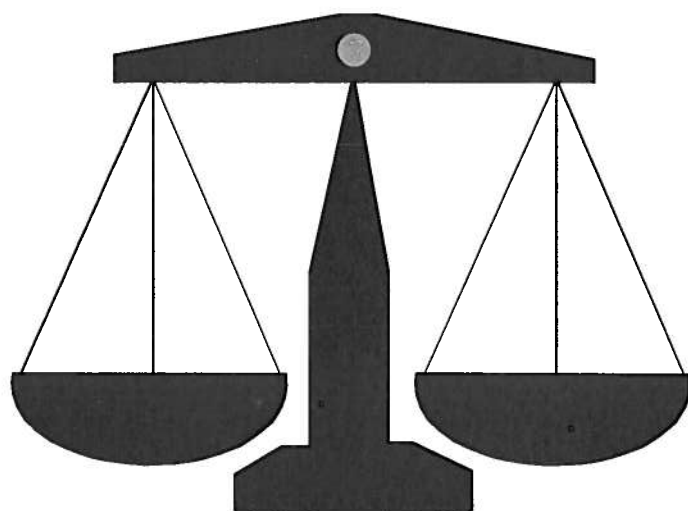


**NEW HAMPSHIRE
ATTORNEY GENERAL'S
ASSET FORFEITURE MATERIALS**



June 26, 2007

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**NEW HAMPSHIRE ATTORNEY GENERAL
DRUG ASSET FORFEITURE GUIDELINES**

July 1, 1996

These guidelines set forth an internal policy established by the Attorney General's Office (AGO) regulating its handling of asset forfeiture pursuant to RSA 318-B:17-b and RSA 318-B:17-d. These guidelines are not intended to create any right or cause of action in any person other than those found in existing law. Variances from these guidelines require the prior approval of the Attorney General. These guidelines supercede all previous guidelines.

- I. **Initial Acceptance of Case:** The AGO will examine the following factors when deciding whether to proceed with a forfeiture action:
- A. **How was the asset seized?**
 - 1. Was a warrant used to accomplish the seizure of the property? Does the affidavit appear to establish probable cause to support the seizure of the asset?
 - 2. If a warrant was not used to accomplish the seizure, do the facts and circumstances presented in the police reports appear to meet the requirements of a recognized search warrant exception?
 - B. **Has the seizing agency sent the 7 day notice letter to all identified interested parties? Does time permit the AGO to direct the seizing agency to provide appropriate notice to any interested party within the time limit?**
 - C. **Is there evidence to support the conclusion that the asset was used or intended to be used to facilitate a felony drug offense or was the proceeds of a felony drug offense?**
 - 1. **The nexus between the asset and the drug felony offense must be substantial and clearly evident from the police reports where the seizure is based upon the asset's use to facilitate a drug felony.**
 - a. **For purposes of these guidelines, with respect to houses in felony marijuana cases, forfeiture will ordinarily be sought in cases where the number of plants seized exceeds 21.**

- i. A general rule of thumb used by law enforcement is that one plant of marijuana equals one pound. The federal sentencing guidelines consider a single marijuana plant will equal 1 kilogram of smokeable marijuana. The AGO will ordinarily apply a conservative estimate of one plant equals 1/4 pound.
 - ii. The presence of large sums of cash, or drug distribution paraphernalia such as scales, baggies, drug ledgers, and weapons, are factors to be considered in determining if seizure is appropriate when there are fewer than 21 plants present.
- b. Firearms: Unless the weapon is actually possessed during a felony drug offense or intended to be used to facilitate a felony drug offense, the AGO will not institute a forfeiture action. Nothing in these guidelines should be interpreted to in any way curtail the authority of a police officer to seize a firearm pursuant to a validly authorized search warrant or warrant exception to assess the weapon for its evidentiary value in the pending drug case or forfeiture action. The AGO will recommend condemnation of any firearms seized upon conviction pursuant to RSA 595-A:6.
- c. Vehicle forfeiture actions will not be sought where the evidence indicates the controlled drug was solely for the personal consumption of the owner.
- d. Cash forfeiture actions will be instituted where there is sufficient evidence in the police reports to indicate that the money was used or intended to be used to purchase a controlled drug in a felony offense, including but not limited to:
 - i. The proximity of money to the controlled drug;
 - ii. The denominations of the bills;
 - iii. The packaging of the bills;
 - iv. The presence of marked bills used in prior documented drug sales;

v. Admissions by those involved in the felony drug offense.

2. Proceeds as a general rule: Forfeiture actions against assets constituting proceeds require the approval of DPAFS staff prior to seizure of the asset.

a. When assets are seized without the prior approval of DPAFS, a forfeiture action will not be instituted against the asset unless the police reports establish a direct and traceable link between the acquisition of the asset and felony drug trafficking.

