


GAINESVILLE POLICE DEPARTMENT

	TITLE Seizure and Forfeiture of Property		ACCREDITATION CALEA
	PROPOSER UNIT Legal		PRIOR REVISIONS September 8, 2016 – June 14, 2010 – July 29, 2009 ATTACHMENT:
NUMBER 40.20	ISSUE DATE 07/01/1998	REVISION DATE 01/06/2022	TOTAL PAGE 9

I. PURPOSE: This Order provides information regarding the statewide guidelines for policies and procedures used by law enforcement personnel in seizing, maintaining, and forfeiting property under the Florida Contraband Forfeiture Act (herein after referred to as the 'Act') identified in Florida State Statutes 932.701-7062.

II. POLICY: The Department shall, while adhering to Federal and State constitutional limitations regarding an individual's right to be free from unreasonable searches and seizures, use the provisions of the Act to deter, interrupt and prevent the continued use of contraband articles for criminal purposes.

III. DEFINITIONS:

A. Contraband: "Contraband article", means in part:

1. 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 is 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.
2. Any equipment, gambling device, apparatus, material of gaming, proceeds, substituted proceeds, real or personal property, Internet domain name, gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was obtained, received, used, attempted to be used, or intended to be used in violation of the gambling laws of the state, including any violation of chapter 24, part II of chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849.
3. 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;
4. Any motor fuel upon which the motor fuel tax has not been paid as required by law;

5. 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 Florida Contraband Forfeiture Act;

6. Any real property, including the right, title, leasehold, or other interest in the whole of any lot or track 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 Florida Contraband Forfeiture Act.

7. 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).

8. Any motor vehicle offered for sale in violation of s. 320.28.

9. Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a).

10. 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 s. 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.

11. 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 s. 409.920 or s. 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 s. 409.920 or s. 409.9201.

12. 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 s. 509.144, whether or not comprising an element of the offense

B. Legal Requirements for Forfeiture: Pursuant to FSS 932.703(1)(a) Property is subject to forfeiture only 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 s. 932.701, or one or more of the following circumstances apply:

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;

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.

IV. PROCEDURE: When taking items custody under the Florida Contraband Forfeiture Act, members shall ensure due process in the protection of citizens' rights as well as in the integrity of the methods used. Members will not use illegal stops, coercive consent searches, or searches based solely upon an individual's race or ethnicity. Further, the potential for obtaining revenues from forfeitures must not override fundamental considerations such as public safety, the safety of law enforcement officers, or the investigation and prosecution of criminal activity.

A. Regulations:

1. **General:** Crime scenes, property and evidence shall be attended to per the requirements of the General Orders found in Chapters 83 and 84 regarding the collection, preservation, processing, submission, control and release of property and evidence.

i. **Currency:** Currency should be seized initially as evidence of the criminal activity at the time of the incident, and **not** pursuant to the Florida Contraband Forfeiture Act, unless approved by a supervisor. The seizing officer shall provide the Contraband Forfeiture Request, along with all reports regarding the seizure to the GPD Legal Office within 24 hours of seizure, or the next business day if the seizure occurs on a holiday or weekend, as stated in (h) below. The seizing officer shall not provide a

Notice of Forfeiture to the defendant or inform the defendant that the currency is being held for forfeiture absent approval by a supervisor. This will be done by the Legal Office if the decision is made to proceed with the forfeiture action.

ii. Vehicles and other personal property: Vehicles and other personal property may be seized for both evidence and/or forfeiture at the time the incident. The GPD Notice of Seizure form for forfeiture should be delivered to the defendant at that time if the seizure meets the forfeiture requirements.

2. Hold: When property is seized for forfeiture, the seizing member shall mark all applicable forms "Hold For Possible Forfeiture-Do Not Release."

3. Release: Seized property, currency, or any other item shall not be released without the prior written approval of the Assistant City Attorney assigned to forfeiture cases.

4. Property: When property is seized for forfeiture, the probable cause supporting the seizure should be promptly reviewed by a supervisor who is not directly involved in making the seizure.

5. Currency: The determination of whether to seize currency must be made by supervisory personnel. The currency should be held as evidence of the underlying criminal offense, pending review by the legal office. The officer should not serve a Notice of Seizure for forfeiture on the defendant at the time of the incident absent approval of a supervisor or the Assistant City Attorney handling forfeiture cases. The legal office will serve the Notice of Seizure to the defendant if it is determined that there is sufficient evidence to meet the criteria of the Florida Contraband Forfeiture Act.

