

February 13, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1286

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

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

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

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

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

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

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

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

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

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

**19-03.1-36.7. Legal interest in property.**

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

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

### **19-03.1-36.8. Reporting.**

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

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

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

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

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

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

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

Renumber accordingly