

2021 HOUSE JUDICIARY

HB 1261

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1261

1/26/2021

Relating to seizure and forfeiture reporting requirements.
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Chairman Klemin called the hearing to order at 11:36 AM.

Present: Representatives Klemin, Karls, Becker, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter.
Rep. Buffalo absent.

Discussion Topics:

- Report opposition
- Civil Asset forfeiture

Rep. Becker: Introduced the bill. Testimony #3451 & 3466 11:36

Pete Hanebutt, ND Farm Bureau: testified in favor.

Troy Seibold, Attorney General's office: testified in opposition. 11:45

Chairman Klemin closed the hearing at 12:04

Addition Written Testimony: #2579

DeLores D. Shimek
Committee Clerk

OFFICE OF ATTORNEY GENERAL

Civil Asset Forfeiture

Statewide Report Fiscal Year 2019-2020



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HISTORY

The 66th Legislative Assembly passed House Bill 1286, which amended existing sections and created new sections in Chapter 19-03.1 (Uniform Controlled Substances Act) relating to civil asset forfeiture procedures and reporting requirements.

The bill required the Office of Attorney General to publish an annual report summarizing the civil asset forfeiture activity in the state for the preceding fiscal year, including the type, approximate value, and disposition of any civilly forfeited property, and amount of proceeds received.

Civil Asset Forfeiture Proceedings

As North Dakota Century Code § 19-03.1-36 provides, there are numerous items that may be seized by law enforcement for civil asset forfeiture. As outlined in this report, almost all items seized for civil asset forfeiture fall into one of three categories: currency, automobiles, or firearms.

In a typical seizure of currency, an automobile, or firearm, the law enforcement agency completes a report and notice of seized assets. This form details which agency is seizing the assets, what those assets are, and is signed by both the defendant and the officer making the seizure. Law enforcement next provides this information to the local prosecutor who determines whether or not to initiate civil asset forfeiture proceedings. If the prosecutor declines to initiate forfeiture proceedings the assets are returned to the defendant.

Generally, the Court does not take action on the civil forfeiture until the criminal case has been resolved. The delay is often in the interest of protecting the defendant's right against self-incrimination. The vast majority of cases are not contested by the defendant, and default judgment is entered by the Court. The rare case that is contested proceeds to a bench trial after the conclusion of the criminal case.

N.D.C.C. § 19-03.1-36.6 sets out the process for civilly forfeited property.

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 a valid seizure of the property to be forfeited, and the 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 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.

Reporting

In a civil asset forfeiture proceeding, certain information is required to be included in the court's judgment, which is a public court record. Reporting requirements are set out in N.D.C.C. § 19-03.1-36.8(2), which provides:

- (2) 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.

Disposition of Civilly Forfeited Property

The forfeited property or proceeds from the sale of forfeited property must be deposited in a political subdivision's 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. A political subdivision that has a civil asset forfeiture fund must 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.

See also “Civil Asset Forfeitures” on the Criminal Justice Resources tab of the Office of Attorney General’s website, <https://attorneygeneral.nd.gov/>.

ANNUAL REPORT

The fiscal year covers the period July 1 – June 30. House Bill 1286 took effect on August 1, 2019. Therefore, this initial Annual Report covers the period August 1, 2019 through June 30, 2020, and information about civil asset forfeiture cases *concluded* - or *assets disposed of* - during that time period.

Disclaimer

At the request of the Interim Judiciary Committee, on September 24, 2020, the Office of Attorney General prepared a preliminary report. As noted at the time, the verification process had not been completed and the accuracy of the preliminary report could not be guaranteed. The reporting requirement was new, and because both the prosecuting attorney and the law enforcement agency/agencies had a reporting requirement on each case, it created uncertainty. During the verification process, we determined that there were numerous instances of duplicative or erroneous reports or omissions.

