

Peoria Police Department Policy and Procedure Manual

Policy 4.19 Asset Forfeiture



**“Our Community...
Our Commitment”**

I. POLICY (1.2.9)

A. The Peoria Police Department is committed to civil asset forfeiture as a tool to combat illegal drug trafficking and organized crime. Many criminals are motivated by greed and the acquisition of material goods. Therefore, the ability of the government to seize property and have a court of appropriate jurisdiction declare it forfeit because it is connected with criminal activity can be an effective law enforcement tool by reducing the incentive for illegal conduct. Asset forfeiture "takes the profit out of crime" by helping to eliminate the ability of the offender to command resources necessary to continue illegal activities.

B. The use of asset forfeiture in criminal investigations aims to undermine the economic infrastructure of the criminal enterprise. Criminal enterprises in many ways mirror legitimate businesses. They require employees, equipment, and money flow to operate. Criminal enterprises also generate a profit from the sale of their "product" or "services." The obvious difference is that the profit generated from criminal enterprises is derived from criminal activity. Asset forfeiture can remove the tools, equipment, money flow, profit, and, sometimes, the product itself, from the criminals and the criminal organization, rendering the criminal organization powerless to operate.

C. Officers will not seize for forfeiture property based only on the race, religion, national origin, gender, sexual orientation or economic status of the offender.

II. PROCEDURE

A. Definition of "Seizure for Forfeiture" Per Arizona Revised Statutes (ARS) § 13-4301 (9), Seizure for Forfeiture means seizure of property by a peace officer coupled with an assertion (verbal or written) by the seizing agency or by an attorney for the state that the property is subject to forfeiture.

B. Legal Grounds for Seizure. Per ARS § 13-4305, Property subject to forfeiture may be seized for forfeiture by a peace officer under the following circumstances:

1. On process issued pursuant to the rules of civil procedure or the provisions of ARS Title 13, including a seizure warrant.

2. By making a seizure for forfeiture on property seized on process issued pursuant to law, including the sections of ARS § 13-3911 through § 13-3915 [Search Warrant Statutes].

3. By making a seizure for forfeiture without court process if any of the following is true:

a. The seizure forfeiture is of property impounded seized incident to an arrest or search.

b. The property subject to seizure for forfeiture has been the subject of a prior judgment in favor

of the State of Arizona, or any other state, or the federal government in a forfeiture proceeding.

c. The peace officer has probable cause to believe that the property is subject to forfeiture.

C. Factors to Assist in Establishing Probable Cause. In establishing a preponderance of the evidence and in determining probable cause for seizure and forfeiture:

1. A rebuttable presumption exists that the property of any person is subject to forfeiture if the state establishes all of the following by the standard of proof applicable to that proceeding:

a. Conduct giving rise to forfeiture occurred.

b. The person acquired the property during the period of the conduct giving rise to forfeiture or within a reasonable time after that period.

c. There is no likely source for the property other than the conduct giving rise to forfeiture.

2. The fact that the money or negotiable instrument was found in proximity to contraband or to instrumentalities of an offense gives rise to an inference that the money or instrument was the proceeds on contraband or was used or intended to be used to facilitate commission of the offense.

D. Items Subject To Seizure and Forfeiture

1. Drugs. Per ARS § 13-3413, the following items used or intended for use in violation of the drug offenses are subject to seizure and forfeiture pursuant to ARS Title 13, Chapter 39.

a. Property, equipment, containers, chemicals, materials, money, books, records, research products, formulas, microfilm, tapes, and data.

b. Vapor-releasing substances containing a toxic substance.

c. Vehicles to transport or in any manner facilitate the transportation, sale or receipt of, or in which is contained or possessed, any item or drug, except as provided in chapter 39 of this title.

2. The following property is subject to seizure and forfeiture pursuant to ARS Title 13, Chapter 39:

a. All proceeds traceable to an offense that is included in this chapter and that is committed for financial gain.

b. All proceeds seized in this state and traceable to an offense that:

(1) Is chargeable or indictable under the laws of the state in which the offense occurred and, if the offense occurred in a state other than this state, would be chargeable or indictable under this chapter if the offense occurred in this state.

(2) Is punishable by imprisonment for more than one year.

(3) Involves prohibited drugs, marijuana or other prohibited chemicals or substances.

(4) Is committed for financial gain.

