

# Civil Forfeiture in Iowa

John Heggen, Legal Counsel  
Legislative Services Agency  
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# OVERVIEW

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- Civil Forfeiture Versus Criminal Forfeiture
- Scope of the Forfeiture Reform Act
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# WHAT IS CIVIL FORFEITURE?

# Civil Forfeiture Definition

- Civil forfeiture is a legal process whereby property may be forfeited to the state if the state can show by a preponderance of the evidence that the property was used to facilitate a crime, was furnished in an exchange that is a crime, or is proceeds of a crime.
- A civil forfeiture proceeding in Iowa is independent of any criminal prosecution for the same conduct. Iowa Code section 809A.12(14).
- Currently, 49 states and the federal government have some form of civil forfeiture, but these laws vary widely.

# Overview of a Forfeiture Action

- Seizure for evidentiary purposes. Iowa Code section 808.2.
- Seizure for forfeiture needs to be supported by probable cause. Iowa Code section 809A.6.
  - Pre-seizure process required unless exigent circumstances exist or property has already been seized for a purpose other than forfeiture. Iowa Code section 809A.6(2).
  - If there is no prior process, court may issue an order to show cause for the purpose of a probable cause determination. Iowa Code section 809A.12(3).
- Seizure for forfeiture can be actual or constructive. Iowa Code section 809A.4(6)(b).
- Prosecuting attorney may file a lien on the property. Iowa Code section 809A.9.

# Overview of a Forfeiture Action, continued

- Notice of pending forfeiture or an in rem complaint. Iowa Code section 809A.8.
- If no timely filed claim or proper answer, the prosecuting attorney may apply for an order of forfeiture and an allocation of forfeited property. Iowa Code section 809A.16(3).
- Forfeiture proceeding:
  - State must show, by a preponderance of the evidence, that the property is subject to forfeiture. Iowa Code section 809A.13(7).
  - If state meets its burden, a property owner can attempt to show an exemption by a preponderance of the evidence. Iowa Code section 809A.13(8).
- Allocation of property. Iowa Code section 809A.17.

# History of Forfeiture

- Feudal England recognized three types of forfeiture:
  - Deodand – Anything causing death to a subject was forfeited to the Crown.
  - Summary forfeiture – All crime was against the King, so any felony violated the King's peace. Felon automatically forfeited his estate.
  - Statutory Forfeiture – In the seventeenth century England enacted the Navigation Acts, the forerunners of modern civil forfeiture.
- American colonies never adopted deodand.
- First Congress abolished summary criminal forfeiture in 1790.
- American legal system kept statutory forfeiture.
- Forfeiture use expanded during the Civil War.
- Little forfeiture activity until 1970 – RICO and Comprehensive Drug Abuse and Control Act.
- Comprehensive Crime Control Act of 1984.

# Commission Forfeiture Reform Act

- Iowa's current forfeiture law is based on a model act produced by the President's Commission on Model State Drug Laws.
- The President's Commission was a bipartisan task force appointed by President George H. W. Bush.
- President's Commission was comprised of state legislators, treatment service providers, police chiefs, state attorneys general, a housing specialist, district attorneys, a state judge, attorneys, and other experts.
- The President's Commission published the Forfeiture Reform Act in December of 1993.
- The Forfeiture Reform Act was 1 of 44 model laws, and 1 of 6 of the model laws designed to provide economic remedies.

# Commission Forfeiture Reform Act, continued

- President's Commission used the Model Asset Seizure and Forfeiture Act, which was promulgated in 1991, as the foundation for its Forfeiture Reform Act.
- The President Commission's stated goals were to remove the financial incentive of illegal activity, to restore economic integrity to the marketplace, and to compensate society for economic damages suffered due to illegal activity by rededicating forfeited property to socially beneficial uses.

# Forfeiture Reform Act – Iowa Code Chapter 809A

- Forfeiture Reform Act was enacted by the General Assembly in 1996 and is codified in chapter 809A.
- Forfeiture Reform Act included protections for innocent owners as compared to the previous forfeiture law in Iowa:
  - Eliminated forfeiture as an option in simple misdemeanor cases.
  - Allows innocent owners to file a claim prior to judicial process.
  - Allows joint owners to claim the status of an innocent owner.
  - Allows an innocent owner who successfully asserts an exemption to recoup attorney fees.
  - Allows an owner to substitute a bond for a specific item of property.

