


<b>LEESBURG POLICE DEPARTMENT REGULATIONS AND GENERAL ORDERS MANUAL</b>		
General Order Number: 304	Section: CRIMINAL INVESTIGATIONS	Effective Date: SEPTEMBER 2022
Title: <b>ASSET FORFEITURE</b>		
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## I. POLICY

A constitutional amendment to state law permits law enforcement agencies to benefit directly from the seizures made in narcotics or drug investigations. Formerly, in order to receive financial assistance through seized assets, law enforcement agencies had to use the federal forfeiture process. The Department aggressively enforces narcotics and dangerous drugs laws, and where officers make a substantial seizure of property according to state law, the Department shall begin forfeiture proceedings. Any assets recovered through the forfeiture process, whether money or property, will be applied to legitimate enforcement needs, primarily to carry out other drug enforcement strategies. Under no circumstances will personnel select enforcement targets because of the expected financial gain accruing to the Department or the State Literary Fund: enforcement strategies are not dictated by profit.

## II. TERMINOLOGY

*Asset forfeiture coordinator (AFC):* The AFC is the officer designated by the Chief of Police to be conversant in state forfeiture law (*Virginia Code*, §§ 19.2-386.1 through 19.2-386.35 as well as non-narcotic related forfeitures), to identify assets in case records, and begin the legal process to appropriate these assets for Department use. The AFC also performs as liaison to other state and federal agencies, and the courts as needed. The Criminal Investigations Section commander or designee will be the designated Asset Forfeiture Coordinator.

*Designated seizing agency:* The designated seizing agency is the one which initiates the seizure, or which retains possession of the seized property. It may be the agency chosen by mutual decision of the participating agencies.

*Assets:* Assets are anything of value seized in connection with an applicable criminal case and include both in-kind property and proceeds. In-kind property consists of whatever an agency can put to immediate use. Proceeds refer to money that is raised through sale of property of a kind not immediately useful. The purpose of the Asset Forfeiture Program is to disrupt or eliminate the ability of the offender to command resources necessary to continue illegal activities.

## III. PROCEDURES

### A. Responsibilities of the Asset Forfeiture Coordinator (AFC)

1. The AFC shall also understand the authority of § 19.2-386.22 which allows for the seizure and forfeiture of property used in narcotics trafficking. The AFC shall maintain a current edition of the *Forfeited Assets Seizure Manual* (FASP), published by the Department of Criminal Justice Services (DCJS).
2. Reviews all offense reports to identify property subject to forfeiture.
3. Ensures that all applicable seizures for forfeitures are reported to DCJS.
4. Reports to the Field Operations Division Commander on all matters pertaining to forfeiture proceedings.
5. Ensures that seized property is properly labeled, clearly identified, and stored in the Department's evidence room, pending forfeiture proceedings.

6. Coordinate with the Commonwealth's Attorney to review and file the appropriate court paperwork to start the seizure process.
7. Apply to DCJS for return of in-kind property for legitimate law enforcement use if applicable.
8. Coordinate with the Property & Evidence Custodian as necessary to obtain a commercial sale of property in appropriate cases.
9. Coordinate with other agencies participating in a regional drug enforcement task force to agree on which agency will become the designated seizing agency for purposes of forfeiture proceedings. Negotiate with participating law enforcement agencies for a suitable division of assets.
  - a. Where agencies seize property pursuant to membership in a regional task force, the AFC shall forward to DCJS a copy of the interagency agreement or contract that authorizes the task force.
  - b. If the agency elects to pursue forfeiture through federal proceedings, then the AFC does not notify DCJS but ensures compliance with both state and federal guidelines for asset forfeiture.
  - c. The AFC shall assist inter-jurisdictional coordination to ensure that localities maintain separate forfeitures, accounts, and auditing procedures. Similarly, the AFC shall track cases in which the Department is involved but is not the primary seizing agency.
10. Ensure that the locality's certification (that the proceeds will be used for law enforcement purposes only and will not supplant existing resources) is submitted to DCJS and renewed annually by the Town Manager.
11. Ensure that seized money is forwarded to DCJS in check form. Coordinate with the finance officer, as necessary.
12. Conduct quarterly audits of all Asset Forfeiture proceedings.

