

**INFORMATION BRIEF**

**Research Department**

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600 State Office Building

St. Paul, MN 55155

Rebecca Pirijs, Legislative Analyst

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## **Minnesota's Forfeiture Laws**

Minnesota law allows property associated with certain crimes to be forfeited. This can be done judicially or administratively. This information brief describes the laws dealing with forfeiture and discusses cases of note in Minnesota and recent changes made to forfeiture laws.

In particular, 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" or "double jeopardy." Part 4 highlights several Minnesota cases of interest. Finally, part 5 examines the legislative changes made in 2010 following the shutdown of the Metro Gang Strike Force.

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# 1. General Forfeiture Law

[Minn. Stat. §§ 609.531 to 609.5319](#)

## 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 certain prostitution crimes, 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, violation of [chapter 624](#), or violation of a domestic abuse order for protection. [Minn. Stat. §§ 609.5312; 609.5316](#), subd. 3.

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. The existence of a security interest must be established by clear and convincing evidence. [Minn. Stat. §§ 609.5312; 609.5319](#).

## 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 \$75 or more and is associated with a felony-level offense
- 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 \$2,000 or more

[Minn. Stat. §§ 609.531](#), subd. 6a; [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
- the appropriate agency<sup>1</sup> 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

When property is seized, an officer must provide a receipt to the person found in possession of the property or leave a receipt where the property was found. The seizing agency must use reasonable diligence to secure the property and prevent waste. [Minn. Stat. § 609.531](#), subds. 4, 5.

The owner of the seized property may 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. This option is not available if the property is contraband or is being held for investigatory purposes.

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 seizing agency. The agency must notify the Department of Public Safety and any

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<sup>1</sup> See appendix for the definition of “appropriate agency.” This publication will use the terms “seizing agency” and “law enforcement agency” in lieu of “appropriate agency.”

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.

Seizures of motor vehicles used to commit certain prostitution crimes or used to flee from a pursuing peace officer are governed by more restrictive provisions.<sup>2</sup> These provisions apply to the seizure of vehicles from persons alleged: (1) to have engaged in or hired another to engage in prostitution; or (2) to have fled from a peace officer in a manner that endangered life or property. 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.<sup>3</sup> 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](#), subds. 3, 4.

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

### **Minnesota law contains a separate, nonjudicial 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, or 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
- 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

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<sup>2</sup> In 2003, the Minnesota Court of Appeals ruled that a vehicle forfeiture for fleeing a peace officer is governed exclusively by [Minnesota Statutes, section 609.5312](#), subdivision 4, and as a result, a defendant may not seek possession of the vehicle by surrendering its title before the forfeiture action is determined. *Gaertner v. One 1999 Dodge Pickup Truck*, 668 N.W.2d 25 (Minn. Ct. App. 2003).

<sup>3</sup> These time limits do not apply to the seizures of recreational vehicles or motorboats allegedly used to flee a peace officer.

Administrative forfeiture procedures may only be used if the property involved does not exceed \$50,000.

The law enforcement agency is permitted to seize the property immediately and must send a notice to all persons known to have an ownership, possessory, or security interest in the property within 60 days of the seizure. The notice must state 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 and a hearing must be held within 180 days of filing the demand. 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, nonjudicial 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.

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 at the conclusion of the criminal proceeding instead of when the seizure notice is sent
- the “innocent owner” defense does not apply if the owner was grossly negligent in allowing the vehicle to be used by another

[Minn. Stat. § 609.5318](#).

## Summary Forfeitures

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

The types of property included in this provision are:

- contraband property; i.e., property that is illegal to possess under Minnesota law. This property must either be destroyed by the agency or used for law enforcement purposes;
- police radios used to commit or attempt to commit a felony or to flee a peace officer in a motor vehicle;
- 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, a violation of [chapter 624](#), or a violation of a domestic abuse order for protection, 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 or stalking crime;
- 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; and
- telephone-cloning paraphernalia (materials capable of creating a cloned cellular telephone) used to commit a cellular telephone-counterfeiting crime.

