

HB 636-FN - AS AMENDED BY THE SENATE

7Jan2016... 2507h  
23Mar2016... 0885h  
05/12/2016 1952s  
05/12/2016 1966s  
05/12/2016 1949s

2015 SESSION

15-0385  
05/01

HOUSE BILL

**636-FN**

AN ACT                    relative to forfeiture of property; relative to the sale of premixed synthetic urine; establishing a grant program for high schools for heroin and opiate prevention education; and clarifying who may petition to adopt.

SPONSORS:            Rep. D. McGuire, Merr 21; Rep. Rowe, Hills 22; Rep. Cushing, Rock 21; Rep. Itse, Rock 10; Rep. Sylvia, Belk 6; Rep. Rappaport, Coos 1; Rep. Theberge, Coos 3; Sen. Reagan, Dist 17; Sen. Cataldo, Dist 6; Sen. Pierce, Dist 5; Sen. Daniels, Dist 11

COMMITTEE:          Criminal Justice and Public Safety

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AMENDED ANALYSIS

This bill:

I. Limits forfeiture to cases in which the state has found by clear and convincing evidence that the property was derived from, or used in, the commission of a crime and requires the state to deposit proceeds from forfeited property in the general fund.

II. Prohibits the use or sale of premixed synthetic urine to defeat a drug or alcohol screening test.

III. Establishes a one-year grant program for high schools for heroin and opiate prevention education.

IV. Provides that any adult or 2 adults together may petition to adopt another person for the purpose of creating a relationship of parent and child.

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fifteen*

AN ACT                    relative to forfeiture of property; relative to the sale of premixed synthetic urine; establishing a grant program for high schools for heroin and opiate prevention education; and clarifying who may petition to adopt.

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

1            1 New Section; Property Subject to Forfeiture. Amend RSA 617 by inserting after section 1 the  
2 following new section:

3            617:1-a Criminal Forfeiture; Property Subject to Forfeiture.

4            I. Subsequent to a criminal conviction pursuant to a statute that authorizes forfeiture,  
5 including but not limited to RSA 318-B:17-b, the court may order the person convicted to forfeit:

6                    (a) Property the person derived from the commission of the crime;

7                    (b) Property directly traceable to property derived from the commission of the crime;

8 and

9                    (c) Instrumentalities the person used in the commission of the crime.

10            II. When a conviction or agreement of the parties is not possible due to the person's death,  
11 incompetence, unavailability, or not being within the jurisdiction of the court, or the person to be  
12 charged cannot be identified, forfeiture proceedings may be commenced.

13            III. Property may be forfeited if the state establishes that the property is forfeitable by clear  
14 and convincing evidence.

15            IV. Nothing in this section shall prevent property from being forfeited by plea agreement  
16 approved by the presiding criminal court or other agreement of the parties.

17            V. At the request of any party, the civil portion of the forfeiture proceeding may be stayed  
18 by the court.

19            2 New Section; Forfeiture; Innocent Owner. Amend RSA 617 by inserting after section 4 the  
20 following new section:

21            617:4-a Innocent Owner. In addition to any other remedy provided by law, any person claiming  
22 to be an innocent owner of property seized for purposes of forfeiture may petition the court, after 10  
23 days from the date of seizure, for return of the property. No item or property interest shall be  
24 subject to forfeiture unless the alleged innocent owner thereof was a consenting party to the crime.  
25 This provision shall not apply to property seized as evidence in a pending criminal investigation or  
26 prosecution.

27            3 New Section; Disposition of Unclaimed Property and Proceeds. Amend RSA 617 by inserting

1 after section 10 the following new section:

2 617:11 Disposition of Property and Proceeds.

3 I. Notwithstanding any other provision of law, at any time when unclaimed property or  
4 contraband held for evidentiary purposes is no longer needed for that purpose, the court may order  
5 the state to deliver any unclaimed property, other than currency, to the commissioner of the  
6 department of administrative services, to deliver any currency to the state treasurer, and to destroy  
7 any contraband within 30 days.

8 II. If the forfeiture is granted, the court may order the state to deliver any currency to the  
9 state treasurer and any other property to the commissioner of the department of administrative  
10 services within 30 days. The commissioner of the department of administrative services shall  
11 dispose of the forfeited property at public auction.

12 III. Upon motion, the court may order that a portion of the currency seized or proceeds from  
13 public auction be used to pay reasonable non-personnel expenses of the seizure, storage, and  
14 maintenance of custody of any forfeited items.

