



Approved:

*Chief Marcia Harnden*

Subject:

# 582. Asset Forfeiture

Effective:

November 6, 2017

CALEA Standards: 84.1.8

Page:

1

## 582.1: PURPOSE AND SCOPE

This policy describes the authority and procedure for the seizure, forfeiture and liquidation of property associated with designated offenses.

### 582.1.1: DEFINITIONS

- a. **Fiscal agent** - The person designated by the Chief of Police to be responsible for securing and maintaining seized assets and distributing any proceeds realized from any forfeiture proceedings. This includes any time the Albany Police Department seizes property for forfeiture or when the Albany Police Department is acting as the fiscal agent pursuant to a multi-agency agreement.
- b. **Forfeiture** - The process by which legal ownership of an asset is transferred to a government or other authority.
- c. **Forfeiture reviewer** - The department member assigned by the Chief of Police who is responsible for reviewing all forfeiture cases and for acting as the liaison between the Department and the assigned attorney.
- d. **Prohibited conduct** - In the context of criminal forfeiture, refers to a felony or a Class A misdemeanor for purposes of proceeds and the many crimes listed in [ORS 131.602](#) for purposes of instrumentalities ([ORS 131.550](#)).
  - 1) Prohibited conduct in the context of civil forfeiture refers to any of the following ([ORS 131A.005](#)):
    - Crimes related to the Uniform Controlled Substances Act where a person may be sentenced to imprisonment (specifically, [ORS 475.005 through ORS 475.285](#) and [ORS 475.752 through ORS 475.980](#));
    - Crimes involving violation of, or solicitation, attempt or conspiracy to violate 2017 Oregon Laws, c. 21 § 3 through 2017 Oregon Laws, c. 21, § 6;
    - Violation of, or solicitation, attempt or conspiracy to violate [ORS 475B.227](#);
    - Involuntary servitude or compelling prostitution ([ORS 163.263](#); [ORS 163.264](#); [ORS 163.266](#); [ORS 167.017](#));
    - Other local crimes allowing for civil forfeiture where a person may be sentenced to imprisonment for the offense.
- e. **Criminal Forfeiture** - The following, with certain restrictions, may be subject to criminal forfeiture

when used, or intended to be used, for prohibited conduct ([ORS 131.558](#)):

- 1) Containers for controlled substances and related compounds;
- 2) Conveyances, including aircraft, vehicles and vessels to transport, sell, conceal, etc. controlled substances;
- 3) Proceeds from prohibited conduct or money, deposits or other things of value used to facilitate prohibited conduct;
- 4) Real property or interest in real property;
- 5) Weapons possessed or used;
- 6) Property used for attempts to commit prohibited conduct, solicitations to commit prohibited conduct and conspiracies;
- 7) All other personal property that is used or intended to be used to commit or facilitate prohibited conduct.

f. **Civil Forfeiture** - The following, with certain restrictions, may be subject to civil forfeiture when used for prohibited conduct ([ORS 131A.020](#)):

- 1) Containers for controlled substances and related compounds;
- 2) Conveyances, including, but not limited to, aircraft, vehicles and vessels to transport, sell, or conceal controlled substances;
- 3) Proceeds from prohibited conduct or money, deposits or other things of value used to facilitate prohibited conduct;
- 4) Real property or interest in real property;
- 5) Weapons possessed or used;
- 6) Property used for attempts to commit prohibited conduct, solicitations to commit prohibited conduct and conspiracies;
- 7) A motor vehicle when the driver is arrested or cited for driving while suspended or revoked under [ORS 811.182](#) or [ORS 163.196](#) and has been convicted of either offense within the past three years ([ORS 809.740](#))

g. **Seizure** - The act of law enforcement officials taking property, cash or assets that have been used in connection with or acquired by specified illegal activities.

**582.2: POLICY**

It is the policy of the Albany Police Department that all members, including those assigned to internal or external law enforcement task force operations, shall comply with all state and federal laws pertaining to forfeiture, and to never compromise the effective investigation of criminal offenses, officer safety or any person's due process rights in the name of revenue.

