



## Tip of the Month December 2021

### How New Minnesota Forfeiture Laws Will Affect Property Owners

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For years, Minnesota forfeiture laws have gone against American Fourth Amendment seizure ideology in that an innocent person can have their property seized and forfeited under Minnesota Statute §169A.63, §609.531-§609.5317. The nature of DWIs and controlled substances forfeiture is tricky, which leaves an opportunity for innocent owners' property to be seized by law enforcement. Minnesota law has left innocent owners, including those with no charges or dropped charges with little resources and recourse for obtaining forfeited property, at the mercy of law enforcement. Even the Minnesota Courts Self Help Center's page for Forfeiture and Impoundment currently states that the recourse for no charges or dismissed charges when property is forfeited is unknown. Additionally, this law unfavorably affected property owners experiencing poverty. Not only were innocent owners getting property taken away, but they also had to pay an additional fee, known as the court filing fee, in order to try to gain their property back. Fortunately, Minnesota's new forfeiture laws that go into effect January 1, 2022, aim to eliminate these issues by providing a way for innocent owners to receive their property back without having to pay court filing fees.

#### Summary of the Effect of the New Laws on Property Owners

##### Minnesota Statute §169A.63

**Subdivision 7:** Innocent owners now have 60 days after service of notice of seizure to notify the prosecuting authority. (a) Whereas, previously, owners would have to petition the court. The prosecuting authority may release the vehicle to the asserting innocent owner. However, if the prosecuting authority process with the forfeiture they must file a separate complaint and must be served on the asserting person (b-c). At the hearing the prosecuting authority must prove by a preponderance of the evidence that a crime under §609.5314 took place. (e) Then the asserting person must prove by a preponderance of the evidence that they have actual ownership and that they did not have actual or constructive knowledge that the vehicle would be used in such manner. (f) The prosecuting authority must succeed on their claims and the asserting person must fail on theirs in order for the vehicle to remain subject to forfeiture. (g) The vehicle will be returned to the asserting party if the state failed to meet their burden, the asserted person succeeded on their claims, or both. (h) Unfortunately, innocent owners are still subject to reasonable costs of towing, seizure, and storage.

**Subdivision 8:** Owners will no longer have to pay a filing fee for conciliation court.

**Subdivision 13:** These exceptions were added to sections 7. A forfeiture proceeding is stayed, and the vehicle must be returned if the driver is a program participant in the ignition interlock program before the motor vehicle is forfeited and the driver is not charged with Driving While Impaired (169A.20) under the circumstances described in First Degree Driving while impaired (169A.24), or the driver has been accepted into a treatment court, or the forfeiture was stayed after the driver entered treatment court but then later ceases participation.

**Subdivision 14:** Owners do not have a right to sue an appropriate agency or prosecution authority. This includes but is not limited to peace officers and employee of appropriate agency. This is because under section 8 they are given criminal and civil immunity, if they act in good faith within the scope of their employment, after unlawful use of seized vehicle.

#### Minnesota Statue §609.5311; Forfeiture of Property Associated with Controlled Substances-

**Subdivision 2:** Any amount of money is subject to forfeiture if it is considered property of an appropriate agency. This would be money that is used to purchase or attempt to purchase controlled substance by an appropriate agency or person acting on their behalf and that money was previously recorded.

**Subdivision 3:** Conveyance devices are no longer subject to forfeiture if the controlled substance is under \$100. Previously, the limit was \$75. The Conveyance device also must be used in the transportation or exchange of a controlled substance in order to be subject to forfeiture.

Additionally, the new law limits money subject to forfeiture of property associated with controlled substances. Previously, an appropriate agency could seize any amount of money found in proximity to a controlled substance offense. The new law states that anything less than \$1500 is not subject to forfeiture unless the appropriate agency has probable cause to believe the money was exchanged for the purchase of a controlled substance.

#### Minnesota Statute §609.5314; Administrative Forfeiture of Certain Property Seized in Connection with Controlled Substance Seizure

**Subdivision 1:** Money is only subject to forfeiture under this section only if its value totals at least \$1,500 and the appropriate agency has probable cause to believe the money represents the process of a controlled substance offence. However, all money is still subject to forfeiture under this section if there is probable cause to believe that the money was exchanged for the purchase of a controlled substance. Conveyance device forfeiture, like in §609.5311 subd. 3, is subject to forfeiture if the controlled substance is valued at \$100 or more, changing it from \$75 or more.

Also, the same process for Innocent Owners as in §169A.63 was added to this section.

**Subdivision 2:** Owners automatically lose property and the right to be heard in court if they do not notify the prosecution authority within 60 days.

**Subdivision 3:** Owners will no longer have to pay a standard filing fee (conciliation or district) for civil actions. The new law redacted the previous language that required this.

#### **Conclusion**

Innocent owners now have 60 days to send notice to the prosecuting attorney. Hopefully, with these new laws in place innocent owners will be able to get their property back in an orderly fashion. These laws also open a path for innocent owners experiencing poverty to get their property back. However, seeing how these laws work in practice will be the only way to see if they really help.