniency as a result of the defendant's circumstances and in the case of defendants cooperating with law enforcement. If House Bill 1286 passed a prosecutor who reduced charges for a cooperating witness would be forced to allow the drug dealer to retain the profits of the drug sales.

The requirement of a conviction would adversely impact law enforcement and prosecutors in the instance of defendant's who flee while on release. Defendants who are charged with dealing in narcotics are commonly from outside of North Dakota. It is not uncommon for defendants to flee back to their home state and avoid prosecution for years on end. Under House Bill 1286, the defendant would benefit from fleeing as nothing could be forfeited.

House Bill 1286 also addresses the proportionality of forfeitures. The U.S. Supreme Court is currently addressing this issue. On November 28, 2018, arguments

were heard in Timbs v. Indiana. The case directly addresses the issue of proportionality of forfeitures. It would be prudent to wait for the results of this decision to insure compliance with the decision.

House Bill 1286 would also direct all currency and the proceeds to the sale of any forfeitable property to be deposited to the state school fund. This change is presumptively to avoid the seizing agencies from having an incentive to unlawfully seize property or currency. Drug task forces around the state are generally responsible for the seizure and forfeiture of vehicles and currency. These task forces commonly distribute the proceeds from forfeitures to other organizations. For example, in Minot the task force distributes proceeds as follows: 10% to the Ward County State's Attorney's Office, 30% to the Bureau of Criminal Investigation, 30% to the Ward County Sheriff's Office, and 30% to the Minot Police Department. None of these agencies use the proceeds to pay employees' salaries or distribute bonuses. These agencies have most recently used the proceeds to fund employee training, improved phones within the Ward County Jail, and a new radio system.

The final area of concern for House Bill 1286 is its amendments to NDCC 62.1, commonly referred to as the weapons or firearms section. Currently under 62.1-01-02, a judge may forfeit a firearm possessed by a convicted felon. If House Bill 1286 passes, a judge would not be able to forfeit a firearm possessed by a convicted felon. Rather, the local state's attorney would need to initiate the civil forfeiture process. This would both prove costly and unnecessary.

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Office of
McLean County State's
Attorney

McLean County

STATE OF NORTH DAKOTA

712 5th Avenue
P.O. Box 1108
Washburn, ND 58577-1108
(701) 462-8541
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lerrickson@nd.gov

January 30, 2019

Mr. Chairman and members of the committee:

My name is Ladd Erickson and I am the McLean County State's Attorney. I appear before the committee in opposition to HB 1286, and will be supporting my opposition with the attached documents and oral testimony. Thank you.

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCLEAN

SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota,)	McLean Co. Civil Case # 28-2016-CV- 28
)	
Plaintiff,)	
)	
v.)	COMPLAINT
)	
\$24,832.00 in U.S. Currency,)	
)	
Defendant.)	

The State of North Dakota through McLean County State's Attorney Ladd R. Erickson
alleges and submits:

I.

This is a civil forfeiture action pursuant to Chapters 29-31.1 and 19-03.1 of the North
Dakota Century Code, et. seq;

II.

That \$24,832.00 was seized by the McLean County Sheriff's Department during a traffic
stop in McLean County on July 21, 2016;

III.

That the \$24,832.00 is in the custody of the McLean County Sheriff, 706 6th Avenue,
Washburn, North Dakota;

IV.

That the \$24,832.00 was seized from a large bag in the engine compartment air filter of
the vehicle driven by Anthony Deonte Williams during a traffic stop;

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V.

That the \$24,832.00 is the proceeds of illegal drug transactions, and is presumed to be so under N.D.C.C. § 19-03.1-23.3;

VI.

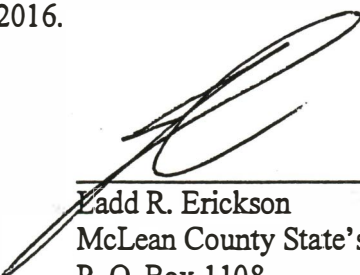
That the \$24,832.00 is the proceeds of illegal drug transactions based on the following:

1. The \$24,832.00 was being carried on a highway in an unusual manner and exceeded \$10,000.00;
2. Mr. Williams told Detective Aaron Matties he was traveling from Minot to Bismarck. He told Deputy Nielsen he was traveling from Minot to Dickinson. Mr. Williams indicated two different trip plans to two different officers. During the stop, Mr. Williams used two different cell phones and was making several calls/texts to several different people indicating that he was stopped by Wilton, ND and stating to "tell the other guy that he got stopped";
3. While searching the vehicle, officers found two money gram order receipts. One from Mr. Williams to Kiah Williams in Nevada dated July 17, 2016 in the amount of \$900.00 purchased from the Minot Walmart. The other one from Mr. Williams to Maria Haro Chavez in Mexico dated July 16, 2016 in the amount of \$950.00. Text messages on Anthony Williams' phone showed drug trafficking;

VII.

WHEREFORE, the plaintiff prays for an Order for Forfeiture of the \$24,832.00 to the McLean County Sheriff's Department.

Dated: This 1 day of September, 2016.



Eadd R. Erickson
McLean County State's Attorney
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Telephone (701) 462-8541
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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCLEAN

SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota,) McLean County Cr. #28-2018-CR-00207
) McLean County Cr. #28-2018-CR-00208
)
Plaintiff,) **MOTION TO FORFEIT ONE 2016 HYUNDAI**
) **ELANTRA, VIN # 5NPDH4AEGH699887;**
) **and ONE 9 MM SMITH AND WESSON**
) **SHIELD HANDGUN, SERIAL NO. HDR0336;**
) **\$296.00 IN U.S. CURRENCY**
Kevin Christopher Spurrier,)
Cassidy Wayne Stewart,)
)
Defendants.)

The State of Dakota through McLean County State's Attorney Ladd R. Erickson hereby motions the Court under N.D.C.C. § 29-31.1-08 and § 29-31.1-09 to forfeit a 2016 HYUNDAI ELANTRA, VIN #5NPDH4AEGH699887; \$296.00 IN U.S. CURRENCY; and a 9 MM SMITH AND WESSON SHIELD HANDGUN, SERIAL NUMBER HDR0336 that was seized from the defendants on July 24, 2018 after a traffic stop in McLean County. The State supports its motion in the attached Brief.

BRIEF

The 2016 HYUNDAI ELANTRA is forfeitable property because it is a vehicle used to traffic methamphetamine and marijuana from California to North Dakota. The \$296.00 in U.S. CURRENCY is the proceeds of illegal drug transaction. The 9 MM SMITH AND WESSON SHIELD HANDGUN was possessed by Cassidy Stewart, who is a convicted felon. The vehicle and gun are forfeitable property based on the following:

I.

The 2016 Hyundai Elantra is owned by Dawn Marie Hard of Carmichael, California. Deputy Nielsen noticed three individuals acting suspicious at the Cenex in Wilton, ND near the

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gas pumps. After several minutes, one of them, Keith Caruso, hopped on a street bike, pulled up to a stop sign, and spun his rear tire in an attempt to make Deputy Nielsen pursue him. Moments later, the Hyundai Elantra which was being driven by Cassidy Stewart, where Kevin Spurrier was the passenger, left the Cenex parking lot. Deputy Nielson followed them for around thirty minutes and he pulled them over when they began to drive at excessive speed on Hwy 83. When he approached the vehicle, Deputy Nielsen could smell a strong odor of marijuana coming from the vehicle and both defendants appeared nervous. During a search the following was found on the defendants or in the vehicle: several drugs and drug paraphernalia, a Samsung phone, three cell phones in backpack, wallet in backpack containing \$175 in U.S. Currency, \$121 in U.S. Currency, multiple documents showing ownership of the vehicle in glove box, four electronic devices, 40 caliber ammo, two letters Cassidy Stewart wrote about one pound of marijuana for sale for \$800, and receipts from a hotel in California the night before the stop in Kevin Spurrier's name. Cassidy Stewart had a strong odor of marijuana coming from his body. During a strip search, a nugget of marijuana was exposed in his underwear and lots of loose marijuana in his underwear and socks totaling 2 grams. A detention officer saw of baggy hanging out of Cassidy's rectal cavity. Cassidy used his hand to push in back inside his rectal cavity and refused to remove it. A warrant was obtained to Xray Cassidy's rectal cavity which confirmed something in his rectum. The doctor pulled out loose marijuana from Cassidy's rectum and thought she could feel a plastic bag further in but could not safely remove it. On July 26, 2018, Cassidy Stewart had a bowel movement while in isolation at the McLean County Law Enforcement Center and contained in it was a clear baggy of methamphetamine.

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II.

After the arrest of Stewart and Spurrier, the McLean County Sheriff's office and States Attorney's office received several phone calls from Dawn Hard requesting that her 2016 Hyundai be returned to her. She indicated that she owned a salvage yard in California and that she has a lot of cars registered in her name. She was adamant and persistent about getting her vehicle back fast. It was discovered through interviews, phone calls and investigation of the cell phones that Dawn Hard was lying and working with Kevin Spurrier to bring drug to North Dakota for profit.

A search warrant was obtained to review the phones found in the defendants' possession. A search of those phones showed pictures of Kevin Spurrier with multiple marijuana plants. There were 1,020 SMS messages about scoring drugs. For examples: Message #8 - Dawn Hard admits to funding the trip to North Dakota, car and product; Message #9 - Dawn Hard asks if things are going as planned and the projected prices. She states I was told 30k take home I'm getting 4k." Message #10 - Kevin tells Dawn to stop texting and checking on what's left or specifics on what's going on. Message #27 - Kevin states that the LB of clear is a ounce heavy so he can take some of it. Message #53 - Kevin tells Bri they might be on a North American tour. People are selling their mothers for us to come and flood their towns. I might have to do this again with you. Message #113 - 153, 192-200 - talk about Kevin getting drugs from Bri and Dawn being involved, they talk about it in code about the product that is brought to ND to sale.

There is also a video of Keith Curuso in the seized car fanning a large amount of cash and saying they made it all the night before and still had more product to sell. The video was made the morning of the arrest. Two photos of large bags of meth were also on the phones.

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Other evidence obtained from the phones search warrant showed twenty-eight (28) photos of Cassidy Stewart and Kevin Spurrier posing with a hand gun and large amount of cash. The handgun is the loaded Smith and Wesson M&P 9 mm shield hand gun with serial number HDR0336 that was found through a destructive examination search warrant of the white 2016 Hyundai bearing California license plate number 8DMA899.

III.

The 2016 Hyundai Elantra; \$296.00 in U.S. Currency, and 9 mm Smith and Wesson Shield Handgun are in the custody of the McLean County Sheriff's Department, 709 5th Avenue, Washburn, North Dakota.

THEREFORE, the State respectfully requests the Court issue an order forfeiting the seized 2016 Hyundai Elantra, VIN# 5NPDH4AEGH699887; \$296.00 in U.S. Currency and 9 mm Smith and Wesson Shield Handgun, serial number HDR0336 to McLean County Sheriff's Department.

Dated this 17 day of November, 2018.



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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MCLEAN

SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota,

) **McLean Co. Civil Case # 28-2018-CV-188**

)

Plaintiff,

)

v.

)

)

One 2006 BMW 330,

)

VIN #WBAVB33556AZ88305;

)

One 2001 Honda Accord,

)

VIN # JHMCG56681CO20111; and

)

\$1,125.00 in U.S. Currency,

)

)

Defendant.

)

FINDINGS AND ORDER

FINDINGS

¶ 1 At 11:00 a.m. on January 11, 2019, in the Burleigh County Courthouse the Court heard sworn testimony from Morton County Sheriff's Detective Dion Bitz and McLean County Sheriff's Detective Justin Krohmer regarding this civil asset forfeiture action brought by the State.

¶ 2 The Court finds that this case has been properly plead and served upon Jacob Todd Stein who was the owner of the property when it was seized. The Court also finds that Jacob Todd Stein filed letters with the Court resisting this forfeiture action and requesting that he be transported to this hearing from the North Dakota State Penitentiary where he is serving sentences for criminal offenses in North Dakota, but not necessarily related to this case. The Court denied that request because this is a civil case, and the Court finds that Mr. Stein did not make requests of the Court to appear by telephone or interactive television.

¶ 3 From Detective Krohmer's testimony and exhibits, the Court finds convincing evidence that the \$1,125.00 seized from inside the BMW that is listed on the complaint was stolen money, and money likely stolen from a burglary and break-in of an ATM machine on September 9,

2018, in Fessenden, North Dakota. The Court was provided a photograph of a “tally” sheet seized by McLean County deputies during their September 10, 2018, search of the BMW - and that tally sheet depicted money someone had counted out and marked down the varying denominations of money they were counting. That is evidence someone had received a large unknown amount of cash and was counting it. In addition, this cash was seized from a McLean County traffic stop and car search within a day of the ATM in Fessenden being broken into.

¶ 4 Along with the cash, McLean County deputies found pry bars in the BMW, and the Court was shown a photograph of them. Detective Krohmer testified that he had been provided crime scene photos showing pry marks on doors or windows that burglars had made when they pried them open to enter closed businesses. Detective Krohmer testified that he had compared the pry bars to the crime scene pry marks and that those comparisons could be a match.

¶ 5 After Mr. Stein was arrested for Driving Under Suspension by McLean County deputies on September 10, 2018, the Court was shown a booking photo of him wearing shorts with large “Just Do It” logo on the left side. The Court was shown a still photograph taken from an in-store video of a burglar in a business in New Leipzig, North Dakota, on September 9, 2018, and that burglar had a logo matching the size, shape, and location of the logo on Mr. Stein’s pant/shorts. Cigarettes and coins had been taken from the New Leipzig burglary. McLean County deputies seized cigarettes and coins from the BMW on September 10th, and those items matched.

¶ 6 Other items seized from the BWM on September 10, 2018, and for which the Court was provided photographic comparssions of included:

- 1) One of the burglars was wearing a black hoodie sweatshirt in the Fessenden business that was burglarized on September 9th, and the Court was shown a still photo of that

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hoodie from the businesses in-store video. McLean County deputies seized a matching black hoodie from the BMW on September 10, 2018;

- 2) In-store videos from burglarized businesses show the burglars wearing gloves. The Court was shown still photographs of the gloves from those videos. McLean County deputies seized two sets of gloves from the BMW that the Court was shown a photograph of. Both sets of gloves are greyish with darker coloring around the fingers. The Court compared the gloves to the still photos of the gloves the burglars were wearing inside businesses and they appear to the Court to match;
- 3) In addition to the cash stolen from an ATM in Fessenden on September 9th, a large box was Snickers candy bars was taken during that burglary. The Court was shown a photograph of large Snicker Bar box and numerous Snicker Bars that McLean County deputies seized from the BMW on September 10, 2018;
- 4) During the September 9th burglar spree, one of the burglars was wearing a white baseball cap with a logo on the center top of the bill. The Court was shown a still photograph of that baseball cap from an in-store video. The Court was also shown, then, a photograph of a white baseball cap with a logo in the center of the bill that was seized from the BMW by McLean County deputies on September 10, 2018.

¶ 7 Based on the evidence presented, the Court will detail the evidence presented specifically related to the U.S. Post Office burglary that had occurred in Flasher, North Dakota, on September 9, 2018. Detective Krohmer testified that some personal cards with a women's name on them had been found by McLean County deputies when they searched the BMW on September 10th. In addition, a passenger was with Mr. Stein when the BMW was stopped by McLean County. That passenger was wearing white high-top tennis shoes and the Court was

shown a photograph of that. Detective Krohmer took a close up photograph of the soles of those tennis shoes, and sent that photograph to Detective Dion Bitz in Morton County.

Detective Bitz had processed the Flasher Post Office burglar scene and had preserved a shoe print that was left on a sheet of paper on a countertop in the post office that one of the burglars had apparently jumped onto and over. Detective Bitz compared the shoe print on the paper with the photograph of the sole of the shoe that he had been sent by Detective Krohmer and determined that they matched.

¶ 8 In addition, Detective Bitz was able to verify that the personal cards with a woman's name on them that McLean County deputies had seized from the BMW matched the cards taken from the Flasher Post Office burglary.

¶ 9 In the early morning hours of August 25, 2018, McLean County Sgt. Gordy Malaterre was on patrol and made contact with a 2001 Honda Accord sitting behind "Grimsley's," a convenience store in Underwood, North Dakota, that was closed for business at the time. When Sgt. Malaterre investigated the car he made contact with the driver, who was Mr. Stein. Mr. Stein was arrested for Driving Under Suspension and felony Possession of Drug Paraphernalia. Detective Krohmer testified that during a further investigation of the Honda Accord and why it might be possibility casing a closed convenience store in the middle of the night, Mr. Stein gave multiple accounts regarding the ownership and possession of the car. The Honda Accord did not have a registration, bill of sale, or title. And, Mr. Stein gave differing versions of how he got the car and from where.

¶ 10 During a search of the car McLean County deputies found a cash bag with "Western Bank and Trust" stenciled on it. The Court reviewed a photograph of that bag. The Court was also shown photographs of numerous lock keys that were found the car, and Detective Krohmer


testified that the keys were similar to keys that had been stolen in a previous burglary in Wells County, North Dakota. There was a plastic grocery bag in the car which contained a light with a headband that could be used during nighttime burglaries to light areas without turning on the businesses' lights. McLean County deputies also found bags of tools with pry bars and a metal grinder. When the business in Fessenden was burglarized on September 9, 2018, Detective Krohmer testified that one of the burglars was seen on the in-store video using a similar metal grinder to open the ATM.

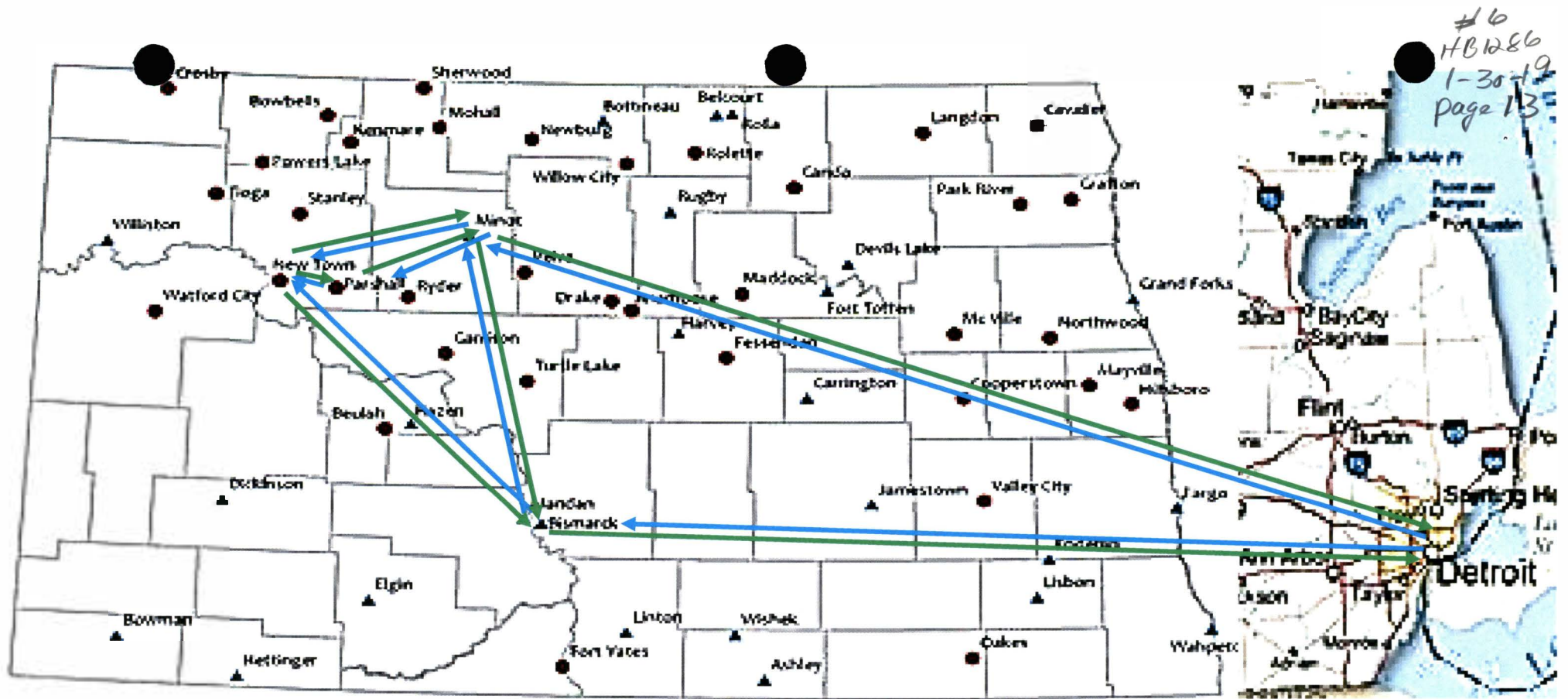
¶ 11 In a civil asset forfeiture action the burden is on the State to prove that the property at issue was used, would have been used, or was the proceeds of felony criminal conduct in North Dakota. After hearing the testimony and reviewing the photographic exhibits of the physical evidence the State offered the Court, the Court finds the State has met its burden.

