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Overview

This bill amends the forfeiture procedure under Minnesota law. Under current law, forfeiture follows one of two tracks: judicial or administrative forfeiture.

Under judicial forfeiture, when property is seized pursuant to an arrest, the prosecuting authority must institute a civil proceeding to forfeit that property. The prosecuting authority carries the burden in that proceeding and must prove by clear and convincing evidence that the person was convicted of the criminal offense related to the action for forfeiture and that the property is an instrument, or represents the proceeds, of the underlying offense.

Alternatively, under administrative forfeiture, the law enforcement agency seizing property provides the owner with a notice that property was seized. If the owner does nothing, the property is forfeit without any hearing. If the owner challenges the forfeiture, then the requirements under judicial forfeiture apply. This procedure applies to specific offenses including controlled substance, DWI, and drive-by shootings.

Article 1 eliminates the civil forfeiture system including both judicial forfeiture and administrative forfeiture. Instead, any defendant charged with a crime in which law enforcement seized property must file a criminal complaint describing both the crime charged and the basis for forfeiture. Notice must also be sent to any identified owner who is not the defendant. The forfeiture accompanies the criminal proceeding with the option of a contested hearing following a conviction.

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The new procedure limits what property can be forfeit, provides for an innocent owner petition, and allows owners to seek return of some or all of the property during the criminal proceeding. Act 1 also prohibits participation in the federal equitable sharing program and directs that all the proceeds of a forfeiture must go to the general fund instead of being divided between entities that include local law enforcement and prosecuting authorities.

Article 2 amends the DWI forfeiture proceedings to mirror the new forfeiture proceedings and Article 3 includes several conforming amendments to the DNR statutes and other sections of law.

Article 1

Overview

Eliminates administrative forfeiture, creates a new criminal forfeiture procedure, prohibits participation in the federal equitable sharing program, and directs that forfeiture proceeds be deposited into the general fund or specific dedicated accounts.

- 1 **Definitions.** Defines the term “abandoned property” to mean personal property left by an owner who relinquishes all rights to its control. Also defines the term “conviction” to include the meaning given in section 609.02, subdivision 5, an admission of guilt to an offense chargeable under chapter 152, a stayed sentence for a violation of chapter 152, or a stay of adjudication under section 152.18
- 2 **Construction.** Adds the statement “forfeiture is disfavored” to the statement of intent. Also says that forfeiture statutes should be interpreted to protect property and due process rights.
- 3 **Seizure.** States that the presence or possession of currency, debit cards, or credit cards is insufficient to establish probable cause for seizure of those items without other indicia of a crime that subjects the property to forfeiture.
- 4 **Right to possession vests immediately; custody of seized property.** Strikes the statement that certain property is not subject to replevin based on the creation of a replevin procedure in another section of the bill.
- 5 **Forfeiture; conviction required.** Strikes the reference to forfeiture being a civil proceeding, states that forfeiture is part of a criminal prosecution, and permits forfeiture when property has been abandoned or the defendant dies or is deported.
- 6 **Property exempt from forfeiture.** States that the following property is exempt from forfeiture: (1) homestead real property; (2) a motor vehicle of less than \$10,000 in market value (the provision does not apply to vehicles used in drive-by shootings); and (3) currency totaling no more than \$500.

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- 7 Forfeiture policies; statewide model policy required.** Requires the County Attorneys Association and Peace Officer Standards and Training Board to update a model policy for forfeiture and directs law enforcement agencies to adopt a policy in conformity with that model policy.
- 8 Adoption; joint task forces; receipt of payment proceeds from federal government.** Prohibits an appropriate agency from providing property seized under state law to a federal agency for forfeiture under federal law. Prohibits a state agency from accepting payment from the federal government unless the aggregate value of the property exceeds \$100,000. Clarifies that nothing in this section prevents the seizure of property subject to forfeiture.
- 9 Vehicle forfeiture for prostitution offenses.** Eliminates the reference to judicial forfeiture.
- 10 Vehicle forfeiture for fleeing peace officer.** Eliminates the reference to judicial forfeiture.
- 11 Forfeiture; procedure.** Creates a process for forfeiture as part of a criminal action.

Subd. 1. Complaint; service of process. Requires the prosecuting attorney to include specific information related to the forfeiture of property in a criminal complaint. Allows the prosecutor to file an amended complaint within seven days of an initial complaint and describes the acceptable methods of service. Requires the return of property if no complaint is filed.

