

## **DEPARTMENT GENERAL ORDER 99-54**

OFFICE of the CHIEF OF POLICE  
REPLACES: SOP 502.17.00

DATE: October 8, 1999

### **PROPERTY ACQUIRED BY CIVIL PROCESS**

#### **I. PURPOSE.**

To establish procedures in regard to the seizure of property via civil process. This shall include the initiation of seizure proceedings pertaining to a criminal suspect's property, the documentation required, coordination with the prosecutor's office, and the subsequent allocation/distribution of funds.

#### **II. DEFINITIONS.**

Asset Seizure - To take legal possession of property (bank accounts, cars, boats, furniture, aircraft, jewelry, etc.) owned by a person or business.

Civil Process - Writs, summonses, mandates, or other process issuing from a court of law to a cause of action of a civil nature.

Criminal Activity - The commission, attempted commission, conspiracy to commit, or the solicitation, coercion or intimidation of another person to commit any crime which is chargeable under certain Missouri statutes ( e.g. drug offenses, sexual offenses, offenses against the person, weapons offenses, stealing offenses, robbery offense, etc.).

### III. PROPERTY ACQUISITION

In accordance with RSMo 506.140, which states: “Service of process except as otherwise provided shall be made by a sheriff, or his deputy, or in case the sheriff in any cause is for any reason disqualified, the process may be issued and served by the coroner of the county in which such process is to be served; or for good cause shown, some other person, other than sheriff or coroner, may be specially appointed by the court for service of process in any cause, but such appointment shall be valid for service of the process for which such person was specially appointed,” the Police Department will not serve civil process documents which result in the acquisition of private property. In such instances, officers may be sent to assist sheriff’s deputies or others authorized to seize real or personal property as sanctioned by civil process documents; however, the officer’s responsibility shall be limited to keeping the peace and ensuring the safety of those involved.

Should an occasion arise where the department would become a benefactor or caretaker of such a property seizure, said property shall, upon receipt, be handled in conformance with the procedural guidelines established in the general orders covering Evidence and Property Collection and Administration..

#### A. Asset Seizure/Forfeiture Procedures (State of Missouri)

In accordance with the Criminal Activity Forfeiture Act, RSMo 513.600 - 513.645, all property of every kind used or intended for use in the course of, derived from, or realized through criminal activity is subject to civil forfeiture. As such, a law enforcement officer, incident to a lawful arrest, search, or inspection, may seize property where there is probable cause to believe the property is subject to forfeiture and will be lost or destroyed if not seized. A law enforcement officer who believes property is subject to forfeiture, but it is not reasonable to believe that the property will be lost or destroyed if not immediately seized, shall contact the prosecuting attorney or attorney general for a writ of seizure.

Officers who seize property under the authority of the above statutes shall complete a “Notice of Seizure” form (Refer attachment) and, accompanied by a copy of the police incident report, immediately forward the documents to the Criminal Investigations Division. There, the detective assigned to handle seizures will direct such cases to the St. Louis County Prosecuting Attorney’s Office within three (3) days of the seizure of any property or cash. It should also be noted that by statute, both Saturday and Sunday, are to be included in calculating the three day period.

If the person from whom the property was seized indicates a desire to redeem the property, this fact should be noted on the forfeiture form. However, while officers may make a suggestion as to the amount recommended for a settlement, officers shall not make any representation to a defendant concerning a possible settlement. The prosecuting attorney's office shall have sole authority to make the final determination of a settlement amount, if any.

In the event an innocent person may have a partial interest in forfeited property, their rights will be preserved.

The prosecuting attorney's office will not communicate directly with a defendant. The officer handling the forfeiture case should inform the defendant that they will receive a copy of the forfeiture petition after it has been filed with the court. Should the individual be represented by an attorney, the name and phone number of the legal council should also be noted on the "Notice of Seizure" form.

Within five (5) days from the receipt of notice, the prosecutor's office will determine if a Petition of Forfeiture is to be filed. If so, an assistant prosecuting attorney will file the petition and notify the appropriate police department of the fact. If a petition is not filed, or if certain property seized is not included in the petition, the prosecuting attorney's office will immediately notify the department. Any property included in a Petition for forfeiture should be returned to the individual from whom it was seized as soon as possible.

The attorney responsible for each petition will bring the matter to a conclusion as soon as possible. If an out of court settlement is reached, the attorney handling the case will prepare the necessary settlement documents and oversee their proper execution. Some settlements may require further action by the seizing officer. In such an event, the prosecuting attorney will provide instructions on a case by case basis.

If the case proceeds to trial and results in an Order of Forfeiture, the responsible attorney will prepare all necessary documents and provide further instruction to the seizing officer. Generally, the court will order the sale of the property. In drug case, the seizing department will typically conduct the sale and turn the proceeds over to the prosecuting attorney. In CAFA cases, the court will usually order a judicial sale to be conducted by the St. Louis County Sheriff. The court as an alternative may also order the destruction of illegal contraband, or direct that the property in question be retained for official use by any state agency or subdivision.

The prosecuting attorney's office will prepare an accounting of each such sale, and submit same to the court. Once same is approved, expenses may be deducted, at which time the clear proceeds will be disbursed to the county treasurer for distribution to the school districts.

Once a case has been resolved, the initiating law enforcement agency will receive a closing letter from the prosecuting attorney's office. Settlement documents and accounting will be filed with the court. Expenses involving filing fees, service charges, publication costs, etc. are the responsibility of the Police Department.

1). Authority

The St. Louis County Prosecuting Attorney or the attorney general have sole authority to make all decisions concerning forfeiture, settlement and compromise, once they have been informed of a seizure. Neither municipal prosecutors, nor other municipal officials have the legal authority to release property once the county prosecuting attorney has decided to proceed to forfeit.

2). Time Limitations

Civil forfeiture may be made within five (5) years of the criminal activity.

3). Dismissal of Forfeiture Action

Upon acquittal or dismissal of a criminal action against a person also named in a CAFA action, the civil action shall be dismissed.

B. Asset Seizure/Forfeiture Procedures (United States)

In the event narcotics incidents and properties meet the requirements for federal seizure, this agency may direct such cases to the Drug Enforcement Agency's Asset Removal Group. Upon their review, should the federal agency elect to adopt the case, it shall assume responsibility for the subsequent prosecution of same and any concurrent civil forfeiture proceedings.

IV. ASSET SEIZURE/FORFEITURE FUNCTION.

In accordance with a recommendation by the St. Louis County Prosecuting Attorney's Office, the Criminal Investigations Division shall designate a detective who shall be responsible to manage all forfeiture cases. This shall include coordinating such activities with the prosecuting attorney's office, maintaining proper documentation in the form of reports and files, and ensuring that such matters are handled in a timely fashion. \_

BY ORDER OF:

RICHARD T. MORRIS  
Chief of Police

RTM:dld

CALEA Reference: 74.4.1