3. Racketeer Influenced and Corrupt Organizations Act (RICO). The following real property, personal property, vehicles, and currency are subject to seizure for forfeiture if the crime is committed for financial gain and is a chargeable narcotics or indictable felony racketeering offense, regardless of whether such is actually charged or indicted, and any of the following criteria is met pursuant to ARS Title 13, Chapter 23 and 18 United States Code (USC) § 981.

a. The item is proceeds of a racketeering offense.

b. The item is used to facilitate a racketeering offense.

c. The item is a vehicle used during a drive-by shooting offense.

d. Types of Racketeering Offenses

(1) Bribery

(2) Child pornography

(3) Drug Offenses

(4) Extortion

(5) Extortionate extensions of credit

(6) Forgery

(7) Gambling

(8) Homicide

(9) Kidnapping

(10) Money laundering

(11) Obscenity

(12) Prostitution

(13) Robbery

- (14) Terrorism
- (15) Theft
- (16) Usury
- (17) Participating in a criminal syndicate
- (18) Asserting false claims, including fraud and arson
- (19) Intentional or reckless fraud in the purchase or sale of securities or real property securities
- (20) Intentional or reckless false statements or sale of subdivided lands or sale and mortgaging of unsubdivided lands
- (21) Obstructing or hindering criminal investigations
- (22) Obscene or indecent telephone communications to minors for commercial purposes
- (23) Restraint of trade or commerce in violation of ARS § 34-252
- (24) Resale of realty with intent to defraud
- (25) Trafficking in explosives, weapons, and stolen property.
- (26) Alien smuggling for profit conducted by an organized group per 18 USC § 1961.

E. Monetary Limitations on Seizure for Forfeitures

- 1. Unless approved by the Financial Services Supervisor officers will not impound as evidence any currency or property with less than a \$500 value.
- 2. Unless approved by the Financial Services Supervisor officers will not impound as evidence any vehicles with an estimated value less than \$2,500 or in an obvious state of disrepair. Questions regarding a vehicle's value or appropriateness for seizure should be referred to the Financial Services Supervisor or their designee.
 - a. The Financial Services Supervisor or their designee will determine if there is a lien on the vehicle and will indicate on the "Request for Forfeiture" the lien-holder's name and address, the amount of the pay-off lien on the date of seizure and from whom the lien information was obtained.
 - b. Officers will have the ability to seize any vehicle (regardless of value, miles, or age) that has been modified or altered for the purpose of transporting and/or concealing contraband or illicit proceeds.

F. Seized Vehicles

- 1. Under ARS § 13-2314, ARS § 13-3413, and ARS § 13-4305.
 - a. Vehicles that have been used to unlawfully transport or facilitate the transportation or sale of drugs, or which drugs are deposited, concealed, or possessed by any vehicle occupant may be seized.
 - b. Vehicles purchased with the proceeds of a violation of ARS Title 13, Chapter 34 may be seized.
 - c. Officers must have probable cause to believe the vehicle was used, or was intended to be used, for this purpose in order to seize. A vehicle may also be seized under ARS § 13-2314 (Racketeering) if the vehicle is proceeds traceable to a racketeering offense. Any vehicle used in an alien smuggling or in conjunction with a drive-by shooting will be seized per 18 USC § 1961.
 - d. Any information tending to show that the vehicle owner/driver was knowingly involved will be included in the Incident Report (IR). The Financial Services Supervisor or their designee approval is required prior to seizing a vehicle under these circumstances. Any questions should be directed toward the Financial Services Supervisor or their designee.
- 2. Property procedures shall be adhered to when impounding a vehicle as evidence. The narcotic or drug must be in usable condition and the quantity should be a sufficient amount to indicate sale or intent to distribute. In doubtful cases, contact the Financial Services Supervisor or their designee.
 - a. The officer will interview the suspect(s) and attempt to determine if they are the lawful owner(s) or interest holder(s) of the vehicle and what financial institution, if any, holds a lien, along with the amount of said lien.
 - b. All personal property will be removed from the vehicle (Exception: items physically attached to vehicle, i.e. car phones, stereos, etc.).
 - c. At the time of impound of a vehicle, the title of the vehicle should be impounded if the title is located at the time of arrest of the suspect or impound of the vehicle.
- 3. Vehicles will be impounded regardless of owner(s) information shown on Motor Vehicle Department (MVD) records with the following exception:
 - a. Short-term rental vehicles (i.e. Hertz, Avis, etc.) will not be routinely seized for forfeiture.

