

Support HB 1296 – Place the Burden in Civil Asset Forfeiture Cases Where it Belongs – on the Government.

Bill Summary: HB 1296 would place the burden of proof on the government in state civil asset forfeiture cases involving money, coin, currently, or other investments found near a controlled substance. Under current law the burden of proof is on the property owner.

New Hampshire’s civil asset forfeiture law turns the presumption of innocence on its head. In 2016 New Hampshire took a major step toward ending civil asset forfeiture, a program that allows the government to take and keep the property of Granite Staters without even charging them with a crime. Since 2016, New Hampshire law has required the state to first charge and convict the property owner and then show by clear and convincing evidence that the seized property was the product of the crime before the forfeiture can occur.ⁱ Yet, New Hampshire law arbitrarily upends the presumption of innocence for one class of forfeiture cases. A cornerstone of the American justice system is the principle that one is innocent until proven guilty – it is time for New Hampshire lawmakers to bring the state’s civil asset forfeiture law in line with this basic principle.

Civil asset forfeiture incentivizes the pursuit of profit over the fair administration of justice. Under New Hampshire law, the local or state government which provided the law enforcement agency or agencies responsible for the seizure can keep up to 45 percent of the remaining proceeds from property forfeited after initial disbursements to cover the costs of the process, debts associated with the property, and a set amount to the police psychological stability screening fund.ⁱⁱ This structure already creates a perverse incentive for law enforcement to prioritize profit. The current law creates an additional incentive for law enforcement to seize cash, knowing that the burden is on the property owner to prove their property’s innocence. Law enforcement should not be put in a position where they appear to value funding their budget over the protection of individual rights.

Placing the burden on the property owner disproportionately harms unbanked people and people working in cash-heavy employment. Current law requires property owners to prove legitimate ownership of their cash. For unbanked people and servers, bartenders, and other service-sector employees who work for tips, proving ownership of their cash can be an impossible burden to meet. For example, servers and other wait staff can make hundreds of dollars in tips in an evening, yet have no formal receipt for those tips. These individuals are at a heightened risk merely because of their employment. By placing the burden on the government, lawmakers can better ensure that these individuals will not have their hard-earned dollars unjustifiably taken from them.

Support HB 1296: Ensure the presumption of innocence is not flipped on its head.

ⁱ RSA 318-B:17-b.

ⁱⁱ RSA 318-B:17-b-V.