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## Information Brief

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### Forfeiture Laws

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#### ACQUISITIONS

This information brief describes Minnesota's forfeiture laws. Part 1 summarizes the general forfeiture law applicable to most felony offenses. Part 2 describes several special forfeiture laws that apply to particular criminal offenses such as DWI violations, game and fish violations, gambling crimes and racketeering crimes. Part 3 briefly discusses the circumstances under which a court may rule that a particular forfeiture violates the U.S. Constitution's prohibition against "excessive fines".

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# **1. General Forfeiture Law**

Minn. Stat. §§609.531 to 609.5318.

## **Judicial Forfeiture; Designated Offenses**

**Minnesota law permits a court to order the forfeiture of certain property associated with the commission of a "designated offense".**

The definition of "designated offense" includes most serious felonies against persons, a number of property felonies, and felony or gross misdemeanor violations of the crime of unauthorized computer access. It also includes the gross misdemeanor crime of carrying a rifle or shotgun in a public place and the crimes of promoting, soliciting, or engaging in prostitution, regardless of the penalty prescribed for the violation. Minn. Stat. §609.531, subd. 1. The term does not include controlled substance offenses, however. These offenses are governed by the special forfeiture provisions described in the next section. (See the appendix for a complete list of the crimes included within the definition of "designated offense".)

Property is subject to forfeiture if it was either (1) personal property used or intended for use to commit or facilitate the commission of a designated offense; or (2) real or personal property representing the proceeds of a designated offense. Additionally, all contraband property is subject to forfeiture as is any weapon used or possessed in furtherance of any criminal code violation, controlled substance offense, or violation of chapter 624. Minn. Stat. §609.5312.

Property associated with a designated offense (other than weapons and contraband) may be forfeited by judicial order, following a civil in rem proceeding. Minn. Stat. §609.5313. The government has the burden of proving by clear and convincing evidence that the property is subject to forfeiture. The fact that a designated offense was committed may be established only by proof of a criminal conviction. Minn. Stat. §§609.531, subd. 6a. The law also provides certain defenses for innocent common carriers, innocent owners and innocent secured parties. "Innocent" in this context means that the party neither knew of, consented to, or was involved in the act or omission giving rise to the forfeiture. Minn. Stat. §609.5312.

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## **Judicial Forfeiture; Controlled Substance Offenses**

Minnesota law also provides for judicial forfeiture of property associated with controlled substance (i.e. illegal drug) offenses.

This procedure is identical to the judicial forfeiture procedure for designated offenses with the following exceptions:

- ▶ the fact that a controlled substance offense was committed must be established by clear and convincing evidence; however, the government does not need the fact of a criminal conviction to satisfy this evidentiary burden;
- ▶ a "conveyance device" (i.e. a motor vehicle) used to commit the controlled substance offense is forfeitable only if the retail value of the drugs is \$25 or more; and
- ▶ real property associated with the controlled substance offense is forfeitable not only when it represents the proceeds of the offense but also when it is used in the commission of the offense; however, forfeiture of such property in the second instance is permitted only if the retail value of the controlled substance is \$1,000 or more.

Minn. Stat. §609.5311.

## **Seizure of Property in Advance of Forfeiture**

Minnesota law permits a law enforcement agency to seize forfeitable property in advance of its forfeiture.

The seizure may be made under process issued by any court having jurisdiction over the property. The law also authorizes seizure without process under the following circumstances:

- ▶ the seizure is incident to a lawful arrest or a lawful search;
- ▶ the property has been the subject of a prior judgment in favor of the state in a criminal injunctive or forfeiture proceeding; or
- ▶ the law enforcement agency has probable cause to believe that the delay required to obtain court process would result in the property's removal or destruction and that the property is either dangerous to health or safety or was used or is intended to be used to commit a felony.

Minn. Stat. §609.531, subd. 4.

The owner of the seized property may, subject to the law enforcement agency's approval, give security or post a bond in an amount equal to the property's retail value and, thereby, regain possession of the property. If this is done, the forfeiture action proceeds against the security as if it were the seized property. Alternatively, if the seized property is a motor vehicle, the owner may regain possession of the vehicle pending determination of the forfeiture action by surrendering the vehicle's certificate of title to the law enforcement agency. The agency must notify the Department of Public Safety and any secured party noted on the certificate that this has occurred and must notify them if and when the certificate of title is returned to the owner. Minn. Stat. §609.531, subd. 5a.

