



# **TALLAHASSEE POLICE DEPARTMENT**

## **GENERAL ORDERS**

 Proudly Policing Since 1841	<b>SUBJECT</b>  Seizures and Forfeitures		 Nationally Accredited 1986
	<b>CHIEF OF POLICE</b>  <i>Signature on File</i>		
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### **AUTHORITY/RELATED REFERENCES**

FS Chapter 717, Disposition of Unclaimed Property  
 FS 932.701-7062, Florida Contraband Forfeiture Act  
 General Order 6, Arrests and Alternatives to Arrest  
 General Order 18, Criminal Investigations  
 General Order 42, Impounding and Controlling of Property and Evidence  
 General Order 46, Rules of Conduct  
 General Order 62, Management of Confidential Informants

### **ACCREDITATION REFERENCES**

CALEA Chapters    1, 84  
 CFA Chapter        15

### **KEY WORD INDEX**

<b>Currency Procedures</b> <b>Disposition of Forfeiture Cases</b> <b>Federal Asset Forfeiture Procedures</b> <b>General Procedures</b> <b>Legal Advisor's Responsibilities</b> <b>Motor Vehicle, Aircraft and Vessel Procedures</b> <b>Property Subject to Forfeiture</b> <b>Real Property Procedures</b> <b>Required Reports and Forms</b> <b>Training Requirements</b> <b>Use of Forfeited Property</b> <b>Weapons and Personal Property Procedures</b>	Procedure VI Procedure X Procedure XI Procedure II Procedure IV Procedure V Procedure I Procedure VIII Procedure III Procedure XII Procedure IX Procedure VII
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## **POLICY**

The Department is committed to the utilization of state and federal seizure and forfeiture statutes to deter and prevent the use of contraband for criminal purposes, while protecting the constitutional rights and proprietary interests of innocent owners.

## **DEFINITIONS**

**Bias-Based Profiling:** The selection of individuals based solely on a common trait of a group. This includes but is not limited to race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group or other identifiable groups.

**Claimant:** Any party who has proprietary interest in property subject to forfeiture and has standing to challenge such forfeiture, including owners, registered owners, bona fide lienholders, and title holders.

## **PROCEDURES**

### **I. PROPERTY SUBJECT TO FORFEITURE**

- A. Only sworn members are authorized to seize property for forfeiture under the Florida Contraband Forfeiture Act (FCFA).
- B. Members may seize a contraband article, vessel, motor vehicle, aircraft, other personal property, or real property for forfeiture under the FCFA only when:
  - 1. There is probable cause to believe the item subject to seizure has been used, is being used, or was attempted to be used in violation of any provision of the FCFA, and
  - 2. The owner of the property is arrested for the criminal offense which forms the basis for the forfeiture, or one or more of the following circumstances are applicable to the situation:
    - a. The owner of the property cannot be identified after a diligent search.
    - b. The person in possession of the property denies ownership and the owner of the property cannot be identified by means which are available to the member at the time of the seizure.

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- c. The owner of the property is a fugitive from justice (see subsection I C below for additional information).
  - d. The owner of the property is deceased.
  - e. A person who does not own the property is arrested for a criminal offense which forms the basis for the forfeiture and the owner of the property had *actual knowledge* of the criminal activity (evidence that an owner received written notification from a law enforcement agency and acknowledged receipt of the notification in writing, that the seized asset had been used in violation of the FCFA on a prior occasion by the arrested person, may be used to establish actual knowledge).
  - f. The owner of the property agrees to be a confidential informant (see subsection I D below for additional information).
  - g. The property is money.
- C. The following protocols are applicable to situations described in subsection B 2 c above (owner considered a fugitive from justice):
- 1. In order for an owner to be considered a fugitive from justice, there must be an active arrest warrant for the owner *for a criminal offense which forms the basis for the forfeiture*.
  - 2. If such an arrest warrant does not exist and probable cause exists to obtain a warrant, members are responsible for the following:
    - a. Within 72 hours of the seizure, obtaining an arrest warrant for the owner in adherence to the applicable protocols in General Order 6 (Arrests and Alternatives to Arrest) *except* that the probable cause form and warrant affidavit shall be “hand-delivered” to both the State Attorney’s Office and the judge (i.e., do not leave the paperwork to be reviewed at a later date),
    - b. If the warrant application is approved by the reviewing judge, attempting to serve the warrant within at least five (5) business days of obtaining approval, and
    - c. Notifying the Legal Advisor of the procurement of the arrest warrant and service or attempted service.

