

City of Johns Creek Police Department

<i>Subject:</i> Asset Forfeiture		<i>Number:</i> 01-17
<i>Reference:</i>		<i>Amends:</i>
<i>Effective:</i> 04/08 <i>Revised:</i> 02/25	<i>Review Date:</i> Annually	<i># of Pages:</i> 4

PURPOSE:

The purpose of this policy is to standardize the policies and procedures used in seizing, maintaining and forfeiting assets and to ensure that such property is seized and maintained in an efficient and lawful manner. The provisions contained in this policy are intended to serve as guidelines for this agency in the seizure and forfeiture of property.

POLICY (01-17):

The OCGA 16-13-49 authorizes the forfeiture of certain property used in or derived from violations of the Georgia Controlled Substances Act (GCSA). It is the policy of this agency to utilize these forfeiture provisions to the fullest extent possible in order to accomplish the remedial goals of forfeiture, which are the removal of unlawfully obtained proceeds of and the instrumentalities used in this criminal activity. Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, the integrity of ongoing investigations or the due process rights of citizens.

Scope:

Applicable to all members and employees of the Department.

PROCEDURES:

Statutory Basis for Seizure (01-17-01)

This agency may seize property for forfeiture if the agency determines there is probable cause to believe that the property falls within any of the following categories:

- A. All property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of the GCSA, or any proceeds derived or realized therefrom;

- B. All property located in this State which was, directly or indirectly, used or intended for use in any manner to facilitate a violation of the GCSA or of the laws of the United States;
- C. All weapons possessed, used or available for use, in any manner to facilitate a violation of the GCSA or of the laws of the United States;
- D. Any interest, security, claim, or property or contractual right of any kind affording a source of influence over any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of the GCSA or any of the laws of the United States;
- E. All monies, negotiable instruments, securities, or other items of value which are found within close proximity to any controlled substance or marijuana or other property which is subject to forfeiture under Section 2 of the GCSA.

Seizure of property subject to forfeiture may be made without prior judicial approval if there is probable cause to believe the property is subject to forfeiture under the GCSA, or the seizure is incident to arrest or search pursuant to a search warrant or to an inspection under an inspection warrant.

Property not seized pursuant to an arrest warrant, inspection warrant, or legally recognized exception to a warrant requirement, which property is located on private property, should be seized pursuant to a seizure warrant issued by a Superior Court Judge in the county in which the property is presently located.

A property interest shall not be subject to forfeiture under the GCSA for a violation involving one gram or less of cocaine, or four ounces or less of marijuana, unless said property was used to facilitate a transaction in, or a purchase or sale of, a controlled substance.

A rented or leased vehicle shall not be subject to forfeiture unless it can be established in forfeiture proceedings that the owner of the rented or leased vehicle is legally accountable for the conduct which would otherwise subject the vehicle to forfeiture, consented to the conduct, or knew, or reasonably should have known the conduct, or that it was likely to occur. GCSA requires the rented or leased vehicle to be returned to the owner or its agent as soon as practicable.

When the property that was used in violation of the GCSA has been removed from the jurisdiction of this agency, before the seizure is to take place, then the seizure should be done jointly with an officer having jurisdiction in the area where the property is located. That officer may then turn the property over to this agency.

Training (01-17-02)

All officers who may be involved in the seizure of property shall receive training on the legal basis for the seizure of property, and what information needs to be obtained in order to successfully forfeit the property.

Actions to Be Taken by Seizing Officers (01-17-03)

Only upon approval and review by the Chief of Police and Support Services Division Deputy Chief will any request for seizure action be permitted.

- A. When property is seized pursuant to GCSA, the fact of the seizure shall be reported immediately to the Chief of Police through the chain of command in writing, and within twenty (20) days to the District Attorney's Office.
- B. No later than thirty (30) days of the date of seizure, this agency shall conduct an inventory and estimate the value of the property seized and shall provide a copy of the inventory and appraisal to the District Attorney. This shall be done as soon as possible to provide the District Attorney with information needed to properly evaluate the case.
- C. If not done through pre-seizure planning, the officer shall make a diligent effort to determine ownership of the property, including the identification of registered owner(s), title holder(s), and bona fide lien holders, if any.
- D. The officer will evaluate the case from all aspects, including the economic feasibility of proceeding with a forfeiture action. This shall be done in consultation with the District Attorney.
 1. All seized property shall be evaluated for condition, value, and usability. It is the decision of the District Attorney to file a forfeiture action.
 2. All seized property shall be properly maintained and stored in order to ensure its protection and value. No seized property shall be used for any purpose before forfeiture.
 3. If the District Attorney's office does not file a forfeiture action, then all seized property shall be promptly returned to the owner or his agent, or valid lien holder, upon the District Attorney obtaining an order of release from the Court.
 4. The care and maintenance of any vehicle and all other property that has been seized and is pending litigation is the responsibility of this agency, and all seized property will be properly cared for and maintained.