#### IV. ASSET FORFEITURE PROCESS

##### A. THE SEIZURE OF ASSET(S)

1. Officers shall consult with the Asset Forfeiture (AF) Detective, prior to seizing asset(s). The on-call detective will serve as back-up in the event the AF Detective is unavailable. The officer will complete the AF Seizure Form (LPD Form# 141). The officer will complete an IBR, attach the AF Seizure Form to the report, and place the package in the CIS mailbox. If CIS decides to move forward with the seizure process and the seizure was conducted as required by General Order, applicable provisions of the Code of Virginia, and federal guidelines, the case shall be assigned to the AF Detective.
2. All AF cases will be reviewed by the Criminal Investigations Section (CIS) Commander or designee. The CIS Commander, or designee, will notify the seizing officer, by email, as to whether the seizure will go forward. If the case does not to move forward, the seizing officer will be advised to return the asset(s) to the owner if it is not needed as evidence.
3. Officers must obtain complete data on all suspects and participants when a seizure is made. This data includes name, date of birth, race, sex, nationality, height, eye and hair color, complete address with zip code, telephone number, Social Security number, and any other identifying numbers such as driver's license number.
4. When interviewing suspects or participants, officers shall try to elicit statements of ownership or lien-holding, and origin (how did the property come into the suspect's possession).
5. Officers searching businesses, residences, or vehicles for narcotics evidence shall try to obtain documents relating to the ownership of the items seized.

##### B. NOTICE OF SEIZURE

1. After the asset(s) have been seized, the AF Detective shall enter the property seized into the pending Asset Forfeiture Database and create a case file related to the seizure. The AF Detective will create two (2) identical case files (an agency file and one for the CA's Office). The AF case file shall include all reports, supplemental reports, and a detailed list of items seized, that establishes the substantial connection to criminal activity. The AF Checklist (LPD Form# 142) will be maintained in the case file.

After internal review of the file, the CA's Office will be notified by furnishing the duplicate file with all documents to support the asset(s) seizure.

- a. For cash seized, the Evidence Custodian will deposit the cash into the Asset Forfeiture Account maintained by the Town of Leesburg Finance Department, unless the cash is needed for evidentiary purposes.
2. Once the CA's Office has decided to move forward with the seizure, the case will be assigned to an Attorney in that office, and the AF Detective will file DCJS Form 998, the Asset Seizure Reporting Form. The DCJS Form begins the administrative process and a DCJS Seizure Number will be assigned to the case. Any communication between the CA's Office and the LPD in regard to the seized item will be maintained in the AF Detective's case file. The CA's Office will give the AF Detective the Notice to Appear, Notice of Seizure and Information sheets to serve on the owner of the seized item, if a Stipulation Agreement is not signed.
  - a. For Sex Crimes related cases, the Notice to Appear regarding the seizure is not served until the case is adjudicated.

#### C. INFORMATION FILING AND THE COURT PROCESS

1. The Hearing.

The AF Detective shall provide testimony in court as may be required by the CA. The LPD AF Checklist will be updated in the case file, as well as any other case notes. The electronic AF log maintained in the CIS database will also be updated.
2. Final Order.

Once the AF Detective receives the Final Order from the CA's Office, the seized item shall be handled as follows:

  - a. If it is a narcotics-related case, the AF Detective shall prepare the DCJS 999 form, have it signed by the Chief of Police, and then send it to DCJS along with a copy of the court order. The agreed upon distribution is 65% to LPD, 25% CA's Office and 10% to DCJS.
  - b. "In Kind" vehicles and all other items, except cash, need to be noted on the DCJS 999 form. The form shall be completed to indicate that the seized item will be used in one of the following manners, as may be determined by the Operations Division commander:
    - (i) Utilize for law enforcement purposes
    - (ii) Sale of the asset
    - (iii) Not known at the current time
  - c. If the vehicle/item is sold, following the LPD's receipt of those proceeds, the AF Detective shall prepare another DCJS 999 form and complete section 9. This form shall be signed by the Chief of Police and the original given to the Finance Department along with a copy of the bill of sale. The Finance Department will mail the funds and the original 999 form to DCJS so that agency may then re-disperse the money in appropriate percentages.
  - d. For all other non-narcotic crimes, the money seized and/or received due to the sale at auction of the seized item is to be given to the Literary Fund.
  - e. The Evidence Custodian, in coordination with the Town Fleet Maintenance section, shall be responsible for placing asset(s) for auction. The auctioneer shall be instructed to forward a check for the auction proceeds to the Evidence Custodian or the Town of Leesburg Finance Department, whichever applicable. The original receipt shall be given to the Finance Department for AF account deposit. A check for the full action amount will be sent to DCJS for proper disbursement. Copies of all receipts will be kept in the AF case file. AF status updates will be emailed to the AF group, for any change in case status as it relates to the AF process.