The law also provides that weapons, bullet-resistant vests, and telephone-cloning paraphernalia used in a crime may, instead, be judicially forfeited without proof of a conviction for the underlying crime. [Minn. Stat. §§ 609.2242](#), subd. 3; [609.5316](#); [609.749](#), subd. 8; [609.856](#), subd. 2.

## Conciliation Court Jurisdiction

**The conciliation court has jurisdiction to determine certain forfeiture claims that do not exceed \$15,000.**

If a claim does not exceed \$15,000 and involves money or personal property subject to forfeiture under section [609.5311](#) (controlled substance offenses); [609.5312](#) (designated offenses); [609.5314](#) (administrative forfeiture for certain controlled substance offenses); or [609.5318](#) (drive-by shootings), the claimant may file a demand for judicial review in conciliation court

instead of district court. The determination of claims in conciliation court must be without jury trial and by a simple and informal procedure. The filing fee in conciliation court is \$65 as compared to \$310 in district court. In administrative forfeiture actions where the property is worth less than \$500, the claimant does not have to pay the conciliation court filing fee.

[Minn. Stat. §§ 357.021; 357.022; 491A.01](#), subd. 3; [609.5314](#).

## **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. If the forfeited property is a firearm, the law enforcement agency has the following options:

- if the firearm is an antique, the agency may sell it at a public sale
- if the firearm is an assault weapon, the agency must either destroy it or keep it for official use
- if the firearm is neither of the foregoing, the agency may destroy the firearm, keep it for official use, or sell it to a federally licensed firearm dealer

The law also provides that if the Hennepin or Ramsey county board disapproves of the sale of forfeited firearms, the local sheriff must comply with that directive.

Before administratively forfeited property may be sold, a county attorney must certify that: (1) an evidence or seized property receipt was provided; (2) the seizing agency served timely notice of the intent to forfeit; and (3) probable cause for the forfeiture exists.

Property may not be sold to an employee of the seizing agency or to an employee's family member.

If property representing proceeds of a designated offense 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
- 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
- 40 percent to the city treasury for distribution to neighborhood crime prevention programs

A special formula also applies to the distribution of proceeds from the sale of property forfeited for trafficking of persons. In these cases, proceeds are distributed as follows:

- 40 percent to the law enforcement agency
- 20 percent to the prosecuting agency
- 40 percent to the commissioner of public safety for distribution to trafficking crime victim service organizations

Each law enforcement agency or the prosecutor 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 statutory authority for the forfeiture, the date of the forfeiture, a brief description of the circumstances involved, and whether the forfeiture was contested. The report also must include the number, make, model, and serial number of firearms seized by the agency. For DWI and drug forfeitures, the report must indicate if it was initiated as an administrative or judicial forfeiture. Finally, the report must indicate how the property was disposed or if it was returned to the property owner. The state auditor must, in turn, report annually to the legislature on the nature and extent of forfeitures during the preceding year.

These reporting requirements apply to the following types of forfeiture: game, fish, and wetland violations (motor vehicles, bows, and firearms only), DWI, gambling, racketeering, and general forfeiture under [chapter 609, Minn. Stat. § 609.5315](#). See also [Minn. Stat. §§ 84.7741](#), subd. 13; [97A.221](#), subd. 5; [97A.223](#), subd. 6; [97A.225](#), subd. 10; [169A.63](#), subd. 12.

## **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 and the owner 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<sup>4</sup>

### **Forfeiture of Motor Vehicles and Recreational Vehicles Used to Commit Impaired Driving Offenses**

**Minnesota's impaired driving law provides a special forfeiture procedure applicable to motor vehicles and recreational vehicles (such as snowmobiles, all-terrain vehicles, and motorboats) used to commit certain alcohol-related traffic offenses.**

This law authorizes the forfeiture of a motor vehicle or recreational vehicle used to commit one of the following:

- a first- or second-degree DWI offense. A person is guilty of a first-degree DWI offense if the person: (1) violates DWI law within ten years of the first of three or more qualified prior impaired driving incidents; or (2) violates DWI law and has previously been convicted of a felony DWI or felony criminal vehicular operation while under the influence of drugs or alcohol. A second-degree DWI offense includes those that involve two or more "aggravating factors," or an implied consent test refusal and one "aggravating factor." "Aggravating factor" means: (1) having a prior impaired driving conviction or license revocation in the past ten years; (2) having an alcohol concentration of 0.20 or more at the time of the offense; or (3) having a passenger under the age of 16 in the vehicle at the time of the offense.<sup>5</sup>
- a DWI offense committed by a person whose driver's license has been canceled as "inimical to public safety" and not reinstated
- 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 (commonly referred to as a "B-card")

A person's vehicle also may be forfeited under this law based on a license revocation instead of a criminal conviction, if it is preceded by two or more prior impaired driving convictions or license revocations within the previous ten years. [Minn. Stat. § 169A.63](#), subd. 1, paras. (d) and (e).

A motor vehicle is subject to forfeiture if it was used in the commission of a designated offense or used in conduct resulting in a designated license revocation. There is a presumption that a vehicle is subject to forfeiture if: (1) the driver is convicted of the designated offense on which

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<sup>4</sup> This section does not include any discussion of property forfeiture due to tax law violations.

<sup>5</sup> See [Minn. Stat. §§ 169A.24; 169A.25](#).

the forfeiture is based; (2) the driver fails to appear for a scheduled court appearance and fails to voluntarily surrender within 48 hours after the time required for appearance; or (3) the driver's conduct results in a designated license revocation and the driver does not seek timely judicial review or judicial review is upheld. [Minn. Stat. § 169A.63](#), subd. 7.

If the owner was not the violator, the vehicle is not subject to forfeiture if the owner can demonstrate by clear and convincing evidence that the owner did not have actual or constructive knowledge that the vehicle would be used or operated unlawfully or that the owner took reasonable steps to prevent use of the vehicle by the offender.<sup>6</sup> If the offender is a "family or household member" and has three or more prior impaired driving convictions, the owner is presumed to know of any vehicle use by the offender that is contrary to law (including but not limited to a violation of driving without a valid license, failure to produce proof of insurance, driving restrictions, DWI, underage drinking and driving, and open bottle law). 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. [Minn. Stat. § 169A.63](#), subd. 7.

The forfeiture may be affected either through administrative forfeiture or judicial action. These administrative and judicial processes are essentially the same as those provided under the general forfeiture law described in part 1. However, in an administrative hearing, the claimant must file a demand for a judicial hearing within 30 days of service (instead of 60 days). The demand must be filed with the court administrator and served on both the prosecuting attorney and the appropriate agency. [Minn. Stat. § 169A.63](#), subd. 8. The vehicle must be returned to the owner immediately if the person charged with committing the designated offense appears in court and is not convicted of the offense, the license revocation is rescinded, or the vehicle owner can demonstrate that he or she did not have actual or constructive knowledge of the offense. [Minn. Stat. § 169A.63](#), subd. 9.

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 the proceeds do not equal or exceed an outstanding loan balance on the vehicle, the agency must remit all sale proceeds (minus storage and sale expenses) to the secured party.<sup>7</sup> If a vehicle is sold, the net proceeds must be distributed as follows:

- 70 percent to the law enforcement agency for use in DWI-related enforcement, training, and education
- 30 percent to the prosecuting agency

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<sup>6</sup> In 2009, the Minnesota Supreme Court ruled that, in the case of joint ownership of a vehicle, all owners must be innocent in order for any owner to employ the innocent owner defense. *Laase v. 2007 Chevrolet Tahoe*, 776 N.W.2d 431 (Minn. 2009). See part IV.

<sup>7</sup> A secured party may elect to foreclose on the loan and sell the vehicle at its own foreclosure sale. If so, that sale process replaces the forfeiture sale process. The secured party is subject to certain limits and must reimburse the law enforcement agency for its seizure, storage, and forfeiture expenses. After paying its costs and satisfaction of the lease or lien, the secured party must forward any proceeds that remain to the state treasury for credit to the appropriate fund. [Minn. Stat. § 169A.63](#), subd. 11.

[Minn. Stat. § 169A.63](#), subd. 10.

