

**Subject** Criminal forfeiture  
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## Overview

Forfeiture under Minnesota law follows one of two tracks: judicial or administrative forfeiture.

Under judicial forfeiture, the prosecuting authority must institute a civil proceeding to forfeit 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.

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 crimes including controlled substance violations, DWI offenses, and drive-by shootings.

In Minnesota, attention to asset forfeiture increased following reports on abuses of the system by the Metro Gang Strike Force. The Legislative Auditor's financial audit division conducted a special review of the Metro Gang Strike Force and, in May 2009, concluded that "internal controls were not adequate to safeguard seized and forfeited property, properly authorize its financial transactions, accurately record its financial activity in the accounting records, and conduct its financial activities in a reasonable and prudent manner." An additional report by the Department of Public Safety, the "Luger Report," found credible allegations of misconduct relating to strike force employees that included illegal seizures and improper handling of seized property. The legislature passed significant changes to the state's forfeiture laws in 2010 and made additional changes in 2012, 2013, 2014, and 2017.

Recent decisions by the Minnesota Court of Appeals and the United States Supreme Court discuss forfeiture. In *Olson v. One 1999 Lexus*, a Minnesota woman with three prior DWI convictions was stopped for a new DWI. The officers took the vehicle under the forfeiture statute and gave proper notice to both the driver (Megan Olson) and her mother (Helen Olson, the registered owner). The Olsons filed the proper challenge to the forfeiture and that initiated a judicial forfeiture process. The Olsons challenged the constitutionality of the statute and the district court ruled that the statute was

unconstitutional as applied. The court of appeals upheld the district court decision. They found that the law is not unconstitutional on its face, but was unconstitutional as applied to the Olsons. That decision was based primarily on the fact that no hearing was held for about 18 months. The court noted that there were some possible ways in which the Olsons might have avoided the situation—posting a bond, a remission petition, and an innocent owner claim. However, the Olsons did not pursue those options and the court effectively determined that there is no record on which to assess whether those options would have cured the problem here. The court suggested that there should be a hearing similar to the ones identified in section [609.5312](#), subdivisions 3, paragraph (b), and 4, paragraph (b). The Minnesota Supreme Court granted review and heard the case in October 2018. The court will likely issue a decision in the coming months.

On February 20, 2019, the United States Supreme Court issued a decision in *Timbs v. Indiana*. In *Timbs*, the defendant pled guilty to dealing heroin with a value of less than \$250. His sentence included five years of probation and a combination of fines and fees totaling \$1,203. In addition, the state sought forfeiture of a vehicle worth approximately \$42,000 which Timbs had purchased with money from a life insurance policy paid out after his father's death but used to transport heroin. The district court denied the forfeiture, concluding that the forfeiture amounted to an excessive fine. The Indiana Supreme Court reversed the decision, concluding that the excessive fines clause of the Eighth Amendment to the United States Constitution did not apply to the state. In a unanimous decision, the United States Supreme Court reversed the Indiana court, finding that the excessive fines clause does apply to the states. The United States Supreme Court did not rule on the question of whether the forfeiture was excessive in this case, but returned the case to the state courts for further proceedings on that question.

## Article 1: Criminal Forfeiture

Replaces the existing forfeiture rules and procedures with rules and procedures connecting forfeiture to the prosecution of the underlying criminal offense.

Section	Description
1	<p><b>Criminal forfeiture.</b></p> <p>Establishes definitions, limitations, and procedures for forfeiture of certain property used in, or representing the proceeds of, criminal offenses.</p> <p><b>Subd. 1. Definitions.</b> Defines terms related to forfeiture used in the section governing criminal forfeiture.</p> <p><b>Subd. 2. Purpose.</b> States that forfeiture is disfavored and that the purpose of the section is to deter criminal activity, confiscate certain property used in violation of the law, and protect property rights.</p>

