

# Police Department Policy and Procedure Manual

## Chapter 4 — Operations

**Section Number:** 4-10-5  
**Section Title:** Seizable and Forfeitable Property  
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### I. Policy

#### A. Seizable Property is defined as

1. Property relevant in a criminal prosecution or investigation;
2. Property defined by law to be found forfeitable property;
3. Property which, if not seized by the state, poses an imminent danger to a person's health, safety, or welfare.

#### B. Forfeitable Property is defined as

1. Property which is illegally possessed;
2. Property which has been used or is intended to be used to facilitate the commission of a criminal offense or to avoid detection or apprehension of a person committing a criminal offense;
3. Property which is acquired as or from the proceeds of a criminal offense;
4. Property offered or given to another as an inducement for the commission of a criminal offense.

#### C. Guidelines on the Forfeiture of Property

1. The decision to initiate forfeiture of property pursuant to Iowa Code Chapter 809A is within the discretion of the County Attorney. They determine whether forfeiture actions should be pursued, what property should be forfeited, and which interests of joint property owners should be excepted from the forfeiture action. The decision to forfeit property is made only after consideration of all of the facts and circumstances available in the light of the objectives to be achieved by forfeiture.

2. Among the objectives to be considered for any forfeiture action are the following:
  - a. Divesting criminal enterprises of their profit,
  - b. Separating criminal perpetrators from the instrumentalities of their crimes,
  - c. Ensuring the safety of the community from future criminal activities,
  - d. Deterring future criminal activity,
  - e. Imposing consequences that are proportionate to the seriousness of the criminal activities.
  
3. Among the factors to be considered in which forfeiture is not justified:
  - a. The seriousness of the criminal activity that supports the forfeiture,
  - b. The intent or mental state of the perpetrator of the criminal offense or series of offenses,
  - c. The nexus between the forfeitable instrumentality and the criminal offense or series of offenses,
  - d. The course of conduct of the perpetrator during the commission of the criminal offense or series of offenses,
  - e. The prior involvement, if any, of the perpetrator with the criminal justice system,
  - f. The effect, if any, that forfeiture would have in deterring future criminal activity by the perpetrator or by others in the community.
  - g. The effect, if any, that forfeiture would have in punishing the perpetrator,
  - h. The hardship, if any, that forfeiture would impose upon the perpetrator, family members, or joint interest holders,
  - i. Balancing the cost of the forfeiture action to the county,
  - j. Protecting the rights of innocent property interest holders, if any.

#### D. Notice of Forfeiture

1. Clive Police Officers shall complete a Notice of Seizure for Forfeiture specifying the property to be seized and request a signature from the person from whom the property is seized. A copy of this form will then be given to the affected individual. The original Notice of Seizure for Forfeiture will go with other case reports for processing to Records.
2. Clive Police Officers taking possession of property with the intent to have that property forfeited shall also make a written inventory of the property and deliver a pink copy of the property report inventory to the person from whom it was seized. The inventory shall include the name of the officer taking custody of the property, and the date and time. The signed Notice of Seizure for Forfeiture will be forwarded to Records to scan with case.
3. The Records Section shall route the original Notice of Seizure for Forfeiture to the designated Clive employee who handles forfeitures.
  - a. The designated Clive employee will then E-File the Notice of Forfeiture with the Clerk of Court and notify the appropriate county attorney of the forfeiture.
  - b. The county attorney will prepare the In Rem complaint and forward it the designated Clive employee to serve on the interested parties.
  - c. The designated Clive employee will either attempt to serve the In Rem complaint by personally serving the interested party or mailing it by restricted certified mail.
  - d. An affidavit stating the results of the attempt serve will be completed, notarized and sent to the county attorney.