## **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 *must* seize unlawfully possessed firearms and must seize any items used to illegally take game if no owner of the items can be identified. These items are subject to an administrative forfeiture process, not a judicial one.<sup>8</sup>

The officer also *may* confiscate any wild animals, wild rice, prohibited invasive species, or other aquatic vegetation that have been unlawfully taken or possessed as well as any equipment having a value under \$1,000 that was used to commit the violation. Boats and motors with trailers used to take, possess, or transport wild animals when the animal's restitution value exceeds \$500, may also be seized by an officer.

Furthermore, conservation officers must seize and seek judicial forfeiture of any:

- motor vehicles 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
- boats and motors used to net fish illegally on Lake of the Woods, Rainy Lake, Lake Superior, Namakan Lake, or Sand Point Lake.

The law outlines a confiscation and 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 are credited to the game and fish fund in the state treasury. [Minn. Stat. §§ 97A.215](#) to [97A.225](#).

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<sup>8</sup> Seizure and administrative forfeiture may be appealed if the owner requests a hearing within 45 days after the seizure.

## **Forfeiture of Off-Highway Vehicles**

**Minnesota law authorizes a law enforcement officer to seize and forfeit an off-highway vehicle if it was used in the commission of certain wetland crimes.**

Upon a repeat gross misdemeanor violation for operating an off-highway vehicle in a careless manner and recklessly upsetting the natural and ecological balance of a wetland or public waters wetland, a law enforcement officer may seize an off-highway vehicle used in the commission of the offense. The forfeiture provisions under [section 84.7741](#) are similar to those for DWI violations except that any sale proceeds must be distributed as follows:

- 70 percent to the seizing agency for use in purchasing equipment for off-highway vehicle enforcement, training, and education
- 30 percent to the prosecuting agency

[Minn. Stat. §§ 84.774; 84.7741.](#)

## **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
- property used or intended to be used to illegally influence 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 are 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; 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.<sup>9</sup> 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; 609.908](#).

### 3. Major Constitutional Issues

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

Three significant rulings have been issued by the U.S. Supreme Court concerning whether a particular property forfeiture violates the [Eighth Amendment](#)’s prohibition against “excessive fines” when its value is disproportionate to the seriousness of criminal activity on which it is based.

In 1993, 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, 509 U.S. 602 \(1993\)](#); [Alexander v. United States, 509 U.S. 544 \(1993\)](#).

In the *Austin* and *Alexander* cases, the Court declined to articulate an analytical, constitutional test for determining whether a particular fine or forfeiture is excessive, leaving that task to the

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<sup>9</sup> A civil *in rem* forfeiture proceeding is a proceeding directed against “guilty property” instead of against a criminal offender. Technically speaking, it is separate from and independent of any criminal prosecution. In contrast, an *in personam* forfeiture penalty results from a criminal conviction and is imposed directly on an individual offender as punishment for criminal wrongdoing.

lower courts. 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.

In 1998, the Court ruled for the first time that the government’s forfeiture of a particular sum of money in an *in personam* forfeiture proceeding did, in fact, violate the Excessive Fines Clause of the Eighth Amendment.

In this case, the government forfeited \$357,144 from the defendant because he had unlawfully failed to report to customs officials that he was carrying the money at the time he boarded an international flight. The Court ruled, in a 5-4 decision, that because the defendant’s offense was “solely a reporting offense” and involved minimal culpability or harm, the forfeiture of this large sum of currency was unconstitutional because it was “grossly disproportional” to the gravity of the offense. This “grossly disproportional” standard, the Court stated, is the proper one to use in deciding excessive fine inquiries under the Eighth Amendment because it gives adequate deference to legislative judgments concerning the appropriate level of punishment, and it recognizes the “inherent imprecision” of any judicial determination regarding the gravity of particular criminal offenses. *United States v. Bajakajian*, 524 U.S. 321 (1998).

