

STOCKTON POLICE DEPARTMENT

GENERAL ORDER

ASSET SEIZURE AND FORFEITURE POLICY  
SUBJECT

DATE: January 24, 2008

NO: G-7

FROM: CHIEF ERIC JONES

TO: ALL PERSONNEL

INDEX: **Asset Seizure**  
**Forfeiture**  
**Narcotics Asset Seizures**

**I. PURPOSE**

To define and outline the basic procedure to be utilized in asset seizure and asset forfeiture cases, ensuring that Departmental practices fall within the guideline and scope of both state and federal statutes.

**II. DEFINITIONS AS USED IN THIS POLICY**

A. Financial Investigation/Asset Forfeiture Officer refers to:

1. The designated Officer in the Special Investigations Section, Investigations Division, who is assigned to handle asset forfeitures. The Financial Investigation/Asset Forfeiture Officer will work with the Departmental Fiscal Affairs Manager, or his/her designee, known as the Asset Forfeiture Coordinator.

B. Asset Forfeiture Coordinator refers to:

1. The designated person in the Fiscal Affairs Unit that is responsible for maintaining the Asset Seizure Accounts.

C. Officer Seizing refers to:

1. The Officer that seizes assets (this can be the Patrol Officer, or the Narcotics Officer, or any other Peace Officer depending on the circumstances).

**III. SUMMARY OF ASSET SEIZURE AND FORFEITURE LAWS**

A. California Health and Safety Code Section 11470 provides that certain kinds of property may be forfeited under specified circumstances. These circumstances differ for each type of property, but, in general, property may be subject to forfeiture if it is used to facilitate drug trafficking, or if its proceeds are traceable to drug trafficking.

B. The forfeiture proceeding is a civil matter that is run concurrently with the criminal proceeding. For the forfeiture to be successful, the suspect MUST be convicted of a criminal drug trafficking offense (except for cash seizures of over \$25,000.00, in which case, no criminal conviction is required.)

Under section 11488a of the Health and Safety Code, any Peace Officer, having probable cause, may seize all monies, negotiable instruments, securities, real property, boats, vehicles, airplanes, or other things of value which are forfeitable pursuant to subdivision (e), or (f) of section 11470 of the Health and Safety Code.

C. Specific basis for forfeiture:

1. CASH: Cash, and cash substitutes (i.e., negotiable instruments and securities) have the broadest basis for forfeiture. If cash is used or intended to be used to facilitate drug dealing, if it is exchanged or intended to be exchanged in a drug transaction, or if it can be traced back to a drug exchange, it is subject to forfeiture.

- a. The forfeiture law reaches cash before or after the exchange.
  - b. The controlled substance may be any controlled substance.
2. VEHICLES: Motor vehicles, boats, and airplanes are subject to forfeiture if they are used as an instrument to facilitate the sale, or possession for sale of the below listed quantities of controlled substances.
    - a. 14.25 grams (half ounce) or more of a substance containing heroin or cocaine base (rock cocaine)
    - b. 57 grams (two ounces) or more of a substance containing powder cocaine, methamphetamine, or any other schedule I or II controlled substance.
    - c. Ten pounds dry weight of marijuana, peyote, or psilocybin mushrooms.
    - d. Vehicles, boats, and airplanes are also subject to forfeiture if they can be traced back to actually being exchanged for a controlled substance.
  3. OTHER PERSONAL PROPERTY: Anything other than cash, vehicles, and real estate can only be forfeited if it can be proven the suspect obtained it in a drug exchange, purchased it with the proceeds, or intended to use it to purchase drugs. The facilitation theory does not apply.
  4. REAL PROPERTY: Real property may be forfeited under the exchange or traceable to an exchange basis. Also, any real property owner who is convicted of violating sections 11366, 11366.5, or 11366.6 H.S. with respect to that property is subject to forfeiture.
  5. OTHER MISCELLANEOUS BASIS FOR FORFEITURE: The law provides for the forfeiture of controlled substances themselves, manufacturing raw materials, and equipment, containers (can't be vehicles) records, and research products associated with controlled substances. This can cover items such as cellular phones for which the facilitation basis is not available.
  6. LIMITATIONS AND EXEMPTIONS:
    - a. The Innocent Owner Defense: If the property owned by a third party is used by a suspect to facilitate drug trafficking, the State must prove the owner "consented to the use of the property with the knowledge it would be or was used for drug trafficking." This requirement to show actual knowledge beyond a reasonable doubt makes forfeiting property owned by someone other than the suspect very difficult.
    - b. The Family Vehicle Exemption: A community property interest in a vehicle that is the sole transportation available to the suspect's immediate family is completely exempt from forfeiture. This generally applies only to a legitimate marriage.
    - c. Real Property Exemptions: Real property is exempt from forfeiture if it is used as a family residence, or for "other lawful purposes," or which is owned by two or more persons, one of whom had no knowledge of the unlawful use of the property.

