



# MICHIGAN STATE POLICE LEGAL UPDATE

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## CRIMINAL LAW AND PROCEDURE MANUAL

The fourth edition of *Michigan Criminal Law and Procedure: A Manual for Michigan Police Officers* is now available for purchase in print and eBook formats.

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## FORFEITURE

### ***Amendments to forfeiture provisions of the Controlled Substances Article of the Public Health Code***

Public Act 7, Public Act 8, and Public Act 9 of 2019 amended the forfeiture provisions of the Controlled Substances Article of the Public Health Code, [MCL 333.7101](#) to [MCL 333.7545](#).

The amendments are **effective August 7, 2019**.

**Notice must be given to a person charged with a crime, in addition to the property owner, if the property is seized without a court order and totals \$50,000 or less**

Public Act 9 of 2019 amended the notice requirements under [MCL 333.7523](#) that apply to property seized without a court order under [MCL 333.7522](#) that has a total value of \$50,000 or less.

The seizing agency will now be required to provide notice of the seizure and intent to forfeit the property to a person charged for a crime, in addition to the owner of the property. [MCL 333.7523\(1\)\(a\)](#), as amended.

The notice(s) must be in writing and delivered or sent by certified mail. If the name and address are not reasonably ascertainable, or delivery cannot be reasonably accomplished, the notice must be published in a newspaper of general circulation in the county in which the property was seized for 10 successive publishing days and, under [MCL 333.7523\(1\)\(a\)](#), as amended, on the local government's or Attorney General's public website.

The seizing agency is still required to immediately provide notice of the seizure and intent to forfeit to the

prosecutor in the county in which the property was seized, unless all criminal proceedings involving or related to the property are completed. [MCL 333.7523\(1\)\(b\)](#).

### **Claiming an interest in property following the notice of seizure and intent to forfeit**

A person still has 20 days after receiving the notice, or after the first day of publication of the notice, to file a written, signed claim expressing an interest in the property and objection to the forfeiture. [MCL 333.7523\(1\)\(c\)](#).

Public Act 9 amended [MCL 333.7523](#) to require the claim of interest in the property to be on a form ([MC 311](#)) provided by the State Court Administrative Office. The claim must include a detailed description of the property and interest asserted and a verification certifying under penalty of perjury that the claim has been examined and is true and complete to the best of the person's knowledge. [MCL 333.7523\(1\)\(c\)](#), as amended.

If no claim of interest is filed within the 20-day period, the property must be declared forfeited and disposed of under [MCL 333.7524](#). However, the seizing agency shall not dispose of the property without the prosecutor's written consent, unless all criminal proceedings involving or related to the property are completed. [MCL 333.7523\(1\)\(d\)](#).

If a claim of interest is filed, it must be transmitted to the prosecutor. [MCL 333.7523\(1\)\(c\)](#).

### **A conviction or guilty plea is required for the forfeiture and disposition of seized property valued at \$50,000 or less, unless an exception applies**

Public Act 7 of 2019 added [MCL 333.7521a](#) to prohibit the forfeiture and disposition of property and currency seized under [MCL 333.7522](#) that has an aggregate fair market value of \$50,000 or less, excluding contraband, [MCL 333.7521a\(6\)](#), unless both of the following occur:

- A criminal proceeding involving or relating to the property has been completed. [MCL 333.7521a\(1\)](#).
- The defendant either pleads guilty to, or is convicted of, a violation of the Controlled Substances Article. [MCL 333.7521a\(1\)](#).

However, under [MCL 333.7521a\(2\)](#), the requirement for a conviction or guilty plea does not apply under any of the following circumstances:

- A claim of interest is not filed under [MCL 333.7523](#).
- The property owner withdraws a claim, in which case the prosecutor must review and approve any forfeiture.
- The property owner waives the requirement for a conviction or guilty plea.
- A criminal charge is filed, and the defendant either cannot be located after reasonable efforts were made to arrest, or is not in Michigan and cannot be reasonably extradited or brought in for prosecution.

Additionally, [MCL 333.7521a](#) does not prohibit the immediate destruction of property that cannot be lawfully possessed by any person or is dangerous to the health or safety of the public, whether or not a conviction or guilty plea occurs. [MCL 333.7521a\(4\)](#).

Officers should know that [MCL 333.7521a](#) only applies to forfeiture proceedings that are initiated on or after August 7, 2019. [MCL 333.7521a\(5\)](#).

#### **If MCL 333.7521a applies and a claim of interest is filed, forfeiture proceedings are stayed**

[Public Act 8 of 2019](#) added [MCL 333.7523a](#) to expressly state that forfeiture proceedings must be stayed while criminal proceedings are pending if [MCL 333.7521a](#) applies and a claim of interest was filed under [MCL 333.7523](#). [MCL 333.7523a\(1\)](#).

The forfeiture action must proceed after the defendant is convicted or pleads guilty or after an event listed in [MCL 333.7521a\(2\)](#) occurs (see above exceptions to the conviction or guilty plea requirement).

#### **Burden of proof at hearing**

The prosecutor must prove the property is subject to forfeiture under [MCL 333.7521\(1\)](#), and any person who filed a claim of interest had prior knowledge of, or consented to, the crime. [MCL 333.7523a\(2\)](#), as added. The requirement to prove prior knowledge of, or consent to, the crime does not apply to a person convicted of, or who entered a plea agreement in connection with, a violation of the Controlled Substances Article.

If the prosecutor fails to meet the burden of proof, the property must be returned to the owner within 14 days from the court's dispositive order, unless an extension is granted by the court for good cause. [MCL 333.7523a\(3\)](#), (5), as added.

#### **Return of seized property**

[MCL 333.7523a\(4\)](#), as added, requires the seizing agency to return property not more than 14 days after any of the following occur, unless provided otherwise under [MCL 333.7521a](#):

- A warrant is not issued against a person for the commission of a crime within 90 days after the property was seized.
- All charges against the person relating to the crime are dismissed.
- The person charged with a crime is acquitted.
- If there are multiple defendants, all persons charged with a crime are acquitted.
- Entry of a court order to return the property.

A party to a forfeiture proceeding may file a motion to extend the 14-day period upon a showing of good cause. [MCL 333.7523a\(5\)](#), as added.

To ensure compliance with the time periods in which property must be returned under [MCL 333.7523a](#), and with any other requirement established under [MCL 333.7521a](#) or [MCL 333.7523](#), officers should promptly seek the advice of the appropriate prosecutor to address any questions that may arise following the seizure of property pursuant to the Controlled Substances Article.

## **CRIMINAL PROCEDURE**

### ***Venue for a violation of MCL 750.317a (delivery of controlled substance causing death) is proper in the county where the delivery occurred***

In [People v. McBurrows](#), two men traveled to a house in Wayne County where McBurrows sold them heroin. After using some of the heroin and returning to his home in Monroe County, one of the men was found unresponsive the following morning and died due to fentanyl toxicity. McBurrows was charged in Monroe County with delivery of a controlled substance causing death, contrary to [MCL 750.317a](#).

On appeal, the Michigan Supreme Court held that venue is proper in the county in which the crime itself was committed, unless an applicable statute provides otherwise. The Court held that a violation of [MCL 750.317a](#) would occur in the county where the controlled substances were delivered, not where the resulting death occurred. The Court also held that the venue statutes at issue, [MCL 762.5](#) and [MCL 762.8](#), did not apply to an alleged violation of [MCL 750.317a](#) to create an exception to the general rule that venue is proper in the county where the crime was committed.