**Minnesota’s appellate courts look to the “grossly disproportional” test articulated in *U.S. v. Bajakajian* to resolve Eighth Amendment challenges to civil forfeitures.**

In a 2000 case involving a challenge to court-imposed fines and surcharges, the Minnesota Supreme Court looked to the U.S. Supreme Court case, *U.S. v. Bajakajian*, for guidance in applying the Excessive Fines Clause. *State v. Rewitzer*, 617 N.W.2d 407 (Minn. 2000). In *Bajakajian*, the Supreme Court held that a fine is unconstitutional if it is grossly disproportional to the gravity of the offense and adopted the standard of gross disproportionality articulated in *Solem v. Helm*, 463 U.S. 277 (1983). The *Solem* court looked at three factors when considering proportionality: (1) the gravity of the offense and the harshness of the penalty; (2) comparison of the contested fine with fines imposed for the commission of other crimes in the same jurisdiction; and (3) comparison of the contested fine with fines imposed for commission of the same crime in other jurisdictions. Although the *Rewitzer* case involved criminal fines, Minnesota courts have applied the same analysis of the excessive fines clause in civil *in rem* forfeiture cases. See *Miller v. One 2001 Pontiac Aztek*, 669 N.W.2d 893 (Minn. 2003) (upholding forfeiture of a \$16,000 vehicle for a first-degree DWI offense); *City of New Brighton v. 2000 Ford Excursion*, 622 N.W.2d 364 (Minn. Ct. App. 2001) (upholding forfeiture of \$40,000 vehicle for a gross misdemeanor DWI offense); and *Borgen v. 418 Eglon Avenue and \$1,230.00*, 712 N.W.2d 809 (Minn. Ct. App. 2006) (upholding forfeiture of defendant’s house and money as a result of a controlled substance offense).

Before Minnesota courts adopted the gross disproportionality standard, some courts had relied on the “instrumentality or nexus” test, which asks if the property bears a close relationship to the offense. See *City of Worthington Police Dep’t v. One 1988 Chevrolet Berreta*, 516 N.W.2d 581 (Minn. Ct. App. 1994). While the Minnesota Supreme Court since has rejected solely using the “instrumentality or nexus” test, it has stated that the courts may still use the test in conjunction

with the gross-disproportionality test. *Borgen*, 712 N.W.2d at 812 (citing *Miller v. One 2001 Pontiac Aztec*, 669 N.W.3d 893, 897 n. 2 (Minn. 2003)).

## **Does a particular forfeiture violate the U.S. Constitution's prohibition against double jeopardy?**

**A significant ruling was issued by the U.S. Supreme Court in June 1996 concerning whether the Fifth Amendment's prohibition against "double jeopardy" is violated when the government seeks to convict an individual for engaging in criminal activity and, separately, to forfeit property resulting from or used in that same criminal activity.**

The Court ruled that the Fifth Amendment's Double Jeopardy Clause is not violated when the government both punishes a defendant for a criminal offense and forfeits the defendant's property for that same offense in a separate civil proceeding. In contrast to its analysis under the Eighth Amendment's excessive fines clause, the Court ruled that the forfeiture of property in a civil *in rem* proceeding does not constitute "punishment" for purposes of the Double Jeopardy Clause.

The Court used a two-pronged test in reaching this result. First, it considered whether the legislature intended the forfeiture proceedings to be criminal or civil. The Court found that, in this case, Congress clearly intended the proceedings to be civil because it targeted the property itself rather than the property owner as the "guilty party," and it provided distinctly civil procedures for conducting the proceedings. Second, the Court considered whether the forfeiture proceedings were so punitive in form or effect as to clearly render them criminal, despite Congress' intent to the contrary. It found that, while the proceedings had certain punitive aspects, they also served important nonpunitive goals, such as deterring the illegal use of property and ensuring that no one profits from engaging in criminal activity. For these reasons, the Court ruled that civil *in rem* proceedings to forfeit either the proceeds of criminal activity or property used to commit criminal acts are neither punishment nor criminal for purposes of the Double Jeopardy Clause. *United States v. Ursery*, 518 U.S. 267 (1996).

### **The U.S. Supreme Court's ruling in *Ursery* is consistent with recent forfeiture decisions of the Minnesota Court of Appeals concerning the double jeopardy issue.**

In *State v. Rosenfeld*, 540 N.W.2d 915 (Minn. Ct. App. 1995), decided six months before *Ursery*, the Minnesota Court of Appeals upheld the authority of the state to prosecute the defendant for a drug crime after having civilly forfeited property representing instrumentalities and proceeds of the crime. The court ruled that the Double Jeopardy Clauses of neither the federal nor the state constitutions were violated by these actions because the forfeiture was rationally related to such remedial, nonpunitive goals as eliminating the means for engaging in future drug trafficking and reducing the financial incentive for drug dealing.

