

Sections 1 and 2 are effective August 1, 1985, and apply to crimes committed on or after that date. Section 3 is effective August 1, 1985, and applies to cases commenced on or after that date.

Approved May 20, 1985

CHAPTER 160 — S.F.No. 693

An act relating to crimes; providing for forfeitures of communications devices and proceeds derived from commission of designated offenses; regulating the use, possession and sale of electronic incapacitation devices; imposing penalties; amending Minnesota Statutes 1984, sections 152.19, subdivision 5; 609.531; and 624.731.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1984, section 152.19, subdivision 5, is amended to read:

Subd. 5. Property shall be forfeited after a conviction deemed to be a felony according to the following procedure:

(1) A separate complaint shall be filed against the property describing it, charging its use in the specified violation, and specifying the time and place of its unlawful use.

(2) If the person arrested is acquitted, the court shall dismiss the complaint against any property seized pursuant to the preceding subdivisions and order the property returned to the persons legally entitled to it.

(3) If after conviction the court finds that the property, or any part thereof, was used in any violation as specified in the complaint, it shall order that the property unlawfully used be sold, destroyed, or disposed of by the appropriate agency in the following manner:

(a) The appropriate agency and prosecuting agency that handled the forfeiture may retain the property for official use but shall not use any motor vehicle required to be registered pursuant to chapter 168A until title is properly transferred pursuant to chapter 168A;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(c) Require the commissioner of administration to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the federal drug enforcement administration.

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Any property retained pursuant to clause (3)(a) of this subdivision shall be used only in the performance of official duties of the appropriate agency, and shall not be used for any other purpose. All proceeds from property retained under clause (3)(a) of this subdivision which is later sold shall be disbursed as provided in clause (4) of this subdivision.

(4) One-third of the proceeds from the sale of forfeited property, after payment of seizure, storage, forfeiture and sale expenses and satisfaction of valid liens against the property, shall be forwarded to the state drug abuse authority for distribution among licensed hospitals and licensed drug treatment facilities of this state for the care and treatment of patients with drug related physical and psychological disorders, and licensed drug analysis centers. The remaining two-thirds of net proceeds shall be shared equally between the agencies prosecuting the forfeiture proceeding and prosecuting agency with jurisdiction over the criminal offense or the agency handling the forfeiture proceeding at the request of the prosecuting agency, and the agency investigating the offense involved in the forfeiture, except that if the forfeiture proceeding was prosecuted by a county attorney whose position is not full time as provided in section 388.21, the prosecutor's share of net proceeds shall be forwarded to the county board.

Any local police relief association organized under chapter 423, which received or was entitled to receive the proceeds of any sale made under this section before the enactment of Laws 1984, chapter 625, shall continue to receive and retain the proceeds of these sales.

Sec. 2. Minnesota Statutes 1984, section 609.531, is amended to read:

609.531 FORFEITURES.

Subdivision 1. **DEFINITIONS.** For the purpose of this section, the following terms have the meanings given them.

(a) "Conveyance device" means a device used for transportation in connection with a designated offense and includes, but is not limited to, motor vehicles, trailers, snowmobiles, airplanes, and vessels. The term "conveyance device" does not include property which is, in fact, itself stolen or taken in violation of the law.

(b) "Primary container" means a fundamental receptacle other than a conveyance device used to store or transport property.

(c) "Weapon used" means weapons used in the furtherance of a crime and defined as a dangerous weapon under section 609.02, subdivision 6.

(d) "Property" means property as defined in section 609.52, subdivision 1, clause (1).

(e) "Contraband property" means property which is illegal to possess under Minnesota law.

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(f) "Appropriate agency" means either the bureau of criminal apprehension, Minnesota state patrol, county sheriffs and their deputies, or city police departments.

(g) "Designated offense" includes:

(1) For weapons used: any violation of chapter 609;

(2) For all other purposes: violation of, or an attempt or conspiracy to violate, sections 609.185; 609.19; 609.195; 609.21; 609.221; 609.222; 609.223; 609.2231; 609.24; 609.245; 609.25; 609.255; 609.322, subdivision 1 or 2; 609.342; 609.343; 609.344; 609.345; 609.42; 609.425; 609.466; 609.485; 609.487; 609.52; 609.521; 609.525; 609.53; 609.54; 609.551; 609.561; 609.562; 609.563; 609.582; 609.59; 609.595; 609.687; 609.825; 609.86; 609.88; 609.89; or 617.246, when the violation constitutes a felony.

