

“Keep Orlando a safe city by reducing crime and maintaining livable neighborhoods.”

ORLANDO POLICE DEPARTMENT POLICY AND PROCEDURE

1106.9, CONTRABAND, SEIZURE, AND FORFEITURE

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1. PURPOSE

The purpose of this directive is to provide an orderly process for the seizure and forfeiture of personal and real property pursuant to the Florida Contraband Forfeiture Act, [Sections 932.701-932.7062](#), Florida Statutes (hereinafter the FCFA or the Act).

2. POLICY

It is the policy of the Orlando Police Department (OPD) to utilize forfeiture to the fullest extent possible in order to impact criminal activity, provide law enforcement with economic benefit, and protect the substantive and procedural due process rights of all interested persons.

3. DEFINITIONS

N/A

4. PROCEDURES

4.1 APPLICATION

4.1.1 CONTRABAND ARTICLES

[Florida Statute §932.701\(2\)\(a\) 1 - 12](#) defines "contraband article" as:

- a. Any controlled substance as defined in Chapter [893](#) or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of Chapter 893, if the totality of the facts presented by the state are clearly sufficient to meet the state's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.
- b. Any gambling paraphernalia, lottery tickets, money, and currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state. (The Act applies to property used in misdemeanor gambling.)
- c. Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.
- d. Any motor fuel upon which the motor fuel tax has not been paid as required by law.
- e. Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the FCFA. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the FCFA.
- f. Any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of [§812.014\(2\)\(c\)](#).
- g. Any motor vehicle offered for sale in violation of [§320.28](#).
- h. Any motor vehicle used during the course of committing an offense in violation of [§322.34\(9\)\(a\)](#).
- i. Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of [§810.145](#) and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.
- j. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which is acquired by proceeds obtained as a result of Medicaid fraud under [§409.920](#) or

[§409.9201](#); any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, or currency; or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person which is acquired by proceeds obtained as a result of Medicaid fraud under [§409.920](#) or [409.9201](#).

- k. Any personal property, including, but not limited to, any vehicle, item, object, tool, device, weapon, machine, money, security, book, or record that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person's third or subsequent violation of [§509.144](#) (prohibited handbill distribution in a public lodging establishment), whether or not comprising an element of the offense.

4.1.2 VIOLATIONS

Florida Statute [§932.702](#) states that it is unlawful to:

- a. Transport, carry, or convey any contraband article in, upon, or by means of any vessel, motor vehicle, or aircraft.
- b. Conceal or possess any contraband article.
- c. Use any vessel, motor vehicle, aircraft, other personal property, or real property to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article.
- d. Conceal, or possess, or use any contraband article, as an instrumentality in the commission of or in aiding or abetting in the commission of any felony or violation of the FCFA.
- e. Acquire real or personal property by the use of proceeds obtained in violation of the FCFA.

4.1.3 ARREST IS REQUIRED FOR A SEIZURE; EXCEPTIONS

A seizure may occur if the owner of the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under Fl. Stat. 932.701, or one or more of the following circumstances apply as per Fla. Stat. [932.703\(1\)\(a\)](#).

1. The owner of the property cannot be identified after a diligent search, or the person in possession of the property denies ownership and the owner of the property cannot be identified by means that are available to the employee or agent of the seizing agency at the time of the seizure;
2. The owner of the property is a fugitive from justice or is deceased;
3. An individual who does not own the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under s. [932.701](#) 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 Florida Contraband Forfeiture Act on a prior occasion by the arrested person, may be used to establish actual knowledge (See Attachment D, Notification of Vehicle Use);
4. The owner of the property agrees to be a confidential informant as defined in s. [914.28](#). The seizing agency may not use the threat of property seizure or forfeiture to coerce the owner of the property to enter into a confidential informant agreement. The seizing agency shall return the property to the

owner if criminal charges are not filed against the owner and the active criminal investigation ends or if the owner ceases being a confidential informant unless the agency includes the final forfeiture of the property as a component of the confidential informant agreement; or

5. **The property is a monetary instrument.** For purposes of this subparagraph, the term “monetary instrument” means coin or currency of the United States or any other country; a traveler’s check; a personal check; a bank check; a cashier’s check; a money order; a bank draft of any country; an investment security or negotiable instrument in bearer form or in other form such that title passes upon delivery; a prepaid or stored value card or other device that is the equivalent of money and can be used to obtain cash, property, or services; or gold, silver, or platinum bullion or coins.

4.1.4 BURDEN OF PROOF AND EVIDENCE REQUIRED

4.1.4.1 BEYOND A REASONABLE DOUBT

The burden of proof in a forfeiture case is “beyond a reasonable doubt”. A seizing officer must keep this heightened standard of proof in mind when determining whether the facts support a forfeiture seizure. Fourth Amendment search and seizure rules apply to forfeiture cases.

4.1.4.2 INNOCENT OWNER

It is an affirmative defense to forfeiture for an owner to assert that he or she is an “innocent owner.” An affirmative defense operates to defeat the forfeiture action, even if the facts supporting the forfeiture action are proven true. Different standards of proof apply to different situations as described below.

KNEW OR HAD REASON TO KNOW

When the vehicle or property is owned by co-owners, and one co-owner is arrested while using the property in violation of the Act, proof is required that the other co-owner knew, or had reason to know after a reasonable inquiry, that property was likely to be employed in criminal activity.

ACTUAL KNOWLEDGE

If a vehicle or property owner allows a non-owner to use the property and non-owner uses the property in committing a crime and is arrested for that crime, the owner must be aware of the specific criminal behavior involved. (See 4.1.3 above). Proving that the owner has *knowledge of the actual criminal activity* is only required when a non-owner is arrested for a criminal offense that forms the basis for determining that the property is contraband.