These factors affected the accuracy of the preliminary report:

1. Forfeiture is reported by the state's attorney within thirty days of the forfeiture judgment. The value of the forfeited property estimated in the court's judgment (reported by the state's attorney) is not necessarily indicative of the actual amount that may be realized from the eventual sale or disposal of the property (reported by law enforcement).
2. The law enforcement agency reports the proceeds from disposal of forfeited assets, but disposal (sale) may not occur for months, or may not occur until the next year's reporting period.
3. A multi-county narcotics task force report is submitted from the county where the task force is headquartered which may not be the same as the county in which the civil asset forfeiture case was filed. The task forces are comprised of officers from state and local law enforcement agencies, which could result in more than one agency from a task force submitting a report for assets on a single forfeiture.
4. Some agencies erroneously reported on all cases completed during the 2019 and 2020 *calendar* years rather than the 2019-2020 *fiscal* year, resulting in reports for cases before the reporting requirement and reports received after the reporting deadline.

These issues have been resolved and/or corrected in this final report.

SUMMARY INFORMATION

Jurisdictions

The district courts are divided into eight judicial districts. The following jurisdictions reported civil asset forfeiture proceedings

South Central Judicial District

- Burleigh
 - Burleigh County State's Attorney's Office
 - Bismarck Police Department
 - Burleigh County Sheriff's Office
 - Metro Area Narcotics Task Force (Burleigh & Morton)
- Morton
 - Morton County State's Attorney's Office
 - Morton County Sheriff's Office

East Central Judicial District

- Cass
 - Cass County State's Attorney's Office
 - Cass County Drug Task Force
 - Fargo Police Department

Northeast Judicial District

- Pembina
 - Pembina County State's Attorney's Office

Northeast Central Judicial District

- Grand Forks
 - Grand Forks County State's Attorney's Office
 - Grand Forks Narcotics Task Force (Grand Forks & Pembina)

Southeast Judicial District

- Foster
 - Foster County State's Attorney's Office
- Stutsman
 - Stutsman County State's Attorney's Office
 - Stutsman County Narcotics Task Force (Stutsman & Foster)
- Sargent
 - Sargent County State's Attorney's Office
 - Southeast Multi County Agency

North Central Judicial District

- Ward
 - Ward County State's Attorney's Office
 - Ward County Narcotics Task Force

Northwest Judicial District

- Williams
 - Williams County State's Attorney's Office
 - Northwest Narcotics Task Force

Currency

Forfeited currency is divided among the agencies involved in the investigation and prosecution of the case. The number of agencies receiving funds and the cost share ratio depends on the jurisdiction and how the case originated, among other factors.

- Currency seized, statewide¹\$521,846
 - Returned to Defendants -\$34,632
 - Sent to ND Child Support Enforcement..... -\$10,000
- **Net total****\$477,214**

Automobiles

Eleven² forfeited vehicles were reported as held or disposed of during the reporting period. The reported value of the asset is the amount for which the automobile sold. In one case, rather than putting the forfeited automobile in an auction, the court approved an agreement allowing the [convicted] owner to make a civil payment equal to a percentage of the automobile's value and then keep it.

- Total proceeds realized from forfeited automobiles**\$30,141**

Firearms

Eight³ firearms were reported as held or disposed of during the reporting period. The reported value of the firearms is the amount realized from sale.

- Total proceeds received from forfeited firearms⁴**\$300**

Other Property

Other property includes any other personal property, such as cell phones and electronics, clothing, personal possessions, hobby or sporting equipment, tools, etc. The "value" of some items (such as used clothing) is minimal.

¹ During the verification process we determined that there was confusion over how to properly report when all or part of the forfeited currency was returned to the defendant or directed to an entity other than the reporting jurisdiction's civil asset forfeiture fund. In addition, because both the state's attorney and the receiving law enforcement agency are required to report, some cases involving forfeited currency were not initially reported because each of the agencies believed the other agency had already submitted a report. Reports were updated as these cases were identified during the verification process.

² Additional vehicles were identified during the verification process and the agencies corrected the submitted reports.

³ In the September 2020 preliminary report, additional firearms were noted to have been "destroyed." Upon further investigation and verification with the reporting entity, it was determined that these firearms had been reported erroneously because they were, in fact, destroyed under the evidence exception provisions in N.D.C.C. Title 62.1 under a criminal case rather than a civil asset forfeiture proceeding. However, even civilly forfeited firearms may be ordered destroyed if they have been altered and sale is thus prohibited.

