

**MARIN COUNTY SHERIFF'S DEPARTMENT
POLICY AND PROCEDURE MANUAL**

**CHAPTER – INVESTIGATIONS
PAT-04-01
Page 1 of 5**

**DATE
10/15/97
Rev. August 1, 1996**

ASSET SEIZURE AND FORFEITURE POLICY

POLICY

It shall be the policy of the Marin County Sheriff's Department to adhere to all state and federal laws and/or legislative mandates requiring law enforcement to maintain a policy detailing the statutory guidelines for asset forfeiture cases that originate within the jurisdiction of the Sheriff of the County of Marin.

GENERAL OVERVIEW

California Health and Safety Code section 11470 provides that certain kinds of property may be forfeited under specified circumstances. These instances differ for each type of property but, in general, property may be subject to forfeiture if it is used to facilitate drug trafficking or it is the proceeds traceable to drug trafficking.

1. "Facilitation" means anything done to make drug trafficking easier, while "proceeds" refers to property acquired directly in drug transactions or that can be traced back to drug transactions.
2. The most important requirement for forfeiture is that someone must be convicted in an underlying or related criminal action of a California drug-trafficking offense.
 - a. The seizure of cash amounting to less than \$25,000.00 requires that prior to actual forfeiture, someone must be convicted in an underlying or related criminal action of a California Narcotics Trafficking Offense.
 - b. The only exception to the criminal conviction requirement is where cash of \$25,000 or more is seized. In such cases, there is no required conviction. The burden of proof is lowered to a much less standard.
3. Property Subject to Forfeiture
 - a. **11470(a) Controlled Substances**

This includes all controlled substances that have been illegally manufactured, distributed, disbursed, or acquired in violation of Division 10, sections 11000 through 11683 of the Health and Safety Code.
 - b. **11470(b) Raw Materials and Equipment**

This includes all raw materials, products, and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance.
4. **11470(c) Containers**

All property, except real property or a boat, airplane, or any vehicle that is used, or intended for use as a container for controlled substances, raw material or equipment.
5. **11470(d) Records and Research Products**

All books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used, or intended for use, in violation of the Health and Safety Code. NOTE: Computers are no longer included within this statutory definition.
6. **11470(e) Conveyances (Automobiles, Boats, and Airplanes)**

Used as an instrument to facilitate possession for sale or sale. Vehicles, boats and airplanes are also subject to forfeiture if they can be traced back to an exchange for a controlled substance. Minimum quantities for seizing these conveyances are as follows:

- a. 14.25 grams (½ ounce) or more of heroin or cocaine base;
- b. 14.25 grams (½ ounce) or more of a substance containing heroin or cocaine base;
- c. 28.5 grams (1 ounce) or more of a Schedule I substance, except marijuana, peyote and psilocybin;
- d. Ten pounds of dry weight or more of marijuana, peyote or psilocybin;
- e. 28.5 grams (1 ounce) or more of cocaine or methamphetamine;
- f. 57 grams (2 ounces) or more of a substance containing cocaine or methamphetamine;
- g. 28.5 grams (1 ounce or more of a Schedule II controlled substance.

7. **11470(f) Money and Other Things of Value (Not Real Property)**

- a. Cash proceeds, negotiable instruments and securities need to be traceable to an exchange. If they are commingled, then illegal funds must be traced.
- b. Facilitation, used or intended to be used to facilitate one of the target violations.

8. **11470(g) Real Property**

- a. The real property of any property owner who is convicted of violating Health and Safety Code sections 11366, 11365.5, or 11366.6.
- b. Real property, that is used as a family residence or for other lawful purposes, or that is owned by two or more persons, one of whom had no knowledge of its unlawful use, shall not be subject to forfeiture.