# CIVIL FORFEITURE VERSUS CRIMINAL FORFEITURE

# No Conviction Requirement

- Criminal forfeiture occurs after a defendant has been convicted of a crime.
- Civil forfeiture is independent of a criminal prosecution, if any.
- Chapter 809A provides for civil, not criminal forfeiture.
- In civil forfeiture, a criminal conviction is not required, and a dismissal or acquittal does not preclude civil forfeiture proceedings. Iowa Code section 809A.12(14).

# Lower Burden of Proof

## Standard

- Probable cause
- Preponderance
- Clear and convincing
- Beyond a reasonable doubt

## Burden on state

- Reasonable basis – same as search warrants
- More likely than not – standard used in civil suits
- No serious or substantial doubt as to the correctness of the conclusions of law drawn from the evidence
- No reasonable person could have doubt about truth of claim – criminal standard

# Lower Burden of Proof, continued

- The standard in Iowa for contested forfeiture cases is a preponderance of the evidence. Iowa code section 809A.13(7).
- State's burden in criminal cases is beyond a reasonable doubt. Iowa Code section 701.3.
- Preponderance of the evidence is the most common standard, and is used by 26 states and the federal government.
- 10 states use the probable cause standard.
- 12 states use the clear and convincing standard.
- 6 states use the reasonable doubt standard, with half of those states requiring a conviction prior to the forfeiture.

# Criminal Law Concepts

- Eight Amendment – “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”
- Fourth Amendment – Bans unreasonable searches and seizures
  - Exclusionary rule – Court created remedy for violations of the Fourth Amendment
  - Pretextual Stops
- Sixth Amendment – “In all criminal prosecutions, the accused shall . . . have the assistance of counsel for his defense.”

# Eight Amendment – Excessive Fine Clause

- Both the United States Constitution and the Iowa Constitution ban “excessive fines.”
- Eighth Amendment is applied to criminal prosecutions to ensure that a rational relationship exists between the underlying offense and the punishment.
- According to the President’s Commission, civil forfeiture is not intended to punish wrongdoing, but is intended to compensate the public for economic loss attributable to illegal property use.
- President’s Commission did not that the Eighth Amendment was relevant to civil forfeiture.

# Eight Amendment – Excessive Fine Clause, continued

- The United States Supreme Court has held that civil forfeiture statutes may violate the Excessive Fines Clause because, while such statutes are said to be remedial, they are also intended to deter and punish unlawful activity. Austin v. United States, 509 U.S. 602 (1993).
- The Iowa Supreme Court has held that civil forfeiture is constitutionally excessive if the defendant can show “gross disproportionality.” In re Property Seized from Chiodo, 555 N.W.2d 412 (Iowa 1996).
- Factors included in this analysis are “the extent and duration of the criminal conduct, the gravity of the offense weighed against the severity of the criminal sanction, and the value of the property forfeited.”

# Fourth Amendment - Exclusionary Rule

- Fourth Amendment bars unreasonable searches and seizures.
- Exclusionary rule, subject to exceptions, bars the admissibility of evidence in a criminal trial that is obtained in violation of the Fourth Amendment.
- Iowa Supreme Court held that, “In establishing a right to forfeiture, however, the State may not rely on evidence obtained in violation of fourth amendment protections nor derived from such violations”. In re Property Seized from Flowers, 474 N.W.2d 546 (Iowa 1991).
  - BUT – “We hold the fact that property otherwise forfeitable has been seized in violation of the fourth amendment to the federal constitution is not a bar to forfeiture.”

# Fourth Amendment – Pretextual Stops

- An officer's pretextual basis for a stop is constitutionally sufficient under the Fourth Amendment if the officer observes a traffic offense, however minor. Whren v. United States, 517 U.S. 806 (1996).
- Pretextual stops do not violate the Fourth Amendment or Iowa Constitution. In re Property Seized from Pardee, 863 N.W.2d 35 (Iowa App. 2015).

# Sixth Amendment – Right to Counsel

- Sixth Amendment of the U.S. Constitution guarantees a defendant a right to counsel in criminal cases.
- Under the Iowa Constitution, a defendant has a right to the assistance of counsel when the defendant faces the possibility of imprisonment.
- No right to counsel in civil forfeiture cases. See In re Property Seized from Behmer, 720 N.W.2d 191 (Iowa App. 2006).

# SCOPE OF FORFEITURE REFORM ACT

# Conduct Giving Rise to Forfeiture

- Conduct giving rise to forfeiture:
  - An act or omission which is a serious or aggravated misdemeanor or felony. Iowa Code section 809A.3(1)(a).
  - An act or omission occurring outside of the state which would be a serious or aggravated misdemeanor or felony if it occurred in Iowa. Iowa Code section 809A.3(1)(b).
  - An act or omission committed in furtherance of an act or omission which is a serious or aggravated misdemeanor or felony, including an inchoate or preparatory offense. Iowa Code section 809A.3(1)(c).
- Minor's conduct can still be conduct giving rise to forfeiture, even if minor is adjudicated a delinquent in juvenile court. In re Property Seized from Terrell, 639 N.W.2d 18 (Iowa 2002).
- A conviction is not required. Iowa Code section 809A.12(14).

# Conduct Giving Rise to Forfeiture – Exceptions

- Violations of chapters 321 (motor vehicles) and 321J (OWI) are not conduct giving rise to forfeiture, except for violations of:
  - Sale, operation, or possession of a speed detection jamming device.
  - Second or subsequent violation of driving with a suspended or revoked license due to an OWI.
  - Operation of motor vehicle in violation of an order of impoundment or immobilization.
- Iowa Code section 809A.3(2).

# Property Subject to Forfeiture

- Controlled substances. Iowa Code section 809A.4(1).
- Real and personal property. Iowa Code section 809A.4(2).
- Proceeds. Iowa Code section 809A.4(3).
- Weapons. Iowa Code section 809A.4(4).
- Enterprise interests. Iowa Code section 809A.4(5).
- Substitute assets. Iowa Code section 809A.4(6).

# Controlled Substances

- Controlled substances, counterfeit controlled substances, imitation controlled substances, or precursor substances. Iowa Code section 809A.4(1).
- Controlled substances are summarily forfeited to the state. Iowa Code section 809A.21.
  - No requirement of a nexus between controlled substances and conduct giving rise to forfeiture.
- State may not return seized property if the possession of the property is prohibited by law. Iowa code section 809.5(1).

# Real and Personal Property

- Iowa Code section 809A.4(2): All property, real and personal, including homesteads, that is either:
  - Furnished or intended to be furnished by a person in an exchange that constitutes conduct giving rise to forfeiture; or
  - Used or intended to be used in any manner or part to facilitate conduct giving rise to forfeiture.
- Facilitate means to have a substantial connection between the property and the conduct giving rise to forfeiture. Iowa Code section 809A.4(7).

# Real and Personal Property - Exception

- Exception if conduct giving rise to forfeiture is only possession of a controlled substance in violation of Iowa Code section 124.401(5):
  - Real property is not subject to forfeiture; and
  - Property may only be forfeited in an in personam proceeding, not an in rem proceeding.
- Iowa Code section 809A.4(2)(b).

# Proceeds

- All “proceeds” of any conduct giving rise to forfeiture. Iowa Code section 809A.4(3).
- “Proceeds” means property acquired directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose. Iowa Code section 809A.1(4).

# Weapons

- All weapons possessed, used, or available for use in any manner to facilitate conduct giving rise to forfeiture. Iowa Code section 809A.4(4).

# Enterprise Interests

- Any interest or security in, claim against, or property or contractual right of any kind affording a source of control over any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct or through conduct giving rise to forfeiture. Iowa Code section 809A.4(5).

# Substitute Assets

- Any property of a person up to the value of property which is real or personal property, or proceeds. Iowa Code section 809A.4(6).
- Relevant when there is an order of forfeiture and any of the following is true:
  - Forfeitable property cannot be located.
  - Forfeitable property has been transferred or conveyed to a third party.
  - Forfeitable property is beyond the court's jurisdiction.
  - Forfeitable property has been substantially diminished in value while not in the actual physical custody of the court, the seizing agency, the prosecuting attorney, or their designee.
  - Forfeitable property has been commingled with other property that cannot be divided without difficulty.
  - Iowa Code section 809A.15.

# Property Exempt from Forfeiture

- Owner obtained interest prior to or during the illegal activity without knowledge or reason to know of the illegal activity or its likelihood of occurrence. Iowa Code section 809A.5(1)(a).
- Owner obtained interest prior to or during the illegal activity with knowledge, or reason to know of the offense or its likelihood of occurrence, but took reasonable steps to prevent the offense. Iowa Code section 809A.5(1)(a).
- Owner purchased the interest in good faith and without knowledge of the unlawful conduct. Iowa Code section 809A.5(1)(b).

# Nonexempt Interests

- Iowa Code section 809A.5(2) contains three exceptions to the property exemptions:
  - Person whose conduct gave rise to the forfeiture had authority to convey the property of the person claiming the exemption to a good faith purchaser for value at the time of the conduct.
  - Owner is criminally responsible for the conduct giving rise to the forfeiture (e.g., a co-conspirator).
  - Owner had notice of the seizure or reason to believe the property was forfeitable.

# SEIZURE OF PROPERTY

# Seizure for Forfeiture

- Seizure for forfeiture means seizure of property by a law enforcement officer, including constructive seizure, accompanied by an assertion by the seizing agency or by a prosecuting attorney that the property is seized for forfeiture. Iowa Code section 809A.1(9).
- Seizure may also be made for evidentiary purposes. Iowa Code section 808.2.
- Property may only be seized for forfeiture upon probable cause. Iowa Code section 809A.6.
- Property may be seized for forfeiture with or without a seizure warrant. Iowa Code section 809A.6.
- Seizure for forfeiture requires process, but judicial process may occur after the seizure. Iowa Code sections 809A.6, 809A.12(3).

# Seizure Warrant

- Property can be seized for forfeiture pursuant to a seizure warrant. Iowa Code section 809A.6(1).
- In probable cause hearing, court may consider any evidence which would be admissible in an application for a search warrant, which includes evidence that would not be admissible in a trial, such as hearsay. Iowa Code section 809A.12(8).
- Absent exigent circumstances or if the property has already been seized for a purpose other than forfeiture, a peace officer may only seize property for forfeiture by obtaining a seizure warrant from a district judge, district associate judge, or magistrate. Iowa Code section 809A.6(1).

# Warrantless Seizure

- Property may be seized for forfeiture without a seizure warrant, so long as the peace officer has probable cause to believe that the property is subject to forfeiture and that exigent circumstances exist or if the property has already been seized for a purpose other than forfeiture. Iowa Code section 809A.6(2).
- Property can also be seized for evidentiary purposes. Iowa Code section 809.1(a).
- If property is seized for forfeiture without a warrant, property owner can request a hearing on sole issue of probable cause. Iowa Code section 809A.12(3).

# Occupied Residential Real Estate

- Seizure of inhabited residential real estate, which would remove the residents, may only be done after a pre-seizure adversarial judicial determination of probable cause. Iowa Code section 809A.6(3).
- Determination may be made ex parte if the prosecuting attorney has demonstrated exigent circumstances, such as a safety hazard on the property. Iowa Code section 809A.6(3).

# Constructive Seizure

- Property may be seized constructively. Iowa Code section 809A.6(4).
- State seize constructively by posting notice of the seizure for forfeiture on the property, giving notice to the property owner, and filing or recording a notice of pending forfeiture in the public records relating to that type of property. Iowa Code section 809A.6(4).
- Forfeiture Reform Act authorizes the filing of liens for the forfeiture of property. Iowa Code section 809A.9.

# Third Party Protection

- A person who acts in good faith and in a reasonable manner pursuant to an order of the court or a request of a law enforcement officer regarding a seizure is not liable to any person for acts done in reasonable compliance with the order or request. Iowa Code section 809A.6(6).
- A possessory lien of a person from whose possession property is seized is not affected by the seizure. Iowa Code section 809A.6(7).

# Property Management and Preservation

- Property seized for forfeiture under this chapter is not subject to alienation, conveyance, sequestration, attachment, or an application for return of seized property under chapter 809. Iowa Code section 809A.7(1).
- Seized property may be returned if actual custody is unnecessary. Iowa Code section 809A.7(2).
- Seized property may also be released to the property owner if the property owner posts a surety bond or cash in an amount equal to the fair market value of the property.
  - The state, however, may oppose the release of the property if the property is contraband, evidence, or is particularly designed for use in conduct giving rise to forfeiture.
  - If a bond or cash is posted and the state prevails in the forfeiture proceeding, the bond or cash is forfeited in lieu of the property.
  - Iowa Code section 809A.7(5).