If written notice is provided to an owner about non-owner’s criminal activity involving the property, that notice may be used to establish actual knowledge in the future. See Attachment D, Notification of Vehicle Use.

4.1.5 VEHICLES, VESSELS, AND AIRCRAFT

Police Legal Advisor (PLA) approval is required prior to any vehicle seizure. Unless an exception applies in Section 4.1.3 of this Policy, officers may only seize vehicles if:

- 1) There is probable cause for a qualifying offense; AND
- 2) The vehicle was used as an instrumentality of that offense, or purchased with proceeds of criminal activity, AND
- 3) An arrest was made of the driver or owner for that offense.

Note: If the owner is not the person arrested, there must be proof that the owner has actual knowledge that the arrested driver was committing that offense.

Additional factors the PLA will consider are:

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- 1) The value of the vehicle should be valued over \$10,000;
 - 2) The vehicle should not have a lien;
 - 3) There can be no “innocent owners”, or people with a property interest that are not aware of the crime being committed.
- Possession and transportation of a controlled substance in a vehicle is sufficient for seizure and forfeiture of the vehicle, if possession and/or knowledge of said possession can be imputed to the vehicle’s owner.
 - In cannabis cases, there must be possession of a felony amount (greater than 20 grams), or evidence to establish probable cause of possession with intent to sell, or other felony.
 - The purchase or sale of a controlled substance from, in, or on a vehicle subjects the vehicle to forfeiture.
 - A vehicle used to transport a suspect to and from a drug transaction or negotiation site is subject to seizure and forfeiture without showing that a controlled substance was actually possessed or transported within the vehicle. A vehicle used to transport a suspect to the scene of a felony is subject to seizure and forfeiture, if it can be proven that the suspect had the intent to commit the felony during the time he/she traveled in the vehicle. For example, where a suspect drives to a location with no plan to commit an offense, but commits an offense on the premises sometime after the arrival (such as an aggravated assault in a bar or a subsequent purchase of narcotics), the suspect’s vehicle is not subject to seizure on those facts alone. If, however, it can be established that the individual had the intent to commit the offense at the time he/she used the vehicle, then the vehicle is subject to seizure. Examples might include driving a vehicle to a prearranged drug transaction; driving a vehicle around looking for drugs to buy; using a vehicle in a kidnapping, etc.
 - A vehicle used to possess the fruits or instrumentalities of a felony (i.e., stolen property > \$750, burglary tools, etc.) is subject to seizure and forfeiture.
 - Various statutes permit forfeiture of motor vehicles, boats, or engines where the VIN, hull, or serial numbers have been altered, removed, or defaced. Case law requires that there be some other evidence of wrongdoing to support a forfeiture action. No vehicle, vessel, or aircraft shall be forfeited under the FCFA when the owner unknowingly, inadvertently, or neglectfully altered, removed, destroyed, covered, or defaced the vessel hull ID number ([§328.07\(3\)\(b\), Fla. Stat.](#)). This does not affect the validity of seizures of such items for evidentiary or other statutory purposes.
 - A vehicle is not subject to forfeiture only because a concealed firearm is inside. The weapon must have been used in an independent felony, or the firearm must otherwise be “contraband” (e.g., possessed by a convicted felon; used in the commission of a felony or fruit of a felony); then, the vehicle is subject to forfeiture because it was used to transport or conceal that contraband. When the firearm itself is “contraband,” it is regarded in the same way as other contraband, like illegal narcotics. If a firearm is merely concealed in a vehicle, but is otherwise lawfully possessed, the vehicle is regarded as “merely incidental” to the offense and, therefore, not subject to seizure.
 - The Act also defines “contraband article” as “any personal property...which was used, or was attempted to be used, as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony....” The Act permits us to forfeit property, including vehicles, which are used in: DUI manslaughter; vehicular homicide; felony DUI cases; leaving the scene of an accident with personal injury cases; racing on highway cases (2nd offense); weapons used in armed offenses (e.g. firearm used in robbery); fleeing to elude; and any other property where such property is a necessary element of a felony offense. However, property can be forfeited pursuant

to a violation of [§322.34\(5\)](#) (Habitual Traffic Offender) only in specified circumstances. (See Appendix A for more information). The Police Legal Advisor should approve any forfeiture seizures for the driving offenses listed above.

4.1.6 CURRENCY

Currency that has been employed as an instrumentality in the commission of, or in aiding and abetting the commission of, any felony, is subject to seizure and forfeiture. Unlike vehicle seizures, arrest is **NOT** required for currency seizures. A diligent effort to determine the identity of the owner is required by the statute. If anyone on the scene denies ownership of seizable currency or property, the officer shall have the individual(s) sign the Disclaimer of Ownership of Currency or Property Form (Attachment A). Seizure of any amount under \$1,500 is discouraged; however, if probable cause exists to hold the currency for evidence in the criminal case, the currency can be taken for evidence and an evidentiary hold can be placed on the currency. See Section 4.2.1.3 of this Policy.

Currency used in violation of the drug laws found in [Chapter 893, Florida Statutes](#), is subject to seizure and forfeiture. The mere presence of a large quantity of currency alone is not sufficient to justify forfeiture seizure. There must be evidence sufficient to establish probable cause to believe the currency was used, or was attempted to be used, or was intended for use, in furtherance of a drug transaction. The following factors may be considered:

1. the proximity of the currency to illegal drugs,
2. the quantity,
3. denomination,
4. packaging of the currency;
5. residue on the currency;
6. a "hit" by a drug dog for the presence of a controlled substance on the currency; and
7. inconsistent statements about the currency from the owner or other involved individuals.

