

**CITY COUNCIL MEETING**

**AGENDA ITEM VII**





**CITY OF FRANKLIN  
COUNCIL AGENDA REPORT**

*City Council Meeting of March 7<sup>th</sup>, 2016*

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**Subject: Chief Goldstein to give legislative update.**

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## HB 1688-FN-LOCAL - AS INTRODUCED

2016 SESSION

16-2825  
06/09HOUSE BILL ***1688-FN-LOCAL***

AN ACT relative to governmental liability for negligence claims.

SPONSORS: Rep. Woodbury, Hills. 5; Rep. Hopper, Hills. 2

COMMITTEE: Judiciary

## ANALYSIS

This bill provides that employees of a governmental unit may be held liable for damages in certain negligence claims.

This bill is a request of the committee to study government immunity from suit and accountability by its citizens established in 2015, 175 (SB41).

Explanation: Matter added to current law appears in ***bold italics***.  
 Matter removed from current law appears [~~in brackets and struck through.~~]  
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.  
 16-2825  
 06/09

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Sixteen*

AN ACT relative to governmental liability for negligence claims.

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

1 Bodily Injury Actions Against Governmental Units; Liability for Negligence. Amend RSA 507-B:2 to read as follows:

507-B:2 Liability for Negligence. A governmental unit, ***employee, or official*** may be held liable for damages in an action to recover for bodily injury, personal injury or property damage caused by its fault or by fault attributable to it, ***whether or not*** arising out of ownership, occupation, maintenance, or operation of all motor vehicles, and all premises[~~;- provided.~~]. However, [~~that~~] the liability of any governmental unit with respect to its sidewalks, streets, and highways shall be limited as provided in RSA 231 and the liability of any governmental unit with respect to publicly owned airport runways and taxiways shall be limited as set forth in RSA 422.

2 Effective Date. This act shall take effect January 1, 2017.

LBAO  
16-2825

12/16/15

**HB 1688-FN-LOCAL- FISCAL NOTE**

AN ACT relative to governmental liability for negligence claims.

**FISCAL IMPACT:**

The New Hampshire Association of Counties, New Hampshire Municipal Association, and Judicial Branch state this bill, **as introduced**, may increase state, county, and local expenditures by indeterminable amounts in FY 2017 and each year thereafter. There will be no fiscal impact to state, county, and local revenue.

**METHODOLOGY:**

The New Hampshire Association of Counties and New Hampshire Municipal Association state this bill expands liability for negligence claims to employees and officials of every political subdivision in the state. Further, this bill provides for liability arising out of ownership, occupation, maintenance, or operation of all motor vehicles, and all premises. This bill could increase the number of negligence cases in which counties and municipalities may be held liable for personal injuries. Costs for liability insurance for political subdivisions may increase by an indeterminable amount as a result of this bill.

The Judicial Branch states this bill may increase the number of cases brought forward for damages against governmental units, their employees, and their officials. There is no method to determine how many additional cases would be brought as a result of this bill to determine the fiscal impact on expenditures. The table below provides the potential costs associated with this bill:

	FY 2017	FY 2018
<b>Judicial Branch*</b>		
Complex Civil Case	\$724	\$756
Appeals	Varies	Varies
*It should be noted average case cost estimates for FY 2017 and FY 2018 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types.		

The Department of Administrative Services states this bill will have no fiscal impact because the State and all of its departments and agencies are exempt from the provisions of this bill pursuant to RSA 507-B:1, I.

## HB 1687-LOCAL - AS INTRODUCED

2016 SESSION

16-2824  
08/09HOUSE BILL ***1687-LOCAL***

AN ACT relative to governmental liability for personal injury on playground structures.

SPONSORS: Rep. Hopper, Hills. 2; Rep. Woodbury, Hills. 5; Sen. Carson, Dist 14

COMMITTEE: Judiciary

## ANALYSIS

This bill allows municipalities and school districts to be held liable for certain injuries on playground equipment.

This bill is a request of the committee to study government immunity from suit and accountability by its citizens established in 2015, 175 (SB 41).

Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struck through.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.  
16-2824  
08/09

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Sixteen*

AN ACT relative to governmental liability for personal injury on playground structures.

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

- 1 Use of Municipal and School District Playground Facilities. Amend RSA 507-B:11 to read as follows:  
507-B:11 Use of Municipal and School District ***Playground*** Facilities [~~for Skateboarding, Rollerblading, Stunt Biking, or Rollerskiing~~]. A municipality or school district, which without charge permits any person to use [~~a facility~~] ***playground structures*** operated by the municipality or school district [~~for the purpose of skateboarding, rollerblading, stunt biking, or rollerskiing, shall not be liable for personal injury or property damage resulting from the person's participation in such activity, in the absence of gross and wanton negligence~~] ***may be liable for damages in an action to recover for bodily injury, personal injury, or property damage under RSA 507-B:2.***
- 2 Effective Date. This act shall take effect 60 days after its passage.





## Chief Goldstein

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**From:** Elizabeth Dragon [citymgr@franklinnh.org]  
**Sent:** Tuesday, February 16, 2016 4:32 PM  
**To:** David Goldstein; Kevin Lachapelle  
**Subject:** FW: Please vote down HB 1687 & HB 1688

Fyi...

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**From:** Elizabeth Dragon  
**Sent:** Tuesday, February 16, 2016 4:17 PM  
**To:** 'Wheeler, Deborah'  
**Subject:** Please vote down HB 1687 & HB 1688

Good afternoon Representative Wheeler,

HB 1687 & 1688 are potentially very harmful to communities in a variety of ways. I have been doing this type of work (administrator/manager) for more than 18yrs in a couple different communities.

When people are upset they often start with ...I am going to sue the town/city, I am going to take the town/city to court. People automatically look at the city/town as the place with the BIGGEST pockets to reach towards...but in reality they are reaching into your pocket and mine as tax payers. Unfortunately, in today's day and age people want to sue you over just about anything. Luckily, municipalities have had some protection under RSA 507-B and this has kept away some of the more frivolous lawsuits. RSA 507-B:2 doesn't say that towns/cities are never liable...of course they are (and should be) liable for things caused by them or attributable to them...

**HB 1688** would reverse the general rule governing municipal liability for negligence actions. Current law (RSA 507-B:2) states that a municipality "may be held liable for damages in an action to recover for bodily injury, personal injury or property damage caused by its fault or by fault attributable to it, arising out of ownership, occupation, maintenance or operation of all motor vehicles, and all premises." Another section of the same statute states, "No governmental unit shall be held liable in any action to recover for bodily injury, personal injury or property damage *except as provided by this chapter or as is pro-vided or may be provided by other statute.*"

**HB 1688** changes the language of RSA 507-B:2 to state that municipalities are liable for injuries "whether or not arising out of owner-ship, occupation, maintenance or operation of all motor vehicles, and all premises." In other words, they are liable for everything. This will result in an explosion of litigation against municipalities and a huge increase in insurance costs.

- ❖ This will reach into your pocket and mine..and in my opinion-encourage ambulance chasing!