**582.2.1: ITEMS SUBJECT TO CRIMINAL FORFEITURE**

The following are subject to criminal forfeiture:

- a. All controlled substances that have been manufactured, distributed, dispensed, possessed or acquired in the course of prohibited conduct;
- b. All raw materials, products and equipment of any kind that are used, or intended for use, in providing, manufacturing, compounding, processing, delivering, importing or exporting any service or substance in the course of prohibited conduct;
- c. All property that is used, or intended for use, as a container for property described in subsection (a) or (b) of this section;
- d. All conveyances, including aircraft, vehicles and vessels, that are used, or are intended for use, to transport or facilitate the transportation, sale, receipt, possession or concealment of property described in subsection (a) or (b) of this section, and all conveyances, including aircraft, vehicles and vessels, that are used or intended for use in prohibited conduct or to facilitate prohibited conduct, except that:
  1. No conveyance used by any person as a common carrier is subject to criminal forfeiture under the provisions of this section unless the owner or other person in charge of such conveyance was a consenting party or knew of and acquiesced in the prohibited conduct; and
  2. No conveyance is subject to criminal forfeiture under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.
- e. All books, records, computers and research, including formulae, microfilm, tapes and data that are used or intended for use to facilitate prohibited conduct;
- f. All moneys, negotiable instruments, balances in deposit or other accounts, securities or other things of value furnished or intended to be furnished by any person in the course of prohibited conduct, all proceeds of or from prohibited conduct, and all moneys, negotiable instruments, balances in deposit and other accounts and securities used or intended to be used to facilitate any prohibited conduct;
- g. All real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended to be used to commit or facilitate the

commission of prohibited conduct;

- h. All weapons possessed, used or available for use to facilitate conduct giving rise to criminal forfeiture;
- i. All property described in this section that is intended for use in committing or facilitating an attempt to commit a crime as described in [ORS 161.405](#), a solicitation as described in [ORS 161.435](#) or a conspiracy as described in [ORS 161.450](#);
- j. All personal property that is caused or intended to be used to commit or facilitate prohibited conduct.

### 582.2.2: MINIMUM GUIDELINES FOR SEIZURES

The following guidelines identify the minimum amounts or values required to seize vehicles or real property:

- a. Vehicles, i.e. cars, trucks, motorcycles, boats, or airplanes used as a conveyance, with equity based on a low blue book value of at least \$5,000.
- b. \$50,000 in equity of real property (house/condominium).
- c. Personal property valued at \$3,000 or more.
- d. Cash in excess of \$3,000.

### 582.2.3: PROHIBITED CONDUCT

- a. For the purposes of proceeds, prohibited conduct is any Felony or Class A Misdemeanor.
- b. For the purposes of instrumentalities, prohibited conduct is any crime listed in [ORS 131.602](#).

### 582.3: ASSET SEIZURE

Property may be seized for forfeiture as provided in this policy.

#### 582.3.1: PROPERTY SUBJECT TO SEIZURE

- a. The following may be seized upon review and approval of a supervisor and in coordination with the forfeiture reviewer:
  - 1) Civil forfeiture
    - A. Property that is subject to a court order ([ORS 131A.060](#));
    - B. Property that is not subject to a court order if ([ORS 131A.065](#)):
      - 1. There is probable cause to believe that the property is subject to forfeiture and the property may constitutionally be seized without a warrant;

2. The seizure is in the course of a constitutionally valid criminal investigative stop, arrest or search, and there is probable cause to believe that the property is subject to civil forfeiture;
3. The property is directly or indirectly dangerous to the health or safety of any person;
4. An owner consents to the seizure.

2) Criminal forfeiture

A. Property that is subject to a court order ([ORS 131.561](#)).

B. Property that is not subject to a court order when ([ORS 133.535](#); [ORS 131.561](#)):

1. The property subject to criminal forfeiture is also evidence of a crime or is illegal to possess.
2. There is probable cause to believe that the property is subject to criminal forfeiture.

b. Whenever practical, a court order for seizure prior to making a seizure is the preferred method.

c. A large amount of money standing alone is insufficient to establish the probable cause required to make a seizure.

