

## Asset Forfeiture

### 606.1 PURPOSE AND SCOPE

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

#### 606.1.1 DEFINITIONS

Definitions related to this policy include:

**Fiscal agent** - The person designated by the Chief of Police to be responsible for securing and maintaining seized assets and distributing any proceeds realized from any forfeiture proceedings. This includes any time the Elk Grove Police Department seizes property for forfeiture or when the Elk Grove Police Department is acting as the fiscal agent pursuant to a multi-agency agreement.

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

**Forfeiture counsel** - Sacramento County District Attorney of the Asset Forfeiture Unit.

**Forfeiture reviewer** - The Special Investigations Unit detectives assigned by the Chief of Police who are responsible for reviewing all forfeiture cases and for acting as the liaison between the Department and the assigned attorney.

**Property subject to forfeiture** - The following may be subject to forfeiture:

- (a) Property related to a narcotics offense, which includes (Heath and Safety Code § 11470; Health and Safety Code § 11470.1):
  1. Property (not including real property or vehicles) used, or intended for use, as a container for controlled substances, materials to manufacture controlled substances, etc.
  2. Interest in a vehicle (car, boat, airplane, other vehicle) used to facilitate the manufacture, possession for sale or sale of specified quantities of controlled substances.
  3. Currency, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, proceeds traceable to an exchange, etc.
  4. Real property when the owner is convicted of violating Health and Safety Code § 11366, Health and Safety Code § 11366.5 or Health and Safety Code § 11366.6 (drug houses) when the property was not used as a family residence or for other lawful purposes, or property owned by two or more persons, one of whom had no knowledge of its unlawful use.
  5. The expenses of seizing, eradicating, destroying or taking remedial action with respect to any controlled substance or its precursors upon conviction for the unlawful manufacture or cultivation of any controlled substance or its precursors.

# Elk Grove Police Department

## Elk Grove PD Policy Manual

### Asset Forfeiture

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- (b) Property related to criminal profiteering (may include gang crimes), to include (Penal Code § 186.2; Penal Code § 186.3):
  - 1. Any property interest, whether tangible or intangible, acquired through a pattern of criminal profiteering activity.
  - 2. All proceeds acquired through a pattern of criminal profiteering activity, including all things of value that may have been received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity.

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

#### 606.2 POLICY

The Elk Grove 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 for revenue should never compromise the effective investigation of criminal offenses, officer safety or any person's due process rights.

It is the policy of the Elk Grove 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 forfeiture.

#### 606.3 ASSET SEIZURE

Property may be seized for forfeiture as provided in this policy.

All persons involved shall be interviewed concerning their possession of the seized assets. The interviewing officer shall ensure that *Miranda* warnings are given and waivers obtained before interviewing any person.

##### 606.3.1 PROPERTY SUBJECT TO SEIZURE

The following may be seized upon review and approval of a supervisor and in coordination with the forfeiture reviewers:

- (a) Property subject to forfeiture authorized for seizure under the authority of a search warrant or court order.
- (b) Property subject to forfeiture not authorized for seizure under the authority of a search warrant or court order when any of the following apply (Health and Safety Code § 11471; Health and Safety Code § 11488):
  - 1. The property subject to forfeiture is legally seized incident to an arrest.
  - 2. There is probable cause to believe that the property was used or is intended to be used in a violation of the Uniform Controlled Substances Act and the seizing officer can articulate a nexus between the property and the controlled substance offense that would lead to the item being property subject for forfeiture.

# Elk Grove Police Department

Elk Grove PD Policy Manual

## *Asset Forfeiture*

---

Officers aware of assets that may be forfeitable as a result of criminal profiteering or human trafficking should consider contacting the district attorney regarding a court order to protect the assets (Penal Code § 186.6; Penal Code § 236.6).

Whenever practicable, a search warrant or court order for seizure prior to making a seizure is the preferred method.