#### **IV. REQUIREMENTS FOR INITIAL SEIZURE**

- A. The law allows any peace officer to seize personal property subject to forfeiture, without a court order incident to an arrest, or a search under a search warrant, or when he or she has "probable cause to believe that the property was used or is intended to be used in violation of" California drug laws. This means if the officer is in a place the officer has a right to be, the officer may, without a court order, constitutionally seize property in plain view which he has probable cause to believe is subject to forfeiture. The key factor is the officer must be able to articulate facts that lead him or her to believe the property is subject to forfeiture under one or more of the provisions of section 11470 H.S. "Probable cause" in an asset forfeiture case means the same as "probable cause" in a criminal case, but deals with facts relating to forfeiture rather than the direct commission of a crime.
- B. If the seizure would involve an intrusion into or upon a privacy interest, or a situation defined by

statute as requiring process (e.g., a bank), then a "seizure order" from the Superior Court would be required to seize the property. The officer must be able to state facts in the affidavit for the seizure warrant that leads the judge to conclude there is probable cause to believe the property is subject to forfeiture.

- C. A seizure order may also be used for assets that are physically unavailable or impractical to seize. For example, a vehicle used to facilitate a drug transaction early in an investigation may not be present when the investigation is concluded and the arrests made. The court's order would then be used to prevent the transfer of the property. In the case of a vehicle, a signed seizure warrant would make it possible to place the vehicle on "hot sheets" and stop transfer with DMV, thereby increasing the likelihood of physical seizure.
- D. The physical seizure of real property requires notice to all interested parties and a pre-seizure court hearing to determine there is probable cause to believe the property is subject to forfeiture and that seizure before completion of the case is necessary to preserve the property pending the outcome of the forfeiture proceedings. The court may then authorize physical seizure or may issue orders to preserve the value of the property.

## **V. PROCEDURE FOR OFFICERS SEIZING ASSETS**

- A. Assuming probable cause exists to believe the property is subject to forfeiture, the following steps must be taken to institute forfeiture:
  - 1. The officer seizing the property must give a receipt to the person or persons from whom the property is taken. (Note: cash in a total amount of \$400.00 or less shall not be seized, but will be booked and treated as evidence)
    - a. The seizing officer shall fill out a Notice of Non-Judicial Forfeiture (D.A. form 328) front and back. The seizing officer shall then serve a copy of the notice to all involved and/or present parties. This will meet the requirements of Penal Code Section 1412 for property taken from a person arrested by a police officer as long as the Notice is served on the parties in the field.
      - (1) Note: If the property is not taken from the personal possession of any person or the person who had personal possession disclaims ownership, the receipt should be given to the person in possession of the premises from which the property was taken. If the "person in possession" is not present when the seizure is made, the receipt must be left in a prominent place at the premises. When in doubt, serve all persons present.
    - b. The seizing officer shall, in addition, provide each person served, with a Claim Opposing Forfeiture form (Judicial Council of California form MC-200).
    - c. The seizing officer shall fill out a Disclaimer of Ownership of Property Seized (P.D. form 1590) form in the event any of the parties served disclaim ownership of the assets seized. The disclaiming party will not be given a copy of this form. Note: Regardless if a party disclaims items seized, and signs disclaimer form, they will still be served with a Notice of Non-Judicial Forfeiture Proceedings form, and be provided a Claim Opposing Forfeiture form.
    - d. The seizing officer shall then fill out a FINANCIAL QUESTIONNAIRE FORM on each party served. Note: Even if the party invokes Miranda, and doesn't want to make a statement, officers can still question the party about the above listed asset forfeiture matters. Though it cannot be used in the criminal case, the information can be used in the Non-Judicial process of asset forfeiture. Served parties will not be given a copy of the Financial Questionnaire form.
    - e. If officers in the field are in doubt if an item is forfeitable, but are making an arrest for Sale, or Possession for Sale, they may book the assets as evidence and forward a copy of all related crime reports, and property cards to the Financial Investigations/Asset Seizure Officer, Special Investigations Section.

