

APPENDIX A

Scope and Methodology

This report details criminal forfeitures, firearm forfeitures and DUI-related forfeitures completed in 1997 pursuant to Minnesota Statutes §§ 609.531 to 609.5317; 84.912; 86b.337; and, 169.1217. The report provides information on the amount of money, weapons and property seized by Minnesota law enforcement officers.⁷

The statutes direct law enforcement agencies to provide, on a monthly basis, (and on an annual basis for DUI-related forfeitures) a written record of each forfeiture incident to the State Auditor. The law enforcement agencies reporting include the Minnesota Bureau of Criminal Apprehension, Minnesota State Patrol, county sheriff departments, and city police departments.

Information is reported on the value of cash, gross sales of forfeited property, administrative expenses, lien holders' obligations, net proceeds, and disposition of property. Net proceeds are defined as proceeds from the sale of forfeited property after payment of administrative costs and satisfaction of valid liens against the property. Law enforcement agencies report forfeitures completed during the reporting period.⁸ The actual seizure of property, which usually happens at the time of arrest, could have occurred before January 1, 1997, the beginning of the 1997 reporting period.

⁷ Law enforcement authorities may also use federal statutes as a means of compelling the forfeiture of cash and property. In fact, many forfeitures of large amounts of cash and valuable property are based on federal statutes and, therefore, are not identified in this report.

⁸ Property seized under Minnesota Statutes §§ 609.531 to 609.5317 is subject to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. Property seized in connection with a controlled substance offense is subject to administrative forfeiture procedures. The owner(s) of the seized property must be given written notice of the seizure, the intent to forfeit the property and the right to obtain judicial review of the forfeiture. The court may order the return of seized property or find that the property is subject to forfeiture. If the forfeiture of property is related to controlled substances, the court may not issue an order of forfeiture while the alleged owner of the property is in custody and the related criminal proceedings are pending against the alleged owner. Forfeitures are not complete until all related judicial and administrative proceedings have been completed.

BACKGROUND

State laws governing property that is subject to criminal forfeiture proceedings, and the actual disposition of the forfeited property, have changed considerably since their inception in 1971.

- ! In 1971, the Legislature authorized a law enforcement agency making an arrest involving a controlled substance to seize property associated with the use or transportation of the controlled substance. Upon conviction of the offense, the individual forfeited the seized property to the local law enforcement agency. Legislation authorized the local law enforcement agency to use forfeited property for law enforcement purposes, sell the property and use the proceeds of the sale for authorized agency activities, and destroy forfeited contraband.
- ! In 1973, the Legislature authorized the seizure and subsequent forfeiture of money that was deemed to be related to the commission of an offense involving a controlled substance. The 1973 law prescribed a more detailed process for criminal forfeitures. It also directed that half of all proceeds from the sale of forfeited property, and half of all of the forfeited cash, be forwarded to the state drug abuse authority. The state drug abuse authority was directed to use its share of the proceeds for the care and treatment of individuals with drug-related disorders. The remaining half of the proceeds from the sale of forfeited property would continue to be used by the local law enforcement agency.
- ! In 1984, the Legislature expanded the items that are subject to criminal forfeiture to include all moneys, precious metals, gems, negotiable instruments, securities and property or things of value. The 1984 law further stipulated that "all moneys, precious metals, and gems found in proximity to controlled substances or in proximity to any equipment or records pertaining to a controlled substance, are subject to forfeiture." It also revised the formula for distributing forfeited cash and the net proceeds from the sale of forfeited property. Under the 1984 revision, the state retained one-third of the cash and net proceeds for the care and treatment of individuals with drug-related disorders. The remaining two-thirds of the net proceeds were to be shared equally between the law enforcement agency making the initial arrest and the prosecuting agency.
- ! In 1988, the Legislature significantly expanded the list of criminal offenses which included the potential for forfeiture of cash and personal property. In addition to forfeitures related to offenses involving a controlled substance, the Legislature authorized forfeitures of cash and property related to the commission of a variety of other criminal offenses, including: murder, aggravated assault, criminal sexual conduct, criminal vehicular homicide, robbery, kidnaping, prostitution, bribery, fraud, and theft. The 1988 law also amended the formula used to distribute forfeited cash and the proceeds from the sale of forfeited property. The new formula directed that 70 percent of the cash and net proceeds be used by the law enforcement agency initiating the forfeiture action, 20 percent of the cash and net proceeds be distributed to the prosecuting agency, and the remaining ten percent of the cash and net proceeds be forwarded to the state for deposit in the state's general fund.
- ! In 1992, legislative interest in the nature and extent of criminal forfeitures increased throughout the state. This increased interest resulted in a legislatively-imposed requirement

that law enforcement agencies report all criminal forfeitures to the Office of the State Auditor. Monthly reports to the auditor "shall include the amount forfeited, date, and a brief description of the circumstances involved." (See Attachment A for a copy of the reporting form.)

- ! In 1993, the Legislature passed legislation that forbids law enforcement agencies from selling forfeited firearms. The provision requires that all forfeited weapons, ammunition, and firearm accessories be destroyed unless they are retained for law enforcement purposes.
- ! In 1994, the Legislature amended the forfeiture statutes to require law enforcement agencies to report to the State Auditor "the number of firearms forfeited and the make, model, and serial number of each firearm forfeited." (See Attachment B for a copy of the reporting form.)
- ! In 1995, the Legislature expanded DUI-related forfeiture statutes to include offenses involving snowmobiles, all-terrain vehicles, boats and automobiles. A vehicle used in an incident that results in a third impaired driving conviction in five years or a fourth conviction within fifteen years is subject to forfeiture. The legislation also requires law enforcement agencies to report these forfeitures to the Office of the State Auditor on an annual basis. (See Attachment C for a copy of the reporting form.)