#### V. STORAGE OF SEIZED VEHICLES

- A. All vehicles seized by LPD shall be stored at the secured impound lot with the vehicle keys securely stored in the evidence room at the LPD Headquarters. The vehicle's descriptive information, location and final disposition will be recorded in the AF case file, as well as the CIS database.
- B. If the vehicle is to be returned to the owner for any reason, the Evidence Custodian shall be notified that the vehicle is no longer to be held for Asset Forfeiture purposes. If the vehicle is not needed as evidence, it may be released to the owner. Upon return of the vehicle, an "Innocent Owner" letter will be provided to

the owner by the AF Detective.

## VI. PROCEDURES FOR SEIZING CURRENCY

- A. The following procedures shall be followed when an officer seizes any money over \$1,000, in accordance with § 19.2-386.1 through § 19.2-386.35 of the Code of Virginia:
1. On any scene where a monetary seizure is to occur, the seizing officer shall call for a second officer to respond to their location. If the circumstances prohibit counting the currency or coins at the scene, the seizing officer AND a second officer shall place the money into an evidence container (currency envelope) labeled “precount collection.” The currency envelope shall be sealed and initialed by both officers on the scene. They shall proceed to LPD Headquarters to count the money.
  2. The seizing officer AND second officer shall count the money together two times. The total of each denomination of currency shall be counted and recorded on the evidence container (currency envelope). The evidence container (currency envelope) will be initialed by both officers to include their name and badge number. The evidence container (currency envelope) must be placed into a property evidence locker as soon as possible. Only cash and coins shall be placed inside the currency envelope. There should be no other evidence packaged with the currency.
  3. The Evidence Custodian will store the currency envelope in the money vault until the report has been completed and merged allowing the evidence to be processed. The currency will remain in the money vault until the court proceedings are complete. Large amounts of currency may be delivered to the Finance Department, if the currency is not needed as evidence in court. In such cases, a receipt will be provided, and the currency will be deposited into the Asset Forfeiture Escrow Account until court proceedings are complete.
  4. If seizure is upheld a check for the full amount is sent to DCJS, with a DCJS Form 999 signed by the Chief of Police, and a copy of the court order.
  5. If the seizure was not upheld, or no paperwork was filed, a check from the Finance Department will be mailed to the owner.

## VII. OTHER CONSIDERATIONS

- A. According to § 19.2-386.22 of the Code of Virginia, there must be a “substantial connection” shown between all money and property seized, and the manufacture, sale or distribution of a controlled substance. A substantial connection requires that the property subject to the forfeiture must have more than an incidental or fortuitous connection to criminal activity. The officers IBR must clearly articulate the substantial connection to establish a valid seizure.
- B. There are instances where seizure may not be practical, although the seizure may fit within the AF guidelines. Before seizing an item, officers must consider:
1. The value of the property
    - a. The cost associated in the selling of the asset exceed the value of the asset.
    - b. The asset is heavily financed, lien-holder, or mortgaged.
  2. The impact on the violator
    - a. The agency’s resources to manage the seized asset(s)
    - b. A small amount of assets seized from a juvenile or incarcerated defendant is not practical. Assets seized from juveniles require a Guardian ad Litem appointment.
- C. All property seized during the course of an investigation shall be documented in the seizing officer’s IBR report and on the Asset Forfeiture Seizure Form (LPD Form# 141). The seized property shall be secured in the evidence locker. The seizing officer shall immediately email the Department’s Asset Forfeiture e-mail account, [AssetForfeiture@Leesburgva.gov](mailto:AssetForfeiture@Leesburgva.gov), to advise of the seizure and the applicable case number. A copy of the AF Seizure Form shall be attached to the e-mail sent by the seizing officer.
- D. In cases where identified confidential funds are included in the seized money, the following shall apply: All money will be taken back to LPD Headquarters and photographed with the seizing officer AND a CIS Detective. The identified confidential funds will separated and packaged separately from the seized money. Both sets of currency will be entered into evidence in a currency envelope and labeled

appropriately. Upon conclusion of the court process, the confidential funds money will be placed back into the CIS Funds with proper documentation, and the remaining funds shall be handled as outlined above.