

Cocoa Beach Police Department

Standard Operating Procedure



Effective Date: January 25, 2022	Replaces: Amends: November 06, 2018	Number: 299.00
Subject: Forfeitures		Re-evaluation Date:
Distribution: ALL PERSONNEL	Related Standards: 15.19M	

This order consists of the following numbered sections:

1. Purpose
2. Scope
3. Policy
4. Definitions
5. Procedure for Forfeiture
6. Follow-Up Procedure
7. Equitable Sharing
8. Storage and Maintenance of Personal Property
9. Appendix
10. References

1. **PURPOSE**

The purpose of this policy is to define the forfeiture policy of the Cocoa Beach Police Department and to delineate the process through which forfeiture action is initiated while standardizing the procedures used in seizing, maintaining, and forfeiting assets pursuant to the provisions of the Florida Contraband Forfeiture Act, pursuant to Florida State Statute (FSS) 932.

2. **SCOPE**

This policy applies to all members of the Cocoa Beach Police Department.

3. **POLICY**

It is the policy of the Cocoa Beach Police Department to utilize forfeiture provisions to effectively and significantly impact crime while protecting the proprietary interest of innocent owners and lien holders. The potential for obtaining revenues from forfeiture must not override fundamental considerations such as public safety, the safety of law enforcement officers, or the investigation and prosecution of criminal activity.

4. **DEFINITIONS**

- A. Adversarial Preliminary Hearing- the seizing Police Department is required to establish probable cause that the property subject to forfeiture was used in violation of the Florida Contraband Forfeiture Act.
- B. Advisement and Waiver of Rights and Voluntary Forfeiture Settlement Agreement- a form utilized when the owner/processor of property waives the right to an Adversarial Preliminary hearing and voluntarily forfeits described property, pursuant to FSS 932.
- C. Bona fide Lienholder-the holder of a lien perfected pursuant to applicable law.
- D. Contraband Article
 1. Any controlled substance, device, paraphernalia, or currency or other means of exchange that was used, attempted to be used, or was intended to be used in violation of any provision of FSS 893.
 2. Seizure of vessels, vehicles, aircraft, or other personal property(s) subject to seizure that have been used, is being used, was attempted, or intended to be used in violation of Florida Contraband Forfeiture Act.
 3. The item(s) subject to seizure was used or attempted to be used in the commission of, or in aiding or abetting in the commission of a felony. Whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of Florida Contraband Forfeiture Act.

- E. Real Property- immovable property, such as homes or land.
5. **PROCEDURE FOR FORFEITURE (CFA 15.19M)**
- A. The Agency may seize personal property for forfeiture under the Act if it determines that there is probable cause to believe the following:
1. The item subject to seizure is a contraband article as defined in FSS 932.701, or other provisions of FSS specifically authorizing forfeiture in accordance with the Florida Contraband Forfeiture Act.
 2. The item subject to seizure has been used, is being used, or was attempted to be used in violation of any provision of the Florida Contraband Forfeiture Act.
 3. Any violation of the Florida Contraband Forfeiture Act has taken place or is taking place in, upon, or by means of the seized property.
- B. Seizure of Contraband Article(s):
1. The seizing officer or detective is responsible for the following:
 - a. Immediately notify the On-Duty Shift Supervisor
 - b. Photograph the property or contraband article(s) in the location and condition found
 - c. Seizure of currency totaling \$3,500.00 or more will be considered for forfeiture, unless extenuating circumstances exist which would justify the expense incurred by initiating forfeiture proceedings. Less than \$3,500.00 will be kept in evidence storage only.
 - 1) Total the amount of currency being seized and verify the total with an independent count by the on-duty Shift Supervisor.
 - 2) If currency is seized from more than one location, distinguish the amounts and their locations on separate property receipt(s).
 - d. Record seized property, such as a vehicle; keys; title; registration; currency; etc. on a property receipt and log in same in accordance with SOP 206.00 Property and Evidence Management.
 - e. Complete and deliver a *Notice of Seizure and Forfeiture* (Appendix A) form to any owner, entity, bona fide lienholder, or person in possession of the property subject to forfeiture, at the time of seizure. If impractical at the time of arrest, the seizing officer or detective shall notify a Lieutenant or designee to make arrangements for delivery of said Notice by certified mail within five (5) business days of the date of seizure. Such Notice must state that the person(s) entitled to notice may request an adversarial preliminary hearing within fifteen (15) days of the receipt of notice.
 - f. Afford the property owner the opportunity to waive the right to an adversarial preliminary hearing and voluntarily forfeit the currency or property to be seized for forfeiture. If the property owner elects to waive the right to an adversarial preliminary hearing, the seizing officer or detective shall complete an *Advisement and Waiver of Rights and Voluntary Forfeiture Settlement Agreement* (Appendix B) and have the property owner sign same. If impractical at the time of arrest, the seizing officer or detective shall notify a Lieutenant or designee to make arrangements for said Agreement. The owner shall be provided a copy of the Agreement and the original will be forwarded to the Major.
 - g. Complete an appropriate probable cause affidavit.
 - h. Prior to completing tour of duty, the seizing officer or detective shall submit copies of the offense report, Notice, Agreement (if applicable), Affidavits for Seizure Warrant, Seizure Warrant, statements (affidavits), property receipts, lien information (if applicable), and all other pertinent documentation to the Records Division.
 2. The On-Duty Shift Supervisor will notify the Major and all Lieutenants of the seizure via email and note the seizure on the shift pass-on.
 3. The Records Division will forward the forfeiture packet to a Lieutenant or designee within one (1) business day of the incident.
 4. The Major or designee will brief the Chief and Deputy Chief. All settlements must be personally approved by the Chief of Police. If the Chief is unavailable and a delay would adversely affect the settlement, approval may be given by a subordinate of the agency head who is designated to grant such approval. The property owner will be afforded the opportunity to negotiate the return of his/her property and waive the right to proceed with the forfeiture. A *Settlement Agreement* will be completed if applicable. (Appendix C)
 5. If a determination is made to proceed with the forfeiture, the Major or designee will ensure that a complete case package is submitted to outside or contract counsel who handles all forfeitures for the Agency.
 6. The Department will apply within ten (10) business days after the date of the seizure, to a court of

competent jurisdiction for an ex parte order to determine whether probable cause exists for the seizure of the property.