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3. If such an arrest warrant does exist, members are responsible for attempting to serve the warrant within at least five (5) business days of the seizure.
- D. The following protocols are applicable to situations described in subsection B 2 f above (owner agrees to be a confidential informant):
  1. Members shall not use the threat of property seizure or forfeiture to coerce the owner of the property to enter into a confidential informant agreement.
  2. The Department shall return the property to the owner if:
    - a) Criminal charges are not filed against the owner and the active criminal investigation ends, or
    - b) The owner ceases being a confidential informant, unless the owner agrees otherwise (e.g., final forfeiture of the property is included as a component of the confidential informant agreement).

## **II. GENERAL PROCEDURES**

- A. Members shall not take seizure or forfeiture actions premised on bias-based profiling.
- B. No member shall receive any compensation for, or have their employment, salary, promotion, or any other compensation dependent on, attaining a quota of seizures.
- C. Any member needing assistance with completing a forfeiture action shall consult their supervisor or the Legal Advisor.
- D. When property is seized for forfeiture under the FCFA, it will be seized as contraband, and members are responsible for handling the property in accordance with General Order 42 (Impounding and Controlling of Property and Evidence) and:
  1. Providing the person from whom the property was seized with the appropriate copy of the PD 139 (Property and Evidence Receipt) or PD 129 (Vehicle Receipt),
  2. Placing the property in the appropriate secure location (property/evidence room, vehicle impoundment lot, or any other location deemed necessary), and

3. Marking all receipts and inventory forms with "Hold for Forfeiture."



- F. All seizures require an assessment by a member with the rank of Sergeant or above who shall review the Request for Forfeiture Form (PD 248) to determine if there is sufficient probable cause to seize the property.
- G. Seizing members are responsible for conducting any follow-up investigation deemed necessary by the Legal Advisor.

### **III. REQUIRED REPORTS AND FORMS**

- A. After an item is seized, the member is responsible for completing an offense report (whether or not an arrest is made), particularly describing all circumstances associated with the seizure, including:
  1. Names of all law enforcement personnel involved and the nature of their involvement,
  2. Names of all witnesses, their biographical and contact information, and any statements made,
  3. Names of all suspects/claimants, their biographical and contact information, and any statements made,
  4. All information describing the nexus between the seized contraband, criminal activity, and the claimant, and
  5. If the owner is not arrested, the exemption which qualifies the seized property for forfeiture (see exemptions in subsection I B 2 above).

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- B. The seizing member shall complete a PD 248 and submit it to their supervisor (or another supervisor if more appropriate) for approval.
  - 1. The supervisor shall review the request to determine if there is sufficient probable cause and, if approved, sign the PD 248.
  - 2. The completed PD 248 shall be submitted to the Legal Advisor's Office within 24 hours of the seizure (excluding weekends and holidays).
- C. The seizing member should complete a Notice of Seizure form (PD 248a) at the time of the seizure.
  - 1. The PD 248a provides a description of the items being seized for forfeiture, information regarding the right to an adversarial preliminary hearing, and a signature line for acknowledgement of receipt of the form.
  - 2. When the PD 248a is completed at the time of seizure, the seizing member is responsible for providing a copy of the form (if possible) to the person from whom the property was seized and any other person who the member believes may assert a claim to the property. If necessary, the member shall complete additional PD 248a forms to provide copies to additional claimants.
  - 3. If the person from whom the property is being seized, or any claimant, refuses to sign the PD 248a, the seizing member shall document the refusal on the form by writing "REFUSED" where the person should sign. This should be witnessed by another sworn member.
  - 4. If a copy of the PD 248a was *not* provided to all persons who may assert a claim to the property, the seizing member is responsible for noting the need for additional notifications on the form and ensuring the form is submitted to the Legal Advisor's Office within 24 hours.
- D. If a PD 248a is completed at the time of the seizure, the seizing member is responsible for ensuring:
  - 1. The original copy of the form is submitted to the Legal Advisor's Office (along with the PD 248) within 24 hours after the seizure, and