Subd. 2. Notice to registered owner. Requires the prosecuting authority to provide notice of seizure to a registered owner or any other person known to have an ownership interest in the property.

Subd. 3. Statement of interest or ownership. Requires a person, other than the defendant, served with notice under subdivision 2 to file a statement of interest or ownership within 20 days of receiving that notice. Waives the filing fee for the statement and states that nothing in the filing may be used in the underlying criminal matter. The person filing the statement can testify at the trial if that person is otherwise qualified to present evidence.

Subd. 4. Venue. Establishes that the court hearing the underlying criminal matter has jurisdiction over the forfeiture.

Subd. 5. Hearing; time. Requires that any contested forfeiture hearing take place as soon as practicable after a conviction in the related criminal matter.

Subd. 6. Innocent owner. Permits a person, other than the defendant, to petition the court for return of property as an innocent owner. Requires the court to hold a hearing within 30 days of receiving the petition and permits the owner and petitioner to present evidence at the hearing. Places a burden on the person asserting an ownership interest to prove that interest by clear and convincing evidence. Requires the state to prove by clear and convincing evidence that the petitioner permitted the use of property while having knowledge that the property would be used to commit a criminal offense, and that the petitioner did not attempt to prevent such use. Establishes a presumption that, if the defendant in the underlying criminal matter has been convicted of related crimes, the petitioner had knowledge that the property would be used in a manner contrary to law. Requires a person who acquires ownership

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interest after the commission of the underlying crime to show that the person's ownership interest is legitimate and that the person did not know of any defect in title. Prohibits a person who asserts an innocent owner claim from also challenging forfeiture under subdivision 9.

Subd. 7. Replevin hearing. Creates a replevin hearing under which a criminal defendant can petition the court for return of some or all of the seized property. Requires the court to hold a hearing on the motion and return the property if (1) it is likely the final judgment will be that the state must return the property, (2) the property is not reasonably required to be held for evidentiary reasons, or (3) the property is the only reasonable means for a defendant to pay for legal representation in the matter.

Subd. 8. Discovery. Establishes that discovery must follow the rules of criminal procedure.

Subd. 9. Proceeding. Creates a proceeding for contested forfeiture matters. Directs that hearings are held before a judge and neither the rules of evidence nor formal rules of pleading apply. Permits claimants to be represented by counsel and, if authorized by the state public defender or chief public defender of the judicial district, allows a defendant's public defender to provide representation. Allows resolution of the matter pursuant to a plea agreement so long as the agreement does not direct the proceeds to any third party or impede on the rights of any other identified owner.

Subd. 10. Standards of proof. Establishes the standards of proof for a contested forfeiture proceeding. Requires a person other than the defendant to prove, by clear and convincing evidence, that the person has a bona fide ownership interest. Requires the state to prove that the underlying criminal matter resulted in a conviction and that the property represents an instrument, or the proceeds, of the underlying criminal matter. Further requires the state to prove either that the defendant is the sole owner of the property or that all other owners permitted use of the property with knowledge that it would be used in a manner contrary to law.

Subd. 11. Proportionality hearing. Creates a proportionality hearing in which a defendant can challenge whether forfeiture is excessive under the state or federal constitution. Places the burden on the defendant in such a hearing and directs the court to consider several listed factors in balancing the seriousness of the underlying offense against the value of the seized property.

Subd. 12. Judgment. Establishes that property must be forfeit if the state meets its burden and returned if the state does not. If property is returned, the owner is not responsible for any storage or related costs.

Subd. 13. Appeal. Permits defendants, or other owners, to appeal forfeiture decisions.

12 Disposition. Strikes the provision allowing the appropriate agency or prosecuting agency to keep property that has been forfeit.