ORDER

¶ 12 The Court hereby ORDERS the property captioned above forfeited to the McLean County Sheriff's Department.

¶ 13 Dated 1/15/19


Bruce A. Romanick, District Court Judge



Since 2016 approximately \$700,000.00 in U.S. Currency has been seized by federal, tribal, state, or local law enforcement agencies between Detroit, Michigan and the oil patch.

1/22/2019

Six doctors charged in \$500m opioid scheme preyed on addicts, prosecutors say - Story | WJBK



(<http://www.fox2detroit.com>)

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[Hall of Shame](http://www.fox2detroit.com/news/hall-of-shame) (<http://www.fox2detroit.com/news/hall-of-shame>) [Let it Rip](http://www.fox2detroit.com/let-it-rip) (<http://www.fox2detroit.com/let-it-rip>) [Chapter 10](http://www.fox2detroit.com/chapter-10) (<http://www.fox2detroit.com/chapter-10>)

Six doctors charged in \$500m opioid scheme preyed on addicts, prosecutors say

Six doctors charged in opioid scheme preyed on addicts, prosecutors say

By: **FOX 2 Staff** (<mailto:wjbkwebteam@foxtv.com>)

body=[http://www.fox2detroit.com/news/local-news/six-doctors-charged-in-](http://www.fox2detroit.com/news/local-news/six-doctors-charged-in-500m-opioid-scheme-preyed-on-addicts-prosecutors-say)

[500m-opioid-scheme-preyed-on-addicts-prosecutors-say](http://www.fox2detroit.com/news/local-news/six-doctors-charged-in-500m-opioid-scheme-preyed-on-addicts-prosecutors-say))

VIDEO POSTED: DEC 07 2018 05:42PM EST

UPDATED: DEC 07 2018 06:31PM EST



DETROIT (FOX 2) - Prosecutors say six doctors have been charged in a scheme that involved millions of opioid drugs and unnecessary medical procedures in southeastern Michigan.

U.S. Attorney Matthew Schneider says it's "particularly egregious" for doctors to prey on addicts.

An indictment unsealed Thursday says the doctors prescribed opioids (<http://www.fox2detroit.com/news/local-news/six-detroit-area-doctors-indicted-in-500m-health-care-fraud>) to induce people to visit. The indictment says

patients were forced to undergo other treatments. Nearly \$500 million was billed to insurers, mostly Medicare and Medicaid.

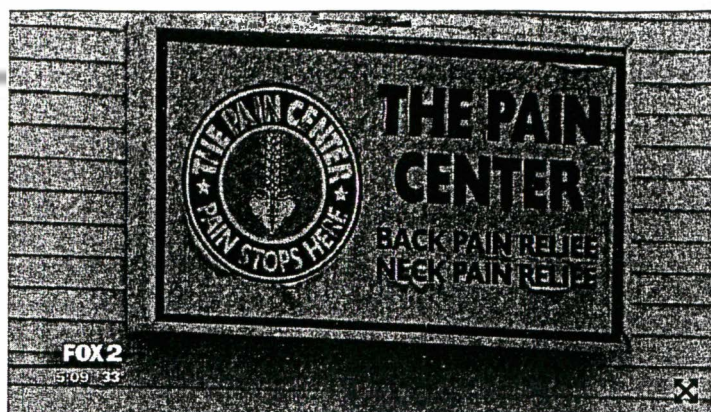
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Ad Content

The alleged ringleader was Dr. Rajendra Bothra, who operated pain clinics in Warren and Eastpointe. He's charged with conspiracy, fraud and other crimes. He was returned to jail to await a detention hearing Friday. His attorney declined to comment.

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Prosecutors say the six doctors operated pills mills and gave out drugs that weren't necessary.

Mary Jonas was a patient of Dr. Gaiu Edu, one of the six doctors. She went to her first appointment at the Pain Center in Warren about two months ago and immediately knew something was wrong.

"I instantly had anxiety. Must have been 50 people in there," Jonas said. "It just reminded me of a drug house

But Jonas says a pinch nerve was causing her so much pain that she pushed her concerns aside and met with Dr. Edu. She says the doctor did not offer a thorough explanation of the treatment she was receiving

"I said what were all these shots that you gave me he says oh that was for your bulging disk and they burned nerves in your back... I've never felt this much pain before," she said.

Authorities say the six doctors fraudulently billed medicare and illegally prescribed controlled substance in a scheme that netted them more than \$500 million.

The Pain Center locations are owned by Dr. Bothra. Federal officials called him the mastermind behind the scheme.

When Jonas heard about the investigation into in fraudulent medical billing and illegally prescribing controlled substances she says she wasn't surprised.

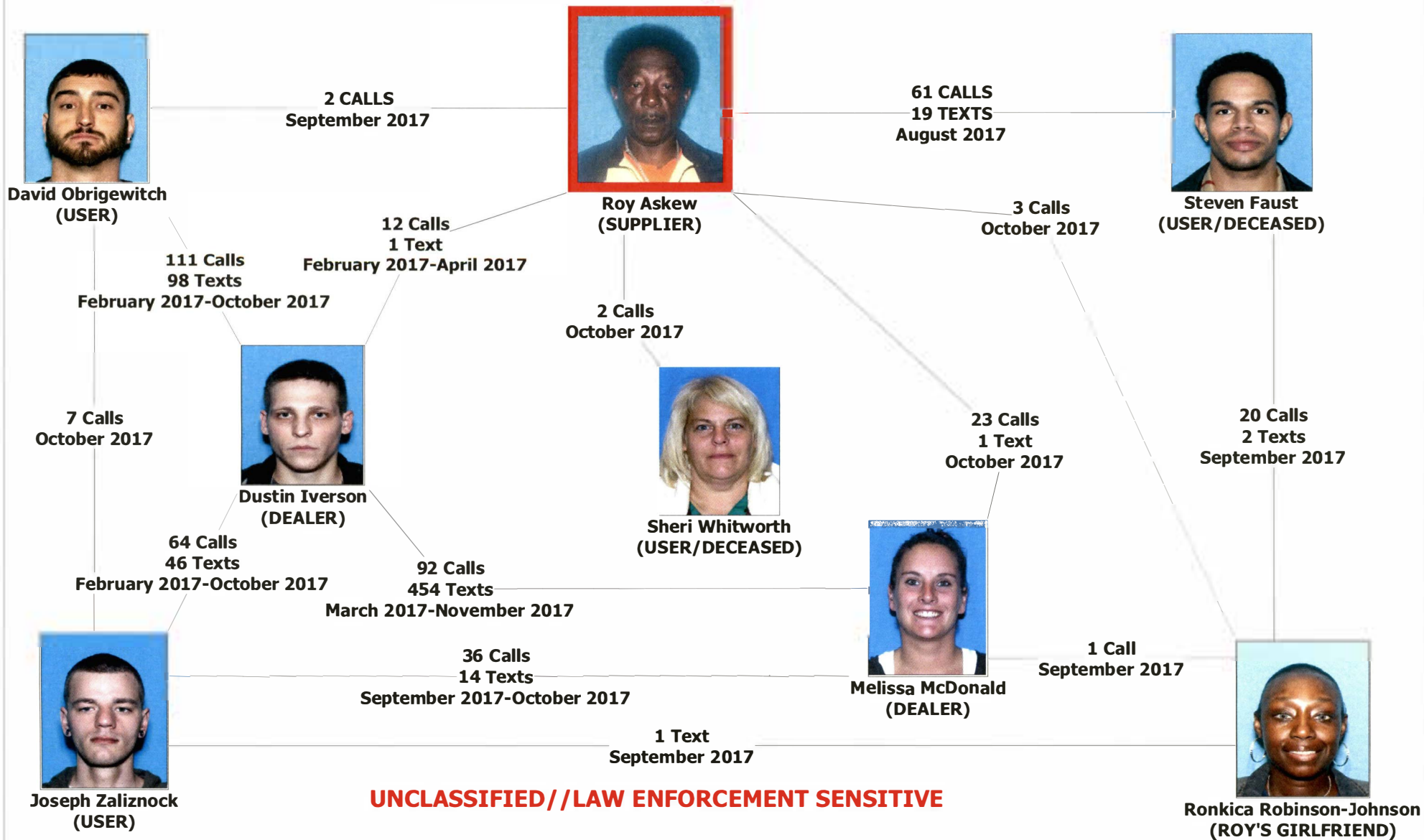
Jonas says she is considering a lawsuit.

The Associated Press contributed to this report.

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UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE

BCI CASE NUMBER 17-00711

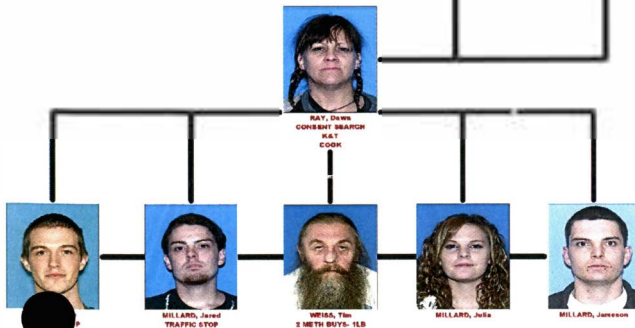
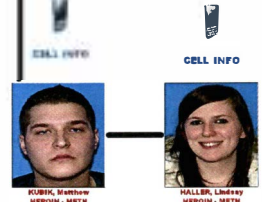


UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE

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CASE 13-088
DICKINSON, ND

TIED TO CALIFORNIA STREET GANG - CRIP MEMEBERS
OFFICER SAFETY HOTSHOOT PUT OUT



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P.1

FISCAL IMPACT EXPLANATION FOR 2019 HOUSE BILL 1286
OFFICE OF ATTORNEY GENERAL

**STATE AGENCY FISCAL IMPACT - OFFICE OF ATTORNEY GENERAL &
HIGHWAY PATROL**

	<u>OTHER FUNDS REVENUES</u>	<u>OTHER FUNDS EXPENDITURES</u>	<u>OTHER FUNDS APPROPRATIONS</u>
17-19	-	-	-
19-21	(491,831)	(491,831)	(491,831)
21-23	(491,831)	(491,831)	(491,831)

POLITICAL SUBDIVISIONS FISCAL IMPACT - CITIES & COUNTIES

	<u>OTHER FUNDS REVENUES</u>	<u>OTHER FUNDS EXPENDITURES</u>	<u>OTHER FUNDS APPROPRATIONS</u>
17-19	-	-	-
19-21	(2,384,376)	(2,384,376)	(2,384,376)
21-23	(2,384,376)	(2,384,376)	(2,384,376)

STATE COMMON SCHOOLS TRUST FUND

	<u>OTHER FUNDS REVENUES</u>	<u>OTHER FUNDS EXPENDITURES</u>	<u>OTHER FUNDS APPROPRATIONS</u>
17-19	-	-	-
19-21	2,876,207	2,876,207	2,876,207
21-23	2,876,207	2,876,207	2,876,207

Testimony for:
House Judiciary
Prepared by:
Sgt. Mike Bolme, Bismarck Police Department
2/4/19

#2
HB 1286
2-4-19
RJ

HB 1286-Opposition to changes to Asset Forfeiture Process

Mr. Chairman and members of the committee,

My name is Mike Bolme and I am a sergeant in the investigations section at the Bismarck Police Department. Prior to my promotion I was a narcotics investigator for eight years and was personally involved in multiple asset forfeiture proceedings.

Like you, I have sat through the testimony from both sides concerning this bill. We've heard from attorneys, civic groups, Chiefs of Police, Sheriffs, and even the Attorney General. What you haven't heard is how this bill, as written, will affect the people on the ground. The men in the arena per se. It's hard to see what is happening on the ground from 20,000 feet. So let me give you their perspectives.

I supervise five narcotics investigators and two internet crimes investigators. They investigate drugs and sex crimes. They are the men in the arena. Those seven investigators initiate more asset forfeiture proceedings than the rest of the department combined. That's because of the nature of the crimes they investigate. Drug dealing and human trafficking are cash rich businesses. You've heard testimony on how no one wants to give money back to drug dealers and human traffickers. Those two groups are the example because those two groups are who we seize the most cash and assets from. High level drug dealers have lots of money. Pimps have lots of money. Solicitors of human trafficking bring money to their prostitution deals. That's where the largest percentage of our seizures come from, using them as an example is not some political ploy to scare people.

In addition, the notion of some "perverse incentive" to seize innocent citizen's money and property is wrong. To quote my extremely wise Chief, "We go where the case takes us." The evidence follows the case, not the other way around. To think otherwise is to not know the nature of investigating crimes. There is a great deal of luck involved in catching the criminals at the right time. Sometimes it works out, sometimes it doesn't. Sometimes you catch them with a huge load of controlled substances, sometimes you catch them with cash. Sometimes you get neither. So to think that we somehow have a crystal ball which allows us to go where the forfeitures are going to be is incorrect. We take our shots, and hope we get the timing right. And by the way, we don't care which it is. A large quantity of money can have the same evidentiary value as a large quantity of methamphetamine. It's all about the evidence, it's not about the forfeitures.

Think about it this way. When was the last time you carried around a large quantity of cash? I guarantee you, if asked, you could have explained exactly where that money came from, and proven it. Criminals caught with proceeds of criminal activity, can't prove the legitimacy of those funds. They don't give receipts for selling drugs, and they don't deposit their money in banks. I have personally given seized money back, without a court proceeding, to people who could prove that the money was

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pg 2

legitimately gained. No one is out there trying to take money from innocent citizens, and there is a system in place to prevent that from happening. The prosecutor and a judge have to also agree on the forfeiture. Asset forfeiture is not the wild west, and we are not running amok.

We have heard no testimony on how the relatively small amount of assets forfeited statewide would affect the state school fund. No one is against funding schools. But I can tell you the loss of those funds would have terribly detrimental effects on my department's ability to effectively target criminal organizations. As we speak, two of my investigators are preparing to travel to a different state, armed with arrest warrants, in order to cut the head off the snake of one of those criminal organizations. The loss of asset forfeiture funds, or any sort of replacement, would make those kinds of operations virtually impossible.

Let me add some comments on accountability and oversight. As the supervisor in charge of my department's asset forfeiture account, I can tell you exactly where our money is spent. Training, equipment, investigations vehicles, and the lion's share of our department's K-9 budget come out of the asset forfeiture fund. Every penny spent is first scrutinized by me and has to meet the requirements spelled out by state law for the utilization of those funds. That spending also has to be approved by my Deputy Chief, the Chief, and finally fiscal. From the previous testimony from both sides, it appears we are all in agreement that more accountability is needed. That doesn't scare me. Even though it means I will have to drum up one more annual report, I know our books are right, and we have nothing to be afraid of. We are being responsible with that money, and it is going to where it is needed most. Keeping neighborhoods safe.

There is no mechanism in this bill, as written, in which the state would somehow make up the difference of the money they are taking from municipalities and counties. That leaves the burden on those municipalities and counties to make up the difference. The money for that equipment and training has to come from somewhere. Having been through my cities budget process, I have my doubts, but eventually we know it will come from the taxpayers. They will now bear the burden once born by those who would do us harm.

Finally, as someone who has been through asset forfeiture proceedings, and who now keeps the books for our department's asset forfeiture account, I can honestly tell you I still have faith in the system. I trust our officers, our prosecutors, and our judges to collectively get it right. That doesn't mean that more oversight and more scrutiny would be bad things. If they ensure that we get it right, then that's a positive outcome. No one is out there to take innocent people's property.

Mr. Chairman, members of the committee, please keep these considerations in mind as you debate this bill. The men and women with the boots on the ground, fighting the good fight, are counting on you. Thank you.

NDLA, H JUD - Shimek, Delores

#3
HB1286
2-4-19
PJ



Michelle & Riley Kuntz <michellelep502@gmail.com>

Sunday, February 03, 2019 9:32 PM

To:

NDLA, H JUD - Shimek, Delores

Subject:

HB1286 Civil Asset Forfeiture Reform

Attachments:

IMG_1317.jpg

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Hello,

We request a do pass recommendation, in conjunction with a yes vote on HB 1286, for the following simplified reasons.

This bill is written to protect the innocent. Guilty people committing crimes are not aided by this bill whatsoever. Imagine, for a moment, what it would be like to borrow a friend your car. Unbeknownst to you, that friend utilizes your property in the commission of a crime. Despite your goodwill, lack of knowledge, consent or involvement in said crime, your property is seized and you now have to fight the government, and it's unlimited budget, to get it back. The foregoing scenario is abhorrent to the fundamental principles inherent in the United States and North Dakota's Constitution and at this country's inception, precedent.

For an example at how egregious the other two branches of government act when proceeding against property, stand, that when property is to be seized and 'due process requirements' are 'met', the property in question is served with a lawsuit. Not the property owner, the property itself. Then, when the car, duly served by a Sheriff, does not answer the complaint, the property is taken.

Multiple other States have enacted civil asset forfeiture reform bills such as this one. California, of all places, has better protections than ND, so does Colorado, Wisconsin, Nebraska, New Mexico, Arizona, Kansas and Virginia. In Wisconsin and California, property is not legally taken unless there is an underlying criminal conviction. This bill, is far less stringent, even though it should be that difficult to steal someone's property.

Lastly, it seems as though the same people or organizations opposing this bill are the same ones that also opposed Constitutional Carry. Think about that for a moment or two.

For the foregoing reasons, we again ask for your yes vote on HB 1286.

Respectfully,

Mr. and Mrs. Kuntz and on behalf of Rita and Jay Kuntz

P.S. It seems as though many are claiming this bill is anti-law enforcement. That is nothing more than a well-worded, baseless claim, intended to strike fear into the Legislators.

Dickinson has about 17k people living here. Yet, in the attachment, you will see the DPD has an armored personnel transport. This must be necessary equipment expenditure due to all of the insurgent activity taking place here. Cops don't need any more money, let alone from innocent Americans.