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

### **606.3.2 PROPERTY NOT SUBJECT TO SEIZURE**

The following property should not be seized for forfeiture:

- (a) Currency and property that does not meet the forfeiture counsel's current minimum forfeiture thresholds should not be seized.
- (b) Real property is not subject to seizure, absent exigent circumstances, without a court order (Health and Safety Code § 11471).
- (c) A vehicle which may be lawfully driven on the highway if there is a community property interest in the vehicle by a person other than the suspect and the vehicle is the sole vehicle available to the suspect's immediate family (Health and Safety Code § 11470).
- (d) Vehicles, boats or airplanes owned by an "innocent owner," such as a common carrier with no knowledge of the suspected offense (Health and Safety Code § 11490).
- (e) Any property when the associated activity involves the possession of marijuana or related paraphernalia that is permissible under the Control, Regulate and Tax Adult Use of Marijuana Act (Health and Safety Code § 11362.1).

### **606.3.3 SEIZED VEHICLES**

Vehicles seized subject to forfeiture will be taken to a designated secure storage facility. A seized vehicle should not be impounded. The officer seizing the vehicle shall notify the Special Investigations Unit supervisor and forfeiture reviewers of the seizure of the vehicle and circumstances of the seizure as soon as possible.

If the vehicle cannot be driven, a tow truck will be used to tow the vehicle to the storage facility.

Personal property located in a seized vehicle shall be removed and booked into Property as either evidence or for safekeeping.

### **606.4 PROCESSING SEIZED PROPERTY FOR FORFEITURE PROCEEDINGS**

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

- (a) Complete and submit a report detailing the circumstances of the incident within 24 hours of the seizure, if practicable.
- (b) Notify the Special Investigations Unit supervisor and the forfeiture reviewers via e-mail at PD\_Narc@elkgrovecity.org within two days of the seizure. The notification should

# Elk Grove Police Department

Elk Grove PD Policy Manual

## *Asset Forfeiture*

---

include the report number, a description of the seized property or currency and the date of the seizure.

Currency seized subject to forfeiture will be counted by the seizing officer and a supervisor. The currency will be placed in a money envelope with the denomination of the currency, totals of each denomination and total amount of currency enclosed noted on the money envelope. The officer counting and supervisor verifying money will initial and sign the envelope when sealed. If the currency will not fit into a standard money envelope, place the currency in a larger envelope or bag, sealing and affixing a completed money envelope to the outside of the larger envelope or bag which contains the currency.

Currency seized will be booked into the property room according to the Elk Grove Police Department Property Money Booking Procedures. The Property and Evidence Bureau Manager will coordinate with the Special Investigations Unit supervisor or the forfeiture reviewers to deposit the seized currency in the County of Origin Asset Forfeiture Holding Account.

The officer will book seized property as evidence with the notation in the comment section of the property form, "Seized Subject to Forfeiture." Property seized subject to forfeiture should be booked on a separate property form. No other evidence from the case should be booked on this form.

Photographs should be taken of items seized, particularly currency, 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 estate, bank accounts, non-tangible assets) should document and forward the information in the appropriate report to the forfeiture reviewers.

### **606.5 MAINTAINING SEIZED PROPERTY**

The Property and Evidence Bureau Manager 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.
- (b) All property received for forfeiture is checked to determine if 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.

# Elk Grove Police Department

Elk Grove PD Policy Manual

## Asset Forfeiture

---

### 606.6 FORFEITURE REVIEWER

The Chief of Police will assign Special Investigations Unit detectives as the forfeiture reviewers. Prior to assuming duties, or as soon as practicable thereafter, the forfeiture reviewers should attend a department-approved course on asset forfeiture.

The responsibilities of the forfeiture reviewers include:

- (a) Remaining familiar with forfeiture laws, particularly Health and Safety Code § 11469 et seq. and Penal Code § 186.2 et seq. and the forfeiture policies of the forfeiture counsel.
- (b) Serving as the liaison between the Department and the forfeiture counsel and ensuring prompt legal review of all seizures.
- (c) Making reasonable efforts to obtain annual training that includes best practices in pursuing, seizing and tracking forfeitures.
- (d) Ensuring that property seized under state law is not referred or otherwise transferred to a federal agency seeking the property for federal forfeiture as prohibited by Health and Safety Code § 11471.2.
- (e) Ensuring that responsibilities, including the designation of a fiscal agent, are clearly established whenever multiple agencies are cooperating in a forfeiture case.
- (f) Ensuring that officers who may be involved in asset forfeiture receive training in 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 Department Directives. The training should cover this policy and address any relevant statutory changes and court decisions.
- (g) Reviewing each asset forfeiture case to ensure that:
  - (a) Written documentation of the seizure and the items seized is in the case file.
  - (b) Independent legal review of the circumstances and propriety of the seizure is made in a timely manner.
  - (c) Property is promptly released to those entitled to its return (Health and Safety Code § 11488.2).
  - (d) All changes to forfeiture status are forwarded to the Special Investigations Unit supervisor.
  - (e) Any currency received is deposited with the fiscal agent.
  - (f) Assistance with the resolution of ownership claims and the release of property to those entitled is provided.
  - (g) Current minimum forfeiture thresholds are communicated appropriately to officers.
  - (h) This policy and any related policies are periodically reviewed and updated to reflect current federal and state statutes and case law.

# Elk Grove Police Department

## Elk Grove PD Policy Manual

### *Asset Forfeiture*

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- (h) Ensuring that a written plan that enables the Chief of Police to address any extended absence of the forfeiture reviewers, thereby ensuring that contact information for other law enforcement officers and attorneys who may assist in these matters is available.
- (i) Ensuring that the process of selling or adding forfeited property to the department's regular inventory is in accordance with all applicable laws and consistent with the department's use and disposition of similar property.
- (j) Keeping a manual that details the statutory grounds for forfeitures and department procedures related to asset forfeiture, including procedures for prompt notice to interest holders, the expeditious release of seized property, where appropriate, and the prompt resolution of claims of innocent ownership (Heath and Safety Code § 11469).
- (k) Providing copies of seized business records to the person or business from whom such records were seized, when requested (Heath and Safety Code §11471).
- (l) Notifying the California Franchise Tax Board when there is reasonable cause to believe that the value of seized property exceeds \$5,000.00 (Health and Safety Code § 11471.5).
- (m) An inventory of all asset forfeiture cases shall be kept in the Special Investigations Unit on the Asset Forfeiture Log. The inventory shall include the following:
  - 1. Case number
  - 2. Date of seizure
  - 3. Value
  - 4. Type of seizure (Federal or State)
  - 5. Status of the seizure

Inventory maintained on the Asset Forfeiture Log will be provided to the Chief of Police or designee, as requested.

Forfeiture proceeds shall 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 shall be completed in the manner prescribed by the law and City financial directives (Health and Safety Code § 11495).

#### **606.7 DISPOSITION OF FORFEITED PROPERTY**

Forfeited funds distributed under Health and Safety Code § 11489 et seq. shall only be used for purposes allowed by law, but in no case shall a peace officer's employment or salary depend upon the level of seizures or forfeitures he/she achieves (Heath and Safety Code § 11469).

The Department may request a court order so that certain uncontaminated science equipment is relinquished to a school or school district for science classroom education in lieu of destruction (Health and Safety Code § 11473; Health and Safety Code § 11473.5).

# Elk Grove Police Department

Elk Grove PD Policy Manual

## *Asset Forfeiture*

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### 606.7.1 RECEIVING EQUITABLE SHARES

When participating in a joint investigation with a federal agency, the Elk Grove Police Department shall not receive an equitable share from the federal agency of all or a portion of the forfeiture proceeds absent either a required conviction under Health and Safety Code § 11471.2 or the flight, death or willful failure to appear of the defendant. This does not apply to forfeited currency or negotiable instruments of \$40,000 or more.

### 606.8 CLAIM INVESTIGATIONS

An investigation shall be made as to any claimant of a vehicle, boat or airplane whose right, title, interest or lien is on the record in the Department of Motor Vehicles or in an appropriate federal agency. If investigation reveals that any person, other than the registered owner, is the legal owner, and that ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, boat or airplane, notice shall be made to the legal owner at his/her address appearing on the records of the Department of Motor Vehicles or the appropriate federal agency (Health and Safety Code § 11488.4).