The seizure of motor vehicles used to commit certain prostitution crimes is governed by more restrictive provisions. These provisions apply to the seizure of vehicles from persons alleged to have engaged in or solicited another to engage in prostitution. If such a vehicle is seized before a judicial forfeiture order has been issued, a hearing must be held before a judge or referee within 96 hours. Notice of the hearing must be given to the registered owner within 48 hours of the seizure. The prosecutor must certify to the court before the hearing that he or she has filed or intends to file charges against the alleged violator. After the hearing, the court must order the motor vehicle returned to the owner if the prosecutor fails to certify that charges have been filed or will be filed in the case, the owner has demonstrated that he or she has a defense to the forfeiture, or the court has determined that seizure of the vehicle would create an undue hardship for members of the owner's family. If a seized vehicle ultimately is not forfeited, neither the owner nor the alleged violator is responsible for seizure and storage costs. Minn. Stat. §609.5312, subd. 3.

## **Administrative Forfeiture; Controlled Substance Offenses**

**Minnesota law contains a separate, non-judicial procedure for forfeiting certain property seized in connection with a controlled substance offense.**

This administrative forfeiture law creates a presumption that the following property is subject to forfeiture:

- ▶ all money, precious metals, and precious stones found in proximity to controlled substances, forfeitable drug manufacturing or distribution equipment, and forfeitable records of drug manufacture or distribution;
- ▶ conveyance devices containing controlled substances with a retail value of \$100 or more if possession or sale of the drugs would be a felony-level controlled substance crime; and

- ▶ all firearms, ammunition, and firearms accessories found: (1) in a conveyance device used or intended for use to commit a felony drug offense; (2) on or in proximity to a person from whom a felony-level amount of drugs was seized; or (3) on the premises where drugs were seized and in proximity to the drugs, if the possession or sale of the drugs would be a felony offense.

The law enforcement agency is permitted to seize the property immediately and send a notice to the owner stating that the property will be forfeited unless the property claimant files a demand within 60 days for a judicial forfeiture hearing. If the demand is filed, the judicial forfeiture procedures must be followed. If no demand for judicial forfeiture is filed, the property is forfeited. Minn. Stat. §609.5314.

### **Administrative Forfeiture; Drive-by Shooting Offenses**

**Minnesota law also contains a separate, non-judicial procedure for forfeiting motor vehicles used to commit a "drive-by shooting" offense.**

The "drive-by shooting" offense imposes felony penalties on any person who recklessly discharges a firearm at or toward a person, vehicle, or building while in or having just exited from a motor vehicle. Minn. Stat. §609.66, subd. 1e. A motor vehicle used to commit the drive-by shooting offense is subject to administrative forfeiture if the prosecutor establishes by clear and convincing evidence that the motor vehicle was used to commit the crime. The prosecutor does not need the fact of a criminal conviction to meet this burden; however, if the vehicle owner was convicted of a drive-by shooting offense, that fact creates a presumption that the vehicle was used in the violation. Minn. Stat. §609.5318.

As is true of other types of administrative forfeitures, this law permits the immediate seizure of the property and, unless the owner demands a judicial forfeiture proceeding, the forfeiture of the vehicle without any further hearings. However, this law differs from other administrative forfeiture laws in the following ways:

- ▶ notice of a vehicle seizure must be given within seven days of the seizure;
- ▶ if criminal charges are filed in connection with the drive-by shooting incident, the 60-day period during which the owner may demand a judicial forfeiture proceeding begins to run when the charges are filed instead of when the seizure notice is sent; and
- ▶ the "innocent owner" defense does not apply if the owner was grossly negligent in allowing the vehicle to be used by another.

## **Summary Forfeitures**

**Minnesota law permits law enforcement agencies to summarily forfeit certain property without going through any judicial or administrative proceedings.**

The property included in this provision are:

- ▶ contraband property; i.e., property which it is illegal to possess under Minnesota law. This property must either be destroyed by the agency or used for law enforcement purposes;
- ▶ schedule I controlled substances that are illegally sold or possessed, or that are seized by peace officers and of unknown ownership; and species of plants from which controlled substances in schedules I and II may be derived that are growing wild, of unknown ownership, or lack appropriate registration;
- ▶ weapons used or possessed in furtherance of a criminal code violation, a controlled substance crime, or a violation of chapter 624, upon the owner's or possessor's conviction for one of these crimes;
- ▶ firearms used in any way during the commission of a domestic assault; and
- ▶ bullet-resistant vests worn or possessed during the commission or attempted commission of a criminal code violation or controlled substance crime, upon the owner's or possessor's conviction for one of these crimes.

