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## Asset Forfeiture Policy

### 606.1 PURPOSE AND SCOPE

This policy describes the authority and procedure for the seizure and liquidation of property associated with specified designated offenses and controlled substance offenses. This policy applies to forfeited or seized property in the form of real, personal, tangible or intangible property (ARS § 13-4315).

#### 606.1.1 DEFINITIONS

Definitions related to this policy include:

**Seizure For Forfeiture** - Seizure of property by a peace officer coupled with an assertion by the seizing agency or by an attorney for the state that the property is subject to forfeiture (ARS § 13-4301(9)).

### 606.2 ASSET SEIZURE AUTHORITY

ARS§13-4305 authorizes any peace officer to seize any property subject to forfeiture under the following circumstances:

- Pursuant to a search warrant or seizure warrant.
- Without court process under either of the following circumstances:
  - The property is seized incident to arrest or search.
  - An officer has probable cause to believe that the property is subject to forfeiture.
  - The property has been the subject of a prior judgment in favor of this state or any other state or the federal government in a forfeiture proceeding.

Property is subject to forfeiture when there is a statute providing for its forfeiture unless exempted from forfeiture within the statute (ARS § 13-4304). Examples of property subject to forfeiture, dependent upon the details of the case may include, but are not limited to:

- Property utilized in or proceeds from racketeering offenses (ARS § 13-2314(G)(3)).
- Property used, or intended for use, in violation of a drug offense (ARS § 13-3413, ARS § 13-3401 and ARS § 13-4304).

Factors to assist in establishing probable cause:

In establishing a preponderance of the evidence and in determining probable cause for seizure and forfeiture:

- 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:
- Conduct giving rise to forfeiture occurred.
- The person acquired the property during the period of the conduct giving rise to forfeiture or within a reasonable time after that period.
- There is no likely source for the property other than the conduct giving rise to forfeiture.

# Peoria Police Department

## Policy Manual

### *Asset Forfeiture Policy*

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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 of contraband or was used or intended to be used to facilitate commission of the offense.

Bias-based profiling is prohibited in all asset seizure and forfeiture efforts. (1.2.9.a)

### **606.3 SEIZURE AUTHORITY**

Any supporting documents shall be promptly provided to the County Attorney (ARS § 13-4306(C)).

An officer impounding items shall:

- As soon as practicable after the incident, conduct an inventory of the property impounded.
- Promptly store the property in accordance with the provisions set forth in ARS § 13-4306(B).

#### **606.3.1 ITEMS SUBJECT TO SEIZURE AND FORFEITURE**

Pursuant to 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.

- Property, equipment, containers, chemicals, materials, money, books, records, research products, formulas, microfilm, tapes, and data.
- Vapor-releasing substances containing a toxic substance.
- 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.

Pursuant to ARS § 13-3413, the following property is subject to seizure and forfeiture:

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

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

- 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.
- Is punishable by imprisonment for more than one year.
- Involves prohibited drugs, marijuana or other prohibited chemicals or substances.
- Is committed for financial gain.

#### **606.3.2 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO)**

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.

# Peoria Police Department

## Policy Manual

### *Asset Forfeiture Policy*

---

- The item is proceeds of a racketeering offense.
- The item is used to facilitate a racketeering offense.
- The item is a vehicle used during a drive-by shooting offense.

Racketeering offenses included any of the following acts committed for financial gain:

- A scheme or artifice to defraud
- Animal terrorism or ecological terrorism
- Asserting false claims including, but not limited to, false claims asserted through fraud or arson
- Bribery
- Counterfeiting marks as proscribed in section 44-1453
- Extortion
- Extortionate extensions of credit
- Forgery
- Gambling
- Homicide
- Intentional or reckless false statements or publications concerning land for sale or lease or sale of subdivided lands or sale and mortgaging of unsubdivided lands
- Intentional or reckless fraud in the purchase or sale of securities
- Intentional or reckless sale of unregistered securities or real property securities
- Kidnapping
- Money laundering
- Obscene or indecent telephone communications to minors for commercial purposes
- Obscenity
- Obstructing or hindering criminal investigations or prosecutions
- Participating in a criminal syndicate
- Prohibited drugs, marijuana or other prohibited chemicals or substances
- Prostitution
- Resale of realty with intent to defraud
- Restraint of trade or commerce in violation of section 34-252
- Robbery
- Sexual exploitation of a minor
- Smuggling of human beings
- Terrorism
- Theft
- Trafficking in explosives, weapons or stolen property
- Usury

#### **606.4 PROPERTY FORFEITURE LOG**

A computerized inventory of all forfeiture cases shall be kept in the Administrative Services. The inventory shall include the following:

# Peoria Police Department

## Policy Manual

### *Asset Forfeiture Policy*

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- Case number
- Date of seizure
- Type of seizure (federal or state)
- Status of the seizure

Information maintained on the log will be provided to the Chief of Police or authorized staff, as requested.

#### **606.5 DISPOSITION ORDERED BY THE COURT**

Court-ordered disposition may include:

- Retention by the Department.
- Destruction.
- Sale, performed in a commercially reasonable manner.
- Other disposition pursuant to Arizona law.

#### **606.6 DISTRIBUTION OF PROCEEDS FROM FORFEITURE**

All forfeiture proceeds must be applied first to satisfy any established claims. The balance shall be deposited in the following manner:

- To any special account established pursuant to Arizona law.
- In an equitable manner between agencies involved in the seizure to be directed by the court hearing the proceeding for forfeiture.