

Asset Forfeiture

514.1 VERSION

Review Date	Effective Date	Approving Authority
01/29/19	07/09/18	Eric D. English, Chief of Police

514.2 POLICY AND PURPOSE

This policy describes the authority and procedure for the seizure, forfeiture and liquidation of property associated with designated offenses.

The Harrisonburg Police Department recognizes that appropriately applied forfeiture laws are helpful to enforce the law, deter crime and reduce the economic incentive of crime. However, the potential of revenue shall not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations or any person's due process rights.

It is the policy of the Harrisonburg Police Department that all members, including those assigned to internal or external law enforcement task force operations, shall comply with all state and federal laws pertaining to forfeitures.

514.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive 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 care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

514.4 DEFINITIONS

Asset Forfeiture Coordinator - The person designated by the Chief of Police to be responsible for securing and maintaining seized assets, reviewing all forfeiture cases and distributing any proceeds realized from any forfeiture proceedings. This includes any time the Harrisonburg Police Department seizes property for forfeiture or when the Harrisonburg Police Department is acting as the fiscal agent pursuant to a multi-agency agreement. The coordinator also acts as the liaison between the Department and the designated Assistant Commonwealth's Attorney.

Forfeiture - The process by which legal ownership of an asset is transferred to a government or other authority.

Seizure - The act of law enforcement officials taking property, cash or assets that have been used in connection with or acquired by specified illegal activities.

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514.5 ASSET SEIZURE

514.5.1 PROPERTY SUBJECT TO SEIZURE

Property subject to forfeiture - Property subject to forfeiture may include:

- (a) Property used in connection with or derived from terrorism (Va. Code § 19.2-386.15).
- (b) Vehicles used for prostitution and kidnapping related offenses (Va. Code § 19.2-386.16).
- (c) Moneys and other income, including all proceeds, derived through computer crimes (Va. Code § 19.2-386.17).
- (d) Property used in connection with money laundering (Va. Code § 19.2-386.19). (Felonies) 18.2-248, 18.2-248.1, 18.2-474.1
- (e) Unlawfully sold or delivered cigarettes and counterfeit/contraband cigarettes (Va. Code § 19.2-386.20; Va. Code § 19.2-386.21).
- (f) Property used in connection with or derived from illegal drug transactions (Va. Code § 19.2-386.22).
- (g) Firearms carried in violation of weapons carry laws or used in a crime (Va. Code § 19.2-386.27; Va. Code § 19.2-386.28; Va. Code § 19.2-386.29).
- (h) Money, gambling devices and personal property used in connection with illegal gambling (Va. Code § 19.2-386.30).
- (i) Property used in connection with the exploitation, solicitation or abduction of children (Va. Code § 19.2-386.31).
- (j) Money and real or personal property derived through government corruption (Va. Code § 19.2-386.33).
- (k) Vehicles used in felony-level driving while intoxicated offenses (Va. Code § 19.2-386.34).
- (l) Property used in connection with certain listed offenses (Va. Code § 19.2-386.35).

The following properties may also be seized upon review and approval of a supervisor and in coordination with the asset forfeiture coordinator:

- (a) Property subject to seizure through a court order.
- (b) Property that can be legally seized as evidence of a crime.
- (c) Property that is not subject of a court order, but:
 - 1. The property can be lawfully accessed by officers.
 - 2. There is probable cause to support a substantial connection between the property and the activity for which a statute authorizes its seizure.

Whenever practicable, obtaining a search warrant or court order for seizure prior to making a seizure is the preferred method (Va. Code § 19.2-386.2).

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A large amount of money standing alone is insufficient to establish the probable cause required to make a seizure.

514.5.2 REQUESTS TO RELINQUISH PROPERTY RIGHTS

Officers shall not request or otherwise suggest that a person who is asserting an ownership or other right to property seized by the department waives that interest prior to the filing a proper court paper document related to the property.

514.5.3 PROPERTY NOT SUBJECT TO SEIZURE

The following property should not be seized for forfeiture:

- (a) Cash and property that does not meet the forfeiture counsel's current minimum forfeiture thresholds.
- (b) Property when the officer suspects the owner was not a consenting party or privy to the conduct giving rise to forfeiture ("innocent owner") (Va. Code § 19.2-386.8).
- (c) Real property absent a court order.

514.6 PROCESSING SEIZED PROPERTY FOR FORFEITURE PROCEEDINGS

When property or cash subject to this policy is seized, the officer making the seizure should ensure compliance with the following:

- (a) Complete the applicable seizure forms (95-Seizure-Worksheet-Fillable.pdf) and present the appropriate copy to the person from whom the property is seized. If cash or property is seized from more than one person, a separate copy must be provided to each person, specifying the items seized. When property is seized and no one claims an interest in the property, the officer must leave the copy in the place where the property was found, if it is reasonable to do so (Va. Code § 19.2-386.2).
- (b) Complete and submit a report and original seizure forms within 24 hours of the seizure, if practicable.
- (c) Forward the original seizure forms and related reports to the forfeiture reviewer within one day of seizure.
- (d) The forfeiture coordinator will then be responsible for completing the appropriate forms and submitting them to DCJS within 21 days. Failure to meet this deadline will negate any seizure effort.
- (e) The Evidence Specialist will take seized currency to a designated bank for deposit and copy all bank forms to the incident file. All original bank forms will be given to the forfeiturer coordinator.

The officer will book seized property as evidence with the notation in the IBR narrative and comment section of the property form, "Seized Subject to Forfeiture."