However, the court of appeals also ruled that when the state seeks to forfeit property that is merely "associated" with a crime, the forfeiture is subjected to closer scrutiny. To escape the limitations of the Double Jeopardy Clause, it must be shown either that the property being subjected to forfeiture was "proceeds" or "instrumentalities" of the crime, or that the forfeiture

served some other remedial goal such as compensating the government for its costs in connection with the property owner's criminal activity. *See Freeman v. Residence Located at 1215 East 21st St.*, 552 N.W.2d 275 (Minn. Ct. App. 1996).

Similarly, in *City of New Hope v. 1986 Mazda 626*, 546 N.W.2d 300 (Minn. Ct. App. 1996), the Court of Appeals upheld the constitutionality of a motor vehicle forfeiture under the DWI forfeiture law. The court ruled that civil forfeiture of a motor vehicle used by a repeat DWI offender to commit a DWI offense is rationally related to the statute's remedial purpose of protecting public safety and, therefore, is not punishment for purposes of the Double Jeopardy Clauses of either the federal or state constitutions. *Accord, City of Pine Springs v. One 1992 Harley Davidson*, 555 N.W.2d 749 (Minn. Ct. App. 1996); *see also Johnson v. 1996 GMC Sierra*, 606 N.W.2d 455 (Minn. Ct. App. 2000), reviewed denied April 18, 2000; *Hawes v. 1997 Jeep Wrangler*, 602 N.W.2d 874 (Minn. Ct. App. 1999); *Lukkason v. 1993 Chevrolet Extended Cab Pickup*, 590 N.W.2d 803 (Minn. Ct. App. 1999), review denied May 18, 1999; *City of New Brighton v. 2000 Ford Excursion*, 622 N.W.2d 364 (Minn. Ct. App. 2001); *Schug v. Nine Thousand Nine Hundred Sixteen Dollars & Fifty Cents in U.S. Currency*, 669 N.W.2d 379 (Minn. Ct. App. 2003).

## 4. Minnesota Cases of Interest

**The following case summaries highlight specific forfeiture issues decided by Minnesota appellate courts.**

In cases of **joint ownership** of a vehicle, the **innocent-owner defense** found in Minnesota Statutes, section 169A.63, subdivision 7, paragraph (d) only applies when *all* owners are innocent. *Laase v. 2007 Chevrolet Tahoe*, 776 N.W.2d 431 (Minn. 2009) (involving husband and wife joint ownership; because wife was an owner and an offender, the defense did not apply and the vehicle was properly forfeitable).

“[T]he Minnesota Constitution's **homestead exemption**, as implemented by [Minnesota Statutes, section 510.01](#), exempts homestead property from forfeiture.” The court looked at the question of whether the drug-asset forfeiture statute, [Minnesota Statutes, section 609.5311](#), subdivision 2, was constitutional as applied to homestead property. *Torgelson v. Real Property Known As 17138 - 880th Ave.*, 749 N.W.2d 24 (Minn. 2008).

A prior **administrative license revocation** may be used as an aggravating factor to subject a vehicle to forfeiture pursuant to [Minnesota Statutes, section 169A.63](#), subdivision 6, without violating due process when there was no hearing on a petition for judicial review (PJR) because of the petitioner's voluntary decision to withdraw the PJR prior to the commencement of the forfeiture trial. *Heino v. One 2003 Cadillac*, 762 N.W.2d 257 (Minn. Ct. App. 2009).

The vehicle forfeiture statute ([Minn. Stat. § 169A.63](#)) is **civil/regulatory** and thus cannot be enforced by the state against Indian-owned vehicles for conduct occurring on the owner's reservation. *Morgan v. 2000 Volkswagen*, 754 N.W.2d 587 (Minn. Ct. App. 2008).