A couple examples cited in a recent NHMA article which helps explain/illustrate- the potential result of **HB 1688**. One of the court decisions the bill would overrule involved a high school basketball player who was injured during practice and sued the school and the coach. Another involved a person who was injured in a two-car automobile accident and sued the local police department for having failed to arrest the other driver during a previous confrontation. In both cases the supreme court ruled that the claims were properly dismissed under RSA 507-B. If **HB 1688** is enacted, such claims would be allowed.

**HB 1687 is equally terrible**= it amends RSA 507-B:11, which currently provides immunity to municipalities and school districts for injuries occurring at a skateboarding or rollerblading park. **HB 1687** repeals that immunity and, further, makes municipalities and school districts liable for injuries occurring on any playground structure they own.. In addition, it creates an odd inconsistency: under another statute, RSA 212:34, a landowner who allows the use of his land for “outdoor recreational activity” without charge is immune from liability for any injuries that result. If **HB 1687** passes, the only exception to that law will be municipal and school playgrounds. I had to read this part twice- Anyone else is immune if they don't charge for use of their land- anyone else that is.... except for municipal and school playgrounds?????????????

I think lawyers hoping to grow their law practice have the most to gain from these bills...and taxpayers have the most to lose!

My police chief, David Goldstein, intends to testify in opposition tomorrow on our behalf.

Please let me know if we can answer any questions or provide any information that would be helpful to you.

We ask that you vote against HB 1687 & HB 1688 and tell would be ambulance chasers and lawyers looking to grow their business-they need look somewhere other than the tax payer dollars for their big cash settlements.

***Elizabeth A. Dragon***

City Manager  
City of Franklin  
(P) 934-3900  
(F) 934-7413

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

Merrimack Superior Court  
163 North Main St./PO Box 2880  
Concord NH 03302-2880

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

**NOTICE OF DECISION**

**Brian J.S. Cullen, ESQ  
CullenCollimore PLLC  
10 East Pearl Street  
Nashua NH 03060**

**Case Name: Daniel Greene v Franklin Fire Department, et al  
Case Number: 217-2015-CV-00182**

Enclosed please find a copy of the court's order of August 06, 2015 relative to:

**ORDER**

**August 07, 2015**

**Tracy A. Uhrin  
Clerk of Court**

**(629)**

**C: Daniel Greene; Paul T. Fitzgerald, ESQ; Andrew Livernois, ESQ**

**AUG 10 2015**

# The State of New Hampshire

MERRIMACK, SS

SUPERIOR COURT

Daniel Greene

v.

Franklin Fire Department and Andover Fire Department

NO. 2015-CV-00182

## ORDER

Plaintiff Daniel Greene ("Greene") has brought a lawsuit against the Franklin Fire Department and the Andover Fire Department alleging that he was transported on an ambulance against his will and seeking damages as a result of that conduct. Both fire departments have moved to dismiss. For the reasons stated in this Order, the Motions to Dismiss are GRANTED.

Both fire departments argue that the Complaint does not adequately set forth a cause of action. The Franklin Fire Department states that Plaintiff claims that he never gave the Department's permission to transport him to the hospital but that he does not state he was physically restrained or otherwise forced to submit being transported.

It is no doubt true that there is some ambiguity in the Complaint. However, in paragraph 3 of the Complaint, Plaintiff clearly asserts "I was transported on an ambulance from Franklin Fire Department against my will". Complaint, ¶ 3. On a Motion to Dismiss, the Court must consider whether or not the allegations are reasonably susceptible of a construction that would permit recovery. Silva v. Warden, 150 N.H. 372, 373 (2003). A reviewing court must assume the truth of the facts alleged in a plaintiff's pleadings, and construe all reasonable inferences in a light most favorable

AUG 10 2015

to him. Bowden v. Commissioner, New Hampshire Department of Transp., 144 N.H. 491, 496 (1999). Considering the pleadings in the light most favorable to the Plaintiff, as the Court must on a Motion to Dismiss, the Plaintiff's claim can be read as one of battery, and/or false imprisonment. Plaintiff clearly claims that he was taken from his home against his will and his Complaint sets forth a cause of action.

However, Defendants also argue that the case should be dismissed because they are immune from suit under RSA 507-B:5, which provides in relevant part:

A governmental unit may be held liable for damages in an action to recover for bodily injury, personal injury or property damage caused by its fault or fault attributable to it, *arising out of ownership, occupation, maintenance or operation of all motor vehicles, and all premises...* (Emphasis supplied).

In DiChiara v. Sanborn Reg'l Sch. Dist., 165 N.H. 694 (2013) the New Hampshire Supreme Court specifically held that an action against a municipality can only be maintained when the claim arises out of the ownership occupation, maintenance or operation of a motor vehicle. It held that a school district had no liability for an injury which occurred at a school as a result of a teacher's direction to students to engage in a "loose ball drill" in the gym. Id. at 165 N.H. 695. In so holding, the Court upheld the principle that if the "vehicle acts as merely the situs of an injury, the causal connection between the injury and the use of the vehicle is too tenuous to support" to application of the statute. Chatman v. Strafford County, 163 N.H. 320, 323 (2012).

In Chatman, the plaintiff, an inmate participating in a work release program, was injured when he was directed to load tables and chairs onto a trailer which was not yet hitched to another vehicle and was located on uneven, soft ground. After it was loaded, Chatman was directed to hitch the trailer to a pickup truck. While he was doing so, a weld on the trailer jack or the hitch failed causing the trailer to fall on the plaintiff and

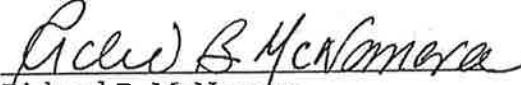
injure him. In rejecting the plaintiff's claim of liability, the New Hampshire Supreme Court applied its analysis in insurance cases of when injuries "arise out of" the operation of a motor vehicle to its interpretation of RSA 507-B: 5. Id. at 323. Under settled principles of New Hampshire law, the fact that a vehicle is a location of an injury does mean that the injuries "arise out of" the operation of a motor vehicle and does not mean that the carrier must provide coverage. See e.g. Ackerley v. Hartford Ins. Group, 136 N.H. 433, 440 (1992) (insurer had no obligation to provide insurance coverage to officer for injuries he sustained while removing an uninsured motorist from a vehicle because the vehicle was on the situs); Lebroke v. United States Fidelity and Guaranty insurance Company, 146 N.H. 249, 249-51 (one) (no coverage for injuries sustained when the insured was bitten by a dog while loading brochures onto an automobile because the automobile was merely the site of the injury).

Under these principles, the Plaintiff's claim cannot succeed. Assuming, as the Court must on a Motion to Dismiss that he suffered a false imprisonment, the actions of the fire department personnel did not involve the operation of a motor vehicle; rather the motor vehicle was simply the site of their tortious conduct. Under these circumstances, the case cannot proceed and the Defendants' Motions to Dismiss must be GRANTED.

**SO ORDERED.**

DATE

8/6/15

  
Richard B. McNamara,  
Presiding Justice

## Elizabeth C. Sargent

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**From:** Chief Goldstein <dgoldstein@franklinnh.org>  
**Sent:** Thursday, February 18, 2016 7:26 PM  
**To:** jerry.little@leg.state.nh.us  
**Subject:** additional info

Senator,

I wanted to take a moment of your time concerning yesterday's hearing concerning SB 365. I feel that I was not as precise in my testimony as I try to be.

