

FILLMORE COUNTY ATTORNEY'S OFFICE
FORFEITURE POLICY

To: Employees of the Fillmore County Attorney's Office
From: Brett A. Corson, Fillmore County Attorney
Re: Forfeiture Policy
Date: February 28, 2011

Effective Date: February 28, 2011
Replaces Policy Dated: NA

Pursuant to Minn.Stat. §609.531 Subd. 8(d), the Fillmore County Attorney's Office hereby adopts and implements the following written policy regarding civil forfeitures.

Purposes of Forfeiture

Under Minnesota Law, forfeiture must be liberally construed to carry out the following remedial purposes:

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

Potential revenue, however, must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens.

Statutes Authorizing Forfeiture

Civil forfeitures are governed by the following statutes:

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

Criminal forfeitures are authorized under Minn.Stat. §609.905 – 609.910 for RICO crimes. Civil remedies for RICO crimes may be brought under Minn.Stat. §609.911.

General Forfeiture Guidelines

The U.S. and Minnesota Constitutions, and State and Federal Statutes, prohibit the improper use of personal characteristics such as race, color, national origin, gender, or religion to target individuals for law enforcement action.

No prosecutor's or licensed peace officer's employment or salary may be made to depend upon the level of seizures of forfeitures he or she achieves.

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.

Every government entity with the authority to seize property shall maintain written documentation of all seizures and items seized.

General Forfeiture Procedures – Before and During Forfeiture

All seized property shall be held like evidence until forfeiture is finalized or items are returned to the claimant or person with an ownership interest. 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 as well as taxpayers.

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 forfeiture 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.

In addition to remission and mitigation authorized by 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.

Minimum Thresholds

Forfeitures initiated by, or subject to review by, the Fillmore County Attorney's Office shall meet the following minimum values:

- Vehicles and other conveyances 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, except:
 - Personal computers or laptops may be forfeited regardless of value at the discretion of the County Attorney.
 - Firearms or other dangerous weapons used in the commission of a criminal offense will be subject to forfeiture irrespective of their value.
- Real property must have a net a value of \$2,000.00 or more.

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

Best Practices for Timely and Fair Resolution

Law enforcement agencies seizing money or property for purposes of forfeiture shall promptly notify the County Attorney of the seizure and forward all reports pertaining to the seizure to the County Attorney.

Once received by the County Attorney, forfeiture cases shall be promptly reviewed by the County Attorney or designee to:

- Insure compliance with all statutory requirements and office policies pertaining to forfeitures, including whether a person's money or property may have been seized in a manner inconsistent with Minnesota Law governing forfeiture actions; and
- To evaluate whether mitigating factors justify not pursuing the forfeiture action in whole or in part, including an analysis of the likelihood of successful forfeiture.

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 to the claimant or a person with an ownership interest.

General Forfeiture Procedures – After Forfeiture

Entities retaining forfeited property for official law enforcement use shall ensure that the property is subject to internal controls consistent with those applicable to property acquired through the normal appropriations process of that entity.

Property should not be used unless the forfeiture action has been completed. Forfeited property not used in an undercover capacity should be sold or added to the regular inventory of the agency. All property should be used and disposed of in a manner consistent with the use and disposition of similar property by that agency.

The retention of property for official use should be approved by the chief law enforcement agency seizing the property or designee.

Forfeiture proceeds shall 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 shall be kept for a minimum of six years.

Prosecutor's Role and Training

Attorneys handling forfeiture actions shall:

- Familiarize themselves with the statutes and procedures for handling forfeiture cases;
- Review existing case law and monitor new case law in the area of forfeiture proceedings;
- Be mentored by the County Attorney, or designee, on best practices for timely and fair resolution of forfeiture cases, notice to interest holders, release of seized property where appropriate, resolution of claims of innocent ownership, and situations in which forfeiture should not be pursued;
- Commence judicial actions necessary to accomplish the forfeiture on behalf of the seizing law enforcement agency; and
- Represent the County Attorney and law enforcement agency in the forfeiture action.

As available and as appropriate to the attorneys' needs, the Fillmore County Attorney's Office shall provide access to outside trainings on forfeiture.

The Fillmore County Attorney's Office shall assist Fillmore County law enforcement agencies in providing appropriate training concerning forfeiture law and procedures. This may include in-house training, if mutually agreed-upon by the agencies involved.

Forfeiture is a civil *in rem* action and separate from any criminal prosecution. Ideally, forfeiture and criminal cases are handled by different attorneys. The Fillmore County Attorney's Office, however, is comprised of three attorneys, two of which are part-time. Forfeiture and criminal cases may be handled by the same attorney, but decisions in forfeiture cases shall not be controlled by or influenced by the criminal prosecution, unless otherwise provided by law.

Policy Updates

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.