



OFFICE OF THE DISTRICT ATTORNEY  
CONTRA COSTA COUNTY

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DISTRICT ATTORNEY

**TO: District Attorney's Office, All Staff**

**FROM: Diana Becton District Attorney**

**DATE: December 1, 2020**

**SUBJECT: Civil Asset Forfeiture Policy**

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A. Overview:

Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, of this or any other law enforcement agency, or the due process rights of citizens.

No position, promotion, salary, or any other benefit to an employee of the District Attorney's Office shall be made to depend upon the level of seizures or forfeitures he or she achieves.

No seized or forfeited property shall be placed into service by the seizing agencies. In addition, no department personnel shall purchase, directly or indirectly, forfeited property seized by the agency.

Forfeiture proceeds distributed to Contra Costa District Attorney's Office shall be maintained in a separate fund or account with the county treasurer subject to appropriate accounting controls and financial audits of all deposits and expenditures at the request of the county governing board. All money received or transferred shall be in accordance with the "Money Handling Procedures" of the District Attorney's Office.

The Contra Costa District Attorney's Office will seek to protect the interests of innocent property owners, to guarantee adequate notice and due process to property owners, and to ensure that forfeiture serves the remedial purpose of the forfeiture law.

It is the policy of the District Attorney's Office that in order to initiate asset forfeiture proceedings, the total value of the property seized must be equal to or exceed \$ 1,000.

B. Statutory Basis for Forfeiture:

California Health and Safety Code section 11470 provides that certain kinds of property may be forfeited under specified circumstances. The circumstances will differ for each type of property, but in general, property may be subject to forfeiture if it is used as an "exchange" for drugs, to "facilitate" drug trafficking or if it is "proceeds traceable" to drug trafficking. "Facilitation" means anything done by someone to make drug trafficking easier, while "proceeds" refers to things acquired directly in drug transactions, or which can be traced back to drug transactions. The types of property that can be seized includes cash and cash substitutes [Health and Safety Code Section

11470(f)], vehicles [Health and Safety Code section 11470(e)], real property [Health and Safety Code Section 11470(g)], and “other things of value” [Health and Safety Code Section 11470(f)].

#### 1. Limitations and Exemptions

##### a. The “innocent owner” defense

One of the important defenses built into the forfeiture law is the “innocent owner” defense. If property owned by a third party is used by a criminal suspect to facilitate drug trafficking, it must be proved that the owner “consented to the use of the property with the knowledge that it would be or was used” to facilitate drug trafficking. (Section 11488.5(d)(1))

##### b. The family vehicle exemption/ Community property

A community property interest in a vehicle that is the sole transportation available to the criminal defendant’s immediate family is completely exempt from forfeiture. Community property is generally property acquired during a legitimate marriage. It is imperative that the seizing officers determine if this exemption applies as soon as possible. (Section 11470(e))

##### c. Real property exemptions

Real property is exempt from forfeiture if it is used as a family residence or for other lawful purposes or which it is owned by two or more persons, one of whom had no knowledge of the unlawful use of the property. (Section 11470(g)) This is a very broad exemption, intended to limit forfeitures of such properties. As such, particular care should be exercised in circumstances when real property is subject to asset forfeiture proceedings.

#### C. Requirements for Initial Seizure

The law allows any peace officer to seize personal property subject to forfeiture without a court order, incident to an arrest, during a search under a search warrant, or when he or she has “probable cause to believe that the property was used or is intended to be used in violation of” California drug laws. (Section 11471).

If the seizure involves an intrusion into, or upon, a privacy interest, or a situation defined by statute as requiring process (e.g. a bank), then a “seizure order” from the Superior Court would be required to seize the property

The Contra Costa District Attorney’s Office must decide whether to proceed to forfeit the property seized. This decision must be made within 15 days of seizure unless the property is seized as evidence of a crime, or any other valid legal reason. (See Sections 11488, 11488.1, and 11488.2).

#### D. Criminal Charging Document Policy:

Although not required under the law, as a general policy, the Contra Costa County District Attorney’s Office will only proceed with asset forfeiture proceedings when an accompanying “criminal charging document” is filed on a related criminal case. A “criminal charging document” includes a complaint, information, indictment, and/or probation or parole violation that has been filed in Contra Costa County, or in another

State or Federal jurisdiction. In order to fall under the general policy, the “criminal charging document” must allege conduct that would qualify as an asset forfeiture criminal offense.

Specific exceptions to this general policy include the following:

1. Where the property subject to forfeiture is abandoned or unclaimed.
2. Where the property subject to forfeiture is claimed by a third party who does not appear to own the property or have an interest in the property;
3. Where initiating asset forfeiture proceedings absent a criminal charging document would be in the interest of justice.

