




WINCHESTER POLICE DEPARTMENT OPERATION ORDER

NOTE: This policy is for internal use only, and does not enlarge an employee’s civil liability in any way. It should not be construed as the creation of a higher standard of safety or case in an evidentiary sense, with respect to third party claims. Violation of this policy, if proven, can only form the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

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| Number 2-39 | | Effective Date September 22, 2021 | Review Date September 15, 2021 | Reviewing Division Administration |
| Subject ASSET FORFEITURE | | <input type="checkbox"/> New Policy <input checked="" type="checkbox"/> Revised <input type="checkbox"/> Replaces: | | This policy shall apply to personnel assigned to the following divisions: <input type="checkbox"/> All Personnel <input checked="" type="checkbox"/> Patrol Division <input checked="" type="checkbox"/> Administration Division <input checked="" type="checkbox"/> Investigation Division |
| References VLEPSC: OPR.03.06 CALEA | | | | |
|  _____ Chief of Police or Designee | | _____ March 23, 2023 Date | | |

I. PURPOSE

The purpose of this policy is to outline the Department's participation in asset forfeitures from drug enforcement cases and to state responsibilities of the asset forfeiture coordinator.

II. POLICY

A constitutional amendment to state law permits law enforcement agencies to benefit directly from the seizures made in narcotics 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 drug laws and where officers make a substantial seizure of property according to state law, the Department may begin forfeiture proceedings. Any assets recovered through the forfeiture process whether money or property, will be applied to legitimate law enforcement needs, primarily to carry out other drug enforcement strategies. Under no circumstance will personnel select enforcement targets because of the expected financial gain to the Department. Enforcement strategies are not dictated by profit.

III. DEFINITIONS

A. Asset Forfeiture Coordinator (AFC)

The AFC is the employee designated by the Chief of Police to be conversant in state and federal forfeiture law, 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.

B. Designated Seizing Agency

The designated seizing agency is the agency 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.

C. Assets

Assets are anything of value seized in connection with a criminal investigation 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.

IV. PROCEDURES

A. AFC Responsibilities

The AFC is responsible for the following duties:

1. The AFC shall also understand the authority of Virginia Code, which allows for the seizure and forfeiture of property used in narcotics trafficking;
2. Maintain a current edition of the Forfeited Assets Seizure Manual (FASM), published by the Department of Criminal Justice Services (DCJS);
3. Review all offense reports to identify property subject to forfeiture;
4. Ensure that all seizures for forfeiture are reported to DCJS. If the Department elects to pursue forfeiture through federal proceedings, then the AFC does not notify DCJS;
5. Report to the Chief of Police or his or her designee on all matters pertaining to forfeiture proceedings;
6. Choose and coordinate with vendors hired to manage seized property;
7. Coordinate, where possible, with other Department representatives, as designated by the Chief of Police, for pre-seizure planning meetings to evaluate target assets to ascertain ownership and the existence of liens or encumbrances. Personnel planning a seizure of assets shall make every reasonable effort to identify innocent lien holders;
8. Coordinate with the Commonwealth's Attorney to enter a default judgment against persons who fail to respond to the court within thirty (30) days to defend against seizure of their property;
9. Apply to DCJS for return of in-kind property for legitimate law enforcement use;

10. Coordinate with the Commonwealth's Attorney or other officials as necessary to obtain a commercial sale of property in appropriate cases;
11. Coordinate with other agencies participating in a regional drug and gang enforcement task force to agree on which agency will become the designated seizing agency for purposes of forfeiture proceedings and 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. 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.
12. Ensure that the Department'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 City Manager and the Chief of Police; and
13. Coordinate with the Department finance officer, as necessary to ensure that seized money is forwarded to DCJS in check form.

B. Finance Coordinator Responsibilities

The Department Finance Coordinator is responsible for the following duties:

1. Prepare checks to DCJS as soon as possible upon receipt by the Department of forfeited funds from drug transactions;
2. Prepare and maintain records on all property accruing to the Department through drug forfeitures and retain these records for a period not to exceed Commonwealth of Virginia requirements for records retention.
3. Annually conduct an audit of all property seized related to drug transactions, including an audit of all property subjected to forfeiture proceedings. A copy of all audits shall be forwarded to DCJS upon request.
4. Compile and retain a file of all receipts for cash or property obtained and sold or otherwise disposed of through asset forfeitures procedures.

C. Officer Responsibilities

Officers will have the following responsibilities concerning asset forfeiture cases:

1. The seizing officer or detective shall contact the Commonwealth's Attorney after a seizure is made to determine if the Commonwealth's Attorney will proceed with forfeiture. The officer or detective is also responsible for providing the Commonwealth's Attorney with copies of any investigative reports related to the seizure.
2. If the Commonwealth's Attorney agrees to proceed with the forfeiture case, the following will be required by the AFC for processing:
 - a. Seizure checklist;
 - b. Incident report with suspect's information;
 - c. Narrative outlining the reason for seizure;
 - d. Photo of the item seized (if vehicle or property);
 - e. Complete description of the item including the owner, lien holder, lien amount, etc; and
 - f. Location where the item is stored.
3. Officers searching businesses, residences, or vehicles for narcotics evidence shall make every effort to obtain documents relating to the ownership of the items seized.
4. Officers must collect 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.
5. When interviewing suspects or participants, officers shall attempt to elicit statements of ownership or lien holding and the origin of the property.
6. Officers will comply in a timely manner with requests from the AFC for information, documents, or other assistance.