# Property Management and Preservation, continued

- If the state retains the seized property during the pendency of the forfeiture proceeding, the property can be removed to an appropriate place designated by the court, retained as evidence, removed to a storage area for safekeeping, deposited in an interest-bearing account, or transferred to a custodian to maintain and operate the property as reasonably necessary to maintain its value. Iowa Code section 809A.7(6).
- The court may order property which has been seized for forfeiture sold, leased, rented, or operated to satisfy a specified interest of any interest holder, or to preserve the interests of any party on motion of such party, after notice to persons known to have an interest in the property, and an opportunity for a hearing. Iowa Code section 809A.7(8).

# Property Management and Preservation, continued

- If the seized property is liable to perish, to waste, or to be foreclosed upon or significantly reduced in value, or if the expenses of maintaining the property are disproportionate to the property's value, the court may order a commercially reasonable sale of the seized property. Iowa Code section 809A.7(9).
- The proceeds would be applied in the following order:
  - Expenses of the sale.
  - To satisfy any exempt interests of the property in order of their priority.
  - Any remaining proceeds are placed in an interest-bearing account, and would be forfeited upon an ultimate finding that the property was subject to forfeiture.
  - Iowa Code section 809A.7(9).

# FORFEITURE PROCEEDINGS

# Prosecutorial Discretion

- Prosecutor has discretion to determine whether to initiate forfeiture proceedings.
- Iowa County Attorneys Association has guidelines for forfeiture proceedings.
  - Prosecutor should consider objectives of forfeiture:
    - Divesting criminal enterprises of their profits;
    - Separating criminal perpetrators from their instrumentalities;
    - Ensuring community safety;
    - Deterrence; and
    - Imposing consequences that are proportionate to the seriousness of the criminal activities.

# Prosecutorial Discretion, continued

- Prosecutor should determine if forfeiture is not justified by considering:
  - The seriousness of the criminal activity;
  - The intent or mental state of the criminal;
  - The nexus between the property and the criminal offense;
  - The course of conduct of the perpetrator during the commission of the criminal offense;
  - The prior involvement of the perpetrator with the criminal justice system;
  - The effect that forfeiture would have in deterring future criminal activity by the perpetrator or by others;
  - The effect, if any, that forfeiture would have in punishing the perpetrator;
  - The hardship that forfeiture would impose upon the perpetrator, family members, or joint property interest holders;
  - The cost of the forfeiture action to the county; and
  - The rights of any innocent property interest holders.

# Judicial Proceedings – In rem vs. in personam

- Judicial forfeiture proceedings may be either in rem or in personam. Iowa Code sections 809A.13, 809A.14.
- In an in rem proceeding, the state proceeds directly against the property the state is seeking to forfeit.
- In an in personam proceeding, the state proceeds against the person the state alleges committed conduct giving rise to forfeiture.
- In rem proceedings may be necessary following an in personam proceeding to determine rights of third parties. Iowa Code section 809A.14(7).

# In rem Proceedings

- Hearing shall be held without a jury and within 60 days after service of the complaint. Iowa Code section 809A.13(7).
- State has burden of proving the property is subject to forfeiture by a preponderance of the evidence. Iowa Code section 809A.13(7).
- If state meets burden, claimant must prove property is exempt from forfeiture by a preponderance of the evidence. Iowa Code section 809A.13(7).
- If judge finds that the prosecuting attorney failed to meet the state's burden or that the claimant established by a preponderance of the evidence that the claimant has an interest that is exempt from forfeiture, the property is returned to the claimant. Iowa Code section 809A.13(8).
- If judge finds that the prosecuting attorney met the state's burden and an exemption does not apply, the judge will order the property forfeited to the state and conduct further proceedings related to the disposition and allocation of the property. Iowa Code section 809A.13(8).

# In Personam Proceedings

- A judicial in personam forfeiture proceeding is brought by a prosecuting attorney pursuant to an in personam civil action alleging conduct giving rise to forfeiture. Iowa Code section 809A.14(1).
- If the court determines that a person committed conduct giving rise to forfeiture, the court shall enter a judgment of forfeiture and authorize the prosecuting attorney or designee or any law enforcement officer to seize all property ordered forfeited which was not previously seized or is not under seizure. Iowa Code section 809A.14(5).
  - Court can order the forfeiture of any other property of a person up to the value of that person's property found by the court to be subject to forfeiture if the forfeitable property is not available. Iowa Code section 809A.15.
- Following the entry of an in personam forfeiture order, the prosecuting attorney may proceed with an in rem action to resolve the remaining interests in the property. Iowa Code section 809A.14(7).