Ruminating about your question made it obvious to me that I did not get my point across re. local control.

Briefly, I was attempting to underscore the fact that in communities such as Franklin and Concord, we have not seen the need for specific ordinances when deciding between and among flaggers and police officers. We are intimately familiar with the needs and requirements of our respective communities.

Should this bill become law as proposed, we will be forced to make a choice, thus removing the decision making authority of the city/town councils or Boards of Selectmen.

Further, the ordinances or by-laws adopted are still required to fall in line with the DOT Guidelines, thus resulting in a loss of local control as well.

Should a community default to the Guidelines, this has the flavor of an "end run" around any legislative process as noted in the NHDOT Policy 402.06. Here, the Chief Engineer is imbued with the authority to change the Guidelines (read: policy) without legislative input of any sort (i.e., local or state).

I will close with the comment that Guidelines are, in effect, not policies but suggestions. Thus, one might well expect additional confusion.

Thank you for your interest.

David B. Goldstein, PhD  
Chief of Police  
City of Franklin  
5 Hancock Terrace  
Franklin, NH 03235  
603-934-2535 (24 hour)  
603-934-7159 (office)  
603-998-9782 (cell)  
[dgoldstein@franklinnh.org](mailto:dgoldstein@franklinnh.org)





STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Sixteen*

AN ACT relative to traffic control measures.

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

1 1 New Paragraph; City Councils; Bylaws and Ordinances; Temporary Traffic Control. Amend  
2 RSA 47:17 by inserting after paragraph VIII the following new paragraph:

3 VIII-a. Temporary Traffic Control. Relative to temporary traffic control measures on class  
4 IV and class V highways in connection with road construction and maintenance, other work within  
5 the public right of way, or special events or activities. The council may require persons or entities  
6 to employ traffic control measures at their expense, if the need for traffic control arises because of  
7 the activities of such persons or entities, subject to the following:

8 (a) The council may require the use of non-police flaggers, and/or cones, signs,  
9 barricades, or other appropriate devices and may require properly trained uniformed police officers  
10 only when necessary for traffic control due to traffic volume, speed, visibility, or other safety  
11 concerns, or when qualified flaggers are not available. Nothing in this paragraph shall prevent the  
12 persons or entities performing activities from requesting uniformed officers in other circumstances.

13 (b) The council may identify locations in which the use of uniformed police officers is  
14 required, or may establish criteria for making such a determination. Such criteria should identify a  
15 consistent methodology addressing safety issues similar to the recommendations contained in the  
16 department of transportation's guidelines for the use of flaggers and uniformed officers on state  
17 highways.

18 (c) All determinations for traffic control shall be applied consistently with local  
19 requirements for municipal and state projects.

20 (d) The council may require flaggers and uniformed officers to have training or  
21 certification by a nationally recognized organization or to meet the department of transportation's  
22 training requirements for highway flaggers.

~~(e) In the absence of a policy that complies with this paragraph, the department of  
transportation's guidelines for the use of flaggers and uniformed police officers on state highways  
shall apply and shall be administered by the council or its designee.~~

26 2 Selectmen; Regulation of Use of Highways. Amend RSA 41:11 to read as follows:

27 41:11 Regulation of Use of Highways, Etc. Unless regulated by the commissioner of the  
28 department of transportation as provided in RSA 236:1, the selectmen may regulate the use of all  
29 public highways, sidewalks, and commons in their respective towns and for this purpose may  
30 exercise all the powers conferred on city councils by RSA 47:17, VII, VIII, **VIII-a**, and XVIII, and by  
31 any other provisions of the laws upon the subject.

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION POLICY		NUMBER <b>402.06</b>
TITLE Flagger and Uniformed Officer Use in Work Zones		DATE 05/29/2009
SUBJECT Flagger and Uniformed Officer Use for Temporary Traffic Control and Safety		RESPONSIBLE BUREAU

**Authority:** The State Legislature has delegated the Commissioner of the Department of Transportation with full authority to control traffic in highway/bridge construction work zones on Class I, II, III highways; RSA 228:21, 236:1, and 228:37.

**Definitions:**

**Flagger:** A person trained in flagger operations who actively controls the flow of vehicular traffic into and/or through a temporary traffic control zone using hand-signaling devices or an Automated Flagger Assistance Device. (MUTCD 6E.01)

**Uniformed Officer:** A certified law enforcement officer who has the legal authority to enforce traffic laws on the roadways within the work zone.

**Dynamic Traffic Control** is traffic control that can be continuously adjusted to meet changing work zone needs and traffic demands. Dynamic Traffic Control can be at a fixed location or mobile and requires either human intervention or automated/intelligent electronic devices. Dynamic Traffic Control is typically implemented using flaggers and/or uniformed officers.

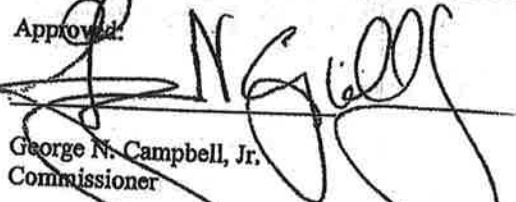
**Purpose:** The purpose of this policy is to provide a safe work zone through the prudent and consistent use of flaggers and/or uniformed officers in dynamic traffic control operations and traffic law enforcement. This policy provides guidance and consistency statewide with regards to the use of flaggers and uniformed officers, while ensuring efficient use of construction funding. This policy was initiated to comply with the requirements of the Federal Highway Administration, 23 CFR Part 630, Subpart K, 630.1106(c) Uniformed Law Enforcement Policy.

**Policy:** It is the policy of the Department of Transportation to take appropriate measures to reduce the likelihood of injuries and fatalities to workers and road users in NHDOT work zones. The use of appropriately trained flaggers and uniformed officers for the purpose of dynamic traffic control, presence, enforcement, and emergency assistance will be part of the safety measures taken.

Flaggers will be the primary means for providing dynamic temporary traffic control operations in work zones. Uniformed officers will be utilized for their specific authority for operations beyond that of a flagger, such as assistance in speed control and traffic law enforcement as necessary. The use of flaggers and uniformed officers in work zones is to be consistent with the *NHDOT Flagger and Uniformed Officer Use in Work Zones Guidelines*.

A Municipal Work Zone Agreement (MWZA) outlining the Department of Transportation's authority and responsibility for controlling traffic within the work zone is to be signed by each municipality as detailed in the *NHDOT Flagger and Uniformed Officer Use in Work Zones Guidelines* prior to construction of applicable project.

**Responsibility:** The Chief Engineer is responsible for the development, oversight and updating of the *NHDOT Flagger and Uniformed Officer Use in Work Zones Guidelines*.