2. A copy of the PD 248a is submitted to the Records Section.
- E. If a PD 248a was not completed at the time of seizure, the Legal Advisor's Office is responsible for providing timely notice to any and all known claimants via certified mail in accordance with the FCFA (see subsection III A 2 and 3 for the information members must obtain in order for the Legal Advisor to complete this task).
- F. Within 72 hours after the seizure, the seizing member shall submit a packet to the Legal Advisor's Office which contains all available and applicable information about the seizure and request for forfeiture. Depending upon the circumstances, the information may include:
1. Copies of the following documents:
    - a. Original and supplemental offense reports,
    - b. Property and Evidence Receipts (PD 139),
    - c. Vehicle Receipts (PD 129),
    - d. Arrest affidavits (if an arrest was made),
    - e. Statement of Rights form(s) (PD 130),
    - f. Consent to Search form(s) (PD 227), and
    - g. Any other documents the seizing member deems necessary to support the seizure and forfeiture of the item(s).
  2. Any photographs of the contraband, vehicle, or other pertinent items.

#### **IV. LEGAL ADVISOR'S RESPONSIBILITIES**

- A. The Legal Advisor will review the PD 248 and determine whether to proceed with forfeiture action.
1. The decision to proceed with forfeiture rests solely with the Chief of Police or designee.
  2. When necessary, the Legal Advisor will seek guidance from the Chief of Police or designee.

- B. If the Legal Advisor decides to proceed with the forfeiture action the seizing member will be notified.
  - 1. The Legal Advisor will assist the seizing member in completing a Verified Affidavit in Support of Forfeiture within three (3) days after the determination to proceed with the forfeiture action.
  - 2. The Legal Advisor shall inform the seizing member of any follow-up investigation deemed necessary to support the forfeiture action, to include:
    - a. Completing evidence processing requests (e.g., latent prints, drug identification), and
    - b. Obtaining and ensuring the timely service of search warrants on cellular phones and/or other electronic devices.
- C. The Legal Advisor is responsible for the disposition of the seized property if the decision is made not to proceed with the forfeiture action.
- D. If the best course of action is determined to be a settlement agreement, the Legal Advisor is responsible for forwarding the agreement to the Chief of Police for approval or disapproval.
- E. The Legal Advisor is responsible for tracking all forfeitures which are submitted to the Legal Advisor's Office and providing a quarterly report on Department forfeiture activity to the Chief of Police.
- F. The Legal Advisor should provide feedback to members who make forfeiture cases. The feedback should include case disposition and any information necessary to enhance the quality of future cases.

**V. MOTOR VEHICLE, AIRCRAFT AND VESSEL PROCEDURES**

- A. A vehicle which is rented or leased, in a manner prescribed by law, from a company engaged in the business of renting or leasing vehicles is not subject to forfeiture.
- B. In addition to the mandates of subsection I B above, members are required to adhere to the following procedures regarding the seizure and forfeiture of motor vehicles, aircraft and vessels:



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1. Members are required to identify the owner and any co-owners of a motor vehicle, aircraft, or vessel *prior to* seizing it for forfeiture action.
  2. Members should ascertain if there is a lien on the motor vehicle, aircraft, or vessel, and if there is, ascertain the amount thereof.
  3. If the owner is not the person from whom the item is being seized, the item should be seized only if the seizing member can show:
    - a. The owner had actual knowledge the item was being used in violation of the FCFA, or
    - b. An applicable exemption which qualifies the seized property for forfeiture (see exemptions in subsection I B 2 above).
  4. If there is a co-owner, the item should be seized only if the seizing member can show:
    - a. The co-owner had actual knowledge the item was being used in violation of the FCFA, or
    - b. An applicable exemption which qualifies the seized property for forfeiture (see exemptions in subsection I B 2 above).
  5. If a motor vehicle, aircraft, or vessel is not seized because the owner or co-owner was an “innocent owner,” the member should place the “innocent owner” on notice by completing a Notice of Violation of Florida Contraband Forfeiture Act form (PD 248b), and the seizing member is responsible for:
    - a. Ensuring the “innocent owner” acknowledges receipt of the PD 248b in the designated area on the form (“person receiving notice”),
    - b. Providing a copy of the PD 248b to the “innocent owner,”
    - c. Sending the original PD 248b to the Records Section, and
    - d. Sending a copy of the PD 248b to the Legal Advisor’s Office.
- C. If a motor vehicle, aircraft, or vessel is seized for forfeiture, the seizing member shall ensure photographs are taken of the item to document its condition at the time of seizure.

- D. Members are responsible for ensuring the photographs include images of the right side, left side, front and rear of the item, the item's interior and any notable damage.
- E. Seized motor vehicles (including vehicles requiring forensic processing) which are subject to forfeiture shall be driven or towed to the Department's impound lot or vehicle storage building and secured.
  - 1. The vehicle impoundment shall be documented on a PD 129.
  - 2. Any documents relating to ownership shall be impounded into Property and Evidence via a PD 139.
  - 3. The keys shall remain with vehicle at the impound lot or vehicle storage building.
- F. The seizing member shall conduct an inventory of the motor vehicle, aircraft, or vessel and any valuable property or property considered evidence and/or subject to forfeiture shall be removed and impounded into Property and Evidence using a PD 139.
- G. If necessary, the Legal Advisor shall submit a Law Enforcement Administrative Stop Request to the DHSMV in order to place a hold on the vehicle registration and title.
- H. If an aircraft or vessel is seized, the Legal Advisor's Office shall be called immediately to arrange for proper storage and maintenance of the item.

## **VI. CURRENCY PROCEDURES**

In addition to the mandates of subsection I B above, members are required to adhere to the following procedures regarding the seizure and forfeiture of currency.

- A. Members are responsible for handling seized currency in accordance with FS Chapters 717 and 932.
- B. Members should take appropriate evidence handling procedures to ensure the currency is not contaminated with any controlled substance which may be present (e.g., wearing clean protective gloves to handle currency, placing currency at a distance from controlled substances).
- C. Members seizing currency should contact a K-9 officer to conduct a canine sniff of the currency for the presence of controlled substances.

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- D. The impoundment of currency shall be documented on a PD 139 and in accordance with the protocols in General Order 42 (Impounding and Controlling of Property and Evidence).
- E. Unless otherwise approved by the Legal Advisor, members are not authorized to seek forfeiture action on seized currency of an amount less than \$5000.
- F. In situations where the amount of currency is less than \$5000, but is evidence of a crime, members are responsible for impounding the currency in accordance with the protocols in General Order 42.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- H. When seizing currency for forfeiture, the seizing member should

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- I. It is the responsibility of the seizing officer(s) to ensure the seized currency is photographed prior to its deposit into a holding account.
1. The photographs should reflect the condition of the currency "as is" (e.g., do not clean currency which is dirty or mend currency which is torn prior to photographing).
  2. A member involved in the seizure shall be present during the photographing of the currency to maintain the chain of custody. That member will then impound the photograph(s) or download the digital image(s) in accordance with policy and return the money to Property and Evidence.
  3. Upon request, copies of the photographs/digital images shall be provided to the State Attorney's Office via the Legal Advisor's Office.

