

## Forfeiture Guiding Principles

Forfeiture statutes have been, and should continue to be, a valuable tool for law enforcement in Minnesota. The Minnesota County Attorneys Association endorses the following principles that should guide consideration of forfeiture laws and the operation of forfeiture programs. Each of the following principles is supported by existing law. Conformance with these principles does not require any changes in existing law.

- 1. Crime should not be profitable. Those involved in criminal activity should not be allowed to retain the proceeds of or property used to facilitate that activity.**

Minnesota's forfeiture statutes are based upon the common sense idea that those involved with criminal activity should not be allowed to keep the proceeds of criminal activity or property used to facilitate a crime. Crime should not pay. Thus, money obtained from drug dealing or promoting prostitution, for example, should not be retained by the dealer or pimp. Similarly, fundamental fairness and public safety require that the tools used to commit crime, such as a computer used to possess child pornography, a firearm used by a drug dealer, or a car driven by a repeat drunk driver, should be forfeited instead of returned to the wrongdoer. In this way, the forfeiture statutes further important public safety and justice functions.

- 2. Forfeiture should occur only in a separate civil proceeding, according to civil standards of proof. Resolution of any criminal case should be independent of any forfeiture.**

Forfeiture is not and should not be a part of a criminal action. In particular with respect to drug crimes, money and guns recovered in proximity to the drugs are appropriately presumed to be proceeds or facilitating property to criminal activity. This is true even if the state cannot prove beyond a reasonable doubt which of a number of suspects was the actual owner or possessor of the drugs, money, or guns.

Additionally, criminal cases and forfeiture proceedings serve distinct purposes and should rise or fall each on their own merits.

- 3. Notice of forfeiture should be promptly given to the potential claimant and to a prosecuting agency and no contested forfeiture should occur unless approved by a prosecuting agency.**

Minnesota's existing forfeiture statutes appropriately provide due process for a forfeiture claimant. Providing notice to a potential claimant (or leaving a notice at the location where the property was seized) is an important component of due process and, represents a critical first step in tracking the care and disposition of seized property. In addition, providing a copy of that notice to the appropriate prosecutor in a timely manner serves an important oversight function by allowing the prosecutorial agency to track property that was seized pursuant to forfeiture laws. Finally, if a claimant

contests the forfeiture, the prosecutorial agency should review the claim and make a determination as to how best to proceed. Law enforcement should neither finally forfeit seized property nor return it (or any portion of it) to the claimant without receiving notice from the prosecutorial agency that either the time for contesting the forfeiture has passed and no claim has been made, or the matter has been finally resolved, either by settlement or in accordance with statutory processes.

**4. Property taken in conscious or reckless disregard of the law should be returned unless it is contraband.**

Minnesota law appropriately provides that a forfeiture action is a civil in rem proceeding that is “independent of any criminal prosecution.” Nonetheless, if a person's property is taken in a conscious or reckless disregard for the law the property should be returned to the person unless the ongoing possession of the property would be unlawful. Moreover, under such circumstances, it must be returned whether or not a criminal prosecution could be maintained with the improperly seized property excluded from evidence.

**5. The rights of innocent owners should be respected and protected in the forfeiture process.**

Holders of property interests who are legitimately unaware the property in which they have an interest is being used to facilitate a crime (for example, banks with liens) should have their interests respected and protected. Current Minnesota forfeiture law appropriately defines which property interest holders are “innocent owners” and which are not.

**6. Forfeiture proceeds are appropriately used to supplement law enforcement and prosecutorial funding.**

Current Minnesota law provides that forfeiture proceeds are to be distributed to law enforcement and prosecutors to “supplement” their budgets. Using proceeds of criminal activity to prevent and combat crime is a common sense idea that Minnesota law and the law of most states reflects. The idea that forfeiture proceeds must “supplement” and not replace the operating budgets of law enforcement and prosecution is important. Forfeiture funds are appropriately used at the discretion of those offices for community engagement, training, extraordinary capital expenses and the like. Minnesotans have come to expect law enforcement and prosecutors in the State to be among the leaders in their professions. The supplemental funds have played an important role in allowing the kind of training, community engagement, and investments high quality professional justice leadership requires. The statutory requirement that forfeiture funds “supplement,” but do not replace core criminal justice funding, helps to ensure law enforcement activities are not negatively impacted by funders anticipating forfeiture revenue and considering it a budget offset.

*Adopted by the MCAA Board of Directors on October 16, 2009*