

HB 615-FN - AS INTRODUCED

2025 SESSION

25-0591

09/11

HOUSE BILL ***615-FN***

AN ACT relative to drug forfeiture proceedings.

SPONSORS: Rep. D. McGuire, Merr. 14; Rep. Berch, Ches. 6; Rep. Lynn, Rock. 17; Rep. Popovici-Muller, Rock. 17

COMMITTEE: Judiciary

ANALYSIS

This bill modifies the procedures to be used regarding forfeiture of items used in connection with drug offenses.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

25-0591

09/11

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Five

AN ACT relative to drug forfeiture proceedings.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Controlled Drug Act; Forfeiture of Items Used in Connection With Drug Offenses. Amend RSA 318-B:17-b to read as follows:

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

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

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

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

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

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

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

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

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

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

it except upon further order of the court. The order may be made on or in connection with a search warrant;

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

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

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

(e) United States currency totaling \$1,000 or less, or a motor vehicle of \$5,000 or less in market value, shall be exempt from seizure and forfeiture. The department of justice shall notify state, county, and municipal law enforcement agencies of the publications that such agencies may use to establish the value of a motor vehicle.

(f) Notwithstanding subparagraph (e), any property may be seized or impounded according to state law if it is needed as evidence in a criminal investigation or prosecution. The agency seizing the property may take reasonable steps to preserve it for use as evidence in the investigation or prosecution. This may include promptly returning the property and using photographs or other alternatives as evidence.

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

I-d. A person from whom property is seized may waive the person's rights, interests, and title in the seized property by knowingly and voluntarily executing a forfeiture document that identifies the seized property to be forfeited and, if any, encumbrances or liens on the seized property and is approved by the official authorized to prosecute the associated criminal charge. A law enforcement officer, other than the official authorized to prosecute the associated criminal charge, may not request, induce, or require a person to relinquish, for purpose of forfeiture, the person's rights, interests, and title in seized property. A waiver resulting from efforts by a law enforcement officer, other than the official authorized to prosecute the associated criminal charge, which purports to relinquish a person's rights, interests, and title in seized property is void. The waiver is inadmissible in court.

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

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

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

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

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

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

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

(a) Place the property under seal; or

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

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

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

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

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

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

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

III-a.(a)(1) The court that has jurisdiction in the associated criminal matter shall have jurisdiction over the civil forfeiture litigation. The same judge shall be assigned responsibility for both processes and shall coordinate hearings as required in the interest of justice. The civil forfeiture litigation shall be docketed separately from the criminal matter and be assigned its own docket number.

(2) If a defendant in a criminal matter is represented by a public defender or counsel appointed by the court, the public defender or appointed counsel shall represent the defendant in the civil forfeiture proceeding in this section.

(3) Following seizure, any person other than a defendant with an interest in the seized property shall have a right to a post-seizure hearing.

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

(A) As a separate hearing;

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

(C) At the court's discretion.

(5) A party, by agreement or for good cause, may move for one extension of no more than 30 days. Any motion may be supported by affidavits or other submissions.

(6) The court shall order the return of property if, by a preponderance of evidence, it finds:

(A) The seizure was invalid;

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

(C) The property cannot be forfeited under this chapter.

(7) Notwithstanding subparagraph (6), the court may impose reasonable conditions on the return of the property, including delaying return or the use of photographic evidence, to preserve the property for later use as evidence in criminal prosecution.

(8) The provisions of this paragraph shall not apply to the return of controlled substances.

(b) In a case in which the state seeks forfeiture of property, the state shall file with the court a civil complaint for forfeiture. It shall include the following information:

(1) A description of the property seized;

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

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

(c)(1) The state shall serve the civil complaint for forfeiture on a reasonably timely basis.

This includes:

(A) At arraignment;

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

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

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

(E) At the superior court's discretion.

(2) The defendant may answer the civil complaint at any time up to 90 days after the court enters judgment in the associated criminal prosecution. The defendant's failure to answer the complaint prior to conviction will not cause the defendant to default in the civil case. At any time, the defendant may give notice to the court of the defendant's waiver of interest in any of the seized property.

