



**DIRECTIVE**  
**DEPARTMENT OF NATURAL RESOURCES**  
**Division of Enforcement**

|  |                                       |
|--|---------------------------------------|
| <b>Subject: FORFEITURE OF PROPERTY UNDER DWI, DRUGS, FLEEING, AND CRIMINAL CODE LAWS</b>                               |                                       |
| <b>Directive Number: O-23-2007</b>   | <b>Effective Date: April 30, 2007</b> |
| <b>Special Instructions:</b>   |                                       |
| <b>Reference: Minn. Stat. Secs. 169A.63, 609.487, 609.531 to 609.5318, and others; Directives A-13, O-4, O-6, O-11</b> |                                       |
| <b>Distribution: All Conservation Officers</b>   |                                       |
| <b>Number of Pages, Including Appendices and Signature Page: 25</b>  |                                       |

This directive is for division use only and does not modify or supersede any law and should not apply to any criminal or civil proceeding except civil proceedings related to departmental administrative action. This directive should not be viewed as creating a higher standard of safety or care in any evidentiary sense. Violations of this directive may form the basis for departmental administrative action.

**I. PURPOSE**

This directive provides guidance and direction to conservation officers regarding the confiscation and forfeiture of vehicles, firearms, contraband, and other property under the driving while intoxicated (DWI), fleeing, and other criminal code provisions in law.

**II. POLICY**

It is the policy of the Division of Enforcement to consistently pursue confiscation and forfeiture of vehicles, contraband, and other property consistent with state and federal law.

### III. AUTHORITY TO POSSESS AND CONFISCATE OR FORFEIT PROPERTY

- A. Seizure is the right to temporarily possess something.
- B. Confiscation and forfeiture is the transfer of ownership to the state.

The state cannot claim ownership by confiscation or forfeiture without a law that provides the specific ownership transfer authority. Each forfeiture or confiscation authority provided in law has its own provisions regarding seizure, confiscation, forfeiture, and disposition. Confiscation or forfeiture authority processes can be either administrative or judicial.

- C. District court is the correct venue for property disputes, including forfeitures and confiscations. Conciliation court or civil court filings and procedures may be used in addition to specific procedures provided in law.
- D. The following sections of this directive address the type of incident or stage of the confiscation/forfeiture process:

- IV. Seizure and forfeiture of property related to driving while intoxicated page 3
- V. Limitations on DWI forfeitures page 3
- VI. DWI administrative forfeiture page 3
- VII. Disposal of DWI forfeited vehicles page 5
- VIII. Seizure and forfeiture of vehicle related to fleeing a peace officer page 6
- IX. Limitations on fleeing a peace officer forfeitures page 6
- X. Property subject to seizure and forfeiture related to other criminal code offenses page 6
- XI. General procedures for contraband page 8
- XII. Criminal code administrative forfeiture page 8
- XIII. Judicial forfeiture; DWI, fleeing a peace officer, and criminal code page 9
- XIV. Required reporting of fleeing a peace officer and criminal code forfeitures page 9
- XV. Disposal of forfeited property under the criminal laws or abandoned or contraband property page 10

#### **IV. SEIZURE AND FORFEITURE OF PROPERTY RELATED TO DRIVING WHILE INTOXICATED**

For purposes of this directive, DWI includes the operation of motor vehicles, off-road recreational vehicles (ORRV's), and motorboats in violation of the impaired driving statutes. Prior DWI violations include DWI convictions or license revocations, or any combination of the two based on separate incidents. Motor vehicles, ORRV's, and motorboats operated in the following specified DWI and DWI related offenses are subject to forfeiture (Minn. Stat. Sec. 169A.63).

DWI related forfeitures may proceed under either administrative procedures or judicial procedures as outlined in sections VI and XIII of this directive.

#### **V. LIMITATIONS ON DWI FORFEITURES**

- A. The registered owner is presumed to be the legal owner for DWI forfeiture actions. For vehicles owned jointly by two or more people each owner's interest extends to the whole vehicle and is not subject to apportionment.
- B. If the DWI offender has three or more priors and the owner is a family member or household member, the owner is presumed to have known of the illegal DWI operation of the vehicle.
- C. Vehicles leased for less than 180 days are not subject to forfeiture.
- D. Vehicles may be released on bond only if arresting agency approves the release.
- E. Conservation officers shall request information on any lien holders for the vehicle.
- F. Any legally perfected liens on the vehicles must be satisfied after any agency costs of seizure and forfeiture (such as towing and storage costs) are satisfied. No fees will be charged for storage at Department of Natural Resources (DNR) facilities unless there is a direct charge assessed for storage of the particular vehicle. Any net proceeds can be distributed as specified in section VII of this directive.

#### **VI. DWI ADMINISTRATIVE FORFEITURE**

Under the administrative procedures, the burden is on the offender or the owner to request a judicial hearing to contest the forfeiture.

- A. Conservation officers shall notify their immediate supervisor of the seizure as soon as practical; and
- B. Seize the vehicle used in the offense and arrange for secure storage. Division or other law enforcement facilities should be used so that storage costs can be minimized. If the vehicle was towed to a commercial impound lot, the vehicle shall be moved to a state owned or other low cost or no cost secure facility within 48 hours. Copies of any tow or storage bills will be maintained at the region to ensure costs are captured prior to fund disposal;
- C. Complete the appropriate Towed Vehicle Report form (NA-01223), or Watercraft Impoundment and Inventory Record form (NA-01034), available in the DNR Alcohol Enforcement Packet;
- D. Determine ownership of the vehicle or watercraft and whether there are liens against the property;
- E. Issue the Motorboat/Off-Road Recreational Vehicle Notice of Seizure and Intent to Forfeit Vehicle Form (NA-01033), available in the DNR Alcohol Enforcement Packet (NA-03830) to the operator. If the operator is not the owner of the vehicle or watercraft, serve the registered owner, either in person or by certified mail, with a Motorboat/Off-Road Recreational Vehicle Notice of Seizure and Intent to Forfeit Vehicle form. If there is a perfected lien on the vehicle, the Motorboat/Off-Road Recreational Vehicle Notice of Seizure and Intent to Forfeit Vehicle form shall be sent by certified mail to the lien holder;
- F. Notify the local prosecutor that the vehicle or watercraft was seized. Appendix A of this directive has a sample notification form that can be used for this purpose. Conservation officers shall provide the prosecutor with copies of the forfeiture form, all ICR reports, records, and forms regarding the case and the seizure; and
- G. If a motor vehicle is seized that is registered under Minn. Stat. Chapter 168, the officer shall notify the Department of Public Safety (DPS), Driver and Vehicle Services Division, that the vehicle is subject to forfeiture and ask them to "flag" the title by placing a note on the DPS copy of the vehicle forfeiture form included in the DNR alcohol enforcement packet so that no additional liens may be placed against the vehicle.
- H. If the vehicle is an ORRV or motorboat, the officer shall e-mail through the chain of command to the DNR License Center to request the DNR registration record be flagged as held subject to forfeiture.

- I. If the forfeiture is contested within 30 days, the forfeiture process becomes a judicial process (see section XIII).
- J. After 30 days of issuance of the forfeiture notification, the officer shall contact the local prosecutor and request the prosecutor to certify that there has not been a request for a judicial determination. Upon certification by the prosecutor, and when the operator is either convicted, fails to appear with respect to the violation, or the operator's conduct results in a driver's license revocation, the property may be either utilized by the division or sold at the direction of the regional or program manager. Any proceeds resulting from sales of forfeited vehicles will be distributed as specified in section VII of this directive. The department's share of the proceeds will be available for DWI enforcement including administrative costs for towing and storage, education, and training with expenditures to be approved by the director's designee.

## **VII. DISPOSAL OF DWI FORFEITED VEHICLES**

- A. For DNR initiated forfeitures, 70 percent of any net proceeds are deposited to the division's DWI training and education forfeiture account; the remaining 30 percent is to be sent to the prosecuting authority.
- B. Sales of any DWI forfeited vehicles shall be coordinated by the district supervisor. The district supervisor shall forward copies of the deposit documentation with the forfeiture certification letter from the prosecuting attorney to the regional or program manager. The regional or program manager shall forward copies to the Enforcement business manager or regional business manager. The certification letter from the prosecuting authority will generally include: (1) a statement that the party has been convicted, (2) that there has been no request for judicial determination of the forfeiture, (3) if there are any perfected liens, and (4) verification of the distribution of the sale proceeds. The business manager's staff will confirm the proper deposit of the proceeds and make the disbursement required by law to the prosecuting authority.

A perfected lien holder may take possession of the forfeited vehicle for disposition, by notifying the department in writing within 30 days of their intent to do so. The district supervisor shall coordinate the request and shall prepare a secured party release agreement (see appendix C of this directive). Any costs of seizure and forfeiture incurred by the division will be satisfied before proceeds are applied to the lien. Any remaining proceeds, after agency and lien costs, are deposited and distributed as provided in item A, above.

## **VIII. SEIZURE AND FORFEITURE OF VEHICLE RELATED TO FLEEING A PEACE OFFICER**

- A. Motor vehicles, ORRV's, and motorboats operated in fleeing peace officer offenses which endanger life or property of another are subject to forfeiture. Conservation officers should initiate forfeiture for fleeing offenses which endanger persons or property of another. Off-road recreational vehicles and motorboats are exempt from the 48/96-hour notification requirements in Minn. Stat. Sec. 609.5312, subd. 4.
- B. Fleeing a peace officer related forfeitures must be handled under the judicial forfeiture procedures outlined in section XIII of this directive.

## **IX. LIMITATIONS ON FLEEING A PEACE OFFICER FORFEITURES**

- A. The owner of a vehicle seized for a fleeing forfeiture must have had knowledge of the offense for which forfeiture is sought.
- B. Vehicles leased for less than 180 days are not subject to forfeiture.
- C. Vehicles may be released on bond only if arresting agency approves the release.
- D. Conservation officers shall request information on any lien holders for the vehicle. Any legally perfected liens on the vehicles must be satisfied after any agency costs of seizure and forfeiture (such as towing and storage costs) are satisfied. No fees will be charged for storage at DNR facilities unless there is a direct charge assessed for storage of the particular vehicle. Any net proceeds can be distributed as specified in section XV, item B of this directive.

## **X. PROPERTY SUBJECT TO SEIZURE AND FORFEITURE RELATED TO OTHER CRIMINAL CODE OFFENSES**

- A. Controlled Substance Related Seizure and Forfeiture.

Forfeiture may proceed under either administrative procedures or judicial procedures, as outlined in sections XII or XIII of this directive, including (Minn. Stat. Sec. 609.5311):

- 1. All money, precious metals, and precious stones found in proximity to controlled substance offenses.

2. All conveyance devices containing controlled substances having a retail value of \$100 or more if the possession or sale of the substance would be a felony (using the administrative forfeiture process), or a retail value of \$25 or more and the conveyance device is associated with a felony level controlled substance crime (using the judicial forfeiture process).
3. All firearms, ammunition, and firearm accessories found in a conveyance device or used or intended for use to commit or facilitate the commission of a felony involving a controlled substance; on or in proximity of a person from whom a felony amount of controlled substance is seized; or in the proximity of a felony level of controlled substance.

B. Designated Criminal Code Offenses Subjecting Property to Seizure and Forfeiture.

Designated crimes which subject property to forfeiture include:

1. Any violation of Minn. Stat. Chapters 152, 609, or 624 when a weapon is used.
2. Any felony level violation of many of the criminal statutes such as murder, assault, robbery, kidnapping, prostitution, criminal sexual conduct, bribery, escape, theft, transporting stolen property, receiving stolen property, embezzlement, livestock theft, arson, burglary, damage to property, forgery, dangerous weapons, certain environmental crimes, and certain computer crimes.
3. Gross misdemeanor violations of Minn. Stat. Sec. 624.7181 for carrying a rifle or shotgun in a public place. (Minn. Stat. Sec. 609.531 to 609.5316)
4. Violations of firearms prohibitions contained in orders for protection related to domestic abuse.
5. Dangerous dogs may be seized under the provisions of Minn. Stat. Sec. 347.54.

C. Limitations on Property Forfeitures.

1. Forfeitures must proceed under the judicial procedure as indicated in section XIII of this directive, except for controlled substance offenses and weapons used in designated crimes.

2. The owner of any property seized must have had knowledge of the offense under which the property forfeiture is sought.
3. Firearm forfeitures should be processed under the more flexible authority for conservation officers in Minn. Stat. Sec. 97A.223 (see Directive O-22).

## **XI. GENERAL PROCEDURES FOR CONTRABAND**

Contraband is any object that is unlawful to possess under Minnesota law or any federal law, that conservation officers are authorized to enforce. Contraband shall be seized. Unless otherwise ordered by the court, contraband is not to be returned. Examples of contraband include, but are not limited to:

- A. Weapons used in violation of any controlled substance crime, any violation of Minn. Stat. Chapters 609 or 624, or violation of a protective order under Minn. Stat. Sec. 518B.01, subd.14.
- B. Bullet-resistant vests possessed during the commission of a crime.
- C. Controlled substances, plants from which controlled substances are derived, and drug paraphernalia (Minn. Stat. Chapter 152).

## **XII. CRIMINAL CODE ADMINISTRATIVE FORFEITURE**

Other property subject to administrative forfeiture under the criminal laws such as vehicles, other conveyances, and property found in proximity to controlled substances are governed by separate administrative forfeiture procedures.

- A. Seize, secure, and store the property as outlined in Directive O-11.
- B. Issue a Controlled Substance Notice of Seizure and Intent to Forfeit Property form to the operator or person from whom the property is being seized. These controlled substance administrative forfeiture forms are generally available at local law enforcement offices. If that person is not the owner of the property, serve the owner, either in person or by certified mail, with a copy of the Controlled Substance Notice of Seizure and Intent to Forfeit Property Form. A complete inventory, property description, and receipt must be attached to the Controlled Substance Administrative Forfeiture Form.
- C. After 60 days of issuance of the forfeiture notification, the officer shall contact the local prosecutor and request the prosecutor to certify that there has not been a request for a judicial determination. Upon certification by the



prosecutor, the property may be either utilized by the division, sold, or destroyed. The forfeitures must be reported as specified in section XIV, item E of this directive. Any proceeds resulting from sales of forfeited property will be distributed as specified in section XV, item B, 3 of this directive.

### **XIII. JUDICIAL FORFEITURE; DWI, FLEEING A PEACE OFFICER, AND CRIMINAL CODE**

- A. The forfeiture of property is a civil court procedure. A separate civil complaint is filed against the property, generally by the prosecutor handling the criminal case. The forfeiture case can be filed at the same time as the criminal case or at a later time. In some cases, a conviction of the originating criminal offense is required to complete forfeiture while in other cases, the conduct giving rise to the seizure must simply be proven by clear and convincing evidence.
- B. For all judicial forfeiture cases, contact the appropriate local prosecutor and provide that office with all pertinent information regarding the case and request initiation of forfeiture proceedings. Complete inventory and description of the property and receipt to the person from whom the property was seized.

### **XIV. REQUIRED REPORTING OF FLEEING A PEACE OFFICER AND CRIMINAL CODE FORFEITURES**

- A. Conservation officers shall notify their immediate supervisor of the seizure of any vehicle or other property, as provided in Directive O-11, and shall prepare any reports required under Directive A-13.
- B. A Custody/Seizure Tag/Disposition Report form (NA-01189) shall be completed for every forfeiture incident.
- C. If a summons is issued, the custody/seizure tag/disposition report form number shall be recorded on the summons and the summons number shall be recorded on the custody/seizure tag/disposition report form.
- D. Conservation officers shall include the reason and statutory authority for seizure for any property seized on the custody/seizure tag/disposition report form and complete reports listed in item E, below.
- E. District supervisors shall ensure the completion of the Criminal Forfeiture Incident Report form (appendix B of this directive) and forward it to the arrests and confiscations supervisor within the month the forfeiture is

completed. The arrest and confiscations supervisor shall forward the report to the state auditor. See state auditor's website for directions and forms: [http://www.auditor.state.mn.us/forms/gid/forfeiture/forfeiture\\_form.pdf](http://www.auditor.state.mn.us/forms/gid/forfeiture/forfeiture_form.pdf)

For firearms **not** confiscated under authority of the game and fish laws, the district supervisor shall submit the above form along with the firearm to the arrests and confiscations supervisor.

- F. Game and fish confiscations and DWI forfeitures are exempt from these reporting requirements.

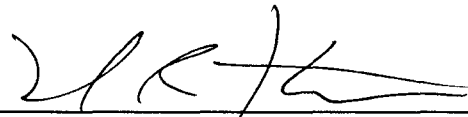
#### **XV. DISPOSAL OF FORFEITED PROPERTY UNDER OTHER CRIMINAL LAWS OR ABANDONED OR CONTRABAND PROPERTY**

- A. Property not authorized for direct sale by the Department is subject to specific disposal procedures. The court may order forfeited property to be disposed of, or if the property was administratively forfeited, the division may dispose of property as applicable in the following manners:
  - 1. Weapons, firearms, ammunition, and firearm accessories forfeited under laws, other than game and fish laws, may be retained for use by the division, sold to licensed firearms dealers under Minn. Stat. Sec. 609.5315, or destroyed.
  - 2. Other property, except cash/money, may be kept for official use by the division or by the prosecutor. The director's designee shall determine what use will be made of property retained by the division. In general, forfeited property will not be assigned to the officer affecting the seizure.
- B. Proceeds resulting from sales of property forfeited in connection with controlled substances and other designated crimes must be distributed as follows:
  - 1. Pay all towing, storage, and other costs related to the forfeiture prior to paying valid liens against the property.
  - 2. Seventy percent of the net proceeds will be deposited to the division's operating budget; 20 percent to the prosecuting authority handling the forfeiture proceedings; and the remaining 10 percent deposited to the state's general fund.

3. Deposits of any forfeited cash or proceeds of sales of forfeited property will be coordinated by the district supervisor. The proceeds of any sale shall be by check or money order payable to the Department of Natural Resources and shall be forwarded to Office of Management and Budget Services in a self-addressed envelope available through regional enforcement offices. The envelope needs to contain (1) a deposit slip form (available through the regional enforcement office or Enforcement's form folder on the I-drive); (2) the check or money order; and (3) the associated custody/seizure tag/disposition report form. Officers shall not mail cash.
- C. Property forfeited may be turned over to the Department of Administration through DNR Management Resource Bureau for sale or disposal.
  - D. Large amounts of controlled substances may be turned over to the Bureau of Criminal Apprehension for disposal.
  - E. Abandoned or stolen firearms may be turned over to the sheriff. They must be kept and protected for at least 90 days while efforts are made to locate the lawful owner.
  - F. Property abandoned on private land shall be turned over to the sheriff's office and disposed of pursuant to Minn. Stat. Sec. 345.02 to 345.07.
  - G. Firearms Lost/Stolen Record Checks.

The seizing officer shall run National Crime Information Center (NCIC) record checks for lost/stolen records when any firearm is seized, and again before the firearm is released or turned in for disposal.