© Riley and Michelle Kuntz

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BURLEIGH COUNTY SHERIFF'S DEPARTMENT

#4
HB 1286
2-4-19
KELLY LEBEN
SHERIFF

Testimony provided for: House Judiciary
By: Dustin Olson, Lt. Burleigh County Sheriff's Department

My name is Dustin Olson and I am a Lieutenant with the Burleigh County Sheriff's Department. I oversee the Enforcement Division which includes our Patrol and Investigation Sections. I come here today in opposition to House Bill 1286 as it is currently written.

The Burleigh County Sheriff's Department utilizes asset forfeiture as a means to cut off the supply to criminal activity or drug trafficking in our community. If assets are seized from suspects, it is because we can show the assets are direct links to criminal activity or have been obtained through illegal means. We must follow a process which includes the State's Attorney review. If they agree, the paperwork will be filed with District Court and it will go before a District Judge. A hearing will be held if requested by the defendant. At this point, testimony may be offered and a decision will be made by the judge.

Once the judgement is awarded to the Sheriff's Department, the money is deposited into a separate asset forfeiture account at the Auditors Office. The Major of the Enforcement Division maintains the records of the funds deposited and spent from that account. Items that have been purchased in the past have included a digital evidence program, a Cellebrite machine used for extracting phone data, weapons and ammunition to name a few. I want to stress that we do not go around seizing innocent people's property or cash. There must be a link to criminal activity. We do not use these assets to fund our department however they are critical to us because they allow us to purchase items that enable us to better serve our community and investigate crimes. This is why the funds must remain within our local control.

Another concern of ours is the requirement that a conviction be obtained before assets can be forfeited. Convictions will not always be available to us. One example that I can provide is where the suspect flees to an area that we will not extradite from, therefore an active arrest warrant is issued. The area that the suspect flees to could be another state or country. Even though an arrest warrant is in place, the likelihood of the suspect ever returning is very low. What do we do with the seized assets that we can prove were obtained illegally? With a criminal case the drug evidence remains in our evidence room indefinitely. Presently, we are able to move forward with the seized assets through asset forfeiture and would no longer be able to if House Bill 1286 passes as written.

Another example that I can provide you is where assets are seized and multiple suspects are involved. All of them provide statements indicating that the assets were obtained illegally by one of the other suspects and distance themselves from the seized assets. Nobody claims ownership. What do we do with those assets? We can't give it back since we know they were obtained from illegal means and nobody claims ownership.

For these reasons, I ask that you consider amending House Bill 1286 as written and remove the requirement for a criminal conviction and allow the funds to be utilized at the local level.

COURTHOUSE

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BURLEIGH MORTON DETENTION CENTER

4000 Apple Creek Road • PO Box 2499
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Testimony Prepared for the
House Judiciary
January 30, 2019
By: Donnell Preskey, NDACo



#15
HB 1286
2-4-19
P31

RE: OPPOSITION to House Bill 1286 – Asset Forfeiture

Good morning Chairman Koppelman and committee members. For the record, my name is Donnell Preskey representing the North Dakota Association of Counties which I serve as Executive Director for the Sheriff's and Deputies Association (NDSDA). NDSDA strongly opposes HB 1286 as written.

They understand the intent of this bill but firmly disagree that there is a problem with the asset forfeiture process.

The Sheriffs agree transparency would create greater education and understanding of the process with the public. Therefore, they are supportive of an annual report being filed with the Attorney General's office that is set forth in Section 28 of this bill. The Sheriffs are also supportive of the proposal in Section 13 which establishes that forfeitures must be proportional along with the burden of proof as outlined in Section 22.

Sheriffs oppose the requirement that a conviction must take place prior to ^{For Forfeiture} a seizure as well as the concept that allocations from seized funds and property must go elsewhere than to the agency responsible for the seizure.

The Sheriffs and Police Chiefs have worked together to compile a sampling of data as it relates to asset forfeitures in the state. The sampling exemplifies the point that our law enforcement are acting responsible and are not abusing their power in efforts to keep our communities safe.

Our sampling was conducted with assistance from 37 counties and cities (20 counties & 17 cities) from across the state and agencies representing small and large cities.

First, I want to give you an idea of the amount of money we are talking about.

We asked agencies to provide their average in asset forfeiture each year over the past five years. The grand total for those 37 agencies is \$654,000 which is an average of \$17,600 per agency.

We also asked agencies to estimate the current balance of their asset forfeiture fund in your agency. The grand total for the 37 reporting agencies was a little more than \$1 million or about \$29,000 for each agency. These amounts clearly demonstrate that local law enforcement is prudent and responsible with these public funds.

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P2

	Agency average in asset forfeiture each year over past five years	Estimate current balance of asset forfeiture funds in your agency
Grand Total	\$654,299	\$1,072,374
Average	\$17,684	\$28,983

What these funds are used for, according to input we collected during this survey, is primarily for equipment, training and support for our regional drug task force units. Law enforcement agencies repeatedly stressed the concern that the loss of these funds would jeopardize the effectiveness of task forces. Agencies listed other items purchased with the funds to include: cell phone forensic tools, body armor, evidence room investments, in-car video equipment and equipment for special ops teams.

Our local law enforcement indicate that a majority of forfeitures are based on criminal conviction, there are however instances when civil asset forfeiture is necessary and is an important tool for law enforcement. In both cases, assets are only forfeited through due process and a court order issued by a state district judge.

In order to best serve our communities, we need to ensure that those involved in the drug trade are not allowed to keep the profits of their illegal activity. Currently the funds received through the court process of asset forfeiture is reinvested into equipment needed to better fight the war on drugs along with those committing property crimes. This bill would inhibit officers in how they counteract illegal drug activity.

This bill proposes to shift the funds from the local agencies to the state. We see one of two or a combination of the scenarios playing out if this is not addressed; a greater burden will be put on the locals to raise property taxes to pay for drug fighting efforts or our law enforcement will be lacking the tools to continue the success they have been experiencing in getting hundreds of thousands of dollars in drugs off our streets, drug related money off the streets, and nabbing drug traffickers.

The ND Sheriffs and Deputies Association urges a Do Not Pass on HB 1286.

North Dakota 66th Legislative Assembly
HOUSE JUDICIARY COMMITTEE
Hon. Rep. Kim Koppelman, Chair
Hearing on January 30, 2019

#6
HB 1286
2-4-19
PJ1

Re: Testimony in Opposition to House Bill 1286

Chairman Koppelman and members of the Committee, I am Tracy Peters, Assistant Cass County State's Attorney. I oppose House Bill No. 1286.

Our asset forfeiture laws are an important and powerful part of our criminal justice system. With the forfeiture laws currently in place, property owners are afforded due process and the right to be heard.

House Bill 1286 requires a criminal conviction prior to initiating any forfeiture proceedings. Inevitably, this requirement would have unintended consequences.

If House Bill 1286 were to pass as written, law enforcement would be returning known drug money to drug dealers. I have personally handled a case involving \$286,000 US currency seized by law enforcement as proceeds of drug trafficking. In that case, there was overwhelming evidence the money was the proceeds of drug trafficking despite the fact the property owner was not convicted of a crime. Under the proposed language of House Bill 1286, the State would not have been able to pursue forfeiture of that money.

If House Bill 1286 were to pass as written, prosecutors would be forced to pursue drug charges they may not otherwise pursue. In some cases, drug traffickers decide to cooperate with law enforcement in exchange for consideration on their criminal charges. There are times when a traffickers cooperation warrants an outright dismissal of the charges. Under House Bill 1286, prosecutors would be left with the difficult choice of pursuing both the criminal case and forfeiture or dismissing the criminal case and returning the traffickers ill-gotten gains.

In conclusion, I ask you to oppose House Bill 1286. Thank you.

#1 HB1286
21 7/19
pl.

Sixty-fifth
Legislative Assembly
Of North Dakota

Introduced by

A BILL for an Act to amend and reenact subsection 5 of section 19-03.1-36 and section 19-03.1-36.2 relating civil asset forfeiture.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

5. When property is forfeited under this chapter, the board or a law enforcement agency may:
 - a. Retain it for official use or transfer the custody or ownership of any forfeited property to any federal, state, or local agency. The board shall ensure the equitable transfer of any forfeited property to the appropriate federal, state, or local law enforcement agency so as to reflect generally the contribution of that agency participating directly in any of the acts that led to the seizure or forfeiture of the property. A decision to transfer the property is not subject to review.
 - b. Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds must be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs, with any remaining proceeds to be deposited, subject to section 54-12-14, in the appropriate state, county, or city general fund. When two or more law enforcement agencies are involved in seizing a conveyance, the remaining proceeds may be divided proportionately.

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- c. Require the attorney general to take custody of property and remove it for disposition in accordance with law.
- d. Forward it to the bureau for disposition.
- e. Use the property, including controlled substances, imitation controlled substances, and plants forfeited under subsections 6 and 7, in enforcement of this chapter. However, in a case involving the delivery of a forfeited controlled substance by a law enforcement officer or a person acting as an agent of a law enforcement officer, no prosecution or conviction for simple possession of a controlled substance under subsection 6 of section 19-03.1-23 may be based upon the forfeited controlled substances supplied by the law enforcement officer or the officer's agent.
- f. Any law enforcement agency that forfeits property under this chapter or 29-31.1 shall file an annual report with the Attorney General indicating any pending forfeiture or completed forfeiture action. The report must include the types of property and dollar amount of the forfeited property, the jurisdiction which received the property and any other information as required by the Attorney General. The report shall be subject to the open records provision of chapter 44-04, and the Attorney General may enact rules to implement this subsection.

SECTION 2. REPEAL. Section 19-03.1-36.2 of the North Dakota Century Code is repealed.

SECTION 3. AMENDMENT. Section 19-03.1-36.6 of the North Dakota Century Code is created and enacted as follows:

19-03.1-36.6. Hearing on contested forfeiture--Order releasing or forfeiting property

If an answer is filed within the time limits in this chapter, the forfeiture proceedings must be set for hearing before the court. At the hearing, the state shall establish a constitutionally valid seizure of the property and clear and convincing evidence ~~probable cause~~ for instituting the forfeiture action following which any owner or person with a legal interest in the property to be forfeited who has filed an answer to the complaint has the burden of proving that the property to be forfeited is not subject to

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forfeiture under this chapter. If the court finds that the property is not subject to forfeiture under this chapter, the court shall order the property released to the owner or other person with a legal interest in the property as that person's right, title, or interest appears. The court shall order the property forfeited if it determines that such property or an interest therein is subject to forfeiture.

SECTION 4. AMENDMENT. Section 19-03.1-36.7 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.7. Legal interest in property Proportionality hearing.

1. A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.

2. At any time following determination of forfeiture by the Court, the interested party may request the court to determine whether the forfeiture is unconstitutionally excessive under the state or federal constitution. Vehicles valued less than two thousand dollars cannot be forfeited unless the court finds they have been modified to conceal contraband or currency. In determining the value of property subject to forfeiture the court shall determine fair market value of the property, the extent the interested party participated in the offense, and the extent to which the property was used or received in committing the offense. The court shall not consider the value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1286

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 19-03.1-36.8 of the North Dakota Century Code, relating to law enforcement agencies reporting seizures and forfeitures; and to amend and reenact sections 19-03.1-36.2, 19-03.1-36.6, and 19-03.1-36.7 of the North Dakota Century Code, relating to forfeiture proceedings, contested forfeiture hearings, and legal interests in forfeited property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-36.2 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.2. Forfeiture proceeding as civil action - Standard of proof.

Forfeiture proceedings are civil actions against the property to be forfeited and the standard of proof is ~~a preponderance of the evidence~~ clear and convincing evidence.

SECTION 2. AMENDMENT. Section 19-03.1-36.6 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.6. Hearing on contested forfeiture - Order releasing or forfeiting property.

If an answer is filed within the time limits in this chapter, the forfeiture proceedings must be set for hearing before the court. At the hearing, the state shall establish ~~probable cause~~ a valid seizure, and by clear and convincing evidence for instituting the forfeiture action following which any owner or person with a legal interest in the property to be forfeited who has filed an answer to the complaint has the burden of proving that the property to be forfeited is not subject to forfeiture under this chapter. If the court finds that the property is not subject to forfeiture under this chapter, the court shall order the property released to the owner or other person with a legal interest in the property as that person's right, title, or interest appears. The court shall order the property forfeited if it determines that such property or an interest therein is subject to forfeiture.

SECTION 3. AMENDMENT. Section 19-03.1-36.7 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.7. Legal interest in property.

1. A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence

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that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.

2. Upon a determination by the court that property is subject to forfeiture, the owner of the property to be forfeited or any other person with a legal interest in the property may petition the court to determine whether the forfeiture is unconstitutionally excessive.

- a. A vehicle valued at less than two thousand dollars may not be forfeited unless the court finds the vehicle has been modified to conceal contraband or currency.
- b. In determining whether a forfeiture is excessive, the court shall determine the fair market value of the property subject to forfeiture, the extent to which the owner or person participated in the offense, the extent to which the property was used or received in committing the offense, and, if any, the sentence imposed for committing the offense subject to forfeiture.
- c. The court may not consider the value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

SECTION 4. Section 19-03.1-36.8 of the North Dakota Century Code is created and enacted as follows:

19-03.1-36.8. Reporting.

- 1. As used in this section, "law enforcement agency" means a nonfederal public agency authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law, including the authority to conduct or engage in seizure and forfeiture.
- 2. Annually, each law enforcement agency shall compile the following information regarding seizures and forfeitures pending or completed by the agency under this chapter:
 - a. The types of property and dollar amount of the forfeited property;
 - b. The jurisdiction that received the property; and
 - c. The total number of seizures of currency.
- 3. The attorney general may require the reporting of additional information not specified in this section. The attorney general shall develop standard forms, processes, and deadlines for electronic data entry for annual submission of forfeiture data by law enforcement agencies.
- 4. Each law enforcement agency shall file with the attorney general a report of the information compiled under subsection 2 for the law enforcement agency and the corresponding prosecutor. A law enforcement agency that did not engage in seizures or forfeitures during the reporting period shall file a null report. The attorney general shall compile the submissions and issue an aggregate report of all forfeitures in the state.

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5. If a law enforcement agency fails to file a report within thirty days after the report is due, the attorney general may compel compliance by any means until the report is filed.
 6. The attorney general shall make available on the attorney general's website the reports submitted by law enforcement agencies and the attorney general's aggregate report. The reports must be updated annually."

Renumber accordingly

February 13, 2019

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P.1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1286

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 19-03.1-36.8 of the North Dakota Century Code, relating to law enforcement agencies reporting seizures and forfeitures; and to amend and reenact sections 19-03.1-36.2, 19-03.1-36.6, 19-03.1-36.7, 29-27-02.1, and subsection 1 of section 54-12-14 of the North Dakota Century Code, relating to forfeiture proceedings, contested forfeiture hearings, legal interests in forfeited property, disposition of statutory fees, fines, forfeitures, and the attorney general assets forfeiture fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-36.2 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.2. Forfeiture proceeding as civil action - Standard of proof.

1. Forfeiture proceedings are civil actions against the property to be forfeited and the standard of proof is a ~~preponderance of the evidence~~ clear and convincing evidence.
2. Forfeiture proceedings are separate and distinct from any related criminal action, and may not be initiated until the owner of the property has been convicted of or pled guilty to a criminal offense, or the individual has died, been deported by the United States government, been granted immunity or a reduced sentence in exchange for testifying or assisting a law enforcement investigation or prosecution, or has abandoned the property. As used in this subsection, "abandoned the property" means for a period of more than one year, the owner has not responded to any of the reasonable efforts made by the seizing agency to contact the owner.
3. Two or more law enforcement agencies and courts from different jurisdictions may coordinate, cooperate, and engage in interjurisdictional prosecution under this section.

SECTION 2. AMENDMENT. Section 19-03.1-36.6 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.6. Hearing on contested forfeiture - Order releasing or forfeiting property.

1. If an answer is filed within the time limits in this chapter, the forfeiture proceedings must be set for hearing before the court. At the hearing, the state shall establish ~~probable cause~~ a valid seizure of the property to be forfeited, and by clear and convincing evidence for instituting the forfeiture action following which any owner or person with a legal interest in the property to be forfeited who has filed an answer to the complaint has the burden of proving that the property to be forfeited is not subject to forfeiture under this chapter. If the court finds that the property is not subject to

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forfeiture under this chapter, the court shall order the property released to the owner or other person with a legal interest in the property as that person's right, title, or interest appears. The court shall order the property forfeited if it determines that such property or an interest therein is subject to forfeiture.

2. A court ordering property forfeited under subsection 1 may order the proper costs and expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, sales, and court costs with any remaining proceeds to be deposited as provided in subsection 2 of section 29-27-02.1.

SECTION 3. AMENDMENT. Section 19-03.1-36.7 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.7. Legal interest in property.

1. A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.
2. Upon a determination by the court that property is subject to forfeiture, the owner of the property to be forfeited or any other person with a legal interest in the property may petition the court to determine whether the forfeiture is unconstitutionally excessive.
 - a. A vehicle valued at less than two thousand dollars may not be forfeited unless the court finds the vehicle has been modified to conceal contraband or currency.
 - b. In determining whether a forfeiture is excessive, the court shall determine the fair market value of the property, the extent to which the owner or person participated in the offense, the extent to which the property was used or received in committing the offense, and the sentence imposed for committing the offense subject to forfeiture.
 - c. The court may not consider the value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

SECTION 4. Section 19-03.1-36.8 of the North Dakota Century Code is created and enacted as follows:

19-03.1-36.8. Reporting.

1. As used in this section, "law enforcement agency" means a nonfederal public agency authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law, including the authority to conduct or engage in seizure and forfeiture.

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HB 1284
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2. Annually, each law enforcement agency shall compile the following information regarding seizures and forfeitures pending or completed by the agency under this chapter:

- a. The types of property and dollar amount of the forfeited property;
- b. The jurisdiction that received the property;
- c. The total number of seizures of currency; and
- d. The amount the court has ordered to be paid toward the costs and expenses of the proceedings for forfeiture and sale under section 19-03.1-36.6.

3. The attorney general may require the reporting of additional information not specified in this section. The attorney general shall develop standard forms, processes, and deadlines for electronic data entry for annual submission of forfeiture data by law enforcement agencies.

4. Each law enforcement agency shall file with the attorney general a report of the information compiled under subsection 2 for the law enforcement agency and the corresponding prosecutor. A law enforcement agency that did not engage in seizures or forfeitures during the reporting period shall file a null report. The attorney general shall compile the submissions and issue an aggregate report of all forfeitures in the state.

5. If a law enforcement agency fails to file a report within thirty days after the report is due, the attorney general may compel compliance by any means until the report is filed.

6. The attorney general shall make available on the attorney general's website the reports submitted by law enforcement agencies and the attorney general's aggregate report. The reports must be updated annually.

SECTION 5. AMENDMENT. Section 29-27-02.1 of the North Dakota Century Code is amended and reenacted as follows:

29-27-02.1. Disposition of statutory fees, fines, forfeitures, pecuniary penalties, and bond forfeitures.

1. Except as otherwise provided by law, all statutory fees, fines, forfeitures, and pecuniary penalties prescribed for a violation of state laws, when collected, must be paid into the treasury of the proper county to be added to the state school fund. When any bail bond or other property or money deposited as bail is forfeited to the state, the proceeds collected therefrom must be paid over to the proper state official and credited to the state general fund.
2. Funds obtained through civil asset forfeiture under section 19-03.1-36 must be paid into the attorney general assets forfeiture fund.