#### E. Custody and Control of Forfeitable Property

1. The Senior Property Custodian shall be responsible for the management of all forfeitable property and related evidentiary functions including the storage and retrieval of forfeitable property, except as stipulated below.
2. The Criminal Investigation Commander will be responsible for monitoring:
  - a. The custody and control of forfeited motor vehicles;
  - b. Initiating and keeping apprised of the court proceedings related to the seized property;

- c. Keeping updated on changes in seizure proceedings as dictated by federal and state authorities, and;
- F. Disposition of Forfeitable Property. All final dispositions from the County Attorneys' office will be directed to the Chief's Office. The Chief's Office will notify the City that money can be transferred to the City and checks need to be written to the appropriate county, state and/or federal government body.
1. When forfeiture on a non-cash item(s) is completed and the necessary court order is received, the following procedure will be followed:
    - a. If the property is a motor vehicle, the title and associated paperwork must be sent to the Iowa Department of Justice to be transferred initially to the State of Iowa. That title is sent to the Clive Police Department and title may then be transferred to the city. The title is then sent to city hall with a completed Vehicle Acquisition Form.
    - b. If the forfeited property is cash, appropriate distribution must be made. On state forfeitures the Iowa Department of Justice receives 10% of the gross amount. The county attorney receives 15% of the remaining net amount. Distribution may then be made to any other law enforcement agencies that assisted in the respective investigation. If the forfeiture was handled in federal court, the adopting federal agency receives 10% of gross amount unless other arrangements were made.
    - c. Cash assets from forfeiture or sale of forfeited property will be relayed to the Chief of Police or his designee and be deposited within either the department's Federal or State forfeited funds accounts.
      - (a) Federal Forfeiture Account
        - (i) A fund established for cash assets which were the result of federal forfeiture action and managed in accordance to the U.S. Department of Justice Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies.
      - (b) State Forfeiture Account
        - (i) A fund established for cash assets which were the result of state forfeiture action and managed in accordance with the Code of Iowa.
    - d. If the forfeited property can be used for law enforcement purposes by the Clive Police Department, e.g., computer, TV, cameras, etc., the Criminal Investigation Division Commander shall send a memo to the Chief of Police defining the item(s) and confirming its disposition. The Chief may then entertain requests for assignment from various divisions and personnel.

2. Controlled substances shall be disposed of as provided in the Code of Iowa.
3. Firearms which are not illegal and not offensive may be disposed by the Department as provided in the Code of Iowa.

#### G. Use of Forfeited Property

1. Forfeited property may be used by the Clive Police Department. The Department may give, sell, or trade property to any other law enforcement agency within the state if it will enhance law enforcement.
2. Permissible uses. Subject to the laws, rules, and regulations of the United States, State of Iowa, and City of Clive, the expenditures stated below are permissible uses of forfeited funds and property:
  - a. Activities calculated to enhance future investigations;
  - b. Law enforcement training;
  - c. Law enforcement equipment and operations;
  - d. Detention facilities;
  - e. Law enforcement facilities and equipment;
  - f. Drug education and awareness programs;
  - g. Asset accounting and tracking.
3. Impermissible uses of Federal and State forfeited funds and property
  - a. Payment of salaries for existing positions;
  - b. Uses of forfeited property by non-police department personnel;
  - c. Payment of non-law enforcement expenses;
  - d. Non-official government use;
  - e. Uses contrary to the laws of the United States, State of Iowa, or City of Clive;
  - f. Extravagant expenditures.

#### H. Procedures to Account for Various Special Law Enforcement Proceeds

1. Forfeited funds must be receipted into a separate special revenue fund.
2. Examples of proceeds are Federal grants, cash from the disposition of forfeited property from the State Attorney General's Office and other State grants.
3. When funds are accepted by the Department it is with the understanding that they are for additional law enforcement efforts. This means that monies so designated are not to replace those already budgeted. The receipt and disbursement of proceeds of this type may require a budget amendment at some time before the end of the fiscal year. The grant agreement should be referenced to determine any specific conditions attached to the proceeds.
4. All proceeds disbursed should be charged to the appropriate expenditure account.
5. For disbursements for non-confidential purchases, the City's normal purchasing and bill payment procedures will be followed. The invoice, shipping document and any other required documentation should be attached to a claim. The claim should be completed according to the entity's normal procedures and signed by the law enforcement official to indicate that the goods or services were received. The claim should then be submitted to the City's