D. What is the value of the property seized? Minimum value requirements:

1. Cash: No forfeiture action will be instituted where there is less than \$1,000.00.

2. Vehicles: No forfeiture action will be instituted where there is less than \$3,000.00 of equity (based upon an appraisal from a NADA blue book or by an appraisal from a garage). Except in the case of an antique automobile or a restored automobile, as a general rule the AGO will not forfeit automobiles that are more than five years old.

3. Houses: No forfeiture action will be instituted where there is less than \$50,000.00 of equity based upon a "windshield" appraisal performed by a real estate expert designated by the AGO. Each case will be reviewed by DPAFS before filing a seizure warrant at the registry of deeds.

E. As a general rule, the seizing agency must investigate the claims of innocent spouses/owners/dependents when notified of such claims.

1. The agency shall report to DPAFS the result of any investigation into such claims.

2. The agency shall limit its investigation of claims of innocent spouses/owners/dependants to activities that would be permissible under the State and Federal Constitutions as well as state law.

3. DPAFS will review the claims of "innocent" parties based upon the information available from the police investigation and

make a preliminary determination as to whether to institute forfeiture action against a party's secured interest in the asset. Nothing in the initial decision to proceed shall bind the AGO to continuing with a forfeiture action if in the event that further information becomes available through discovery and/or further investigation, it becomes clear that the secured party was not a knowing or a consenting party to the use of the asset in a drug felony offense or was unaware that the asset was a proceed from drug sales.

II. Asset Management Pending Forfeiture.

A. Unless otherwise directed by AGO, all seized assets will be secured and safeguarded by the seizing agency pending disposition of any and all criminal cases and the conclusion of any forfeiture action.

1. Cash:

a. Unless the seized drug-related money is released by the court pursuant to an order issued under RSA 595-A:6, the money will be maintained by the seizing agency or prosecutor's office until introduced as an exhibit at trial.

b. If the court issues an order pursuant to RSA 595-A:6, the money will be forwarded to the AGO and placed in an interest-bearing account maintained by the AGO for that purpose, pending the disposition of the forfeiture action.

2. Vehicles: The seizing agency must hold vehicles in a secured area to avoid vandalism or theft.

3. Houses: Under RSA 318-B:17-b, law enforcement does not ordinarily take physical custody of real estate.

B. DPAFS will make all reasonable efforts to protect the interest of innocent secured lienholders or owners.

1. Use of Interlocutory Sales

a. In the event that an asset owner defaults on a secured loan or enters bankruptcy, the AGO will not object to motions filed by the secured creditor or bankruptcy trustee for a foreclosure sale so long as the proceeds are placed in an escrow account pending settlement of the forfeiture action.

- b. In the event that a real property owner fails to redeem a tax lien, DPAFS shall either:
 - i. Pay the outstanding lien and recoup the cost as a part of the disposition of the forfeiture action, or
 - ii. Not object to a tax sale so long as all moneys in excess of the outstanding tax lien are deposited into an escrow account pending settlement of the forfeiture action.

III. Post Filing Forfeiture Proceedings

A. Administrative forfeiture

1. The AGO will not use the administrative process to forfeit a person's interest in an asset which:
 - a. Is real estate;
 - b. Is proceeds, or
 - c. Exceeds \$75,000 in value.
2. A person claiming an interest in an asset subject to administrative forfeiture action will not be subject to default solely for missing the filing deadlines by 10 days or less when contact with DPAFS staff is ongoing.
3. Petitions for remission or mitigation of an asset subject to administrative forfeiture will be reviewed by the staff of DPAFS. (See also Section IV. A.)
 - a. In reviewing petitions, the DPAFS staff should attempt to develop all the pertinent facts surrounding a claim recognized under RSA 318-B:17-b or 318-B:17-d.
 - b. In developing such facts, the staff may:
 - i. Request additional information from the claimant which may bear on the claimant's standing or the nature and extent of the claim;

- ii. Request that the seizing agency perform further investigative work concerning standing or the nature and extent of claim;
 - iii. Develop information from public sources which might bear on the validity of the claim.
 - c. DPAFS should attempt to resolve the facts surrounding the claim within 60 days of its receipt but it will not terminate inquiry until the pertinent facts are fully developed. In the event that the inquiry of DPAFS will apparently exceed 60 days from receipt of the claim, DPAFS will comply with provisions of RSA 318-B:17-d, II(f) and notify the claimant of the need to extend the review period and provide an anticipated date of completion.
- 4. The AGO will not object to a request for transfer of a forfeiture action from the administrative process to the judicial process if:
 - a. There is a timely made request for transfer, and
 - b. The claimant either:
 - i. Posts a cost bond, or
 - ii. Files an affidavit of indigency with the AGO and a request for waiver of the cost bond because of indigency.
 - d. The AGO will accept as fulfilling the requirements of III.A.3.b.i) either:
 - i. An affidavit prepared by claimant or counsel;
 - ii. A certified copy of the claimant's request for court-appointed counsel; or
 - iii. A financial affidavit form supplied by DPAFS.
 - e. If DPAFS staff finds that a cost bond is required due to the financial circumstances of the claimant, the claimant may appeal the finding to the chief of the Criminal Justice Bureau (CJB) in the first instance and finally to the Attorney General.