SECTION 6. AMENDMENT. Subsection 1 of section 54-12-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The attorney general assets forfeiture fund consists of funds appropriated by the legislative assembly and additional funds obtained from moneys,

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

- a. For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse.
- b. For repayment of rewards to qualified local programs approved under section 12.1-32-02.2, if the information that was reported to the qualified local program substantially contributed to forfeiture of the asset, and for paying, at the discretion of the attorney general, rewards for other information or assistance leading to a forfeiture under section 19-03.1-36.
- c. For paying, at the discretion of the attorney general, any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property.
- d. For equipping, for law enforcement functions, forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the state board of pharmacy or a law enforcement agency.
- e. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation incurred as a result of investigations of violations of any state criminal law or law relating to the control of drug abuse.
- f. For paying matching funds required to be paid as a condition for receipt of funds from a federal government program awarding monetary grants or assistance for the investigation, apprehension, or prosecution of persons violating the provisions of chapter 19-03.1."

Renumber accordingly

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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-

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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.

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

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

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.

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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.

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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.

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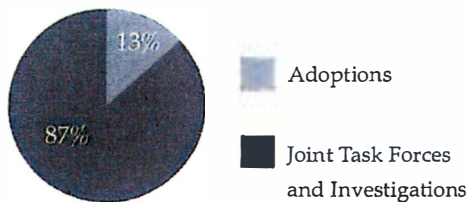
Federal Equitable Sharing

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.

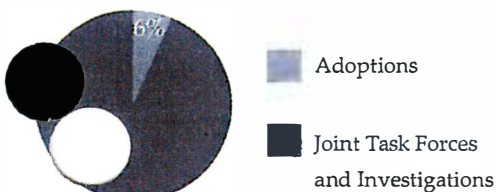
DOJ and Treasury Equitable Sharing Proceeds

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

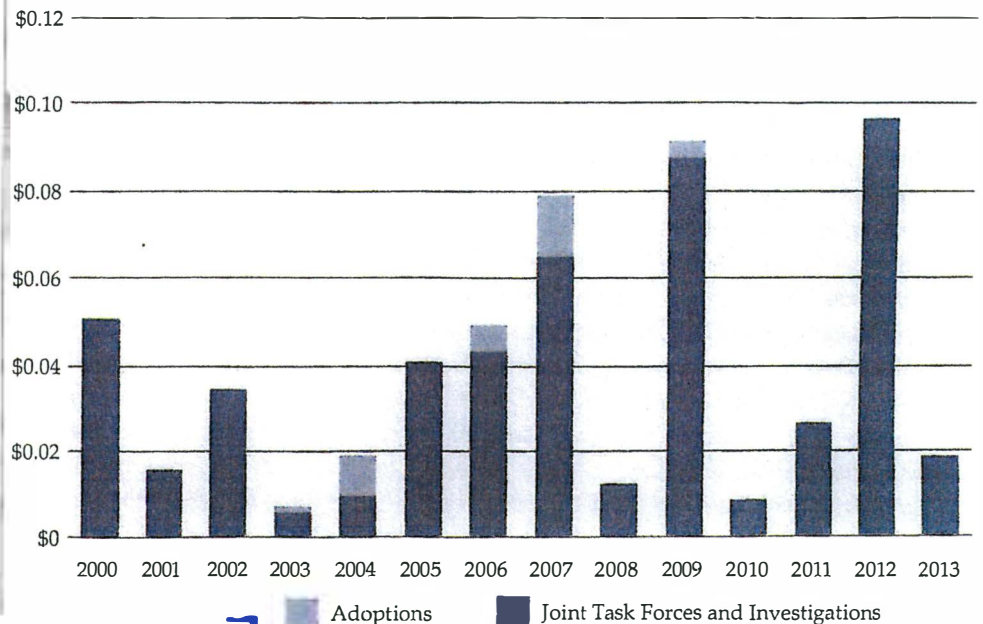


Seizures



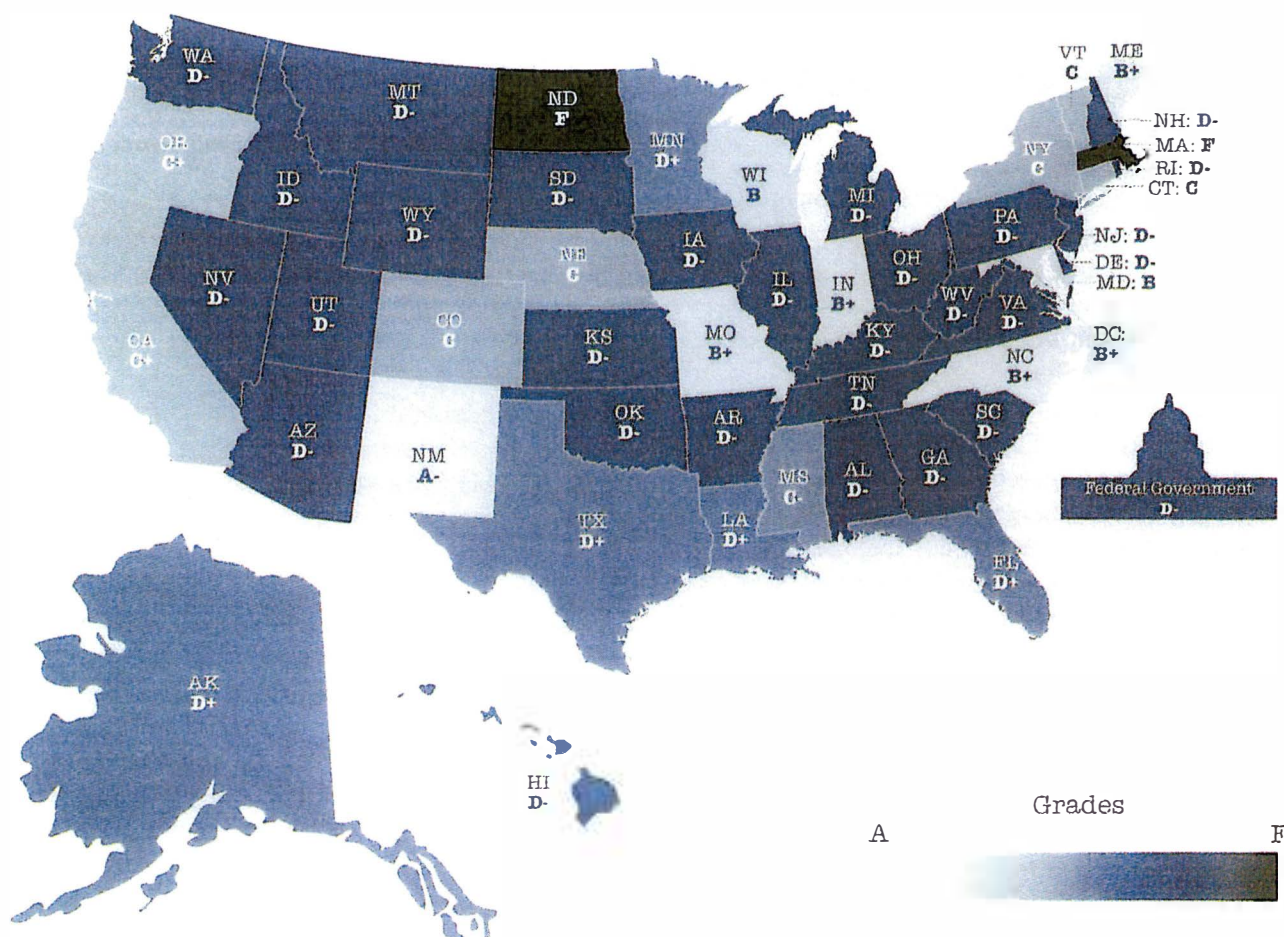
Proceeds

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



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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.

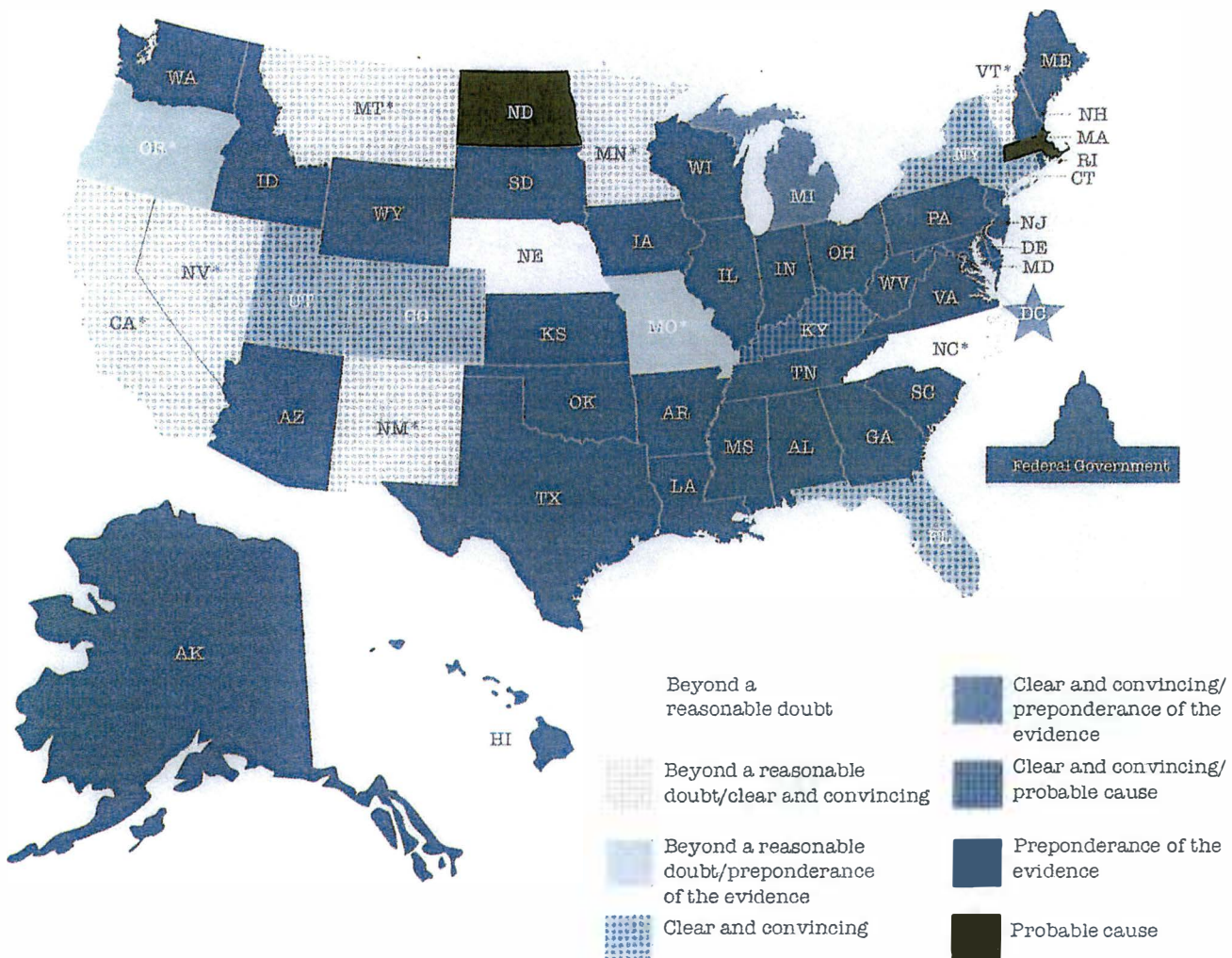
Nevada's and Montana's new laws now require a conviction in criminal court as a prerequisite to forfeiture of property in civil court, increasing protections for property owners. Reforms in Montana also shifted the

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.

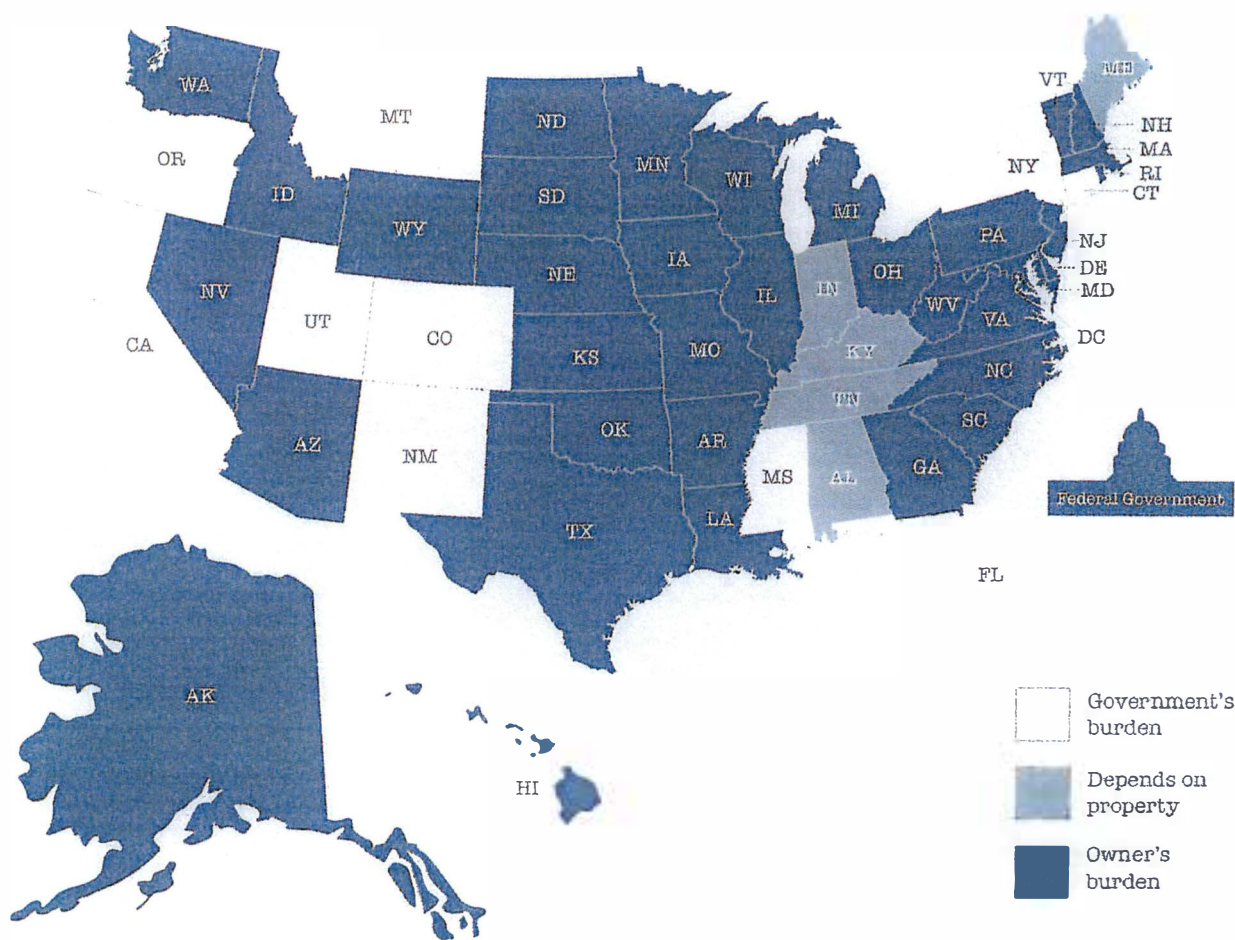
Cox lost her truck without ever having been accused of a crime and without ever having gotten her day in court. Innocent third-party owners who do make it to court will often face a bizarre and almost impossible task: proving their own innocence.

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 is 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.

"It is impossible to introduce into society a greater change and a greater evil than this: the conversion of the law into an instrument of plunder."

- Frédéric Bastiat

The term "plunder" often conjures images of criminals ravaging the streets. It may remind us of pirates or bandits. What it doesn't bring to mind is legal activities by trusted institutions. Yet, that is exactly the meaning meant by French philosopher Frederic Bastiat, who coined the term "legal plunder" in his most famous work The Law (1850). This concept asserts the ability of the law to be weaponized as a tool of injustice, or plunder.

Legal plunder today takes the form of civil asset forfeiture. Civil asset forfeiture allows law enforcement officials at various levels of government to seize private property without due process. While these laws were enacted to restrict illegal trade and fight organized crime, they have been weaponized against law abiding citizens with increasing frequency.

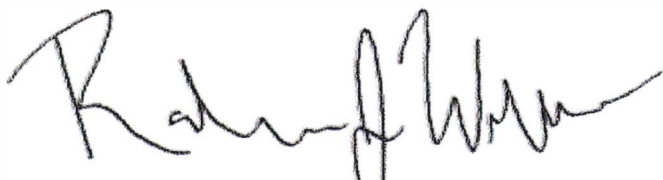
In my policy paper, Legal Plunder: Civil Asset Forfeiture in North Dakota, I examined North Dakota's forfeiture laws. I discovered North Dakota's laws heavily favor law enforcement and offer few citizen protections. In fact, in a 2014 study by the Institute for Justice, North Dakota received an "F" grade for citizen protections.

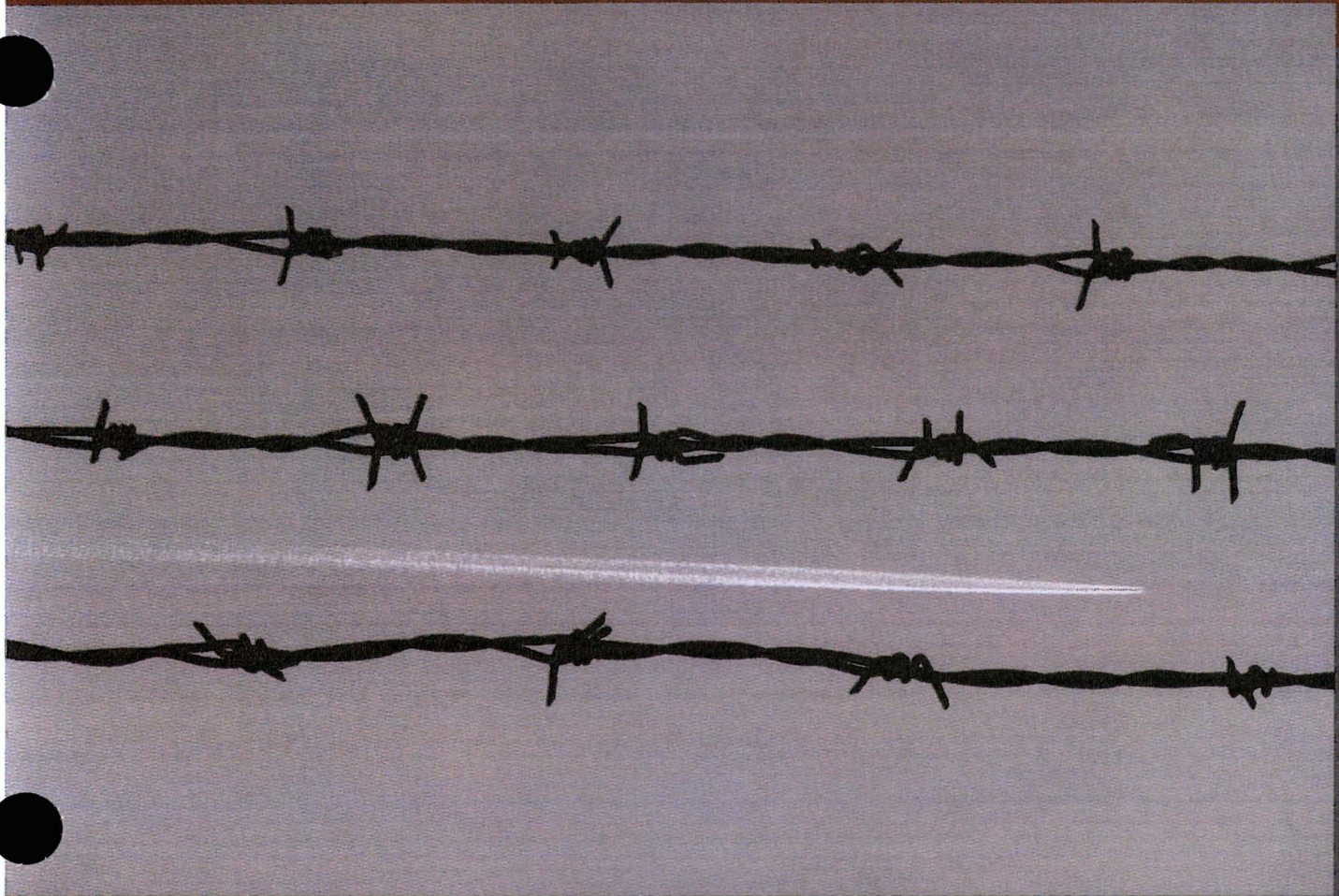
I want to highlight the two biggest findings from my report: lack of due process and lack of transparency. First, state law shifts the burden of proof to the accused. In North Dakota, law enforcement officials can seize private property as long as they have probable cause that it was involved in illegal activity. To regain possession, a citizen must appeal to the court and prove the innocence of his or her property, even if the citizen has not been found guilty of a crime.