### 582.3.2: PROPERTY NOT SUBJECT TO SEIZURE

The following property should not be seized for forfeiture:

- a. Cash and property that does not meet the forfeiture counsel's current minimum forfeiture thresholds should not be seized.
- b. A conveyance owned by a common carrier or person who did not consent to the offense in question or had no knowledge of the offense (i.e., an "innocent owner") ([ORS 131.558](#)).

### 582.3.3: SEIZED VEHICLES

- a. Vehicles seized subject to forfeiture will be towed to a designated secure storage facility. The officer seizing the vehicle shall notify the detective supervisor of the seizure of the vehicle and circumstances of the seizure as soon as practical.
- b. Seized vehicles should be towed, not driven, to the storage facility.
- c. Personal property located in a seized vehicle shall be removed and booked into Property, as either evidence or for safekeeping.

- d. Vehicles lawfully seized, that contain a hidden compartment as defined in [ORS 131A.005](#), should have the hidden compartment disabled or removed prior to release ([ORS 131A.030](#)).

#### **582.4: PROCESSING SEIZED PROPERTY FOR FORFEITURE PROCEEDINGS**

- a. When property or cash subject to this policy is seized, the officer making the seizure should ensure compliance with the following:
- 1) Complete applicable seizure forms and present the appropriate copy to the person from whom the property is seized. If cash or property is seized from more than one person, a separate copy must be provided to each person, specifying the items seized. When property is seized and no one claims an interest in the property, the officer must leave the copy in the place where the property was found, if it is reasonable to do so.
  - 2) Complete and submit a report and original seizure forms within 24 hours of the seizure, if practical.
  - 3) Forward the original seizure forms and related reports to the forfeiture reviewer within two days of seizure.
- b. The officer will book seized property as evidence with the notation in the comment section of the property form, "Seized Subject to Forfeiture." Property seized subject to forfeiture should be booked on a separate property form. No other evidence from the case should be booked on this form.
- c. Photographs should be taken of items seized, particularly cash, jewelry and other valuable items.
- d. Officers who suspect property may be subject to seizure but are not able to seize the property (e.g., the property is located elsewhere, the whereabouts of the property is unknown, it is real estate, bank accounts, non-tangible assets) should document and forward the information in the appropriate report to the forfeiture reviewer.

#### **582.5: MAINTAINING SEIZED PROPERTY**

The Property and Evidence Section supervisor is responsible for ensuring compliance with the following:

- a. All property received for forfeiture is reasonably secured and properly stored to prevent waste and preserve its condition;
- b. All property received for forfeiture is checked to determine if the property has been stolen;
- c. All property received for forfeiture is retained in the same manner as evidence until forfeiture is finalized or the property is returned to the claimant or the person with an ownership interest;
- d. Property received for forfeiture is not used unless the forfeiture action has been completed.

#### **582.6: FORFEITURE REVIEWER**

The Chief of Police will appoint a forfeiture reviewer. Prior to assuming duties or as soon as practical thereafter, the forfeiture reviewer should attend a course approved by the Department on asset forfeiture. The responsibilities of the forfeiture reviewer include:

- a. Remaining familiar with forfeiture laws, particularly [ORS 131.550](#) et seq., [ORS 131A.010](#) et seq., and [Oregon Constitution, Article XV, § 10](#) and the forfeiture policies of the forfeiture counsel;
- b. Serving as the liaison between the Department and the forfeiture counsel and ensuring prompt legal review of all seizures;
- c. Making reasonable efforts to obtain annual training that includes best practices in pursuing, seizing and tracking forfeitures;
- d. Reviewing each seizure-related case and deciding whether the seizure is more appropriately made under state or federal seizure laws. The forfeiture reviewer should contact federal authorities when appropriate (see the restrictions in [Oregon Constitution, Article XV, § 10](#));
- e. Ensuring that responsibilities, including the designation of a fiscal agent, are clearly established whenever multiple agencies are cooperating in a forfeiture case;
- f. Ensuring that seizure forms are available and appropriate for department use. These should include notice forms, a receipt form and a checklist that provides relevant guidance to officers. The forms should be available in languages appropriate for the region and should contain spaces for:
  1. Names and contact information for all relevant persons and law enforcement officers involved;
  2. Information as to how ownership or other property interests may have been determined (e.g., verbal claims of ownership, titles, public records);
  3. A space for the signature of the person from who cash or property is being seized;
  4. A tear-off portion or copy, which should be given to the person from whom cash or property is being seized, that includes the legal authority for the seizure, information regarding the process to contest the seizure and a detailed description of the items seized;
  5. Other information as necessary to comply with the form requirements of [ORS 131.570](#) and [ORS 131A.055](#);
- g. Ensuring that officers who may be involved in asset forfeiture receive training in the proper use of the seizure forms and the forfeiture process. The training should be developed in consultation with the appropriate legal counsel and may be accomplished through traditional classroom education, electronic media, Training Bulletins or policy updates. The training should cover this policy and address any relevant statutory changes and court decisions;
- h. Reviewing each asset forfeiture case to ensure that:

1. Written documentation of the seizure and the items seized is in the case file;
  2. Independent legal review of the circumstances and propriety of the seizure is made in a timely manner;
  3. Notice of seizure has been given in a timely manner to those who hold an interest in the seized property. Information on the notice to interested parties can be found in [ORS 131.561](#), [ORS 131.570](#), [ORS 131A.150](#) and [ORS 131A.230](#). Information on the notice of intent to forfeit real property with the county can be found in [ORS 131.567](#);
  4. Property is promptly released to those entitled to its return;
  5. All changes to forfeiture status are forwarded to any supervisor who initiates a forfeiture case;
  6. Any cash received is deposited with the fiscal agent;
  7. Assistance with the resolution of ownership claims and the release of property to those entitled is provided;
  8. Current minimum forfeiture thresholds are communicated appropriately to officers;
  9. This policy and any related policies are periodically reviewed and updated to reflect current federal and state statutes and case law;
- i. Ensuring that a written plan is available that enables the Chief of Police to address any extended absence of the forfeiture reviewer, thereby ensuring that contact information for other law enforcement officers and attorneys who may assist in these matters is available;
  - j. Ensuring that the Department disposes of property as provided by law following any forfeiture;
  - k. Ensuring the forms and receipts provided for field use comply with [ORS 131.570](#) and [ORS 131A.055](#). A consensual search of a motor vehicle form should be available for field use as well ([ORS 131A.025](#));
  - l. Disabling hidden compartments in vehicles when appropriate ([ORS 131.566](#); [ORS 131A.030](#));
  - m. Forfeiture proceeds should be maintained in a separate fund or account subject to appropriate accounting control, with regular reviews or audits of all deposits and expenditures;
  - n. Forfeiture reporting and expenditures should be completed in the manner prescribed by the law and City financial directives.

#### **582.7: DISPOSITION OF FORFEITED PROPERTY**

- a. Property forfeiture through the criminal forfeiture process shall be disposed of in accordance with ORS 131.594 and the associated statutes including priority payments for costs and to victims, as applicable. Forfeited cigarettes shall be destroyed, not sold ([ORS 131.604](#)).



b. Criminally forfeited lab equipment may be donated to educational institutions ([ORS 131.594](#)).

#### **582.7.1: DISPOSITION OF RECORDS**

Written documentation of each sale, decision to retain, transfer or other disposition of criminally forfeited property will be maintained and any information requests necessary for the forfeiture counsel's electronic reports shall be addressed ([ORS 131.600](#)).

#### **582.8: CONSENSUAL SEARCH OF A MOTOR VEHICLE**

Officers should use a [Consent to Search: Form A20](#) when requesting a consensual search of a motor vehicle ([ORS 131A.025](#)).