



**ASSET FORFEITURE**  
**GENERAL ORDER #18.01**

Adopted: 08/04/2006  
Replaces: NEW ORDER

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**POLICY**

The process of taking or forfeiting property is a civil proceeding in which there is a criminal filing. In California state asset forfeiture cases, the court in the county in which the property is located has jurisdiction. The *Stanford University Department of Public Safety* will promote the uniform and proper use of the provisions of the law pertaining to asset seizure.

**PROCEDURE**

**A. DEFINITION**

Forfeiture is the taking by the government of property which is illegally used or obtained without compensating the owner.

**B. TYPES OF FORFEITURE**

1. An administrative forfeiture exists when the asset is seized and no petitions have been filed by any claimants or owners and the property is forfeited by administrative paperwork. This results in a forfeiture order by the Superior Court.
2. A judicial forfeiture is when claims are made to regain control of the property and petitions are filed with the Superior Court. A hearing is conducted to ascertain the facts of the case and determine if the property is subject to forfeiture. This may again result in a forfeiture order by the Superior Court.

**C. STATE AND FEDERAL ASSET FORFEITURE**

1. Under most circumstances, asset forfeiture seizures conducted by the *Stanford University Department of Public Safety* are based on California state law. Under some circumstances; however, asset forfeiture seizures may also be conducted pursuant to federal law. The federal agencies participating in the United States Department of Justice Forfeiture Program are: Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization Service, United States Park Police, United States Marshals Service, United States Attorneys' Offices, Criminal Division, and United States Postal Inspection Service.
2. The *Stanford University Department of Public Safety*, as a local law enforcement *subsidiary of the Office of the Sheriff*, can participate in the federal "equitable sharing program" for asset forfeiture seizures in two ways:
  - a. Sharing forfeiture proceeds based on seizures pursuant to a joint investigation conducted by the *Stanford University Department of Public Safety* and a federal agency; or
  - b. The *Stanford University Department of Public Safety*, having seized property, may request that a specified federal agency adopt the seizure and proceed with federal forfeiture. Federal agencies may adopt such seized property for federal forfeiture where the conduct giving rise to the seizure is in violation of federal law and federal law provides for forfeiture. The *Stanford University Department of Public Safety* has 30 days from the date the property was originally seized to request a federal adoption, unless a waiver is approved based on exceptional circumstances justifying the delay.

**D. PROPERTY SUBJECT TO SEIZURE:**

Health and Safety Code Section 11470 defines the property and conditions which are subject to forfeiture under California law. These include:

1. All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of the law.
2. All raw materials or equipment of any kind which are used, intended to be used in manufacturing, processing, delivering, importing or exporting any controlled substance in violation of the law.

3. All property except real property or a boat, airplane, or any vehicle which is used, or intended for use, as a container for controlled substances in violation of the law.
4. All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of the law.
5. The interest of any registered owner of a boat, airplane, or any vehicle other than an implement of husbandry which has been used as an instrument to facilitate the manufacture of, or possession for sale or sale of certain quantities of drugs. The community property interest of a non-defendant in a class 3 or 4 vehicle, which is the sole class 3 or 4 vehicle available to the defendant's immediate family, prevents forfeiture of the entire vehicle.
6. All money, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Health and Safety Code sections 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, 94 11383 or Penal Code Section 182, or a felony violation of Health and Safety Code Section 11366.8, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under the law, or the issuance of an order or forfeiture of the property, whichever comes first.
  - a. The "Exchange Theory" permits forfeiture of all money, negotiable instruments, securities, or other things of value furnished or intended to be furnished by a person in exchange for a controlled substance.
  - b. The "Proceeds Traceable to an Exchange Theory" permits forfeiture of all proceeds traceable to an exchange mentioned in the above theory.
  - c. The "Facilitation Theory" allows forfeiture of all money, negotiable instruments or securities used or intended to be used to facilitate any violation of the listed code sections.
7. The real property of any property owner who is convicted of violating Health and Safety Code sections 11366, 11366.5, or 11366.6 with respect to that property. This does not apply to property which 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 its unlawful use.

**E. CONSTITUTIONAL CONSIDERATIONS**

Although the processes previously described are civil in nature, the course of conduct requiring police intervention is usually criminal in nature. Careful consideration must first be given to the criminal case with secondary considerations given to the forfeiture case. However, critical evidence may be developed during the investigation to enhance the forfeiture case merely by documenting the statements and actions of the defendant regarding the seized property.