For example, if you borrowed your car to your roommate and law enforcement have probable cause to believe it was used to transport drugs, they can confiscate and even sell your car. This is without you knowing or committing a crime, or sometimes, even without your roommate being found guilty of a crime. While this is an extreme example, it illustrates the lack of due process rights afforded in these cases. Second, state law does not require confiscated assets to be tracked. This can arguably create incentives for law enforcement to "police for profit." In North Dakota, law enforcement receives up to 100 percent of the proceeds from civil asset forfeiture. Given the lack of available data on this issue, it is difficult to measure the impact, if any, civil asset forfeitures have on North Dakota's citizens and the state economy. While there is no evidence to condemn or accuse state and local law enforcement officials of any wrongdoing, the state should consider making reforms to increase citizen protections and improve transparency.

North Dakota consistently ranks among the worst states in the country when it comes to civil asset forfeiture. The state should bring an end to instruments of legal plunder by strengthening private property rights and transparency.

The Center for the Study of Public Choice and Private Enterprise at NDSU
Former Research Economic Specialist
Raheem J Williams





LEGAL PLUNDER: CIVIL ASSET FORFEITURE IN NORTH DAKOTA

Released April 2018

Researchers:
Raheem Williams, M.A.

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***“It is impossible to introduce into society a greater change
and a greater evil than this: the conversion of the law into an
instrument of plunder.” – Frédéric Bastiat¹***

¹ Bastiat, Frederic. (1850). The Law. Library of Economics and Liberty. Retrieved from <http://econlib.org/library/Bastiat/basLaw.html>

Introduction

Secure private property rights encourage economic growth. Studies have found that nations that protect private property rights experience more economic growth (Knack & Keefer, 1995; Leblang, 1996; Svensson, 1998; Weingast, 1995). Therefore, ensuring a strong system of private property rights and protections should be considered a pre-requisite to achieving growth and higher living standards. Modern civil asset forfeiture practices weaken private property rights by allowing the state to seize property without due process or public transparency. While these laws were originally intended to help police crackdown on organized crime, they create perverse economic incentives that can lead to abuse.

A renewed focus on this issue by national organizations has sparked citizen protection reforms in some states, but meaningful reforms have not been enacted in North Dakota. With civil asset forfeiture laws that heavily favor law enforcement, the strength of North Dakota's private property rights could be in question. This policy paper will review the definition of civil asset forfeiture, clarify the laws in North Dakota, examine recent legislative attempts at reform, and, finally, make policy recommendations.

Background

Civil asset forfeiture is a legal procedure that allows law enforcement officials at various levels of government to seize private property without due process. It was first introduced to the rule of law through a series of early Supreme Court cases involving illegal trade (*The Palmyra*, 1827; *United States v. The Brig Malek Adhel*, 1844). It was intended to help law enforcement restrict trade related to illicit activities and fight organized crime. Ideally, the Fifth Amendment's due process clause would protect citizens against unlawful civil asset forfeiture (Cheh, 1998; Kim, 1997; Piety, 1990; Ross, 2000). In reality, civil asset forfeiture opens the door to corruption and policing for profit.

The constitutionality of this practice has been increasingly scrutinized by leading legal advocacy organizations across the political spectrum, including the American Civil Liberties Union and the Institute for Justice. Law enforcement abuses are being exposed with greater frequency due to the work of these legal watchdog groups, leading states to weigh the benefits of civil asset forfeiture against upholding citizens' constitutional liberties.

North Dakota

In a national study of state civil asset forfeiture laws by the Institute for Justice, North Dakota tied for worst in the country, receiving an “F” grade for citizen protections (Institute for Justice, 2014). North Dakota state law only requires “probable cause” to seize assets. This is the lowest possible standard of proof for government seizures (Institute for Justice, 2014). Additionally, when property is seized for illegal activity without the owner’s knowledge, the burden of proof is placed on the owner to prove his or her innocence in order to recover the seized property. If the notion of “innocent until proven guilty” is to be preserved, the burden of proof should be on the state.

Current Law

Chapter 29-31.1 of the North Dakota Century Code defines forfeitable property as:

- a. Property that is illegally possessed or is contraband.
- b. Property that has been used or is intended to be used to facilitate the commission of a criminal offense or to avoid detection or apprehension of a person committing a criminal offense.
- c. Property that is acquired as or from the proceeds of a criminal offense.
- d. Property offered or given to another as an inducement for the commission of a criminal offense.
- e. A vehicle or other means of transportation used in the commission of a felony, the escape from the scene of the commission of a felony, or in the transportation of property that is the subject matter of a felony.
- f. Personal property used in the theft of livestock or the transportation of stolen livestock (N.D. Cent. Code §§ 29-31.1-10, 1991 & 2009).

This broad definition allows the state almost unlimited power to confiscate property. The law in its current form allows law enforcement to make judgment decisions on the “intended use” of property. It also allows the sale of seized assets and the retention of the proceeds from such sales (Williams, 2002). Agencies in North Dakota receive up to 100 percent of civil asset forfeiture proceeds, and if the forfeiture fund exceeds \$200,000 during the two-year budgetary period, excess proceeds are deposited in the General Fund (Institute for Justice, 2014). This creates a use-it-or-lose incentive that could encourage the seizure of assets (Institute for Justice, 2014).

In its current form, North Dakota's civil asset forfeiture law tips the scale too far in favor of law enforcement. While there is no evidence that law enforcement officials are abusing this power, there is a troubling lack of transparency.

Tracking Civil Asset Forfeiture

The North Dakota Century Code does not require local law enforcement to track civil asset forfeiture proceeds, making it difficult to understand the degree to which North Dakotans are affected. The most accessible data available comes from the Department of Justice, which tracks the use of Equitable Sharing Agreements (ESA). ESAs outline how the proceeds of civil asset forfeitures are split between local, state, and federal law enforcement in cases involving multiple agencies (Carpenter, Salzman, & Knepper, 2011).

A quick look at the data compiled from the Department of Justice shows that North Dakota law enforcement rarely utilize ESAs. The state received only \$550,483 in equitable sharing proceeds from 2000-2013. This makes North Dakota the second best state in terms of federal civil asset forfeiture, according to rankings by the Institute for Justice (Carpenter, Knepper, Erickson, & McDonald, 2015). However, this seemingly good news could be deceptive. North Dakota's civil asset forfeiture laws are favorable enough to local and state law enforcement that there is little incentive to collaborate with federal officials. In theory, local law enforcement keep more of the proceeds from asset forfeiture by not including federal law enforcement.

Legislative Reform

In order to discourage the possibility of abuse, H.B. 1170 was introduced during the most recent legislative session (North Dakota Legislative Assembly, 2017a, p. 70). This bill would have amended North Dakota Century Code Chapter 29.31.1. The amendment, Chapter 29.31.2, required a conviction before seizing property in most cases. However, the amendment did allow police to immediately seize property when there was "probable cause to believe the delay occasioned by the necessity to obtain process would result in the removal or destruction of the personal property." Additionally, it allowed the courts to collect the equivalent in forfeitable property if the intended property was purposely hidden to avoid seizure. The bill also allowed for the immediate seizure of property from persons with a known criminal history.

In regards to protecting the property rights of the citizens of North Dakota, Chapter 29.31.2 guaranteed defendants or third party claimants the right to challenge the validity of a seizure in a pre-trial hearing. Citizens could request a court hearing for property seized any time prior to 60 days before the relevant trial. Such hearings would be held within 30 days of the motion being filed. Lastly, the amendment forbid the retention of forfeited property by law enforcement, substantially reducing the risk of corruption (Malcolm, 2016; Williams, 2002). Instead, the bill proposed that proceeds from civil asset forfeiture sales would go into the General Fund. H.B. 1170 passed in the North Dakota House (North Dakota Legislative Assembly, 2017a, p. 767) but failed in the Senate (North Dakota Legislative Assembly, 2017b, p. 1018). No civil asset forfeiture reforms were enacted in the 2017 Legislative Assembly.

Conclusion

Property rights and economic growth are intrinsically linked (Knack & Keefer, 1995; Leblang, 1996; Svensson, 1998; Weingast, 1995). The state should reinforce such rights whenever possible. The people of North Dakota deserve to be secure in their persons and the protection of their property. Given the lack of available data on this issue, it is difficult to measure the impact, if any, civil asset forfeitures have on the state economy. While there is no evidence to condemn or accuse state and local law enforcement officials of any wrongdoing, lawmakers should reconsider instituting reforms and protections such as those in H.B. 1170. Secure property rights are vital for promoting trust in the state's institutions and ensuring the people of North Dakota are treated fairly under the law.

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#1

HB 1286
3.26.19



January 30, 2019

House Judiciary Committee
North Dakota Legislature
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

Subject: *H.B. 1286*

Dear Committee Members:

Liberty Initiative Fund urges your support of House Bill 1286, a statute to reform civil asset forfeiture. Civil forfeiture, which allows courts to forfeit property without a criminal conviction (or oftentimes even a charge), violates two important American principles: (1) our property rights and (2) the foundational justice concept of "innocent until proven guilty."

This legislation sponsored by Rep. Rick Becker is a solid, sensible reform that fixes the problem while being pro-law enforcement.

As a national organization, we work with citizens across the country to *Hold Government Accountable*, *Fight Crony Capitalism* and *Protect Our Liberties*, primarily through state and local ballot initiatives. Liberty Initiative Fund was a supporter of Measure 2 on last November's ballot, which North Dakota voters passed by a roughly two to one margin.

Thank you for your consideration of this reform.

Sincerely,

Paul Jacob
President

January 29, 2019

Letter in Support of HB 1286 and Reforming Civil Forfeiture

Dear members of the North Dakota Legislature:

On behalf of the undersigned organizations, we write in support of HB 1286, a bill that would substantially overhaul one of the greatest threats to private property rights in North Dakota: civil forfeiture. Through civil forfeiture, law enforcement agencies can confiscate property suspected of involvement in criminal activity. Unlike *criminal* forfeiture, with *civil* forfeiture, the government can permanently seize and keep property without charging, let alone convicting, anyone of a crime. In fact, North Dakota has the worst civil forfeiture laws in the nation, a dubious honor it shares only with Massachusetts.¹ By enacting HB 1286, the legislature can rectify serious flaws in state law and establish significant safeguards for the innocent.

First and foremost, HB 1286 would deposit all civil forfeiture proceeds into the state school fund, redirecting those funds away from law enforcement coffers. Currently, after property has been forfeited, agencies can retain up to 100 percent of the proceeds. This creates a perverse incentive to pursue forfeiture cases, a practice widely criticized as “policing for profit.” According to the bill’s fiscal note, state law enforcement and regional task forces have generated an estimated \$1.62 million in forfeiture funding.²

Law enforcement’s retention of forfeiture proceeds violates two key constitutional principles: due process and separation of powers. Giving law enforcement a direct financial stake in seizures violates the basic due process requirement of impartiality in the administration of justice—a bedrock principle of the American legal system. Allowing state and local law enforcement to directly benefit from forfeiture proceeds dangerously shifts law enforcement priorities from fairly and impartially administering justice to generating revenue.

Moreover, funding agencies outside the legislative process violate the separation of powers. State legislators are responsible for raising and appropriating funds. By retaining forfeiture proceeds, police departments and prosecutors’ offices—members of the executive branch—become

¹ See Dick M. Carpenter II, Lisa Knepper, Angela C. Erickson & Jennifer McDonald. *Policing for Profit: The Abuse of Civil Asset Forfeiture*, 2nd Edition, Inst. for Justice (2015), available at <http://ij.org/report/policing-for-profit/>

² “Fiscal Note,” January 14, 2019, available at <https://www.legis.nd.gov/assembly/66-2019/fiscal-notes/19-0345-04000-fn.pdf>

self-financing agencies, unaccountable to members of the North Dakota legislature, and, by extension, to the public at large.

Second, HB 1286 would strengthen due process for property owners facing civil forfeiture. The bill would require a conviction in criminal court before property can be forfeited in civil court. Today, only 12 states (including Minnesota and Montana) have similar protections for property owners. Another three states (Nebraska, New Mexico and North Carolina) have abolished civil forfeiture entirely, and replaced it with criminal forfeiture.³ To further shield owners, HB 1286 would raise the standard of proof from probable cause to clear and convincing evidence. In addition, the bill would create a new proportionality hearing that would allow owners to challenge “unconstitutionally excessive” forfeitures.

Finally, HB 1286 would implement the state’s first-ever reporting requirements for civil forfeiture. Transparency is in short supply. North Dakota is one of just six states that does not require any tracking of seizures and forfeitures whatsoever. That earned the state failing grades across the board in a recent report by the Institute for Justice.⁴ To shine a light on law enforcement’s seizure and forfeiture activity, the bill would require agencies to annually report the total number of seizures by value and property type, the underlying crimes that led to the seizure, and any additional information the attorney general may require. Reports would then be aggregated and compiled by the attorney general and published online. These disclosure requirements would play a vital role in keeping both the public and legislators well-informed about civil forfeiture in North Dakota.

HB 1286 would enact simple, commonsense but vitally needed changes in civil forfeiture law and procedures to protect innocent property owners from being unjustly deprived of their property. Passing the bill would go a long way toward restoring public trust in law enforcement, and the belief—so vital to our Republic—that we are a nation ruled by laws and not by men.

Sincerely,

Lee McGrath
Senior Legislative Council
Institute for Justice

Chris Harelson
Executive Director
Hazlitt Policy Center

Michael Fedorchak
State Director - North Dakota
Americans for Prosperity

Cliff Maloney
President
Young Americans For Liberty

Heather Smith
Executive Director
ACLU - North Dakota

³ “Civil Forfeiture Reforms on the State Level,” Institute for Justice. Accessed: January 28, 2019, *available at* <https://ij.org/activism/legislation/civil-forfeiture-legislative-highlights/>

⁴ See Angela C. Erickson, Jennifer McDonald and Mindy Menjou. “Forfeiture Transparency and Accountability: State-by-State and Federal Report Cards,” *available at* <https://ij.org/report/forfeiture-transparency-accountability/?state=US-ND>

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Chairman Koppelman and House Judiciary committee members.

The following information put together by the Heartland Institute for HB 1286, thank you for your consideration.

Research & Commentary: North Dakota's civil asset forfeiture laws and the need for reform.

In recent years, states have taken many steps toward limiting the ability of law enforcement agencies to seize property from criminal suspects without conclusive evidence a crime was committed, a process known as civil asset forfeiture. Civil asset forfeiture can also be completed without bringing criminal charges against those whose assets have been seized. The standard of proof permitting seizure differs from state to state. Since 2014, 24 states have comprehensively reformed their forfeiture laws, with 14 states now requiring a criminal conviction before assets are seized. Three states have even banned the practice altogether.

Along with Massachusetts, North Dakota has the worst civil forfeiture laws in the country, with analysts at the nonpartisan Institute for Justice giving the state an "F" grade in their report card of state civil asset forfeiture laws. In many states, a much higher standard of evidence is required to seize property – generally a conviction or a preponderance of the evidence. In North Dakota, law enforcement agencies are allowed to seize property if they have probable cause that the property was involved in illegal activity.

The state also shifts the burden of proof to the accused. To regain property, a citizen must appeal to the court to prove his or her innocence in order to recover the property, even if it was used without the owner's knowledge. Another glaring issue with North Dakota forfeiture laws is that there is a near-total lack of transparency in the forfeiture process; the state does not require confiscated assets to be tracked. This makes identifying and tracking abuses much more difficult.

Another notable problem with North Dakota's forfeiture laws is related to how proceeds are spent. Under current law, North Dakota law enforcement agencies may retain 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 funds are deposited in the state's general fund.

Proponents of forfeiture argue it allows law enforcement agencies to use seized assets toward their enforcement efforts, transforming property illicitly gained by criminals into resources to be used for public benefit. Critics of the process note it gives law enforcement agencies economic incentives to seize property.

Assets should be seized only for criminal reasons, and law enforcement should not have incentives to seize any more property than is necessary and justified.

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The following documents provide additional information about civil asset forfeiture.

<http://web.archive.org/web/20181205132529/https://ij.org/pfp-state-pages/pfp-North-Dakota/>
www.heritage.org/research/reports/2014/03/civil-asset-forfeiture-7-things-you-should-know
<https://www.heritage.org/crime-and-justice/report/overview-recent-state-level-forfeiture-reforms>

Thank you.

Matthew Glans
The Heartland Institute
Sr. policy analyst

Bette Grande
The Heartland Institute
Research Fellow

Mark A. Frieese

mfrieese@vogellaw.com

#1
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3-26-19

January 27, 2019

Dr. Rick Becker
District 7 Representative
Member, ND House Judiciary Committee

VIA EMAIL ONLY
rcbecker@nd.gov

Re: HB 1286

Dear Dr. Becker:

I write in support of House Bill 1286, which proposes long-overdue, moderate, 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 lawmakers as well. 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 formerly served as a citizen member of the Interim Alternatives to Incarceration Committee, and in that capacity have gained the privilege of meeting 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 1286 is consistent with national trends. I agree that when used correctly, asset forfeiture is an essential component of effective law enforcement, and sound public policy. If approved, House Bill 1286 will retain this 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 Common Schools Trust Fund, rather than being distributed to the seizing agencies. This provision would finally place asset forfeitures in compliance with longstanding North Dakota statutory and constitutional law, which has long protected the police from claims of impropriety, and appearances of bias by protecting the police from citizen claims of ulterior motives—i.e., policing for a profit. Further, the bill provides for return of non-contraband property if an accused is acquitted or the criminal charges are dismissed.

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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 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 alike. Current law allowing police to seize and convert property from citizens for minor offenses, like possessing marijuana or items of drug paraphernalia, is draconian. Current law results in some police seizing all property, while other officers who recognize the lack of fairness of existing procedures wholly decline to do so,

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 approval. The citizens and law enforcement of this state deserve these meaningful improvements to existing law.