Approved:   
George N. Campbell, Jr.  
Commissioner

Date: 6/5/09

References: 23 CFR Part 630 Subpart K, RSA 228:21, RSA 236:1, RSA 228:37, RSA 188-F:23, RSA 265:3-b, RSA 265:4, MUTCD




# FLAGGER AND UNIFORMED OFFICER USE IN WORK ZONES

## GUIDELINES

June 5, 2009  
Revised February 5, 2013

**Approved:**

  
\_\_\_\_\_  
David J. Brillhart, P.E.  
Chief Engineer

**Rev. Date:** 2/5/13

(Written in support of NHDOT policy: *Flagger and Uniformed Officer Use in Work Zones*)

# NHDOT FLAGGER AND UNIFORMED OFFICER GUIDELINES

02/05/2013

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# NHDOT FLAGGER AND UNIFORMED OFFICER GUIDELINES

02/05/2013

## I. GENERAL GUIDANCE:

The following guidelines for the use of flaggers and uniformed officers were developed by the NHDOT in cooperation with FHWA. The goal of these guidelines is to reduce the likelihood of injuries and fatalities to workers and road users in NHDOT Work Zones, while maintaining a fiscally responsible approach in their use. These guidelines provide parameters to identify the appropriate need and consistent use of flaggers and uniformed officers addressed by the following categories:

- A. **Traffic control** (guiding and directing traffic in, through, and around a work zone).
- B. **Presence** (deter speeding and aggressive driving, encourage drivers to cautiously proceed through the work zone)
- C. **Enforcement** (actively enforce traffic laws within the work zone on an as needed basis to gain driver awareness rather than as a full-time operation).
- D. **Emergency assistance** (assist and coordinate activities at accident sites within the work zone, report accidents)

- A. **TRAFFIC CONTROL OPERATIONS:** Flaggers shall be used to the greatest extent possible for "dynamic" traffic control operations. However, the use of uniformed officers may be necessary in some instances.

Examples of dynamic traffic control operations where **flaggers** should be used include:

1. Alternating 1-way traffic (stop/slow paddles must be used).
2. Directing traffic through low volume intersections.
3. Assisting trucks and equipment in and out of work areas.
4. Providing coverage at side roads and driveways during mobile operations (i.e. paving, striping, etc.).
5. Directing pedestrians and bicyclists through the work zone.
6. Providing detour guidance beyond work zone limits.

Examples of dynamic traffic control operations where **uniformed officers** may be used include:

1. Directing traffic through complex intersections, especially where signals are being overridden.
2. Assisting construction vehicles and equipment in and out of work areas on high speed, high volume facilities. Note: If an access area is anticipated to be in place for an extended period of time and it is determined that assistance is required for the safe exit and entry of construction vehicles, then a cost analysis should be completed to determine if stationary measures (i.e. signals) would be more cost effective than officers or flaggers.
3. Rolling roadblock operations on interstate and turnpike facilities and other multi-lane L.A.R.O.W. highways.
4. If a uniformed officer is already on site for other needs (**enforcement or presence**), then the officer may be asked to supplement these duties by providing limited duration traffic control that would otherwise be covered by a flagger. However, the officer must be adequately trained for the flagger operation to be performed and must use appropriate equipment and techniques (which may include the use of stop/slow paddles).

# NHDOT FLAGGER AND UNIFORMED OFFICER GUIDELINES

02/05/2013

**B. PRESENCE:** The use of flaggers or uniformed officers for **presence** should only be used when there is an added safety risk to the workers and road users due to speeding, other aggressive driving behaviors, and/or high traffic crash/incident rates attributed to other features such as poor highway geometrics.

**Uniformed officers** may be used for **presence** on high-speed facilities when workers are unprotected and in close proximity to high volume traffic for extended periods of time or where unique work zone conditions require a higher level of driver awareness to ensure safety.

Facilities where this application may be appropriate include, but are not necessarily limited to:

1. Interstate facilities
2. F.E. Everett Turnpike
3. Spaulding Turnpike (Middleton (Exit 18) south)
4. NH 101 corridor (Manchester East)
5. Roads with a posted speed of 45 mph or higher and an average daily traffic (ADT) volume of 15,000 vpd or greater.

**Flaggers** may be used for **presence** on projects involving roads with a posted speed of less than 45 mph or ADT volumes less than 15,000 vpd to alert and slow traffic with the use of hand signals and hand-signaling devices as described in Chapter 6E of the MUTCD.

Though typically not necessary, **flaggers** may be used for **presence** on roads with posted speeds of greater than 45 mph or ADT volumes more than 15,000 vpd if the NHDOT determines that a **flagger presence** is desired to address safety.

If all work is behind barrier, neither officers nor flaggers are typically necessary.

The use of police vehicles should be considered for nighttime operations in most instances as the use of flashing blue lights, visible from 360 degrees, has been proven to deter aggressive driving behavior. However, the manner of their use during nighttime operations should be carefully considered as police vehicle lights provide no positive direction to motorists traveling through the work zone and are often overpowering and distractive. Excessive use of police vehicles with lights at night, or the inappropriate positioning of these vehicles, may actually detract from the positive guidance the work zone traffic control devices (TCDs) provide. When used for nighttime work, flashing blue lights shall be dimmed if capable.

Though typically not necessary, **uniformed officers** may also be used for **presence** on roads with posted speeds of less than 45 mph or ADT volumes less than 15,000 vpd if the NHDOT determines that a **police presence** is needed to address a specific safety issue. Examples of traffic control safety issues where a uniformed officer may be needed include:

1. A work zone with a high rate of crashes.
2. A work zone with vehicles traveling at excessive speeds.
3. A work zone with poor highway geometrics.
4. A work zone with excessive East-West sun glare.

# NHDOT FLAGGER AND UNIFORMED OFFICER GUIDELINES

02/05/2013

NOTE: Using the flashing blue lights from a police vehicle to slow traffic approaching a work zone with poor visibility (i.e. East-West sun glare) or poor sight distance due to geometric features should be considered only after other measures have been determined to be ineffective.

- C. ENFORCEMENT:** The following guidelines are recommended to reduce the likelihood of injuries and fatalities to workers and road users by enforcing traffic laws within work zones. **Enforcement** can only be performed by uniformed officers.

Enforcement may be used during work zone operations where excessive speed and/or other aggressive driving behaviors are likely to jeopardize the safety of the workers and other road users.

Enforcement may be used on an as needed basis within a work zone where another officer is being used for **presence** to improve that officer's effectiveness.

Uniformed officers being used for **presence** should typically not be used for **enforcement** except for flagrant violations of traffic law.

If an arrest is necessary, the work-zone detail uniformed officer shall call in, and turn the arrest over to, an on-duty officer.

- D. EMERGENCY ASSISTANCE** While on site, work-zone detail uniformed officers may offer immediate assistance in emergency situations. However, on-duty police should be called to respond to vehicle crashes and other incidents within the work zone to allow the work-zone detail uniformed officers to resume their previously assigned duties.

During development of the project within the Design Bureaus, these guidelines should be used as a first step in identifying initial need, to be further developed and refined through coordination with the Bureau of Construction and the Traffic Control Committee. This will ensure consistency and conformity over all projects. These guidelines should also be used in the development of the contract documents. The Contract Administrator with the District Construction Engineer should be involved in the development of the contract plans, Prosecution of Work (POW), and Traffic Control Plan (TCP) narrative as much as possible, such that an appropriate cost for flaggers and uniformed officers is provided in the contract.

## II. MUNICIPAL WORK ZONE AGREEMENT (MWZA) AND EARLY COORDINATION GUIDANCE:

Prior to the construction of a project, the municipality in which the work is being performed shall be notified of the NHDOT's intentions regarding the use of flaggers and/or uniformed officers within the work zone. A Municipal Work Zone Agreement (MWZA) is required on all projects, except for those done exclusively on Class I roads (interstate) or the NH Turnpike system; nor are they required for routine maintenance operations.

In order for work (final design, construction, etc.) to progress, the municipality will be required to sign a MWZA. The MWZA shall be the primary means of communicating to the municipalities the NHDOT's commitment and jurisdiction to control traffic on an upcoming construction project. The NHDOT shall present the MWZA to town or city officials for signature during the public participation process (public

# NHDOT FLAGGER AND UNIFORMED OFFICER GUIDELINES

02/05/2013

hearings or informational meetings) to allow for execution prior to advertising of the project. Signature of the MWZA should be obtained prior to commencement of the Final Design phase. For those projects that do not go through a formal public participation process, a MWZA shall be presented to the affected municipalities and signed as soon as practicable and appropriate. A signed copy of the MWZA is to be included in the contract documents. No project shall be advertised for bids until the MWZA has been signed. See part VI of this document for a sample MWZA.

Early on in the public participation process, the NHDOT shall ask the police, fire, and other appropriate town officials for their input regarding current or past experiences related to traffic control issues within the vicinity of the proposed project limits. Topics of discussion may include, but are not limited to the following:

1. Accident history
2. Commuter traffic patterns
3. Traffic volume increases at certain times of day (i.e. school or factory letting out)
4. Traffic volume increases at certain times of year (tourist season)
5. Special town events (fairs, Old Home Days, etc.)

Advance notice of the meeting agenda or a follow-up meeting with public officials may be necessary to allow officials to give thoughtful feedback to these questions.

Near the end of the design phase and prior to advertising, the Project Manager shall meet with municipal officials to communicate the NHDOT's proposed traffic control plan. Elements of this discussion shall address earlier concerns raised by the municipalities during the public participation process and spell out the NHDOT's intentions regarding the use of flaggers and/or uniformed officers.

On District Resurfacing contracts, the District Engineer may elect to use a standard notification letter in lieu of a MWZA if the anticipated project impacts on the municipality are negligible. The standard notification letter will include the following paragraph:

*"Please be aware that the State Legislature has delegated the Commissioner of the Department with the full authority to control traffic in highway/bridge construction work zones on Class I, II and III highways. Prior to commencement of the work, the Department will send notice of a preconstruction meeting. You are invited to attend this meeting as project schedule and anticipated traffic control measures are among the topics discussed."*

See section VII of this document for a sample district resurfacing letter.

If Bridge or Highway Maintenance operations are likely to require work in an area for an extended period of time (i.e. one month or more), then a notice is to be sent to the town similar to the District Resurfacing letter outlining the NHDOT's intent. Executing a MWZA with the affected municipality should also be considered if the project's anticipated impacts warrant one.

If the NHDOT is overseeing work on Class IV or Class V roads (town roads), a separate municipal agreement will need to be written for signature by the municipality and language should be included in that agreement to address the NHDOT's traffic control authority and intentions during the life of that project. An example of this added language may be:



# NHDOT FLAGGER AND UNIFORMED OFFICER GUIDELINES

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*The DEPARTMENT will be responsible for the management and operation of these facilities throughout the duration of the construction of the project. The TOWN delegates to the DEPARTMENT the authority to control traffic within the TOWN road construction zones of this project.*

### III. FIELD USE GUIDANCE:

If the NHDOT determines that a uniformed officer is needed within the work zone, the following guidelines should also be followed:

1. Use State Police Troopers on interstate and turnpike facilities. County Sheriffs or local police should only be used on interstate or turnpike facilities if they have jurisdictional authority and State Police Troopers are unavailable.
2. Use local police on non-interstate and non-turnpike facilities. County Sheriffs and State Police Troopers may be used if local police are unavailable.
3. If the work zone extends into multiple towns on non-interstate or non-turnpike facilities and there is no mutual aid agreement between the neighboring police departments granting them authority to enforce traffic laws within the work zone, then the County Sheriffs or State Police Troopers are to be used.
4. If a police vehicle is required and the local police department is unable to provide a vehicle meeting the requirements of NHDOT specification 618.2.1, then the County Sheriffs or State Police Troopers are to be used. Private vehicles are not acceptable. Special duty vehicles, such as D.A.R.E. and animal control are also not acceptable.
5. If a uniformed officer is on site for **traffic control** or **presence** and work zone operations are unexpectedly suspended due to weather or other unforeseen reasons, then the uniformed officer may be used for **enforcement** of traffic laws within the work zone until the minimum payment time is reached as directed by the NHDOT on NHDOT projects.
6. If a police department chooses to split one work shift into two, no "minimum show-up time" payment will be made for the "2<sup>nd</sup>" officer shift if work ends early.
7. No "minimum show-up time" payment will be made to any police department for any uniformed officer that did not actually show-up on site.
8. Flaggers and/or uniformed officers are not to use cell phones or other mobile devices for personal use.
9. All traffic control personnel shall wear high-visibility safety apparel meeting the requirements of the most current MUTCD edition or Federal regulation 23 CFR 634, as appropriate.
10. STOP/SLOW paddles shall be used in accordance with the MUTCD and other state regulations.

### IV: UNIFORMED OFFICER TRAINING:

Effective April 1, 2013, all Uniformed officers working on all NHDOT funded, including municipally managed, projects shall have successfully completed a NHDOT approved course on *The Safe and Effective Use of Law Enforcement Personnel in Work Zones*. This course shall be taken once every four years. Proof of successful course completion shall be supplied upon request.

# NHDOT FLAGGER AND UNIFORMED OFFICER GUIDELINES

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Sources of NHDOT approved training can be found on the NHDOT website under work zone safety at [www.NHDOT.gov](http://www.NHDOT.gov)

## **V: FLAGGER TRAINING:**

Flaggers working on contract work for the NHDOT are required to meet the flagger training specifications listed under Section 618 of the NHDOT Standard Specifications for Road and Bridge Construction.

## **VI. UNIFORMED OFFICER REIMBURSEMENT AGREEMENTS/PAYMENT:**

Reimbursement of uniformed officers on NHDOT contract work are to be as outlined under Section 618 of the NHDOT Standard Specifications for Road and Bridge Construction.

NHDOT FLAGGER AND UNIFORMED OFFICER GUIDELINES

02/05/2013

VII. SAMPLE MUNICIPAL WORK ZONE AGREEMENT (MWZA):

MUNICIPAL WORK ZONE AGREEMENT

FOR

(CITY / TOWN)

STATE PROJECT: \_\_\_\_\_

FEDERAL PROJECT: \_\_\_\_\_

THIS AGREEMENT, executed in triplicate, made and entered into this \_\_\_\_\_ day of (month) (year), between the New Hampshire Department of Transportation, hereinafter called the "DEPARTMENT" and the City / Town of (City / Town), hereinafter called the "CITY / TOWN".

WITNESSETH that,

WHEREAS, the DEPARTMENT will be (description of project);

WHEREAS, The State Legislature has delegated the Commissioner of the DEPARTMENT with full authority to control traffic in highway/bridge construction work zones on Class I, II, and III highways; RSA 228:21, 236:1, and 228:37;

WHEREAS, The Department intends to use a combination of flaggers and/or uniformed officers, as appropriate, to control traffic and ensure public and worker safety.