Whether probable cause exists depends on the totality of the circumstances; rarely will one factor alone be enough. For example, a large sum of currency plus a drug dog "hit" alone is not sufficient to justify a seizure. A large sum of money, found with one piece of crack cocaine, is not subject to forfeiture absent additional factors. If a subject has a large amount of unexplained currency upon which a drug dog has "hit" and the subject possesses individually wrapped pieces of crack cocaine that seem to be packaged for sale, the money is subject to forfeiture seizure. It is critical to look for and record all available factors.

If cryptocurrency is being seized for forfeiture, the legal advisor must be contacted prior to any freeze or transfer of cryptocurrency. All procedures in P&P 1411, Seizure of Cryptocurrency, apply.

4.2 SEIZURE PROCEDURES

4.2.1 SEIZING PERSONAL PROPERTY

Supervisory personnel must authorize vehicle, currency and property seizures. Supervisory personnel should consult with the PLA if the probable cause for seizure is not evident. Officers may seize personal property for forfeiture if there is probable cause to believe that the property is subject to forfeiture as outlined above, or as otherwise authorized by other statutes permitting forfeiture in accordance with the FCFA. The FCFA permits seizure of the contraband article both at the time of the violation, or subsequent to the violation. Whenever possible, the seizure should occur at the time of the violation.

The seizing officer shall make diligent efforts to determine ownership of the property, including the identification of the registered owner, title holder, any bona fide lien holder, or other interested party.

If anyone on the scene denies ownership of seizable currency or property, the officer shall request the individual(s) sign the Disclaimer of Ownership of Currency or Property Form (Attachment A).

The officer must provide to the PLA the names and addresses of persons who may be entitled to notice regardless of whether the person(s) claim an ownership interest at the time of seizure. "Persons entitled to notice" are "any owner, entity, bona fide lien holder, or person in possession of the property...when seized." ([§932.701\(e\), Fla. Stat.](#))

4.2.1.1 FORMS AND RECEIPTS

The officer shall complete the Notice of Forfeiture and Property Receipt Form (Attachment B) at the time of the seizure, and request the claimant sign and provide the claimant a copy of the form. If the claimant refuses to sign, the refusal shall be noted, and the officer's signature on the form is sufficient. This form is available in the Quartermaster Unit and the original shall be submitted to the Police Legal Advisor.

When a vehicle or property is seized, a Vehicle and Property Seizure and Forfeiture Summary form (Attachment C) shall be completed and delivered via email to PLA@orlando.gov, with the Notice of Forfeiture and Property Receipt Form (Attachment B) and a copy of all reports or Charging Affidavits, prior to the end of the officer's tour of duty. The Act requires the agency to provide written notice to all persons entitled to notice within five days of the seizure. This requirement can also be satisfied if there is a single owner and the officer provides the Notice of Forfeiture and Property Receipt (Attachment B) to the owner on scene. Any delays in submitting the forfeiture summary and available paperwork may prevent the ability to go forward with forfeiture. Original Incident Reports and Charging Affidavits shall be routed through normal report flow channels. If supplemental reports are prepared, copies must be forwarded to the Police Legal Advisor to be matched with the existing forfeiture file. Forfeiture paperwork submitted to the PLA shall be filled out completely, sworn to and signed. Failure to do so may result in the loss of the forfeiture.

Property seized for forfeiture shall be handled as provided by OPD directives relating to property and evidence control and vehicle storage and inventory. All receipts, inventory forms, disposition sheets, and red tags shall be marked, "hold for forfeiture." When property seized for eventual forfeiture also needs to be held for evidence, the officer must make it clear to the Police Legal Advisor and the Property and Evidence Section that property is subject to an ongoing evidence hold. Such evidence holds should be used only where necessary for trial or further investigation. Unnecessary evidence holds may impair the ability of the Police Legal Advisor's office to obtain favorable dispositions in forfeiture cases. If a dual hold is necessary, the officer must promptly release evidence holds when no longer necessary to enable the forfeited property to be properly disposed of by the Department.

If lab analysis of a controlled substance is necessary to establish probable cause for forfeiture, the seizing officer shall ensure that the substance is properly submitted for delivery to the lab and shall further ensure that a copy of the lab results is forwarded to the Police Legal Advisor's office upon receipt. In cases with multiple quantities of different drugs, the lab will only test the drug that carries the highest level felony. Indicate on the lab transmittal which drug should be tested.

Under no circumstances shall any settlement negotiations take place at the time of seizure.

4.2.1.2 VEHICLE CASES

Supervisory personnel must authorize all vehicle seizures. In cases of vehicle seizure, the officer shall run a last lien and data check and reflect that information on the forfeiture summary form. Whenever possible, a hard copy of the last lien and data shall be attached to the forfeiture paperwork to be submitted to the Police Legal Advisor. The VIN shall be verified by means other than a cross-reference of the license tag number. The VIN must be accurately and legibly recorded on all appropriate documents

4.2.1.3 CURRENCY CASES

Currency seizures should be greater than \$1,500 and supervisory personnel must authorize all cash

seizures. For other types of property seized, a supervisor who was not directly involved in making the seizure should promptly review the probable cause supporting the seizure.

When cash is taken from a claimant for forfeiture, the officer shall issue the claimant a Notice of Forfeiture and Property Receipt (Attachment B). All property and evidence procedures apply (P&P 1123, Property and Evidence).

If the seized currency is also evidence in the criminal case, consult the PLA for further guidance. Indicate in the report that the currency is evidence of the intent to sell an illegal drug but do not place evidence holds on forfeited currency, because that prevents the Police Legal Advisor from entering into meaningful negotiations for settlement of forfeiture cases. The prosecution does not need the actual currency seized; the state may use any currency identical in amount and denomination for demonstrative purposes. Officers may be tasked by the state to obtain such cash for trial purposes from OPD investigative funds. Prosecutors have been directed by the State Attorney's Office management not to introduce currency into evidence at trial because of the difficulties in retrieving the money later from the Clerk of Court. The state may wish to utilize the photographs or photocopies of the currency instead. Be certain to advise the prosecutor that these photographs were taken and make those pictures available to the prosecutor in a timely fashion. If money needs to be seized for evidentiary purposes, complete whatever steps are necessary for evidence handling and/or testing; and then place a forfeiture hold on the currency if it meets the statutory definition of contraband under the Florida Contraband Forfeiture Act.