- f. The seizing officer shall, prior to the end of his/her tour of duty, place all Notice of Non-Judicial Forfeiture Proceedings forms, all Disclaimer of Ownership in Property Seized forms, all Financial Questionnaire forms, a photocopy of all involved property cards, and all related crime/arrest/subsequent reports in a large manila envelope. This packet shall be placed in the narcotics mail box at Headquarters, and forwarded Attention to the Financial Investigations/Asset Forfeiture Officer, Special Investigations Section".
- g. All the above mentioned forms will be maintained and available both in the Field Operations Report Writing Room, and at the Special Investigations Section, Narcotics Unit Office.
- h. If the seizure involves cash in a total amount of \$1,000.00 or greater, or involves three or more vehicles to be seized, the seizing officer shall immediately notify his/her immediate supervisor, who shall notify the Watch Commander for permission to contact a Narcotics Unit Supervisor at home. The Narcotics Unit Supervisor shall determine if the Financial Investigations/Asset Forfeiture Officer should be called out to assist.

**VI. RESPONSIBILITY OF SPECIAL INVESTIGATIONS SECTION**

- A. The Special Investigations Section will decide whether to proceed to forfeit the property seized. This decision must be made within 15 days of the seizure.
  - 1. The decision whether to proceed and forfeit property seized will be made by the Narcotics Unit Supervisor and/or Financial Investigations/Asset Forfeiture Officer based on the facts contained in the seizure packet. If probable cause to proceed is present, the Financial Investigations/Asset Forfeiture Officer will prepare the case for presentation to the District Attorney's Office. If a decision not to proceed with the forfeiture case is made, the Narcotics Unit Supervisor shall cause the property to be returned to the rightful owners as soon as is practicable.
  - 2. Any claims "innocent ownership" filed subsequent to the initiation of a forfeiture case shall be reviewed by a Narcotics Unit Supervisor as soon as is practicable. If the Narcotics Unit Supervisor determines there appears to be any merit to a claim of "innocent ownership" the supervisor will bring these facts to the attention of the Asset Forfeiture Deputy District Attorney. If the Deputy District Attorney concurs, the supervisor shall cause a return of the property to the innocent owner in a timely manner.
  - 3. When returning property, proof of ownership and identification of the person to whom the property is released to should be required before releasing the property. The person to whom the property is to be released will be required to execute an INDEMNITY FORM agreeing to hold the agency harmless from any claims arising from the release.

Note: The property may be held beyond 15 days if it is being held as evidence or for some other legal reason.

**VII. RESPONSIBILITY OF THE FINANCIAL INVESTIGATIONS/ASSET FORFEITURE OFFICER**

- A. The Stockton Police Department must serve a Notice of Non-Judicial Forfeiture Proceedings and a Claim Opposing Forfeiture within 15 days of the seizure.
  - 1. If the Financial Investigations/Asset Forfeiture Officer receives a seizure packet in which the Notice of Non-Judicial Forfeiture Proceedings has not been served, he/she will be responsible for service within the statutory 15 day period. All efforts should be made however to serve this notice at the time of the seizure.
  - 2. The notice must be personally served and an affidavit/declaration of service completed by the person serving the notice.
  - 3. In order to constitute a valid notice, the Judicial Council form entitled "Claim Opposing

Forfeiture" (MC-200) must be given to the person being served.