NOW, THEREFORE, in consideration of the above premises, it is mutually agreed as follows:

- A. The DEPARTMENT shall construct project (project name, number and description).
- B. The DEPARTMENT will be responsible for the management and operation of the highway throughout the duration of the construction of the project. This includes the authority to determine the most appropriate way to control traffic within the construction work zone limits of the project.
- C. The Department, as of April 1, 2013, will only compensate for the use of police officers that have successfully completed an NHDOT approved course on the Safe and Effective Use of Law Enforcement in Work Zones

IN WITNESS WHEREOF, the parties here have affixed their signatures, the (City / Town) of \_\_\_\_\_, New Hampshire, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and the Department of Transportation on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

CITY / TOWN OF

By: \_\_\_\_\_  
For Christopher D. Clement, Sr.  
Commissioner, Department of Transportation

By: \_\_\_\_\_  
(Mayor / Chairperson of the Selectboard)

\_\_\_\_\_  
City Councilor / Selectboard Member

\_\_\_\_\_  
City Councilor / Selectboard Member

cc: Police Chief

# NHDOT FLAGGER AND UNIFORMED OFFICER GUIDELINES

02/05/2013

## VIII. SAMPLE DISTRICT RESURFACING LETTER:

April 17, 2009

«TownName»

«Address1»

«City», «State» «PostalCode»

RE: Highway Maintenance District « # »  
Proposed Resurfacing Program CY 2009

For your planning information, the New Hampshire Department of Transportation has tentatively programmed the state road(s) on the attached list in your town for paving during the coming season. I hope this information will assist you in coordinating maintenance activities such as crosswalk striping, underground utility projects, trenching, and curb or sidewalk work. This is particularly important for manholes and other structures within the paving limits as significant depressions can develop if they are not set to the proper grade. If appropriate, please advise local utilities to prepare for the proposed resurfacing since it will be their responsibility to make adjustments as required to accommodate the paving.

*Please be aware that the State Legislature has delegated the Commissioner of the Department with the full authority to control traffic in highway/bridge construction work zones on Class I, II and III highways. Prior to commencement of the work, the Department will send notice of a preconstruction meeting. You are invited to attend this meeting as project schedule and anticipated traffic control measures are among the topics discussed.*

The Department, as of April 1, 2013, will only compensate for the use of police officers that have successfully completed an NHDOT approved course on the Safe and Effective Use of Law Enforcement in Work Zones

Should the program be changed due to funding considerations or pavement conditions, I will contact you. Once a contract and schedule of work has been approved, the Contractor is required to provide written notice to your town between 7 and 14 work days in advance of the final paving.

In addition to this work, District maintenance forces will grader-shim various sections of the secondary highway system as part of our routine maintenance program.

Should you have any questions, please feel free to call at the number listed below.

Sincerely,

«D.E. Name», P.E.

District Engineer

Phone # \_\_\_\_\_

HB 636-FN - AS AMENDED BY THE HOUSE

7Jan2016... 2507h

2015 SESSION

15-0385 05/01

HOUSE BILL **636-FN**

AN ACT relative to forfeiture of property.

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

---

AMENDED ANALYSIS

This bill 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. The bill also requires the state to deposit proceeds from forfeited property in the general fund.

---

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

7Jan2016... 2507h 15-0385 05/01

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fifteen*

AN ACT relative to forfeiture of property.

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

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

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

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

- (a) Property the person derived from the commission of the crime;
- (b) Property directly traceable to property derived from the commission of the crime; and
- (c) Instrumentalities the person used in the commission of the crime.

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

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

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

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

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

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

3 New Section; Disposition of Unclaimed Property and Proceeds. Amend RSA 617 by inserting after section 10 the following new section:

617:11 Disposition of Property and Proceeds.

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

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

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

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

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

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

5 Forfeiture of Items Used in Connection with Drug Offense; Reference to Drug Forfeiture Fund Removed. Amend RSA 318-B:17-b, II-a(e) to read as follows:

(e) In the case of moneys, file a motion for transfer of evidence under RSA 595-A:6. Upon the court's granting of the motion the moneys shall be immediately forwarded to an interest-bearing seized asset escrow account to be administered by the attorney general. Upon resolution of the forfeiture proceeding the moneys deposited shall be transferred to the ~~[drug forfeiture]~~ **general** fund or returned to the owners thereof as directed by the court. Unless otherwise ordered by a court in a specific case, interest on all moneys deposited in the seized asset escrow account shall be deposited annually into the ~~[drug forfeiture fund established under RSA 318-B:17-e]~~ **general fund**.

6 Disposition of Funds Obtained by the Attorney General. Amend RSA 7:6-e, III to read as follows:

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

7 Repeal. The following are repealed:

I. RSA 318-B:17-b, V, relative to the distribution of proceeds from items forfeited from drug offenses.



Amendment to HB 636-FN

1 Amend the bill by inserting after section 6 the following and renumbering the original sections 7-8  
2 to read as 8-9, respectively:

3

4 7 New Section; Budget and Appropriations; Department of Justice; Request for Appropriation  
5 for Drug Related Law Enforcement and Drug Treatment Programs. Amend RSA 9 by inserting  
6 after section 4-e the following new section:

7 9:4-f Department of Justice; Request for Appropriation for Drug Related Law Enforcement and  
8 Drug Treatment Programs. The department of justice shall include in its biennial operating budget  
9 request made pursuant to RSA 9:4, an appropriation to pay a portion of the costs of local, county,  
10 and state drug related investigations, as well as drug control law enforcement programs within  
11 New Hampshire. Such appropriation also may be used to pay extraordinary costs of local, county,  
12 and state drug prosecutions and trial expenses. Law enforcement agencies may apply to the  
13 department of justice for grants from the amount appropriated. Of the annual appropriation,  
14 \$5,000 shall be deposited into a special non-lapsing account established within the office of the state  
15 treasurer for the department of health and human services to fund drug education, prevention, and  
16 treatment services. The attorney general shall report 60 days after the close of each fiscal year to  
17 the governor and council and to the fiscal committee of the general court a summary of the grants  
18 provided to law enforcement agencies under this section for the preceding fiscal year.

19

20 Amend the bill by replacing section 9 with the following:

21

22 9 Effective Date.

23

I. Section 7 of this act shall take effect July 1, 2016.

24

II. Sections 1 and 2 of this act shall take effect January 1, 2017.

25

III. The remainder of this act shall take effect July 1, 2017.

*← non-financial*  
*← financial*

- II. RSA 318-B:17-c, establishing the drug forfeiture fund.
  - III. RSA 318-B:17-d, relative to administrative forfeiture of items used in connection with drug offenses.
  - IV. RSA 6:12, I(b)(19), relative to the drug forfeiture fund.
- 8 Effective Date. This act shall take effect January 1, 2017.

LBAO  
15-0385  
01/26/15

### HB 636-FN - FISCAL NOTE

AN ACT relative to forfeiture of property.

#### FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill, as introduced, as it is awaiting information from the Judicial Branch, Departments of Justice and Safety, and the New Hampshire Associations of Counties, who were contacted on 01/08/15. When completed, the fiscal note will be forwarded to the House Clerk's Office.



2016-0524h

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.

II. Requires the state to deposit proceeds from forfeited property in the general fund and repeals the drug forfeiture fund.

III. Directs the attorney general to include in the department of justice's budget request an appropriation for the cost of local, county, and state drug related enforcement actions.

IV. Establishes a special non-lapsing account for the department of health and human services to fund drug education, prevention, and treatment programs.



House Democratic Office  
The State House  
107 North Main Street, Room 307  
Concord, NH 03301-4951 • (603) 271-2136



## Please Vote for Forfeiture Reform

By Rep. Paul Berch

Please consider and vote for the HB 636, as amended, when it comes up for a vote early next year. The bill clarifies and modernizes our civil asset forfeiture laws.

Forfeiture is a legal tool that allows law enforcement to seize contraband and property on suspicion that it is used in criminal activity and which seizure is subject to final approval by the Courts. It is an old concept, existing in the United States since colonial days and even earlier in English common law.

There has been a national movement to update these laws and end the practice of “policing for profit” – the idea that police can obtain funds for their departments by timing arrests and choosing which cases to pursue and which not. The effort to reform civil asset forfeiture laws is truly bi-partisan, supported by libertarian and liberal alike. The Judiciary Committee vote was 14-5, with bi-partisan support.

HB636, as amended requires a criminal conviction as a condition for forfeiture unless the person is unavailable or agrees to the forfeiture. The standard of proof is clarified to be clear and convincing evidence and protections for innocent owners are set forth.

Finally – and most importantly – the Committee decided that forfeited funds should go to the general fund as opposed to individual police departments and the Attorney General’s office. Although the funds are small (\$50-60,000 in total), the principle is large: it is important that the public perceive that the police act solely on the needs of law enforcement and not for reasons of revenue raising. By having forfeited funds go to the general fund, the question of conflicts of interest is put to rest.

Please endorse the work of a bi-partisan majority of the Judiciary Committee and vote for HB636, as amended – and exactly as written.

As always, I am available to discuss this bill with my colleagues. Thank you.

## In Opposition to HB 636

Rep. Timothy Horrigan

The Judiciary Committee's consideration of HB 636, “relative to forfeiture of property,” took place against the backdrop of the ever-worsening opiate crisis. Roughly 400 people (most of them young) died from drug overdoses in 2015, especially from heroine and fentanyl. Drug abuse now surpasses violence and automobile accidents as a cause of untimely death. Drugs have become our #1 health problem and the drug trafficking has become our #1 public safety problem. Our local communities are the first line of defense against these problems.

Eliminating the state drug forfeiture fund is the wrong thing to do at this time. The proceeds from civil forfeiture should not be diverted into the general fund. This money should be going to local agencies.

Currently, the status quo is that the fund is used to pay for drug enforcement and prosecution. The money is available only to law enforcement agencies. The minority of the committee agreed that there is much legitimate concern about how drug forfeiture dollars are being spent. There will be a floor amendment which would redirect this money towards local alcohol and drug abuse prevention, treatment, and recovery programs. The status quo and the proposal embodied in the floor amendment are both preferable to simply diverting the proceeds into the general fund. Each of our communities has unique needs related to the drug addiction crisis. The continuation of a dedicated drug fund would allow the proceeds from asset forfeiture to be targeted to the needs of each specific community.

## Deferral of Department of Justice Equitable Sharing Payments:

### Fact Sheet

#### *Why are payments being deferred?*

- The Bipartisan Budget Act of 2015 (P.L. 114-74) enacted in November included a \$746 million permanent reduction of Asset Forfeiture Program Funds. This reduction, or “rescission,” means that \$746 million was removed from the Assets Forfeiture Program Funds to go to the General Treasury Fund. The Consolidated Appropriations Act of 2016, signed into law on December 18, 2015, included an additional \$458 million rescission in the FY 2016 budget.
- In the face of a now combined \$1.2 billion rescission, coupled with the expected receipts and expenditures for the year, in order to maintain the financial solvency of the Asset Forfeiture Program and operate within legal guidelines for Federal financial management the Department had no choice but to immediately defer the disbursement of equitable sharing payments to our state, local, and tribal partners and the transfer of any items for official use.
- The Department is very eager to resume payments as soon as it is fiscally feasible to do so. By deferring equitable sharing payments, the Department preserves the ability to resume equitable sharing payments once the budget picture improves. In the meantime, the Department will continue to review any and all potential avenues for restoring equitable sharing payments.
- Typically, a variety of cases resolve throughout the year, and based on our assessment of the current pace of adjudicated forfeitures, we believe this step is only a “pause.” Thus, all DAG-71 forms submitted through the eShare portal for ongoing cases will continue to be reviewed and processed pursuant to current Department policy. When the budget situation improves, those shares will be paid in full or in part.

#### *Did the Department of Justice “shut down” the Equitable Sharing Program?*

- Contrary to some reports, the Department did not “shut down” or otherwise terminate the Equitable Sharing Program. Rather, the Department was required to temporarily defer equitable sharing payments to our state, local, and tribal law enforcement partners due to the combined effects of the \$1.2 billion rescission and our obligations to maintain the financial solvency of the Asset Forfeiture Program and operate within legal guidelines for Federal financial management. This deferral decision was made purely for budgetary reasons, and does not alter the Department’s commitment to supporting state, local, and tribal law enforcement.

- The burden of this rescission is not falling solely on equitable sharing recipients. The deferral of equitable sharing payments represents only one quarter of the budgetary shortfall caused by the \$1.2 billion rescission.

*When will payments resume?*

- At this time, the Department cannot say with any certainty when the deferral of sharing payments will be lifted. However, the Department continues to explore all budgetary options available to restore equitable sharing as soon as possible.
- Despite the deferral, some agencies may continue to receive payments in the coming weeks as the remainder of payments processed by the U.S. Marshals Service prior to December 21, 2015, are disbursed. Otherwise, no further equitable sharing payments will be issued until this deferral is lifted.
- Funds already disbursed to state, local, and tribal agencies may continue to be expended and reported in accordance with the policies outlined in the *Guide to Equitable Sharing*.
- The bottom line is that the Department views this as a “pause” whereby we are holding payments in place until the funding situation improves. We hope that when funding allows, we will resume payments where they left off either in full, or as close to full as the budgetary situation allows.

*What is the Department doing to support law enforcement?*

The Department will continue to support state and local law enforcement through other funding mechanisms provided in the FY 2016 budget:

- **Joint Law Enforcement Operations (JLEO)** – The Department will provide \$155 million, equal to the FY 2015 level, to support JLEO in FY 2016 through the Assets Forfeiture Fund. JLEO is the Department’s primary mechanism for funding State and local Task Force Officer overtime. JLEO also pays for travel, fuel, training, equipment, and other similar costs of state or local law enforcement officers that are incurred in a joint operation.
- **Community Oriented Policing Services (COPS)** – The FY 2016 budget provides \$212 million for COPS, an increase of \$4 million over FY 2015. The COPS Hiring Program (\$187 million), Collaborative Reform initiative (\$10 million) and Community Policing Development program (\$10 million) all received increases over FY 2015. Funding is provided for the Anti-Methamphetamine and Anti-Heroin Task Forces programs at the FY 2015 level.