(1) Rental agencies will be contacted to pick up the vehicle at the scene of the arrest or incident.

(2) Impounding or disposition other than return to a rental agency will require the approval of a supervisor.

b. Long-term lease vehicles will continue to be seized in accordance with the provisions of this order after contacting the Financial Services Supervisor or their designee and with the concurrence of a supervisor.

G. Seizure of Currency. Currency is subject to seizure when used, or intended for use, in violation of ARS Title 13, Chapter 34 (Drug Offenses) and Chapter 23 (Racketeering Offenses).

1. Currency - The authority for monetary seizure rests in ARS § 13-3413 and ARS § 13-2314. Currency may be seized and forfeited only when it can be shown that the currency was used to facilitate or was the proceeds of violations of these chapters.

a. The Peoria Police Department requires that a minimum amount of \$500 be seized in order to initiate forfeiture proceedings on currency.

b. The officer will articulate in the IR the amount(s) and individually packaged by location(s) the currency impounded as evidence (Example: \$200 front right pants pocket, \$300 wallet). The investigating officer will be responsible for notifying the Financial Services Supervisor or their designee of the evidence items impounded for potential seizure. Notification can be made by memorandum, voice mail, e-mail, or in person.

c. The IR will include, if obtainable, any information which links the currency to the illegal drugs or RICO violations, including:

(1) When and where the currency was seized. Photographs will be taken to assist with documentation.

(2) Any statements made by the suspect(s) referencing the currency.

(3) The proximity of the currency to illegal drugs or other evidence when seized.

(4) A photocopy of any record-keeping documents related to the illegal drug sales or other evidence will be forwarded to Financial Services Supervisor or their designee.

d. Employment history of suspect to include name, address, phone numbers of employer, length of employment, and annual income.

e. The IR will fully substantiate the probable cause that establishes that the property is subject to forfeiture.

H. Seizure Procedures

1. Officers may impound property as evidence for potential forfeiture when legally entitled to do so. The Financial Services Supervisor or their designee will determine if the evidence will be processed as asset forfeiture.

2. Investigating officers will impound property and currency as evidence in accordance with existing impound procedures and will submit appropriate impound forms, invoices and requests for scientific analysis. Two officers must always be present at the count of any and all currency in excess of \$500. All property will be photographed and impounded (Exception: cases that the Financial Services Supervisor has made prior arrangements). Under the following circumstances, currency counts can be sealed in evidence bags for counts to be completed the following work day.

a. Seizure Search Warrants which have required detectives to work for an extended period of time and fatigue might hinder the accuracy of cash counts.

b. A detective and a Lieutenant must both sign on the sealed bag.

3. Investigating officers will forward copies of IR and search warrants to the Financial Services Supervisor or their designee through normal procedures.

I. Request for Forfeiture Packet

1. Within 15 working days of the case being assigned to the Financial Services Supervisor or their designee, he or she will make a determination if the case should be processed for Asset Forfeiture. The Request for Forfeiture Packet will be processed through the Financial Services Supervisor, Support Division Deputy Chief and Chief of Police to the Attorney or the City Attorney for the State. The Chief of Police will have final approval on all Asset Forfeiture Cases. The Forfeiture Packet will include:

a. Request for Forfeiture Memo

(1) List property and assets to be forfeited

(2) List Defendants/Owners/Interest Holders

(3) A statement summarizing the probable cause for forfeiture

(4) Equal Sharing Form

b. Due diligence affidavit(s) for all potential owners/interest holders.

c. Copies of the necessary investigative documents will be included in the Forfeiture Packet, to include a copy of the IR, the Request for Scientific Analysis Form verifying the existence of narcotics or dangerous drugs (if applicable), and justification for the potential seizure of the property).

2. The Financial Services Supervisor or their designee will maintain the following documentation of each case submitted for asset forfeiture:

a. Seizure log containing at least the IR number, the date the Request for Forfeiture was made, the date of the Affidavit, the date sent to the City or County Attorney, suspect(s) name(s), and award date, value, and description.

b. A case file on each Request for Forfeiture packet listed by IR.

c. An Equitable Sharing Form shall be completed in multi-agency investigations/operations (the percentage figure can be estimated by calculating the amount of time, currency, and staffing utilized). The percentage of allocation figure is used by the court to divide the proceeds from forfeiture when a court judgment is made.

d. The appraised or estimated value of the seized property shall be listed.

e. The pay-off lien on the date of seizure along with the name, address, and telephone number of the lien holder shall be listed. The seizing agency will also list a maximum dollar amount to discharge any lawful encumbrance on the property.