4.2.1.4 STORAGE AND MAINTENANCE OF VEHICLES AND OTHER PERSONAL PROPERTY

A complete inventory of the seized property and all containers, open or closed, found therein shall be completed by the seizing officer at the time of the seizure.

If any personal property seized for forfeiture needs to be processed, or held for evidence, the officer must indicate that on all forfeiture paperwork. This will prevent premature release by the Police Legal Advisor's office based upon a forfeiture case filing decision.

All vehicles seized for forfeiture shall be towed to the Primrose substation. The seizing officer shall contact the Watch Commander to arrange for an employee with access to the Primrose substation to meet the tow truck operator, collect the keys to the vehicle and give him/her supervised access to the locked parking area at the Primrose substation. Vehicle keys will be marked and labeled to identify the corresponding vehicle and placed in the designated black key storage box at the Primrose substation. Officers shall also document the placing or removal of keys and corresponding vehicle in the log book next to the black storage box. Pursuant to [Fla. §932.703\(1\)\(d\)\(2\)](#), the seizing agency is responsible for any damage to the property and any storage fees or maintenance costs applicable to the property, unless expressly agreed to in writing.

The seizing or assisting officer shall complete a Vehicle Disposition Form. The Vehicle Disposition Form shall be placed at the Information Desk prior to the end of the seizing officer's tour of duty. "Red Tag" procedures will be followed and the tags must be marked for forfeiture. In cases where the owner may be unaware of the seizure, officers are reminded to notify Communications of the seizure of the vehicle. This avoids unnecessary stolen vehicle reports and complies with policy.

The inventory section of the Vehicle Disposition Form must be completed, and pursuant to Policy & Procedure 1130, Vehicle Towing, Storage, and Inventory, with special attention to section (7):

The following procedures shall be adhered to when vehicles are inventoried: Vehicles shall be completely inventoried. The inventory shall include, but not be limited to, the interior of the vehicle and any containers within the interior of the vehicle. The trunk

and glove compartments and any containers therein, should be inventoried, provided that the keys are available, or the vehicle has an operable trunk release. Any and all items of great or unusual value (currency, firearms, cameras, compact disc collections, jewelry, etc.) which are not considered evidence or part of the vehicle itself shall be removed and submitted to the Property and Evidence Unit for safekeeping as personal property. Any personal property in the vehicle which an employee believes may be evidence of a crime shall be removed from the vehicle for investigative purposes. Once this investigation is concluded, such personal property shall be placed in the Property and Evidence Unit as evidence or personal property. The employee shall follow current policies regarding handling and storage of the property during the investigative process.

All property located within the vehicle which is not evidence and which is not subject to forfeiture should be inventoried and placed in Property and Evidence as personal property.

Evidence numbers must be recorded on the Vehicle and Property Seizure and Forfeiture Summary form, and the Property and Evidence card shall be marked to indicate that said property is related to the forfeiture case.

Vessels or aircraft seized for forfeiture shall be transported to a secure location until further arrangements can be made. It is the responsibility of the seizing officer's section commander to ensure that the vessel or aircraft is secured and protected.

Reasonable efforts shall be made to maintain the property in the time-of-seizure condition. Seized items shall not be used for any purpose until such rights, interest, and title are perfected pursuant to the FCFA. This section does not prohibit use or operation necessary for reasonable maintenance of seized personal property.

If special maintenance is required to maintain seized personal property in time-of-seizure condition, as may be necessary with aircraft or vessels, the Orlando Police Department shall ensure that such maintenance is provided within a reasonable time after seizure, with such care continuing through the pendency of the forfeiture action.

4.2.2 SEIZURE OF REAL PROPERTY

The Orlando Police Department may seize real property, including any right, title, leasehold, or other interest in the whole of or any lot or tract of land, in real property for forfeiture under the Act when there is probable cause to believe that the realty, or the interest therein subject to seizure, was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the FCFA. However, "homestead exemption" provisions of the Florida Constitution prohibit the forfeiture of one's home, regardless of the criminal activity being conducted in it.

Unless an exception applies in Section 4.1.3 of this Policy, officers may only seize real property if it is not homestead property and:

- 1) There is probable cause for a qualifying offense; AND
- 2) The property was used as an instrumentality of that offense, AND
- 3) The owner was arrested for that offense.

Note: If the owner is not the person arrested, there must be proof that the owner had actual knowledge that the arrested person was committing that offense.

If the real property to be seized is occupied, or where dependent children, medically deficient persons, or persons

otherwise infirm are to be removed, notification to appropriate social service agencies shall be made as soon as reasonably possible.

Prior to the seizure of real property, the Orlando Police Department will make a diligent effort to determine the ownership of the seized property, including the owner and the bona fide lien holder of record, and shall schedule any pre-seizure hearings as appropriate.

Should the Orlando Police Department determine not to proceed with forfeiture based upon innocent-owner or other considerations, the property shall be released to the lawful owner or designated agent.

4.2.2.1 FACTORS FOR CONSIDERATION IN REAL PROPERTY SEIZURES

Prior to seizing any real property, an attorney from the Police Legal Advisor's office must determine whether there is probable cause to believe that the real property was used in violation of the FCFA or other applicable statutes. Once probable cause has been established, the following factors may be considered prior to any recommendation or final decision to seize real property:

- a. Whether the seizure is cost effective and/or serves other law enforcement objectives.
- b. The availability of alternative methods of forfeiture such as joint or adoptive forfeiture ventures with federal officials.
- c. The impact of forfeiture on co-owners and lien holders and the relative merit of any claims or defenses they may have.
- d. The impact of forfeiture on the public health, safety, and welfare, particularly where environmentally sensitive lands may be involved.