## **VII. WEAPONS AND PERSONAL PROPERTY PROCEDURES**

In addition to the mandates of subsection I B above, members are required to adhere to the following procedures regarding the seizure and forfeiture of weapons and personal property.

- A. The seizing member is responsible for ensuring a complete inventory of all personal property is conducted at the time of the seizure, and:
1. All items seized for forfeiture shall be individually noted on the PD 248a, and
  2. The impoundment is documented on a PD 139, in accordance with the protocols in General Order 42 (Impounding and Controlling of Property and Evidence).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### VIII. REAL PROPERTY PROCEDURES

In addition to the mandates of subsection I B above, members are required to adhere to the following procedures regarding the seizure and forfeiture of real property.

A. Before the seizure of real property occurs:

1. Members shall promptly contact the Legal Advisor (regardless of the time of day),
2. Authorization to seize the property must be given by the Legal Advisor's Office and the Chief of Police or designee, and
3. The appropriate written notice must be filed with the court (i.e., *lis pendens*).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- D. If the property is not seized at the time of a violation of the FCFA, a court order authorizing entry into the property shall be obtained before the seizure.
- E. The seizing member is responsible for ensuring a complete inventory of all personal property and fixtures on the premises is made at the time of seizure.
- F. The Legal Advisor's Office is responsible for the arrangement of maintenance of the property and the release of any personal property which is not subject to forfeiture or retained as evidence.

**IX. USE OF FORFEITED PROPERTY**

- A. Seized property may not be used for any purpose until the rights to, interest in, and title to the seized property are determined in accordance with the FCFA. This does not prohibit the use or operation of the seized property for reasonable maintenance (e.g. starting the engines of motor vehicles).
- B. Items obtained by forfeiture may be sold at public auction, transferred to a non-profit organization, or used by the Department for law enforcement purposes as specified in the FCFA.
- C. Monies obtained by forfeiture shall be placed in a special Law Enforcement Trust Fund.
- D. Requests for the expenditure funds or the use of property from state or federal forfeiture will be made by numbered memorandum to the Chief of Police via the chain of command.
- E. Copies of the request/memo shall be forwarded to the Financial Management Office and the Legal Advisor's Office for determination of whether the proposals constitute proper expenditures.

**X. DISPOSITION OF FORFEITURE CASES**

- A. The Department, upon being awarded the seized property by a court order, settlement agreement, a signed PD 248d, or other lawful means, shall dispose of the property/assets in accordance with the FCFA or the guidelines set forth by the U.S. Department of Justice.
- B. If the Court directs the seized property be returned, or if a settlement agreement includes the return of seized property, the Legal Advisor is responsible for the disposition of the seized property in accordance with the FCFA.

**XI. FEDERAL ASSET FORFEITURE PROCEDURES**

Only federally forfeited cash, property, proceeds, and any interest thereon is eligible for equitable sharing with local law enforcement agencies under the Federal Asset Forfeiture Program. The following procedures shall be followed to ensure participation in this program:

- A. The seizing member's supervisor is responsible for ensuring an authorized Department member completes the appropriate online forms in regards to the Department's interest in the equitable sharing of federally seized property.
- B. The Department's Financial Management Office or designee is responsible for ensuring the timely completion of the Equitable Sharing Agreement, the Federal Annual Certification Report, and other applicable documents essential to participation in the program.
- C. All federal equitable sharing funds received from the Department of Justice and the Department of the Treasury shall be received by the City of Tallahassee Revenue Division and managed by the City of Tallahassee's Accounting Services Division in revenue accounts separate from other state and local forfeiture funds.
- D. The City of Tallahassee is responsible for complying with all applicable laws and statutes and ensuring an independent auditor presents an annual financial statement of these accounts for analysis.

**XII. TRAINING REQUIREMENTS**

The Legal Advisor is responsible for providing relevant annual training to sworn members on legal topics related to forfeiture actions.

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- A. The training will include legal bulletins, training bulletins, and/or in-service training.
- B. Topics will include 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Amendment Issues.

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