

WILLMAR POLICE DEPARTMENT

GENERAL DIRECTIVE: 0010

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Application: All Sworn Personnel & CSOs

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SUBJECT: FORFEITURES

PURPOSE

To provide lawful, responsible, and consistent procedures in the seizure, handling and eventual disposal of any property held with intentions of applying forfeiture action against such property. This directive describes the authority and procedure for the seizure, forfeiture and liquidation of property associated with specified designated offenses and controlled substance offenses (MN State Statute 609.531 – 609.5318).

POLICY

The Willmar Police Department recognizes that appropriately applied forfeiture laws are helpful to enforce the law, deter crime and reduce the economic incentive of crime. However, the potential of revenue shall 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.

It shall be the policy of the Willmar Police Department that all employees of this agency, all employees assigned to another law enforcement agency's task force, and all employees assigned to a task force from an outside law enforcement agency to a task force in which this agency serves as the fiscal agent, follow all state and federal laws pertaining to forfeiture. Training will be provided by the employing law enforcement agency in consultation with the prosecuting authority to officers who may exercise the use of administrative forfeiture in the performance of their assigned duties. Such training to be conducted whenever the agency policy is changed or modified, based upon administrative directives, legislative statutes changes and/or relative court decisions. Training may include, but is not limited to, agency policy, directives, electronic or traditional classroom education.

DEFINITIONS

Cash – Money in the form of bills or coins, traveler's checks, money orders, checks or other forms of electronic money or stored value cards, including, but not limited to, gift cards, debit cards, gift certificates or other negotiable financial instruments.

Conveyance Device – A device used for transportation, which includes, but is not limited to, a motor vehicle, trailer, snowmobile, airplane, and vessel, and any equipment attached to it. The term "conveyance device" does not include property which has been stolen or taken in violation of the law.

Designated Offense – Designated offenses include, but are not limited to, specified subdivision violations of the following felonies listed: murder, criminal vehicular operation, assault (1st – 4th degree), robbery, kidnapping, false imprisonment, prostitution, criminal sexual conduct, escape from custody, fleeing, theft, receipt of stolen goods, arson, burglary, possession of burglary tools, environmental crimes, check forgery, bribery, drive-by shootings, and for weapons used (any violation of MN Statute Chapters 152, 609 or 624). See MN Statute 609.531.

Firearms/Ammunition/Firearm Accessories – A device that projects either single or multiple projectiles at high velocity. Ammunition is a term meaning the assembly of a projectile and its propellant. Accessories include, but are not limited to, holsters, gun cases, firearm optics, suppression devices, cleaning supplies, etc.

Fiscal Agent – The person designated by the Willmar Police Department to be responsible for securing and maintaining seized assets and distributing any proceeds as a result of any forfeiture proceedings. This includes any time the Willmar Police Department seizes property for forfeiture or when the Willmar Police Department is acting as the fiscal agent pursuant to a multi-agency agreement.

Forfeiture – The process by which legal ownership of a described asset is transferred to a government agency or other authority.

Forfeiture Reviewer – The Willmar Police Department employee designated by the Chief of Police to be responsible for reviewing all forfeiture cases and acting as the liaison between the Willmar Police Department and the prosecutor's office.

Jewelry/Precious Metals/Precious Stones – Includes items of jewelry, such as rings, necklaces, and watches, which reasonably appear to be made of precious metals or precious stones. Precious metals include, but are not limited to, gold, silver, platinum, iridium, and palladium. Precious stones, often referred to as gemstones, include, but are not limited to, diamonds, emeralds, and rubies.

Seizure – The act of law enforcement officials taking property, including cash and conveyance devices, which have been used in connection with or acquired by illegal activities.

ASSET SEIZURE

Property may be seized for forfeiture as provided in this directive.