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- 13** **Distribution of money.** Eliminates the distribution of forfeiture proceeds to the agency that seized the property and the prosecuting authority and directs that proceeds related to forfeiture be placed in the general fund except for certain offenses.
- 14** **Disposition of certain forfeited proceeds; prostitution.** Eliminates the distribution of forfeiture proceeds from certain prostitution offenses to the agency that seized the property and the prosecuting authority, directs that 50% of the proceeds be used for neighborhood crime prevention programs, and directs that the remaining proceeds be credited to the general fund.
- 15** **Disposition of certain forfeited proceeds; trafficking of persons; report required.** Eliminates the distribution of forfeiture proceeds from human trafficking offenses to the agency that seized the property and the prosecuting authority, directs that 50% of the proceeds be distributed to crime victims service organizations that provide services to victims of trafficking offenses, and directs that the remaining proceeds be credited to the general fund.
- 16** **Distribution of money; prostitution.** Eliminates the distribution of forfeiture proceeds from certain prostitution offenses to the agency that seized the property and the prosecuting authority, directs that 50% of the proceeds be deposited in the safe harbor for youth account, and directs that the remaining proceeds be credited to the general fund.
- 17** **Notice.** Eliminates the notice requirement in current law related to the administrative forfeiture of vehicles used in drive-by shootings. Under the bill, there will no longer be administrative forfeiture of vehicles and notice is provided under section 11, subdivision 2 of the bill.
- 18** **Procedure.** Requires the forfeiture of vehicles used in drive-by shootings to follow the procedure described in section 11 of the bill.
- 19** **Repealer.** Repeals sections 609.531, subdivision 7 (Petition for remission or mitigation); 609.5314 (Administrative forfeiture of certain property seized in connection with a controlled substances seizure); 609.5315, subdivisions 2 (Disposition of administratively forfeited property) and 3 (Use by law enforcement); and 609.5318, subdivision 3 (Hearing).

Article 2

Overview

Eliminates administrative forfeiture in DWI cases and conforms forfeiture to the procedure created in article 1.

- 1** **Definitions.** Strikes the definition of “designated license revocation” as used in section 169A.63.

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- 2 **Right to possession vests immediately; custody.** Eliminates the reference to a designated license revocation, limiting forfeiture to an action that constitutes a designated offense.
- 3 **Evidence.** Eliminates the reference to evidence of the occurrence of a designated license revocation.
- 4 **Vehicle subject to forfeiture.** Strikes the reference to a designated license revocation, limiting forfeiture to an action that constitutes a designated offense.
- 5 **Limitations on vehicle forfeiture.** Limits forfeiture to situations under which the driver was convicted of a designated offense. Replaces the innocent owner defense with the innocent owner defense in article 1, section 11, subdivision 6 of this bill.
- 6 **Forfeiture procedure.** Directs that section 609.5313 (Article 1, section 11 of this bill) controls forfeiture actions under section 169A.63 except as modified in this section. Directs that property must be returned if a defendant is not convicted of a designated offense or if another owner proves the innocent owner defense. No person to whom property is returned may be charged for storage of the vehicle.
- 7 **Disposition of forfeited vehicle.** Permits the appropriate agency to sell a forfeited vehicle. Requires that the proceeds of any such sale be deposited in the general fund. Eliminates the reference to administrative forfeiture.
- 8 **Sale of forfeited vehicle by secured party.** Eliminates a reference to crediting the appropriate fund following a financial institution's disposition of a forfeited vehicle.
- 9 **Repealer.** Repeals section 169A.63, subdivision 8 which described the administrative forfeiture procedure for DWI-related motor vehicles.

Article 3

Overview

Makes conforming changes in other areas of statute.

- 1 **Presumptions; limitations on vehicle forfeiture.** Removes the presumption that a vehicle can be forfeit if a person fails to appear at a court appearance. Replaces the innocent owner provision with the new innocent owner provision in article 1, section 11, subdivision 6 of this bill.
- 2 **Forfeiture procedure.** Mirrors the changes in article 2, section 6. Directs that section 609.5313 (Article 1, section 11 of this bill) controls forfeiture actions under section 169A.63 except as modified in this section. Directs that property must be returned if a defendant is not convicted of a designated offense or if another owner proves the innocent owner defense.
- 3 **Disposition; forfeited vehicle.** Mirrors the changes in article 2, section 7. Permits the appropriate agency to sell a forfeited vehicle. Requires that the proceeds of any such sale be deposited in the general fund. Eliminates the reference to administrative forfeiture.

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- 4** **Sale of forfeited vehicle by secured party.** Mirrors the changes in article 2, section 8. Eliminates a reference to crediting the appropriate fund following a financial institution's disposition of a forfeited vehicle.
- 5** **DWI; vehicle forfeiture.** Eliminates the reference to 169A.63, subdivision 8, which is repealed, and to administrative or judicial forfeiture.
- 6** **Proceedings at time of apprehension or arrest.** Removes the reference to section 609.5314 which is repealed in article 1.
- 7** **Repealer.** Repeals section 84.7741, subdivision 8 which describes the administrative forfeiture of off-highway vehicles.