B. Judicial Forfeitures

1. When required by RSA 318-B:17-b or when a claimant with a claim which is cognizable under the law has requested the transfer of an administrative forfeiture to a judicial forum, the AGO will file a forfeiture petition in the superior court and request that the petition be served on all known persons with protected interests.
 - a. DPAFS will assist the sheriff's office when possible in making service of the petition upon an interested party.
 - b. Service by order of notice for publication shall be utilized only as a last resort.
2. Default judgments.
 - a. If a person listed in the petition as a potential claimant fails to file an appearance and a responsive pleading to the forfeiture petition in accordance with the orders of notice, the DPAFS will file a motion to default that person's interest in the asset.
 - b. Unless specifically authorized by the Attorney General, DPAFS will not object to a motion to defer filing an answer or other responsive pleading until the conclusion of any related criminal case brought against the claimant.
3. Continuances.
 - a. The AGO will not object to a continuance of the hearing date for the forfeiture action until the conclusion of any pending criminal case against a claimant who has filed an appearance and requested such a continuance unless the Attorney General has specifically authorized proceeding in advance of a criminal conviction. Any such approval must be in writing.
 - i. As a condition of a continuance until resolution of pending criminal cases, the claimant shall agree that in the event he fails to appear in answer to the pending criminal charges, the AGO may request the court set a hearing date on the forfeiture

petition notwithstanding the assented to continuance.

- ii. When a claimant fails to appear in connection with pending criminal cases, the AGO will request a hearing be scheduled unless there is at least one other claimant for the asset who has requested a stay pending resolution of the criminal charges who has not defaulted in the pending criminal case.

4. Discovery.

- a. DPAFS will utilize all authorized discovery techniques, including but not limited to written interrogatories and depositions, to narrow the issues to be litigated in the forfeiture action.
- b. Where a claimant has a pending related criminal charge and has not objected to proceeding to hearing prior to the disposition of that charge or the Attorney General has authorized the AGO to go forward on a forfeiture prior to conclusion of a criminal case, the AGO will:
 - i. Not object to the granting of a protective order preventing disclosure of information obtained in the forfeiture discovery process to the prosecutor in the related pending criminal case; or
 - ii. Stay all discovery until the conclusion of the related criminal charge involving the claimant.

5. Motions for summary judgment

- a. The AGO will file a motion for summary judgment when after the discovery process there is no genuine issue as to any material fact and the AGO is entitled to judgment against that party's interest in the asset which is the subject of the action.
- b. The AGO may file a motion for summary judgment after a claimant has been found guilty in the related criminal case if:

- i. Together with the information amassed in the discovery process would demonstrate that the asset was:
 - a. used or intended for use to facilitate a felony drug offense, or
 - b. the proceeds from felony drug dealing, and
- ii. The AGO has an affidavit from the arresting officers as well as a certified copy of the conviction.

IV. Forfeiture Resolution Guidelines

A. Administrative Forfeiture Actions

1. When the asset which is subject to administrative forfeiture is wholly owned by a claimant charged with a felony drug offense and the claimant has not filed a petition in mitigation or remission or taken action to transfer the matter to the superior court, the asset will be forfeited.
2. When a claimant to an interest in an asset subject to administrative forfeiture files a petition in remission and after thorough and complete review the claim is unsubstantiated, then that interest will be forfeited.
 - a. If a thorough and complete review of the claim is thwarted by the claimant's refusal to cooperate with the reasonable requests of the DPAFS staff or its designated investigators, then the claim may be found to be unsubstantiated.
 - b. Where a claimant asserts his state and federal constitutional rights against self-incrimination and unreasonable search and consequently thwarts the efforts of DPAFS to thoroughly investigate the case, the claim may be found unsubstantiated.
3. When a claimant to an interest in an asset subject to administrative seizure files a petition in mitigation, it shall be thoroughly and completely reviewed by DPAFS staff.

- a. In assessing whether to mitigate the forfeiture, the following factors should be considered:**
- i. The nexus between the asset and the criminal activity:**
 - a. Did the asset significantly contribute to the functioning of the drug enterprise?**
 - b. Was the asset substantially connected to the commission of a felony drug offense?**
 - c. Were the criminal activities conducted by the defendant/s by and through the use of the property extensive?**
 - d. What was the non-drug related use of the asset?**
 - e. Is the asset one that is commonly used for drug trafficking?**
 - ii. Will the forfeiture of the asset serve a remedial purpose?**
 - a. What is the value and quantity of the controlled drug involved in the defendant/s criminal activity?**
 - b. Will the forfeiture of the property serve to disrupt or prevent recurrence of the underlying drug offense?**
 - c. What were the costs of the investigation and prosecution of the defendant?**
 - d. What is the value of the asset to be forfeited?**
 - e. Is there evidence of significant community impact such as:**
 - 1. Long term trafficking in controlled drugs?**

2. Is there evidence of widespread or indiscriminant distribution of drugs?

3. Is there evidence that the decimation of drugs involves persons who are particularly susceptible, such as minors or intellectually challenged individuals?

d. Are there collateral impacts to the forfeiture?