⁴ The amount is less than stated in the September 2020 preliminary report because one firearm was reported by both agencies with a reporting requirement when it sold, which duplication was discovered during the verification process.

DISAGGREGATED INFORMATION

Currency

The disaggregated forfeited cash is reported by judicial district and county because the narcotics task forces serve multiple counties and each county also may include multiple law enforcement agencies. Proceeds from civilly forfeited assets from a case originating with a local law enforcement agency may be divided among different agencies, or in different percentages, than the assets from a case originating with a narcotics task force, even though the same criminal justice agencies may be involved.

South Central Judicial District

- Burleigh\$21,254
- Morton\$160,590

East Central Judicial District

- Cass.....\$65,115

Northeast Judicial District

- Pembina.....\$1,451

Northeast Central Judicial District

- Grand Forks\$71,662

Southeast Judicial District

- Foster\$1,313
- Stutsman\$1,560

North Central Judicial District

- Ward\$54,687

Northwest Judicial District

- Williams.....\$99,582

TOTAL.....\$477,214

Automobiles

Following is the breakdown of forfeited vehicles by county and, if sold⁵, the month of sale and amount realized.

South Central Judicial District

- Burleigh
 - 1970 Cadillac Deville
- Morton
 - 2006 Dodge Charger
 - 2010 Jeep Grand Cherokee
 - 2005 Chevrolet Corvette, February 2020 \$11,252

East Central Judicial District

- Cass
 - 2000 Ford Ranger
 - 2015 Mercedes Benz C300, November 2019 \$8,000

Southeast Judicial District

- Sargent
 - 2005 Chevrolet Tahoe truck, December 2019 \$1,124

North Central Judicial District

- Ward
 - 2015 Dodge Charger, December 2019 \$6,410
 - Hyundai X6350, December 2019 \$1,055

Northwest Judicial District

- Williams
 - 2001 Ford F-250 Super Duty, October 2019 \$1,850
 - 2001 Lincoln Continental, October 2019..... \$450

TOTAL.....\$30,141

⁵ Civilly forfeited vehicles are generally sold at public auction, but because of Covid-19, these auctions were cancelled or postponed.

Firearms

These jurisdictions reported forfeited firearms held or sold pursuant to the civil asset forfeiture order and in accordance with the provisions of statute during the reporting period.

South Central Judicial District

- Burleigh
 - 380 ACP Hi Point CF, forfeited December 2019
- Morton
 - Magnum Research .44 Desert Eagle pistol, November 2019
 - Kimber .45 Ultra Raptor, November 2019
 - Sig Sauer .22 Mosquito pistol, November 2019
 - North American Arms .22 pistol, November 2019
 - Springfield .45 Xds pistol, November 2019

Northeast Central Judicial District

- Grand Forks
 - Ruger 9 mm, forfeited 2014, sold November 2019 \$100

North Central Judicial District

- Ward
 - S&W MP handgun, forfeited 2019, sold March 2020.. \$200

TOTAL \$300

Other Property

The state's attorneys reported the estimated value of forfeited property, as required, but almost none of this property was actually forfeited to a criminal justice agency.

Judicial District	Amount estimated	Amount realized
South Central Judicial District		
• Burleigh	\$100.....	\$0
• Morton	\$0.....	\$0
East Central Judicial District		
• Cass.....	\$0.....	\$0
Northeast Judicial District		
• Pembina.....	\$0.....	\$0
Northeast Central Judicial District		
• Grand Forks ⁶	\$2,560.....	\$0
Southeast Judicial District		
• Foster	\$0.....	\$0
• Sargent	\$0.....	\$0
• Stutsman	\$0.....	\$0
North Central Judicial District		
• Ward (prepaid cards)	\$400.....	\$400
Northwest Judicial District		
• Williams (Jewelry)	\$599.....	\$599
TOTAL.....	\$3,659.....	\$999

⁶ The seized items that were forfeited included alcohol (which cannot be resold but was included in the agency's estimated value for reporting purposes as required by law), and stolen tools and small equipment that were returned to the rightful owner pursuant to the forfeiture judgment.

RECOMMENDATIONS

The Office of Attorney General has identified three potential areas to improve reporting.

