

# DAKOTA COUNTY ATTORNEY'S OFFICE FORFEITURE POLICY

**DATE:** January 6, 2011  
**TO:** All Employees of the Dakota County Attorney's Office  
**FROM:** James C. Backstrom, County Attorney *SCB*  
**SUBJECT:** Forfeiture Policy of Dakota County Attorney's Office  
**EFFECTIVE DATE:** January 6, 2011  
**REPLACES POLICY DATED:** N/A

This policy is being adopted pursuant to Minnesota law governing forfeiture actions and the requirements of Minn. Stat. § 609.531, Subd. 8(d).

The pursuit of forfeiture actions under Minnesota law is an important process to insure that those involved in criminal activity are not allowed to keep the proceeds of their crimes and to seize property used to facilitate the commission of a crime. It is important that such actions be done in accordance with the law and with respect for the rights of the person(s) from whom the property is seized. All property seized pursuant to forfeiture in Dakota County should be processed in accordance with these guidelines.

## Forfeiture Guidelines

### 1. Purpose of Forfeiture

Under Minnesota law, forfeiture must be liberally constituted to carry out the following remedial purposes:

- to enforce the law;
- to deter crime;
- to reduce the economic incentive to engage in criminal enterprise;
- to increase the pecuniary loss resulting from the detection of criminal activity; and
- to forfeit property unlawfully used or acquired and divert the property to law enforcement purposes.

### 2. Applicable Law

Civil forfeitures can occur in Minnesota in accordance with the following statutes:

- Minn. Stat. § 84.7741 – Off Highway Vehicles
- Minn. Stat. § 97A – Game and Wildlife Violations
- Minn. Stat. § 169A.63 – Driving While Impaired Violations
- Minn. Stat. § 609.531 – Controlled Substances and Other Designated Offenses
- Minn. Stat. § 609.762 – Gambling Violations

### **3. Statutory Role of Prosecutors in Forfeiture Proceedings**

- A. There is a distinction between the statutory role of the County Attorney in the prosecution of criminal cases and the statutory role of the County Attorney in pursuing civil forfeiture actions in compliance with Minnesota civil law. Forfeiture is a civil *in rem* action and is independent of any criminal prosecution. In furtherance of the goal of keeping these two roles separate and independent of one another, forfeiture actions shall be handled in the Civil Division of the Dakota County Attorney's Office. Such actions shall remain separate from any criminal prosecution underway pertaining to the money or property for which a forfeiture action has been commenced. Decisions in forfeiture cases should not be controlled by or influenced by the criminal prosecution, unless otherwise provided by law.
- B. Assistant County Attorneys handling forfeiture actions should:
  - 1) review existing case law and monitor new case law in the area of forfeiture proceedings;
  - 2) review seizure, retention, disposition and distribution of money and property seized by law enforcement agencies to insure compliance with statutory requirements [this review should include, but not be limited to responding to a Petition for Remission or Mitigation filed pursuant to Minn. Stat. § 609.5315, Subd. 7 and certifying forfeitures pursuant to Minn. Stat. § 609.5315, Subd. 2];
  - 3) review service and/or notice to potential claimants for compliance with statutory requirements;
  - 4) commence judicial actions necessary to accomplish the forfeiture on behalf of the seizing law enforcement agency;
  - 5) represent the County Attorney and law enforcement agency in the forfeiture action; and
  - 6) insure that the Dakota County Attorney's Office is in compliance with all reporting requirements outlined in Minn. Stat. § 609.5315, Subd. 6.

### **4. Best Practices for Timely and Fair Resolution of Forfeiture Cases**

- A. To insure adequate compliance with Minnesota law and the fair and just pursuit of forfeiture actions, law enforcement agencies seizing money or property for purposes of forfeiture should promptly notify the County Attorney (or other prosecuting agency involved in the case) of the seizure of the money or property and forward all reports pertaining thereto to the County Attorney (or other prosecuting agency).
- B. Once received by the County Attorney, forfeiture cases shall be promptly reviewed by an Assistant County Attorney to insure compliance with statutory requirements, to insure compliance with office policies pertaining to forfeitures, and to evaluate whether mitigating factors justify not pursuing the forfeiture action in whole or in part. Such evaluation shall also include an analysis of the likelihood of successful forfeiture.

- C. Money or property taken in a manner inconsistent with Minnesota law governing forfeiture actions and excluded from evidence in the criminal case, which exclusion has been confirmed by an appellate court or the appeal time has run, shall be returned or processed as stated in this Policy. If the Assistant County Attorney reviewing a forfeiture action determines that a person's money or property may have been seized in a manner inconsistent with Minnesota law governing forfeiture actions, the Assistant County Attorney shall notify the seizing agency that the money or property shall be returned to the lawful owner as soon as possible, unless the ongoing possession of the money or property by the owner would be unlawful or against public policy in which event it shall be returned to a law enforcement agency for proper disposal.