1. Are there other "innocent" interest claimants?

2. What would the effect of forfeiture be on the interest of the "innocent" claimants or "innocent" spouses or dependants?

B. Judicial Forfeiture

1. The AGO will proceed with a forfeiture action against the interests of parties who were knowing and consenting parties to the use or intended use of the asset in a drug felony offense or when the asset is the proceeds of a felony drug trafficking after disposition of related criminal cases that were pending at the time of the seizure.

a. Decisions on resolution of forfeiture cases shall be made on their own merits and independent of the pending related criminal cases to avoid any inference of a claimant/defendant "buying" his way out of prison.

i. Joint negotiations or global settlements will be undertaken only if there are written waivers of claims by the claimant/defendant.

ii. In global settlement negotiations, the criminal and civil forfeiture cases must be independently analyzed by the lawyers involved.

- b. Absent a global settlement, disposition of a claimant's felony offense to a reduced misdemeanor charge shall result in discontinuation of the forfeiture action.
- c. The AGO will not proceed with a forfeiture action against an interest in an asset after the acquittal of a claimant on the related criminal charge.

2. Settlement of Forfeiture Actions

- a. In all cases DPAFS will consider partial forfeitures or a settlement of the forfeiture action which would result in the return of the seized asset to a claimant and a payment of cash to be distributed in accordance with RSA 318-B:17-b, IV.
- b. Where the asset subject to forfeiture exceeds \$7,500 in value or is real estate, the attorney handling the forfeiture will prepare a settlement memo for the Chief of the CJB. The memo will:
 - i. Detail the admissible evidence in the case;
 - ii. Discuss important factors which would influence the disposition of the asset;
 - iii. Outline any offer made by the claimant;
 - iv. Assess the trial risks; and
 - v. Make a recommendation concerning the resolution of the case.
- c. The following factors may be considered in arriving at a settlement position:
 - i. All the factors listed in Section IV.A.3.a of these guidelines, as well as the factors set forth in RSA 318-B:17-b, IV(e);
 - ii. In the case of real estate:
 - a. Is the real estate a primary residence? Are there family or dependants who are not knowing and consenting parties who

would be seriously disadvantaged by the forfeiture of the asset?

- b. What is the title in the property? What are the costs and problems associated with the partitioning of interests between parties who have forfeitable and non-forfeitable interests?
 - c. Was the asset purchased directly or indirectly with monies derived from drug trafficking?
 - d. Was the asset maintained directly or indirectly by monies derived from drug trafficking?
 - e. What is the cost financially and collaterally to innocent third parties of a forced sale following forfeiture?
 - f. Can a settlement be structured so as to accommodate the interest of the claimant in light of the other factors and the State?
- d. Information from a variety of sources which might not be admissible in a forfeiture hearing may be considered in formulating a settlement position, including but not limited to:
- i. All information developed in the investigation of the criminal case and the forfeiture action.
 - a. Any rationale and reasonable inferences which can be drawn from that evidence.
 - b. Example: If a person is charged with selling a kilogram of cocaine, it is a rationale and reasonable inference that the person has a long-term involvement in drug trafficking.
 - ii. Information developed from confidential sources which the AGO has determined cannot be used at the hearing without endangering the safety of the

informant or compromising long-term narcotics operations.

iii. The statements of co-defendants and unindicted co-conspirators.

iv. Information from other law enforcement authorities.

e. Approval of settlement authority:

i. The Attorney General must approve all settlement offers concerning:

a. Real estate, or

b. Other property with a net equity value in excess of \$50,000.

ii. The Chief of the CJB may approve all settlement offers where the asset is not real estate and the value is less than \$50,000.

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

Statute text

I. Interests in the following property, upon petition of the attorney general, 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, as follows:

(a) Upon process issued by any justice, associate justice or special justice of the municipal, district 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.

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.

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 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 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 the property. If upon inquiry and examination, the department of justice determines that such proceedings probably cannot be sustained or that

the ends of justice do not require the institution of such proceedings, the department 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, either file a petition in the superior court having jurisdiction under this section or seek administrative forfeiture pursuant to RSA 318-B:17-d. If no such petition is filed or administrative procedure initiated 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 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.

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 orders of notice 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 return date on said petition.

(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 or under RSA 318-B:17-d shall be implemented by the department of justice 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 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 as follows:

(a) Of the first \$500,000:

(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 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) 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 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.

History

History

Source. 1981, 166:2. 1983, 292:15. 1985, 327:1-4. 1986, 232:1. 1988, 94:1. 1989, 380:1, 2. 1992, 182:1. 1994, 343:1-3, eff. Aug. 7, 1994. 1995, 310:177, eff. Nov. 1, 1995.