4. The Financial Investigations/Asset Forfeiture Officer, upon receipt of an asset seizure packet shall:
  - a. Review the seizure packet to ensure all required materials are present, and correctly filled out.
  - b. Prepare the Stockton Police Department Asset Forfeiture Transmittal sheet.
  - c. Prepare the San Joaquin County District Attorney's Office Non-Judicial Forfeiture Case Transmittal sheet.
  - d. Prepare a Stockton Police Department Receipt for Release of Funds to the District Attorney form.
  - e. Attempt to secure a signed Authorization to release Federal Tax Information from the Defendant, if appropriate.
  - f. Remove the funds seized from the Property Room, and deposit same in the District Attorney's Asset Forfeiture account at the County Treasurer's Office.
  - g. If a vehicle is involved, cause a Notice of Non-Judicial Forfeiture Proceedings form, and certified letter to be mailed to the registered owner, and the legal owner.
  - h. If a search warrant is involved, obtain a copy of the search warrant and return for the packet.
  - i. Retain a case file of all materials.
  - j. Make a complete copy of the file and transmit same to the Asset Forfeiture Deputy District Attorney. The following must be included with every Transmittal Sheet:
    - (1) Originals of all notices and disclaimers.
    - (2) Copies of all relevant reports.
    - (3) A statement of probable cause for the seizure. (There is a place on the form for a short statement.)
    - (4) Some record of the disposition of the property. (This may be a property card, receipt from Roger Ernst & Assoc., CHP 180, etc.)
    - (5) The following must be included if they apply:
      - (a) All money seized. This may be by check, evidence of deposit with the county Treasurer or, if necessary, the actual cash. (Note: The case will not be processed without receipt of the seized money.)
      - (b) A copy of any search warrants and return
      - (c) Any agreements with other agencies as to the sharing of the proceeds of the forfeiture. A copy of any sharing agreement will also be forwarded to the Asset Forfeiture Coordinator in the Fiscal Affairs Unit.
  - k. The Financial Investigation/Asset Forfeiture Officer shall notify the Franchise Tax Board where there is reasonable cause to believe the property seized has a value in excess of \$5,000. This notice may be given orally by telephone to the Franchise Tax Board District Office in Stockton and should be done as soon as is practical. A request should also be made for a certificate of non-filing of the suspect from the Franchise Tax Board.

## VIII. HANDLING AND STORAGE OF SEIZED PROPERTY

- A. The Stockton Police Department shall take reasonable steps to protect and preserve the property.
1. All property shall be booked and stored as seized property, but never used. Large items of property or items of particular value should be turned over to Roger Ernst & Associates after it is determined forfeiture proceedings will be instituted. Real property and businesses must be professionally appraised and managed by a responsible agent or tenant. Cash, which has no evidentiary value, must be presented to the D.A.'s Office with the case paperwork. All seized money is placed in an interest-bearing trust account until it is declared forfeited and distributed.
- B. Handling of Seized Cash
1. Officers of the Stockton Police Department will adhere to General Orders regarding the Property Room and proper booking of Property, when handling/booking seized cash. Initial counting in the presence of two officers and notification of the seizing officer's supervisor should be observed. It may be necessary to maintain the actual currency as evidence, as where a narcotics dog has given indications that cash has been exposed to controlled substances. This determination shall be made by the Financial Investigations/Asset Forfeiture Officer who will notify the D.A.'s Office in the event this is necessary. Sums under \$400.00 shall not be seized, but should be booked as evidence.
- C. Handling of Seized Vehicles
1. It is the policy of San Joaquin County District Attorney that each vehicle submitted for seizure must be worth at least \$1,000 more than all liens of record on that vehicle. The value of the vehicle should be determined by reference to the "Kelley Blue Book" or an estimate from Roger Ernst & Associates. The current payoff amount for any liens must also be determined and can usually be obtained by calling the legal owner. Where there is no legal owner listed on DMV records, the vehicle must be worth at least \$1,000 in total. The information on value should be forwarded with the package sent to the D.A.'s Office. Any exception to this policy must be cleared in advance with the asset forfeiture D.A. If a vehicle does not meet this standard, but the lienholder has a contractual right to repossession when the vehicle is used for illegal purposes, the vehicle should be turned over to the legal owner upon proof of the contractual right.
  2. Vehicles seized shall not be towed. They shall be driven by officers to a locked storage facility, such as under the Cross Town Freeway. Seizing officers shall perform a "walk around" inspection of the vehicle and note all prior existing damage in the motor vehicle report. Seizing officers shall also inventory the contents of the vehicle, and book any items of value into property "held for safe keeping." Seizing officers will note the seized vehicle's current location in the seizure packet submitted to Special Investigations Section.
  3. Upon receipt of the seizure packet, the Financial Investigation/Asset Forfeiture Officer will inspect the seized vehicle to insure it meets the above criteria. He will then transfer the vehicle to either the Special Investigations Storage area, or into the custody of Roger Ernst & Associates for safe keeping during the litigation of the case.
- D. Handling of Real Property
1. Real Property can only be forfeited by judicial proceedings. That means a Petition must be filed before a lis pendens may be recorded or any action to remove the residents can occur. If you think real-property forfeiture is justified, we must complete an investigation of the real property prior to requesting the D.A. to file a forfeiture action. The following must be done in all cases:
    - a. There must be an appraisal of the property. The appraisal must be current and, where possible, performed by a qualified appraiser, but can be informal.
    - b. The state of the title to the property and the knowledge of the owners must be