The DWI forfeiture statute does not require that a driver be **convicted** of a designated offense; **commission** of a designated offense is sufficient for forfeiture. *Mastakoski v. 2003 Dodge Durango*, 738 N.W.2d 411 (Minn. Ct. App. 2007) (Appellant plead guilty to third-degree DWI and state dismissed charge of second-degree DWI that was undisputed appellant committed.)

An **insurance-settlement payment** representing the fair-market value of a destroyed vehicle qualifies as a proceed from a crime under [Minnesota Statutes, section 609.5312](#). An insurance payment is subject to forfeiture where the destroyed vehicle is also subject to forfeiture. *Schug*, 669 N.W.2d 379 (Minn. Ct. App. 2003).

## 5. Minnesota Legislative Action

**The 2010 Legislature enacted laws aimed at addressing allegations of misconduct by officers assigned to the Metro Gang Strike Force, including improper seizures and forfeitures.**

In May 2009, the Legislative Auditor's financial audit division conducted a special review of the Metro Gang Strike Force and found 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."<sup>10</sup> Subsequent to this report and after further allegations of misconduct, the strike force was shut down. An additional investigation was conducted at the request of the Department of Public Safety. This report, known as the "Luger" report, found "credible allegations of misconduct relating to strike force employees that went beyond the findings of the Legislative Auditor," including illegal seizures, potential civil rights violations, and improper handling of seized property and evidence.<sup>11, 12</sup>

In an effort to curb further potential abuse, the 2010 Legislature passed two bills that addressed the oversight of multijurisdictional task forces, such as the Metro Gang Strike Force,<sup>13</sup> and made changes to various seizure and forfeiture laws. Regarding the latter, [chapter 391](#) implemented the following changes in forfeiture law:

- Requires officers to give receipts upon seizing property

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<sup>10</sup> Office of the Legislative Auditor, State of Minnesota, *Metro Gang Strike Force: Special Review* (May 20, 2009), 1, <http://www.auditor.leg.state.mn.us/fad/pdf/fad0918.pdf>.

<sup>11</sup> Andrew Luger and John Patrick Egelhof, *Report of the Metro Gang Strike Force Review Panel* (August 20, 2009), 2, [http://www.dps.state.mn.us/Docs/FINALReport\\_MGSFReviewPanel.PDF](http://www.dps.state.mn.us/Docs/FINALReport_MGSFReviewPanel.PDF).

<sup>12</sup> One strike force officer was indicted by a federal grand jury in August 2010. A month later, Hennepin County Attorney Mike Freeman announced he had insufficient evidence to criminally charge former strike force officers under Minnesota state law. Randy Furst, "Obstacles Sink State's Strike Force Case," *Star Tribune*, September 9, 2010.

<sup>13</sup> See [Laws 2010, ch. 383](#).

- Amends bond provisions for forfeited property
- Implements timelines for forfeiture notice and hearings
- Amends conciliation court jurisdiction to include certain forfeiture claims
- Places a cap on the value of property that may be forfeited administratively
- Requires prosecutors to certify administrative forfeitures
- Prohibits sales of forfeited property to officers and their family members
- Amends and expands forfeiture reporting requirements
- Requires the Peace Officers Standards and Training (POST) Board and the Minnesota County Attorneys' Association to develop a statewide model policy for best practices in forfeiture

One of the legislature's main concerns was the use of administrative forfeiture provisions. If an agency administratively forfeits property, there is no judicial review or formal process. Moreover, the previous law did not set any time limits for initiating these actions. To increase accountability and oversight, the legislature implemented a 60-day timeline to serve notice after seizure and required that contested claims be heard within 180 days of the demand. A cap of \$50,000 was placed on administrative forfeitures (anything above that value would need to be forfeited judicially), and prosecutors must certify that certain procedures were met before an agency can dispose of administratively forfeited property. Reporting requirements were also expanded to increase transparency of forfeiture actions.