THE FOREGOING CONSIDERATIONS ARE NOT INTENDED TO NEGATE THE AUTHORITY OR ABILITY OF THE ORLANDO POLICE DEPARTMENT TO CONDUCT FORFEITURE SEIZURES OF REAL PROPERTY.

4.2.2.2 MAINTENANCE OF REAL PROPERTY

Reasonable efforts should be made to maintain the real property in such a manner as to minimize loss of value.

4.2.3 SEIZURE OFFICER'S ONGOING RESPONSIBILITIES

The seizing officer (and/or assigned investigator, where applicable) is required to provide updated case information to the Police Legal Advisor. This includes supplemental reports or other critical information as it becomes known and available. If the officer believes a settlement offer favorable to the claimant should be made, the officer shall communicate that information to the Police Legal Advisor. Accordingly, if the person from whom the property was seized is a repeat offender, that information should also be provided to the Police Legal Advisor's office. All officers involved in the seizure of property are expected to be available for, and testify at, all applicable forfeiture hearings, including any adversarial preliminary hearings, if such hearings are scheduled. Subpoenas will not be necessary to secure the officer's presence at any hearing. On-call and appearance time, and compensation provisions will be observed. As much advance notice as possible will be provided to the officer by the Police Legal Advisor's office.

4.3 POLICE LEGAL ADVISOR DUTIES

4.3.1 DESIGNATION

The Chief of Police has designated the Police Legal Advisor's Office to handle all forfeiture actions and proceedings on behalf of the Chief. The Police Legal Advisor office shall handle these matters as follows:

- a. Promptly review all reports and conduct an independent evaluation of the probable cause determination

and the prosecutive merit of the case.

- b. Make a determination as soon as possible after seizure whether to proceed with the forfeiture or to release the seized property to the lawful owner, bearing in mind that 1) the statute requires a judge to find probable cause within 10 days of a seizure and 2) 45 days after seizure, motions for return of property may be brought against the Department.
- c. Ensure that timely notice is provided to all interested persons. The notice shall advise interested persons that they have the right to request an adversarial preliminary hearing within 15 days. If the officer failed to give the Notice of Forfeiture in Attachment B to the owner(s) on scene, the Police Legal Advisor shall send notice to all interested persons by certified mail. It is the claimant's responsibility to send a written request for an adversarial preliminary hearing to the Police Legal Advisor, by certified mail, return receipt requested. The Police Legal Advisor will schedule the hearing and provide notice. The hearing must be scheduled within ten days of the demand, or as soon thereafter as practicable.
- d. Upon the determination to proceed with the forfeiture, coordinate the forfeiture process with appropriate members of the Orlando Police Department.
- e. Either enter into a settlement agreement or obtain a probable cause finding by a judge within 10 days of seizure and file the forfeiture action within 40 days of seizure in compliance with the Act.
- f. Upon the determination not to proceed with a forfeiture action, ensure that the seized property is immediately released to the lawful owner or authorized designee and that notice of the release is provided.
- g. Conduct periodic reviews of forfeiture seizures, settlements, and proceeds to ensure compliance with the Act, applicable law, and Uniform Standards.
- h. Be responsible for the record-keeping system of cash settlements. The records consist of hard copy and computerized files that will be maintained as follows:
 1. A settlement agreement will be issued to the claimant bearing the OPD case number, settlement amount, and signature of the claimant and at least one City representative. A copy of the settlement agreement will be maintained in the Police Legal Advisor file.
 2. Copies of the closing memo bearing the OPD case number and settlement amount will be distributed to the lead officer and Fiscal Management.
 3. A log will be maintained by the Police Legal Advisor or his/her designee indicating the transaction date, case number, claimant, settlement amount, and date of deposit.
- i. When a new attorney is assigned the forfeiture caseload, a joint audit shall be conducted by the former forfeiture attorney, if available, or designee assigned by the Chief of Police, the new assignee, and the Fiscal Manager. Copies of the results of this audit will be forwarded to the Chief of Police and kept on file by the Fiscal Manager. All discrepancies shall be resolved prior to assumption of responsibility by the newly assigned forfeiture attorney .
- j. After property is seized pursuant to the Florida Contraband Forfeiture Act, regardless of whether the civil complaint has been filed, all settlements must be personally approved by the Chief of Police. As a delay in the settlement process would adversely affect the settlement, the Chief of Police has designated the Police Legal Advisor to give initial approval, followed by notification of the details of the settlement to the Chief of Police.

4.3.2 ANNUAL REPORT

Pursuant to Fla. Stat. [§932.7061](#), every law enforcement agency shall submit an annual report to the Department of Law Enforcement indicating whether the agency has seized or forfeited property under the Florida Contraband Forfeiture Act. A law enforcement agency receiving or expending forfeited property or proceeds from the sale of forfeited property in accordance with the Florida Contraband Forfeiture Act shall submit a completed annual report by **December 1st**, documenting the receipts and expenditures. The report shall be submitted in an electronic form, maintained by the Department of Law Enforcement in consultation with the Office of Program Policy Analysis and Government Accountability, to the entity that has budgetary authority over such agency and to the Department of Law Enforcement.

The annual report must, at a minimum, specify the

- 1) type,
- 2) approximate value,
- 3) court case number,
- 4) type of offense,
- 5) disposition of property received, and
- 6) amount of any proceeds received or expended.

Fiscal shall be responsible for updating this information into the spreadsheet provided by FDLE and submitting the final report to legal by October 31st each year, or no later than November 15th. The PLA shall submit the final report to FDLE by the December 1st deadline.