included in any investigation of the feasibility of forfeiting real property. The law provides an exemption from forfeiture for real property "used as a family residence, or for other lawful purposes or which is owned by two or more persons, one of whom had no knowledge of its unlawful use."

- c. There must be a determination of the equity owned by the suspect. Loan payoff amounts can be obtained from the lienholder of record by search warrant.
- d. Where the theory of forfeiture is "proceeds" there must be evidence to that effect submitted to the D.A. The use of cash, or cashier's checks in the purchase of the property, the lack of any other source of funds with which to make the payments on the property, or "straw-man" transfers may be used to prove the property was acquired with drug proceeds. Recorded transfers of real property are a matter of public record at the County Recorder's Office. Title company escrow files must be obtained by search warrant.
- e. Where the theory of forfeiture is "facilitation," the criminal prosecution for violation of Health & Safety Code sections 11366, 11366.5, or 11366.6 must be instituted before the forfeiture of the real property on a facilitation basis will be considered.
- f. Where the property has been used as a lab, there must be testing to determine if there is any contamination before the case is submitted to the D.A. The potential liability from contamination may outweigh the benefits of forfeiture.

E. Other Personal Property

1. The only basis for forfeiture of personal property other than cash is that it was purchased with the proceeds of drug transactions.
2. This will require tracing of the proceeds and will be very difficult to prove beyond a reasonable doubt, absent an admission on the part of the drug dealer. Proof of the income and expenditures of the claimant showing no ability to accumulate property without drug proceeds will be needed.

F. Firearms

1. While firearms may still be subject to forfeiture under a "proceeds" theory, it is the policy of the San Joaquin County District Attorney that firearms will not be accepted for forfeiture, except where the firearm is of exceptional value, such as an antique, and there is probable cause to believe it was obtained with, or as proceeds of, drug transactions.
2. Firearms taken in the course of a criminal investigation should be confiscated and destroyed by court order.

**IX. SPEEDY RESOLUTION OF THIRD-PARTY CLAIMS**

- A. It is the policy of the Stockton Police Department to promptly resolve claims of innocent ownership, and where appropriate, expeditiously release seized property. To that end, the following procedures will be followed:
  1. Upon receipt of a third-party claim of ownership, the Financial Investigations/Asset Forfeiture Officer shall conduct an investigation to validate all claims. This will include interviews with the claimant, and a request for documentation, as well as a utilization of all other investigatory means available to determine the validity of the claim. In the event the claim is shown to be valid, and the third party is shown to be an "innocent owner", it is the policy of the Stockton Police Department to return such property to the "innocent owner" as expeditiously as possible.
  2. When releasing property, the releasing officer shall ask for documentation of ownership, as well as positive identification of the person to whom the property is released. The releasing officer shall have the receiving party sign a Stockton Police Department indemnification form prior to release. The releasing officer shall document the release in the case file and write a

subsequent report documenting the release. The subsequent report will have the same DR number as the arrest/seizure case.