6. Civil Matter: The seizure of property is not dependent upon the outcome of any criminal charges, for the seizure is simply a civil matter between the agency and the owner of the property.

7. Legal Advice: If there are questions about whether or not to seize specific property, Department members may seek the legal advice of the Assistant City Attorney assigned to forfeiture cases through the Police Legal Office, or, if after hours, through Communications.

i. After hours contact shall be first cleared through a supervisor.

8. Notifying the Legal Office: The Legal Office shall be notified as soon as possible of all seizures. Copies of required documentation shall be forwarded to the Legal Office within 24 hours of the seizure or the next business day if the seizure occurred during the weekend.

i. The Legal Program Assistant shall then forward a copy of the documents to the Assistant City Attorney assigned to forfeiture cases. The Assistant City Attorney will review the case and the Legal Office will send out the Notice of Seizure within 5 days of the initial seizure if there is sufficient evidence to prove beyond a reasonable doubt that the property sought to be forfeited meets the requirements of the Contraband Forfeiture Act.

B. Restrictions Regarding Seizures: When currency or property is believed to meet the criteria of the Florida Contraband Forfeiture Act and the following Department criteria, patrol officers should contact the GACDTF, if the criminal activity is narcotics related, or GPD CID, if the criminal activity is other than narcotics related, to handle the asset forfeiture portion of the investigation. If the asset forfeiture investigation is conducted by GACDTF, the detective will follow the GACDTF asset forfeiture policy and criteria. If the asset forfeiture portion of the investigation is conducted by the GPD CID, in addition to abiding by the Florida Contraband Forfeiture Act, the following department guidelines will be followed:

1. Real Property: No real property (i.e., land, buildings) is to be seized without a court order prior to seizure.

i. If, in the opinion of the member, a piece of real property is eligible for seizure, the member shall contact the City Attorney assigned to forfeiture cases, who will then make a determination about whether to pursue an appropriate court order.

2. Financial Threshold: Department members will **NOT** attempt to forfeit:

i. Individual items of cash or property, including vehicles valued at less than \$5,000.00.

ii. Any motor vehicle unless such forfeiture provides or represents a benefit to the Department that would be either:

a. Financially cost-effective (i.e. a newer or high quality vehicle in good to excellent condition with little to no lien amount outstanding),

b. Represent a significant fulfillment of an operational goal or need (e.g., a special vehicle that would be more cost effective to acquire through forfeiture proceedings than by other acquisition, such as outright purchase).

c. The fair market value of the vehicle far exceeds the amount of any lien on the vehicle.

C. Required Reports/Forms: When seizing property for which forfeiture will be sought, the Department member shall complete the following reports and forms, and attain supervisory approval for each. Members shall include the words "Hold for Possible Forfeiture-Do Not Release" on attachments to the investigative report, and note this action in the report.

1. An *Incident/Investigation Report*, to include the following (see also the requirements of G.O. 82.2 regarding report content):

i. Detailed observations that gave probable cause for arrest, search, and seizure,

ii. Chain-of-custody on the contraband and property,

iii. The owner(s) of the property, along with a valid mailing address for each owner identified, and for each person who had possession of the property at the time of the seizure.

2. A *Forfeiture Request Form* (with the appropriate supervisor's signature),
3. A *Property and Evidence Submittal Form* (GPD #89) (except for vehicles),
4. An arrest mittimus (and related forms), when indicated.
5. A *Vehicle Tow Report* when a vehicle is subject to possible forfeiture.

i. Should a 'Hold for Forfeiture' be canceled, and a *Forfeiture Request Form* has NOT yet been forwarded to the assigned City Attorney (Legal Office), the officer shall note on the tow report that the relevant 'hold' has been canceled.

D. Vehicles: Vehicles that are seized and are **NOT** being held as evidence will be towed by the contract wrecker service and held in open storage (See G.O. 84.2 and 84.3 for additional requirements regarding vehicles).

1. Required Photographs: At least four photos shall be taken at the scene, to include: the CR#, vehicle, vehicle tag, and vehicle identification number.