15 IV. The auction proceeds and forfeited currency shall be forwarded to the state treasurer  
16 and shall be used first to pay all outstanding recorded liens on the forfeited property, then to comply  
17 with an order of the court to pay reasonable non-personnel expenses, with all remaining funds to be  
18 deposited into the drug forfeiture fund.

19 4 Forfeiture of Items Used in Connection with Drug Offense. Amend RSA 318-B:17-b, II(e) to  
20 read as follows:

21 (e) The department of justice shall, within 60 days of the seizure, ~~[either]~~ file a petition  
22 in the superior court having jurisdiction under this section ~~[or seek administrative forfeiture~~  
23 ~~pursuant to RSA 318-B:17-d]~~. If no such petition is filed ~~[or administrative procedure initiated]~~  
24 within 60 days, the items or property interest seized shall be released or returned to the owners.

25 5 Disposition of Funds Obtained by the Attorney General; Reference to Administrative  
26 Forfeiture Removed. Amend RSA 7:6-e, III to read as follows:

27 III. This section shall not apply to fines received by the attorney general in criminal cases,  
28 penalty assessment funds, drug forfeiture funds as provided in RSA 318-B:17-b ~~[through RSA 318-~~  
29 ~~B:17-d]~~ **and RSA 318-B:17-c**, fines or civil penalties authorized by state law as a result of  
30 enforcement actions taken by state agencies or the attorney general, and money received on behalf  
31 of a victim or the state as restitution.

32 6 Repeal. RSA 318-B:17-d, relative to administrative forfeiture of items used in connection  
33 with drug offenses, is repealed.

34 7 Heroin and Opiate Prevention and Education Grant Program.

35 I. There is hereby established a heroin and opiate prevention education grant program  
36 (HOPE) which shall be jointly administered by the TIGER program at Plymouth state university  
37 and Communities for Alcohol- and Drug-free Youth (CADY), a nonprofit organization which serves

1 as the state's regional prevention network for central New Hampshire.

2 II. Grants shall be available to public high schools, including chartered public high schools,  
3 to cover the cost of the HOPE program presentation. Grant applications shall be submitted to the  
4 TIGER program on a form to be developed by the TIGER program. The TIGER program shall  
5 distribute HOPE grants to high schools and chartered public high schools to the extent of available  
6 funds. A high school or chartered public high school shall be eligible for one HOPE grant per school  
7 year.

8 III. A high school or chartered public high school in which 40 percent or more of the  
9 average daily membership in attendance in the determination year are eligible for the federal free  
10 and reduced-price meal program shall be eligible for a grant in the amount of 100 percent of the cost  
11 of the HOPE program. All other high schools and chartered public high schools shall be eligible for  
12 a grant in the amount of 50 percent of the cost of the HOPE program.

13 IV. Recipients of a HOPE grant shall, within 30 days of the conclusion of the program at  
14 the school, submit a report to the governor's commission on alcohol and drug abuse prevention,  
15 treatment, and recovery established in RSA 12-J and to CADY summarizing the student's reaction  
16 to the program. Any school that does not comply with this paragraph shall not be eligible to receive  
17 a HOPE grant in any subsequent year of the program.

18 V. "Average daily membership in attendance" and "determination year" shall have the same  
19 meaning as in RSA 198:38.

20 8 Appropriation. The sum of \$51,520 for the biennium ending June 30, 2017 is hereby  
21 appropriated to the university system of New Hampshire for the purpose of making grants as  
22 provided in section 7 of this act to the TIGER program at Plymouth state university. For the  
23 purposes of funding the appropriation made in this section, the governor shall identify excess  
24 appropriations from sums appropriated pursuant to 2015, 275 and 276, and shall transfer said sums  
25 to the appropriate class lines. Any transfers made pursuant to this section shall not require the  
26 prior approval of the fiscal committee of the general court and the governor and council and shall  
27 not be subject to the provisions of RSA 9:16-a, RSA 9:17-a, and RSA 9:17-c.

28 9 Repeal. Section 7 of this act, establishing a heroin and opiate prevention education grant  
29 program, is repealed.

30 10 New Subdivision; Substance Abuse Enforcement Program. Amend RSA 21-P by inserting  
31 after section 65 the following new subdivision:

32 Substance Abuse Enforcement Program

33 21-P:66 Substance Abuse Enforcement Program.

34 I. The commissioner of safety shall establish a substance abuse enforcement program which  
35 shall make grants available to county, local, and appropriate state law enforcement agencies to  
36 increase visible police presence on streets and highways and in public spaces, promote the sharing  
37 of information, and support enhanced drug investigative procedures, with particular emphasis on

1 interdicting and disrupting the flow of illicit drugs being transported into and through the state for  
2 eventual sale and illegal use.

