

# Criminal Forfeiture Process

## HF 4673/SF 4625

### PURPOSE:

To end **civil forfeiture** and replace it with criminal forfeiture.

### BENEFIT:

A fairer forfeiture process that is streamlined and united with the criminal prosecution.

### TWO KEY PROVISIONS

#### Subd. 19 Trial, conviction required, and standard of proof.

8.23 Property may be forfeited if the state proves:

1. The defendant has been convicted of a designated offense (lines 2.16-2.29); and
2. The property is an instrumentality of or is derived directly from the crime for which there has been a conviction.

9.4 Property may be forfeited as part of a consent order that reflects any of the following:

1. a plea agreement;
2. a diversion agreement; or
3. a grant of immunity or reduced punishment, with or without the filing of a criminal charge, in exchange for testifying or assisting a law enforcement investigation or prosecution.

#### Subd. 20 Exceptions to the conviction requirement.

9.22 A court may waive the conviction requirement and grant title of the property to the state if the prosecuting authority shows by clear and convincing evidence that, before conviction, the defendant:

1. died;
2. was deported by the U.S. government;
3. abandoned the property; or
4. fled the jurisdiction.

For more information, please contact Lee McGrath of the Institute for Justice at (612) 963-0296 or Munira Mohamed of the American Civil Liberties Union of Minnesota at (612) 978-6841.

## I. Total MN Forfeitures—Small Statewide Program

Data Source: Minnesota State Auditor

| Table I: Proceeds |                              |                            |                            |
|-------------------|------------------------------|----------------------------|----------------------------|
| Year              | Gross Proceeds<br>(millions) | Net Proceeds<br>(millions) | Budget Contribution<br>(%) |
| 2018              | \$11.1                       | \$8.3                      | 74%                        |
| 2019              | \$10.5                       | \$7.5                      | 72%                        |
| 2020              | \$8.0                        | \$5.6                      | 70%                        |
| 2021              | \$11.0                       | \$7.8                      | 71%                        |
| 2022              | \$9.0                        | \$6.6                      | 73%                        |
| 5-Year Average    | \$9.9                        | \$7.2                      | 72%                        |

▲ Average net proceeds of \$7.2 million constitutes a small percentage of statewide expenditures on public safety. For example, Minneapolis will spend over \$200 million and Saint Paul will spend over \$100 million on public safety in 2024.

## II. Drug-Related Forfeitures

Approximately 45% of Total

| Table II-A: Number of Forfeitures |                  |                      |                   |
|-----------------------------------|------------------|----------------------|-------------------|
| Year                              | Cash Forfeitures | Non-Cash Forfeitures | Total Forfeitures |
| 2018                              | 1,771            | 1,176                | 2,947             |
| 2019                              | 1,659            | 1,213                | 2,872             |
| 2020                              | 1,046            | 819                  | 1,865             |
| 2021                              | 1,338            | 974                  | 2,312             |
| 2022                              | 895              | 831                  | 1,726             |

| Table II-B:<br>Median Cash Amount of Forfeitures |         |
|--|---------|
| 2018   | \$735   |
| 2019   | \$797   |
| 2020   | \$993   |
| 2021   | \$1,157 |
| 2022   | \$1,323 |

| Table II-C:<br>Percent of Uncontested Forfeitures |     |
|---|-----|
| 2018  | 83% |
| 2019  | 82% |
| 2020  | 85% |
| 2021  | 93% |
| 2022  | 85% |

▲ Although increasing since 2018, the median currency forfeiture remains astonishingly low. At the increased amount of \$1,323 for 2022, it is still irrational for innocent Minnesotans to hire an attorney and engage in forfeiture litigation. The cost and complexity of civil forfeiture litigation contribute to the rates of 82% to 93% that Minnesotans default—they do not even attempt to get back their property.