A Deputy District Attorney who reviews an asset forfeiture case and determines that asset forfeiture proceedings should proceed absent the filing of a criminal charging document shall obtain authorization to do so from the head of the Community Violence Prosecution Unit [CVRU] and the Assistant District Attorney in charge of the unit. In addition, the head of the CVRU unit shall review all asset forfeiture proceedings that are filed in conjunction with a criminal charging document, prior to the filing of the criminal charging document.

#### E. Third-Party Claims

It is the policy of Contra Costa District Attorney's Office to promptly resolve claims of innocent ownership and, where appropriate, expeditiously release seized property.

Claims by third parties will be forwarded for follow-up investigation. The Forfeiture Unit will conduct civil discovery, where appropriate, in an attempt to determine the true owner of the property. The Forfeiture Unit will obtain as much information as possible early in the litigation to determine whether third party claimant does have a legitimate interest in the asset. The goal is to restore the property to an innocent third-party in a timely and efficient manner.

#### F. Notice

The seizing agency must serve a Notice of Non-Judicial Forfeiture Proceedings and a Claim Opposing Forfeiture on any person who has, or may have, an interest in the seized property. (Section 11488.4(C)). Failure to provide a Claim form invalidates the service of notice. The Notice of Non-Judicial Forfeiture Proceedings will be available in English, Spanish, and Mandarin.

Notice of Seizure forms and Claim Opposing Forfeiture forms can be obtained from the Asset Forfeiture Specialist in the CVRU on the 1<sup>st</sup> Floor at 900 Ward Street. Additional Claim Opposing Forfeiture Forms can be found online at <http://www.courts.ca.gov/documents/mc200.pdf>.

The notice must be personally served and an affidavit/declaration of service completed by the person serving the notice. The notice may also be served by registered mail.

Service of the Notice of Non-Judicial Forfeiture Proceedings and a Claim of Opposing Forfeiture should occur, when reasonably possible, at the time the assets are initially seized.

G. Return of Assets:

If, after the initial seizure of the assets, further investigation reveals that there is insufficient evidence to file an accompanying, "criminal charging document," and that there are no applicable exceptions to continue with asset forfeiture proceedings, the seized assets shall be returned to the property owner, if reasonably possible.

H. Policies Applicable to Vehicles

The seizing agency shall implement the following policies regarding seized vehicles for forfeiture:

1. The value of the vehicle should be determined by the lowest estimate under, "Kelley Blue Book," or similar evaluation method.
2. The current payoff amount for any liens shall be determined, and the vehicle must be worth at least \$7,500.00, or have that much equity in the vehicle after the lienholder is paid in full.
3. The vehicle will be housed in an area that is protected from the public and where its security can be assured.
4. Prior to storing the vehicle, the seizing agency will photograph the vehicle, place copies of those photos in the case file, and submit a copy to the forfeiture unit.
5. The seizing agency will take reasonable steps to maintain the condition of the vehicle.
6. In the event a claim is filed for the vehicle, the seizing agency will complete an investigation pursuant to Health and Safety Code section 11488.4(d) as to the ownership of the vehicle.
7. Upon forfeiture of the vehicle, the seizing agency will arrange for the vehicle to go to auction to be sold and act as the liaison between the auction yard and the Contra Costa District Attorney's Office.
8. When the vehicle is sold and a check is issued for the vehicle, the seizing agency will deliver that check to the forfeiture unit for distribution.

I. Policies Applicable to Real Property

Real Property can only be forfeited by judicial proceedings. A Petition must be filed before *a lis pendens* may be recorded or any action to remove the residents can occur. The following must be done in all cases:

1. The seizing agency must obtain an appraisal of the property. The appraisal must be current and, where possible, performed by a qualified appraiser.
2. The state of the title to the property and the knowledge of the owners must be included in any investigation of the feasibility of forfeiting real property.
3. There must be a determination of the equity owned by the party against whom forfeiture is sought.

J. Policies Applicable to “other things of value.”

1. The foundation for forfeiture of personal property other than cash is that it was purchased with the proceeds of drug transaction.
2. The Contra Costa County District Attorney’s Office will review the case to determine if sufficient evidence exists to initiate asset forfeiture proceedings against personal property. In making that determination the District Attorney’s Office will consider whether or not there is proof tracing the proceeds of a drug transaction to the property seized, whether or not there is proof of income by the claimant reflecting no ability to accumulate property without drug proceeds, as well as any other relevant evidence.