#### I. State of Iowa Forfeiture Rules (Iowa Administrative Code Sections)

1. 61-33.1 (809A) Scope of rules. These rules apply to property forfeited under the authority of Iowa Code section 809A.25. They do not apply to property seized for forfeiture by the department of natural resources under Iowa Code section 483A.33.
2. 61-33.2 (809A) Maintenance and storage of property during pendency of proceedings. The seizing agency that initiates a seizure for forfeiture must arrange for and pay costs associated with the proper care of property seized for forfeiture within the following guidelines:
  - a. 33.2(1) Motor vehicles
    - (a) Motor vehicles must be stored in a manner which will minimize deterioration due to lack of operation and maintenance
    - (b) The use of commercial towing and storage facilities is at the expense of the seizing agency. The Department of Public Safety will not assume responsibility for such fees, whether before or after forfeiture, unless the Department of Public Safety decides to retain ownership of the vehicle for its use instead of transferring title to the seizing agency.
  - b. 33.2(2) Cash. Where possible, a seizing agency should, in cooperation with the prosecuting attorney, secure a court order authorizing cash to be deposited in an

interest-bearing account. The Department of Public Safety will not claim any interest in income derived from such account, but the interest must be accounted for as provided by these rules.

- c. 33.2(3) Real property
    - (a) Unoccupied structures of value must be equipped with alarm systems or otherwise safeguarded to protect them from unlawful entry and damage by fire. The seizing agency should consider the value of the property, the condition of existing gates and locks, and the potential threat to public safety when determining whether alarm systems or other safeguards are appropriate.
    - (b) Real property that complies with local and state building and housing code standards at the time of seizure must be maintained to local and state building and housing code standards as well as to the standard of neighboring properties, including mowing and removal of snow as necessary. Seized property that does not comply with code standards at the time of seizure must not be allowed to degrade and should be maintained in a condition that does not present a threat to public safety.
  - d. 33.2(4) Other property. Property other than listed above shall be cared for as appropriate, giving due consideration to the nature of the property.
3. 61-33.3 (809A) Notice to Department of Public Safety of forfeited property
- a. 33.3(1) An agency which seizes real property for forfeiture must notify the Department of Public Safety within ten days of the seizure.
  - b. 33.3(2) A prosecuting attorney who obtains a declaration of forfeiture or an order forfeiting property must provide the Department of Public Safety with a copy of the declaration or the order forfeiting the property within ten working days of receiving the order.
4. 61-33.4 (809A) Disposition of forfeited property
- a. 33.4(1) Controlled substances. An agency in possession of a controlled substance which has been forfeited shall dispose of it as required by Iowa Code section 124.506

- b. 33.4(2) Obscene materials. Materials which violate the provisions of Iowa Code chapter 728 shall be destroyed. An inventory and a record of the destruction of obscene materials shall be maintained by the agency
  - c. 33.4(3) Firearms and ammunition. Forfeited firearms and ammunition must be disposed of pursuant to the rules of the Department of Public Safety
  - d. 33.4(4) Real property. An agency seizing real property for forfeiture must do the following.
    - (a) Accept transfer of title from the Department of Public Safety
    - (b) Pay all costs associated with transfer of title, including abstracting costs, property taxes and assessments
    - (c) Indemnify the state for any expenses it might become liable for by being the owner of the property during the forfeiture and transfer process, including but not limited to environmental clean-up costs, abstracting costs, and any expenses the Department of Public Safety incurs to comply with reasonable community standards of maintenance.
    - (d) Indemnify the state for any expenditures incurred as a result of liability to a third party for any injury associated with the property which occurs during the period from seizure through transfer of ownership to the agency
  - e. 33.4(5) Alcoholic beverages and beer. Alcoholic beverages and beer shall be destroyed. An inventory and a record of the destruction of forfeited alcoholic beverages and beer shall be maintained by the agency
  - f. 33.4(6) Motor vehicles
    - (a) Orders forfeiting motor vehicles must include a physical description of the vehicle, as well as the vehicle identification number
    - (b) Motor vehicles must be titled to the Department of Public Safety prior to being transferred to the seizing agency or its designee
    - (c) The Department of Public Safety requires payment of a fee of \$200 for processing the transfer of title to a vehicle.
5. 61-33.5 (809A) Use by the Department of Public Safety