PROCEDURES AT SEIZURE

1. Personnel seizing property will issue a receipt to those person(s) from whom the property is taken, utilizing Marin County Sheriff's Department's Evidence/Property form. Property seized will be accurately inventoried and have a Sheriff's case number assigned. When property is initially seized at the patrol level, Sheriff's personnel shall also include a disclaimer form when the person(s) denies ownership of the property. In addition, the seizing deputy must include a statement of facts. This statement shall include the following:
 2. The same Sheriff's Department case number associated with the initial seizure incident.
 3. Statement of facts shall be documented on the Marin County Sheriff's Department's Supplemental Crime Report.
 4. The statement of facts must include and detail your articulable facts and knowledge that leads you to believe that the items and property seized are believed to be derived from the proceeds or facilitation of narcotics trafficking. Articulable facts can include and are not limited to defendant's prior criminal and employment history, informant and citizen information, amount and denomination of monies, and other articulable facts related to the seizure incident.
 5. The statement of facts should not be incorporated with the original crime report, but should be forwarded separately to Investigations Division.
 6. If the property is not taken from the personal possession of any person or the person who had possession disclaims ownership, the receipt should be given to the person in possession of the premises from which the property was seized. If the person in possession is not present when the seizure is made, the receipt must be left in a prominent place at the premises.
 7. The Sheriff's Department must decide whether to proceed with forfeiture proceedings within 15 days of the initial seizure. The assigned Investigations Detective must review the forfeiture case for preparation and submission to the District Attorney's Office for forfeiture proceedings within this time period.
 8. The assigned Investigations Detective, in preparing the forfeiture report, will ensure that the following is completed:

Asset Forfeiture Referral Form

1. Asset Forfeiture Information Sheet
2. Receipt of Fund Deposit
3. Receipt for Seizure of Property
4. Statement of Facts
5. Crime Report.
 - a. The Investigations Detective will then forward the packet to the District Attorney's Office for initiation of forfeiture proceedings.
 - (1) Cash monies associated with the forfeiture case shall be deposited within the District Attorney's Asset Forfeiture Fund.
 - (2) Associated and related evidence/property seized is to be retained by the Sheriff's Department. The Marin County Sheriff's Department is responsible for all assets seized.
 - (3) Assets, such as conveyances, shall be properly stored and maintained and not used by the department. Real property will be professionally appraised and managed by a responsible tenant. Cash, negotiable

assets and property of value will be properly accounted for, safeguarded and deposited.

6. Upon review of the forfeiture case, the Investigations Detective will notify the Franchise Tax Board when there is reasonable cause to believe that the property seized has a value exceeding \$5,000. This notification will be made by telephone and noted on the property sheet.

DISPOSITION AND RELEASE OF PROPERTY

1. When the determination is made to return seized property, Sheriff's personnel shall require proof of ownership before releasing property. The person accepting the property is required to sign an indemnity form agreeing to hold the Marin County Sheriff's Department harmless from any claims arising from the initial seizure or release. Those individuals refusing to sign the indemnity will not have the property released to them pending legal review by County Counsel.
2. Property may be held beyond 15 days by the Sheriff's Department if it is being held as evidence or some other legal reason.
3. After forfeiture proceedings are initiated by the District Attorney's Office, the Sheriff's Department will be routed the Notice of Forfeiture Proceedings. This notice, along with the following supporting documents, will be served as soon as practical on the responding party from whom the items were seized, or whomever claims ownership.

Notice of Forfeiture

1. Letter of Instruction
2. Superior Court Claim Form
3. Proof of Service
4. Once the Notice of Forfeiture is served on the responding party, the proof of service shall be routed to the Investigations Division. The Investigations Division will then route the proof of service to the District Attorney's Office.

SHERIFF'S DEPARTMENT'S ACCOUNTING

1. Monies received from the District Attorney's Office at the conclusion of the forfeiture proceedings will be submitted to the Marin County Sheriff's Department Fiscal Officer and deposited in the appropriate interest bearing account maintained in the Auditor's Office.
2. The asset forfeiture monies, predicated on their source of origin, are then deposited in one of the following Sheriff's Department's interest bearing accounts.
3. Sheriff's Asset Forfeiture Federal Account #887
4. Sheriff's Asset Forfeiture State Account #896
5. Sheriff's Asset Forfeiture Coordination of Probation Enforcement Account #958.
6. Sheriff's Asset Forfeiture State Programs Account #96M

RELATED STANDARDS:

AFFECTED DIVISIONS:

DATE OF REVISIONS: