

# MINNESOTA DEPARTMENT OF NATURAL RESOURCES

## DIVISION OF ENFORCEMENT

### DIRECTIVE

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**DIRECTIVE NUMBER: O-23-24**

**SUBJECT: SEIZURE AND FOFEITURE AND DISPOSAL OF PROPERTY UNDER DWI, FLEEING, DRUGS AND CRIMINAL CODE LAWS.**

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**EFFECTIVE DATE:** Oct. 9, 2024

**SPECIAL INSTRUCTIONS:** POST Board Mandated Policy –Reviewed Annually

**APPENDIX:** None

**REFERENCE:** MN Statutes: 169A.63, 609.487, 609.531 to 609.5318, and others; Directives A-13, 0-4, 0-6, 0-11, 0-22

**DISTRIBUTION:** All Conservation Officers

**NUMBER OF PAGES:** 7

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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 for civil proceedings related to departmental administrative actions. 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 officers regarding the seizure and forfeiture of motor 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 to consistently pursue seizure and forfeiture of motor vehicles, firearms, contraband, and other property under the driving while intoxicated (DWI), fleeing and other criminal code provisions in law.

#### **III. DEFINITIONS**

- A. Confiscation/forfeiture:** the transfer of ownership to the state. The state cannot claim ownership by confiscation/forfeiture without a legal authority that provides the specific ownership transfer. Confiscation/forfeiture authority processes can be either administrative or judicial.

- B. Contraband:** any wild animal, wild rice, aquatic vegetation, or object that is unlawful to possess under Minnesota law or any federal law that officers are authorized to enforce. Contraband shall be seized and not returned, unless otherwise ordered by the court.
- C. Courts:**
  - a. District court is the correct venue for property disputes, including forfeitures.
  - b. Conciliation court or civil court filings and procedures may be used in addition to specific procedures provided in law.
- D. DWI:** as defined in 169A.20
- E. DWI forfeiture:** as outlined in 169A.63
- F. Fleeing a peace officer motor vehicle; other:** as defined in 609.487
- G. Forfeiture:** the transfer of ownership, of seized property, to the state. The state cannot claim ownership by forfeiture without legal authority that provides the specific ownership transfer. The forfeiture authority process can be either administrative or judicial.
- H. Motor vehicle:** as defined in 169A.03
- I. Property:** all tangible items, including but not limited to wild animals, contraband, equipment, vehicles, and other evidence that are taken into custody by an officer in the course of the officer's duties.
- J. Prosecuting authority:** county attorneys are the primary prosecuting authority for violations under 169A and 609.487. Prosecution includes associated civil forfeiture actions provided by law.
- K. Retention period:** 90 days after final court disposition or 90 days from the date of seizure whichever is longer. Unless authorized by the Director.
- L. Secured party:** as defined in 336.9-102(a)(73)
- M. Security interest perfected:** as defined in 336.9-703
- N. Seizure:** the act of temporarily taking possession of property pursuant to an officer's legal authority provided by statute.

#### **IV. DWI FORFEITURE**

- A. Forfeiture limitations. Property may not be confiscated/forfeited if one of the following conditions exist:
  - 1. 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.
  - 2. Vehicles leased for less than 180 days are not subject to forfeiture.

3. 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.

B. Field initiated requirements

1. Seizure tag. A seizure tag shall be completed for all property seized. Evidence documentation procedures shall be followed per directive O-11.
2. Motor vehicles. Officers shall receive approval from a supervisor prior to the seizure and/or towing of a motor vehicle.
3. Towing (if applicable). After supervisory approval, a motor vehicle or watercraft is seized and towed a division tow sheet/impound inventory form will be completed (document found under forms in PowerDMS). Tow invoices shall be uploaded to the ICR and a copy sent to the regional office by the primary officer.
4. Lien status. Officers shall check the lien status of a motor vehicle by performing a records check using the CJIS database with a QML search. Officers shall also verbally check/verify lien information with the operator/owner.
5. Forfeiture checklist (necessary for DWI and fleeing). Officers will complete the division forfeiture checklist and upload it to the ICR. The officer will continue to update the document as steps are verified and completed. (Document located under forms in PowerDMS).
6. Notice of seizure and intent to forfeit. Officers shall serve the driver or operator of the vehicle and any person known to have an ownership, possessory, or security interest in the motor vehicle and or watercraft with this form (document located under forms in PowerDMS) at the time of seizure if possible and in no case later than 24 hours of arrest, in all other cases by the end of the next calendar day, unless the officer will not be on duty the next day, in which case the submission must be completed before the officer goes off duty. A notice sent by certified mail to the registered owner's address shown in Department of Public Safety (DPS) records is considered sufficient notice.
7. ICR. Officers will complete an Initial Complaint Report (ICR) and enter property as required in Directive O-11 Property and Evidence Standards and A-13 Written Report Requirements. The forfeiture DWI custom attribute shall be checked.
8. Flagging of motor vehicle title
  - a. DPS registered vehicle. If a motor vehicle is seized that is registered under Minn. Stat. Chapter 168, the officer shall notify the 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 BCA E charging documents so that no additional liens may be placed against the vehicle.
  - b. Department of Natural Resources (DNR) registered vehicle. If the vehicle is an OHV or motorboat, the officer shall notify the administrative captain who shall then request the DNR license center flag the registration record as subject to

forfeiture.

## **V. STORAGE OF SEIZED PROPERTY**

- A. All property (other than motor vehicles and watercraft) shall be stored in a secure area that will protect it from damage and maintains property chain of custody per directive O-11.
- B. Motor vehicle and watercraft. The officer will arrange for secure storage at a DNR or other law enforcement facility to minimize storage costs. If the vehicle was towed to a commercial impound lot, the vehicle shall be moved to a state owned or other low-cost secure facility within 48 hours. If the vehicle is to be stored over winter, district supervisors shall ensure it is properly winterized. Storage invoices shall be uploaded to the ICR and a copy provided to the regional office by the primary officer.

## **VI. RELEASE OF PROPERTY PRIOR TO FINAL CASE DISPOSITION**

Prior to the releasing of a motor vehicle or watercraft, the officer or their supervisor will ensure that the owner or authorized agent by the owner signs the division tow sheet/impound inventory form release authorization section.

In all other returning or releasing of property, the officer or their supervisor will ensure that the division seizure return receipt is completed. In all other circumstances:

- A. Bond by owner. A request to release a vehicle by bond by the owner per 169A.63 (4) shall be forwarded to the supervisor. The supervisor shall consult with their regional or program manager for guidance on how to disable the vehicle in accordance with the statutory requirement.
- B. Secured party release. The supervisor will coordinate the secured party request and prepare a secured party release (appendix C). Any cost of seizure and/or 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 instructed by the division's administrative captain.
- C. Secured interest perfected. Release a vehicle to a perfected lien holder if they notify the department in writing within 30 days of their intent to do so.
- D. Ignition interlock release. If ignition interlock/acceptance into a treatment court is initiated forfeiture proceedings are stayed and the vehicle must be returned per 169A.63 (13).
- E. Court order. If the court orders property to be returned, the officer shall notify their supervisor to facilitate the return.

## **VII. DISPOSAL OF DWI FORFEITED MOTOR VEHICLE/WATERCRAFT**

- A. Sales of DWI forfeited motor vehicles and watercraft shall be coordinated through the regional manager with their respective Management Resources bureau manager. The regional manager shall forward copies of the sale documentation to, along with the forfeiture certification letter from the county attorney to the administrative manager.

- B. The administrative manager will work with the division's business office to confirm proper deposit of proceeds and coordinate any funds owed to the county attorney as required by law. Proceeds from the sale of a forfeited vehicle will be distributed per 169A.63 (10).

## VIII. FLEEING A PEACE OFFICER FORFEITURE

Motor vehicles operated in fleeing a peace officer offense which endanger life or property of another are subject to forfeiture under 609.487. Officers should initiate confiscation/forfeiture proceedings for fleeing offenses with approval from a supervisor.

Off-road recreational vehicles and motorized watercraft are exempt from the 48/96-hour notification requirements in 609.5312 (4).

### A. Forfeiture limitations

The vehicle may not be forfeited if one of the following conditions exist:

1. The owner did not have knowledge of the offense.
2. The vehicle was leased for fewer than 180 days.

### B. Field initiated requirements

1. Seizure tag. A seizure tag shall be completed for all property seized. Evidence documentation procedures shall be followed per directive O-11.
2. Motor vehicles. Officers shall receive approval from a supervisor prior to the seizure and/or towing of a motor vehicle.
3. Towing (if applicable). After supervisory approval, a motor vehicle or watercraft is seized and towed a division tow sheet/impound inventory form will be completed (document found under forms in PowerDMS). Tow invoices shall be uploaded to the ICR and a copy sent to the region office by the primary officer.
4. Lien status. Officers shall check the lien status of a motor vehicle by performing a records check using the CJIS database with a QML search. Officers shall also verbally check/verify lien information with the operator/owner.
5. Forfeiture checklist (necessary for game and fish over \$1,000, DWI, fleeing, felon possess firearm). Officers will complete the division forfeiture checklist and upload it to the ICR. The Officer will continue to update the document as steps are verified and completed. (Document located under forms in PowerDMS)
6. Notice of seizure and intent to forfeit vehicle and property. Officers shall serve the driver or operator of the vehicle and any person known to have an ownership, possessory, or security interest in the motor vehicle and or watercraft with this form (document located under forms in PowerDMS) at the time of seizure if possible and in no case later than 24 hours of arrest. in all other cases by the end of the next calendar day, unless the officer will not be on duty the next day, in which case the submission must be completed before the officer goes off duty. A notice sent by certified mail to the registered owner's address shown in DPS records is considered

sufficient notice.

7. ICR. Officers will complete an Initial Complaint Report (ICR) and enter property as required in Directive O-11 Property and Evidence Standards and A-13 Written Report Requirements. The forfeiture DWI custom attribute shall be checked.
8. Flagging of motor vehicle title
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  - b. DNR registered vehicle: If the vehicle is an OHV or motorboat, the officer shall notify the administrative captain who shall then request the DNR license center flag the registration record as subject to forfeiture.

## **IX. STORAGE OF SEIZED PROPERTY**

- A. All property (other than motor vehicles and watercraft) shall be stored in a secure area that will protect it from damage and maintains property chain of custody per directive O-11.
- B. Motor vehicle and watercraft. The officer will arrange for secure storage at a DNR or other law enforcement facility to minimize storage costs. If the vehicle was towed to a commercial impound lot, the vehicle shall be moved to a state owned or other low-cost secure facility within 48 hours. If the vehicle is to be stored over winter, district supervisors shall ensure it is properly winterized. Storage invoices shall be uploaded to the ICR and a copy provided to the regional office by the primary officer.

## **X. RELEASE OF PROPERTY**

Prior to the releasing of a motor vehicle or watercraft, the officer or their supervisor will ensure that the owner or authorized agent by the owner signs the division tow sheet/impound inventory form release authorization section.

In all other releasing of property, the officer or their supervisor will ensure that the division seizure return and acknowledgement form (in division forms folder) is completed. Other releasing of property processes are:

- A. Bond by owner. A request to release property by bond by the owner or person having legal right to possess shall be forwarded to the supervisor. The supervisor shall consult with their regional or program manager for guidance to facilitate the return. 609.531 subd. 5a (a,b). The owner of a motor vehicle or watercraft may bond their property out.
- B. Court order. If the court orders property to be returned, the officer shall notify their supervisor to facilitate the return.

## **XI. DISPOSAL OF FLEEING FORFEITED MOTOR VEHICLE/WATERCRAFT**

- A. Sales of forfeited motor vehicles and watercraft shall be coordinated through the regional manager and their respective Management Resources regional manager. The regional manager shall forward copies of the sale documentation to, along with the forfeiture certification letter from the county attorney to the administrative manager.
- B. The administrative manager will work with the division's business office to confirm proper deposit of proceeds and coordinate any funds owed to the county attorney as required by law. Proceeds from the sale of a forfeited vehicle will be distributed per 609.5315.

## **XII. PROPERTY UNDER STATUTES: 152 (DRUGS), 609 (CRIMINAL), 624 (FIREARMS)**

Unless authorized by the director, officers shall not proceed with forfeiture of any property resulting from a conviction in Chapters 152, 609, or 624, except for felons in possession of firearm violations (624.713) see specific section below.

Violations of these statutes shall be referred to the local agency for charging and prosecution. Officers may assist another local agency by securing the scene and preserving evidence. If an officer seizes evidence, a seizure tag shall be completed, and the evidence shall be transferred to the local agency as soon as practical.

Contraband is any object that is unlawful to possess under state or federal law. Contraband that is part of a criminal investigation shall be turned over to the investigating agency. Officers shall get direction from a supervisor on how to dispose of contraband in their possession that is not part of an active criminal investigation by a local agency and is not contraband under game & fish law.

- A. Felon in possession of a firearm. Officers charging a felon in possession of a firearm in violation of 624.713 shall immediately or as soon as practical complete the division notice of seizure/intent to forfeit firearm for unlawful possession of a firearm form. (Document located under forms in PowerDMS)

## **XIII. REQUIRED REPORTING OF ALL FORFEITURES**

The administrative manager shall report all forfeitures to the state auditor by the means and forms required by their office.

**By Authority of:**

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**COL Rodmen Smith  
Division Director  
Division of Enforcement**