I am personally aware of the substantial amount of time that you and other lawmakers have spent researching and drafting this bill. I am personally aware of the contacts you and others have had with attorneys, lawmakers, law enforcement, and executive branch officials. Simply, I am aware this proposal results from substantial input and substantial effort.

Correspondingly, I am aware previous efforts at reform have been unsuccessful. This comprehensive bill seems to eliminate those portions of previous reform efforts which were objectionable. Recognizing the work effort, balancing of competing interests, and substantial input you solicited in formulating this bill, I am optimistic that this measured, reasonable approach at reform will be adopted. Thank you for considering my comments.

Respectfully submitted,

/s/ Mark A. Friese

Mark A. Friese

cc: Rep. Mary Johnson marycjohnson@nd.gov
Rep. Tom Kading tkading@nd.gov
Sen. Ronald Sorvaag rsorvaag@nd.gov

Blackstone's ratio

☆A

In [criminal law](#), **Blackstone's ratio** (also known as **the Blackstone ratio** or **Blackstone's formulation**) is the idea that:

It is better that ten guilty persons escape than that one innocent suffer.^[1]

As expressed by the English jurist [William Blackstone](#) in his seminal work, *[Commentaries on the Laws of England](#)*, published in the 1760s.

The idea subsequently became a staple of legal thinking in Anglo-Saxon jurisdictions and continues to be a topic of debate. There is also a long pre-history of similar sentiments going back centuries in a variety of legal traditions. The message that government and the courts must err on the side of innocence has remained constant.^[*citation needed*]

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^ In Blackstone's *Commentaries*

The phrase, repeated widely and usually in isolation, comes from a longer passage, the fourth in a series of five discussions of policy by Blackstone:

Fourthly, all presumptive evidence of felony should be admitted cautiously, for the law holds that it is better that ten guilty persons escape than that one innocent suffer. And Sir Matthew Hale in particular lays down two rules most prudent and necessary to be observed: 1. Never to convict a man for stealing the goods of a person unknown, merely because he will give no account how he came by them, unless an actual felony be proved of such goods; and, 2. Never to convict any person of murder or manslaughter till at least the body be found dead; on account of two instances he mentions where persons were executed for the murder of others who were then alive but missing.

The phrase was absorbed by the British legal system, becoming a maxim by the early 19th century.^[2] It was also absorbed into American common law, cited repeatedly by that country's Founding Fathers, later becoming a standard drilled into law students all the way into the 21st century.^[3]

Other commentators have echoed the principle; [Benjamin Franklin](#) stated it as, "it is better 100 guilty



Statue of [William Blackstone](#)

|

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Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1286

2
HB 1286
3.26.19

Introduced by

Representatives Becker, Blum, Johnston, Paur, Pyle, Satrom, Simons, Strinden

Senators Hogue, Kannianen, Luick, Unruh

1 A BILL for an Act to create and enact section 19-03.1-36.8 of the North Dakota Century Code,
2 relating to law enforcement agencies reporting seizures and forfeitures; and to amend and
3 reenact sections 19-03.1-36.2, 19-03.1-36.6, and 19-03.1-36.7, ~~29-27-02.1, and subsection 1 of~~
4 ~~section 54-12-14~~ of the North Dakota Century Code, relating to forfeiture proceedings,
5 contested forfeiture hearings, legal interests in forfeited property, ~~disposition of statutory fees,~~
6 ~~finer, and~~ forfeitures, ~~and the attorney general assets forfeiture fund.~~

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

8 **SECTION 1. AMENDMENT.** Section 19-03.1-36.2 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **19-03.1-36.2. Forfeiture proceeding as civil action - Standard of proof.**

- 11 1. Forfeiture proceedings are civil actions against the property to be forfeited and the
12 standard of proof is a preponderance of the evidence clear and convincing evidence.
- 13 2. Forfeiture proceedings are separate and distinct from any related criminal action, and
14 may not be initiated until the owner of the property has been convicted of or pled guilty
15 to a criminal offense, or the individual has died, fled the jurisdiction, been deported by
16 the United States government, been granted immunity or a reduced sentence in
17 exchange for testifying or assisting a law enforcement investigation or prosecution, or
18 has abandoned the property, or it can be established beyond a reasonable doubt the
19 property was used in the commission of a crime or constituted the proceeds of criminal
20 activity. As used in this subsection, "abandoned the property" or "fled the jurisdiction"
21 means for a period of more than one year, the owner has not responded to any of the
22 reasonable efforts made by the seizing agency to contact the owner or has not
23 contacted the seizing agency.

~~3. Two or more law enforcement agencies and courts from different jurisdictions may coordinate, cooperate, and engage in interjurisdictional prosecution under this section.~~

SECTION 2. AMENDMENT. Section 19-03.1-36.6 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.6. Hearing on contested forfeiture - Order releasing or forfeiting property.

1. If an answer is filed within the time limits in this chapter, the forfeiture proceedings must be set for hearing before the court. At the hearing, the state shall establish ~~probable cause~~ a valid seizure of the property to be forfeited, and ~~clear and convincing evidence for instituting the forfeiture action following which~~ the forfeited property meets the requirements of subsection 2 of section 19-03.1-36.2. Following the state's case, any owner or person with a legal interest in the property to be forfeited who has filed an answer to the complaint has the burden of proving that the property to be forfeited is not subject to forfeiture under this chapter. If the court finds that the property is not subject to forfeiture under this chapter, the court shall order the property released to the owner or other person with a legal interest in the property as that person's right, title, or interest appears. The court shall order the property forfeited if it determines that such property or an interest therein is subject to forfeiture.

2. A court ordering property forfeited under subsection 1 may ~~order the proper costs and expenses of the proceedings for forfeiture and sale, including reasonable expenses of seizure, maintenance of custody, advertising, sales, and court costs with any remaining proceeds to be deposited as provided in subsection 2 of section 29-27-02.1~~ order only the forfeited property or proceeds from the sale of forfeited property to be deposited with a political subdivision if the political subdivision has created a civil asset forfeiture fund. If the political subdivision does not have a civil asset forfeiture fund, any forfeited property and proceeds from the sale of forfeited property must be deposited in the attorney general's asset forfeiture fund.

3. This section does not prohibit the state and a political subdivision from entering an agreement to divide forfeited property and the proceeds from the sale of forfeited property.

SECTION 3. AMENDMENT. Section 19-03.1-36.7 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.7. Legal interest in property.

1. A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.

2. Upon a determination by the court that property is subject to forfeiture, the owner of the property to be forfeited or any other person with a legal interest in the property may petition the court to determine whether the forfeiture is unconstitutionally excessive.

a. A vehicle valued at less than two thousand dollars may not be forfeited unless the court finds the vehicle has been modified to conceal contraband or currency.

b. ~~Currency with the value of seven hundred and fifty United States dollars or less may not be forfeited.~~

~~c. Real property constituting a homestead may not be forfeited.~~

~~d.c.~~ In determining whether a forfeiture is excessive, the court shall determine the fair market value of the property, the extent to which the owner or person participated in the offense, the extent to which the property was used or received in committing the offense, and the ~~sentence imposed for committing the offense subject to forfeiture~~ possible penalty that could be imposed for the alleged or committed offense subject to forfeiture.

e.d. The court may not consider the value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

SECTION 4. Section 19-03.1-36.8 of the North Dakota Century Code is created and enacted as follows:

19-03.1-36.8. Reporting.

1. As used in this section, "law enforcement agency" means a nonfederal public agency authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law, including the authority to conduct or engage in seizure and forfeiture.

- 1 2. Annually, each law enforcement agency shall compile the following information
2 regarding seizures and forfeitures pending or completed by the agency under this
3 chapter:
 - 4 a. The types of property and dollar amount of the forfeited property;
5 b. The jurisdiction that received the property; and
6 c. The total number of seizures of currency; and
7 ~~d. The amount the court has ordered to be paid toward the costs and expenses of~~
8 ~~the proceedings for forfeiture and sale under section 19-03.1-36.6.~~
- 9 3. The attorney general may require the reporting of additional information not specified
10 in this section. The attorney general shall develop standard forms, processes, and
11 deadlines for electronic data entry for annual submission of forfeiture data by law
12 enforcement agencies.
- 13 4. Each law enforcement agency shall file with the attorney general a report of the
14 information compiled under subsection 2 for the law enforcement agency and the
15 corresponding prosecutor. A law enforcement agency that did not engage in seizures
16 or forfeitures during the reporting period shall file a null report. The attorney general
17 shall compile the submissions and issue an aggregate report of all forfeitures in the
18 state.
- 19 5. If a law enforcement agency fails to file a report within thirty days after the report is
20 due, the attorney general may compel compliance by any means until the report is
21 filed.
- 22 6. The attorney general shall make available on the attorney general's website the
23 reports submitted by law enforcement agencies and the attorney general's aggregate
24 report. The reports must be updated annually.

25 ~~**SECTION 5. AMENDMENT.** Section 29-27-02.1 of the North Dakota Century Code is~~
26 ~~amended and reenacted as follows:~~

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

29 ~~1. Except as otherwise provided by law, all statutory fees, fines, forfeitures, and~~
30 ~~pecuniary penalties prescribed for a violation of state laws, when collected, must be~~
31 ~~paid into the treasury of the proper county to be added to the state school fund. When~~

any bail bond or other property or money deposited as bail is forfeited to the state, the proceeds collected therefrom must be paid over to the proper state official and credited to the state general fund.

~~2. Funds obtained through civil asset forfeiture under section 19-03.1-36 must be paid into the attorney general assets forfeiture fund.~~

~~**SECTION 6. AMENDMENT.** Subsection 1 of section 54-12-14 of the North Dakota Century Code is amended and reenacted as follows:~~

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

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

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

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

- 1 d. For equipping, for law enforcement functions, forfeited vessels, vehicles, and
- 2 aircraft retained as provided by law for official use by the state board of pharmacy
- 3 or a law enforcement agency.
- 4 e. For paying, at the discretion of the attorney general, overtime compensation to
- 5 agents of the bureau of criminal investigation incurred as a result of
- 6 investigations of violations of any state criminal law or law relating to the control
- 7 of drug abuse.
- 8 f. For paying matching funds required to be paid as a condition for receipt of
- 9 funds from a federal government program awarding monetary grants or
- 10 assistance for the investigation, apprehension, or prosecution of persons
- 11 violating the provisions of chapter 19-03.1.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1286

Page 1, line 3, after the second comma insert "and"

Page 1, line 3, remove ", 29-27-02.1, and subsection 1 of"

Page 1, line 4, remove "section 54-12-14"

Page 1, line 5, remove "disposition of statutory fees,"

Page 1, line 6, replace "fines," with "and"

Page 1, line 6, remove ", and the attorney general assets forfeiture fund"

Page 1, line 17, remove the third "or"

Page 1, line 18, after the first "property" insert ", or it can be established beyond a reasonable doubt the property was used in the commission of a crime or constituted the proceeds of criminal activity"

Page 1, remove lines 22 and 23

Page 2, line 6, remove "clear and convincing"

Page 2, line 7, remove "evidence"

Page 2, line 7, overstrike "for instituting the forfeiture action following which" and insert immediately thereafter "the forfeited property meets the requirements of subsection 2 of section 19-03.1-36.2. Following the state's case,"

Page 2, line 15, remove "order the proper costs and"

Page 2, remove lines 16 and 17

Page 2, line 18, replace "remaining proceeds to be deposited as provided in subsection 2 of section 29-27-02.1" with "order only the forfeited property or proceeds from the sale of forfeited property to be deposited with a political subdivision if the political subdivision has created a civil asset forfeiture fund. If the political subdivision does not have a civil asset forfeiture fund, any forfeited property and proceeds from the sale of forfeited property must be deposited in the attorney general's asset forfeiture fund."

3. This section does not prohibit the state and a political subdivision from entering an agreement to divide forfeited property and the proceeds from the sale of forfeited property

Page 3, line 3, remove "Currency with the value of seven hundred and fifty United States dollars or less"

Page 3, remove line 4

Page 3, line 5, remove "c."

Page 3, line 6, replace "d." with "c."

Page 3, line 9, remove "sentence imposed for committing the offense"

Page 3, line 10, replace "subject to forfeiture" with "possible penalty that could be imposed for the alleged or committed offense subject to forfeiture"

Page 3, line 11, replace "e." with "d."

Page 3, line 24, after the underscored semicolon insert "and"

Page 3, line 25, remove "; and"

Page 3, remove line 26

Page 3, line 27 remove "the proceedings for forfeiture and sale under section 19-03.1-36.6"

Page 4, remove lines 13 through 31

Page 5, remove lines 1 through 29

Renumber accordingly

3
HB 1286
3.26.19

Testimony for:
Senate Judiciary
Prepared by:
Sgt. Mike Bolme, Bismarck Police Department
3/25/19

HB 1286-Opposition to changes to Asset Forfeiture Process

Madam Chair and members of the committee,

My name is Mike Bolme and I am a sergeant in the investigations section at the Bismarck Police Department. Prior to my promotion I was a narcotics investigator for eight years and was personally involved in multiple asset forfeiture proceedings.

Like you, I have sat through the testimony from both sides concerning this bill. We've heard from attorneys, civic groups, Chiefs of Police, Sheriffs, and even the Attorney General. What you haven't heard is how this bill, as written, will affect the people on the ground. The men and women in the arena per se. It's hard to see what is happening on the ground from 20,000 feet. So let me give you their perspectives.

I supervise five narcotics investigators and two internet crimes investigators. They investigate drugs and sex crimes. They are the men in the arena of asset forfeiture. Those seven investigators initiate more asset forfeiture proceedings than the rest of the department combined. That's because of the nature of the crimes they investigate. Drug dealing and human trafficking are cash rich businesses. You've heard testimony on how no one wants to give money back to drug dealers and human traffickers. Those two groups are the example because those two groups are who we seize the most cash and assets from. High level drug dealers have lots of money. Pimps have lots of money. Solicitors of human trafficking bring money to their prostitution deals. That's where the largest percentage of our seizures come from, using them as an example is not some political ploy to scare people.

In addition, the notion of some "perverse incentive" to seize innocent citizen's money and property is wrong. Effective propaganda always plays on emotions, and usually has little to do with the facts. As elected officials, you all know what it's like to be targets of biased propaganda. I have yet to hear anyone bring forward a genuine case of malfeasance in asset forfeiture on North Dakota law enforcement's part. That's because we go where the case takes us. The evidence follows the case, not the other way around. To think otherwise is to not know the nature of investigating crimes. There is a great deal of luck involved in catching the criminals at the right time. Sometimes it works out, sometimes it doesn't. Sometimes you catch them with a huge load of controlled substances, sometimes you catch them with cash. Sometimes it's both or neither. So to think that we somehow have a crystal ball which allows us to go where the forfeitures are going to be is incorrect. We take our shots, and hope we get the timing right. And by the way, we don't care which it is. A large quantity of money can have the same evidentiary value as a large quantity of methamphetamine. It's all about the evidence, it's not about the forfeitures. So, I want to make sure you understand the forfeiture process. All forfeitures start out as seizures of evidence of criminal activity.

Think about it this way. When was the last time you carried around a large quantity of cash? I guarantee you, if asked, you could have explained exactly where that money came from, and proven it. Criminals caught with proceeds of criminal activity, can't prove the legitimacy of those funds. They don't give receipts for selling drugs, and drug dealers don't deposit their money in banks. I have personally given seized money back, without a court proceeding, to people who could prove that the money was legitimately gained. The seizure of a large quantity of cash has to be coupled with other evidence of criminal conduct. No one is out there trying to take money from innocent citizens, and there is a system in place to prevent that from happening. The prosecutor and a judge have to also agree on the forfeiture. Asset forfeiture is not the wild west, and we are not running amok.

During testimony on the house judiciary side, we heard how the proposed changes would have minimal impact on the state school fund. No one is against funding schools. But I can tell you the loss of those funds would have terribly detrimental effects on my department's ability to effectively target criminal organizations. Recently, two of my investigators travelled to a different state, armed with arrest warrants, in order to cut the head off the snake of one of those criminal organizations. The loss of asset forfeiture funds, without any sort of replacement, would make those kinds of operations virtually impossible.

Let me add some comments on accountability and oversight. As the supervisor in charge of my department's asset forfeiture account, I can tell you exactly where our money is spent. Training, equipment, investigations vehicles, and the lion's share of our department's K-9 budget come out of the asset forfeiture fund. Every penny spent is first scrutinized by me and has to meet the requirements spelled out by state law for the utilization of those funds. That spending also has to be approved by my Deputy Chief, the Chief, and finally fiscal. From the previous testimony from both sides, it appears we are all in agreement that more accountability is needed. That doesn't scare me. Even though it means I will have to drum up one more annual report, I know our books are right, and we have nothing to be afraid of. We are being responsible with that money, and it is going to where it is needed most. Keeping neighborhoods safe.

There is no mechanism in this bill, as originally written, in which the state would somehow make up the difference of the money they are taking from municipalities and counties. That leaves the burden on those municipalities and counties to make up the difference. The money for that equipment and training has to come from somewhere. Having been through my cities budget process, I have my doubts, but eventually we know it will come from the taxpayers. They will now bear the burden once born by those who would do us harm.

Finally, as someone who has been through asset forfeiture proceedings, and who now keeps the books for our department's asset forfeiture account, I can honestly tell you I still have faith in the system. I trust our officers, our prosecutors, and our judges to collectively get it right. That doesn't mean that more oversight and more scrutiny would be bad things. If they ensure that we get it right, then that's a positive outcome. No one is out there to take innocent people's property.

Madam Chair, members of the committee, please keep these considerations in mind as you debate this bill. The men and women with the boots on the ground, fighting the good fight, are counting on you. Thank you.



Sheriff's Department McLean County

State of North Dakota

Jerry "JR" Kerzmann, Sheriff



#4

HB 1286

3.26.19

PO Box 1108
709 6th Ave.
Washburn, ND 58577

Phone: (701) 462-8103
Fax: (701) 462-3780

Madam Chairwoman and members of the committee:

My name is JR Kerzmann, and I am the McLean County Sheriff.

I oppose the current provisions in HB1286 that divert forfeiture proceeds from local entities to the State. Local law enforcement use forfeited funds for officer safety, training, and equipment. Expenditures of the money is done through a public process approved by county commissioners.

McLean County is situated between the urban centers of Bismarck and Minot, and at the same time, on a main route in and out of the oil patch. Therefore, we focus our forfeiture proceeds on drug interdiction on our highways. For example, we have a forfeiture funded drug dog program where shelter dogs are trained to become certified drug detection dogs not only for my department, but we also train drug and tracking dogs for other departments – some of whom, like us, could not afford to have their own trained dogs any other way.

As we meet here today, there are dogs that have passed our training program working in cities and counties detecting drugs throughout the State. I believe this is a prime example of how local law enforcement takes assets derived from crimes and targets those assets right back into fighting crime. Good training schools, protection equipment for our officers, body cameras and a host of other examples can be shown to you wherein forfeited assets were used to professionalize local police forces. Therefore, I hope the legislature continues to support local control of the proceeds from criminal activity. I would be happy to answer any questions you have. Thank you.

#5
HB 1286
3.26.19

Testimony Prepared for the
Senate Judiciary
March 25, 2019
By: Donnell Preskey, NDACo



RE: OPPOSITION to House Bill 1286 – Asset Forfeiture

Good morning Madam Chair and members of the committee. For the record, my name is Donnell Preskey representing the North Dakota Association of Counties which I serve as Executive Director for the Sheriff's and Deputies Association (NDSDA). NDSDA strongly opposes HB 1286 as written, however we would support the amended version presented to you today.

