



## CDS ASSET FORFEITURE

**Directive: 9-105**

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### **I. PURPOSE**

The purpose of this Directive is to establish policy and procedures in regards to CDS Asset Forfeiture.

### **II. POLICY**

- A. It is the policy of DGS-MCP to seize all vehicles, money, coin, currency, weapons, and other personal property used in violation of the Controlled Dangerous Substance laws of the State of Maryland.
- B. After assets are seized and investigation reveals that they are subject to forfeiture the legal process will be handled by the Office of the State's Attorney.
- C. DGS-MCP will continue to serve as custodian of the property until such time as the assets are transferred to the State of Maryland, disposed of in accordance with applicable laws, or are returned to their owner by appropriate authority.
- D. Seized vehicles and other items of significant value may be recommended to the forfeiting authority only after the Chief of Police has personally reviewed the facts and circumstances of the seizure and has determined that the forfeiture is warranted.

### **III. PROCEDURES**

#### **A. Seizure of Property for Forfeiture**

Property, as defined in this section, may be seized and held for forfeiture under the following conditions:

1. When a warrant has been issued by any court having jurisdiction over the property;
2. Property seized incident to an arrest, a search conducted while executing a search warrant or an inspection under an administrative inspection warrant; or
3. There is probable cause to believe that the property has been used or intended to be used in violation of the CDS laws of the State of Maryland.

## B. Property Subject to Forfeiture

1. Vehicles – Criminal Procedure Articles provides for the seizure of “conveyances, including aircraft, vehicles, or vessels used or intended to be used to transport, or facilitate the transportation, sale receipt, possession, or concealment” of controlled dangerous substances or “raw materials, products, and equipment used, or intended to be used, in manufacturing, compounding, processing, delivering, importing, or exporting a controlled dangerous substance in violation of the Controlled Dangerous Substances law”.
2. Money, Currency, Coin, and Weapons – Criminal Procedure Articles also authorizes seizure and subsequent forfeiture of “money or weapons used or intended to be used in connection with the unlawful manufacture, distribution, dispensing, or possession of a controlled dangerous substance or controlled paraphernalia”. The statutes establishes the parameters for such seizures as follows: “Money or weapons that are found in close proximity to a contraband controlled dangerous substance, controlled paraphernalia, or forfeitable records of importation, manufacture, or distribution of controlled dangerous substances are contraband and presumed forfeitable”. (The claimant of money or weapons has the burden to rebut the presumption.)
3. Personal Property – Criminal Procedure Articles also authorizes the seizure of “everything of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Controlled Dangerous Substances law, all proceeds traceable to the exchange, and all negotiable instruments and securities used, or intended to be used, to facilitate and violation of the Controlled Dangerous Substances law.”

## C. Standards for Seizures of Vehicles

1. Motor vehicles may be seized under the following circumstances:
  - (a) When CDS in any quantity is sold or attempted to be sold in violation of the CDS laws from the vehicle; or
  - (b) Although the violator has not sold or attempted to sell controlled dangerous substances, an amount of such substances or paraphernalia is located which would reasonably indicate that sale is contemplated by the violator (possession with intent to distribute).
2. The mere possession of CDS transported in a vehicle or other conveyance does not justify the seizure of the vehicle or conveyance. The vehicle must play an integral part in the commission of the CDS violation or illegal activity beyond simply transporting CDS for personal use of the occupants. However, as enumerated in the Annotated Code of Maryland, the totality of the circumstances of a CDS possession case dictate that seizure and forfeiture of a vehicle are justified when the violator is in possession of controlled dangerous substances and the following factors exist:
  - (a) A previous conviction of the violator for a controlled dangerous substances violation, and/or

- (b) Evidence that the vehicle was acquired by the proceeds from a transaction involving a CDS.
  - (c) Circumstances of the arrest or the way in which the vehicle was used. (Example: the suspect vehicle was used to facilitate a drug transaction.)
3. If the officer and supervisor believe that more than sufficient probable cause exists to believe that any of the occupants of a vehicle can be lawfully charged with a felony CDS violation, the vehicle should be seized.
  4. If a CDS possession arrest is made and the vehicle is not seized at the time of arrest, and the conditions set forth by this order have been met for seizure, the vehicle may still be seized if the owner or driver of the vehicle has not physically taken possession of the vehicle. (i.e. the vehicle is at a tow yard.)
  5. It is not necessary at the time of seizure to render a judgment as to whether or not the owner had actual personal knowledge of the CDS violations involving the vehicle. All that is required of police officers is to apply common sense and use good, sound, prudent judgment when seizing or authorizing the seizure of vehicles. For example, a vehicle that has been extensively damaged as a result of a collision or other incident may not be suitable for seizure.