The law also provides that weapons and bullet-resistant vests used in a crime may, instead, be judicially forfeited without proof of a conviction for the underlying crime. Minn. Stat. §609.5316.

## **Forfeiture Sales; Distribution of Forfeiture Proceeds**

**Minnesota law provides various formulas for the disposition of forfeited property.**

The property may be sold if it is not otherwise required by law to be destroyed and is not harmful to the public; it may be kept for official use by the law enforcement and prosecuting agencies; or it may be forwarded to the federal Drug Enforcement Administration. However, the law specifically provides that law enforcement agencies may not sell forfeited firearms. Instead, the firearm must be destroyed or kept for official use.

If property representing proceeds of a crime is sold, the proceeds must be applied first, to satisfy valid liens and forfeiture sale expenses and second, to pay court-ordered restitution. If other forfeited property is sold, the proceeds also must be used first to satisfy valid liens and forfeiture sale expenses. The remaining sale proceeds from both types of property are distributed according to the following formula:

- ▶ 70 percent to the law enforcement agency;
- ▶ 20 percent to the prosecuting agency; and
- ▶ 10 percent to the state general fund.

A special formula applies to the distribution of proceeds from the sale of vehicles forfeited for prostitution violations. In these cases, proceeds are distributed as follows:

- ▶ 40 percent to the law enforcement agency;
- ▶ 20 percent to the prosecuting agency; and
- ▶ 40 percent to the city treasury for distribution to neighborhood crime prevention programs.

Each law enforcement agency must give a written record of each forfeiture incident to the state auditor. The report must be made monthly and include the amount forfeited, the date of the forfeiture, and a brief description of the circumstances involved. The report also must include the number and make, model, and serial number of firearms seized by the agency. The state auditor must, in turn, report annually to the legislature on the nature and extent of forfeitures during the preceding year. Minn. Stat. §609.5315.

## **Residential Rental Property; Drug Seizures**

**A special forfeiture procedure applies to residential rental property on which contraband or a controlled substance with a retail value of \$100 or more is seized pursuant to a lawful search or arrest.**

Under these circumstances, the county attorney must notify the landlord of the seizure. The landlord must then either initiate eviction proceedings against the tenant on whose premises the property was seized or assign the eviction right to the county attorney. If the landlord does neither and there is a second occurrence involving the same tenant within one year, the rental property may be judicially forfeited. However, the property may be forfeited only if the value of the controlled substances is \$1,000 or more, or there have been two previous seizures of drugs valued at \$100 or more involving the same tenant. Minn. Stat. §609.5317.

## **2. Specific Forfeiture Laws**

### **Forfeiture of Motor Vehicles Used to Commit Certain Traffic Offenses**

**Minnesota's traffic law provides a special forfeiture procedure applicable to motor vehicles used to commit certain alcohol-related traffic offenses.**

This law authorizes the forfeiture of a motor vehicle used to commit one of the following "designated offenses":

- ▶ a DWI offense committed within five years of three prior DWI convictions (defined to include DWI offenses and violations of the criminal vehicular homicide and injury crime) or three prior alcohol-related license revocations, or within 15 years of four or more prior DWI convictions or four or more prior license revocations;
- ▶ a DWI offense committed with a passenger under age 16 in the vehicle, occurring within five years of two prior DWI convictions or alcohol-related license revocations or within 15 years of three or more prior DWI convictions or license revocations;
- ▶ a DWI offense committed by a person whose driver's license has been canceled as "inimical to public safety"; or
- ▶ a DWI offense committed by a person whose driver's license has been limited by the Commissioner of Public Safety to require that the person abstain from the use of alcohol or drugs.

A motor vehicle may be forfeited under this law only if the driver is convicted of the designated offense on which the forfeiture is based. If the owner was not the violator, the vehicle is subject to forfeiture only if the owner knew or should have known of the unlawful use or intended use. In addition, vehicles that are subject to a security interest or a long-term lease agreement are subject to those interests unless the secured party or lessor had knowledge of or consented to the action on which the forfeiture is based and did not take reasonable steps to terminate use of the vehicle by the offender.

The forfeiture may be effected only through judicial action. If the person charged with committing the designated offense is not convicted of the offense, the vehicle must be returned immediately.

If a vehicle is forfeited under this section, the vehicle must either be sold or kept by the local law enforcement agency for official use. If sold, the net proceeds must be forwarded to the treasury of the political subdivision that employs the law enforcement agency for use in DWI enforcement, training and education activities. If the law enforcement agency is a state agency, the net proceeds must be forwarded to the agency for use in DWI-related enforcement, training, and education until June 30, 1994, and thereafter must be forwarded to the state general fund. Minn. Stat. §169.1217.

