

Asset Forfeiture

602.1 PURPOSE AND SCOPE

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

602.1.1 DEFINITIONS

Definitions related to this policy include:

Fiscal agent - The Criminal Investigation Director be responsible for securing and maintaining seized assets and distributing any proceeds realized from any forfeiture proceedings. This includes any time the Montgomery County Sheriff's Office seizes property for forfeiture or when the Montgomery County Sheriff's Office 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 Deputy, assigned by the Sheriff, who is responsible for reviewing all forfeiture cases and acting as the liaison between the Office and other governmental agencies and appropriate courts.

Property subject to forfeiture - Includes the items subject to forfeiture as identified by statute which may include property, cash or assets.

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.

602.2 POLICY

The Montgomery County Sheriff's Office 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 forfeited assets shall not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations or any person's due process rights.

It is the policy of the Montgomery County Sheriff's Office that all Deputies, including those assigned to internal or external law enforcement task force operations, shall comply with all state and federal laws pertaining to forfeitures.

602.3 ASSET SEIZURE

The following property may be seized for forfeiture as provided in this policy:

602.3.1 PROPERTY SUBJECT TO SEIZURE

When applicable, property subject to forfeiture may be seized by any law enforcement officer upon process issued by any district or superior court having jurisdiction over the property, or when the seizure is incident to an arrest or a search under a search warrant, or when the property subject

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to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding.

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

- (a) Controlled substances, money, raw material, products, equipment, property used as a container and all conveyances related to illegal substances.
- (b) All conveyances used to unlawfully conceal, convey or transport property in violation of specified theft crimes which allow a seizure.
- (c) A motor vehicle driven by an impaired driver if the driver is a habitual violator.
- (d) A motor vehicle involved with a felony speeding to elude charge.
- (e) A motor vehicle involved with a pre-arranged speed competition charge.
- (f) All conveyances, containers, equipment or ingredients used in certain violation of Alcoholic Beverage Control (ABC) laws.
- (g) All personal property, including money and other considerations that are a nuisance.
- (h) All property of every kind used in Racketeer Influenced and Corrupt Organizations Act (RICO) violations.

Whenever practicable, obtaining 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 of the money.

602.4 PROCESSING SEIZED PROPERTY FOR FORFEITURE PROCEEDINGS

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

- (a) Complete the 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 deputy 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.

Except for motor vehicles, the deputy will book seized property as evidence with the notation in the comment section of the property form, "Seized Subject to Forfeiture."

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Photographs should be taken of items seized, particularly cash, jewelry and other valuable items, and placed with the related report.

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

602.5 MAINTAINING SEIZED PROPERTY

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 whether 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.
- (e) Forfeitable property is retained until such time as its use as evidence is no longer required.

602.6 FORFEITURE REVIEWER

The Sheriff may appoint a forfeiture reviewer. Prior to assuming duties, or as soon as practicable thereafter, the forfeiture reviewer should attend a course approved by the Office on asset forfeiture.

The responsibilities of the forfeiture reviewer include:

- (a) Remaining familiar with forfeiture laws and forfeiture policies.
- (b) Serving as the liaison between the Office and other governmental agencies, courts and legal counsel ensuring.
- (c) Reviewing each seizure-related case and deciding whether the seizure is more appropriately made under state or federal seizure laws. The forfeiture reviewer should contact federal authorities when appropriate.
- (d) Ensuring that responsibilities, including the designation of a fiscal agent, are clearly established whenever multiple agencies are cooperating in a forfeiture case.
- (e) Ensuring that seizure forms are available and appropriate for office use. These should include notice forms, a receipt form and a checklist that provides relevant guidance to deputies. The forms should be available in languages appropriate for the region and should contain spaces for:

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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.
- (f) Ensuring that deputies who may be involved in asset forfeiture understand laws regarding the process of seizure of money and property under both State and Federal guidelines.
- (g) 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 by agency forfeiture counsel or other legal counsel 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.
 4. Property is promptly released to those entitled to its return.
 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 with the County of Montgomery.
 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 deputies.
 9. This policy and any related policies are periodically reviewed and updated to reflect current federal and state statutes and case law.
- (h) Ensuring that a written plan is available that enables the Sheriff to address any extended absence of the forfeiture reviewer, thereby ensuring that contact information for other law enforcement personnel and attorneys who may assist in these matters is available.
- (i) Ensuring that the Office disposes of property as provided by law following any forfeiture.
- (j) Ensuring that the process of selling or adding forfeited property to office inventory is in accordance with all applicable laws and consistent with the use and disposition of similar property.

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- (k) Upon completion of any forfeiture process, ensuring that no property is retained by the Montgomery County Sheriff's Office unless the Sheriff authorizes in writing the retention of the property for official use.

Forfeiture proceeds should be maintained in a separate fund or account subject to appropriate accounting control in compliance with the Local Government Finance Act, 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 county financial directives.

602.7 DISPOSITION OF FORFEITED PROPERTY

No member of this office may use property that has been seized for forfeiture until the forfeiture action has been completed and the Sheriff has given written authorization to retain the property for official use.