#### D. Seizure Procedures for Vehicles

1. The officer that made the stop will notify a supervisor of a possible seizure situation. The supervisor should respond to the scene and determine if circumstances justify the seizure.
2. The Detachment Commander or his designee will establish the procedures and necessary relationships to facilitate the towing and securing of seized vehicles by officers within the Detachment.
3. Before a vehicle is towed, a complete and thorough inventory will be made detailing the vehicle's contents, including the trunk areas. No personal property will be left in the seized vehicle. All recovered property from the vehicle will be processed in accordance with established procedures.
4. The seizing officer will complete all necessary reports relating to the stop and subsequent seizure, including but not limited to a report detailing the contents of the vehicle, as well as any other reports required by the Department.
  - (a) The crime report/incident report will document the facts and circumstances that substantiate the seizure of the vehicle
  - (b) The vehicle report will include an accurate, detailed description of the condition of the vehicle, including any body damage and special accessories.

- (c) The patrol supervisor will ensure that copies of all reports will be forwarded to the supervisor assigned to the investigative unit. (This should be done within 24 hours of the seizure.)

#### E. Standards for Seizure of Money, Currency, and Coin

1. Money, currency and coin will be seized and held for forfeiture under the following circumstances:
  - (a) A defendant is arrested and charged with possession of CDS, distribution of CDS, possession of CDS with the intent to distribute, manufacturing CDS, or conspiracy to commit any of the aforementioned crimes; or
  - (b) The money was used or intended for use in connection with the illegal the illegal manufacture, distribution, dispensing, or possession of CDS or controlled paraphernalia; or
  - (c) The money was found in close proximity to CDS, controlled paraphernalia, or forfeitable records of importation, exportation, manufacture, or distribution of CDS, regardless of whether or not any criminal charges are filed.

#### F. Seizure Procedures for Money, Currency, and Coin

1. Pending forfeiture proceedings, the Criminal Procedure Article requires that seized money, coin, and currency must be:
  - (a). Photographed
  - (b) Serial numbers must be recorded. (This can be accomplished using a copying machine).
2. The patrol supervisor will ensure that a copy of all reports pertaining to the seizure be forwarded to CID. This should be done within 24 hours of the seizure.
3. All recovered property will be processed in accordance with established evidence and property procedures.

#### G. Standards for Seizure of Personal Property

1. Personal property includes both tangible and intangible property such as:
  - (a) Any item or object such as tools, equipment, containers, raw materials, substances, devices, drug paraphernalia or weapons;
  - (b) Books, records, research, photographs, formulas, microfilm, tapes or other data;
  - (c) Securities, negotiable and non-negotiable instruments, privileges, interests, claims and rights; and

(d) Any property of value including jewelry, electronics equipment, furnishings, etc.

2. Personal property may be seized and held for forfeiture under the following circumstances:

- (a) When the property is used or intended for use in connection with a violation of the Controlled Dangerous Substance laws;
- (b) When the property is furnished or intended to be furnished in exchange for a Controlled Dangerous Substance or in payment to person(s) who will participate in some way in one or more violations of the Controlled Dangerous Substance laws;
- (c) When the totality of the circumstances suggest that it is the profit or proceeds from involvement with Controlled Dangerous Substance, whether derived directly or indirectly in connection with or as a result of that involvement with Controlled Dangerous Substance.

#### H. Seizure Procedures for Personal Property

- 1. Officers should obtain the approval of the patrol supervisor prior to seizing personal property and holding the property for forfeiture proceedings.
- 2. All personal property should be photographed and a record made of any identifying serial numbers or characteristics.
- 3. The personal property will be handled according to the specifications provided in established "Evidence and Property Procedures."
- 4. The patrol supervisor will ensure that a copy of all reports will be forwarded to the supervisor assigned to the investigative unit. (This should be done within 24 hours of the seizure.)

#### I. Responsibilities of CID

- 1. CID will be the liaison between the Department and the local prosecutor who will initiate forfeiture proceedings.
- 2. CID will provide all necessary information, reports and conduct any additional investigative work that is needed by the local prosecutor.

The supervisor assigned to CID will review all forfeiture cases. In the event that any report(s) or other needed information is lacking, the supervisor will immediately contact the patrol supervisor and make him/her aware of the missing report(s) or information.