1. N.D.C.C. § 19-03.1-36.8(1) and (9) place a requirement on law enforcement to file a report with the Attorney General. N.D.C.C. § 19-03.1-36.8(3) places a requirement on every prosecutor to provide a copy of the judgment to the Attorney General. This reporting requirement is duplicative. The judgments are publically available and can be accessed by the Office of Attorney General without any extra requirements on local prosecutors. Removing subsection 3 of N.D.C.C. § 19-03.1-36.8 would reduce the burden on local prosecutors and would not impair the compilation of statistics on Civil Asset Forfeiture.
2. N.D.C.C. § 19-03.1-36.8 requires reporting on all items forfeited. Items such as alcohol were included in this initial report. A *de minimis* exception would exclude items worth less than \$50 such as alcohol or tobacco. This exception would reduce the reporting burden on law enforcement and not meaningfully change public oversight.
3. N.D.C.C. § 19-03.1-36.8(9) requires law enforcement to submit reports to the Attorney General within 30 days after the report is due. Changing the reporting requirement to annually would reduce any confusion and still achieve the desired result.

RECOMMENDATIONS

The Office of Attorney General has identified three potential areas to improve reporting.

1. N.D.C.C. § 19-03.1-36.8(1) and (9) place a requirement on law enforcement to file a report with the Attorney General. N.D.C.C. § 19-03.1-36.8(3) places a requirement on every prosecutor to provide a copy of the judgment to the Attorney General. This reporting requirement is duplicative. The judgments are publically available and can be accessed by the Office of Attorney General without any extra requirements on local prosecutors. Removing subsection 3 of N.D.C.C. § 19-03.1-36.8 would reduce the burden on local prosecutors and would not impair the compilation of statistics on Civil Asset Forfeiture.
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3. N.D.C.C. § 19-03.1-36.8(9) requires law enforcement to submit reports to the Attorney General within 30 days after the report is due. Changing the reporting requirement to annually would reduce any confusion and still achieve the desired result.

**TESTIMONY IN SUPPORT OF
HOUSE BILL NO. 1251**

January 20, 2021

Dear Chairman, Klemin and members of the Judiciary Committee:

Thank you for the opportunity to testify before you today. My name is Craig Enderle, and I am speaking on behalf of the North Dakota collector's association (NDCA).

The NDCA membership is comprised of several North Dakota licensed collection agencies that provide accounts receivable services to thousands of North Dakota's businesses including but not limited to the medical, financial, energy, agriculture, and utility industries. Each of our members efforts create a positive impact on the North Dakota economy as well as the individuals and families we assist in resolving their financial responsibilities.

As you are aware, the 10-year judgment under this section of law has a renewal requirement to extend the judgment for an additional 10 years. The NDCA strongly supports the removal of the renewal requirement for the following reasons:

- Our members report they renew unpaid judgments nearly 100 percent of the time. Because the renewal already extends the limitation for a total of 20 years, we believe the time /labor spent is a non-productive exercise for both the plaintiff and defendant. The end outcome is the judgment completely expires after 20 years anyway.
- The professionals within our industry as well the legal community spend countless hours every year explaining the renewal process to both consumers and businesses. This creates an unnecessary hardship for North Dakota creditors.
- The North Dakota Court systems spend time receiving and filing the renewal and it is done without a fee requirement. This bill would reduce the total labor time spent by the court system.

For the above stated reasons, we ask that you give a favorable DO PASS recommendation to HB 1251.

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1261

2/15/2021

Relating to seizure and forfeiture reporting requirements.
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Chairman Klemin called the meeting to order at 11:15 AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Satrom, and Vetter. Absent: Roers Jones

Discussion Topics:

- Property seizure
- Attorney general procedure

Rep. Becker: Do not pass motion

Rep. Satrom: Seconded

Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	Y
Rep. Christensen	N
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	N
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	A
Rep B. Satrom	Y
Rep Vetter	Y
Rep Buffalo	Y
Rep K. Hanson	Y

11-2-1 Motion carried

Carrier: Rep. Cory

Stopped 11:17AM

DeLores D. Shimek
Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1261: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO NOT PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1261 was placed on the Eleventh order on the calendar.