Annotations

Amendments--1995. Paragraph V: Substituted "department of health and human services" for "office of alcohol and drug abuse prevention" in subpar. (a)(2) and in the first sentence of the concluding paragraph.

--1994. Paragraph III(a): Deleted "it shall appear that" following "unless".

Paragraph IV(d): Added the second sentence.

Paragraph IV(e): Rewritten to the extent that a detailed comparison would be impracticable.

--1992. Rewritten to the extent that a detailed comparison would be impracticable.

--1989. Paragraph IV: Substituted "\$200,000" for "\$50,000" in the introductory clause of subpar. (a), added "except as provided in RSA 31:95-b" following "investigations" in the second sentence of subpar. (a)(1), and substituted "\$400,000" for "\$200,000" in the first and second sentences and "\$1,000,000" for "\$300,000" in the third and fourth sentences of the unnumbered concluding paragraph.

--1988. Paragraph IV: Rewritten to the extent that a detailed comparison would be impracticable.

--1986. Paragraph I: Substituted "interest" for "interests" in the introductory clause and rewrote subpar. (b).

Paragraph II: Substituted "interest" for "interests" following "items or property" in the third sentence.

Paragraph III: Substituted "interest" for "interests" following "property" in subpar. (a) and "may be charged as" for "constitutes" preceding "a felony" in subpar. (b) and deleted subpar. (c).

Paragraph IV: Rewritten to the extent that a detailed comparison would be impracticable.

--1985. Paragraph I: Rewrote subpar. (c), added subpars. (e) and (f), and made other minor stylistic changes.

Paragraph III(c): Added.

Paragraph IV: Inserted "which could be" preceding "brought" in the second sentence, rewrote the fourth and tenth sentences, and added the fifth and eleventh sentences.

--1983. Paragraph III(b): Deleted "at the time of seizure" following "felony" at the end of the paragraph.

Paragraph IV: Deleted "any provision of" preceding "this chapter" at the end of the second sentence, substituted "the" for "said" preceding "hearing" at the beginning of the fifth sentence, "the" for "said" preceding "items" in the sixth sentence, and "the" for "said" preceding "seized" in the last sentence and made other minor changes in style.

Applicability of 1988. 1988, 94:3, eff. July 1, 1988, provided that the amendment to this section shall apply only to items or property interests related to drug offenses seized on or after July 1, 1988.

Purpose. 1981, 166:1, eff. Aug. 1, 1981, provided: "The purpose of this bill is to allow the attorney general to seize any money, books, records, ledgers and research

material, any materials, products and equipment, and any vehicle, aircraft or vessel used in connection with a felonious drug offense and to provide an equitable proceeding to determine the disposition of the goods seized by the attorney general. This act is intended also to provide that all persons holding liens on seized property be compensated in full for the amount of their liens and to protect all innocent owners from having any items forfeited to the state."

Construction of amendments--1995. 1995, 310:187, eff. Nov. 1, 1995, provided: "Nothing in this act is intended to, nor shall it be construed as, mandating or assigning any new, expanded, or modified program or responsibility for any political subdivision in violation of part I, article 28-a of the constitution of the state of New Hampshire."

1995 amendment 1995, 310, which amended this section, was subject to a severability clause. See 1995, 310:186.

CROSS REFERENCES

Administrative forfeiture of items used in connection with drug offense, see RSA 318-B:17-d.

Classification of crimes, see RSA 625:9.

Drug forfeiture fund, see RSA 318-B:17-c.

Forfeiture of controlled drugs, see RSA 318-B:17-a.

Properties and places deemed common nuisances generally, see RSA 318-B:16.

Sentences, see RSA 651.

Annotations

Analysis

1. Jurisdiction.
2. Burden of proof.
3. Sufficiency of evidence.
4. Double jeopardy.
5. Nonpunitive nature of statute.

1. Jurisdiction.

Proceedings under this section with respect to motorcycle seized in connection with drug offenses were in the nature of in personam, and therefore were not of such type or character as to prevent federal court, by medium of the doctrine of "adoptive forfeiture" from claiming prior jurisdiction over motorcycle and issuing warrant in rem under federal forfeiture statute. *United States v. Certain Real Property Known as Lot B, 755 F. Supp. 487 (D.N.H. 1990).*

2. Burden of proof.

In forfeiture proceeding, state has burden to prove by a preponderance of the evidence that property owner knowingly used or intended to use his real property for activities proscribed by this chapter. In re Parcel of Land Located in Effingham, 132 N.H. 1, 561 A.2d 1061 (1989).

3. Sufficiency of evidence.

Paragraph I(c) of this section, providing for forfeiture of moneys used or intended for use in felonious violation of this chapter, does not require proof connecting the money to be forfeited with a particular narcotics transaction. In re Two Hundred Seven Thousand Five Hundred Twenty-Three Dollars & Forty-Six Cents in United States Currency, 130 N.H. 202, 536 A.2d 1270 (1987).