**X. RECEIVING AND ACCOUNTING FOR FORFEITURE PROCEEDS**

- A. The proceeds of property seized by this agency and subsequently forfeited will be maintained in a separate account with the City Treasurer. The use of such funds will be accounted for in such a way as to allow audits by City of Stockton.
- B. The City Treasurer will maintain an account for funds delivered by the District Attorney as proceeds upon resolution of forfeitures filed in State Superior Court.
- C. The City Treasurer will maintain a separate account for funds delivered by the United States Marshall's Service as proceeds upon resolution of forfeitures filed in Federal District Court.
- D. The Asset Forfeiture Coordinator shall notify the Financial Investigations/Asset Forfeiture Officer of receipt of funds from the District Attorney's Office representing the successful conclusion of a forfeiture case. The Financial Investigations/Asset Forfeiture Officer will place a copy in the active forfeiture file in the Special Investigations Section, and close the file. The Asset Forfeiture Coordinator shall also notify the Financial Investigations/Asset Forfeiture Officer of the successful resolution and funds received in federal forfeitures for the same purpose.

**XI. FEDERAL FORFEITURE PROCEDURES**

- A. The decision to proceed with a forfeiture case in State Superior Court or to request federal adoption shall be made by the Section Commander of the Special Investigations Section, or his/her designee. In making this decision, and in procedural performance in the event of a requested federal adoption, the following two manuals will be used as a policy guideline:
  - 1. "Guide to Federal Adopted Forfeitures" prepared by the Asset Removal Group, San Francisco Field Division, Sacramento Resident Office, Drug Enforcement Administration, United States Department of Justice.
  - 2. "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies" By the Executive Office for Asset Forfeiture, Office of the Attorney General, United States Department of Justice, Washington D.C.

**XII. ASSET FORFEITURE MANUAL**

- A. The Stockton Police Department shall keep and maintain an Asset Forfeiture manual in accordance with Health and Safety Code Section 11469(d). Such manual will outline and detail the statutory grounds for forfeiture as well as all applicable policies and procedures.
- B. A copy of the Asset Forfeiture Manual will be kept in the Office of the Chief of Police, Field Services Captain's office, Watch Commander's office, Patrol Sergeant's office, Investigations Division Commander's office, Special Investigations Section, and Narcotics Sergeant's office.
  - 1. The Asset Forfeiture manual should be utilized to resolve any questions about potential seizure enforcement.
  - 2. If the supervisor of a unit considering seizure enforcement is unable to resolve a question by referring to the manual, said supervisor may contact a Narcotics Unit Supervisor at home, if necessary to resolve the problem.

**XIII. ASSET FORFEITURE CASE STATUS DETAIL**

- A. The Asset Forfeiture Coordinator will maintain a detailed report of the fiscal status of all seizures. A copy of the Detail Report will be forwarded to the Special Investigations Lieutenant and the Financial Investigations/Asset Forfeiture Officer whenever the status of any case changes. At the end of fiscal year, the Asset Forfeiture Coordinator will provide the Chief of Police a summary of the Asset Forfeiture Case Status Detail Report and the activity of the Asset Forfeiture Trust accounts in the City Treasury.

**XIV. GENERAL POLICIES**

- A. Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens.
- B. No sworn law enforcement officer's employment or salary shall be made to depend upon the level of seizures or forfeitures he or she achieves.
- C. No seized or forfeited property shall be placed into service by the seizing agencies, unless forfeited in Federal Court, and only with the express permission of the United States Attorney. In addition, no Department personnel shall purchase, directly or indirectly, property seized by the Stockton Police Department.
- D. Forfeiture proceeds distributed to the Stockton Police Department shall be maintained in a separate fund, or account with the City Treasurer subject to appropriate accounting controls, and financial audits of all deposits, and expenditures at the request of the City Council.
- E. The Stockton Police Department seeks to protect the interests of innocent property owners, to guarantee adequate notice and due process to property owners, and to ensure that forfeiture serves the remedial purpose of the forfeiture law.
- F. The Stockton Police Department, as an agency involved in the field of asset forfeiture, subscribes to the "National Code of Professional Conduct for Asset Forfeiture" as a conduct guide for its officers.