## **Forfeiture of Motor Vehicles and Boats Used to Commit Game and Fish Offenses**

**Minnesota law authorizes conservation officers to seize and forfeit any property, motor vehicle, or boat used to commit certain violations of the game and fish laws.**

For example, a conservation officer has the power at any reasonable time to inspect premises and motor vehicles requiring a license under the game and fish laws. The officer may confiscate any wild animals, wild rice, or other aquatic vegetation that have been unlawfully taken or possessed as well as any equipment used to commit the violation. Furthermore, conservation officers must seize and seek forfeiture of any:

- ▶ motor vehicle used illegally to shine wild animals; to transport big game or fur-bearing animals that have been illegally taken or purchased; or to transport minnows illegally; and
- ▶ boat or motor used to net fish illegally on Lake of the Woods, Rainy Lake, Lake Superior, Namakan Lake, or Sand Point Lake.

The law outlines a judicial forfeiture process applicable to persons convicted of these game and fish law violations. This process is similar to that contained in the general forfeiture law described in Part 1 for "designated offense" forfeitures, except that proceeds from the sale of forfeited motor vehicles, boats and motors is credited to the game and fish fund in the state treasury. Minn. Stat. §§97A.215 to 97A.225.

## **Forfeiture of Gambling Devices, Prizes and Proceeds**

**A separate forfeiture law applies to persons convicted of various gambling offenses.**

According to this law, the following property is subject to forfeiture:

- ▶ illegal gambling devices;

- ▶ money and property used or intended for use as payment to participate in gambling or a prize or receipt for gambling;
- ▶ books, records, and research products used or intended for use in gambling; and
- ▶ property used or intended to be used to influence illegally the outcome of a horse race.

The law outlines a judicial forfeiture process applicable to persons convicted of gambling violations. This process is similar to that contained in the general forfeiture law described in Part 1 for "designated offense" forfeitures, except that proceeds from the sale of forfeited property is shared equally by the law enforcement and prosecuting agencies. Minn. Stat. §609.762.

## **Forfeiture of Property Associated with Racketeering Crimes**

**Minnesota law provides a unique criminal forfeiture procedure applicable to persons convicted of a "racketeering" crime.**

A person is guilty of a racketeering crime if the person is employed by or associated with an enterprise and intentionally conducts or participates in the affairs of the enterprise by participating in a pattern of criminal activity. The law defines "pattern of criminal activity" to encompass only certain serious crimes and to require that at least three of these criminal acts must have occurred within the ten years preceding the racketeering prosecution. Minn. Stat. §§609.902 and 609.903.

When a person is convicted of racketeering, the court is authorized to order the forfeiture of any real or personal property used in, intended for use in, derived from, or realized through the racketeering conduct. This forfeiture procedure differs from the other forfeiture procedures found in Minnesota law because it is not a separate civil in rem proceeding; rather it is an in personam criminal forfeiture penalty applied by the court in addition or as an alternative to the other criminal sanctions available, such as fines and imprisonment. Once property has been ordered forfeited by the court, the prosecutor may dispose of the property or forfeiture sale proceeds in a manner similar to that provided for "designated offense" forfeitures under the general forfeiture law. Minn. Stat. §609.905.

### **3. Does a particular forfeiture violate the U.S. Constitution's prohibition against excessive fines?**

Two significant rulings were issued by the U.S. Supreme Court in June 1993, concerning whether a particular property forfeiture can violate the Eighth Amendment's prohibition against "excessive fines" when its value is disproportionate to the seriousness of criminal activity on which it is based.

The Court ruled that there are constitutional limits on the value of property that may be subject to either criminal in personam or civil in rem forfeiture due to its having been used to commit or facilitate the commission of a crime. Regardless of whether the forfeiture provision is characterized as a criminal penalty (like the racketeering forfeiture provision) or as a civil remedial remedy (like the general forfeiture law), its purpose in both contexts is to serve as a penalty for criminal behavior and, as such, it is subject to the limitations imposed by the "Excessive Fines Clause" of the Eighth Amendment to the U.S. Constitution. The Court, therefore, remanded both cases to the courts of appeal from which they came, with instructions to determine whether the forfeitures in the two cases were unconstitutionally excessive in violation of the Eighth Amendment. Austin v. United States, 113 S. Ct. 2801 (1993); Alexander v. United States, 113 S. Ct. 2766 (1993).