In summary, NDSDA can support the reporting requirement, proportionality requirement and increasing the burden of proof for forfeitures. What NDSDA opposes are the conviction requirement for forfeitures, and the shift of forfeiture funds to the state.

The Sheriffs and Police Chiefs have worked together to compile a sampling of data as it relates to asset forfeitures in the state. The findings from 37 agencies (20 counties and 17 cities) show that our law enforcement are acting responsibly and are not abusing their power in efforts to keep our communities safe.

	Agency average in asset forfeiture each year over past five years	Estimate current balance of asset forfeiture funds in your agency
Grand Total	\$654,299	\$1,072,374
Average	\$17,684	\$28,983

The annual average in asset forfeiture over the past five years for those 37 agencies is approximately \$654,000 or \$17,600 per agency. The total balance of asset forfeiture

funds in those combined 37 agencies is a little more than \$1 million. These amounts clearly demonstrate that local law enforcement is prudent and responsible with these funds.

Currently, law enforcement reinvests asset forfeiture funds into drug fighting training and equipment for K-9 programs, cell phone forensic tools, body armor, evidence room investments, in-car video equipment and equipment for special ops teams. The loss of these funds would jeopardize drug fighting tools our law enforcement need to continue their success and shift a greater burden on the locals to raise property taxes to pay for drug fighting efforts.

NDSDA has been very involved in the development of an amended version. We were very vocal on the House side regarding elements of HB 1286 that we were opposed to along with lending our support to some sections of the bill that have good intentions. We made many good faith efforts to work on further improving the bill, however we came up short. Improving this bill is a top priority for Sheriffs.

The amended version will add greater transparency, oversight and accountability to the asset forfeiture process and at the same time, allows our law enforcement to legally remove property and funds used in criminal activity. In order to best serve our communities, we need to ensure that those involved in the drug trade are not allowed to keep the profits of their illegal activity.

Below is a summary of NDSDA's support/opposition to various sections of the bill with or without amending. Again, we would support the amendments brought forward today and oppose HB 1286 in its current form.

CONVICTION REQUIREMENT (Section 1)

In its current form, HB 1286 requires that a conviction must take place prior to a forfeiture. It does include some exemptions, which was an improvement. NDSDA supports the language being proposed by the amendment presented today which increases the burden of proof to "reasonable doubt" the property was used in the commission of a crime or involved in criminal activity.

PORPORTIONALITY (Section 3)

The Sheriffs support the conditions outlined in Section 3 which establishes that forfeitures must be proportional. The current version includes exemptions that were added in after the bill was introduced. For the most part, Sheriffs accept the conditions exempting a vehicle valued at less than \$2,000 and a home from being forfeited. However, they oppose currency with the value of \$750 or less from being forfeited; which the amendment removes.

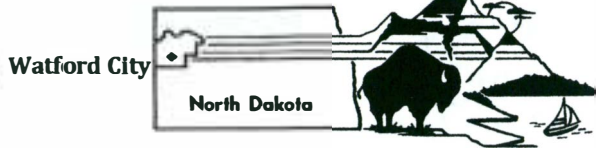
REPORTING REQUIREMENT (Section 4)

The Sheriffs agree transparency would create greater education and understanding of the process with the public. Therefore, they are supportive of an annual report being filed with the Attorney General.

SHIFTING FORFEITURE PROCEEDS TO STATE (Sections 5 & 6)

The Sheriffs strongly oppose this concept. While there is no evidence of any law enforcement agency abusing their use of civil asset forfeiture funds, we do support the language proposed in today's amendment which we believe will create oversight and counter any arguments of "perverse incentives" that may exist with law enforcement. The amendment orders the property to be deposited into a political subdivisions civil asset forfeiture fund. If the political subdivision does not have a fund, it will be deposited into the Attorney General's Asset Forfeiture fund.

#6
HB 1286
3-26-19



City of Watford City
213 2nd St. NE | P.O. Box 494
Watford City, ND 58854
Ph. 701-444-2533
Fax 701-444-3004
www.cityofwatfordcity.com

3/26/2019
10:15 AM – Fort Lincoln Room

Urge a DO NOT Pass Recommendation for HB 1286

Chairman Larson and members of Senate Judiciary,

Thank you for the opportunity to again share the concerns we shared with House Judiciary on HB 1286 and **urge you to recommend a DO NOT Pass**. The Watford City Police Department stands with the North Dakota Chiefs of Police Association in opposing HB 1286 as it is currently written. In addition to our concern with the attached fiscal note to the detriment of the regional Narcotics Task Force Units across the state, the bill is poorly written and hamstringing law enforcement efforts to counter the trafficking of illegal drugs in and through our state. Regional Narcotics Task Forces hold the specialized training and assets needed to focus on movement and trafficking of illegal drugs in and through our communities and to attack them in ways local police and sheriff's departments cannot. With the public safety risks associated with illegal drugs being what they are today, it is imperative that the Narcotics Task Forces benefit from the assets that they seize, to support the capacity needed to further remove drugs and those who traffic them from our streets.

It has been asserted that HB 1286 is an effort to proactively protect the good citizens of North Dakota by limiting government reach into their lives. In my opinion, the protected classes of people by these changes are the supporters of Measure 3, and possibly Defense Attorneys who benefit from determining proportional forfeiture. The good people of North Dakota benefit from the current law by North Dakota having the reputation of being a state that is TOUGH on drugs and drug runners.

HB 1286 removes a deterrent under current law of forfeiture and seizure by making forfeiture proportional. Making it proportional removes the current deterrent of seizing ill-gotten gains and forces the court to apply a subjective standard of determining proportional value of forfeiture and seizure to the charging of the crime.

When you look at the issues that illegal drugs bring to communities, it is important to remember that those trafficking them are truly the source of the issues. It is in the best interest of the state of North Dakota to maintain the deterrents of civil forfeiture as is, and to keep the capacity of the regional Narcotics Task Forces as robust and as supported as possible.

Chairman Larson and members of Senate Judiciary, thank you again for the opportunity to urge you to send a **DO NOT Pass recommendation for HB 1286** to the floor.

Shawn Doble, Chief of Police
City of Watford City
sndoble@nd.gov

#7
HB 1286
3.26.19

March 26, 2019

Dear Legislators,

The ACLU of North Dakota continues to support House Bill 1286, legislation that would substantially overhaul civil asset forfeiture, one of the greatest threats to private property rights in North Dakota.

Under North Dakota law, ordinary citizens who have never been convicted of a crime are becoming ensnared in this system that is unfairly stacked in favor of the government. House Bill 1286 would strengthen due process for property owners facing civil forfeiture, raising the standard of proof from probable cause to clear and convincing evidence, allowing owners to challenge 'unconstitutionally excessive' forfeitures.

Originally designed as a tool to divest drug kingpins of their ill-gotten fortunes, civil forfeiture is increasingly used to take homes, cars, and petty cash from ordinary North Dakotans. Under North Dakota's current civil asset forfeiture laws, law enforcement can take and keep property it claims is connected to illegal activity without charging the property owner with a crime.

A low standard of proof in current North Dakota law means that property can be seized when it has only a tenuous connection to the alleged underlying offense, and property may be forfeited even when there have been no criminal charges filed. This is often a substantial burden on the property owner, who may lose their job or home because the State seized their means of transportation or money needed to pay rent. The current burden placed on property owners seeking to challenge a forfeiture make it nearly impossible for innocent people to recover their property.

By passing House Bill 1286 and requiring a conviction before forfeiture, the legislature can rectify serious flaws in state law and establish significant safeguards for innocent North Dakotans.

In addition to the ACLU of North Dakota, organizations like the Institute for Justice, Americans for Prosperity, Young Americans and the Hazlitt Policy Center also support House Bill 1286.

Sincerely,

Heather Smith
ACLU of North Dakota

ACLU
North Dakota

P.O. Box 1190
Fargo, ND 58107
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www.aclund.org

19.0345.05002
Title.

Prepared by the Legislative Council staff for
Senator D. Larson

March 25, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1286

Page 1, line 3, after the second comma insert "and"

Page 1, line 3, remove ", 29-27-02.1, and subsection 1 of"

Page 1, line 4, remove "section 54-12-14"

Page 1, line 5, remove "disposition of statutory fees,"

Page 1, line 6, replace "fines," with "and"

Page 1, line 6, remove ", and the attorney general assets forfeiture fund"

Page 1, line 17, remove the third "or"

Page 1, line 18, after the first "property" insert ", or it can be established beyond a reasonable doubt the property was used in the commission of a crime or constituted the proceeds of criminal activity"

Page 1, remove lines 22 and 23

Page 2, line 6, remove "clear and convincing"

Page 2, line 7, remove "evidence"

Page 2, line 7, overstrike "for instituting the forfeiture action following which" and insert immediately thereafter "the forfeited property meets the requirements of subsection 2 of section 19-03.1-36.2. Following the state's case."

Page 2, line 15, remove "order the proper costs and"

Page 2, remove lines 16 and 17

Page 2, line 18, replace "remaining proceeds to be deposited as provided in subsection 2 of section 29-27-02.1" with "order only the forfeited property or proceeds from the sale of forfeited property to be deposited with a political subdivision if the political subdivision has created a civil asset forfeiture fund. If the political subdivision does not have a civil asset forfeiture fund, any forfeited property and proceeds from the sale of forfeited property must be deposited in the attorney general's asset forfeiture fund."

3. This section does not prohibit the state and a political subdivision from entering an agreement to divide forfeited property and the proceeds from the sale of forfeited property"

Page 3, line 3, remove "Currency with the value of seven hundred and fifty United States dollars or less"

Page 3, remove line 4

Page 3, line 5, remove "c."

Page 3, line 6, replace "d." with "c."

Page 3, line 9, remove "sentence imposed for committing the offense"

Page 3, line 10, replace "subject to forfeiture" with "possible penalty that could be imposed for the alleged or committed offense subject to forfeiture"

Page 3, line 11, replace "e." with "d."

Page 3, line 24, after the underscored semicolon insert "and"

Page 3, line 25, remove "; and"

Page 3, remove line 26

Page 3, line 27 remove "the proceedings for forfeiture and sale under section 19-03.1-36.6"

Page 4, remove lines 13 through 31

Page 5, remove lines 1 through 29

Renumber accordingly

#1
HB 1286
4-15-19Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1286

Introduced by

Representatives Becker, Blum, Johnston, Paur, Pyle, Satrom, Simons, Strinden

Senators Hogue, Kannianen, Luick, Unruh

1 A BILL for an Act to create and enact section 19-03.1-36.8 of the North Dakota Century Code,
2 relating to law enforcement agencies reporting seizures and forfeitures; and to amend and
3 reenact sections 19-03.1-36.2, 19-03.1-36.6, and 19-03.1-36.7, ~~29-27-02.1, and subsection 1 of~~
4 ~~section 54-12-14~~ of the North Dakota Century Code, relating to forfeiture proceedings,
5 contested forfeiture hearings, legal interests in forfeited property, ~~disposition of statutory fees,~~
6 ~~finer, and~~ forfeitures, ~~and the attorney general assets forfeiture fund.~~

7 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

8 **SECTION 1. AMENDMENT.** Section 19-03.1-36.2 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 19-03.1-36.2. Forfeiture proceeding as civil action - Standard of proof.

- 11 1. Forfeiture proceedings are civil actions against the property to be forfeited and the
12 standard of proof is a preponderance of the evidence clear and convincing evidence.
- 13 2. Forfeiture proceedings are separate and distinct from any related criminal action, and
14 may not be initiated until the owner of the property has been convicted of or pled guilty
15 to a criminal offense, or the individual has died, fled the jurisdiction, been deported by
16 the United States government, been granted immunity or a reduced sentence in
17 exchange for testifying or assisting a law enforcement investigation or prosecution, or
18 has abandoned the property, or it can be established beyond a reasonable doubt the
19 property was used in the commission of a crime or constituted the proceeds of criminal
20 activity. As used in this subsection, "abandoned the property" or "fled the jurisdiction"
21 means for a period of more than one year, the owner has not responded to any of the
22 reasonable efforts made by the seizing agency to contact the owner or has not
23 contacted the seizing agency.

1 3. Two or more law enforcement agencies and courts from different jurisdictions may
2 coordinate, cooperate, and engage in interjurisdictional prosecution under this section.

3 **SECTION 2. AMENDMENT.** Section 19-03.1-36.6 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **19-03.1-36.6. Hearing on contested forfeiture - Order releasing or forfeiting property.**

6 1. If an answer is filed within the time limits in this chapter, the forfeiture proceedings
7 must be set for hearing before the court. At the hearing, the state shall establish
8 ~~probable cause~~ a valid seizure of the property to be forfeited, and ~~clear and convincing~~
9 ~~evidence for instituting the forfeiture action following which~~ the forfeited property meets
10 the requirements of subsection 2 of section 19-03.1-36.2. Following the state's case,
11 any owner or person with a legal interest in the property to be forfeited who has filed
12 an answer to the complaint has the burden of proving that the property to be forfeited
13 is not subject to forfeiture under this chapter. If the court finds that the property is not
14 subject to forfeiture under this chapter, the court shall order the property released to
15 the owner or other person with a legal interest in the property as that person's right,
16 title, or interest appears. The court shall order the property forfeited if it determines
17 that such property or an interest therein is subject to forfeiture.

18 2. A court ordering property forfeited under subsection 1 may ~~order the proper costs and~~
19 ~~expenses of the proceedings for forfeiture and sale, including reasonable expenses of~~
20 ~~seizure, maintenance of custody, advertising, sales, and court costs with any~~
21 ~~remaining proceeds to be deposited as provided in subsection 2 of section~~
22 ~~29-27-02.1~~ order only the forfeited property or proceeds from the sale of forfeited
23 property to be deposited with a political subdivision if the political subdivision has
24 created a civil asset forfeiture fund. If the political subdivision does not have a civil
25 asset forfeiture fund, any forfeited property and proceeds from the sale of forfeited
26 property must be deposited in the attorney general's asset forfeiture fund.

27 3. A political subdivision that has a civil asset forfeiture fund shall establish an application
28 process, including eligibility criteria, to accept and process applications from law
29 enforcement agencies within the political subdivision's jurisdiction for grants from the
30 civil asset forfeiture fund. The political subdivision shall award a grant from the civil

asset forfeiture fund to a law enforcement agency that meets the eligibility criteria established by the political subdivision.

4. This section does not prohibit the state and a political subdivision from entering an agreement to divide forfeited property and the proceeds from the sale of forfeited property.

SECTION 3. AMENDMENT. Section 19-03.1-36.7 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.7. Legal interest in property.

1. A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.

2. Upon a determination by the court that property is subject to forfeiture, the owner of the property to be forfeited or any other person with a legal interest in the property may petition the court to determine whether the forfeiture is unconstitutionally excessive.

a. A vehicle valued at less than two thousand dollars may not be forfeited unless the court finds the vehicle has been modified to conceal contraband or currency.

b. ~~Currency with the value of seven hundred and fifty United States dollars or less may not be forfeited.~~

~~c. Real property constituting a homestead may not be forfeited.~~

~~d.c.~~ In determining whether a forfeiture is excessive, the court shall determine the fair market value of the property, the extent to which the owner or person participated in the offense, the extent to which the property was used or received in committing the offense, and the ~~sentence imposed for committing the offense subject to forfeiture~~ possible penalty that could be imposed for the alleged or committed offense subject to forfeiture.

e.d. The court may not consider the value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

1 **SECTION 4.** Section 19-03.1-36.8 of the North Dakota Century Code is created and
2 enacted as follows:

3 **19-03.1-36.8. Reporting.**

- 4 1. As used in this section, "law enforcement agency" means a nonfederal public agency
5 authorized by law or by a government agency or branch to enforce the law and to
6 conduct or engage in investigations or prosecutions for violations of law, including the
7 authority to conduct or engage in seizure and forfeiture.
- 8 2. Annually, each law enforcement agency shall compile the following information
9 regarding seizures and forfeitures pending or completed by the agency under this
10 chapter:
- 11 a. The types of property and dollar amount of the forfeited property;
12 b. The jurisdiction that received the property; and
13 c. The total number of seizures of currency; and
14 ~~d. The amount the court has ordered to be paid toward the costs and expenses of~~
15 ~~the proceedings for forfeiture and sale under section 19-03.1-36.6.~~
- 16 3. The attorney general may require the reporting of additional information not specified
17 in this section. The attorney general shall develop standard forms, processes, and
18 deadlines for ~~electronic data entry for~~ annual submission of forfeiture data by law
19 enforcement agencies.
- 20 4. Each law enforcement agency shall file with the attorney general a report of the
21 information compiled under subsection 2 for the law enforcement agency and the
22 corresponding prosecutor. A law enforcement agency that did not engage in seizures
23 or forfeitures during the reporting period shall file a null report. The attorney general
24 shall compile the submissions and issue ~~an aggregate~~ a report of all forfeitures in the
25 state.
- 26 5. If a law enforcement agency fails to file a report within thirty days after the report is
27 due, the attorney general may compel compliance by any means until the report is
28 filed.
- 29 6. The attorney general shall make available on the attorney general's website the
30 reports submitted by law enforcement agencies and the attorney general's ~~aggregate~~
31 report. The reports must be updated annually.

1 ~~SECTION 5. AMENDMENT.~~ Section 29-27-02.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~29-27-02.1. Disposition of statutory fees, fines, forfeitures, pecuniary penalties, and~~
4 ~~bond forfeitures.~~

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

11 ~~2. Funds obtained through civil asset forfeiture under section 19-03.1-36 must be paid~~
12 ~~into the attorney general assets forfeiture fund.~~

13 ~~SECTION 6. AMENDMENT.~~ Subsection 1 of section 54-12-14 of the North Dakota Century
14 Code is amended and reenacted as follows: ~~_____~~

15 ~~1. The attorney general assets forfeiture fund consists of funds appropriated by the~~
16 ~~legislative assembly and additional funds obtained from moneys, assets, and~~
17 ~~proceeds seized and forfeited pursuant to section 19-03.1-36, amounts received~~
18 ~~through court proceedings as restitution, amounts remaining from the forfeiture of~~
19 ~~property after the payment of expenses for forfeiture and sale authorized by law, and~~
20 ~~amounts received from a multijurisdictional drug task force as defined in section~~
21 ~~54-12-26. The amount of deposits into the fund which do not come from legislative~~
22 ~~appropriation or from a multijurisdictional drug task force and are not payable to~~
23 ~~another governmental entity may not exceed two five hundred thousand dollars within~~
24 ~~a biennium and any moneys in excess of that amount must be deposited in the~~
25 ~~general fund. The funds are appropriated, as a standing and continuing appropriation,~~
26 ~~to the attorney general for the following purposes:~~

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

29 ~~b. For repayment of rewards to qualified local programs approved under section~~
30 ~~12.1-32-02.2, if the information that was reported to the qualified local program~~
31 ~~substantially contributed to forfeiture of the asset, and for paying, at the discretion~~

- 1 of the attorney general, rewards for other information or assistance leading to a
- 2 forfeiture under section 19-03.1-36.
- 3 ~~e. For paying, at the discretion of the attorney general, any expenses necessary to~~
- 4 ~~seize, detain, inventory, safeguard, maintain, advertise, or sell property seized,~~
- 5 ~~detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary~~
- 6 ~~expenses incident to the seizure, detention, or forfeiture of such property.~~
- 7 ~~d. For equipping, for law enforcement functions, forfeited vessels, vehicles, and~~
- 8 ~~aircraft retained as provided by law for official use by the state board of pharmacy~~
- 9 ~~or a law enforcement agency.~~
- 10 ~~e. For paying, at the discretion of the attorney general, overtime compensation to~~
- 11 ~~agents of the bureau of criminal investigation incurred as a result of~~
- 12 ~~investigations of violations of any state criminal law or law relating to the control~~
- 13 ~~of drug abuse.~~
- 14 ~~f. For paying matching funds required to be paid as a condition for receipt of~~
- 15 ~~funds from a federal government program awarding monetary grants or~~
- 16 ~~assistance for the investigation, apprehension, or prosecution of persons~~
- 17 ~~violating the provisions of chapter 19-03.1.~~

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1286

That the Senate recede from its amendments as printed on pages 1419 and _____ of the House Journal and pages 1172, 1173, and 1185 of the Senate Journal and that Engrossed House Bill No. 1286 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 54-12 of the North Dakota Century Code, relating to seizure and forfeiture reporting; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-12 of the North Dakota Century Code is created and enacted as follows:

Seizure and forfeiture reporting - Report to legislative management.