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

(d) Discovery related to the forfeiture proceeding shall be subject to rules of civil procedure and shall be stayed until after the defendant answers the civil complaint in subparagraph (b).

(e) The court shall consider the loss of property subject to forfeiture as part of and following the conviction of the associated crime. Property may be forfeited only if:

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

(2) The state establishes by a preponderance of the evidence that the property is proceeds derived directly from, the non-currency fruit of, moneys, coin, currency, negotiable instruments or other investments knowingly or intended to be used in, or the instrument of the crime for which the state secured a conviction.

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

(g) Nothing in this paragraph shall prevent property from being forfeited by consent order approved by the court provided that all owners, secured interest holders and other persons entitled to notice under this section consent to the forfeiture. Persons entitled to notice

under this chapter may consent to some issues and have the court determine remaining issues.

(h) The consent order may reflect:

(1) A plea agreement; or

(2) A diversion agreement.

(i) The court may waive the conviction requirement and grant title to the property to the state no fewer than 90 days after seizure if the state files a civil complaint and shows by a preponderance of the evidence that, before conviction, the defendant:

(1) Was deported by the United States government;

(2) Was extradited to another state or foreign jurisdiction;

(3) Has abandoned the property;

(4) Has fled the jurisdiction; or

(5) Is deceased, provided that the defendant's death shall not preclude the defendant's heir or legatee from filing a claim for the seized property as an innocent owner under subparagraph (l).

(j) The defendant may motion the court to determine whether the forfeiture is unconstitutionally excessive under the state or federal constitution. At the court's discretion, the court may hold a proportionality hearing:

(1) As a separate hearing;

(2) At the same time as post-arraignment hearing, a suppression hearing, a post seizure hearing, an omnibus hearing, or other pretrial hearing; or

(3) As a hearing after conviction.

(A) The defendant shall bear the burden of establishing the forfeiture is unconstitutionally excessive by a preponderance of the evidence at a hearing conducted by the court without a jury. In determining whether the forfeiture is unconstitutionally excessive, the court shall not consider the value of the property to the state.

(B) At any hearing, as allowed by subparagraph (j), the court may consider all relevant factors to determine if the forfeiture is unconstitutionally excessive but may consider other relevant factors including:

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

(ii) The extent to which the defendant participated in the crime;

(iii) The extent to which the property was integral to committing the crime;

(iv) Whether the crime was completed or attempted;

(v) The sentence or fine to be imposed for committing the crime;

(vi) Any unjust hardship to the defendant's family if the property is forfeited; and

(vii) All relevant factors related to the fair market value of the property.

(k)(1) Property encumbered by a security interest shall not be forfeited. The state shall return property to a secured interest holder, other than the defendant or rightful owner, up to the value of the interest.

(2) If the property is not returned, the secured interest holder may file a pleading in the civil action commenced by the state with the superior court at any time before the court enters judgment in the associated criminal prosecution or grants the motion in subparagraph (i).

(3) The court shall hold a hearing on the pleading within 30 days after its filing or at the court's discretion. The hearing shall be held before the court without a jury.

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

(5) If the secured interest holder establishes a valid interest but the state seeks to proceed, the state shall prove by a preponderance of the evidence that:

(A) The interest resulted from a fraudulent conveyance;

(B) The interest is held through a straw purchase, trust, or otherwise for the benefit of the defendant; or

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

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

(7) Notwithstanding subparagraph (6), the court may impose reasonable conditions on the return of the property, including delaying return or the use of photographic evidence, to preserve the property for later use as evidence in criminal prosecution.

(l)(1) Property of a defendant's heir, owner, or co-owner of seized property who does not have actual knowledge of the use of the property in a crime that authorizes the forfeiture of the property, but not the defendant or secured interest holder, shall not be forfeited. In this paragraph, "actual knowledge" means direct and clear awareness of information, a fact, or a condition. The state summarily shall return property to such owner.

(2) If the property is not summarily returned, an innocent owner may file a pleading in the civil action commenced by the state with the superior court at any time before the court

enters judgment in the associated criminal prosecution or grants the requested relief in the civil case referred to in subparagraph (i).