The law enforcement agency and the entity having budgetary control over the law enforcement agency may not anticipate future forfeitures or proceeds therefrom in the adoption and approval of the budget for the law enforcement agency.

4.4 SETTLEMENT PROCEDURES

The Chief of Police has designated the PLA to approve settlements prior to receiving a response from the Chief. On a monthly basis, the PLA or designee shall email the Chief of Police with the details of all settlements. The Chief will email back his acknowledgment of the settlements.

4.4.1 PROCEDURE FOR PROPERTY

The Police Legal Advisor or his/her designee will contact Fiscal when a settlement is reached, and an appointment is made on motor vehicles seized for forfeiture. Advanced notice to Fiscal is preferred, but not required. Fiscal will assign a Fiscal representative to join the Legal representative to meet with the claimant in the 1st floor lobby area at OPH. The Legal representative will complete all settlement paperwork with the Claimant. The Fiscal representative will collect the cash or cashier's check, count the cash in front of the Claimant and Legal representative, and issue a receipt. Fiscal Management will then ensure that the funds collected on settlements shall be deposited into the designated Law Enforcement Trust Fund account.

4.4.2 PROCEDURE FOR SETTLEMENTS OF CURRENCY

The Police Legal Advisor or his/her designee will contact Property and Evidence once a settlement agreement is reached with a claimant to arrange for the verification of the currency inside the envelope. The verification will be conducted prior to meeting with the claimant. The entire verification process will be conducted inside the Property and Evidence Section under video surveillance. The verification process will be conducted by the Police Legal Advisor or his/her designee and witnessed by the Property and Evidence Section Supervisor or his/her designee. Once verification of the total monies has been confirmed, the Police Legal Advisor or his/her designee will separate the amount of money that will be returned to the claimant or his/her representative pursuant to the settlement agreement and return the remaining balance to the original evidence package and follow all Property and

Evidence policy and procedures for the repackaging of evidence. The Police Legal Advisor or his/her designee will complete the transfer of the agreed funds to the claimant.

Funds in Property and Evidence that are forfeited to the Department through the FCFA either by settlement or court order shall be deposited into the specially-designated Law Enforcement Trust Fund account.

The Fiscal Manager or his/her designee will complete audits on an annual basis. The results of these audits will be forwarded via the chain of command to the Chief of Police.

4.5 RELEASE OF PROPERTY

4.5.1 RELEASE OF SEIZED PERSONAL PROPERTY AND VEHICLES

If, at the conclusion of the judicial process, the claimant prevails, the seized property shall be released to the lawful owner immediately. The Orlando Police Department shall not assess towing charges, storage fees, administrative costs, maintenance costs, or the like against the owner or other interested party.

Unless the owner agrees in writing, OPD is responsible for any damage to the property and any storage fees or maintenance costs applicable to the property. [Fla. Stat. §932.703\(1\)\(d\)2.](#)

When a forfeiture case involving currency is administratively closed, title to unclaimed money vests with OPD 60 days after the close of the corresponding criminal case (Fla. Stat. §705.105). After that time period, unclaimed currency will be deposited into OPD's General Fund by the Property and Evidence Section. If, at some time in the future, the claimant or owner asserts a claim to the currency, the matter should be referred to the Police Legal Advisor.

Occasionally, the Police Legal Advisor will include in the written closure memorandum a request for Property and Evidence to mail some or all of the funds seized to a particular claimant or person acting on behalf of the claimant. In that event, Property and Evidence shall secure a check or money order and comply with the terms of such written request within 10 days of receipt of the request.

4.6 USE OF FORFEITED ITEMS

Currency obtained through settlement, court order, or sale of forfeited property shall be deposited into the Law Enforcement Trust Fund for Departmental use as provided by law. Items forfeited by settlement or court order may be converted to the use of the Department or sold at auction. No forfeited item shall be used or assigned until forfeiture proceedings are complete pursuant to settlement or court order and the item is listed on Departmental inventory for checkout or assignment. Approval by the Chief of Police or his/her designee must be obtained before any forfeited vehicle is placed in service.

The Police Legal Advisor's office shall notify the Fleet coordinator when a vehicle is awarded to the Department by settlement or by court order. Once all appeal time has elapsed, the PLA shall forward clear title and all supporting documentation to the Fleet coordinator to enable the proper disposition of the vehicle.

The Chief of Police may authorize Departmental use of a vehicle to a specific OPD Division. After the Chief of Police decides to retain a vehicle, the bureau commander in charge of the unit, section, or division requesting the use of a vehicle shall contact the appropriate City personnel to make necessary arrangements

4.7 REQUESTS FOR FUNDS HELD IN LAW ENFORCEMENT TRUST FUND

Requests for expenditures of funds realized through forfeiture or sale will be made to the Chief of Police via the Chain of Command per Policy and Procedures 1629, LE-FAST Funds.

4.8 UNIFORM STANDARDS

The Orlando Police Department has adopted the Uniform Standards, Principles, and Training Procedures as promulgated

by the Florida Department of Law Enforcement and as required by the Act. The uniform principles are as follows:

- a. Law enforcement is the principal objective of asset forfeiture. The potential for revenues from forfeitures shall not override fundamental considerations such as public safety, the safety of law enforcement officers, the investigation and prosecution of criminal activity, or respect for the rights of individuals as provided by law.
- b. The employment, salary, promotion, or other compensation of a law enforcement officer or attorney shall not depend on obtaining a quota of seizures.
- c. OPD shall ensure compliance with the legal requirements regarding seizing, maintaining, and forfeiting property under the Act through the use of written policy, procedures, and training.
- d. The decision of whether to seize currency must be made by supervisory personnel. When property other than currency is seized for forfeiture, a supervisor not directly involved in making the seizure should review the probable cause supporting the seizure. The Police Legal Advisor must be notified as soon as possible of all seizures, and the forfeiture paperwork must be delivered directly to the Police Legal Advisor or left in the Police Legal Advisor's box at the Information Desk by the end of the seizing officer's tour of duty for that day.
- e. The Chief of Police or the Police Legal Advisor, as the Chief's designee, will make the determination of whether the Agency will file a civil forfeiture action in circuit court.
- f. If the Act or Agency decision requires the release of property seized for forfeiture, the Agency shall promptly release the property unless there is a legitimate reason for holding the property.
- g. Property seized for forfeiture shall not be used by the Agency or any of its employees until such time as the Agency's property rights, interest, and title to the property are perfected in accordance with the Act. The Police Legal Advisor shall notify the seizing officer, the Property and Evidence Section, and the Fiscal Management Section whenever property rights have been granted or awarded to OPD. This does not prohibit such use or operation necessary for reasonable maintenance of seized property. Reasonable efforts shall be made to maintain seized property in such a manner as to minimize loss of value.
- h. Settlement of any forfeiture action shall be consistent with the mandates of the Act and in compliance with agency policies and directives.
- i. All forfeited property retained for law enforcement use should be maintained and utilized in accordance with the Act, and should be subject to the same controls with regard to property acquired through the Agency's normal appropriations process.
- j. Funds received by forfeiture should be maintained in a special fund as provided by law, and be subject to normal accounting controls and financial audits of all deposits and expenditures. Proceeds and interest thereon may not be used to meet normal operating expenses of the Agency. OPD shall file financial reports as required by the Act.
- k. Periodic review of the Agency's seizures of property, as well as settlement and forfeiture proceedings will be conducted to determine if such seizures, settlements, and forfeitures comply with the Act and the Uniform Standards promulgated by FDLE.
- l. OPD should avoid the appearance of impropriety in the acquisition, sale, retention, or transfer of any forfeited property or proceeds derived from such property.
- m. OPD personnel involved in the seizure of property for forfeiture shall receive periodic training and shall maintain records demonstrating officer compliance with these training requirements. A portion of such training must address

legal aspects of forfeiture, including search and seizure, or other constitutional considerations.

4.9 FORFEITURE: STATUTORY LAW AND CASE LAW

4.9.1 GENERAL INFORMATION

- a. Section [932.706, Fla. Stat.](#), requires the development and implementation of continuing education training related to contraband forfeiture issues and procedures. ([Sections 932.701-932.7062, Fla. Stat.](#), also known as a Florida Contraband Forfeiture Act.)
- b. The state's interest and concerns regarding contraband forfeiture actions are effective law enforcement, protection of rights of the individuals affected by forfeiture action and the public's expectations that government act fairly and appropriately.
- c. Forfeiture is a powerful tool and should be used prudently. If the Legislature, the public, or the courts perceive law enforcement forfeiture actions as being principally review-driven, law enforcement will most likely suffer some form of repeal or restrictive limitations. The policy for the State of Florida regarding the use of Contraband Forfeiture Act is: 1) deterrence; 2) prevention; and 3) protection of innocent interests in seized property.
- d. We, as law enforcement professionals, must follow federal and state constitutional limitations regarding an individual's right to be free from unreasonable searches and seizures. We need to be certain that the potential for large revenues does **not** cloud our judgment and cause us to ignore or minimize the rights of others.
- e. The Supreme Court of Florida in *White v State*, 753 So.2d 548 (Fla. 1999) suggests that when the seizure of property, such as a car, is remote in time to the felonious activity that caused it to be used in violation of Act, a seizure warrant should be obtained. However, so long as the seizure takes place in a public place, warrantless search of vehicle post forfeiture seizure does not violate the 4th amendment.
- f. A forfeiture may be challenged when it appears disproportionate to the alleged crime. The Eighth Amendment of the U.S. Constitution advises, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Florida's constitution also has similar language that prohibits excessive fines. This clause should be considered when processing a forfeiture.

4.9.2 STATUTORY ISSUES

4.9.2.1 [SECTION 932.701\(2\)\(A\)1](#)

The definition of contraband is to include property that was used, was attempted to be used, or was intended to be used to violate Chapter 893; and the seizing agency must show that there is a nexus (connection) between the seized property and some narcotics activity but it is not required to tie the use of the property to a specific transaction.

4.9.2.2 [SECTION 932.701\(2\)\(a\)5](#)

The definition of contraband includes any personal property that was used, was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony (or qualifying misdemeanor), whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Act.

4.9.2.3 [SECTION 932.703\(3\)\(a\)](#)

A seizing agency must provide personal notice at the time of seizure, or notice by certified mail, return receipt requested, within five days of the seizure of property. A claimant has the right to ask for an adversarial preliminary hearing before a court to decide if there was sufficient probable cause to believe

the seized property was used in violation of law.

4.9.2.4 [SECTION 932.703\(7\)\(a\)](#)

The government has the burden of proving by a preponderance of evidence that the owner knew, or should have known after a reasonable inquiry, that the property was employed or likely to be employed in criminal activity.

4.9.2.5 [SECTION 932.703\(6\)\(b\)](#)

Legally perfected pre-seizure interest in lien holders' property may not be forfeited without the seizing agency showing the lien holders' prior knowledge of illegal use or likely illegal use of seized property.

4.9.2.6 [SECTION 932.703\(7\)\(c\)](#)

In cases involving titled property co-owned by spouses, the agency must prove by a preponderance of evidence that the co-owner knew, or had reason to know, after a reasonable inquiry, that seized property was likely to be employed in criminal activity.

4.9.2.7 [SECTION 932.703\(7\)\(d\)](#)

Leased or rented property cannot be forfeited without showing that the leasing or rental business had actual knowledge at the time the lien was made, of illegal use, or likely illegal use of seized property.