1. As used in this section, "law enforcement agency" means any police force, multijurisdictional task force, fire department, or other municipal, county, or state agency that:
 - a. Is authorized by law or by a government agency or branch to conduct or engage in seizure and forfeiture of property; or
 - b. Collaborates with a federal agency under federal law to conduct or engage in seizure and forfeiture of property.
2. The attorney general shall establish and maintain a case tracking system and searchable public website regarding the following information regarding seized and forfeited property:
 - a. The name of the law enforcement agency that seized the property or, if seized by a multijurisdictional task force, the name of the lead agency.
 - b. Date of the seizure.
 - c. Type of property seized, including currency. If the property seized is not currency, a description of property seized including make, model, year, and serial number must be provided.
 - d. Location of seizure. If the location the seizure occurred was during a traffic stop on an interstate or state highway, the direction of the traffic flow must be provided.
 - e. Estimated value of the seizure.
 - f. Alleged criminal offense that led to the seizure.
 - g. Crime for which the owner of the seized property was charged.

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- h. The criminal case number and the district court where the case was filed.
 - i. Final disposition of the property owner's criminal case.
 - j. Case number of the forfeiture proceeding and the district court where the case was filed.
 - k. Who filed a claim or counterclaim for the seized property, if any.
 - l. Date the forfeiture order was issued.
 - m. Whether a forfeiture settlement agreement was reached.
 - n. The date and the final disposition of the property.
 - o. Estimated value of the forfeited property.
 - p. Estimate of the total costs accrued by the law enforcement agency regarding:
 - (1) Storage of property in impound lots or evidence rooms:
 - (2) Paying for law enforcement personnel and prosecutors' time and expenses to litigate forfeiture proceedings; and
 - (3) Selling or disposing of forfeited property.
 - q. Amount of any attorney fees awarded to owners of seized and forfeited property.
 - r. The purpose for which any seized property is used, if retained by a law enforcement agency.
 - s. The total value of seized and forfeited property held by the agency at the end of the reporting period.
 - 3. At the end of every month, a law enforcement agency that seizes property and a prosecutor who litigates the related criminal case and forfeiture proceedings shall provide to the attorney general a report of the information required under subsection 2.
 - a. The commander of a multijurisdictional task force may appoint one agency to report the multijurisdictional task force's seizures.
 - b. If a law enforcement agency did not conduct or engage in any seizures or forfeitures of property during the previous year, the agency shall file a report specifying the law enforcement agency did not engage in seizures or forfeitures under this section during the reporting period.
 - 4. By November first of each year, the attorney general shall submit to the legislative management and the governor a written report summarizing activity in the state for the preceding fiscal year, the type, approximate value, and disposition of any property seized, and the amount of proceeds received.
 - a. Summary data on seizures and forfeitures must be disaggregated by agency.

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- b. The attorney general shall make the aggregate report available on the attorney general's website.
 - 5. The attorney general may provide recommendations to improve statutes, rules, or policies in the aggregate report to better ensure seizures and forfeiture proceedings are conducted and reported in a manner fair to crime victims, innocent property owners, secured interest holders, citizens, law enforcement, and taxpayers.
 - 6. The state auditor shall perform a financial audit periodically under the generally accepted government auditing standards of records related to inventory of seized property. The state auditor shall submit a copy of the final audit report to the attorney general no later than October first following the audit and the report must be made available to the public.
 - 7. The attorney general shall recover any costs under this section by:
 - a. Withdrawing money from the asset forfeiture fund; and
 - b. Charging a fee to the law enforcement agency filing a report.
 - 8. A law enforcement agency shall use forfeiture proceeds to pay the costs of compiling and reporting data under this section, and to pay any fees imposed by the attorney general.
 - 9. The attorney general may adopt any rules necessary to implement this section.
 - 10. The data and reports compiled and prepared under this section are public information and not exempt from disclosure.

SECTION 2. APPLICATION. This Act applies to all seizures and forfeiture proceedings conducted or commenced after December 31, 2019."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1286

That the Senate recede from its amendments as printed on page 1419 and pages 1659 and 1660 of the House Journal and pages 1172 and 1173 and page 1185 of the Senate Journal and that Engrossed House Bill No. 1286 be amended as follows:

Page 1, line 3, after the second comma insert "and"

Page 1, line 3, remove ", 29-27-02.1, and subsection 1 of"

Page 1, line 4, remove "section 54-12-14"

Page 1, line 5, remove "disposition of statutory fees,"

Page 1, line 6, remove "fines, forfeitures, and the attorney general assets forfeiture fund"

Page 1, line 17, remove the third "or"

Page 1, line 18, after the first "property" insert ", or it can be established beyond a reasonable doubt the property was used in the commission of a crime or constituted the proceeds of criminal activity"

Page 2, line 6, remove "clear and convincing"

Page 2, line 7, remove "evidence"

Page 2, line 7, overstrike "for instituting the forfeiture action following which" and insert immediately thereafter "the property meets the requirements of subsection 2 of section 19-03.1-36.2. Following the state's case,"

Page 2, line 15, remove "order the proper costs and"

Page 2, remove lines 16 and 17

Page 2, line 18, replace "remaining proceeds to be deposited as provided in subsection 2 of section 29-27-02.1" with "order only the forfeited property or proceeds from the sale of forfeited property to be deposited with a political subdivision if the political subdivision has created a civil asset forfeiture fund. If the political subdivision does not have a civil asset forfeiture fund, any forfeited property and proceeds from the sale of forfeited property must be deposited in the attorney general's asset forfeiture fund."

3. A political subdivision that has a civil asset forfeiture fund shall establish an application process, including eligibility criteria, to accept and process applications from law enforcement agencies within the political subdivision's jurisdiction for an appropriation from the civil asset forfeiture fund.

4. This section does not prohibit the state and a political subdivision from entering an agreement to divide forfeited property and the proceeds from the sale of forfeited property"

Page 3, line 3, remove "Currency with the value of seven hundred and fifty United States dollars or less"

Page 3, remove line 4

Page 3, line 5, remove "c."

Page 3, line 6, replace "d." with "c."

Page 3, line 6, replace "determine" with "consider all factors, including"

Page 3, line 9, remove "sentence imposed for committing the offense"

Page 3, line 10, replace "subject to forfeiture" with "possible penalty that could be imposed for the alleged or committed offense subject to forfeiture"

Page 3, line 11, replace "e." with "d."

Page 3, line 19, after "forfeiture" insert "of property or to collaborate with a federal agency under federal law to conduct or engage in seizure and forfeiture of property. The term includes a multijurisdictional task force"

Page 3, line 20, remove "Annually, each law enforcement agency shall compile the following information"

Page 3, remove lines 21 through 26

Page 3, line 27, replace "the proceedings for forfeiture and sale under section 19-03.1-36.6." with "Every civil forfeiture judgment issued by a district court must be made publicly available and include the following information in the findings of fact:

- a. Case number of the forfeiture proceeding and the district court where the case was filed.
- b. Who filed a claim or counterclaim for the seized property, if any.
- c. Date the forfeiture order was issued.
- d. Whether a forfeiture settlement agreement was reached.
- e. The date and the final disposition of the property.
- f. Estimated value of the forfeited property.
- g. Estimate of the total costs accrued by the law enforcement agency for storage and disposal of the civilly forfeited property.
- h. Amount of any attorney fees awarded to owners of seized and forfeited property."

Page 3, line 28, after the "3." insert "Annually, a prosecutor who litigates the criminal case and forfeiture proceeding shall provide to the attorney general a copy of the judgment that includes the information required under subsection 2 and the total value of the forfeited property held by the agency at the end of the reporting period.

4. By November first of each year, the attorney general shall submit to the legislative management and the governor a written report summarizing activity in the state for the preceding fiscal year, the type, approximate value, and disposition of any civilly forfeited property, and the amount of proceeds received.
 - a. Summary data and civilly forfeited property must be disaggregated by agency.

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b. The attorney general shall make the report available on the attorney general's website.

5. The attorney general may recover any costs under this section by withdrawing money from the asset forfeiture fund.
6. A law enforcement agency may use forfeiture proceeds to pay the costs of compiling and reporting data under this section.
7. The data and reports compiled under this section are public information and not exempt from disclosure.

8."

page 3, line 30, remove "electronic data entry for"

Page 4, remove lines 1 through 6

page 4, line 7, replace the "5." with "9."

Page 4, remove lines 10 through 31

Page 5, remove lines 1 through 29

Renumber accordingly

Introduced by

Representatives Becker, Blum, Johnston, Paur, Pyle, Satrom, Simons, Strinden

Senators Hogue, Kannianen, Luick, Unruh

1 A BILL for an Act to create and enact section 19-03.1-36.8 of the North Dakota Century Code,
2 relating to law enforcement agencies reporting seizures and forfeitures; and to amend and
3 reenact sections 19-03.1-36.2, 19-03.1-36.6, and 19-03.1-36.7, ~~29-27-02.1, and subsection 1 of~~
4 ~~section 54 12 14~~ of the North Dakota Century Code, relating to forfeiture proceedings,
5 contested forfeiture hearings, legal interests in forfeited property, ~~disposition of statutory fees,~~
6 ~~finer, forfeitures, and the attorney general assets forfeiture fund.~~

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

8 **SECTION 1. AMENDMENT.** Section 19-03.1-36.2 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **19-03.1-36.2. Forfeiture proceeding as civil action - Standard of proof.**

- 11 1. Forfeiture proceedings are civil actions against the property to be forfeited and the
12 standard of proof is a preponderance of the evidence clear and convincing evidence.
13 2. Forfeiture proceedings are separate and distinct from any related criminal action, and
14 may not be initiated until the owner of the property has been convicted of or pled guilty
15 to a criminal offense, or the individual has died, fled the jurisdiction, been deported by
16 the United States government, been granted immunity or a reduced sentence in
17 exchange for testifying or assisting a law enforcement investigation or prosecution, ~~or~~
18 has abandoned the property, or it can be established beyond a reasonable doubt the
19 property was used in the commission of a crime or constituted the proceeds of criminal
20 activity. As used in this subsection, "abandoned the property" or "fled the jurisdiction"
21 means for a period of more than one year, the owner has not responded to any of the
22 reasonable efforts made by the seizing agency to contact the owner or has not
23 contacted the seizing agency.

- 1 3. Two or more law enforcement agencies and courts from different jurisdictions may
2 coordinate, cooperate, and engage in interjurisdictional prosecution under this section.

3 **SECTION 2. AMENDMENT.** Section 19-03.1-36.6 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **19-03.1-36.6. Hearing on contested forfeiture - Order releasing or forfeiting property.**

- 6 1. If an answer is filed within the time limits in this chapter, the forfeiture proceedings
7 must be set for hearing before the court. At the hearing, the state shall establish
8 ~~probable cause~~ a valid seizure of the property to be forfeited, and ~~clear and convincing~~
9 ~~evidence for instituting the forfeiture action following which the property meets the~~
10 ~~requirements of subsection 2 of section 19-03.1-36.2. Following the state's case, any~~
11 owner or person with a legal interest in the property to be forfeited who has filed an
12 answer to the complaint has the burden of proving that the property to be forfeited is
13 not subject to forfeiture under this chapter. If the court finds that the property is not
14 subject to forfeiture under this chapter, the court shall order the property released to
15 the owner or other person with a legal interest in the property as that person's right,
16 title, or interest appears. The court shall order the property forfeited if it determines
17 that such property or an interest therein is subject to forfeiture.
- 18 2. A court ordering property forfeited under subsection 1 may ~~order the proper costs and~~
19 ~~expenses of the proceedings for forfeiture and sale, including reasonable expenses of~~
20 ~~seizure, maintenance of custody, advertising, sales, and court costs with any~~
21 ~~remaining proceeds to be deposited as provided in subsection 2 of section~~
22 ~~29-27-02.1~~ order only the forfeited property or proceeds from the sale of forfeited
23 property to be deposited with a political subdivision if the political subdivision has
24 created a civil asset forfeiture fund. If the political subdivision does not have a civil
25 asset forfeiture fund, any forfeited property and proceeds from the sale of forfeited
26 property must be deposited in the attorney general's asset forfeiture fund.
- 27 3. A political subdivision that has a civil asset forfeiture fund shall establish an application
28 process, including eligibility criteria, to accept and process applications from law
29 enforcement agencies within the political subdivision's jurisdiction for an appropriation
30 from the civil asset forfeiture fund.

4. This section does not prohibit the state and a political subdivision from entering an agreement to divide forfeited property and the proceeds from the sale of forfeited property.

SECTION 3. AMENDMENT. Section 19-03.1-36.7 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-36.7. Legal interest in property.

1. A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.

2. Upon a determination by the court that property is subject to forfeiture, the owner of the property to be forfeited or any other person with a legal interest in the property may petition the court to determine whether the forfeiture is unconstitutionally excessive.

a. A vehicle valued at less than two thousand dollars may not be forfeited unless the court finds the vehicle has been modified to conceal contraband or currency.

b. ~~Currency with the value of seven hundred and fifty United States dollars or less may not be forfeited.~~

~~c. Real property constituting a homestead may not be forfeited.~~

d.c. In determining whether a forfeiture is excessive, the court shall determine consider all factors, including the fair market value of the property, the extent to which the owner or person participated in the offense, the extent to which the property was used or received in committing the offense, and the sentence imposed for committing the offense subject to forfeiture possible penalty that could be imposed for the alleged or committed offense subject to forfeiture.

e.d. The court may not consider the value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

SECTION 4. Section 19-03.1-36.8 of the North Dakota Century Code is created and enacted as follows:

19-03.1-36.8. Reporting.

1. As used in this section, "law enforcement agency" means a nonfederal public agency authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law, including the authority to conduct or engage in seizure and forfeiture of property or to collaborate with a federal agency under federal law to conduct or engage in seizure and forfeiture of property. The term includes a multijurisdictional task force.
2. Annually, each law enforcement agency shall compile the following information regarding seizures and forfeitures pending or completed by the agency under this chapter:
 - a. The types of property and dollar amount of the forfeited property;
 - b. The jurisdiction that received the property;
 - c. The total number of seizures of currency; and
 - d. The amount the court has ordered to be paid toward the costs and expenses of the proceedings for forfeiture and sale under section 19-03.1-36.6. Every civil forfeiture judgment issued by a district court must be made publicly available and include the following information in the findings of fact:
 - a. Case number of the forfeiture proceeding and the district court where the case was filed.
 - b. Who filed a claim or counterclaim for the seized property, if any.
 - c. Date the forfeiture order was issued.
 - d. Whether a forfeiture settlement agreement was reached.
 - e. The date and the final disposition of the property.
 - f. Estimated value of the forfeited property.
 - g. Estimate of the total costs accrued by the law enforcement agency for storage and disposal of the civilly forfeited property.
 - h. Amount of any attorney fees awarded to owners of seized and forfeited property.
3. Annually, a prosecutor who litigates the criminal case and forfeiture proceeding shall provide to the attorney general a copy of the judgment that includes the information required under subsection 2 and the total value of the forfeited property held by the agency at the end of the reporting period.

4. By November first of each year, the attorney general shall submit to the legislative management and the governor a written report summarizing activity in the state for the preceding fiscal year, the type, approximate value, and disposition of any civilly forfeited property, and the amount of proceeds received.

a. Summary data and civilly forfeited property must be disaggregated by agency.

b. The attorney general shall make the report available on the attorney general's website.

5. The attorney general may recover any costs under this section by withdrawing money from the asset forfeiture fund.

6. A law enforcement agency may use forfeiture proceeds to pay the costs of compiling and reporting data under this section.

7. The data and reports compiled under this section are public information and not exempt from disclosure.

8. The attorney general may require the reporting of additional information not specified in this section. The attorney general shall develop standard forms, processes, and deadlines for ~~electronic data entry for~~ annual submission of forfeiture data by law enforcement agencies.

~~4. Each law enforcement agency shall file with the attorney general a report of the information compiled under subsection 2 for the law enforcement agency and the corresponding prosecutor. A law enforcement agency that did not engage in seizures or forfeitures during the reporting period shall file a null report. The attorney general shall compile the submissions and issue an aggregate report of all forfeitures in the state.~~

~~5.9. If a law enforcement agency fails to file a report within thirty days after the report is due, the attorney general may compel compliance by any means until the report is filed.~~

~~6. The attorney general shall make available on the attorney general's website the reports submitted by law enforcement agencies and the attorney general's aggregate report. The reports must be updated annually.~~

~~**SECTION 5. AMENDMENT.** Section 29-27-02.1 of the North Dakota Century Code is amended and reenacted as follows:~~

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

~~1. Except as otherwise provided by law, all statutory fees, fines, forfeitures, and pecuniary penalties prescribed for a violation of state laws, when collected, must be paid into the treasury of the proper county to be added to the state school fund. When any bail bond or other property or money deposited as bail is forfeited to the state, the proceeds collected therefrom must be paid over to the proper state official and credited to the state general fund.~~

~~2. Funds obtained through civil asset forfeiture under section 19-03.1-36 must be paid into the attorney general assets forfeiture fund.~~

~~SECTION 6. AMENDMENT.~~ Subsection 1 of section 54-12-14 of the North Dakota Century Code is amended and reenacted as follows: _____

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

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

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

- 1 ~~e. For paying, at the discretion of the attorney general, any expenses necessary to~~
- 2 ~~seize, detain, inventory, safeguard, maintain, advertise, or sell property seized,~~
- 3 ~~detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary~~
- 4 ~~expenses incident to the seizure, detention, or forfeiture of such property.~~
- 5 ~~d. For equipping, for law enforcement functions, forfeited vessels, vehicles, and~~
- 6 ~~aircraft retained as provided by law for official use by the state board of pharmacy~~
- 7 ~~or a law enforcement agency.~~
- 8 ~~e. For paying, at the discretion of the attorney general, overtime compensation to~~
- 9 ~~agents of the bureau of criminal investigation incurred as a result of~~
- 10 ~~investigations of violations of any state criminal law or law relating to the control~~
- 11 ~~of drug abuse.~~
- 12 ~~f. For paying matching funds required to be paid as a condition for receipt of funds~~
- 13 ~~from a federal government program awarding monetary grants or assistance for~~
- 14 ~~the investigation, apprehension, or prosecution of persons violating the~~
- 15 ~~provisions of chapter 19-03.1.~~