1. Fourth Amendment Concerns. A warrant is not required to seize property subject to forfeiture; however, the Fourth Amendment does require that any such seizure be reasonable, i.e., that the seizing officer has reasonable cause to believe the property is subject to forfeiture. This means that a deputy should conduct his or her investigation in an equivalent manner to that of an arrest in a public place or seizing evidence in plain view. He or she must be legally on the premises and must have probable cause to believe the property is subject to forfeiture. Care should be exercised in conducting the search of property which otherwise has been lawfully seized for forfeiture. In the case of parked/stored vehicles or residences “seized” for forfeiture, a warrant should be obtained prior to a search of its contents.
2. Eighth Amendment Concerns. The Eighth Amendment to the United States Constitution prohibits excessive fines. The United States Supreme Court has interpreted this provision to prohibit asset forfeiture if the amount of the forfeiture is “grossly disproportionate” to the gravity of a defendant’s offense.

**F. AUTHORIZATION**

1. *SUDPS* watch commanders or division *lieutenants* must authorize the seizure of all property for asset forfeiture. Consideration should be given to the type of property and the possibility of long term maintenance or retention of it.
2. Supervisors must ensure that proper authorization has been obtained from the watch commander or *lieutenant* to seize the property. Supervisors will review all asset seizure cases and ensure that they meet the proper criteria for forfeiture and are routed to the proper investigator for assignment.
3. Deputies and Investigators will ensure that proper authorization is obtained from the on-duty watch commander or division *lieutenant* prior to the seizure of any property. All property must be handled as evidence and all evidence handling procedures followed. Proper documentation shall be made in the incident report (IR) and procedures outlined in this General Order shall be followed. Investigators assigned these cases will ensure that the case is presented to the Asset Forfeiture Unit of the District Attorney's Office for a case review and complaint.

**G. PROPERTY**

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Property seized will be documented the same as evidence and will be logged into evidence. Thorough inventories shall be conducted. Proper care must be taken with fragile or expensive property. Property seized must be able to be returned in the same condition as it was seized should the need arise. Fragile items which have been seized should be photographed to depict the integrity of the property at the time of seizure.

## **H. NOTICE**

Notice of Seizure and Proof of Service Forms should be completed at the time of the seizure. These should be given only to the owner of the property, the person in possession if the owner is unavailable or left in a conspicuous place if nobody is present. An approximate value must be given based on the deputy's valuation at the time of seizure per the statute. The property may then be seized.

## **I. DOCUMENTATION**

1. Asset Forfeiture/Criminal Case. Most reports of Asset Forfeiture will be initiated from a criminal case. The criminal portion of the case shall be documented exactly the same as any other standard criminal cases, in order to reduce duplication, just check the block at the top of the face sheet indicating additional related cases and note "Asset Case".
2. Asset Forfeiture/Non-Criminal. Under most circumstances, asset forfeiture seizure cases will involve a criminal case and, under the Health and Safety Code some forfeitures require a criminal conviction. There may, however, be occasions when an asset forfeiture will be initiated from a non-criminal case. This may occur when property becomes subject to seizure and the person in possession is not arrested or involved in a criminal case. Therefore, an incident report (IR) will need to be initiated utilizing the classification of: Asset Forfeiture/Non-criminal. These cases will require all the normal case forms utilized in any criminal case and the Asset Forfeiture Case Form. The only difference is there may not be any booking sheets attached or criminal violations annotated.
3. General Overview. When cases are documented for asset forfeiture the only difference is the Asset Forfeiture Case Form will begin documentation of this portion of the case. the Notice of Seizure/Proof of Service Form should also be attached when applicable. Otherwise, these cases are written the same as any case, such as incident report (IR) face sheet, suspect sheet, property record, additional narrative, CHP 180, vehicle waivers, and copies of computer print-outs.

**J. DISTRIBUTION OF ASSETS**

1. Property. Property seized will be secured and maintained by the *Stanford University Department of Public Safety* until the property has been forfeited by law. The sale of the property or retention of the property by the *Stanford University Department of Public Safety* will be determined after forfeiture by the District Attorney in the county where the property was seized. All property retained must be authorized by the Sheriff and utilized for those Sheriff's Office or *Stanford University Department of Public Safety* operations that are permitted pursuant to the Health and Safety Code or the federal equitable sharing program.
  
2. Funds. Forfeited funds are distributed according to statute by the District Attorney's Office in the county where the property was seized. Funds from the sale of seized property or funds actually seized shall be deposited with the District Attorney's Office (County Treasurer) when the case is presented for forfeiture. Upon forfeiture, the funds will be released by the District Attorney and placed into an account authorized by the county. These funds are not to be used to defer normal operating expenses of the Sheriff's Office, but utilized for special purchases or projects.



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