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# KANSAS CITY, KANSAS POLICE

## GENERAL ORDER

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ISSUED DATE: 01/30/2015  
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RESCINDS: 70.04 Issued 10/01/2010

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SUBJECT: Asset Forfeiture

REFERENCE: CALEA Chs. 1,74

CROSS REFERENCE:

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### I. PURPOSE

- A. To familiarize personnel with Department policy regarding the seizure of property pursuant to the Kansas Standard Asset Forfeiture Act. This General Order will also familiarize personnel with corresponding federal forfeiture procedures and Kansas State Drug Tax laws.

### II. POLICY

- A. Asset forfeiture serves as a means to strip criminals of assets used to facilitate or derived from specific criminal acts. Upon successful forfeiture, those assets may then be used for official Department use or liquidated in a prescribed manner. Any funds gained through liquidation of seized property may then be used for official Department use.
- B. Asset forfeiture under Kansas Statute is a civil matter. This policy does not supersede or apply to existing policy and standard operating procedures pertaining to the collection of evidence in a criminal matter.
- C. Officers involved in or likely to be involved in investigations leading to asset forfeiture shall review all applicable state statutes prior to seizing property for forfeiture.
- D. The Narcotics Unit Detective/Asset Forfeiture Manager shall be the designated "asset forfeiture coordinator" for the Police Department. Decisions to proceed with forfeiture will be delegated to him or her and reviewed by the Narcotics Unit Commander for final approval. Questions pertaining to asset forfeiture should be directed to this officer or the Narcotics Unit Commander.

- E. The asset forfeiture officer shall be familiar with all applicable federal, state, and local forfeiture guidelines and will refer to the Equitable Sharing of Forfeited Property handbook on all cases involving federal forfeiture cases.
- F. The asset forfeiture officer shall also be familiar with all applicable state statutes pertaining to the taxation of illegal drugs through regular communication with Kansas Department of Revenue agents assigned to the Kansas City area.
- G. The asset forfeiture officer will determine which forfeiture method to utilize on a case by case basis.
- H. Any related criminal investigation shall take precedence over a civil forfeiture matter. Officers are strictly prohibited from allowing matters pertaining to civil forfeiture to influence any substantive decision relative to a criminal investigation. The criminal investigation must proceed independent of the forfeiture matter.
- I. Officers may not make "deals", promises of leniency, or in any way influence or attempt to influence a criminal proceeding for cooperation with a civil forfeiture investigation.
- J. Officers may serve subpoenas at the request of the Wyandotte County District Attorney for records pertaining to asset forfeiture matters.
- K. Asset forfeiture efforts will not be conducted on the basis of the subject's race, ethnicity, age, gender, or residency by county or state.

### III. COVERED EXPENSES AND ACTS GIVING RISE TO FORFEITURE

- A. Conduct and offenses giving rise to forfeiture under this act are:
  - 1. Any violations of the Uniform Controlled Substances Act, 21-36a01 et seq., and all of its amendments. This act defines felony narcotics violations.
  - 2. Unlawful discharge of a firearm, KSA 21-4219 and all of its amendments. This includes drive-by shootings, aggravated battery and any other felony committed where a firearm is discharged.
  - 3. Gambling, KSA 21-4303 and all of its amendments, and commercial gambling, KSA 21-4304 and all of its amendments.
  - 4. Money laundering, KSA 21-36a16(d) and all of its amendments.
  - 5. See KSA 60-4104 (Asset Seizure and Forfeiture) for a complete list

### IV. PROPERTY SUBJECT TO FORFEITURE

- A. Property means anything of value, and includes any interest in property, including any benefit, privilege, claim

or right with respect to anything of value, whether real or personal, tangible or in tangible. The following property is subject to forfeiture:

1. Property used or intended to be used in any manner to facilitate conduct giving rise to forfeiture.
2. All proceeds of any conduct giving rise to forfeiture.
3. Any property derived from any proceeds, which were obtained directly or indirectly from the commission of an act giving rise to forfeiture.
4. All weapons possessed, used, or available for use in any manner to facilitate conduct giving rise to forfeiture.

#### **V. STANDARD OF PROOF REQUIRED FOR SUCCESSFUL FORFEITURE**

- A. Asset forfeiture is a civil matter, which does not require the officer to show facts beyond a reasonable doubt. To be successful, officers must present evidence, which will support a preponderance of the evidence showing that the property in question was in fact forfeitable.

