



KANSAS CITY, MO. POLICE DEPARTMENT

PROCEDURAL INSTRUCTION

DATE OF ISSUE

08-10-06

EFFECTIVE DATE

08-08-06

NO.

06-6

SUBJECT

Property Seizure and Forfeiture

AMENDS

REFERENCE

RSMo 195.140
RSMo 513.600, et seq.,
21 USCS 881, et seq.

RESCINDS

Procedural Instruction 02-8

I. INTRODUCTION

Federal and state forfeiture laws provide officers with authority to initiate proceedings to legally seize property that criminals use for or derive from criminal activity. If an officer has probable cause to believe that property is subject to forfeiture, the officer may seize the property. However, once seized, the very specific requirements of a forfeiture proceeding require expertise in documenting, organizing and presenting the essential petition information to the appropriate authority for civil and/or criminal action in accordance with state law. The Asset Forfeiture Squad will be contacted for consultation any time uncertainties exist regarding seizures.

II. PURPOSE

- A. To establish procedures and provide a reference that will aid officers in seizing cash or tangible property for violations of state and federal statutes.
- B. To implement procedures for the use of the Notice of Seizure Pursuant to Missouri State Forfeiture Statutes, Form 65 P.D., as authorized by the Criminal Activity Forfeiture Act (C.A.F.A.) RSMo 513.600 through 513.647.

III. DEFINITIONS

- A. ***Tangible Property:*** Property used in, derived from or intended for use in the commission, attempted commission or conspiracy to commit any crime, or property realized through criminal activity which is chargeable under certain federal or state statutes. This property includes:
 - 1. Money, (e.g., U.S. currency/coin, or foreign currency/coin) stocks, bonds, money orders, checks or any other negotiable instruments found in close proximity to controlled substances or believed to be the proceeds from sales of a controlled substance, or proceeds of other specified criminal activities.
 - 2. Any vehicle, vessel or aircraft, which has been used, or in any way facilitates the commission of specified criminal activity.

3. Property (personal or real) that was used, intended for use, derived from, or realized through specified criminal activity, e.g., real estate, horses, jewelry, electronics, etc.
- B. **Specified Criminal Activity:** Criminal activity resulting in the commission, attempted commission, conspiracy to commit or the solicitation, coercion or intimidation of another person to commit a crime that is in violation of the federal and/or state statutes.
- *1. For purposes of this directive, federal statutes include, but are not limited to, those prohibiting drug abuse, gambling, motor vehicle theft, child exploitation, and importing and harboring certain foreign nationals.
 2. Available state statutes (as described in RSMo. 513.605) include violation of the laws involving violence to persons, property crimes, sexual offenses, drug regulations, prostitution, weapons offenses, laws relating to registration and licensing of motor vehicles, gambling and pornography laws.
 3. This list is not all inclusive and specific questions about criminal activity which may allow seizure and forfeiture of property should be referred to the Asset Forfeiture Squad.
- C. **Seizure:** The act performed by an officer in taking a person's property, real or personal, into lawful custody. If an officer believes that property may be subject to forfeiture as the result of criminal activity, a seizure may be effected by a law enforcement officer authorized to enforce state and federal laws prior to the filing of the petition and without a writ of seizure if the seizure is incident to a lawful arrest, search or valid investigatory stop.
1. A seizure occurs at the point at which any law enforcement officer or agent discovers and exercises any control over property to be seized. This also includes preventing anyone found in possession of property from leaving the scene of the investigation while in possession of the property.
 2. Seizing agency is defined as the primary employer of the officer or agent seizing the property.
- *D. **Forfeiture:** A valid judgment rendered by a court with jurisdiction, which declares the right of ownership is lost as a result of certain specified criminal activity.
- E. **Proceeds:** Anything received as payment for controlled substance or other specified criminal activity, or anything traceable to such payments. Proceeds are not limited to money. If the direct proceeds of a sale are used to obtain something, then the item obtained is subject to forfeiture.

IV. GUIDELINES

A. Federal Forfeiture – Federal agency involvement in the investigation or federal prosecution is a prerequisite to federal forfeiture. **However, property seized by department members (as outlined in this directive) will not be transferred to any federal agency (regardless of federal agency involvement in the investigation) without meeting the following criteria:**

1. The forfeiture must result from a felony violation under Missouri law or federal law.
2. The seizure must be reviewed and approved by the prosecuting attorney and the circuit judge of the county in which the property was seized prior to being transferred to a federal agency. Listed below are the current minimum acceptable values regarding federal seizures:
 - a. Cash - \$2,000
 - b. Conveyances, clear equity (wholesale) - \$5,000
 - c. Real property - \$20,000
 - d. Other property - \$5,000

NOTE: The Asset Forfeiture Squad will be solely responsible for processing any request to transfer seized property to a federal agency.

B. State Forfeiture – When seizing property in accordance with state law, officers are required to complete a Notice of Seizure Pursuant to Missouri State Forfeiture Statutes, Form 65 P.D. The criteria listed below are minimum suggested guidelines to use in evaluating state seizures.