4.9.2.8 [SECTION 932.703\(7\)](#)

Agencies must show that a co-owner of titled registered property either knew or should have known after a reasonable inquiry of illegal use or likely illegal use of seized property in order to forfeit the co-owner's interest.

4.9.2.9 [SECTION 932.703\(9\)](#)

It is an affirmative defense to a forfeiture action that the nexus between the seized property and the commission of underlying violation was incidental or entirely accidental.

- a. Value of seized property in proportion to any other factors must not be considered in determining this affirmative defense.
- b. The court is prohibited from considering the value of the seized property in proportion to other factors, such as the presence of or proximity to controlled substances or other contraband articles, in determining the validity of the affirmative defense.

4.9.2.10 [SECTION 932.704\(7\)](#)

If the claimant is not represented by counsel, the settlement agreement must include language that the claimant freely and voluntarily signed such without benefit of counsel. The courts and the legislature have not looked kindly upon immediate settlements, especially those of the "roadside variety."

4.9.2.11 [SECTION 932.704\(9\) and \(10\)](#)

This section discusses the fact that sanctions against agencies for bad faith prosecution of forfeiture may include:

- a. Civil action against agency in state or federal court;
- b. Damages for loss of value and loss of income must be awarded if the claimant prevails after trial or appeal;
- c. Fees and costs up to \$2,000 may be awarded after adversarial preliminary hearing to a prevailing claimant;
- d. Fees and costs must be awarded if it is shown that an agency has not proceeded in good faith at any time.

4.9.2.12 SECTION 932.704 (11)

- a. Each agency engaged in forfeitures must comply with newly established guidelines;
- b. Head of agency or designee decides whether to file action; and
- c. Decision to seize currency must be made by supervisor, and agency's legal counsel must be notified as soon as possible.

This is to ensure that higher-level personnel are making the decisions regarding property seizures and to also ensure that "roadside settlements" do not occur.

4.9.3 CASE EXAMPLES

4.9.3.1 INSTRUMENTALITY

Is the vehicle instrumental to a crime or merely incidental?

INCIDENTAL: In City of Edgewood v. Williams, 556 So. 2d 1390 (Fla. 1990), Williams drove his BMW automobile one block from his office to an apartment where he picked up a 15-year old female for the purpose of driving her home. As they were about to leave the apartment, Williams fondled the girl's breast and was arrested for violating F.S. 800.04. The City of Edgewood filed a forfeiture action against the car, alleging that it was used to help facilitate the felony. The Supreme Court disallowed the forfeiture, holding that the use of the car was too remote from the crime. The evidence could not support a showing that Williams had the intent to commit the offense at the time he drove the vehicle. Therefore, the vehicle was considered to be "merely incidental" to the offense.

INSTRUMENTAL: In Brooks v. Gillum, 619 So. 2d 337, (Fla. 4th DCA 1993), the court distinguished the facts at hand from the above facts in determining that in a "second incident," the pickup truck was an "instrumentality" of minor girl's fellatio with owner and, therefore, could be forfeited. In this case, the two male suspects picked up two minor females who had solicited a ride from a convenience store and drove them to a high school where one of the minor girls engaged in oral sex with one or both of the suspects. In this first incident, the use of the vehicle was only incidental. However, after the first incident, the suspects drove the minor girls from motel to motel, and then the owner drove the girls to his residence where additional acts of oral sex occurred. The second incident is the key, as it shows the defendant, before using his vehicle, had already formed the intent to commit crimes and then used the vehicle to carry out that intent.

4.9.3.2 EXCESSIVE FINE

When is a forfeiture considered an "excessive fine"?

Factors in evaluating whether a fine is excessive and thus violates the excessive fines clause of the Eighth Amendment and the state constitution are: (1) whether the defendant falls into the class of persons at whom the criminal statute was principally directed, (2) other penalties authorized by the legislature, and (3) the harm caused by the defendant.

The court in Agresta v City of Maintland, 159 So. 3d 876 (Fla. 5th DCA 2015) found that, while there appeared to be no bright-line rule, looking primarily at the maximum fines faced, the forfeiture violated the Excessive Fines Clause. "Civil forfeiture of defendant's home under Contraband Forfeiture Act following defendant's convictions for cultivating cannabis, stealing electricity, and misdemeanor possession of cannabis, all of which occurred in home, violated the Eighth Amendment's Excessive Fines Clause; value of home was between \$238,000 and \$295,000, defendant faced 11-year

maximum prison sentence and \$11,000 maximum fine, and there was no indication that defendant caused harm beyond his commission of offenses.” *Id.*

While twenty-one times the maximum fine faced was declared excessive here, the court gave no further guidance on what number times the maximum fine would be permissible. The PLA will consider and apply the above analysis and case law in determining whether to proceed with a forfeiture action in each case.

4.9.3.3 SUBSTITUTE ASSETS

The court in *Patel v. State*, 141 So. 3d 1239, 1245 (Fla. 5th DCA 2014) held that “section 932.703(5) does not authorize the seizure of substitute assets prior to forfeiture; rather it is intended to be used once a forfeiture has been ordered and cannot be satisfied due to the circumstances outlined therein. See *Campbell v. Racetrack Bingo, Inc.*, 75 So.3d 321, 324 (Fla. 1st DCA 2011) (explaining that if the sheriff had ultimately prevailed in the forfeiture proceeding, section 932.703(5) would have entitled him to forfeit other property if the subject property could no longer be located).”

5. FORMS AND APPENDICES

APPENDIX A-Suspended Driver’s Licenses and Vehicle Forfeiture

ATTACHMENT A-Disclaimer of Ownership of Currency or Property

ATTACHMENT B-Notice of Forfeiture and Property Receipt

ATTACHMENT C-Vehicle Property Seizure and Forfeiture Summary

ATTACHMENT D-Notification of Vehicle Use