In order to justify a forfeiture under paragraph I(c) of this section, the state is not required to demonstrate that the moneys were associated with drug transactions occurring after the 1981 effective date of the section statute. In re Two Hundred Seven Thousand Five Hundred Twenty-Three Dollars & Forty-Six Cents in United States Currency, 130 N.H. 202, 536 A.2d 1270 (1987).

4. Double jeopardy.

By failing to contest forfeiture, defendant never became a party to proceeding and effectively renounced any interest in property forfeited, and as a result, there was no judicial determination that the property was his; defendant therefore could not claim that forfeiture of property punished him, and without punishment there was no former jeopardy, and thus double jeopardy did not bar defendant's prosecution on indictment for conspiracy to sell cocaine. State v. Natalcolon, 140 N.H. 689, 671 A.2d 556 (1996).

Civil forfeiture did not implicate double jeopardy, where defendant's forfeiture of property was purely voluntary and not the result of any State-initiated forfeiture proceeding, and thus no civil sanction was imposed by State. State v. Guenzel, 140 N.H. 685, 671 A.2d 545 (1996).

5. Nonpunitive nature of statute.

New Hampshire's in rem forfeiture statute was a civil, nonpunitive measure, and thus forfeiture of defendant's vehicle did not constitute a second punishment for double jeopardy purposes. In re 1994 Chevrolet Cavalier, 142 N.H. 705, 708 A.2d 397 (1998).

Library References

NH Practice 2 N.H.P. Criminal Practice & Procedure §§ 737, 1059.

NH Admin Rules of the Department of Justice, Jus 301.01 et seq., New Hampshire Code of Administrative Rules.

CJS Drugs and Narcotics §§ 139-148:

ALR Forfeitability of property held in marital estate under uniform controlled substances act or similar statute. 84 ALR4th 620.

Relief to owner of motor vehicle subject to state forfeiture for use in violation of narcotics laws. 50 ALR3d 172.

Timeliness of drug forfeiture proceedings. 90 ALR4th 493.

§ 318-B:17-c. Drug Forfeiture Fund.

Statute text

- I. There is hereby established within the office of the state treasurer a special revolving fund to be designated as the drug forfeiture fund. This fund shall be administered by the attorney general and may be used to pay the costs of local, county and state drug related investigations, as well as drug control law enforcement programs within New Hampshire. The fund may also be used to pay extraordinary costs of local, county and state drug prosecutions and trial expenses.
- II. Law enforcement agencies may apply to the department of justice for grants from the forfeiture fund. Such grants shall be utilized exclusively for meeting expenses associated with drug related investigations. The attorney general shall report on or before December 31 of each calendar year to the governor and council and to the fiscal committee a summary of the grants provided to law enforcement agencies under this paragraph for the preceding fiscal year.
- III. The attorney general shall adopt rules, pursuant to RSA 541-A, relative to:
- (a) The administration of the drug forfeiture fund.
 - (b) The grant application procedures and forms to be used by law enforcement agencies.

History

History

Source. 1985, 327:5. 1986, 232:2. 1989, 380:3, eff. June 5, 1989.

Annotations

Amendments--1989. Paragraph I: Added the third sentence.

--1986. Rewritten to the extent that a detailed comparison would be impracticable.

CROSS REFERENCES

Department of justice, see RSA 21-M.

Library References

NH Admin Rules of the Department of Justice, Jus 301.01 et seq., New Hampshire Code of Administrative Rules.

CJS Drugs and Narcotics §§ 139-148.

ALR Forfeitability of property held in marital estate under uniform controlled substances act or similar statute. 84 ALR4th 620.

Relief to owner of motor vehicle subject to state forfeiture for use in violation of narcotics laws. 50 ALR3d 172.

Timeliness of drug forfeiture proceedings. 90 ALR4th 493.

§ 318-B:17-d. Administrative Forfeiture of Items Used in Connection With Drug Offenses.

Statute text

I. Interests in property subject to forfeiture under the provisions of RSA 318-B:17-b, subparagraphs I(a), I(b), I(c) excepting proceeds and I(d), but not real property, shall be subject to administrative forfeiture by the department of justice provided that the total amount or value of such property does not exceed \$75,000. The provisions of RSA 318-B:17-b shall apply in any case of administrative forfeiture except as otherwise provided in this section.

II. The department of justice may administratively forfeit property seized under paragraph I of this section as follows:

(a) The department of justice shall provide a notice of intent to forfeit property administratively by publication for 3 consecutive weeks in a local newspaper of general circulation where the property was seized.

(b) In addition, to the extent practicable, the department of justice shall provide notice by certified mail return receipt addressee only requested, of intent to forfeit the property administratively to all persons having a recorded interest or claiming an equitable interest in the property seized.

(c) Notice by publication and by mail shall include:

(1) A description of the property;

(2) Its appraised value;

(3) The date and place of seizure;

(4) The violation of law alleged against the subject property;

(5) Instructions for filing a claim and posting bond or filing a petition for remission or mitigation; and

(6) Notice that the property will be forfeited to the state if a petition for remission or mitigation has not been filed in a timely manner or a claim has not been filed and bond has not been posted in a timely manner.

