

Asset Forfeiture

606.1 PURPOSE AND SCOPE

Best Practice **MODIFIED**

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

606.1.1 DEFINITIONS

State **MODIFIED**

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 Indio Police Department seizes property for forfeiture or when the Indio 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 reviewer - The department member assigned by the Chief of Police who is 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 (Health 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. Money, 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.

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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, cash or assets that have been used in connection with or acquired by specified illegal activities.

Minimum Thresholds:

Currency: Generally, \$1,000+

Vehicles: Generally, \$10,000+ in value/equity (based on low Blue Book)

Facilitation Theory - requires minimum of 57 grams of substances containing Cocaine HCL or Meth 28.5 grams of Cocaine HCL or Meth 14.25 grams of a substance containing Heroin or Cocaine Base 10 pounds of Marijuana, Peyote, or Psilocybin. No weight requirements for “proceeds” or “exchange” theories.

Personal Property: Generally, \$1,000+ (value in current condition)

- (a) Do not seize anything that is alive or breathing.
- (b) Do not seize anything that is expensive to maintain or store like an airplane.

606.2 POLICY

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The Indio 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 Indio 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

State

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

606.3.1 PROPERTY SUBJECT TO SEIZURE

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

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- (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.

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 money standing alone is insufficient to establish the probable cause required to make a seizure.

606.3.2 PROPERTY NOT SUBJECT TO SEIZURE

State

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 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).

606.4 PROCESSING SEIZED PROPERTY FOR FORFEITURE PROCEEDINGS

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

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- (a) Complete applicable seizure forms 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.
- (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 two days of seizure.

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

606.4 (a) SEIZURE CASE DETECTIVE DUTIES

- (a) If the seizure involves assets worth less than \$25,000, completion and service of the "Notice of Seizure and Notice of Intended Forfeiture" and the blank "Claim Opposing Forfeiture" can be accomplished in the field. For purposes of proving due diligence, Notice should be provided to all potential claimants.
- (b) Obtain approval from a Deputy District Attorney for initiation of forfeiture after notifying the DDA of the pertinent facts of the seizure and how the assets are reasonably related to narcotic sales activity.
- (c) Fill out the "Notice of Seizure and Notice of Intended Forfeiture" and provide it along with a blank "Claim Opposing Forfeiture" form to the person from whom the assets were seized and to anyone else who reasonably may have a possessory interest in the assets.
- (d) If any interested party wishes to disclaim the seized assets, that person should be permitted to sign a Disclaimer of Ownership form in addition to being served with the notice and claim forms.
- (e) Provide a receipt for the seized assets in accordance with Penal Code section 1412.
- (f) Advise the person(s) the seizure is a civil matter and ask questions about the origin of the assets and any other financial information relevant to the source of the assets.
- (g) Thereafter, provide copies of the served notices with a proof of service along with the reports and Asset Seizure Packet to the District Attorney within 30 days of the seizure.
- (h) In order to successfully forfeit assets of less than **\$40,000** when a claim is filed, there must be a narcotic sales-related conviction (H&S §§ 11351, 11351.5, 11352, 11355,

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11359, 11360, 11366.8, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383, or PC 182 relating to these charges) or such a conviction within five years of the seizure.

606.4 (b) SPEEDY RESOLUTION OF THIRD-PARTY CLAIMS

1. It is the policy of the Indio Police Department to promptly resolve claims of innocent ownership, and where appropriate, expeditiously release seized property. In order to so, the following procedures will be followed:
2. Upon receipt of a third-party claim of ownership, the Investigative Services Lieutenant or their designee shall conduct an investigation to validate all claims. This will include interviews with the claimant, and a request for documentation, as well as a utilization of all other investigatory means available to determine the validity of the claim. In the event the claim is shown to be valid, and the third party is shown to be an "innocent owner", it is the policy of the Indio Police Department to return such property to the "innocent owner" as expeditiously as possible.
3. When releasing property, the releasing officer shall ask for documentation of ownership, as well as positive identification of the person to whom the property is released. The releasing officer shall have the receiving party sign a Indio Police Department property form prior to release. The releasing officer shall document the release in the case file and write a supplemental report,