Property Subject to Seizure

The following property may be seized upon review and in coordination with the forfeiture reviewer:

Administrative Forfeiture – Property that can be seized:

- Controlled Substance Offenses (MN Statute 609.5314)
 - Vehicles, other conveyance devices, money, precious stones, or precious metals with a value of \$50,000 or less can be forfeited through civil administrative action when one of the following conditions is present:
 - All conveyance devices containing controlled substances with a retail value of \$100 or more if there is probable cause to believe that the conveyance device was used in the transportation or exchange of a controlled substance intended for distribution or sale.
 - All money totaling \$1,500 or more, precious metals and precious stones, that there is probable cause to believe represent the proceeds of a controlled substance offense.
 - All money found in proximity to controlled substances when there is probable cause to believe that the money was exchanged for the purchase of a controlled substance.
 - All firearms, ammunition, and firearms accessories found:
 - In a conveyance device used or intended for use to commit or facilitate the commission of a felony offense involving a controlled substance.
 - On or in proximity to a person from whom a felony amount of controlled substance is seized; or
 - On the premises where a controlled substance is seized and in proximity to the controlled substance, if possession or sale of the controlled substance would be a felony under MN Statute Chapter 152.
- DWI Offenses (MN Statute 169A.63)

Motor vehicles and motor boats, including their trailers, can be forfeited through civil administrative action when one of the following conditions is present:

- The driver is convicted of 1st degree DWI or 3rd degree DWI in ten (10) years.
 - The driver's conduct results in a designated license revocation AND the driver fails to seek judicial review of the revocation as specified by MN Statute 169A.53, subd.2.
- Seizure of property not listed above must be processed in coordination with the forfeiture reviewer. Thoroughly document all steps from seizure to disposition.

Judicial Forfeiture – Property that can be seized:

Do not complete the "Notice of Seizure and Intent to Forfeit Property Form". The only judicial forfeiture requiring the service of a forfeiture form is the offense of fleeing a peace officer in a motor vehicle, which requires a separate designated form "Notice Of Seizure Of Motor Vehicle For Fleeing Police Officer". A separate complaint shall be filed against items to be forfeited through the County Attorney's Office.

- Controlled Substance Offenses (MN Statute 609.5311)
 - All property, real and personal, that was used or intended for use, in the drug business may be forfeited with the following limitations:
 - A conveyance device is subject to forfeiture under this section only if the retail value of the controlled substance is \$100 or more and the conveyance device was used in the transportation or exchange of a controlled substance intended for distribution or sale.
 - Real property may be forfeited only if the street retail value of the controlled substance is \$2,000 or more.
 - Money is subject to forfeiture under this section only if it has a total value of \$1,500 or more, or there is probable cause to believe that the money was exchanged for the purchase of a controlled substance.
- Designated Offenses (MN Statute 609.531)
 - All personal property is subject to judicial forfeiture when it was used or intended for use to commit or facilitate the commission of a designated offense. This includes money, property, real and personal, that represent proceeds of a designated offense, and all contraband property.
 - Officers considering forfeiture actions for a designated offense should confer with the forfeiture reviewer as soon as possible to ensure that the appropriate timelines are met.

Summary Forfeiture – Property that can be seized:

- Any property defined as contraband (which is any property illegal to possess in Minnesota) is allowed to be seized using a "summary forfeiture". In other words, simply having the property allows seizure.
- Certain articles (guns, bullet proof vests and telephone cloning paraphernalia) may automatically become contraband, depending on how they were used and what crime was committed.

On Summary Forfeitures you do not need to complete any form other than the forfeiture receipt. The property by its very nature is illegal to possess in Minnesota. Send the report to the County Attorney for prosecution.

Seizure of Property to be Forfeited

An officer may seize property subject to forfeiture based on a court order. An officer may also seize property without a court order under any of the following conditions (MN State Statute 609.531 Subd. 4):

- The seizure is incident to a lawful arrest or a lawful search.
- The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding.
- The officer has probable cause to believe that a delay to obtain a warrant or other process would result in the removal or destruction of the property and that either of the following apply:
 - The property was used or is intended to be used in a commission of a felony.
 - The property is dangerous to health or safety.