(d) Persons claiming an interest in the property may file petitions for remission or mitigation of forfeiture or file a claim and post bond with the department of justice within 30 days of the first notice by publication or 30 days from the receipt of written notice, whichever is later.

(e) It shall be the duty of the department of justice to inquire into the facts and circumstances surrounding petitions for remission or mitigation of forfeiture.

(f) The department of justice shall provide the seizing agency and the petitioner a written decision on each petition for remission or mitigation within 60 days of receipt of such petition unless the circumstances of the case require additional time in which case the department of justice shall notify the petitioner in writing and

with specificity within the 60-day period that the circumstances of the case require additional time, and further notify the petitioner of the expected decision date.

(g) Any person claiming an interest in seized property may institute judicial review of the seizure and proposed forfeiture by timely filing with the department of justice a claim and bond to the state in the amount of 10 percent of the appraised value or in the penal sum of \$2,500, whichever is less, with sureties to be approved by the department of justice, upon condition that in the case of forfeiture the claimant shall pay all costs and expenses of the proceedings at the discretion of the court. A sworn affidavit of indigency may be filed in lieu of a cost bond. Upon receipt of the claim and bond, or, if the department of justice otherwise so elects, the department shall file with the court a petition in rem to order forfeiture of items or property interests subject to forfeiture under the provisions of this section. All judicial proceedings thereafter shall be conducted in accordance with the provisions of RSA 318-B:17-b, IV. Any bonds received by the department of justice shall be held by the department pending final disposition of the case.

(h) If no petitions or claims with bonds are timely filed, the department of justice shall prepare a written declaration of forfeiture of the subject property to the state and dispose of the property in accordance with this section and the department of justice rules, if any, relative to this section.

(i) If the petition is denied, the department of justice shall prepare a written declaration of forfeiture to the state and dispose of the property in accordance with this section and the department of justice rules, if any, relative to this section.

(j) A written declaration of forfeiture signed by the attorney general or designee pursuant to this chapter shall be deemed good and sufficient title to the forfeited property.

History

History

Source. 1988, 94:2. 1989, 207:6; 1992, 182:2, eff. June 11, 1992.

Annotations

Amendments--1992. Rewritten to the extent that a detailed comparison would be impracticable.

--1989. Paragraph VI(g): Substituted "less" for "greater" following "whichever is" in the first sentence and added the second sentence.

Applicability of enactment. 1988, 94:3, eff. July 1, 1988, provided that this section shall apply only to items or property interests related to drug offenses seized on or after July 1, 1988.

Annotations

Voluntary forfeiture.

Civil forfeiture did not implicate double jeopardy, where defendant's forfeiture of property was purely voluntary and not the result of any State-initiated forfeiture proceeding, and thus no civil sanction was imposed by State. *State v. Guenzel*, 140 N.H. 685, 671 A.2d 545 (1996).

Library References

NH Practice 2 N.H.P. Criminal Practice & Practice §§ 737, 1057.

NH Admin Rules of the Department of Justice, Jus 301.01 et seq., New Hampshire Code of Administrative Rules.

CJS Drugs and Narcotics §§ 139-148.

ALR Forfeitability of property held in marital estate under uniform controlled substances act or similar statute. 84 ALR4th 620.

Relief to owner of motor vehicle subject to state forfeiture for use in violation of narcotics laws. 50 ALR3d 172.

Timeliness of drug forfeiture proceedings. 90 ALR4th 493.

Date

Addressee

Re: Property description

Dear :

Pursuant to RSA 318-B:17-b, II(a), enclosed please find a copy of the Inventory filed by (Police department) upon seizure of the above-described property on (date of seizure). This property may be forfeited to the State upon petition by the Attorney General pursuant to New Hampshire RSA 318-B:17-b or RSA 318-B:17-d.

As owner of the above-described property, you will receive notice of the forfeiture action, either from the Office of the Attorney General pursuant to New Hampshire RSA 318-B:17-d, or from the court having jurisdiction over this property pursuant to New Hampshire RSA 318-B:17-b.

Sincerely yours,

Signature block

enclosure

Served in hand to Addressee on Date of service by Police officer.

Mailed to Addressee by certified mail, return receipt requested, on Date mailed by Police officer.

Mailed to Property owner/interested party/lienholder's name by certified mail, return receipt requested, on Date mailed by Police officer.

Voluntary Forfeiture

I, _____, do hereby knowingly and voluntarily forfeit all my rights, interest, and title to the following item (s) listed below to the State of New Hampshire in consideration of being allowed to cooperate and assist the State of New Hampshire.

- a. _____
- b. _____
- c. _____

The undersigned further states as follows:

1. I hereby acknowledge that the above described item (s) were knowingly used of intended for use by me in the procurement, manufacture, compounding, processing, delivery or distribution of a controlled drug or were the profits or proceeds of my drug trafficking activities in felonious violation of RSA 318-B of the laws of the State of New Hampshire.