- a. 33.5(1) The Department of Public Safety will review each item of forfeited property to determine if it is of a nature that would be useful to the Department of Public Safety in enforcement of the law. If such a use exists, the Department of Public Safety may take possession of the property and retain ownership instead of transferring it to the seizing agency
  - b. 33.5(2) The Department of Public Safety will retain 20 percent of forfeited cash. The balance of forfeited cash, 80 percent, will be given to the seizing agency for its use or for division among law enforcement agencies and prosecutors pursuant to agreement
  - c. 33.5(3) In the event of a cash forfeiture in excess of \$400,000, amounts over \$400,000 shall be apportioned as follows: 40 percent to the seizing agency or agencies; 40 percent to other law enforcement agencies within the region; and 20 percent to be retained by the Department of Public Safety.
6. 61-33.6 (809A) Gifts to other law enforcement agencies
- a. 33.6(1) If the Department of Public Safety determines that it does not have use for an item of forfeited property, the seizing agency must accept ownership of the property and use or dispose of it under these guidelines
  - b. 33.6(2) If the Department of Public Safety determines that property is available for gift to agencies involved in the investigation or prosecution of a case but is presented with conflicting requests for its gift, the Department of Public Safety may refuse to give the property to any of the agencies
  - c. 33.6(3) Forfeited property, including cash, must be used to enhance the enforcement of the criminal law and cannot be used to supplant or otherwise replace normally budgeted items. Questions regarding the propriety of the disposition of forfeited assets should be directed to the Department of Public Safety.
7. 61-33.7 (809A) Record keeping. An agency which seizes property for forfeiture shall maintain records showing the disposition, including destruction, of forfeited property for a period of three years from the date of forfeiture. The records shall comply with any recommendations of the state auditor but must, at a minimum, include the following

- a. the date of forfeiture, a description of the property and the name(s), if available, of the person(s) who owned the property and the person(s) in possession of the property at the time of seizure
  - b. The manner in which all forfeited property has been used by the agency
  - c. The disposition of all forfeited property which has been sold or otherwise disposed of, and of the proceeds derived therefrom
  - d. The manner of use of all forfeited funds and proceeds from the sale of forfeited property.
8. 61-33.8 (809A) Failure to comply. If the Department of Public Safety determines that an agency is not in compliance with these rules, the Department of Public Safety may suspend, temporarily or permanently, the agency's privilege of receiving gifts of forfeited property
9. 61-33.9 (809A) Appeal. An agency may appeal a decision to suspend its privilege to receive gifts of forfeited property under rule 61-33.8 (809A) or other departmental action upon the basis that it has not been done according to these rules as follows:
  - a. 33.9(1) Appeal to deputy attorney general for criminal justice. An applicant may file a notice of appeal to the deputy attorney general within 30 days of the departmental action that forms the basis of appeal. The deputy attorney general shall review the matter, taking testimony if necessary, and issue a written decision
  - b. 33.9(2) Appeal to attorney general. An agency may further appeal from a denial of appeal by the supervising deputy to the attorney general within 30 days of the date the supervising deputy's written decision was mailed
  - c. 33.9(3) Appeal to district court. An agency which disagrees with the decision of the attorney general has the right to appeal to the district court within 30 days of receipt of the attorney general's final decision.
10. 61-33.10 (809A) Interest holders

- a. 33.10(1) The term “interest holder” shall include an entity which owns or holds a properly perfected mortgage, security interest, or other interest in real or personal property
- b. 33.10(2) An interest holder with an exempt interest in forfeited property may be appointed as an agent to act in disposing of forfeited property. An interest holder acting as an agent in disposing of forfeited property shall be relieved of any and all duties that would be imposed on the lien holder if it were acting in its capacity as a lien holder.



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Michael G. Venema  
Chief of Police