

POLICY 105.4	CONTROL AND USE OF CONFISCATED AND FORFEITED PROPERTY	
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Table of Contents

A. POLICY STATEMENT1
B. POLICY1
C. PROCEDURES.....2
D. FORFEITED PROPERTY.....4
E. CARE AND MAINTENANCE OF CONFISCATED AND FORFEITED
PROPERTY4
F. ADDITIONAL POLICIES4
G. TRAINING PROCEDURES7
H. MANAGEMENT AND SUPERVISORY PERSONNEL7
I. ANNUAL REPORTING8
J. FEDERAL EQUITABLE SHARING PROGRAM.....8
K. RETAINING EQUITABLE SHARED ASSET PAPERWORK9

A. POLICY STATEMENT

The Police Department's policy on control and use of vehicles, aircraft, vessels, currency and other properties that are confiscated or forfeited is separate from other Departmental use of such type property. In addition to the policies stated herein, the Police Department specifically incorporates by reference:

1. The Forfeiture Guidelines defined in the Florida Contraband Forfeiture Act, §§ 932.701 – 932.7062, Florida Statutes.
2. A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies (United States Department of Justice) (2009, including the 2011 Interim policy guidance regarding the use of equitable sharing).
3. The Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies (Department of the Treasury) (2004, including the November 1, 2015 Interim policy guidance).

B. POLICY

The Florida Contraband Forfeiture Act [“FCFA”] was enacted for the purpose of deterring and preventing the continued use of contraband articles for criminal purposes while protecting the proprietary interests of innocent owners and lien-holders. Additionally, the FCFA authorizes law enforcement agencies to use the proceeds collected under the Act as supplemental funding for specified authorized purposes. The potential for obtaining revenues from these forfeitures must not influence the fundamental considerations for instituting a seizure, such as public safety, the safety of

law enforcement officers or the investigation and prosecution of criminal activity. The employment, salary, promotion or other compensation of a law enforcement officer or attorney may not be dependent on obtaining a quota of seizures. It is the policy of this state that law enforcement agencies ensure that, in all seizures made under the Act, their officers adhere to federal and state constitutional limitations regarding an individual's right to be free from unreasonable searches and seizures. This includes, but is not limited to, the use of illegal stops, coercive consent searches or a search based solely upon an individual's race, ethnicity, or national origin.

The Act provides procedural safeguards for those claiming or having an interest in the seized property, including bona fide lien-holders, lessors and innocent owners and co-owners. The Act complements the other options available to Florida law enforcement agencies in addressing criminal activity and is a valuable tool to be used by Florida law enforcement agencies to assist their law enforcement mission. The Act is to be wisely used as a valuable weapon in Florida's law enforcement arsenal.

C. PROCEDURES

1. SEIZURE OF PROPERTY UNDER THE FCFA

This includes vehicles, vessels, miscellaneous equipment, currency, derived assets, substituted assets, real property, and personal property (as defined by the Florida Contraband Forfeiture Act), which are currently in or are being evaluated for forfeiture litigation. All seizures shall be based upon probable cause as required by law.

- a. A seizure under the FCFA may occur only if the owner of the property to be seized is arrested for a criminal offense that forms the basis for determining that the property is a proceed or an instrumentality of criminal activity (“contraband article”).
- b. However, the property owners need not be arrested to facilitate a seizure under the Act if one of the following exists:
 - (1). The owner of the property cannot be identified after a diligent search or the person in possession of the property denies ownership and the owner of the property cannot be identified by means available to the seizing officer at the time of the seizure, which must be documented in an offense report;
 - (2). The owner of the property is a fugitive from justice or deceased;
 - (3). An individual who is not the owner is arrested for a criminal offense that forms the basis for determining that the property is a contraband article and the owner of the property had actual knowledge of the criminal activity, which must be documented in an offense report;
 - (4). The owner of the property agrees to be a confidential informant (“CI”). However, the Department must return the property to the owner if criminal charges are not filed against the owner or the owner ceases to cooperate as a CI, unless the final forfeiture of the

property was included as a component of the CI agreement entered into between the owner and the Department.

Department members may not use the threat of the property seizure or forfeiture to coerce the property owner to enter into a CI agreement.