606.4 (c) RECEIVING AND ACCOUNTING FOR FORFEITURE PROCEEDS

1. The proceeds of property seized by this agency and subsequently forfeited will be maintained in a separate account with the City Treasurer. The use of such funds will be accounted for in such a way as to allow audits by City of Indio.
2. The City Treasurer will maintain an account for funds delivered by the District Attorney as proceeds upon resolution of forfeitures filed in State Superior Court.
3. The City Treasurer will maintain a separate account for funds delivered by the United States Marshall's Service as proceeds upon resolution of forfeitures filed in Federal District Court.
4. The Investigative Services Lieutenant shall notify the Chief of Police or their designee of receipt of funds from the District Attorney's Office representing the successful conclusion of a forfeiture case. The Investigative Services Lieutenant will place a copy in the active forfeiture file in MCU / SCU, and close the file. The Investigative Services Lieutenant or his designee shall also notify the Chief of Police or their designee of the successful resolution and funds received in federal forfeitures for the same purpose.

606.4 (d) FEDERAL FORFEITURE PROCEDURES (SEIZURE ADOPTIONS)

- The decision to proceed with a forfeiture case in State Superior Court or to request federal adoption shall be made by the Investigative Services Lieutenant, or their designee. In making this decision, and in procedural performance in the event of a requested federal adoption, the following two manuals will be used as a policy guideline:

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- "Guide to Federal Adopted Forfeitures" (<https://www.justice.gov/jm/jm-9-116000-equitable-sharing-and-federal-adoption>) prepared by the United States Department of Justice.
- "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies" (<https://www.justice.gov/criminal-afmls/file/794696/download>) by the Executive Office for Asset Forfeiture, Office of the Attorney General, United States Department of Justice, Washington D.C.
- For federal asset forfeiture adoptions, the Investigative Services Lieutenant or their designee shall contact the DEA group supervisor at the Palm Springs Narcotic Task Force Group-1 (PSNTF) for their assistance and guidance.

606.4 (e) ASSET FORFEITURE CASE STATUS DETAIL

- The Investigative Services Lieutenant or their designee will maintain a detailed report of the fiscal status of all seizures. A copy of the detail status report will be forwarded to the Chief of Police whenever the status of any case changes. At the end of each fiscal year, the Investigative Services Lieutenant or their designee will provide the Chief of Police a summary of the Asset Forfeiture Case Status detail report and the activity of the Asset Forfeiture Trust accounts in the City Treasury.

606.5 MAINTAINING SEIZED PROPERTY

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The Property and Evidence Section 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.
- (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.

606.6 FORFEITURE REVIEWER

Best Practice **MODIFIED**

The Investigative Services Division Lieutenant or their designee will serve as the forfeiture reviewer. Prior to assuming duties, or as soon as practicable thereafter, the forfeiture reviewer should attend a department-approved course on asset forfeiture.

The responsibilities of the forfeiture reviewer 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.

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- (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 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).
 - 3. A space for the signature of the person from whom cash or property is being seized.
 - 4. A tear-off portion or copy, which 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 Department Directives. 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 (Health and Safety Code § 11488.4).
 - 4. Property is promptly released to those entitled to its return (Health and Safety Code § 11488.2).
 - 5. All changes to forfeiture status are forwarded to any supervisor who initiates a forfeiture case.
 - 6. Any cash received is deposited with the fiscal agent.

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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 that enables the Chief of Police to address any extended absence of the forfeiture reviewer, thereby ensuring that contact information for other law enforcement officers and attorneys who may assist in these matters is available.
 - (j) 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.
 - (k) 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).
 - (l) Providing copies of seized business records to the person or business from whom such records were seized, when requested (Heath and Safety Code §11471).
 - (m) 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).

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 (Health and Safety Code § 11495).

606.7 DISPOSITION OF FORFEITED PROPERTY

State **MODIFIED**

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).

606.7.1 RECEIVING EQUITABLE SHARES

State

When participating in a joint investigation with a federal agency, the Indio 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

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or willful failure to appear of the defendant. This does not apply to forfeited cash or negotiable instruments of \$40,000 or more.

606.8 CLAIM INVESTIGATIONS

State

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).