Photographs should be taken of items seized, particularly cash, jewelry and other valuable items.

Officers who suspect property may be subject to seizure but are not able to seize the property (e.g., the property is located elsewhere; the whereabouts of the property is unknown; it is real

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estate, bank accounts, non-tangible assets) should document and forward the information in the appropriate report to the asset forfeiture coordinator.

514.7 MAINTAINING SEIZED PROPERTY

The Property and Evidence Unit supervisor is responsible for ensuring compliance with the following:

- (a) All property received for forfeiture is reasonably secured and properly stored to prevent waste and preserve its condition (Va. Code § 19.2-386.4).
- (b) All property received for forfeiture is checked to determine whether the property has been stolen.
- (c) All property received for forfeiture is retained in the same manner as evidence until forfeiture is finalized or the property is returned to the claimant or the person with an ownership interest.
- (d) Property received for forfeiture is not used unless the forfeiture action has been completed.

514.8 ASSET FORFEITURE COORDINATOR

The responsibilities of the asset forfeiture coordinator include:

- (a) Remaining familiar with forfeiture laws, particularly the Va. Code § 19.2-386.1 et seq. and the forfeiture policies of forfeiture counsel.
- (b) Serving as the liaison between the Department and the forfeiture counsel and ensuring prompt legal review of all seizures.
 1. If property was seized before a proper court document was filed, notification to the forfeiture attorney should occur as soon as practicable (Va. Code § 19.2-386.3).
- (c) Making reasonable efforts to obtain annual training that includes best practices in pursuing, seizing and tracking forfeitures.
- (d) Reviewing each seizure-related case and deciding whether the seizure is more appropriately made under state or federal seizure laws. The forfeiture reviewer should contact federal authorities when appropriate.
- (e) Ensuring that responsibilities, are clearly established whenever multiple agencies are cooperating in a forfeiture case.
- (f) Ensuring that seizure forms are available and appropriate for department use. These should include notice forms, a receipt form and a checklist that provides relevant guidance to officers. The forms should be available in languages appropriate for the region and should contain spaces for:
 1. Names and contact information for all relevant persons and law enforcement officers involved.
 2. Information as to how ownership or other property interests may have been determined (e.g., verbal claims of ownership, titles, public records).

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3. A space for the signature of the person from whom cash or property is being seized.
 4. A copy should be given to the person from whom cash or property is being seized, that includes the legal authority for the seizure, information regarding the process to contest the seizure and a detailed description of the items seized.
- (g) Ensuring that officers who may be involved in asset forfeiture receive training in the proper use of the seizure forms and the forfeiture process. The training should be developed in consultation with the appropriate legal counsel and may be accomplished through traditional classroom education, electronic media, Daily Training Bulletins (DTBs) or General Orders. The training should cover this policy and address any relevant statutory changes and court decisions.
- (h) Reviewing each asset forfeiture case to ensure that:
1. Written documentation of the seizure and the items seized is in the case file.
 2. Independent legal review of the circumstances and propriety of the seizure is made in a timely manner.
 3. Notice of seizure has been given in a timely manner to those who hold an interest in the seized property.
 4. Property is promptly released to those entitled to its return.
 5. All changes to forfeiture status are forwarded to any employee who initiates a forfeiture case.
 6. Any cash received is deposited with property and evidence unit.
 - (a) The cash shall be held in an interest-bearing account (Va. Code § 19.2-386.4).
 7. Assistance with the resolution of ownership claims and the release of property to those entitled is provided.
 8. Current minimum forfeiture thresholds are communicated appropriately to officers.
 9. This policy and any related policies are periodically reviewed and updated to reflect current federal and state statutes and case law.
- (i) Ensuring that a written plan is available that enables the Chief of Police to address any extended absence of the forfeiture reviewer, thereby ensuring that contact information for other law enforcement personnel and attorneys who may assist in these matters is available.
- (j) Ensuring that the Department disposes of property as provided by law following any forfeiture.
- (k) Ensuring that the process of selling or adding forfeited property to department inventory is in accordance with all applicable laws and consistent with the use and disposition of similar property.

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- (l) Upon completion of any forfeiture process, ensuring that no property is retained by the Harrisonburg Police Department unless the Commonwealth's Attorney authorizes in writing the retention of the property for official use.
- (m) Forwarding a report regarding seized property subject to forfeiture, its release or other final disposition of the property with the Department of Criminal Justice Services (DCJS) as may be required (Va. Code § 19.2-386.4; 6 VAC 20-150-30).
- (n) After consultation with the Chief of Police, filing a DCJS Form 999 with the DCJS after a court has ordered assets to be forfeited and when the Harrisonburg Police Department is the designated seizing agency (6 VAC 20-150-40; Va. Code § 19.2-386.14).
- (o) Ensuring that an annual financial statement of receipts and expenditures is filed with the DCJS as may be required (6 VAC 20-150-40).

Forfeiture proceeds should be maintained in a separate fund or account subject to appropriate accounting control, with regular reviews or audits of all deposits and expenditures.

Forfeiture reporting and expenditures should be completed in the manner prescribed by the law and City financial directives.

514.9 DISPOSITION OF FORFEITED PROPERTY

All proceeds from a forfeiture will be used for law enforcement purposes only and will not be used to supplant existing funds from any source (6 VAC 20-150-80).

No department member involved in the decision to seize property should be involved in any decision regarding the disposition of the property.