Section	Description
	<p><b>Subd. 3. Seizure of personal property with process.</b> Allows the state to seek, and the court to issue, an ex parte preliminary order to attach, seize, or secure personal property.</p>
	<p><b>Subd. 4. Seizure of personal property without process.</b> Allows personal property to be seized if it is the subject of a prior judgment in favor of the state; is incident to a lawful arrest for a designated offense and there is probable cause that the property was used in, or is the proceeds of, the offense; or there is probable cause to believe that delay will result in removal or destruction of the property and the property is connected to a felony or is dangerous to health and safety. Asserts that the mere possession of currency does not justify seizure of that currency.</p>
	<p><b>Subd. 5. Seizure or restraint of real property with process.</b> Requires a court order for seizing real property and requires notice before issuing that order.</p>
	<p><b>Subd. 6. Rental property.</b> Incorporates the existing protections for owners of rental property that appear in section 609.5317. The protections require notice to landlords, an opportunity to bring an eviction, and a defense when the tenant was not aware of the presence of a controlled substance on the property.</p>
	<p><b>Subd. 7. Exemptions.</b> Fully exempts the following property from seizure and forfeiture: (1) homestead real property; (2) currency totaling \$300 or less; and (3) a motor vehicle worth no more than \$2,500 in market value unless the vehicle was used in a drive-by shooting. Permits local jurisdictions to establish alternative exemptions with a minimum dollar amount that exceeds that set by statute.</p>
	<p><b>Subd. 8. Contraband.</b> Establishes that no property right exists in contraband.</p>
	<p><b>Subd. 9. Waiver prohibited.</b> Prohibits an appropriate agency, as defined in subdivision 1, from asking or requiring a person to sign a waiver of the person's interest in property. Permits waivers signed at the behest of a prosecutor in the litigation of the forfeiture case.</p>
	<p><b>Subd. 10. Receipt.</b> Requires an appropriate agency to provide a receipt when property is seized.</p>
	<p><b>Subd. 11. Criminal forfeiture; property subject to forfeiture.</b> Provides that property is subject to forfeiture when a person is convicted of a designated offense and either: (1) the property constitutes, or was derived directly from, proceeds of the underlying offense for which the person is convicted; or (2) the property was used in any manner to commit, or facilitate the commission of, the offense.</p>
	<p><b>Subd. 12. Conviction required; standard of proof.</b> States that there shall be no civil asset forfeiture under the criminal law chapter. Permits property to be forfeited if (1) the offense is a designated offense, (2) the offense is established</p>

Section	Description
	<p>by proof of a criminal conviction, and (3) the state proves by clear and convincing evidence that the property is subject to forfeiture pursuant to subdivision 11. Permits property to be forfeited by plea agreement unless any other person asserted a right to the property under this new section of law. Provides for waiver of the conviction requirement in some situations. Permits the sale of certain property, and certain seized currency, to be credited to the general fund.</p> <p><b>Subd. 13. Forfeiture indictment.</b> Permits the state to seek forfeiture through an indictment or information that includes a criminal charge and a charge for which forfeiture may be ordered. Permits the court to enter an order, effective for up to 90 days, restraining property. Requires notice to persons known to have an interest in the property who are not named in the indictment or information.</p> <p><b>Subd. 14. Forfeiture complaint; service of process.</b> Requires the prosecutor to file a criminal complaint in any case in which the prosecutor intends to seek forfeiture. The complaint must include the criminal charge, a description of the property subject to seizure, and basis for the seizure. Requires return of property if notice is not properly served to all persons appearing to have an interest in the property. Asserts that failure to file a forfeiture complaint does not invalidate the prosecution of the underlying criminal offense. Requires the prosecuting authority to send notice to the registered owner of a seized vehicle and any other individual known to have an interest in any property subject to forfeiture who is not charged with a crime in the complaint. Describes what must be maintained in the notice.</p> <p><b>Subd. 15. Title.</b> Provides that title to the property subject to forfeiture vests with the state when the court issues a forfeiture judgment.</p> <p><b>Subd. 16. Defendant's pretrial replevin hearing.</b> Creates a right to a pretrial hearing to determine the validity of the seizure. Requires the court to hold the hearing when the court enters a plea or within 14 days of the person's first appearance in court. Allows either party to move for an extension. Requires the court to issue a writ of replevin, returning the property, if: (1) it is likely the final judgment will require the court to 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 the defendant to pay for legal representation and minimum living expenses unless the prosecuting authority shows by clear and convincing evidence that the property is the instrument or proceeds of an offense for which the defendant is charged. Permits the court to order the return of sufficient funds to pay for counsel of choice.</p> <p><b>Subd. 17. Discovery.</b> Provides that the Rules of Criminal Procedure govern discovery.</p> <p><b>Subd. 18. Venue; trial proceedings.</b> States that the court with jurisdiction over the related criminal matter has jurisdiction over the forfeiture proceeding. Requires litigation of forfeiture to follow a criminal trial, if any. Requires that the</p>

