



February 26, 2021

Rep. Rick Hansen, Chair  
Environment & Natural Resources Policy and  
Finance Committee  
Minnesota House of Representatives  
407 State Office Building  
St. Paul, MN 55155

Rep. Josh Heintzeman, Republican Lead  
Environment & Natural Resources Policy and  
Finance Committee  
Minnesota House of Representatives  
353 State Office Building  
St. Paul, MN 55155

Dear Reps. Hansen and Heintzeman:

The coalition of undersigned organizations strongly support HF75 (Moller) and SF444 (Johnson), a bill that reforms civil asset forfeiture in Minnesota. This language reflects extensive negotiations between defense attorneys and justice reform advocates and prosecutors and law enforcement stakeholders in Minnesota. The negotiations took place over several months in 2019 and 2020.

Stakeholders on both sides started negotiations in 2019 and devoted a significant amount of time and effort to reach this agreement. This was a lengthy and arduous process that wasn't easy to reach. But we believe the agreed-to language will focus law enforcement's use of civil asset forfeiture on individuals who pose a legitimate threat to public safety and will better safeguard civil liberties of Minnesotans.

Civil asset forfeiture allows the government to seize money, vehicles, and other property suspected of being connected to criminal activity. Even if an individual is never charged with a crime, their property can be seized and ultimately forfeited. Under current law, people wishing to reclaim seized property must engage in expensive litigation to get their property back which often costs much more than the value of the seized currency or property itself. This is a separate, civil process that is completely unrelated to any criminal process.

The established system burdens property owners and creates administrative burdens for law enforcement agencies. Law enforcement agencies must go through various steps in the forfeiture process, including the storage and sale of vehicles, at a cost to taxpayers.

The agreed upon forfeiture language implements reforms by changing the following:

- Reforms the DWI forfeiture statute to expand the use of ignition interlock, requires entrance into treatment courts, and focuses seizure and forfeitures on repeat offenders;
- Provides additional protections for innocent owners and aligns with a recent Minnesota Supreme Court case that requires a prompt hearing;
- Prevents law enforcement from circumventing state forfeiture laws by accessing and utilizing the federal sharing program;
- Establishes a \$1,500 threshold for money and property that can be subject to forfeiture unless the currency or property was used in the direct commission of certain crimes;
- Creates transparent reporting requirements for forfeited property and the use of forfeiture revenue by local municipalities;
- Waives storage fees and some filing fees for individuals and innocent owners; and
- Requires a recidivism study to track efficacy of forfeiture and ignition interlock as strategies to reduce the number of repeat DWI offenders.

We hope we can count on your support for this important legislation. HF75/SF444 will enable law enforcement to keep our communities safe while protecting the rights of Minnesotans.

Sincerely,

William Ward, State Public Defender  
Minnesota Board of Public Defense

Holly Harris, Executive Director  
Justice Action Network

John Gordon, Executive Director  
American Civil Liberties Union of Minnesota

Drew Schaffer, Executive Director  
Mid-Minnesota Legal Aid

Andy Birrell, President  
Minnesota Association of Criminal Defense Attorneys (MACDL)

Jason Flohrs, State Director  
Americans for Prosperity – Minnesota

CC: Members of the House Environment & Natural Resources Policy and Finance Committee



## FORFEITURE REFORM AGREEMENT

### 1. REFORM DWI FORFEITURE LAW

- a. Vehicle forfeiture restricted to two categories:
  - i. **Category 1.** Third (or more) in 10 years (two or more prior DWI convictions or alcohol-related licensure revocations/suspensions).
    1. Exception: owner may regain possession of the vehicle with ignition interlock (no bond required).
  - ii. **Category 2.** Felony DWI (four prior DWI convictions or alcohol-related licensure revocations/suspensions) subject to civil forfeiture
    1. Exception: interlock exception available to individuals participating in treatment court.
- b. Enhanced protection for innocent owners: the legislation provides for a streamlined process for innocent owners to request and obtain return of vehicle. Filing burden shifts to the prosecuting authority, shorter timeframe for a hearing, consistent with *Olson v. 1999 Lexus* (2019).
- c. No storage fees to be charged on vehicles after challenge is made unless innocent owner or owner fails to secure vehicle in a reasonable amount of time once released. Owner still responsible for tow fee.
- d. Permissible use of forfeiture proceeds clarified.
- e. Immunity provision for law enforcement that releases vehicle pursuant to the statute.

## **2. CHANGES TO CONTROLLED SUBSTANCE FORFEITURES**

- a. Set threshold for seizure at \$1,500 or higher for currency, unless there is probable cause to believe that the money was exchanged for the purchase of a controlled substance.
- b. Narrows property subject to forfeiture to that which is an instrument of or represents the proceeds of a controlled substance offense.
- c. Restricts vehicle forfeiture to those used in the transportation or exchange of controlled substances intended for distribution or sale.
- d. Enhanced protection for innocent owners: the legislation provides for a streamlined process for innocent owners to request and obtain return of vehicle. Filing burden shifts to the prosecuting authority, shorter timeframe for a hearing.
- e. Provide for the return of law enforcement buy money.
- f. Permissible use of forfeiture proceeds clarified.

## **3. CHANGES TO FEDERAL SHARING PROGRAM**

- a. Law enforcement agencies shall not transfer property to the federal government if the transfer would circumvent state law.

## **4. CHANGES TO TRANSPARENCY/REPORTING**

- a. Additional agency reporting requirements by the Office of the State Auditor including:
  - i. Details of the forfeiture resolution
  - ii. Use of forfeiture funds and property retained by law enforcement
  - iii. Receipt and expenditures of any funds derived from the Federal Sharing Program (adoptions and equitable sharing)
- b. The Office of the State Auditor may audit forfeiture receipts and expenditures by local municipalities.

## **5. EFFICACY STUDY**

- a. Report by the Office of the Legislature Auditor on the efficacy of the forfeiture changes due to the legislature by January 15, 2025.