(h) "Communications device or component" means a device or system used to facilitate in any manner the creation, storage, dissemination, or transmission of data in connection with a designated offense and includes computers and computer-related components as defined in section 609.87 and any other device or system that by means of electric, electronic or magnetic impulses may be used to facilitate in any manner the creation, storage, dissemination, or transmission of data.

Subd. 2. **FORFEITURES OF CONVEYANCE DEVICES; COMMUNICATIONS DEVICES; PRIMARY CONTAINERS; WEAPONS USED, AND CONTRABAND PROPERTY.** Proceeds that are derived from or traced to the commission of a designated offense, conveyance devices, communications devices or components, primary containers, and weapons associated with the commission or utilized in the commission of a designated offense, and all contraband property shall be subject to forfeiture with the following limitations:

(a) No conveyance device, communications device or component or primary container used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless the owner or other person in charge of the conveyance ~~or~~ container, or communications device or component is a consenting party or privy to commission of a designated offense.

(b) No conveyance device, communications device or component, primary container, or weapon used is subject to forfeiture under this section unless the owner of it is privy to a violation of a designated offense or unless the use of the conveyance device, communications device or component, primary container, or weapon in a violation occurred with his knowledge or consent.

(c) A forfeiture of a conveyance device, communications device or component, primary container, or weapon used encumbered by a bona fide security

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interest is subject to the interest of the secured party unless he had knowledge of or consented to the act or omission upon which the forfeiture is based.

(d) Proceeds which are derived from or traced to the commission of a designated offense are subject to forfeiture under this section only to the extent that the owner of the proceeds was privy to the violation upon which the forfeiture action is based.

Subd. 3. **SEIZURE WITH PROCESS.** Any proceeds which are derived from or traced to the commission of a designated offense, conveyance device, communications device or component, primary container, weapon used, or contraband property subject to forfeiture under this section may be seized by the appropriate agency upon process issued by any court having jurisdiction over the property.

Subd. 4. **SEIZURE WITHOUT PROCESS.** Seizure without process of a weapon used or of contraband property may be made if:

- (a) the seizure is incident to an arrest or a search under a search warrant;
- (b) the weapon subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding;
- (c) the appropriate agency has probable cause to believe:
 - (1) that the weapon was used or is intended to be used in commission of a designated offense; and
 - (2) that the delay occasioned by the necessity to obtain process would result in the removal, destruction, illegal use, or intended illegal use of the weapon; or
- (d) the property is contraband property.

Subd. 5. **NOT SUBJECT TO REPLEVIN.** Any conveyance device, communications device or component, primary container, weapon used, or contraband property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the appropriate agency subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When any proceeds which are derived from or traced to the commission of a designated offense, conveyance device, communications device or component, primary container, weapon used, or contraband property is seized under this section, the appropriate agency may:

- (a) place the conveyance device, communications device or component, primary container, weapon used, or contraband property under seal; or
- (b) remove the conveyance device, communications device or component, primary container, weapon used, or contraband property to a place designated by it.

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Subd. 6. **FORFEITURE PROCEDURES.** Any proceeds which are derived from or traced to the commission of a designated offense, conveyance device, communications device or component, primary container, weapon used, or contraband property shall be forfeited according to the following procedure:

(a) a separate complaint shall be filed against the proceeds which are derived from or traced to the commission of a designated offense, conveyance device, communications device or component, primary container, weapon used, or contraband property describing it, and either specifying that it is contraband property, or specifying that it constitutes proceeds derived from or traced to the commission of a designated offense, or charging its use in the specified violation, and specifying the time and place of its unlawful use;

(b) if the person charged with a designated offense is not convicted of an offense, the court shall dismiss the complaint against the proceeds which are derived from or traced to the commission of a designated offense, conveyance device, communications device or component, primary container, or weapon used pursuant to subdivisions 2 to 5 and order the property returned to the persons legally entitled to it;

(c) if after conviction of a felony offense the court finds that the proceeds derived from or traced to the commission of a designated offense, conveyance device, communications device or component, primary container or weapon was used in commission of a designated offense, it may order that the proceeds which are derived from or traced to the commission of a designated offense, conveyance device, communications device or component, primary container or weapon be sold, used, converted, or disposed of by the appropriate agency in the following manner:

(1) if the lawful ownership of the proceeds which are derived from or traced to the commission of a designated offense, conveyance device, communications device or component, primary container, or weapon used can be determined and it is found the owner was not privy to violation of a designated offense, the proceeds which are derived from or traced to the commission of a designated offense, conveyance device, communications device or component, primary container, or weapon used will be returned forthwith; or

(2) if the lawful ownership of the proceeds derived from or traced to the commission of a designated offense, conveyance device, communications device or component, primary container, or weapon used cannot be determined or if the lawful owner can be determined and it is found the owner was privy to violation of a designated offense, the appropriate agency or prosecuting agency handling the forfeiture may:

(i) retain the proceeds which are derived from or traced to the commission of a designated offense, conveyance device, communications device or component, primary container, weapon used, or contraband property for official use; or

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(ii) sell the proceeds which are derived from or traced to the commission of a designated offense, conveyance device, communications device or component, primary container, or weapon used may be sold in accordance with law. One-third of the proceeds from the sale, after payment of seizure, storage, forfeiture and sale expenses, and satisfaction of valid liens against the property, shall be forwarded to the prosecuting agency with jurisdiction over the criminal offense or the agency that handled the forfeiture proceedings at the request of the prosecuting agency for deposit in its operating fund, or similar fund; one-third of the proceeds shall be forwarded to the commissioner of public safety for disbursement pursuant to section 299C.065, and one-third of the proceeds shall be retained by the appropriate agency and deposited in its operating fund. Any local police relief association organized under chapter 423, which received or was entitled to receive the proceeds of any sale made under this section before the enactment of Laws 1984, chapter 625, shall continue to receive and retain the proceeds of these sales;

(3) property which has been forfeited pursuant to this subdivision and which consists of proceeds derived from or traced to the commission of a designated offense must be applied first, to payment of seizure, storage, forfeiture and sale expenses and to satisfy valid liens against the property, and second, to any court-ordered restitution before being disposed of in accordance with clause (2)(i) and (ii).

(d) if the property is deemed to be contraband, the property shall be destroyed or used by the appropriate agency for law enforcement purposes.

Sec. 3. Minnesota Statutes 1984, section 624.731, is amended to read:

624.731 TEAR GAS AND TEAR GAS COMPOUNDS; ELECTRONIC INCAPACITATION DEVICES.

Subdivision 1. **DEFINITIONS.** For the purposes of this section:

(a) "authorized tear gas compound" means a lachrymator or any substance composed of a mixture of a lachrymator including chloroacetophenone, alpha-chloroacetophenone; phenylchloromethylketone, orthochlorobenzalmalononitrile or oleoresin capsicum, commonly known as tear gas; and

(b) "electronic incapacitation device" means a portable device which is designed or intended by the manufacturer to be used, offensively or defensively, to temporarily immobilize or incapacitate persons by means of electric pulse or current. "Electronic incapacitation device" does not include cattle prods, electric fences, or other electric devices which are used in agricultural, animal husbandry, or food production activities.

Subd. 2. **AUTHORIZED POSSESSION; USE.** (a) A person may possess and use an authorized tear gas compound in the exercise of reasonable force in defense of the person or his property only if it is propelled from an

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aerosol container, labelled with or accompanied by clearly written instructions as to its use and the dangers involved in its use, and dated to indicate its anticipated useful life.

(b) A person may possess and use an electronic incapacitation device in the exercise of reasonable force in defense of the person or his property only if the electronic incapacitation device is labelled with or accompanied by clearly written instructions as to its use and the dangers involved in its use.

Subd. 3. **PROHIBITED POSSESSION; USE.** (a) No person under the age of 16 ~~shall~~ may possess or use an authorized tear gas compound except by written permission of his parent or guardian, and no person under the age of 18 may possess or use an electronic incapacitation device.

(b) No person prohibited from possessing a pistol pursuant to section 624.713, subdivision 1, clause (b), ~~shall~~ may possess or use an authorized tear gas compound or an electronic incapacitation device.

(c) No person prohibited from possessing a pistol pursuant to section 624.713, subdivision 1, clauses (c) to (e), ~~shall~~ may possess or use an authorized tear gas compound or an electronic incapacitation device, except that the certificate or other proof required for possession of a handgun shall not apply.

(d) No person shall possess or use tear gas or a tear gas compound other than an authorized tear gas compound.

Subd. 4. **PROHIBITED USE.** (a) No person shall knowingly, or with reason to know, use tear gas, a tear gas compound, ~~or~~ an authorized tear gas compound, or an electronic incapacitation device on or against a peace officer who is in the performance of his duties.

(b) No person shall use tear gas, a tear gas compound, ~~or~~ an authorized tear gas compound, or an electronic incapacitation device except as authorized in subdivision 2 or 6.

(c) Tear gas ~~or~~, a tear gas compound, or an electronic incapacitation device shall legally constitute a weapon when it is used in the commission of a crime.

