

Senate Executive Departments and Administration Committee

Kevin Condict 271-7875

HB 509-FN, relative to the contents of the attorney general's annual report detailing state forfeiture information for the preceding fiscal year.

Hearing Date: April 9, 2025

Time Opened: 9:50 a.m.

Time Closed: 10:17 a.m.

Members of the Committee Present: Senators Pearl, McGough, Altschiller and Reardon

Members of the Committee Absent : Senator Gannon

Bill Analysis: This bill changes the requirements for the annual report from the attorney general concerning forfeitures of personal property.

Sponsors:

Rep. Popovici-Muller

Rep. D. McGuire

Rep. Wheeler

Who supports the bill: Rep. Carol McGuire (Merr. 27), Rep. Daniel Popovici-Muller (Rock. 17), Alasdair Whitney (IFJ), Rep. Dan McGuire (Merr. 14), Rep. Jonah Wheeler (Hills. 33), Rep. Tom Schamberg (Merr. 6), Curtis Howland, Timothy Finney, James Gardner, Daniel Richardson, and Aubrey Freedman.

Who opposes the bill: None.

Who is neutral on the bill: Asst. AG Josh Speicher (NHDOJ) and Sarahlynn Williams.

Summary of testimony presented:

Representative Daniel Popovici-Muller, Rockingham 17

- Rep. Popovici-Muller introduced House Bill 509-FN.
- Rep. Popovici-Muller stated that there was no opposition to this bill in the House committee.
- Rep. Popovici-Muller explained that HB 509 attempts to bring more transparency to New Hampshire's civil forfeiture reporting.

- Rep. Popovici-Muller stated that while he was on a study committee last summer, they found that the current reports do not help to inform policy or help people understand what is happening in that area of the law.
- Rep. Popovici-Muller explained that this will improve the reporting but is still very straightforward.
- Rep. Popovici-Muller stated that the data that is required is easily available so it will not be a significant change in workload for law enforcement agencies.
- Rep. Popovici-Muller explained that the Attorney General's Office already has the obligation to compile this data and this will just add a few more data points to put into the spreadsheet.
- Rep. Popovici-Muller stated that civil forfeiture is a tough area of the law and tends to be an area where many people feel they have been wronged.
- Rep. Popovici-Muller stated that it is important to have objective data that informs their policy making.
- Sen. Altschiller asked if the opposition to this bill is due to the Attorney General's office having to hire a full-time person to comply with this.
 - o Rep. Popovici-Muller believed that it would be unnecessary for the Attorney General to have to hire another person to comply with the new report requirements. He was unsure why there was dissension.
- Sen. Altschiller stated that looking at the fiscal note it seems federal information is needed and asked if he would be amenable to removing that requirement.
 - o Rep. Popovici-Muller stated that the federal information is already available to local law enforcement and does not ask what the feds are doing. The only added data is information regarding what the State is working on with the feds. There are only a few state agencies that have joint task forces with federal agencies. It is not information that requires extra work or funding.
- Sen. Altschiller pointed out data points that would require a final value and asked who would determine the value.
 - o Rep. Popovici-Muller replied that the law enforcement agency working on the case would determine the value. He added that he will support any amendment that improves transparency in reporting.
- Sen. Reardon asked if the value to the public to have this data is more important than law enforcement's processes.
 - o Rep. Popovici-Muller replied that he absolutely believes that is the case. He added that when putting this new report requirement together, he only looked at data that is already available.