PROCESSING SEIZED PROPERTY FOR FORFEITURE PROCEEDINGS

When property or cash subject to this directive is seized, the officer making the seizure should ensure compliance with the following:

- If the retail value of the asset to be seized is \$50,000 or less, completely and accurately prepare the Notice of Seizure and Intent to Forfeit Property Form (seizure form) and present it to the person from whom the property is to be seized for that person's signature. If the person refuses to sign, the officer shall indicate on the form that the person refused. The seizure form is not used when the value of the seized property exceeds \$50,000.
- Prepare and provide a receipt for the items seized to the person from whom the property is being seized.
 - If cash or property is seized from more than one person, a separate property inventory receipt must be completed for each person, specifying the item(s) seized. The receipt shall include a detailed description of all property, checks, money orders, traveler's checks, or other financial instruments.
- Complete and submit a report by the end of the officer's working shift. The report must include, at a minimum, the following:
 - A description of the items seized.
 - The location where the property was turned in or stored.
 - The name of the individual who was served the seizure form.
 - The date that the seizure form was served.
 - The name of the officer making the seizure.
 - Whether the individual signed the seizure form.
- If property is seized from multiple individuals, a separate seizure form will be completed for each individual. A copy of the receipt and seizure form must be given to the individual from whom the property was seized.

- When property is seized and no one claims possession of the property, the officer must leave a receipt in the place where the property was found, if it is reasonably possible to do so.
- All property seized for forfeiture must be held in the custody of the Willmar Police Department. Vehicles are to be stored in the police impound lot. All other items are to be submitted to the property room either as “evidence” or if not applicable to the case as “evidence”, then held for “safe keeping” until the forfeiture process has ended. This property is subject to all of the rules and regulations that are currently in place relating to property intake procedures.
- Forward the original and the pink copy of the seizure form, and any seized property processing worksheets, property receipts and reports to the forfeiture reviewer as soon as possible.
- Inform the forfeiture reviewer of the estimated retail value of drugs found in proximity to the asset seized.
- Obtain and document any additional information obtained from the person an item was seized from as it relates to true ownership, liens against the property, the defendant’s connection to the property seized, etc.

INVESTIGATION, INVENTORY, RECORD KEEPING AND DISPOSAL OF SEIZED PROPERTY

The forfeiture reviewer shall:

- Review all newly initiated forfeitures for form completeness upon his/her return to work the first day after a forfeiture event occurred.
- Perform any necessary follow-up relating to ownership of the property, providing additional notifications to secondary owners or lien holders as necessary, etc.
- Dictate a report outlining the event leading up to the forfeiture, the action giving cause for the forfeiture, the property seized and other investigatory information determined from follow-up.
- File a copy of all forfeiture paperwork with the proper prosecuting agency and coordinate further forfeiture actions with that agency.
- Track the status of a forfeiture.
 - In the event that a forfeiture attempt is shown to be successful, the property shall be distributed as defined by statute.
 - If the forfeiture attempt is unsuccessful, the property shall be promptly returned to either the person from whom it was initially taken or the person determined by follow-up investigation to be the true and correct owner of the property.

- File necessary forfeiture status reports with the State of Minnesota Auditor's Office as required by law.
- In the event of an extended absence due to vacation, sick leave, etc., these duties can be delegated as needed.

DISPOSITION OF FORFEITED PROPERTY

Legal disposition may include (MN State Statute 609.5315):

- Retention by the Willmar Police Department for law enforcement purposes.
- Disburse money pursuant to applicable provisions of Minnesota Statutes.
- Destruction.
- Sale performed in a commercially reasonable manner.
- Other disposition pursuant to applicable provisions of Minnesota Statutes.

No member of this department may use property that has been seized for forfeiture until the forfeiture action has been completed and the Willmar Police Department has given written authorization to retain the property for official use.

Members of this department or persons related to members of this department by blood or marriage are prohibited from purchasing forfeited items sold by this department [MN State Statute 609.5315 Subd. 1(c)].

ACCOUNTABILITY

It is the responsibility of each officer to be familiar with and adhere to this directive. It is the responsibility of all supervisors to ensure this directive is followed. Failure to adhere to this directive may result in disciplinary action up to and including termination.

BY ORDER OF THE CHIEF OF POLICE

James E. Felt

CLN/sae