- (5). The property to be seized is a monetary instrument, i.e. currency, bank note, cashier check, or personal checks, negotiable instruments, stored value card(s) or other device that is the equivalent of money.
- c. Prior to property being seized for forfeiture, the seizing officer must have the probable cause supporting the seizure reviewed by a supervisor (sergeant or higher), who is not directly involved in making the seizure. Following the seizure, the Police Department's legal counsel must be notified of the seizure as soon as possible.
 - d. Upon seizure of the property by the Police Department, the Legal Advisor shall evaluate the case to determine if the initiation of a forfeiture action is supported by sufficient probable cause and meets the stated purpose of the Act.
 - (1). If the Legal Advisor determines that there is sufficient probable cause to initiate a forfeiture action, the Legal Advisor shall, within 10 business days from the date of seizure, apply to the court for an ex parte probable cause determination.
 - (2). If a court determines that probable cause does not exist for the seizure, the property shall be returned within 5 days from the date of the order finding no probable cause. The Legal Unit shall facilitate the return of the property.
 - (3). If the Department's Legal Advisor determines that a forfeiture action should be filed, the Legal Advisor shall present his or her recommendation, in writing, to the Chief of Police or designee. The Chief of Police or designee shall have the sole responsibility and authority to determine if a forfeiture action should be filed.
 - (4). The Police Department may not use the seized property for any purpose until the rights to, interest in and title to the seized property are perfected in accordance with the Act. This does not prohibit the use or operation necessary for reasonable maintenance and care of seized property. Reasonable efforts shall be made to maintain seized property in such a manner as to minimize loss of value.
 - (5). After property is seized pursuant to the Act, any settlement shall be personally approved by the Chief of Police. All settlements shall be consistent with the mandates of the Act
 - (6). If the Chief of Police is unavailable to approve a settlement his or her designee may give such approval, if the delay in obtaining the Chief's approval would adversely affect the settlement.

- (7). If the City does not file a forfeiture action, then all confiscated property shall be promptly returned to the owner or his/her agent or a valid lienholder. All costs incurred as a result of the seizure shall be borne by the Department, unless the reimbursement of the Department's cost of seizure are agreed to, in writing, by the property owner or his/her agency or lienholder.

To help assure that property is not wrongfully held after seizure, all asserted claims of interest in seized property are to be promptly reviewed by the Police Legal Advisor for potential validity.

D. FORFEITED PROPERTY

This includes vehicles, vessels, aircraft, miscellaneous equipment, currency, derived assets, substituted assets, real property, and other personal property (as defined by the Act), which, through court order or negotiation, have become titled in the City.

1. Currency must be used for law enforcement purposes for use as required by law with approval from the Office of the Chief and the City Commission. The Police Department shall not anticipate future forfeitures or proceeds therefrom in recommending fiscal budgets for said department.
2. Vehicles, aircraft, vessels and other equipment suitable for law enforcement purposes may be used with approval of the Office of the Chief.

Vehicles no longer in use will be turned over to the City Fleet division for disposal at auction. Proceeds will be deposited in the appropriate Law Enforcement Trust Fund.
3. All forfeited property retained for law enforcement use shall be maintained and utilized in accordance with the Act. Such property shall be subject to the same controls with regard to property acquired through the department's normal appropriations process.

E. CARE AND MAINTENANCE OF CONFISCATED AND FORFEITED PROPERTY

1. The Police Department's Fleet Coordinator will monitor the cost of repair and condition of those vehicles in use that have been forfeited. All other forfeited property will be under the control and supervision of the Support Services Bureau.
2. The care and maintenance of vehicles and all other property that have been confiscated and pending litigation are the responsibility of the Legal Unit and the Police Forfeiture Coordinator.

F. ADDITIONAL POLICIES

The following policies will apply to the seizure of any vehicle, vessel, aircraft, currency, weapons, jewelry or other personal property confiscated under the authority of Florida Contraband Forfeiture Act. Aircraft - The Police Forfeiture Coordinator or designee shall

be called out immediately. The Police Forfeiture Coordinator or designee will respond and take charge of the Aircraft and all contents except evidence. The Legal Unit will arrange for proper storage, maintenance and insurance.

1. Currency - All monies shall be placed in Evidence following established police department policies. The officer placing the monies in Evidence shall contact the Police Forfeiture Coordinator on the next working day. The Legal Unit shall arrange to have the money promptly counted, documented and deposited into the appropriate interest bearing Law Enforcement Trust Fund, as required by law.
 - a. If the amount of currency seized is \$2500.00 or less, the Evidence Section shall be responsible for review and final disposition of the currency. However, a seizure of less than \$2500.00 may be made, if approved by a sergeant or higher ranking supervisor.
 - b. If the amount of currency seized is over \$2500.00, the Legal Unit shall review and be responsible for final disposition of the currency.
2. Miscellaneous Property - All property including jewelry, furniture, tools, electronics, etc., shall be placed in Evidence and marked "Hold for Confiscation". In a case where items may be too large or numerous, where storage in Evidence is not practical, the Police Forfeiture Coordinator will be notified and he will make the necessary arrangements for proper storage, maintenance and insurance.
3. Real Property - Because of the uniqueness and special statutory requirements and caretaking needs of real property, contemplation of seizure of such property shall require approval of the Office of the Chief and consultation with the Legal Unit. The following additional factors shall be considered prior to any seizure of real property.

