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S.F. No. 4625 - Forfeiture changes

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SF No. 4625 reorganizes Minnesota's criminal code forfeitures into a single new section of law (Minnesota Statutes, section 609.112). With limited exceptions, the forfeitures must be accompanied by a criminal conviction and will be adjudicated as part of that process.

Section 1 establishes the new forfeiture statutory section.

- Defines key terms used, including “actual knowledge,” “contraband,” “designated offense,” “innocent owner,” “instrumentality,” “proceeds,” and “secured interest holder.” (Subdivision 1)
- Prohibits civil forfeiture. Provides forfeiture jurisdiction to the criminal court overseeing the related criminal matter. Requires the forfeiture proceeding to be part of the related criminal trial. (Subdivision 3)
- Requires the public defender to continue to represent a person in the forfeiture matter if the defender is representing the person in the related criminal matter. (Subdivision 14)
- Requires the prosecutor to perform a reasonable records search to determine who might have an interest in the property subject to forfeiture and to notify those persons. (Subdivision 15)
- Provides for a prompt post-seizure hearing for anyone with an interest in the seized property. Authorizes the court to order property returned upon a finding that the property was invalidly seized, a criminal charge is not pending, the person is a valid innocent owner or creditor, or the continued possession by the government will cause substantial hardship. (Subdivision 16)
- Provides that property may be forfeited if the state secures a conviction for a designated offense and establishes by clear and convincing evidence that the property represents (1) an instrumentality of the crime, or (2) proceeds or personal property derived directly from the crime for which the state obtained the conviction. (Subdivision 19)
- Provides an exception to the conviction requirement if the prosecutor establishes that the defendant has died, been deported, abandoned the property, or fled the jurisdiction. (Subdivision 20)

- Authorizes a defendant to petition the court to determine whether a forfeiture is unconstitutionally excessive and for the court to hold a proportionality hearing. **(Subdivision 21)**
- Provides that property encumbered by a security interest or belonging to an innocent owner may not be forfeited. Requires that the interest holder or innocent owner make an initial specified showing by clear and convincing evidence. If this occurs, the state may essentially refute this by establishing other specified evidence by clear and convincing evidence. **(Subdivisions 22 and 23)**
- Provides that if the prosecuting authority fails to meet its burden in the criminal or forfeiture proceeding, the court shall dismiss the forfeiture and order the property returned to its rightful owner. If the authority meets its burden, the court shall enter a judgment of forfeiture. **(Subdivision 24)**
- Provides that if the property owner's claims prevail by recovering at least half of the property claimed, the seizing authority is liable for attorney fees, litigation costs and interest. **(Subdivision 29)**
- Provides that if the court orders return of the property, the owner is not liable for any expenses relating to the seizure but rather the law enforcement agency holding the property is responsible for this. **(Subdivision 30)**
- Requires the court, upon granting forfeiture, to order the sale of the forfeited property (other than currency). Sale proceeds and currency may be ordered by the court to be used to pay restitution to the victim in the underlying criminal matter; satisfy recorded liens, etc.; pay reasonable costs for the towing, storage, maintenance, repair, etc.; and reimburse the seizing law enforcement agency, prosecuting authority and public defender for non-personnel costs relating to its participation in the forfeiture. Following these disbursements, the court may order the remaining funds disbursed equally between the state general fund and the DPS' Office of Justice Programs. **(Subdivision 31)**
- Provides that this section does not apply to forfeitures under Minnesota Statutes, chapter 84 (DNR). **(Subdivision 35)**
- Provides immunity to a law enforcement or prosecuting agency who returns a vehicle to its owner as authorized in this section. **(Subdivision 37)**