- **COPS-DEA Clandestine Laboratory Cleanup** – DEA’s Clandestine Drug Laboratory Cleanup Program received a \$4 million increase for a total of \$11 million in FY 2016. This Program allows DEA to assist state and local law enforcement with hazardous waste cleanups when they encounter small clandestine laboratories.

### Grants

- **Office of Justice Programs** – The appropriation provides \$1.8 billion in discretionary funding for OJP, an increase of \$191 million over the FY 2015 Enacted level. Highlights include the following:
  - The law supports \$70 million of the Administration’s Community Trust Initiative to improve police-community relations, of which \$23 million is for the Body Worn Camera Partnership Program, \$5 million is for Research and Statistics on Community Trust (including body worn cameras), \$27.5 million is for the Justice Reinvestment Initiative, and \$15 million is for the Byrne Criminal Justice Innovation Program.
  - The appropriation provides \$476 million for the Byrne Justice Assistance Grants (JAG) Program, of which \$15 million is for the VALOR Program, \$5 million is for the Smart Policing Initiative, and \$100 million is for Presidential Nominating Conventions Security.
  - The Bulletproof Vest Partnership Program, which provides partial reimbursement for the cost of purchasing body armor for law enforcement and public safety officers, is funded at \$22.5 million.
  - The appropriation also provides an increase of \$25 million for the State Criminal Alien Assistance Program, which provides reimbursement for the cost of incarcerating illegal aliens.
  - The law funds increases to Residential Substance Abuse Treatment, Mental Health Collaborations, Veterans Treatment Courts, Victims of Trafficking, and the Prescription Drug Monitoring Programs.
- The Department remains committed to the Equitable Sharing Program and to the state, local and tribal partners that are integral to its success. We will take all appropriate and necessary measures to minimize the impact of the rescission and reinstate sharing distributions as soon as practical and financially feasible. If you have any questions or concerns, please direct them to [afmls.communication@usdoj.gov](mailto:afmls.communication@usdoj.gov).

## Changes to Asset Forfeiture Program; Appropriations Update

By Sarah Guy, Manager, Legislative and Media Affairs, IACP

On December 21, 2015, the U.S. Department of Justice (DOJ) announced that all new equitable sharing payments to state and local law enforcement agencies through the DOJ federal asset forfeiture program will cease for the foreseeable future. This is a direct result of a combined \$1.2 billion rescission from both the Bipartisan Budget Act of 2015 (P.L. 114-74), enacted in November 2015, and the Consolidated Appropriations Act of 2016 (P.L. 114-113), which was signed into law on December 18, 2015. It is important to note that this rescission only applies to DOJ's asset forfeiture program funds and does not impact the U.S. Department of Treasury.

This shortsighted decision by the U.S. Congress will have a significant and immediate impact on the ability of law enforcement agencies throughout the United States to protect their communities and provide their citizens with the services they expect and deserve.

For over 30 years, the asset forfeiture program has allowed law enforcement to deprive criminals of both the proceeds and tools of crime. The resources provided by the equitable sharing program have allowed agencies to participate in joint task forces to thwart and deter serious criminal activity and terrorism, purchase equipment, provide training, upgrade technology, engage their communities, and better protect their officers. The suspension of equitable sharing payments may cause some agencies across the United States to reconsider their ability to participate in joint task forces with the federal government. The effects of this decision are far reaching, and the decision not only does a disservice to law enforcement, but also to the public it is sworn to protect.

The IACP authored a joint letter with multiple other law enforcement organizations to the U.S. administration, congressional leadership, and the attorney general expressing our profound concern and disapproval of this decision. In addition, the letter criticizes Congress, the DOJ, and the administration for their failure to consult with law enforcement before taking this

drastic step on a program of such critical importance to the law enforcement community.

The IACP will continue to work with Congress, the administration, and the DOJ to advocate for the reconsideration of this decision, as well as to ensure that further suspension of the program does not occur in fiscal year (FY) 2017.

In the meantime, DOJ's Asset Forfeiture and Money Laundering Section (AFMLS) advises all state and local law enforcement agencies to continue to submit all equitable sharing requests, per usual, and in a timely manner. Although these requests will not be paid at this time, they will be processed on a first-in, first-out basis if or when payments resume. In March 2016, DOJ's AFMLS will reassess the solvency of the asset forfeiture fund, and, if the fund is determined to be solvent, budget constraints will be eased, and payments may be able to resume to state and local law enforcement agencies that have submitted equitable sharing requests.

It is imperative that law enforcement agencies keep track of how the ceasing of equitable sharing payments affect their daily activities and ability to safeguard the public. These examples will be important for future discussions.

### Appropriations Update

On December 18, 2015, the Consolidated Appropriations Act of 2016 (P.L. 114-113) was signed into law. This legislation totals \$1.15 trillion in discretionary spending and will fund the government through September 30, 2016.

The bill funds the DOJ at \$28.7 billion. Highlights from the bill include the following:

- \$187 million for Community Oriented Policing Services (COPS) hiring grants.
- \$476 million for the Byrne Justice Assistance Grant (Byrne-JAG) program, an increase over FY 2015. The increase is to accommodate the \$100 million carve-out to reimburse the two host cities for the cost of providing security at the presidential nominating conventions.
- \$7 million to fund anti-heroin task forces within the COPS program. Competitive grants will be awarded for drug enforcement, including investigations and activities related to stopping the distribution of heroin or unlawful

diversion and distribution of prescription opioids.

- \$42 million for drug courts, level funding with FY 2015.
- \$13.5 million for Paul Coverdell, consistent with prior funding.
- \$480 million for Violence Against Women programs, a slight increase over FY 2015.
- \$22 million for the Bulletproof Vest Partnership (BVP) program.
- \$10 million for the Mentally Ill Offender Treatment and Crime Reduction Act.

The bill funds the U.S. Department of Homeland Security (DHS) at \$41 billion. Highlights from the bill include the following:

- \$476 million for the State Homeland Security Grant Program.
- \$600 million for the Urban Area Security Initiative.
- \$100 million for Public Transportation Security Assistance.
- \$100 million for Port Security Grants.

The bill includes \$18.7 billion in discretionary appropriations for the U.S. Department of Transportation (DOT). Included in that total is \$869 million in both mandatory and discretionary funding for the National Highway Traffic Safety Administration (NHTSA). The bill also funds the DOT's Federal Motor Carrier Safety Administration (FMCSA) at \$580 million.

### Membership Assistance Needed on "Going Dark" Issue

In the January 2016 *Police Chief*, we discussed IACP's advocacy efforts on "Going Dark" and the operational challenges associated with gathering electronic evidence. As part of that effort, we are constantly being asked to provide real-life case examples in which U.S. law enforcement has encountered problems accessing digital evidence and information on smartphones and computers. We need your help in collecting criminal case examples of the day-to-day barriers law enforcement agencies are facing so that we can highlight them in our discussions, especially when we are in meetings with lawmakers from your home states and districts. To submit these criminal case examples, please email [goingdark@theiacp.org](mailto:goingdark@theiacp.org).