By Authority of:



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COL Michael R. Hamm  
Chief Conservation Officer/Division Director  
Division of Enforcement



DIRECTIVE O-23-2007

Appendix A

Forfeiture Request Cover Sheet  
(NA-03846)

*NOTE:* Copies of this form can be found on the  
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DIRECTIVE O-5-2007

Appendix B

Criminal Forfeiture Incident Report Form

Note: Electronic version also available online at:  
[http://www.auditor.state.mn.us/forms/gid/forfeiture/forfeiture\\_form.pdf](http://www.auditor.state.mn.us/forms/gid/forfeiture/forfeiture_form.pdf)

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DIRECTIVE O-23-2007

Appendix C

Secured Party Vehicle Release Agreement

*NOTE:* Copies of this form can be found on the  
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**STATE OF MINNESOTA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF ENFORCEMENT**

**SECURED PARTY VEHICLE RELEASE AGREEMENT**

**THIS AGREEMENT**, is entered into on \_\_\_\_\_, 20\_\_\_, between The State of Minnesota, Department of Natural Resources, Division of Enforcement (hereinafter “Dept. of Natural Resources”), and

\_\_\_\_\_  
(Name of Secured Party)

\_\_\_\_\_  
(Hereinafter “Secured Party”).

**WHEREAS**, the Department of Natural Resources is in possession of the following vehicle which was acquired through a forfeiture proceeding pursuant to Minnesota Statute 169A.63, the DWI forfeiture law:

|             |               |
|-------------|---------------|
| Year:       | Model:        |
| License No: | Make:         |
| VIN:        | Debtor/Owner: |

**WHEREAS**, the Secured Party has requested that the Dept. of Natural Resources release the vehicle to the Secured Party pursuant to its security interest and Minnesota Statute 169A.63, Subdivision 11.

**NOW, THEREFORE**, in the interests of promoting public safety and the prevention of further economic waste, the Department of Natural Resources and the Secured Party agree as follows:

1. The Department of Natural Resources will release the aforesaid vehicle to the Secured Party or its authorized agent upon the following conditions:
  - a) The Secured Party agrees to complete the necessary foreclosure proceedings as soon as reasonably possible to terminate debtor’s ownership interests or, in the alternative, a written surrender of interest executed by the debtor/owner as to the vehicle and to cause the vehicle to be sold in a commercially reasonable manner.
  - b) The Secured party agrees that due to the forfeiture proceedings that the debtor shall have no right to redeem the vehicle under the security agreement in accordance with Minnesota Chapter 336.9-504.
  - c) The Secured Party further agrees that neither the debtor nor any member of the debtor’s household shall regain ownership or possession of the vehicle and the Secured Party agrees not to release, deliver, or assign the vehicle to the debtor or any member of the debtor’s household.

- d) The Secured Party agrees to pay the Department of Natural Resources the greater amount of (i) and (ii) below.
  - i. \$ \_\_\_\_\_, Which represents the total cost incurred by the Department of Natural Resources as a result of the seizure, storage, towing and other related expenses incurred in conjunction with the forfeiture of the vehicle identified above; and
  - ii. The difference between the amount owed to the secured party on the date of the forfeiture and the net proceeds received from the sale of the vehicle.
- 2. In consideration of the Agreement, the parties, for themselves, their agents, representatives, predecessors, successors and assigns, hereby release and discharge their agents, representatives, predecessors, successors and assigns of and from any and all claims, damages, demands, actions, causes of actions or suits of law or equity of whatsoever kind or nature that each of them may have against the other, whether known or unknown, arising out of claims which were or might be alleged in the matter referred to above in connection with the above described vehicle and its seizure by the Department of Natural Resources.
- 3. This release agreement is binding upon and shall insure to the benefit of the successors and assigns of the parties.

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF ENFORCEMENT

\_\_\_\_\_  
By:

SECURED PARTY

\_\_\_\_\_  
By:



**DIRECTIVE NO. O-23-2007 SIGNATURE**

I have received a copy of **Directive O-23-2007, Forfeiture of Property Under DWI, Fleeing, and Criminal Code Laws**, which I have read, placed in my directives manual, and have had an opportunity to discuss with my supervisor

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Officer's Printed Name

Badge No.

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Signature

Date

This sheet shall be signed and returned to your immediate supervisor within seven working days after receipt of this directive. Directive signature sheets will be filed and maintained in the officer's division file in the central office.