# Commencement of Forfeiture Proceedings

- In rem proceedings can be brought pursuant to either a notice of pending forfeiture or a verified complaint. Iowa Code section 809A.13(2).
- If by notice of pending forfeiture, the seizing agency provides owners and interest holder's notice of the forfeiture by personal or certified mail. Iowa Code section 809A.8(2).
  - Owner or interest holder than has 30 days to file a claim in the property, a petition for recognition of an exemption , or an extension of time to file a claim or petition. Iowa Code section 809A.8(1)(b)(2).
  - If a timely petition is filed, the prosecuting attorney delay filing a judicial forfeiture proceeding for one hundred eighty days after the notice of pending forfeiture and provide the seizing agency and petitioner a written recognition or denial of the claimed exemption. Iowa Code section 809A.8(1)(d)
  - If a timely claim or petition for recognition of an exemption is not received, the prosecuting attorney may proceed to dispose of the property according to Iowa Code sections 809A.16 and 809A.17. Iowa Code section 809A.8(1)(e).

# Commencement of Forfeiture Proceedings, continued

- In rem forfeiture proceedings can also commence through the filing of a verified complaint. Iowa Code section 809A.13(2).
- Notice of verified complaint is given in the same manner as if by notice of pending forfeiture. That is, the seizing agency provides owners and interest holder's notice of the forfeiture by personal or certified mail. Iowa Code section 809A.8(2).
- Owner or interest holder has 20 days to file an answer, specifying, among other things, the nature and extent of the claimant's interest in the property and the specific relief sought. Iowa Code section 809A.13(5).
- The forfeiture hearing shall be held without a jury and within sixty days after service of the complaint unless continued for good cause. Iowa Code section 809A.13(7).

# Commencement of Forfeiture Proceedings, continued

- A judicial in personam forfeiture proceeding brought by a prosecuting attorney pursuant to an in personam civil action alleging conduct giving rise to forfeiture. Iowa Code section 809A.14(1).
- Except as otherwise provided by the Forfeiture Reform Act, all proceedings shall be governed by the rules of civil procedure. Iowa Code section 809A.12(16).
- Iowa Rules of Civil Procedure allow 20 days after service to file a motion or an answer. Iowa Rule of Civil Procedure 1.303.

# Claims and Petition for Exemption

- Owner may file a claim by mailing it to the seizing agency and prosecuting attorney within 30 days after effective date of notice of pending forfeiture. Iowa Code section 809A.11(1).
- Claimant has 20 days to file answer after service on the claimant of the verified complaint. Iowa Code section 809A.13(5).
- Claim or petition shall be in affidavit form, signed under oath, and set forth:
  - The caption of the proceedings and identifying number, the name of the claimant or petitioner, and the name of the prosecuting attorney.
  - The address where the claimant or petitioner will accept mail.
  - The nature and extent of the claimant's or petitioner's interest in the property.
  - The date, the identity of the transferor, and the circumstances of the claimant's or petitioner's acquisition of the interest in the property.
  - The specific provision of law relied on in asserting that the property is not subject to forfeiture.
  - All essential facts supporting each assertion, and the specific relief sought.
  - Iowa Code section 809A.11(3) and 809A.13(4).

# Statute of Limitations

- A civil forfeiture action must be commenced within 5 years after the last conduct giving rise to forfeiture or the cause of action becomes known or should have become known, excluding any time during which either the property or defendant is out of the state or in confinement, or during which criminal proceedings relating to the same conduct are pending. Iowa Code section 809A.20.
- BUT – In re Property Seized for Forfeiture from Williams, 676 N.W.2d 607 (Iowa 2004).
  - Court holds that Iowa Code section 809A.8(1)(a)(1) is a “special statute of limitations” which can override the general statute of limitations.

# Statute of Limitations, continued

- Iowa Code section 809A.8(1)(a): Property seized for forfeiture shall be released on the request of an owner or interest holder to the owner's or interest holder's custody, as custodian for the court, pending further proceedings pursuant to this chapter if the prosecuting attorney fails to do either of the following:
  - (1) File a notice of pending forfeiture against the property within ninety days after seizure.
  - (2) File a judicial forfeiture proceeding within ninety days after notice of pending forfeiture of property upon which a proper claim has been timely filed pursuant to section 809A.11.
- According to the President's commission, failure to file within the 90 days is not jurisdictional.
- In Williams, the Court rejects this interpretation, and holds that the state's failure to comply with section 809A.8(1)(a)(1) is jurisdictional.