C. Seizure of real property

1. Real property subject to forfeiture pursuant to the Florida Contraband Forfeiture Act will only be considered after consultation with the Chief of Police, Legal Counsel, and the City Manager. If the decision is made to seize real property, the forfeiture process will be in accordance with FSS 932.

6. **FOLLOW-UP PROCEDURES**

The Major or designee will:

- A. Ensure that the seized currency, absent evidentiary considerations, is deposited in the City Interest-Bearing account
- B. Ensure that any currency awarded through the forfeiture process is transferred from the Law Enforcement Interest Bearing Trust Account to the Law Enforcement Forfeiture Account
- C. Be responsible for submitting an annual report to the Florida Department of Law Enforcement, documenting the receipts and expenditures. This report must be submitted online by December 1st, for the previous fiscal year. The Financial Report Tab within the Forfeiture Spreadsheet must be completed even if there is no seizure/forfeiture data to report. The Seizure Forfeiture Actions Tab will only be completed if there is seizure/forfeiture data to report. Only include seizure/forfeiture data items seized pursuant to the Florida Contraband Forfeiture Act.

7. **EQUITABLE SHARING:** Tracking procedures and internal controls for required financial reporting.

- A. The Department will abide by all guidelines pertaining to the Equitable Sharing Program.
- B. The Logistics Manager shall be responsible for ensuring that Federal Asset Sharing Funds awarded to the Cocoa Beach Police Department are deposited into the applicable fund and administered in accordance with the *Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies*.
- C. The Cocoa Beach Finance Department shall be responsible for the following:
 1. Completing, submitting, and keeping current the Equitable Sharing Agreement
 2. Maintaining copies of applications for transfers of federally forfeited property
 3. Certifying that the information in the applications for transfers of federally forfeited property is correct and that no State or local law prohibits the transfer of the property
 4. Forwarding the applications for transfers of federally forfeited property to the field office of the appropriate federal agency within 30 days of seizure
 5. Maintaining a file for all federal forfeiture actions and acting as a liaison with federal agencies in forfeiture proceedings
 6. Working in conjunction with the Finance Department to file annual certification reports
 7. Ensuring that funds derived from Federal forfeiture cases are maintained separately from those derived from State forfeiture actions

8. **STORAGE AND MAINTENANCE OF PERSONAL PROPERTY:**

- A. At the time of seizure, the Department shall:
 1. Have vehicles, vessels, aircraft, etc., transported or towed by the on-call wrecker to the Department's compound or other appropriate storage location.
 2. Complete a detailed inventory of the vehicle, vessel, aircraft, etc., at the time of seizure and the contents listed on a property receipt. The inventory will include all compartments (locked and unlocked) and all containers (open or closed).
 3. Secure the conveyance by locking all windows and doors
- B. The Department shall make a good faith effort to release to the lawful owner, or designee, all personal property (clothing, etc.) that was contained in any conveyance at the time of seizure and not being retained as evidence or forfeiture. If release is not possible, personal property of value should be placed into evidence until such time as it can be properly released.
- C. Any personal property seized as evidence shall be packaged and stored separately and handled in accordance with established procedures for the processing of evidence.
 1. All rights, interest in, and title to seized assets vest in the Department upon entry of final judgement by the court.
 2. Seized items shall **NOT** be used for any purpose until the rights, interest in, and title to the seized property are perfected pursuant to the Florida Contraband Forfeiture Act.
- D. Reasonable attempts shall be made to maintain the property in same condition as at the time-of-seizure. If reasonable maintenance is required to maintain seized personal property, as may be necessary with vessels

and aircraft, the 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.

9. **TRAINING:**

- A. The Training Coordinator, or designee, will ensure officers involved in seizure of property for forfeiture under the Act receive basic training and continuing education as required by the Florida Contraband Forfeiture Act. The Cocoa Beach Police Department shall maintain records demonstrating an officer's compliance with these training requirements. A portion of such training will address legal aspects of forfeiture, including search and seizure and/or other constitutional considerations.

10. **APPENDICES**

- A. [Notice of Seizure and Forfeiture](#)
B. [Advisement and Waiver of Rights and Voluntary Forfeiture Settlement Agreement](#)
C. [Settlement Agreement](#)

11. **REFERENCES**

[Florida Senate \(2021\). Florida Statutes 893.12 –Contraband; seizure, forfeiture, sale.](#) Retrieved January 5, 2022

[Florida Senate \(2021\). F.S.S. 932.701- 932.706.](#) Retrieved January 5, 2022

[Florida Department of Law Enforcement \(2022\). Civil Asset Forfeiture Reporting.](#) Retrieved January 5, 2022

[US Department of Justice \(2018\). Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies.](#) Retrieved January 5, 2022



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