(3) An innocent owner may file a pleading the superior court by filing a simple statement that sets forth:

(A) The owner's interest;

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

(C) The relief sought by the owner.

(4) The court shall hold a hearing on the innocent owner's pleading within 30 days after its filing or at the court's discretion. The hearing shall be held before the court alone without a jury.

(5) The innocent owner shall establish by a preponderance of the evidence the validity of interest.

(6) If the innocent owner meets the burden under subparagraph (5) and the state seeks to proceed, the state shall prove by a preponderance of the evidence that the innocent owner is not entitled to the property because:

(A) The innocent owner had actual knowledge the property was used in or derived directly from the crime for which the defendant is charged and the claimant did not take reasonable steps to prevent the use of the property in the crime for which the defendant is charged. The claimant is not required to take steps the claimant reasonably believes would subject the claimant to physical danger;

(B) The innocent owner was willfully blind to the crime for which the defendant is charged;
or

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

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

(8) Notwithstanding subparagraph (7), the court may impose reasonable conditions on the return of the property, including delaying return or the use of photographic evidence, to preserve the property for later use as evidence in criminal prosecution.

(9) No information in the innocent owner's statement shall be used as evidence in a criminal proceeding.

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

(11) The defendant or convicted offender may invoke the right against self-incrimination or the marital privilege during the forfeiture proceeding. The trier of fact may draw an

adverse inference from the invocation of the right or privilege.

(m)(1) If the state fails to meet its burden in the associated criminal or the civil forfeiture proceeding, the court shall enter judgment dismissing the forfeiture proceeding and ordering the return of property unless the owner's possession of the property is illegal.

(2) If the state meets its burden in the civil forfeiture proceeding, the court shall enter judgment forfeiting the property.

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

(n) Upon the state's motion following the court entering judgment in the associated criminal prosecution or at the court's discretion, the court may order the forfeiture of substitute property owned solely by the defendant up to the value of property that is beyond the court's jurisdiction or cannot be located through due diligence, only if the state proves by a preponderance of the evidence that the defendant intentionally:

(1) Dissipated the property;

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

(3) Diminished substantially the value of property; or

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

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

(p)(1) A party to forfeiture proceeding, other than the defendant, may appeal the court's decision upon the issuance of the order pursuant to the state's rules of civil procedure and court rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~V.] Final orders for forfeiture of property under this section shall be implemented by the [department of justice] *state* and shall provide for disposition of the items or property interests by the state in any manner not prohibited by law, including retention for official use by law enforcement or other public agencies or sale at public auction. The [department of justice] *state* shall pay the reasonable expenses of the forfeiture proceeding, seizure, storage, maintenance of custody, advertising, court costs, and notice of sale from any money forfeited and from the proceeds of any sale or public auction of forfeited items. All outstanding recorded liens on said items or property interests seized shall be~~

paid in full upon conclusion of the court proceedings from the proceeds of any sale or public auction of forfeited items. The balance remaining shall be distributed by the [~~department of justice~~] **state** as follows:

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

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

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

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

(b) Of any balance remaining:

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

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

The total amount of payments made to the special account for the department of health and human services pursuant to subparagraphs [~~V(a)(2) and V(b)(1)~~] **IV(a)(2)** of this section shall not exceed \$400,000 in any fiscal year and any excess over \$400,000 which would otherwise be paid to such special account under this section shall be deposited in the general fund. The revolving drug forfeiture fund **pursuant to subparagraph IV(a)(3)** shall at no time exceed \$1,000,000. All sums in the revolving drug forfeiture fund in excess of \$1,000,000 shall be credited to the general fund.

2 Effective Date. This act shall take effect January 1, 2026.

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**HB 615-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to drug forfeiture proceedings.

FISCAL IMPACT:

The Legislative Budget Assistant has determined that this legislation has a total fiscal impact of less than \$10,000 in each of the fiscal years 2026 through 2028.

AGENCIES CONTACTED:

Judicial Branch