**5. General Principles Applicable to Forfeitures Occurring in Dakota County**

- A. The recovery of unlawfully obtained proceeds of criminal activity and the elimination of the instrumentalities used to commit crimes are the principal goals of forfeiture.
- B. Forfeiture proceedings should not be initiated if to do so would jeopardize the effective investigation and prosecution of criminal activity, officer safety, the integrity of ongoing investigations, or the due process rights of citizens.
- C. The U.S. and Minnesota Constitutions, as well as State and Federal statutes, prohibit the improper use of personal characteristics such as race, color, creed, national origin, gender, religion, marital status, disability, sexual orientation or age to target individuals for law enforcement action, including forfeiture seizures.
- D. No Assistant County Attorney's or other government entity employee's ongoing employment or salary shall depend upon the level of seizures or forfeitures he or she personally achieves. Dakota County law enforcement agencies are encouraged to adopt similar guidelines as to law enforcement officers involved in the forfeiture of money or property.
- E. Where multiple agencies in a geographic region have jurisdiction to pursue forfeiture, every reasonable effort should be made to cooperate to advance the public interest and avoid duplication of effort in pursuing forfeiture actions.
- F. Every government entity with the authority to seize property shall insure that its asset forfeiture program provides for: (a) written documentation of the seizure and items seized; (b) independent prosecutorial review of the circumstances and propriety of the seizure; (c) timely notice of seizure to interest holders of seized property; and (d) timely resolution of ownership claims and a prompt release of property to those entitled to the return of the property.
- G. All seized property shall be held in the same manner as evidence pending completion of the forfeiture action. Cash may be deposited with the agency's fiscal agent, unless needed as evidence. Every seizing agency shall use reasonable diligence to secure the property and prevent waste to preserve value for successful claimants, crime victims and the agencies to which the distribution of forfeited property is made.

- H. Entities retaining forfeited property for official law enforcement use shall insure that the property is subject to internal controls consistent with those applicable to property acquired through the normal appropriations process of that entity.
- I. Property should not be used for law enforcement purposes prior to it being forfeited. Once forfeited, all property should be used and disposed of in a manner consistent with applicable law and with the use and disposition of similar property by that agency.
- J. The retention of forfeited property for official use should be approved by the head of the law enforcement agency seizing the property or his/her designee.
- K. Forfeiture proceeds should be maintained in a separate fund or account subject to appropriate accounting control with regular reviews or audits of all deposits and expenditures. Records of forfeitures should be kept for a minimum of 6 years.

**6. Situations in Which Forfeitures Should Not Be Pursued**

There are situations where a forfeiture action should not be pursued notwithstanding the broad remedial purposes for which forfeitures are authorized by Minnesota law (*see* Sections 1 and 2 above). Forfeitures should not be pursued in cases where there exists a substantial factual or statutory impediment, a valid defense, or extenuating circumstances justifying the remission or mitigation of forfeiture of property from individuals in accordance with Minn. Stat. § 609.531, Subd. 7. The determination not to pursue a forfeiture action shall be made after reviewing all of the relevant facts pertaining to the situation and after consulting with the law enforcement agency involved in seizing the property.

**7. Remission or Mitigation**

Minnesota Statutes § 609.531, Subd. 7 authorizes the County Attorney, upon receipt of a timely petition from a person who has an interest in forfeited property, to remit or mitigate the forfeiture upon terms and conditions deemed reasonable if the County Attorney determines:

- A. the forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law; or
- B. extenuating circumstances justify remission or mitigation of the forfeiture.

A petition for remission or mitigation must be filed with the County Attorney prior to the entry of a court order disposing of the forfeiture action.

**8. Negotiated Settlement**

In addition to any remission or mitigation authorized under Minn. Stat. § 609.531, Subd. 7, the County Attorney retains the discretion to negotiate the resolution of any forfeiture action commenced by or subject to review by the County Attorney's Office in accordance with terms deemed to be acceptable by the person or persons with an interest in the property being forfeited.

## **9. Training**

The Dakota County Attorney's Office has adopted a procedures manual covering forfeiture actions. Assistant County Attorneys handling forfeiture cases shall review the procedures manual and Minnesota law relating to forfeiture actions when assigned to handle these cases by the County Attorney. Assistant County Attorneys will also receive training that includes best practices for timely and fair resolution of forfeiture cases, notice to interest holders, the release of seized property where appropriate, the resolution of claims of innocent ownership, and situations in which forfeiture should not be pursued. As necessary, the Dakota County Attorney's Office shall provide ongoing training regarding statutory changes and case law updates to Assistant County Attorneys handling forfeiture cases. Additionally, the Dakota County Attorney's Office shall assist Dakota County law enforcement agencies in providing appropriate training concerning forfeiture law and procedures.

## **10. Criminal Forfeitures for Racketeering (RICO) Cases**

Criminal forfeitures are authorized under Minnesota law for Racketeering (RICO) crimes by Minn. Stat. § 609.905. All such forfeitures shall adhere to the procedures set forth in Minn. Stat. § 609.905 to 609.910.

## **11. Minimum Forfeiture Thresholds**

The following minimum forfeiture thresholds are established for forfeitures initiated by or subject to review by the Dakota County Attorney's Office:

- Vehicles and other conveyance devices must have a net retail value of \$2,000.00 or more, except in DWI or fleeing cases, which may be forfeited regardless of value at the discretion of the County Attorney.
- Cash/cash equivalents must have a value of \$100.00 or more.
- Personal property, including jewelry, must have a net retail value of \$500.00 or more.
- Real property must have a net retail value of \$2,000.00 or more.

Firearms and other dangerous weapons used in the commission of a criminal offense will be subject to forfeiture irrespective of their value.

Forfeiture of any item whose value is below the minimum threshold requires review by the County Attorney or designee.

## **12. Updates to Forfeiture Guidelines**

This forfeiture policy shall be updated whenever necessary to conform to changes in Minnesota law or whenever changes are deemed advisable by the County Attorney.