Subd. 5. **PROHIBITED SALE.** Except as permitted by subdivision 6, no person shall knowingly furnish or sell tear gas or a tear gas compound to another person. No person shall knowingly furnish or sell an authorized tear gas compound or an electronic incapacitation device to a person prohibited from possessing it by subdivision 3. No person shall knowingly furnish or sell an authorized tear gas compound or an electronic incapacitation device which fails to meet the requirements of subdivision 2. No tear gas, tear gas compound ~~or~~, authorized tear gas compound, or electronic incapacitation device shall be sold or furnished on premises where non-intoxicating malt liquor as defined in section 340.001, subdivision 2, is sold on an on-sale basis or where intoxicating liquor as

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defined in section 340.07, subdivision 2, is sold on an on-sale or off-sale basis. No person shall sell tear gas, a tear gas compound ~~or~~ authorized tear gas compound, or electronic incapacitation device in violation of local licensing requirements.

Subd. 6. **EXCEPTIONS.** Nothing in this section shall prohibit the possession or use of by, or the sale or furnishing of, tear gas, a tear gas compound, ~~or~~ an authorized tear gas compound, or electronic incapacitation device to, a law enforcement agency, peace officer, the national guard or reserves, or a member of the national guard or reserves for use in their official duties, except that counties and municipalities may impose licensing requirements on sellers pursuant to subdivision 9.

Subd. 7. **EXEMPTION.** Tear gas, tear gas compounds, and authorized tear gas compounds shall not be classified as an obnoxious or harmful gas, fluid, or substance under section 609.60, clause (5).

Subd 8. **PENALTIES.** (a) The following violations of this section shall be considered a felony:

(1) The possession or use of tear gas, a tear gas compound, ~~or~~ an authorized tear gas compound, or an electronic incapacitation device by a person specified in subdivision 3, clause (b).

(2) Knowingly selling or furnishing of tear gas, a tear gas compound, ~~or~~ an authorized tear gas compound, or an electronic incapacitation device to a person specified in subdivision 3, clause (b).

(3) The use of an electronic incapacitation device as prohibited in subdivision 4, clause (a).

(b) The following violation of this section shall be considered a gross misdemeanor and shall be punished by not less than 90 days in jail: The prohibited use of tear gas, a tear gas compound, or an authorized tear gas compound as specified in subdivision 4, clause (a).

(c) The following violations of this section shall be considered a misdemeanor:

(1) The possession or use of tear gas, a tear gas compound, ~~or~~ an authorized tear gas compound, or an electronic incapacitation device which fails to meet the requirements of subdivision 2 by any person except as allowed by subdivision 6.

(2) The possession or use of an authorized tear gas compound or an electronic incapacitation device by a person specified in subdivision 3, clause (a) or (c).

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(3) The use of tear gas, a tear gas compound, ~~or~~ an authorized tear gas compound, or an electronic incapacitation device except as allowed by subdivision 2 or 6.

(4) Knowingly selling or furnishing an authorized tear gas compound or an electronic incapacitation device to a person specified in subdivision 3, clause (a) or (c).

(5) Selling or furnishing of tear gas or a tear gas compound other than an authorized tear gas compound to any person except as allowed by subdivision 6.

(6) Selling or furnishing of an authorized tear gas compound or an electronic incapacitation device on premises where intoxicating liquor is sold on an on-sale or off-sale basis or where non-intoxicating malt liquor is sold on an on-sale basis.

(7) Selling an authorized tear gas compound or an electronic incapacitation device in violation of local licensing requirements.

Subd. 9. **LOCAL LICENSING.** (a) For purposes of this section, "municipality" means statutory or home rule charter city or town.

(b) There is hereby conferred upon the governing body of each county, statutory or home rule charter city and town in the state the authority to license the business of vendors of tear gas, tear gas compounds, authorized tear gas compounds, or electronic incapacitation devices within their respective jurisdictions, to impose a license fee therefor, to impose qualifications for obtaining a license, the duration of licenses and to restrict the number of licenses the governing body will issue.

(c) Every person desiring a license from a local governing body shall file with the clerk of the municipality or the county board in the case of application to a county, a verified written application in the form to be prescribed by the local governing body.

(d) The local governing body may establish the grounds, notice and hearing procedures for revocation of licenses issued pursuant to this section. The local governing body may also establish penalties for sale of tear gas, tear gas compounds ~~or,~~ authorized tear gas compounds, or electronic incapacitation devices in violation of its licensing requirements.

Subd. 10. **LOCAL REGULATION.** This section shall be the exclusive regulation of the possession, use, and furnishing of tear gas, tear gas compounds, and authorized tear gas compounds, and electronic incapacitation devices in Minnesota. This section shall supersede and preempt all regulation of the possession, use, and furnishing of tear gas and, tear gas compounds, authorized tear gas compounds, and electronic incapacitation devices by political subdivisions.

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