Pre-seizure planning:

- a. Cost of maintenance (i.e., insurance, electric, phone, pool, lawn, mortgage payments, security, etc.)
 - b. Feasibility of occupancy agreements.
 - c. Impact of seizure on persons other than those with a legal interest (wife, children, ailing family members, renters, etc.)
 - d. Impact of seizure on the public health, safety and welfare.
 - e. Impact of any deed restrictions.
 - f. Impact of seizure on targets of a criminal investigation.
 - g. The availability of alternative methods of forfeiture such as joint or adaptive forfeiture with a federal agency.
4. Substituted or Derived Assets - Because of the uniqueness, special needs and legal complexities of said properties, any contemplation of seizure of such properties shall require consultation with the Legal Unit.
 5. Vehicles - Any vehicle, if used in violation of the Act, shall be seized regardless of value, lien, or lease and towed to the Police confiscation parking lot located in the rear of the Police Headquarters Facility.

- a. The officer seizing the vehicle shall make every effort to have an on-duty narcotics dog (K9) check the vehicle for drugs at the time of its seizure. If a narcotic K9 is not available, the seizing officer shall notify the Legal Unit.
- b. The officer seizing the vehicle shall make every effort to secure the vehicle from inclement weather and wildlife after completing the necessary tasks for seized vehicles. If vehicle openings (windows, doors, trunk, hood, convertible top, etc.) are broken or inoperable, tarps and/or a vehicle cover shall be obtained from Police Supply for this purpose.
- c. If the vehicle was not checked by a narcotics K-9 at the time of seizure, the Police Forfeiture Coordinator shall coordinate with the on-duty narcotics dog handler to have the vehicle searched in the police compound as soon as possible.

The Police Forfeiture Coordinator shall document on the Vehicle Evaluation Form the date and time the confiscated vehicle was searched. The K-9 handler CCN and name shall also be documented.

- d. The officer seizing the vehicle shall complete a confiscation tow tag and attach it to the vehicle's keys on scene and prior to transferring possession of the keys to the tow truck company for towing.
 - e. Upon towing the vehicle to the FLPD confiscation lot, the tow truck driver will deliver the keys to Police Supply for the Forfeiture Coordinator.
 - f. The vehicle will be locked after being parked. If no vehicle keys are available, the vehicle shall remain unlocked and the Police Forfeiture Coordinator shall be responsible for securing the vehicle. Valuable property and evidence will be removed, inventoried and placed in Evidence, by the seizing officer.
 - g. The officer seizing the vehicle shall notify the Legal Advisor and Forfeiture Coordinator via email to PDForfeiture@fortlauderdale.gov. The vehicle's description (year, make, model & color) and the case number shall be included in the email. This shall be done prior to the end of the officer's shift.
 - h. All documents relating to ownership status of the vehicle shall be given to Police Supply. The Legal Unit will determine the status of lienholders, innocent owners, etc., arrange for the release of the vehicle, when deemed necessary, or file a complaint for forfeiture, after obtaining approval from the Chief of Police, or his/her designee. The Legal Unit will inventory and arrange for the prompt return of personal property not related to the seizure when forfeiture procedures are initiated. The Legal Unit will arrange for proper storage and maintenance of all seized property.
6. Vessels - Seized vessels will be secured at the Police Marine Unit docks when possible and the Police Forfeiture Coordinator or designee shall be called out immediately. The Police Forfeiture Coordinator or designee will respond and take charge of the vessel and all contents except evidence. The Legal Unit will arrange for proper storage, maintenance and insurance.

7. Weapons - Seized weapons will be placed in Evidence following established police department policies and a hold for the Legal Unit shall be noted on the Evidence report.
8. Release of Property - Confiscated funds or property that is maintained in Evidence shall only be released/returned to the owner or the owner's agent. The owner or agent must sign the Evidence/Property Form prior to release of said confiscated funds or property.
9. Law Enforcement Trust Fund - The Fort Lauderdale Police Department shall maintain its forfeiture proceeds and accrued interest thereon in a Law Enforcement Trust Fund as required by law. Such fund shall be subject to normal accounting controls and financial audits of all deposits and expenditures. The proceeds and interest thereon may not be used to meet normal operating expenses of the law enforcement agency. The department shall file financial reports as required by the Act.
10. Periodic Review - The Fort Lauderdale Police Department shall, at least annually, review seizures of property, as well as settlements and forfeiture proceedings initiated by the department to determine whether such seizures, settlements and forfeitures comply with the Act and Departmental policy. If the review suggests deficiencies, the department shall promptly move to ensure compliance with the Act and Department policy.