However, the Court declined to articulate an analytical, constitutional test for determining whether a particular fine or forfeiture is excessive, leaving that task to the lower courts to perform. In a concurring opinion, Justice Scalia indicated some sympathy for a more relaxed "excessiveness" inquiry in civil forfeiture cases than in criminal ones; but the majority opinion declined to endorse his analysis or otherwise influence the future decisions of the lower courts on this matter.

An early indication of how Minnesota's appellate courts will resolve Eighth Amendment challenges to forfeitures is found in City of Worthington v. One 1988 Chevrolet Beretta, 516 N.W.2d 581 (Minn. App. 1994).

The respondent in this case challenged the forfeiture of his automobile on Eighth Amendment grounds, arguing that the value of the automobile far exceeded the value of the property he was convicted of stealing. However, the Minnesota Court of Appeals rejected this argument and ruled that if the use of the property played a significant role in the commission of the offense, the property may be forfeited no matter what its value. In taking this approach, the court rejected the proportionality analysis used in several other jurisdictions to determine whether a particular forfeiture constitutes an excessive fine.

If the court of appeals "significant" role analysis is adopted by the Minnesota Supreme Court in future cases, the likely result will be that few, if any, forfeitures will be found unconstitutional in this state on Eighth Amendment grounds. This, of course, assumes that law enforcement agencies do not seek to forfeit property that has only a tangential relationship to the offense.

## Appendix

### Definition of "Designated Offense" in the General Forfeiture Law (Minn. Stat. §609.531, subd. 1)

**For dangerous weapons used or possessed in furtherance of a crime**, "designated offense" includes every offense in chapter 609 (the Criminal Code), chapter 152 (controlled substance provisions) and chapter 624 (firearms and other criminal provisions).

**For all other purposes**, "designated offense" includes:

- (1) felony violations of, or felony-level attempts or conspiracies to violate the following laws:
  - ▶ unlawful sale or transfer of recorded sounds or materials (M.S. §325E.17 and 325E.18)
  - ▶ murder in the first, second, or third degree (M.S. §§609.185, 609.19, and 609.195)
  - ▶ criminal vehicular homicide and injury (M.S. §609.21)
  - ▶ assault in the first, second, third, or fourth degree (M.S. §§609.221 to 609.2231)
  - ▶ simple or aggravated robbery (M. S. §609.24 and 609.245)
  - ▶ kidnapping (M.S. §609.25)
  - ▶ false imprisonment (M.S. §609.255)
  - ▶ solicitation or promotion of prostitution (M.S. §609.322)
  - ▶ criminal sexual conduct in the first, second, third, or fourth degree (certain provisions only) (M.S. §§609.342 to 609.345)
  - ▶ bribery (M.S. §609.42)
  - ▶ corruptly influencing a legislator (M.S. §609.425)
  - ▶ medical assistance fraud (M.S. §609.466)
  - ▶ escape from custody (M.S. §609.485)

- ▶ fleeing a peace officer in a motor vehicle (M.S. §609.487)
- ▶ theft (M.S. §609.52)
- ▶ bringing stolen goods into state (M.S. §609.525)
- ▶ receiving stolen property (M.S. §609.53)
- ▶ embezzlement of public funds (M.S. §609.54)
- ▶ rustling and livestock theft (M.S. §609.551)
- ▶ arson in the first, second, or third degree (M.S. §§609.561 to 609.563)
- ▶ burglary (M.S. §609.582)
- ▶ possession of burglary or theft tools (M.S. §609.59)
- ▶ damage to property (M.S. §609.595)
- ▶ check forgery (M.S. §609.631)
- ▶ drive-by shooting (M.S. §609.66, subd. 1e)
- ▶ hazardous waste, water pollution and air pollution crimes (M.S. §609.671, subds. 3, 4, 5, 8, and 12)
- ▶ adulteration (M.S. §609.687)
- ▶ financial transaction card fraud (M.S. §609.821)
- ▶ bribery of official or contestant in contest (M.S. §609.825)
- ▶ commercial bribery (M.S. §609.86)
- ▶ computer damage or theft (M.S. §§609.88 and 609.89)
- ▶ telecommunications and information services fraud (M.S. §609.893)
- ▶ use of minors in sexual performance (M.S. §617.246)

(2) gross misdemeanor and felony violations of:

- ▶ unauthorized computer access (M.S. §609.891)
  - ▶ carrying a rifle or shotgun in a public place (M.S. §624.7181)
- (3) any prostitution offense violation (engaging in, offering or agreeing to hire, soliciting or accepting a solicitation to engage in prostitution) (M.S. §609.324)