# Statute of Limitations, continued

- Post-Williams summary
  - General 5 year statute of limitations
  - If property owner requests return of property, special statute of limitations that requires prosecuting attorney to file a notice of pending forfeiture within ninety days after seizure *for forfeiture*.
    - Mere seizure for evidentiary purposes does not start the 90 day special statutory period.
    - Seizure for forfeiture means seizure plus assertion by the seizing agency or by a prosecuting attorney that the property is seized for forfeiture. Iowa Code section 809A.1(8).
  - Failure by state to file a judicial forfeiture proceeding within ninety days after notice of pending forfeiture of property upon which a proper claim has been timely filed pursuant to section 809A.11 also results in dismissal. In re Property Seized for Forfeiture From Lamaak, 772 N.W.2d 270 (Iowa App. 2009).

# Judicial Proceedings – Attorney Fees

- If an owner makes a claim based on an exemption and prevails, the agency or political subdivision bringing the forfeiture action must pay the owner's reasonable attorney fees and costs, as determined by the court. Iowa Code section 809A.12(7).
- If a property owner otherwise prevails, for example if the prosecuting attorney could not show that the property is subject to forfeiture by a preponderance of the evidence, the property owner can only recover attorney fees if the prosecuting attorney's conduct in bringing the case is unreasonable enough to warrant sanctions under Iowa Rules of Civil Procedure 1.413(1). Iowa Code section 809A.16(8).

# Judicial Proceedings – Attorney Fees, continued

- Rule 1.413(1) requires counsel to certificate that “counsel has read the motion, pleading, or other paper; that to the best of counsel’s knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation.”
- If the court finds that reasonable cause existed for the seizure for forfeiture or for the filing of the notice of pending forfeiture or complaint, the property owner is not entitled to costs or damages. Iowa Code section 809A.16(8).

# Powers of Enforcement Personnel

- Prosecuting attorney is authorized to investigate any conduct that gives rise to forfeiture, including power to subpoena witnesses, compel their attendance, examine them under oath, and require the production of documents. Iowa Code Section 809A.18(1).

# Immunity Orders

- Court may require a person to produce evidence, notwithstanding that person's refusal to do so the basis of the privilege against self-incrimination. Iowa Code section 809A.19(1).
- If court so orders, person must comply or may be held in contempt. Iowa Code section 809A.19(3).
- The evidence compelled by such an order, and any information directly or indirectly derived from the production of evidence, shall not be used against the person in a subsequent criminal case, except in a prosecution for perjury, false swearing, or an offense otherwise involving a failure to comply with the order. Iowa Code section 809A.19(4)

# Judicial Proceedings – Claim Preclusion

- A defendant convicted in any criminal proceeding cannot deny the essential allegations of the criminal offense of which the defendant was convicted or pled guilty in any forfeiture proceeding.
- A defendant whose conviction is overturned on appeal may file a motion to correct, vacate, or modify a judgment of forfeiture.
- Iowa Code section 809A.12(6)

# Judicial Proceedings - Presumptions

- The fact that money or a negotiable instrument is found in close proximity to any contraband or an instrumentality of conduct giving rise to forfeiture gives rise to the presumption that the money is the proceeds of conduct giving rise to forfeiture or was used or intended to be used to facilitate the conduct. Iowa Code section 809A.12(9)

# Judicial Proceedings – Presumptions, continued

- Any property of a person is subject to forfeiture if the state establishes any of the following:
  - That the person engaged in conduct giving rise to forfeiture;
  - That the property was acquired during the period of the conduct giving rise to forfeiture or within a reasonable time after that period;
  - That no likely source for acquisition of the property exists other than the conduct giving rise to the forfeiture.
  - Iowa Code section 809A.12(10)

# Judicial Proceedings – Constructive Trustees & Commingled Property

- A person who acquires property subject to forfeiture is a constructive trustee of the property, and its fruits, for the benefit of the state, to the extent that the person's interest is not exempt from forfeiture.
- If property subject to forfeiture has been commingled with other property, the court shall order the forfeiture of the commingled property, and of any fruits of the commingled property, to the extent of the property subject to forfeiture, unless an owner or interest holder proves that specified property does not contain property subject to forfeiture, or that the person's interest in specified property is exempt from forfeiture.
- Iowa Code section 809A.12(12).