3 II. The commissioner shall establish protocols and conditions for increased state police  
4 patrols and conditions for eligibility for grants to local, county, and state law enforcement agencies.  
5 The protocols and conditions shall be based on the principles of intelligence-driven, problem-  
6 oriented policing, using statistics and information to place additional police patrol and investigative  
7 presence at the locations, times, and places where there have been a significant convergence of  
8 motor vehicle crashes, crimes, and drug use, or in corridors known to be used by drug dealers for  
9 shipments of illegal drugs into the state. The protocols and conditions shall:

10 (a) Require dedicated patrol units relieved of taking calls for service absent an  
11 emergency.

12 (b) Insure that the officers assigned to such patrol units have been trained in the  
13 concept of data-driven policing and have an appropriate knowledge of the requirements of the state  
14 and federal constitutions.

15 (c) Include an emphasis on gaining the respect and approval of the public for the work  
16 of the police.

17 III. The program shall include periodic reporting to ensure that measurable results are  
18 being obtained.

19 21-P:67 Substance Abuse Enforcement Fund.

20 I. There is hereby established the substance abuse enforcement fund. This fund shall be  
21 used for the purposes of the substance abuse enforcement program to support coordinated law  
22 enforcement activities, including but not limited to:

23 (a) New Hampshire state police personnel, equipment, and other costs when working in  
24 conjunction with county and local law enforcement in localities experiencing a high volume of  
25 substance abuse related activities;

26 (b) Department of safety personnel, equipment, and other costs to increase the capacity  
27 and efficiency of the state crime laboratory in processing evidence in opioid-related cases; and

28 (c) Grants to county and local law enforcement for overtime personnel costs in localities  
29 experiencing a high volume of substance abuse related activities.

30 II. The substance abuse enforcement fund shall be a nonlapsing fund administered by the  
31 commissioner of the department of safety. The fund shall consist of an initial appropriation of  
32 \$1,500,000, and the commissioner may also accept and expend gifts, grants, and donations from any  
33 state or federal source for deposit into the fund. The fund shall be continually appropriated and  
34 expended at the discretion of the commissioner of the department of safety, in furtherance of the  
35 purposes of the fund. The commissioner shall create an accounting unit and expenditure classes for  
36 the fund as the commissioner deems necessary and appropriate to effectuate the purposes of the  
37 fund. Notwithstanding the provisions of RSA 9:16-a and the provisions of 2015, 276:198, the

1 commissioner is authorized to transfer funds within and among the expenditure classes in  
2 furtherance of the purposes of the fund.

3 21-P:68 Rulemaking. The commissioner of safety shall adopt rules to implement this  
4 subdivision. Notwithstanding any other provisions of law, such rules shall be exempt from the  
5 provisions of RSA 541-A.

6 11 Who May Petition to Adopt. RSA 170-B:4 is repealed and reenacted to read as follows:

7 170-B:4 Who May Petition to Adopt. In this chapter, any adult or 2 adults together may  
8 petition to adopt a natural person for the purpose of creating a relationship of parent and child  
9 between them.

10 12 Effective Date.

11 I. Sections 1-7 of this act shall take effect January 1, 2017.

12 II. Section 10 of this act shall take effect July 1, 2017.

13 III. The remainder of this act shall take effect upon its passage.

**HB 636-FN- FISCAL NOTE**

AN ACT                      relative to forfeiture of property.

**FISCAL IMPACT:**

The Department Administrative Services and the Judicial Branch state this bill, **as amended by the Senate on 4/28/16**, will have an indeterminable impact on state revenue and expenditures in FY 2017 and each year thereafter. There will be no impact on county or local revenue and expenditures.

**METHODOLOGY:**

The Department of Administrative Services assumes it would use existing resources in the State Surplus program to conduct any required auctions. Upon approval of the court, the Department would be able to utilize funds from proceeds of the public auction to pay for reasonable costs to provide custody, maintenance or storage of the seized property. The Department states there is no way to predict the amount of forfeited property that may result from this bill and it is not able to determine the amount of revenue that would be deposited in the general fund.

The Department of Justice states this bill, as amended would not impact the Drug Forfeiture Fund and therefor would have no fiscal impact on the Department.

The Judicial Branch indicates almost all of the forfeitures take place in the superior court. The Branch does not anticipate the bill will result in a fiscal impact greater than \$10,000.

The Municipal Association states this bill does not appear to have an impact on municipal revenues or expenditures.