#### **VI. SEIZURE OF PROPERTY**

- A. Property may be seized upon probable cause to believe that the property is subject to forfeiture under this act or with a seizure warrant issued by a district judge. Property may also be seized at the request of the Kansas Department of Revenue (see section X-C).
- B. If the property to be seized is inside a building, residence, storage locker, etc., the officer must obtain lawful authority prior to entering such premises. The owner or person in lawful control of said premises may give voluntary consent to enter or a search warrant may be sought.
- C. Property may be seized under this act whether or not there is a prosecution or conviction related to the criminal offense.
- D. Officers should use good judgment when seizing property for forfeiture. The property to be seized should be worth the time and effort required to complete forfeiture proceedings. Officers should bear in mind that the civil forfeiture case could be appealed and require prolonged administrative attention by the officer and District Attorney's Office or U.G. Legal Department.
- E. With the exception of vehicles and currency, property seized for forfeiture should be recorded on a standard Department Property Report and transferred to the Police Property room. The seizing officer MUST verbally notify the Narcotics Unit Detective of the seizure at the earliest convenience but not later than 24 hours after the seizure. Copies of all reports related to the seizure shall be delivered to the Narcotics Unit Detective by the seizing officer within 24 hours of the seizure.
- F. Currency and other negotiable instruments shall be recorded on a standard department Property Report separate from all other physical property. Currency and other negotiable instruments seized for forfeiture should be placed in the "valuables" drop box when the property room is closed.
- G. Vehicles seized for forfeiture should be towed to the appropriate tow lot by that tow company based on the geographic boundaries established in accordance with the tow company contract. A hold for "Narcotics" should be noted on the tow report.

- H. If a vehicle is subject to forfeiture proceedings, the Narcotics Unit Detective, in accordance with the current tow contract, will notify the tow company of our intent to officially seize the vehicle. This will be done in writing as well as verbally. If the vehicle will not be subject to forfeiture proceedings, the "hold" will be released by the asset forfeiture officer and the owner allowed to claim the vehicle through normal tow release procedures.
- I. As soon as is practical the Narcotics Unit Detective shall prepare a written inventory and estimate the value of the property seized.
- J. The seizing officer shall make reasonable effort to provide notice of the seizure to the person from whose possession or control the property was seized and any interest holder of record. If no person is in possession or control, the seizing officer may attach the notice to the place from which the property was seized or make a reasonable effort to deliver notice to the owner of the property.
- K. The notice shall contain a general description of the property seized, the date and place of seizure, the name of the seizing agency and the name, address and telephone number of the officer from whom information about the seizure may be obtained.

#### **VII. COMMENCEMENT OF FORFEITURE PROCEEDINGS**

- A. The Narcotics Unit Detective will review the incident giving rise to forfeiture and all related reports to ensure that the necessary elements are present to proceed with forfeiture proceeding. He or she shall prepare and forward a formal forfeiture request to the Wyandotte County District Attorney's Office, or, some misdemeanor cases, to the U.G. Legal Department, within 45 days of the initial seizure.
- B. If the Narcotics Unit Detective determines not to proceed with forfeiture proceedings, he or she will ensure that the property in question is disposed of in accordance with State Statute.
- C. After a formal written request for forfeiture, the District Attorney's Office or U.G. Legal Department should respond within 15 days, either accepting or rejecting the forfeiture request. If the District Attorney's Office or Legal Department declines to proceed or does not respond within 15 days, the Narcotics Unit Detective shall proceed per the Statute.
- D. The Narcotics Unit Detective shall create and maintain records of all incidents where property is seized for forfeiture regardless of the outcome or whether formal proceedings were initiated.
- E. When the District Attorney's Office or Legal Department accepts a forfeiture case, all future actions regarding the case will be handled exclusively by their office unless follow-up assistance is requested.

#### **VIII. ALLOCATION OF FORFEITED PROPERTY**

- A. When property is forfeited, the Department may:
  1. Retain the property for official use or transfer the custody or ownership to any local state or federal agency.
    - a. Property retained for use within the Department will be recorded in the inventory of the unit receiving the property.
  2. Destroy or use for investigative or training purposes.

3. Sell property, which is not required to be destroyed, and which is not harmful to the public.

**IX. FEDERAL FORFEITURE CASES**

- A. Federal forfeiture cases will be conducted pursuant to the guidelines set forth in the Equitable Sharing of Forfeited Property handbook.
- B. Upon seizure of property in a joint investigation or adoption case, the asset forfeiture officer will coordinate all forfeiture efforts with the assigned federal asset forfeiture specialist.
- C. A form DAG-71 will be completed for each asset sought.
- D. The completed DAG-71 will be submitted within 30 calendar days of the seizure or federal adoption.
- E. A copy of the DAG-71 will be sent to the Narcotics Unit Commander, Police Auditor and the Chief of Police.
- F. A copy of all correspondences pertaining to the forfeiture proceedings shall be sent to the Narcotics Unit Commander and the Chief of Police.
- G. The asset forfeiture officer will maintain records of all property seized, sought, retained or released pursuant to federal forfeiture guidelines.

**X. KANSAS STATE DRUG TAX PROGRAM**

- A. The asset forfeiture officer shall coordinate all cases involving drug taxes with the Kansas Department of Revenue Agent assigned to the Kansas City area.
- B. Upon being served with a Tax Warrant demanding items being held by the Department, the asset forfeiture officer will release any items listed in said warrant to an authorized KDOR agent.
- C. Officers may seize property at the request of a Kansas Department of Revenue Agent pursuant to a tax warrant. The KDOR agent need not be present at the time of the seizure.
- D. The asset forfeiture officer will maintain records of all items seized, sought, retained or released to KDOR pursuant to the drug tax laws.