The Fort Lauderdale Police Department shall avoid the appearance of impropriety in the acquisition, sale, retention or transfer of any forfeited property or proceeds derived from such property.

G. TRAINING PROCEDURES

The department shall provide training and continuing education to all officers involved in the seizure of property under the Florida Contraband Forfeiture Act. Training will address legal aspects of forfeiture, including search and seizure, or other constitutional considerations. The department shall maintain records demonstrating an officer's compliance with these training requirements.

H. MANAGEMENT AND SUPERVISORY PERSONNEL

1. Management will ensure that provisions of this policy are strictly adhered to. All personnel will consult with a supervisor or the Legal Unit if any problems arise with the seizure or anticipated seizure of any property.
2. Offense Reports and Other Necessary Documents - All required documentation and offense reports shall be completed and thereafter forwarded to the Legal Unit, within three (3) days from the date of the seizure. All items that were seized shall be clearly identified in these reports, including, but not limited to, whether the seized property owner was arrested or an exception to the arrest requirement, as described in Section C.1.b. of this policy, exists. All required affidavits, statements and other necessary documents will be completed by the date requested. Failure to return these items may result in the return of the seized property to its rightful owner or dismissal of the forfeiture action

I. ANNUAL REPORTING

The Fort Lauderdale Police Department shall submit an annual report to the Florida Department of Law Enforcement indicating whether the agency has seized or forfeited property and/or expended forfeited property or proceeds from the sale of forfeited property pursuant to the FCFA. The report documenting the receipts and expenditures shall be submitted to FDLE by October 10 of each year, on the forms promulgated by FDLE.

J. FEDERAL EQUITABLE SHARING PROGRAM

1. The Fort Lauderdale Police Department participates in joint criminal investigations with various federal law enforcement agencies that result in the seizing of assets for federally initiated forfeiture cases. The seizing of such assets may (at the discretion of the United States) result in the sharing with the Fort Lauderdale Police Department of either currency or other types of property if the federal forfeiture is successfully litigated.
2. The internal procedures for control and tracking of federally shared asset forfeiture cases are as follows:
 - a. Submitting a Request for Shared Funds
 1. No later than 45 days from the seizure, the seizing detective shall create the electronic DAG-71 form in the Department of Justice's Asset Forfeiture Program Equitable Sharing software (eShare Portal).
 2. Upon completing the DAG-71, the seizing detective shall notify, via email, the Police Business Manager and the Support Services Assistant Police Chief of the submission of the DAG-71.
 3. The Police Business Manager or designee shall review the submitted DAG-71 to ensure that the form has been properly completed.
 4. The Police Business Manager or designee shall print a copy of the DAG-71 and forward same to the following persons for approval of submission of the DAG-71: Investigations Bureau Chief or designee, Police Legal Advisor, and Chief of Police or designee.
 5. Upon receiving approval for submission from the proper personnel, the Police Business Manager or designee shall electronically submit the DAG-71 via the eShare Portal.
 - b. Receiving Funds

Upon receiving the shared funds, the Police Business Manager or designee shall ensure that the monies are transferred into the proper Law Enforcement Trust Fund account.
 - c. Tracking Procedures

The Police Business Manager or designee shall track all requests for shared federal funds through the eShare Portal.

d. Internal Controls For Required Financial Reporting

At the conclusion of each fiscal year, all shared receipts of forfeited monies and inventory of forfeited property shall be given to the Police Business Manager or designee. The Police Business Manager or designee shall process and deliver the required Federal Annual Certification Report to the Department of Justice or the Department of Treasury as appropriate.

K. RETAINING EQUITABLE SHARED ASSET PAPERWORK

FLPD follows the General Records Schedule GS1-SL for State and Local Government Agencies records retention; Section 218.32, Florida Statutes, as well as, reports including revenue and expenditure data will be retained for ten (10) fiscal years provided applicable audits have been released; in addition, the use of shared cash, proceeds, real property, or tangible personal property, including but not limited to Forms DAG-71, Equitable Sharing Agreement and Certification forms, accounting and bookkeeping documents, logs and records, bank records and statements, and audit reports shall be retained for not less than five (5) years. The first three (3) years are retained in PDF.