# Judicial Proceedings – Relation Back

- Title to property that is forfeited to the state vests with the state at the time of the conduct giving rise to forfeiture. Iowa Code section 809A.12(13); Iowa Code section 809A.16(4).

# DISPOSITION AND ALLOCATION OF FORFEITED PROPERTY

# Failure of Property Owner to File a Claim or Answer

- Nonjudicial forfeiture is available where both the value of the property subject to forfeiture has an estimated value of \$5,000 or less and no person files a claim opposing forfeiture within thirty days of service of a notice of forfeiture. Iowa Code section 809A.16(1).
  - Failure of the state to properly serve notice of forfeiture on a claimant is a basis for the forfeiture to be set aside for 180 days after the declaration of forfeiture.
  - Claimant has to make a prima facie showing that the state failed to serve proper notice.
  - Upon such showing, the state can try to demonstrate by a preponderance of the evidence that notice was properly served.
  - If the state fails, the court may order the declaration of forfeiture set aside, but the state may proceed with judicial proceedings.
  - Iowa Code section 809A.16(2).

# Failure of Property Owner to File a Claim or Answer, continued

- Even if no property owner files a claim or an answer, if the value of the property to be forfeited is in excess of \$5,000, the state must apply to a court for an order of forfeiture. Iowa Code section 809A.16(3).
- The court must order the property forfeited to the state if the prosecuting attorney can establish that the court has jurisdiction over the forfeiture proceeding, that the state properly supplied notice to property owners, and facts sufficient to show probable cause for forfeiture. Iowa Code section 809A.16(3)

# Disposition of Property

- If property a court orders property to be forfeited, title to the property and its proceeds shall be deemed to have vested in the state on the commission of the conduct giving rise to forfeiture. Iowa Code section 809A.16(4).
- Forfeited property is disposed to the state with clear title. Iowa Code section 809A.16(4).
- On order of the court or declaration of forfeiture forfeiting the property, the state may transfer good and sufficient title to any subsequent purchaser or transferee. Iowa Code section 809A.16(7).

# Forfeiture Totals

- \$43 million from 2009 through 2014
- Nearly \$5 million in 2014
- Totals based on cash and real estate forfeitures
- Totals include state and federal forfeitures
- Source: Des Moines Register, March 28, 2015

# Allocation of Cash and Real Estate Proceeds

- If the forfeited property is cash or proceeds from the sale of real property, then:
  - The department of justice cannot retain more than 10% of the gross sale. The balance of the proceeds are distributed to the seizing agency for use by the agency or for division among law enforcement agencies and county attorneys pursuant to any agreement entered into by the seizing agency.
  - If more than \$400,000 in cash is forfeited, the seizing agency receives 45%, other law enforcement agencies within region receive 45%, and department of justice receives 10%.
  - Iowa Code section 809A.17(5)(e).

# Allocation of Controlled Substances and Weapons

- Controlled substances are destroyed (though prescription drugs may be provided to not-for-profit hospitals). Iowa Code sections 809A.17(5)(a) and 124.506.
- Weapons and ammunition are deposited with the department of public safety and disposed in accordance with the department's rules.
  - All weapons or ammunition may be held for use in law enforcement, testing, or comparison by the criminalistics laboratory, or destroyed.
  - Weapons which are not illegal or offensive may be sold at auction. Proceeds, less expenses, are deposited in the state's general fund.
  - Iowa Code section 809A.17(5)(b).

# Allocation of Other Forfeited Property

- Forfeited property may be used by the department of justice in the enforcement of the criminal law. The department may give, sell, or trade property to any other state agency or to any other law enforcement agency within the state if, in the opinion of the attorney general, it will enhance law enforcement within the state. Iowa Code section 809A.17(3).
- Forfeited property cannot be used to supplant or otherwise replace normally budgeted items. Iowa Admin. Code rule 61-33.6.

# Allocation of Other Forfeited Property, continued

- Forfeited property which is not used by the department of justice in the enforcement of the law may be requisitioned by the department of public safety or any law enforcement agency within the state for use in enforcing the criminal laws of this state. Forfeited property not requisitioned may be delivered to the director of the department of administrative services to be disposed of in the same manner as property received pursuant to section 8A.325. Iowa Code section 809A.17(4).

Questions?