Section	Description
	<p>forfeiture trial be to a court unless the value of the property exceeds \$10,000. States that the rules of evidence or technical or formal rules of pleading do not apply in a trial to the court. Permits the public defender to elect to represent the individual in the forfeiture hearing.</p> <p><b>Subd. 19. Proportionality hearing.</b> Creates a proportionality hearing which can be held as part of a replevin hearing or forfeiture trial. Permits the defendant to petition the court to determine whether the forfeiture is unconstitutionally excessive. Establishes that the defendant has the burden of proving to the court, by preponderance of the evidence, that the forfeiture is disproportional to the seriousness of the offense. Permits the court to determine factors relating to the seriousness of the crime and the defendant's culpability, and also the impact the forfeiture will have on the defendant and any members of the defendant's family. Prohibits the court from considering the value to the state.</p> <p><b>Subd. 20. Secured interest.</b> States that property encumbered by a bona fide security interest is not subject to forfeiture. Provides for a hearing when there is dispute about a security interest.</p> <p><b>Subd. 21. Innocent owner.</b> Creates an innocent owner hearing. Permits an individual asserting an ownership interest to file a statement of interest in ownership. Requires the court, to the extent possible, to hold a hearing within 30 days. The petitioner must prove by clear and convincing evidence that the person has an ownership interest in the property. If the petitioner meets that burden, the state must prove by clear and convincing evidence that the petitioner had actual knowledge of the underlying crime, or was not a bona fide purchaser after the offense took place. Further provides that the statement of interest cannot be used in the underlying criminal matter, but permits the petitioner to testify on behalf of either party in the underlying criminal case. Permits the defendant to be called to testify in the innocent owner hearing, but further permits that person to assert the right to remain silent subject to an adverse inference in the innocent owner proceeding.</p> <p><b>Subd. 22. Judgment.</b> Requires the court to enter judgement for a claimant or the state following the appropriate hearings. Permits the court to enter judgment pursuant to a plea agreement.</p> <p><b>Subd. 23. Substitution of assets.</b> Permits the substitution of property if property subject to forfeiture is unreachable when the state proves by a preponderance that the defendant intentionally took action to put the property beyond the reach of the state.</p> <p><b>Subd. 24. No additional remedies.</b> Prohibits the state from seeking personal money judgments or other remedies related to the forfeiture of property not provided in this new section of law.</p>

Section	Description
	<p><b>Subd. 25. No joint and several liability.</b> Establishes that a defendant is not jointly and severally liable for forfeiture awards owed by other defendants. Permits the court to order each defendant to forfeit property on a pro rata basis when ownership is unclear.</p>
	<p><b>Subd. 26. Appeal.</b> Permits a party to forfeiture, other than the defendant, to file an interlocutory appeal regarding the court's decision regarding seizure or forfeiture. Permits the defendant to appeal the court's decision following a final disposition in district court.</p>
	<p><b>Subd. 27. Attorney fees.</b> Makes the seizing agency liable for attorney fees, postjudgment interest, and any interest the state received from the date of seizure if the property owner's claims prevail by recovering at least half the value of the property.</p>
	<p><b>Subd. 28. Return of property; damages; costs.</b> Requires return of property within five days of entry of judgment in favor of an owner. Exempts the owner from any charges for storage of the property. Makes the storing agency responsible for any damages to the property.</p>
	<p><b>Subd. 29. Disposition of property and proceeds.</b> Permits contraband to be destroyed. Requires proceeds from the sale of forfeited property to be used to pay any outstanding liens, the victim, and reasonable costs related to the seizure. Remaining funds must be credited equally to the Office of Justice Programs, the commissioner of public safety for distribution to crime victim services organizations that provide services to sexually exploited youth, the Minnesota Board of Public Defense, and the general fund.</p>
	<p><b>Subd. 30. Prohibition on retaining property; sale restrictions.</b> Prohibits an appropriate agency from retaining forfeited or abandoned property for its own use, and further prohibits selling the property to employees, relatives of employees, or other appropriate agencies or any other law enforcement agency.</p>
	<p><b>Subd. 31. Prohibition of federal adoption.</b> Prohibits participation in the federal adoption program.</p>
	<p><b>Subd. 32. Limit on receiving forfeiture proceeds from joint task forces.</b> Requires forfeiture of property with a value of \$50,000 or less to follow state law. Prohibits the agency in this state from accepting payment from the federal government if property with a value of \$50,000 or less are forfeit under federal law. Clarifies that the limitations are not intended to limit participation in joint task forces or the right to seize appropriate property.</p>
	<p><b>Subd. 33. Preemption.</b> Expressly preempts any other laws in the state that regulate the forfeiture of property in crimes related to controlled substances and driving while impaired.</p>

Section	Description
	<b>Subd. 34. Reporting requirement.</b> Adopts the existing requirements related to reporting forfeiture.

## Article 2: Conforming Changes

Makes conforming changes in sections addressing enforcement by the Department of Natural Resources, substance abuse offenses, driving while intoxicated offenses, and other criminal statutes. Repeals existing statutes governing forfeiture.



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