2.I hereby knowingly and voluntarily waive my rights under 318-B:17-b&d in this matter. In addition, I understand and acknowledge that the State of New Hampshire may enact its right to initiate the Administrative Forfeiture Procedure pursuant to RSA 318-B:17-d or the Judicial Forfeiture Procedure pursuant to RSA 318-B:17-b within sixty (60) days if I attempt to withdraw from this voluntary forfeiture.

3. I hereby agree to transfer title, to the State of New Hampshire and provide the State of New all documents that are required in this matter.

4. The above-described item (s) is/are not subject to any liens or encumbrances. Those encumbrance (s) and lien (s) is/are _____
_____ It is agreed that these obligations will be disposed of as follows: _____

5. No threats or promises have been made to me by the (Police Department) or their agents in this matter, aside from any agreement contained in a memorandum of understanding between myself and the State which has been signed on _____
_____ and is attached hereto.

Defendant

STATE OF NEW HAMPSHIRE
COUNTY OF _____

On this _____ day of _____, 20____,
before me, personally appeared the above named _____,
known to me (or satisfactorily proven) to be the person whose name is subscribed to
the foregoing instrument and acknowledged that he/she executed the same for the
purpose therein contained.

Notary Public/Justice of the Peace

My Commission Expires:

**OFFICE OF THE ATTORNEY GENERAL
ASSET FORFEITURE SECTION**

SEIZED VEHICLE FORFEITURE REQUEST

To request the forfeiture of a vehicle, please forward the following information to the Asset Forfeiture Section, along with the investigative reports, within 14 days of seizure.

POLICE DEPARTMENT _____

SEIZING OFFICER _____

TELEPHONE NUMBER _____

CASE NUMBER # _____

OWNER _____

TITLE HOLDER _____

LIEN HOLDER AND LIEN AMOUNT \$ _____

BLUEBOOK VALUE \$ _____

YEAR _____

MAKE _____

MODEL _____

MILEAGE _____

ACCESSORIES

| | | | |
|------------------|-------|--------------|-------|
| A/C | _____ | AM/FM | _____ |
| CASSETTE | _____ | CD | _____ |
| POWER WINDOWS | _____ | POWERLOCKS | _____ |
| POWER MOONROOF | _____ | SECURITY | _____ |
| POWER SEATS | _____ | REMOTE START | _____ |
| LEATHER INTERIOR | _____ | 4 X 4 | _____ |

ADDITIONAL _____

VISIBLE RUST

VISIBLE DAMAGE

APPRAISED VALUE

\$ _____

AMOUNT OF EQUITY

\$ _____

**OFFICE OF THE ATTORNEY GENERAL
ASSET FORFEITURE SECTION**

SEIZED CURRENCY FORFEITURE REQUEST

To request the forfeiture of currency please forward the following information to the Asset Forfeiture Section along with the investigative reports within 14 days of seizure.

POLICE DEPARTMENT _____

SEIZING OFFICER _____

TELEPHONE NUMBER _____

CASE NUMBER _____

OWNER (S) _____

AMOUNT OF CURRENCY \$ _____

DENOMINATION OF CURRENCY _____

AMOUNT OF BUY MONEY INCLUDED _____

LOCATION OF CURRENCY WHEN SEIZED _____

MONEY LOCATED NEAR DRUGS

YES

NO

VOLUNTARY FORFEITURE FORM

_____, do hereby knowingly and voluntarily forfeit all my rights, interest and title to the following item(s) below that were seized on _____ to the State of New Hampshire.

- A.
- B.
- C.

The undersigned further state as follows:

I hereby acknowledge that the above-described item(s) were knowingly used or intended for use by me in the procurement, manufacture, compounding, processing, delivery or distribution of a controlled drug or were the profits or proceeds of drug trafficking activities in felonious violation of RSA 318-B of the laws of the State of New Hampshire. _____(Initial).

I understand that RSA 318-B:17-b requires the State to initiate a forfeiture action within sixty days of the date of the seizure of the property. I hereby knowingly and voluntarily waive my rights under RSA 318-B:17-b and I understand that this property will be forfeited to the State of New Hampshire and disbursed pursuant to the provisions of RSA 318-B:17-b, V. _____(Initial).

I hereby agree to transfer title to the State of New Hampshire and provide the State of New Hampshire all documents that may be required to transfer title in this matter. _____ Initial).

The above-described item(s) is/are not subject to any liens or encumbrances. _____ (Initial)

The items listed in this voluntary forfeiture form are subject to the following encumbrance(s) and lien(s): _____.

It is agreed that these obligations will be disposed of as follows: _____

No threats or promises have been made to me by the _____ or its agent in this matter, aside from any agreements which may have been made with respect to my underlying criminal charges.

STATE OF NEW HAMPSHIRE
COUNTY OF _____

On this ___ day of _____, 20____, _____, personally appeared before me and executed this voluntary forfeiture form.

Witness Date & Time
(Print name and agency below the signature)