

HOUSE RESEARCH

Bill Summary

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Overview

Section

1 Forfeitures.

Subd. 1. Definitions. Defines the terms: "appropriate agency," "contraband," "controlled substance," "conveyance device," "designated DWI license revocation," "designated DWI offense," "designated offense," "property," and "weapon used."

Subd. 2. Purpose. Provides that the purpose of the forfeiture law is to deter criminal activity and that property is subject to forfeiture only when courts determine it is necessary and proportional to fulfilling that purpose. Courts are instructed to strictly construe the law and resolve any doubts in its applicability in favor of the party challenging a forfeiture.

Subd. 3. Controlled substances and associated property. Authorizes the forfeiture of property associated with controlled substance crimes. Requires a conviction for a felony-level controlled substance crime as a prerequisite to forfeiture. For controlled substance forfeitures, a diversion is considered a conviction.

Subd. 4. Designated offenses and associated property. Authorizes the forfeiture of property associated with designated offenses. Requires a conviction for a designated offense as a prerequisite to forfeiture.

Subd. 5. Designated offenses; computers. Authorizes the forfeiture of computers and component parts of computers used to commit designated offenses. Requires a conviction for a designated offense as a prerequisite to forfeiture. Addresses the potential return of the computer, its hardware, software, and/or data to the owner.

Subd. 6. Gambling devices, proceeds. Authorizes the forfeiture of items related

to unlawful gambling. Requires a conviction for a gambling crime as a prerequisite to forfeiture.

Subd. 7. Additional conveyance devices. Authorizes the forfeiture of conveyance devices used in the commission of a designated DWI offense, a prostitution offense, or a fleeing a peace officer offense that endangers life or property. Requires a conviction for one of those offenses as a prerequisite to forfeiture. Also, authorizes the forfeiture of a conveyance device that was used in conduct resulting in a designated DWI license revocation.

Subd. 8. Residential rental property. Authorizes the forfeiture of residential rental property involved in a controlled substance crime. Requires that an eviction action be brought following a conviction for a felony-level crime. Permits a landlord to assign the right to bring the action to the county attorney. Upon a second controlled substance occurrence within a year, the property is subject to forfeiture unless an eviction action has been brought or assigned.

Subd. 9. Seizure. Specifies the instances in which law enforcement can seize property subject to forfeiture under this section, both with and without process. Specifies how law enforcement is to treat seized property. Requires law enforcement to ensure that property is maintained and cared for in a manner likely to secure the property and preserve its value. States that property seized illegally is not subject to forfeiture under this section.

Subd. 10. Release of property before final determination. Addresses the rights of property owners and interest holders to regain possession of seized property before the forfeiture action is determined. Authorizes a person with an interest in seized property to file an application for an order to show cause to be issued to the prosecuting agency to determine if probable cause existed to seize the property. If the court finds that probable cause for seizure does not exist, the law enforcement agency must release the property.

Subd. 11. Civil procedure; conviction; speedy determination. Provides that a forfeiture action is an independent civil in rem action. For forfeiture to occur, the law enforcement agency must prove by clear and convincing evidence that:

- the owner of the property was convicted of a crime that subjects it to forfeiture (an exception is made for DWI conveyance device forfeitures based on a designated DWI license revocation);
- the owner's property was used in committing the underlying crime or conduct or represents proceeds derived proximately from the underlying crime; and
- the forfeiture is proportional to the underlying crime or conduct.

Provides that forfeitures under this law are not subject to Rules of Civil Procedure. Provides that no filing or other court-related fees may be assessed against a person contesting a forfeiture. Authorizes the court to order sanctions. Requires forfeiture actions to be heard by the court at the earliest practicable date and in no event later than 120 days following the filing of the claimant's answer. Allows the claimant to waive this expedited time frame.

Subd. 12. Complaint; notice. Requires the prosecutor to file a separate

complaint against property subject to forfeiture and notify by personal service the owner or possessor of the property, if known or readily ascertainable. Requires the complaint to be accompanied by a specified written notice. The notice must be worded in plain language and must include a detachable form to allow the person receiving it to object to the forfeiture. Authorizes an objection to the forfeiture to be made by immediately returning the form to the person serving it or by filing it in district court. Requires that if the objection is made to the person serving the complaint, that person must give the objector written acknowledgment of the objection. Provides that the written objection serves as the person's answer to the complaint.

Subd. 13. Limitations; liens and innocent owners. Provides that property encumbered by a bona fide security interest is subject to the interest of the secured party. Requires the person claiming the interest to establish it by clear and convincing evidence. Allows a person who has not been convicted of an underlying forfeiture-triggering crime or been the subject of a final implied consent determination that triggers forfeiture to demonstrate by substantial evidence the person's ownership interest in property subject to forfeiture. If this occurs, that person's interest is not subject to forfeiture unless the prosecutor proves by clear and convincing evidence that the person took the property or interest with the intent of defeating the forfeiture or the person consented to the underlying criminal act or conduct.

Subd. 14. Return of property and damages. Requires that property be returned to its owner within three business days of a court finding that:

- the property owner has a bona fide security interest or is an innocent owner under **subdivision 13**;
- charges against the accused property owner were dismissed;
- the accused property owner was found not guilty of the criminal charge that is the basis for the forfeiture action;
- the designated DWI license revocation that is the basis for the forfeiture was overturned; or
- the property is a computer and the property owner was not privy to the act or omission upon which the seizure was made under **subdivision 5**.

Authorizes a property owner to bring a claim for damages to seized property if one of these situations has occurred.

Subd. 15. DOC Fugitive Apprehension Unit. Prohibits the Department of Corrections Fugitive Apprehension Unit from seizing conveyance devices or real property for forfeiture under this section.

Subd. 16. Unclaimed property; contraband. Authorizes a judgment of forfeiture to be entered without an underlying conviction or designated DWI license revocation for contraband and property for which no person has claimed an interest and no owner has been found after reasonable investigation.

Subd. 17. Disposition of forfeited property. Specifies how forfeited property is to be disposed of. Of note, money and proceeds from the sale of forfeited property, after payment of specified expenses, must be forwarded to the Commissioner of Management and Budget to be deposited into the state treasury. States that this money

is to be appropriated by the Legislature for public safety purposes. Requires sales of forfeited property to be conducted in a commercially reasonable manner. Prohibits employees of law enforcement agencies and their family members from purchasing forfeited items directly from the law enforcement agency.

Subd. 18. Reporting requirement. Requires law enforcement agencies and prosecutors to report to the state auditor specified information relating to forfeitures. Requires the state auditor to report annually to the Legislature and the public on the nature and extent of forfeitures. Requires the auditor to include in its report recommended changes to forfeiture law to better ensure that forfeiture proceedings are handled in a manner that is fair to innocent property owners and interest holders. Requires the auditor to also include information on law enforcement agencies and prosecutorial offices not in compliance with the reporting requirements of this subdivision.

Subd. 19. Penalty for violations. Provides for a civil penalty (of three times the value of the forfeited property) for persons who, while acting under the color of law, take any action intending to conceal, transfer, withhold, retain, divert, or otherwise prevent any proceeds, conveyances, real property, or other things of value forfeited from being applied, deposited, or used in accordance with this section.

Subd. 20. Coordination with federal law. Requires state and local units of government to take all necessary steps to obtain shared property or proceeds from the United States Department of Justice following a forfeiture. Requires that forfeited property or proceeds received from the United States government by the state or local units of government must be disposed of as provided in **subdivision 17**. Prohibits state and local units of government and forfeiting agencies from transferring forfeiture proceedings to the federal government to circumvent state law. Requires that before a law enforcement agency can transfer a forfeiture proceeding to the federal government, a state court must have affirmatively found that the activity giving rise to the forfeiture is interstate in nature and sufficiently complex, or the seized property is forfeitable only under federal law.

- 2 **Revisor's Instruction.** Requires the Revisor of Statutes to make statutory cross-reference changes necessitated by the bill.
- 3 **Repealer.** Repeals the forfeiture laws that are being superseded by this bill.