2. Ownership Records: To prevent a transfer of title or registration before the vehicle is officially transferred to the Department by the courts, any instruments or documents of ownership found within a vehicle or in the possession of the person arrested shall be seized and placed in evidence (and a copy is to be included with the report).

i. Any questions concerning the release of these documents shall be directed to the Assistant City Attorney assigned to forfeiture cases.

ii. Any other items found in the vehicle that are not taken as evidence nor considered to be part a vehicle must be released to the owner upon the owner's request.

a. The releasing member shall note in the *Incident/Investigation Report*, items released and to whom they were released.

3. Lien Information: Members seizing a vehicle for possible forfeiture shall request (from Records or Communications) that a lien inquiry be conducted through the State Division of Highway Safety and Motor Vehicles (D.H.S.M.V.) database via an FCIC terminal.

i. The member shall include the lien information on the Forfeiture Request Form and in the Investigative Report, and shall include copies of the teletype printout with each document.

a. This information shall be used to evaluate the propriety of the forfeiture under section F.2.b.2 of this Order.

ii. The member shall, when possible, contact the identified lien holder or a representative of the lending entity (such as a bank or other lender) to determine (and record) the outstanding lien amount prior to submitting the paperwork to the Legal Office.

- a. Inability to contact the lien holder shall not cause a delay in submitting the paperwork to the Legal Office. The Legal Office will follow-up on lien inquiries when indicated.

E. City Attorney Responsibilities: The Assistant City Attorney assigned to forfeiture cases shall fully review the case investigative reports provided to determine whether the officers have developed sufficient evidence to prove beyond a reasonable doubt that the property is subject to forfeiture; to determine whether to proceed with confiscation or to release the property (if there is no other legitimate basis for holding it), and discuss filing with the Chief of Police or his designee for the Chief to make final decision regarding the filing of the forfeiture.

1. Forfeiture Request Approved: If the forfeiture request is approved, the Legal Office will:

- i. Initiate forfeiture proceedings.
- ii. Mail or have hand delivered the Notice of Seizure.
- iii. Provide written notice to the Department member who originally seized the property.

2. Forfeiture Request Denied: If the request for forfeiture is denied, the Legal Office shall:

- i. Remove the forfeiture hold on the seized property, if one was placed on the property;
- ii. Make the appropriate notation on the tow report,
- iii. Notify the Property and Evidence Section, and
- iv. Forward a written notice to the Department member who originally seized the property.

F. Property and Evidence Section Responsibilities: Regarding property / evidence which is no longer subject to forfeiture proceedings, Property and Evidence Section personnel shall:

- 1. Retain property that was seized / submitted as evidence.
- 2. Promptly release to the owner property not being held as evidence.

G. Department Use of Forfeited Property: 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 Department's normal appropriations process.

- 1. Property:** The Department shall not use seized property for any purpose until the rights to, interest in, and title to the seized property are properly finalized and filed in accordance with the Act.

i. This does not prohibit using seized property when necessary for its maintenance.

ii. The seized property shall be maintained in such a manner as to minimize loss of value.

2. Integrity: Department members shall avoid impropriety or the appearance of impropriety in the acquisition, sale, retention, or transfer of any forfeited property or proceeds derived from such property.

3. Funds:

i. Forfeiture proceeds should be maintained in a special fund (as provided by law) that is subject to the normal accounting controls and financial audits of all deposits and expenditures.

a. The Department must file reports as required by the Act.

b. Management of related account(s) is the responsibility of the Fiscal Unit.

c. The proceeds and interest thereon may not be used to meet normal operating expenses of the law enforcement agency.

H. Review: The Legal Office shall review each seizure of property, settlement, and forfeiture proceeding to determine whether such seizures, settlements, and forfeitures comply with the Act.

1. If the review suggests deficiencies, the Department shall promptly move to ensure compliance.

I. Training: The Department shall, when sending members to training sessions regarding forfeitures, ensure that members receive continuing education with content and objectives as required by the Act, to include legal aspects of forfeiture, search and seizure, and other constitutional considerations, as required by FSS 932.704(11)(i).

1. The Operational Skills Unit shall maintain records demonstrating a member's compliance with these training requirements.

By Order of

*Signed Original on File in the
Accreditation Section*

**Tony R. Jones
Chief of Police**