1. The forfeiture must result from a felony violation under Missouri law or federal law.
2. The seizure must be reviewed and approved by the prosecuting attorney and the circuit judge of the county in which the property was seized. Listed below are the current minimum acceptable values regarding seizures:
 - a. Cash - \$1,000 (Lesser amounts may be seized upon authorization by a field supervisor or Asset Forfeiture Squad in cases involving repeat offenders, large quantities of drugs, weapons or other aggravating circumstances.)
 - b. Conveyances, clear equity (wholesale) - \$2,500

- c. Real property - Determined by county prosecutor and Asset Forfeiture Squad
- d. Other property - Determined by county prosecutor and Asset Forfeiture Squad

V. POLICY

- A. Officers must exercise their best judgment, based on their training, experience and knowledge of department policies, when faced with the possibly unique and difficult situations relating to seizure of tangible property. **Supervisory or Asset Forfeiture Squad approval is mandatory prior to any seizure.**
- B. Probable cause must exist to connect an item to a specified criminal activity prior to seizure. **Proof beyond a reasonable doubt is not necessary.**
- C. Seized property will be inventoried and recorded in accordance with current recovered property procedures.
- D. On all incidents of criminal activity where property may be subject to forfeiture, the Asset Forfeiture Squad will receive and review all related reports and make a determination regarding the appropriateness of pursuing forfeiture in accordance with state and federal statutes.
- E. The Asset Forfeiture Squad will be responsible for conducting and coordinating the necessary follow-up investigation only as it pertains to property forfeiture proceedings.
- F. Federal forfeiture laws and guidelines may be used when there is a joint investigation with a federal agency, and the property is seized by a member of the federal agency and not a member of this department as outlined in this directive. All other seizures will be referred to the appropriate county prosecutor by the Asset Forfeiture Squad, in accordance with state law.
- G. Unless otherwise directed by court order, the Executive Services Bureau commander will be responsible for the disposition of all property seized in accordance with property forfeiture proceedings.
- H. Real property will **not** be seized unless a court has issued a writ of seizure. Seizures of real property will be undertaken only at the direction/initiation of the Asset Forfeiture Squad.

VI. PROCEDURE

- A. If, incident to a lawful arrest, search or inspection, an officer has probable cause to believe that property is subject to forfeiture and will be lost or destroyed if not seized immediately, the officer may seize the property, with supervisory approval and guidance.
- B. The recovering officer will bring the incident to the immediate attention of the Asset Forfeiture Squad by means of the following:
 - 1. Obtain an original case report number and complete a Report Form, Form 100 P.D. or Form 107 P.D., entitled, "Miscellaneous Investigation, Property Seizure." When applicable, the report may be supplementary to an original Field Incident Report, Form 189 P.D.
 - 2. Include the following information in the report:
 - a. A detailed report of the circumstances, with probable cause to show how the property was used, intended for use, derived from, or realized from criminal activity. The information must contain the necessary facts to establish probable cause for the seizure, including probable cause for any arrests. Include any relevant statements made by suspect(s) or other persons. **Miranda is not necessary to proceed with a seizure/forfeiture case**; it is property, not a person that is in "jeopardy." (However, it may be necessary to employ Miranda to deal with a related criminal prosecution against a defendant.)
 - b. Date, address and county where the property was recovered.
 - c. Full description of property which will clearly distinguish it from other similar property e.g., VIN or property serial number. Include the alleged perpetrator's name and as many positive identifiers as possible in the title of the case.
- C. Seized property will be carefully collected, packaged and preserved, and its custody will be carefully recorded from the time of recovery until completion of forfeiture proceedings in accordance with current recovered property procedures.
- D. Distribution of the copies of the Notice of Seizure Pursuant to Missouri State Statutes, Form 65 P.D., will be made as follows:

1. White (original) – attached to the original offense report to be forwarded to the Records Unit.
 2. Yellow – sent with copies of the offense report and/or investigative reports to the Asset Forfeiture Squad.
 3. Pink – given to the owner, operator, or person in control of the property.
- *E. If the amount of seized currency is \$10,000 or more, the reporting officer will contact an Asset Forfeiture Squad Detective to determine whether a detective needs to respond to the scene. Asset Forfeiture detectives may be contacted between 8:00 am-5:00 pm, Mon-Fri. After hours, contact the Communications Unit.
- *F. Copies of all reports, including the Report Form, Form 100 P.D., Physical Evidence/Property Inventory, Form 236 P.D., and Tow-In Report, Form 36 P.D., if applicable, will be delivered to the Asset Forfeiture Squad before the end of an officer's tour of duty. If personnel from the Asset Forfeiture Squad are not available, the officer will leave copies of reports on the second floor in the pan marked "Reports for other units", or the officer may **FAX** the reports. Officers will **also phone** the Asset Forfeiture Squad office so that all seizures may be logged. It may be necessary to leave the information on the telephone voice mail.

James D. Corwin
Chief of Police

Adopted by the Board of Police Commissioners this _____ day of _____
2006.

James B. Wilson
President

DISTRIBUTION: All Law Enforcement Personnel
Civilian Supervisory Positions
Department Element Manuals
Post on bulletin board for two weeks