NH civil forfeiture statute ranked among worst

In June, the FreedomWorks libertarian website graded the states on their civil forfeiture statutes, with New Hampshire earning a D.

According to the authors of the report, the standard of proof in New Hampshire is too low; the burden is on the property owner to prove innocence to get the property back; and the money goes directly to law enforcement.

The Granite State had plenty of company, with many other states scoring D or worse. Only Minnesota, Montana, New Mexico and North Carolina were rated A in the review.

FreedomWorks is part of a national coalition that has been pushing for reform of forfeiture statutes across the country for years.

In the past two years, Minnesota, Montana and Wyoming added criminal conviction as a prerequisite to forfeiture. Two weeks ago, Michigan’s governor signed into law a bill that improved reporting on seizures and forfeitures in that state and raised the standard of proof. Georgia made similar changes earlier this year as well.

State legislatures in Maryland, Ohio, Oklahoma, Tennessee and Nevada — like New Hampshire — are considering similar changes, according to Lee McGrath, a staff attorney with the Institute for Justice, a nonprofit libertarian public interest law firm headquartered in Virginia.

In April, Gov. Susan Martinez of New Mexico signed into law a bill that ended civil forfeiture and replaced it with criminal forfeiture, with all proceeds going into the state’s general fund.

“That’s the platinum standard that we favor, and we helped in the enactment of that bill,” said McGrath. “And that was with a GOP governor and former prosecutor in a border state.”

The distinction between civil forfeiture, which most states like New Hampshire still have, and criminal forfeiture, is key, said McGrath.

Under civil forfeiture, if someone is arrested or even suspected of a crime, law enforcement can seize assets and file a forfeiture petition in civil court, where the standard of proof is much lower than in a criminal court.

“The U.S. Supreme Court has upheld that if a state wants to subject property to a separate process, independent of criminal conviction, it can,” said McGrath.

Disconnecting the forfeiture process from the criminal case sets the stage for abuse, he said. Many such abuses have been documented in other states in a report titled, “Policing for Profit,” by the Institute for Justice.

Even though no such abuses have been documented in New Hampshire, changing the law is as much about perception as reality, according to State Rep. Paul Berch, especially when it comes to redirecting the money to the state treasury.

“We want to avoid the perception that law enforcement activity is skewed by the possibility of receiving money,” he said. “We feel the public wants to have confidence that police work is not being done to generate
revenue, but to solve crime.”

— Dave Solomon