Other Property Seized (01-17-04)

The following policies will apply to the seizure of any personal property seized under the authority of the GCSA. All seizures shall be based on probable cause as required by law.

- A. Currency: All monies shall be placed in evidence following established policies. The officer placing monies into evidence shall fill out the proper property form.
 1. Photographs will be taken of all monies, the location in which the monies were found and their proximity to contraband (if applicable).
 2. A supervisor shall count the money in the presence of the reporting officer. After each officer has made an individual count, any discrepancy shall require a re-count. During the money count process, the number of people in the immediate area shall be minimized. Counting of currency shall always be accomplished by at least two reporting officers.

3. Seized currency shall be placed in a sealed property bag with the item, date, and case number noted on the bag along with the initials of all officers who counted the money. Only actual counters of monies should sign the property bag(s) containing these monies, and only after agreeing that the amounts listed match their figures.
 4. Each officer will document, in a supplemental report, their findings including the amounts counted by him/her personally.
 5. The seizing officer will prepare an initial case report as soon as practicable.
 6. After the completion of evidentiary tests, if any, all seized currency will be placed into evidence.
- B. Vehicles Any vehicles, regardless of value or lien, shall be seized and towed to the agency's official impound lot when possible.
1. The keys of any seized vehicle shall be placed into evidence. The vehicle shall be locked after being placed in the impound lot, provided the keys are available. Valuable property and evidence will be removed, inventoried, and placed into evidence.
 2. All documents relating to ownership status will be submitted into evidence along with the keys to the vehicle.
 3. A complete inventory of the seized property and all containers, open or closed, found therein, shall be completed at the time of the seizure or as soon as practicable thereafter. A good faith attempt will be made to release to the lawful owner all personal property seized with items impounded pursuant to the GCSA and not being retained as evidence or for forfeiture. If the owner is unknown, has been arrested, or is otherwise unavailable to take possession of the property, such items will be placed into evidence to be released to the owner at a later date.
 4. Any personal property seized as evidence will be packaged, stored separately, and handled in accordance with established procedures for the processing of evidence.
 5. Reasonable attempts shall be made to maintain the property in the same condition as at the time of seizure. Seized items will not be used for any purpose until the property is forfeited and all the rights, interests, and title are transferred to the State pursuant to court order. This section does not prohibit use or operation reasonably necessary for the proper maintenance of seized property.
 6. The vehicle and all contraband or evidence should be photographed in positions in which they were found, if possible.
 7. When possible, the owner, driver, or possible owner should be detained at the scene until ownership can be reasonably proved or disproved.
- C. Miscellaneous Property: All property including jewelry, furniture, tools, electronics, and other personal property shall be placed in evidence and marked hold for forfeiture. Likewise, property that will be needed as evidence should have a written notation hold for evidence in addition to the written notation hold for forfeiture.
1. Reasonable attempts will be made to maintain the property in the same condition as at the time of the seizure. Seized items will not be used for any purpose until the property is forfeited and all rights, interest, and title to the seized property are transferred to the State pursuant to court order. This policy

does not prohibit the use or operations reasonably necessary for the proper maintenance of seized property.

- D. Real Property: The standard procedure for preserving real estate prior to forfeiture will be the District Attorney filing a forfeiture lien against the real property in the Superior Court of the county in which it is located, and the possible execution of an occupancy agreement. Only in rare circumstances, for good cause shown, and with the approval of the District Attorney, will real property be seized prior to forfeiture.
- E. Substituted or Derived Assets Because of the uniqueness, special needs, and legal complexities of such property, any consideration or contemplation of seizure of such property shall require consultation with the District Attorney's Office.
- F. Weapons: All weapons will be placed in evidence following established policies, and the evidence form shall be marked hold for forfeiture. The seizing officer shall check the serial number of the weapon through GCIC/NCIC and shall include a hard copy of the result with the forfeiture form.

Release of Seized Property (01-17-05)

If at the conclusion of the judicial process the claimant prevails, the seized property shall be released to the owner(s) immediately upon the presentation of an order from a Superior Court. Under no circumstances will there be towing charges, storage fees, administrative costs, or maintenance costs assessed against the claimant unless such costs are included in a court order.

In accordance with an order of the court, if a seized vehicle is to be released to the lawful owner(s), there may be assessed against the owner(s) the actual cost of towing, storage, and maintenance of the seized property. Absent settlement, all administrative costs that do not reflect actual expenses will not be assessed.

Ethical Considerations (01-17-06)

No sworn law enforcement officers employment or salary shall be made to depend upon the level of seizures or forfeitures the officers achieves.

Any forfeited property retained by the agency for official law enforcement use is subject to internal controls applicable to property acquired through the normal appropriations process.

Forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.

This agency shall avoid any appearance of impropriety in sale or acquisition of forfeited property.