## Appendix

### Definition of “Appropriate Agency” in the General Forfeiture Law (Minn. Stat. § 609.531, subd. 1)

- Bureau of Criminal Apprehension
- Department of Commerce Division of Insurance Fraud Prevention
- Minnesota Division of Driver and Vehicle Services
- Minnesota State Patrol
- A county sheriff's department
- Three Rivers Park District park rangers
- Department of Natural Resources Division of Enforcement
- University of Minnesota Police Department
- Department of Corrections Fugitive Apprehension Unit
- A city, metropolitan transit, or airport police department
- A multijurisdictional task force

### 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 driver's license or ID card transactions**, “designated offense” includes any violation of [section 171.22](#) (to use, possess, make, or display a fictitious or fraudulently altered card; to permit another to use one's card; to display a card that is not one's own; to make a false application; to alter a card; to give a false name or date of birth to a peace officer).

**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 ([Minn. Stat. §§ 325E.17; 325E.18](#))
- murder in the first, second, or third degree ([Minn. Stat. §§ 609.185; 609.19; 609.195](#))
- criminal vehicular homicide and injury ([Minn. Stat. § 609.21](#))
- assault in the first, second, third, or fourth degree ([Minn. Stat. §§ 609.221 to 609.2231](#))
- simple or aggravated robbery ([Minn. Stat. §§ 609.24; 609.245](#))

- kidnapping ([Minn. Stat. § 609.25](#))
- false imprisonment ([Minn. Stat. § 609.255](#))
- labor trafficking and unlawful conduct with respect to documents in furtherance of trafficking ([Minn. Stat. §§ 609.282; 609.283](#))
- solicitation or promotion of prostitution or sex trafficking ([Minn. Stat. § 609.322](#))
- criminal sexual conduct in the first, second, third, or fourth degree (certain provisions only) ([Minn. Stat. §§ 609.342 to 609.345](#))
- solicitation of children to engage in sexual conduct ([Minn. Stat. § 609.352](#))
- bribery ([Minn. Stat. § 609.42](#))
- corruptly influencing a legislator ([Minn. Stat. § 609.425](#))
- Medical Assistance fraud ([Minn. Stat. § 609.466](#))
- escape from custody ([Minn. Stat. § 609.485](#))
- fleeing a peace officer in a motor vehicle ([Minn. Stat. § 609.487](#))
- theft ([Minn. Stat. § 609.52](#))
- bringing stolen goods into the state ([Minn. Stat. § 609.525](#))
- identity theft ([Minn. Stat. § 609.527](#))
- possession or sale of stolen/counterfeit checks ([Minn. Stat. § 609.528](#))
- receiving stolen property ([Minn. Stat. § 609.53](#))
- embezzlement of public funds ([Minn. Stat. § 609.54](#))
- rustling and livestock theft ([Minn. Stat. § 609.551](#))
- arson in the first, second, or third degree ([Minn. Stat. §§ 609.561 to 609.563](#))
- burglary ([Minn. Stat. § 609.582](#))
- possession of burglary or theft tools ([Minn. Stat. § 609.59](#))
- damage to property ([Minn. Stat. § 609.595](#))
- insurance fraud ([Minn. Stat. § 609.611](#))
- check forgery ([Minn. Stat. § 609.631](#))
- drive-by shooting ([Minn. Stat. § 609.66](#), subd. 1e)
- hazardous waste, water pollution, and air pollution crimes ([Minn. Stat. § 609.671](#), subds. 3, 4, 5, 8, and 12)
- adulteration ([Minn. Stat. § 609.687](#))
- financial transaction card fraud ([Minn. Stat. § 609.821](#))
- bribery of official or contestant in contest ([Minn. Stat. § 609.825](#))
- commercial bribery ([Minn. Stat. § 609.86](#))
- computer damage or theft ([Minn. Stat. §§ 609.88; 609.89](#))
- telecommunications and information services fraud ([Minn. Stat. § 609.893](#))
- counterfeiting intellectual property ([Minn. Stat. § 609.895](#))
- use of minors in sexual performance ([Minn. Stat. § 617.246](#))

- possession of pornographic work involving minors ([Minn. Stat. § 617.247](#))

(2) gross misdemeanor and felony violations of:

- unauthorized computer access ([Minn. Stat. § 609.891](#))
- carrying a rifle or shotgun in a public place ([Minn. Stat. § 624.7181](#))

(3) any prostitution offense violation (involving patrons and prostitutes) ([Minn. Stat. § 609.324](#))

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