Joshua Speicher, Attorney General's Office

- Mr. Speicher stated that his office has concerns about this legislation for a few reasons.
- Mr. Speicher stated that they believe this would require a significant increase in administrative work.
- Mr. Speicher explained that this legislation would require the hiring of an investigative paralegal, and they have concerns that the funding for that will not be available.
- Mr. Speicher explained that much of the data that is required over and above what is currently reported is either redundant, irrelevant or problematic.
- Mr. Speicher stated that reporting the specific locations of seizures of drugs, cash or other contraband in combination with case names raises a significant safety issue for them.
- Mr. Speicher explained that making the public aware that there are large amounts of drugs and cash at certain locations would put people in harm's way.
- Mr. Speicher stated that Section I has problematic language because under the current forfeiture laws, forfeiture can only proceed if there is a criminal conviction.
- Mr. Speicher explained that reporting on cases where charges were dropped or when there was an acquittal is not relevant to forfeiture proceedings and would open them up to hundreds of new cases of data to report.
- Mr. Speicher says that their office does not have information on federal forfeiture proceedings, and it would be difficult to obtain that data.

Alastar Whitney, The Institute for Justice

- Mr. Whitney stated that his organization believes that if the State takes property under civil forfeiture, then the public has an absolute right to know.
- Mr. Whitney explained that this is one of the only areas of the law where you can lose property that is either connected to a crime or not.
- Mr. Whitney believed that many of the reporting requirements in this legislation are information that law enforcement already has access to.
- Mr. Whitney stated that their law firm has helped other states pass similar legislation and there has been a great deal of compliance with this model nationally.
- Mr. Whitney noted that it is important for good governance and transparency to pass this legislation so that the public knows the who, what, when, and how of civil forfeiture in this state.

- Sen. Reardon commented that the existing law provides the information they need and asked what specific information this legislation adds and if they would use it to challenge a forfeiture.
 - o Mr. Whitney replied they could potentially use it for a challenge but that they really want to encourage good transparency laws. They are a firm that started out defending people's property rights. He added that the issue of losing your property without even being arrested is very problematic. There was a recent supreme court case that questioned why this practice still exists. This report will simply show if it does or does not happen in New Hampshire.
- Sen. Reardon commented that the Attorney General's Office just testified that forfeiture only happens if there is a criminal conviction.
 - o Mr. Whitney replied that his understanding is that it can happen pursuant to federal equitable sharing quite a bit. It is the process where the State is working with federal partners to circumvent state law so that it can happen without a conviction.
- Sen. McGough asked how they balance the privacy of the innocent until proven guilty if this forfeiture happens prior to any conviction and this data is published.
 - o Mr. Whitney replied that everything that happens in the court is a matter of public record. Any citizen can go to court and look up this information. He continued that they believe transparency related to forfeiture is more important than any potential loss of privacy.
- Sen. McGough asked if everything in this report is part of the public record.
 - o Mr. Whitney replied that it is.
- Sen. Altschiller asked if his organization has been working on getting this information from federal cases and this legislation is a way to get the states to compile it.
 - o Mr. Whitney replied that this report is to help understand where state agencies are circumventing state law when working with federal agencies.

Representative Dan McGuire, Merrimack 14

- Rep. McGuire stated that if someone is arrested for a drug crime their property can be seized.
- Rep. McGuire explained that typically any drugs or cash seen at the arrest are seized but the cash is a separate case of forfeiture.

- Rep. McGuire stated that in New Hampshire the criminal case is often prosecuted by the county attorney, but the forfeiture case is always prosecuted by the Attorney General's office.
- Rep. McGuire added that for the criminal case the defendant can be provided with a public defender.
- Rep. McGuire stated that for the property forfeiture case there is no defense provided so in almost all of those cases people have to give up.
- Rep. McGuire explained that current reporting does not give many details on how often those forfeitures occur.
- Rep. McGuire stated that in the House, they are interested in possibly combining the two procedures so that it becomes one prosecution, one set of attorneys and a more efficient process.
- Rep. McGuire explained that because all of the forfeiture cases are handled by the Attorney General's Office, they already know how much property was seized, how much was forfeited, how much it was settled for, etc.
- Rep. McGuire offered to get the current report for the Committee so that they could see that it is very cursory and doesn't make clear what is going on in these cases.
- Rep. McGuire stated that it is important for them to have more details if they want to make the case to reform the process in the future.

KC

Date Hearing Report completed: April 14, 2025