3. Pending Asset Forfeiture Determination – No property will be released from Property and Evidence unless approved by the Financial Services Supervisor or other appropriate Peoria Police Department management staff.

J. Seized Property Control

1. Within 72 hours of the case being assigned to the Financial Services Supervisor coordination will be done to deposit all currency seized into an interest bearing account. A copy of the deposit receipt(s) with the IR number will be distributed to the Asset Forfeiture Case File, Property and Evidence Supervisor, Finance, and the Financial Services Supervisor. An email will be forward from the Financial Services Supervisor or their designee to the Finance Department detailing the deposit and requesting a bank count confirmation and counterfeit reductions.

a. Currency totaling less than \$20,000 will be counted and processed at the Finance Department (City Hall) for deposit into the Asset Forfeiture Interest Account by the

Financial Services Supervisor or designee and the Property Police Services Officer (PSO).

b. Currency totaling \$20,000 or more will be processed for deposit from the Peoria Police Department Property Vault. The Financial Services Supervisor will coordinate for a Bank Armored Vehicle pick-up from the Peoria Police Department Property Room. The Financial Services Supervisor or designee, and two (2) sworn officers will be present during the deposit count. The Property and Evidence Supervisor will transfer custody the following day to the AT Systems Contract armored car guard. The AT transfer slip/book will be returned to the Financial Services Supervisor or their designee with a copy of the slip being provide to the Property and Evidence Supervisor, and Finance.

2. An internal audit will be completed by the Financial Services Supervisor quarterly with reports prepared and provided to the Chief of Police.

3. An external audit will be completed by the Finance Senior Accountant that represents the Peoria Police Department at the end of each Fiscal Year with reports prepared and provided to Command Staff.

K. Order of Forfeiture

1. The Financial Services Supervisor or their designee will submit a check request to finance through the Financial Services Supervisor, Support Division Deputy Chief, and Chief of Police to transfer the funds and applicable interest to the appropriate sub-accounts at the County Attorney's Office. A copy of the documentation will be retained for case records.

2. Forfeited property will be auctioned except that which is approved by the Chief of Police for direct police use via the Asset Forfeiture Property Disposition Form with a copy provided to the Attorney for the State.

a. The Property and Evidence Supervisor will submit to Materials Management an inventory of all items to be auction with the associated IR. A copy will be provided to the Financial Services Supervisor.

b. After the completion of the sale, Materials Management will provide a detailed sales list to Finance, Peoria Police Department Financial Services Supervisor, and the Property and Evidence Supervisor.

c. The Financial Services Supervisor or their designee will prepare a check request to transfer the funds to the appropriate sub-accounts at the County Attorney's Office providing a copy of the transfer to the case files.

L. Use of Property Placed into Service

1. No seized property will be placed into service by the Peoria Police Department without appropriate justification and written approval from the Chief of Police via the Asset Forfeiture Property Disposition Form with a copy provided to the Attorney for the State.

2. Property placed into service after state forfeiture is governed by ARS § 13-4315.A. Seized and forfeited property may be placed into service for any governmental purpose, with three restrictions:

a. Property may not be allocated for official use if the fair market value of the property substantially exceeds the agency's probable cost of purchasing other property equally suited for the intended use.

b. Property that is allocated for official use may not be assigned for use by any person who supervised or exercised discretion in its forfeiture, unless the use is approved in writing by the Chief of Police.

c. The sale of forfeited property may not be made to any employee of the seizing agency, any person who participated in the forfeiture, any employee of a contractor selling the property on behalf of the seizing agency or any member of the immediate family of any of the above.

3. No federally forfeited property may be used for non-law enforcement purposes, except under community assistance.

a. No vehicle that is federally forfeited worth \$40,000 or more may be placed into service except for undercover use.

b. Vehicles that are federally forfeited must be actually utilized by the seizing agency for no less than two years before sale, except in unusual circumstances, to prevent cashing in vehicles placed into service.

c. Vehicles forfeited do not need to be placed into service, but can be auctioned with proceeds forwarded to Peoria's Asset Forfeiture Account at County.

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