

As the department transitions policies and procedures from SharePoint to Lexipol KMS, Policy Numbers may change. Policy 500 Asset Forfeiture is now Policy 530 Asset Forfeiture.

Asset Forfeiture

500.1 PURPOSE AND SCOPE

This policy describes the authority for the seizure, forfeiture and liquidation of property associated with designated offenses, and for the seizure of property and the initiation of forfeiture proceedings under Federal Law (21 USC 881) and San Diego County Administration Code (Section 66.4).

500.1.1 DEFINITIONS

Definitions related to this policy include:

Fiscal agent - The person designated by the Chief Probation Officer to be responsible for securing and maintaining post seizure assets and distributing any proceeds realized from any forfeiture proceedings. This includes any time the San Diego County Probation Department receives any forfeited property, or when the San Diego County Probation Department is acting as the fiscal agent pursuant to a multi-agency agreement. The Fiscal Agent is responsible for keeping complete and accurate accounting records in compliance with State and Federal Asset Forfeiture laws.

Forfeiture - The process by which legal ownership of an asset is transferred to a government or other authority.

Forfeiture reviewer - The department employee assigned by the Chief Probation Officer who is responsible for reviewing all forfeiture cases and completing seizure paperwork. The forfeiture reviewer also acts as the liaison between the Department, the assigned attorney, and any participating agencies. This assignment is typically handled by the Probation Officer assigned to the Narcotics Task Force (NTF).

Asset Forfeiture Program Coordinator - the Division Chief of Special Operations is in charge of the Departments Asset Forfeiture Program.

Property subject to forfeiture- The following may be subject to forfeiture:

- (a) Property related to a narcotics offense, which includes (Heath 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

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(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.
- (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.

500.2 APPLICABILITY

This policy applies to all Department employees.

500.3 POLICY

The San Diego County Probation Department has placed a high priority on the control and curtailment of narcotics trafficking activities by individuals under the supervision of the Probation Department. Supervision by Probation Officers, in part, will attempt to identify, monitor, and enforce narcotics trafficking statutes among those clients involved in such activity.

Asset Forfeiture is a tool to be used in selected cases where drug trafficking appears to be occurring. Any revenue generated through Asset Forfeiture must be used to enhance probation programs and supervision efforts, not to supplant budgeted funds. A subject shall not be investigated solely based on their perceived assets.

The general policy of the San Diego County Probation Department is to:

- (a) Impact narcotics traffickers through intelligence gathering and enforcement activities consistent with the Special Operations Division of the Probation Department;
- (b) Hold those persons involved in narcotics trafficking strictly accountable to the Court for their activities;
- (c) Impact their ability to continue narcotics trafficking activities through the removal of assets as provided by law. To this end, there is an officer assigned to the Drug Enforcement Administration (DEA) Narcotics Task Force.

The San Diego County Probation Department recognizes that appropriately applied forfeiture laws are helpful to enforce the law, deter crime and reduce the economic incentive of crime. However,

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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 San Diego County Probation Department that all employees, including those assigned to internal or external law enforcement task force operations, shall comply with all state and federal laws pertaining to forfeiture.

500.4 ASSET SEIZURE

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

500.4.1 PROPERTY SUBJECT TO SEIZURE

The following may be seized in coordination with the forfeiture reviewer (Narcotic Task Force Probation Officer) and approval by a supervisor:

- (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.

If an officer discovers assets that may be forfeitable, they shall contact the Forfeiture Reviewer immediately who will then determine if there is sufficient evidence to proceed with the seizure; the discovering officer must also contact their own supervisor. The determination whether a seizure will be made will be based upon the evidence that the asset is related to drug proceeds and if the asset meets minimum threshold amounts. This decision will be made by the NTF representative.

If the Forfeiture Reviewer becomes aware of assets that may be forfeitable as a result of criminal profiteering or human trafficking they should contact the district attorney regarding a court order to protect the assets (Penal Code § 186.6; Penal Code § 236.6).

If a seizure is processed by another law enforcement agency, the Forfeiture Reviewer must be contacted by the close of the next business day by the probation officer most involved in the case to determine if asset sharing is appropriate. If asset sharing is determined to be appropriate the Forfeiture Reviewer will submit the appropriate forms for equitable sharing. The probation officer making the referral shall submit an incident report and/or other documentation, such as a police report, to reflect what role the Probation Department played in the investigation leading up to the seizure.

The Forfeiture Reviewer is responsible for completing all seizure forms in processing a seizure. Upon completion of the forms, with all appropriate signatures, the Forfeiture Reviewer will submit

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the forms for processing. Notification and disposition of assets will be handled by the assigned Forfeiture Reviewer. All forms must be submitted within 60 days of seizure.

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.

500.4.2 PROPERTY NOT SUBJECT TO SEIZURE

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).

500.5 PROCESSING SEIZED PROPERTY FOR FORFEITURE PROCEEDINGS

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

- (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.

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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.

500.6 MAINTAINING SEIZED PROPERTY

The Forfeiture Reviewer 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.

500.7 FORFEITURE REVIEWER

Prior to assuming the duties of the Forfeiture Reviewer, 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.
- (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) 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.
- (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.

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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.
 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.
 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 Probation Officer 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.

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- (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).
- (n) Process all federal seizures shared with the Probation Department through the Narcotics Task Force to ensure the Department receives appropriate funding pursuant to the current Memorandum of Agreement with the Drug Enforcement Agency.

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 County financial directives (Health and Safety Code § 11495).

500.8 FISCAL AGENT

The Fiscal Agent will receive completed seizure documents from the Forfeiture Reviewer. The Fiscal Agent will enter the information into a tracking database. The Fiscal Agent maintains all documentation and information regarding the collection process and will serve as custodian and disbursing officer for funds received. The Fiscal Agent will process all federal seizures shared with the Probation Department through the Narcotics Task Force to ensure the Department receives appropriate funding pursuant to the current Memorandum of Agreement with the Drug Enforcement Agency. The Fiscal Agent will also process any state seizures to ensure the Department receives appropriate asset sharing.

500.9 DISPOSITION OF FORFEITED PROPERTY

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 they achieve (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).

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500.10 CLAIM INVESTIGATIONS

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 such 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 their address appearing on the records of the Department of Motor Vehicles or the appropriate federal agency (Health and Safety Code § 11488.4).