

Department of
CRIMINAL JUSTICE TRAINING

KENTUCKY JUSTICE AND PUBLIC SAFETY CABINET



Leadership is a behavior, not a position

ASSET FORFEITURE



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Commissioner



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NOTE:

General Information concerning the Department of Criminal Justice Training may be found at <http://docit.ky.gov>. Agency publications may be found at <http://docit.ky.gov/publications.asp>.

In addition, the Department of Criminal Justice Training has a new service on its web site to assist agencies that have questions concerning various legal matters. Questions concerning changes in statutes, current case laws, and general legal issues concerning law enforcement agencies and/or their officers can now be addressed to docit.legal@ky.gov. The Legal Training Section staff will monitor this site, and questions received will be forwarded to a staff attorney for reply. Questions concerning the Kentucky Law Enforcement Council policies and those concerning KLEFPF will be forwarded to the DOCJT General Counsel for consideration. It is the goal that questions received be answered within two to three business days (Monday-Friday). Please include in the query your name, agency, and a day phone number or email address in case the assigned attorney needs clarification on the issues to be addressed.

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218A.405 Definitions for KRS 218A.405 to 218A.460.

The following definitions apply in KRS 218A.405 to 218A.460 unless the context otherwise requires:

- (1) "Interest in property" includes:
 - (a) The interest of a person as a beneficiary under a trust, in which the trustee of the trust holds legal or record title of the personal or real property;
 - (b) The interest of a person or a beneficiary under any other trust arrangement under which any other person holds legal or record title to personal or real property for the benefit of the person; or
 - (c) The interest of a person under any other form of express fiduciary arrangement under which any other person holds legal or record title to personal or real property for the benefit of the person.
 - (d) Real property or an interest in real property shall be deemed to be located where the real property is located. Personal property or an interest in personal property shall be deemed to be located where the trustee is located, the personal property is located, or the instrument evidencing the right is located.
- (2) "Forfeiture lien notice" means the notice provided for in KRS 218A.450.
- (3) "Property" means everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal, easements, franchises, incorporeal hereditaments, or any interest therein.

- (4) "Real property" means any real property located in the Commonwealth or any interest in real property, including any lease of, or mortgage upon, real property.
- (5) "Trustee" includes:
 - (a) Any person acting as trustee under a trust in which the trustee holds legal or record title to personal or real property;
 - (b) Any person who holds legal or record title to personal or real property in which any other person has an interest; or
 - (c) Any successor trustee. The term "trustee" shall not include an assignee or trustee for an insolvent debtor, a guardian under the Uniform Veterans' Guardianship Act, or an executor, administrator, administrator with will annexed, testamentary trustee, curators, guardians, or committees, appointed by, or under control of, or accountable to a District Court.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 445, sec. 7, effective July 13, 1990.

218A.410 Property subject to forfeiture.

- (1) The following are subject to forfeiture:
 - (a) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state.
 - (b) Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

- (c) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily destroyed or forfeited to the state. The failure, upon demand by the law enforcement agency or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.
- (d) All substances, machinery, or devices used for the manufacture, packaging, repackaging, or marking, and books, papers, and records, and all vehicles owned and used by the seller or distributor for the manufacture, distribution, sale, or transfer of substances in violation of KRS 218A.350 shall be seized and forfeited to the state. Substances manufactured, held, or distributed in violation of KRS 218A.350 shall be deemed contraband.
- (e) All controlled substances which have been manufactured, distributed, dispensed, possessed, being held, or acquired in violation of this chapter.
- (f) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter.
- (g) All property which is used, or intended for use, as a container for property described in paragraph (e) or (f) of this subsection.
- (h) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (e) or (f) of this subsection, but:
 1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it is proven beyond a reasonable doubt that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;
 2. No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;
 3. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;
 4. The forfeiture provisions of this paragraph shall not apply to any misdemeanor offense relating to marijuana.
- (i) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or

intended for use, in violation of this chapter.

- (j) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, all proceeds, including real and personal property, traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent. It shall be a rebuttable presumption that all moneys, coin, and currency found in close proximity to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof shall be upon claimants of personal property to rebut this presumption by clear and convincing evidence. The burden of proof shall be upon the law enforcement agency to prove by clear and convincing evidence that real property is forfeitable under this paragraph.
- (k) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or to facilitate

the commission of, a violation of this chapter excluding any misdemeanor offense relating to marijuana, except that property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by the Commonwealth to have been committed or omitted with the knowledge or consent of the owner.

- (2) Title to all property, including all interests in the property, forfeit under this section vests in the Commonwealth on the commission of the act or omission giving rise to forfeiture under this section together with the proceeds of the property after the time. Any property or proceeds subsequently transferred to any person shall be subject to forfeiture and thereafter shall be ordered forfeited, unless the transferee establishes in the forfeiture proceeding that he is a subsequent bona fide purchaser for value without actual or constructive notice of the act or omission giving rise to the forfeiture.
- (3) If any of the property described in this section cannot be located; has been transferred to, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value by any act or omission of the defendant; or, has been commingled with any property which cannot be divided without difficulty, the court shall order the forfeiture of any other property of the defendant up to the value of any property subject to forfeiture under this section.

Effective: July 13, 1990

History: Amended 1990 Ky. Acts ch. 445, sec. 1, effective July 13, 1990. – Created 1984 Ky. Acts ch. 101, sec. 1, effective July 13, 1984.

218A.415 Procedure for seizure of property.

(1) Personal property subject to forfeiture under this chapter may be seized by any law enforcement agency upon process issued by any judge that is empowered to issue a warrant of arrest or search warrant and in whose jurisdiction the property is located. Seizure of personal property without process may be made if:

- (a) The seizure is incident to an arrest or a search under a search warrant;
- b) The property subject to seizure as been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;
- (c) The law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- (d) The law enforcement agency has probable cause to believe that the property is subject to forfeiture pursuant to this chapter.

(2) Property taken or detained under this section shall not be subject to replevin, but shall be deemed to be in the custody of the law enforcement agency subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the law enforcement agency may:

- (a) Remove the property to a place designated by it; or

(b) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(3) Real property subject to forfeiture may be seized only pursuant to final judgment and order of forfeiture or upon order of the court having jurisdiction over the property. The order may be obtained pursuant to this subsection upon application of the Commonwealth.

(a) Upon receipt of the application, the court shall immediately enter an order setting a date for hearing on the matter no fewer than five (5) days nor more than ten (10) days after the filing of the application. At the hearing:

- 1. The court shall take evidence on the issues of whether the property named in the application is forfeit and seizure is necessary to preserve the property pending final judgment.
- 2. The Commonwealth shall have the initial burden of showing the existence of probable cause for forfeiture of the property and the necessity of seizure. On the showing by the Commonwealth, the respondent shall have the burden of showing by a preponderance of the evidence that the property is not subject to forfeiture.
- 3. Evidence at the seizure hearing may not be suppressed on the ground that its acquisition by search or seizure violated constitutional protections applicable in criminal cases relating to unreasonable searches or seizures.
- 4. If the court makes a determination in favor of the Commonwealth, it

shall enter an order authorizing the seizure of the property.

5. The court may, in its discretion, permit the owner of the property to post security equal to the value of the property in lieu of seizure.
- (b) A temporary seizure order pursuant to this section may be entered on application without notice or an opportunity for a hearing if the Commonwealth demonstrates that there is probable cause to believe that the property with respect to which the order is sought is subject to forfeiture and the need to preserve the availability of property through immediate seizure outweighs the hardship that an immediate seizure may cause the owner. The temporary order shall expire ten (10) days after the date on which it is entered or at the time of the hearing provided for in paragraph (a) of this subsection.

Effective: July 13, 1990

History: Amended 1990 Ky. Acts ch. 445, sec. 2, effective July 13, 1990. – Created 1984 Ky. Acts ch. 101, sec. 2, effective July 13, 1984.

218A.420 Procedure for disposal of seized and forfeited property -- Distribution of proceeds -- Administrative regulations on use of funds -- Adoption of policies for seizure of forfeitable assets -- Asset-forfeiture training -- Vehicles -- Joint operations.

- (1) All property which is subject to forfeiture under this chapter shall be disposed of in accordance with this section.
- (2) All controlled substances which are seized and forfeited under this chapter shall be ordered destroyed by the order of the trial court unless there is a legal use for them,

in which case they may be sold to a proper buyer as determined by the Cabinet for Health and Family Services by promulgated regulations. Property other than controlled substances may be destroyed on order of the trial court.

- (3) When property other than controlled substances is forfeited under this chapter and not retained for official use, it may be sold for its cash value. Any sale shall be a public sale advertised pursuant to KRS Chapter 424.
- (4) Coin, currency, or the proceeds from the sale of property forfeited shall be distributed as follows:
 - (a) Eighty-five percent (85%) shall be paid to the law enforcement agency or agencies which seized the property, to be used for direct law enforcement purposes; and
 - (b) Fifteen percent (15%) shall be paid to the Office of the Attorney General or, in the alternative, the fifteen percent (15%) shall be paid to the Prosecutors Advisory Council for deposit on behalf of the Commonwealth's attorney or county attorney who has participated in the forfeiture proceeding, as determined by the court pursuant to subsection (9) of this section. Notwithstanding KRS Chapter 48, these funds shall be exempt from any state budget education acts. The moneys identified in this subsection are intended to supplement any funds otherwise appropriated to the recipient and shall not supplant other funding of any recipient.

- (5) The Attorney General, after consultation with the Prosecutors Advisory Council, shall promulgate administrative regulations to establish the specific purposes for which these funds shall be expended.
- (6) Each state and local law enforcement agency that seizes property for the purpose of forfeiture under KRS 218A.410 shall, prior to receiving any forfeited property, adopt policies relating to the seizure, maintenance, storage, and care of property pending forfeiture which are in compliance with or substantially comply with the model policy for seizure of forfeitable assets by law enforcement agencies published by the Department of Criminal Justice Training. However, a state or local law enforcement agency may adopt policies that are more restrictive on the agency than those contained in the model policy and that fairly and uniformly implement the provisions of this chapter.
- (7) Each state or local law enforcement agency that seizes property for the purpose of forfeiture under KRS 218A.410 shall, prior to receiving forfeited property, have one (1) or more officers currently employed attend asset-forfeiture training approved by the Kentucky Law Enforcement Council, which shall approve a curriculum of study for asset-forfeiture training.
- (8) Other provisions of this section notwithstanding, any vehicle seized by a law enforcement agency which is forfeited pursuant to this chapter may be retained by the seizing agency for official use or sold within its discretion.

Proceeds from the sale shall remain with the agency. The moneys shall be utilized for purposes consistent with KRS 218A.405 to 218A.460. The seizing agency shall be required to pay any bona fide perfected security interest on any vehicle so forfeited.

- (9) When money or property is seized in a joint operation involving more than one (1) law enforcement agency or prosecutorial office, the apportionment of funds to each pursuant to subsection (4) of this section shall be made among the agencies in a manner to reflect the degree of participation of each agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based. The trial court shall determine the proper division and include the determination in the final order of forfeiture.

Effective: June 26, 2007

History: Amended 2007 Ky. Acts ch. 124, sec. 13, effective June 26, 2007. – Amended 2005 Ky. Acts ch. 99, sec. 551, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 491, effective July 15, 1998. -- Amended 1990 Ky. Acts ch. 445, sec. 3, effective July 13, 1990. -- Created 1984 Ky. Acts ch. 101, sec. 3, effective July 13, 1984.

218A.425 Valuation of property retained for official use.

When seized property is retained for official use by law enforcement agencies under this chapter the value of the property shall be determined as follows:

- (1) Vehicles shall be valued at their tax value;

- (2) All other property shall be valued at its fair cash value by the property valuation administrator;
- (3) Property shall be valued as of the time of sale by the law enforcement agency.

Effective: July 13, 1984

History: Created 1984 Ky. Acts ch. 101, sec. 4, effective July 13, 1984.

218A.440 Statement filed listing property seized -- Investigation of utilization of proceeds.

- (1) Each law enforcement agency seizing money or property pursuant to KRS 218A.415 shall, at the close of each fiscal year, file a statement with the Auditor of Public Accounts, and with the secretary of justice and public safety containing, a detailed listing of all money and property seized in that fiscal year and the disposition thereof. The listing shall identify all property so seized.
- (2) Any agency failing to report as required by this section shall be liable to the state for the full value of all property and money so seized. The Attorney General shall institute civil actions for recovery of money or property obtained or retained in violation of KRS 218A.405 to 218A.460.
- (3) The Auditor of Public Accounts, the secretary of justice and public safety or the Attorney General may at any time initiate an inquiry to determine that property is being forfeited as required by KRS 218A.405 to 218A.460.

Effective: June 26, 2007

History: Amended 2007 Ky. Acts ch. 85, sec. 255, effective June 26, 2007; and ch. 124, sec. 15, effective June 26, 2007. -- Amended 1990 Ky. Acts ch. 445, sec. 5, effective July 13, 1990. -- Created 1984 Ky. Acts ch. 101, sec. 7, effective July 13, 1984.

Legislative Research Commission Note (6/26/2007). This section was amended by 2007 Ky. Acts chs. 85 and 124, which do not appear to be in conflict and have been codified together.

218A.450 Lien on forfeited property -- Action by trustee -- Release of lien.

- (1) The Commonwealth shall have a lien on all property, real or personal, which is forfeit to the Commonwealth by virtue of KRS 218A.410. This lien shall not be defeated by gift, devise, sale, alienation, or any means whatever except by sale to a subsequent bona fide purchaser for value without actual or constructive notice of the lien. The lien shall commence from the time the property becomes forfeit and shall have priority over any other obligation or liability following that time but shall be subordinate to any then existing perfected security interest on the property that is not itself subject to forfeiture.
- (2) The Commonwealth may file on the official records of any one (1) or more counties a forfeiture lien notice of the lien created in subsection (1) of this section. No filing fee or other charge shall be required as a condition for filing the forfeiture lien notice, and the appropriate clerk shall, upon the presentation of a forfeiture lien notice, immediately record it in the official records.
- (3) The forfeiture lien notice shall be signed by an attorney authorized to institute a forfeiture action on behalf of the Commonwealth. The notice shall set forth the following information:
 - (a) A description of the property which is subject to the lien;

- (b) The name of the owner of record of the property subject to the lien if known;
 - (c) The date and place of seizure or location of any property not seized but subject to forfeiture;
 - (d) The violation of law alleged with respect to forfeiture of the property;
 - (e) A reference to any judicial proceeding pending against the property with reference to forfeiture, including the name of the county or counties where the proceeding has been brought, and, if known at the time of filing of the forfeiture lien notice, the case number of the proceeding, and the name of the defendant;
 - (f) The name and address of the attorney filing the forfeiture lien notice.
- (4) The attorney filing the forfeiture lien notice shall, as soon as practicable after filing, furnish to any owner or lienholder of record either a copy of the recorded notice or a copy of the notice with annotation on it of the county or counties in which the notice has been recorded. Failure to provide a copy of the notice shall not invalidate or otherwise affect the lien.
- (5) In conjunction with any forfeiture proceeding, an attorney representing the Commonwealth may file, without prior court order, in any county, a lis pendens under the provisions of KRS 382.440, and any person acquiring an interest in the subject real property or interest in it, if the real property or interest is acquired subsequent to the filing of lis pendens, shall take the interest subject to any subsequent judgment of forfeiture.
- (6) (a) A trustee who acquires actual knowledge that a forfeiture lien notice or a forfeiture proceeding has been filed against any property to which he holds legal or record title, shall immediately furnish to the attorney representing the Commonwealth the following:
1. The name and address of the holder of the beneficial interest in the property, as known to the trustee;
 2. The name and address, as known to the trustee, of all other persons for whose benefit the trustee holds title to the personal or real property;
 3. If requested by the attorney representing the Commonwealth, a copy of the trust agreement or other instrument under which the trustee holds legal or record title to the personal or real property.
- (b) Any trustee who knowingly fails to comply with the provisions of his section is guilty of a Class D felony.
- (7) Any trustee who knowingly transfers or conveys title to personal or real property for which a forfeiture lien notice has been filed at the time of the transfer or conveyance in the county where the personal or real property is located shall be liable to the Commonwealth for the greater of:
- (a) The amount of proceeds received directly from the property named in the forfeiture lien notice as a result of the transfer or conveyance;
 - (b) The amount of proceeds received by the trustee as a result of the transfer or conveyance and distributed to the holder of the

- beneficial interest in the property named in the forfeiture lien notice; or
- (c) The fair market value of the interest of the property named in the forfeiture lien notice transferred or conveyed; but if the trustee transfers or conveys the personal or real property and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the discretion of the beneficiary or his designee, the trustee's liability shall not exceed the amount of the proceeds held for so long as the proceeds are held by the trustee.
- (8) The Commonwealth may bring a civil proceeding in any Circuit Court against the trustee to recover from the trustee the amounts set forth in subsection (7) of this section, and the Commonwealth shall also be entitled to recover investigative costs and attorney's fees incurred.
- (9) (a) The provisions of this section shall not apply to any transfer or conveyance by a trustee under a court order, unless the court order is entered in an action between the trustee and the beneficiary.
- (b) Unless the trustee has actual knowledge that property is named in a forfeiture lien notice, this section shall not apply to:
1. Any conveyance by a trustee required under the terms of any trust agreement where the trust agreement is a matter of public record prior to the filing of any forfeiture lien notice; or
 2. Any transfer or conveyance by a trustee to all of the persons who own a beneficial interest in the trust.
- (10) The term of a forfeiture lien notice shall be for a period of six (6) years from the date of filing unless a renewal forfeiture lien notice has been filed, and, in such case, the term of the renewal forfeiture lien notice shall be for a period of six (6) years from the date of its filing. The Commonwealth shall be entitled to only one (1) renewal of the forfeiture lien notice.
- (11) The attorney who filed the forfeiture lien notice may release in whole or part any forfeiture lien notice or may release any personal or real property or interest in it from the forfeiture lien notice upon the terms and conditions he determines. Any executed release of a forfeiture lien notice shall be filed in the official records of any county. No charge or fee shall be imposed for the filing of any release of forfeiture lien notice.
- (12) If no court proceeding to obtain an order of forfeiture is pending against the property named in a forfeiture lien notice at the time of its filing, for purposes only of contesting the notice, it shall be treated as a seizure pursuant to KRS 218A.415.
- (13) An agent of the Commonwealth shall have a continuing right to inspect property against which a forfeiture lien has been placed pursuant to this section and the Commonwealth shall have the authority to stay any civil foreclosure or repossession actions concerning property subject to the lien pending final order of forfeiture.
- Effective:** July 13, 1990
History: Created 1990 Ky. Acts ch. 445, sec. 8, effective July 13, 1990.

218A.460 Jurisdiction -- Ancillary hearing -- Application of forfeiture procedures.

- (1) Jurisdiction in all forfeiture proceedings shall vest in the court where the conviction occurred regardless of the value of property subject to forfeiture.
- (2) Following conviction of a defendant for any violation of this chapter, the court shall conduct an ancillary hearing to forfeit property if requested by any party other than the defendant or Commonwealth. The Commonwealth's attorney, or county attorney if the proceeding is in District Court, shall initiate the hearing by filing a motion requesting entry of a final order of forfeiture upon proof that the property was being used in violation of the provisions of this chapter. The final order of forfeiture by the court shall perfect in the Commonwealth or appropriate law enforcement agency, as provided in KRS 218A.420, right, title, and interest in and to the property. The Commonwealth may transfer any real property so forfeited by deed of general warranty.
- (3) If the property subject to forfeiture is of a type for which title or registration is required by law, or if the owner of the property is known in fact to the Commonwealth at the time of the hearing, or if the property is subject to a perfected security interest in accordance with the Uniform Commercial Code, KRS Chapter 355, the attorney representing the Commonwealth shall give notice of the ancillary hearing by registered mail, return receipt requested, to each person having such interest in the property, and shall publish notice of the

forfeiture once each week for two (2) consecutive weeks in a newspaper of general circulation as defined in KRS Chapter 424 in the county where the forfeiture proceedings will occur. The notice shall be mailed and first published at least four (4) weeks prior to the ancillary hearing and shall describe the property; state the county, place, and date of seizure; state the name of the law enforcement agency holding the seized property; and state the name of the court in which the ancillary hearing will be held and the date of the hearing. However, the Commonwealth shall be obligated only to make a diligent search and inquiry as to the owner of subject property; and if, after diligent search and inquiry, the Commonwealth is unable to ascertain the owner, the actual notice requirements by mail shall not be applicable.

- (4) Unless otherwise expressly provided in KRS 218A.410, the burden shall be upon claimant to property to prove by preponderance of the evidence that it is not subject to forfeiture. Any claimant other than a person who holds title or registration to the property or who has a perfected security interest in the property shall be required to post a bond equivalent to ten percent (10%) of the appraised value of the property with the clerk of the court before being allowed to litigate the claim. The bond shall offset the costs of litigation incurred by the Commonwealth. A claimant may proceed in forma pauperis with leave of court upon sworn petition subject to the applicable rules and subject to the provisions of law concerning perjury.

(5) The procedures for forfeiture proceedings as established in KRS 218A.405 to 218A.460 shall apply to any property subject to forfeiture which is pending as of July 13, 1990.

Effective: June 26, 2007

History: Amended 2007 Ky. Acts ch. 124, sec. 16, effective June 26, 2007. – Created 1990 Ky. Acts ch. 445, sec. 9, effective July 13, 1990.

MODEL POLICY FOR FORFEITURE OF ASSETS BY LAW ENFORCEMENT AGENCIES

I. POLICY STATEMENT

The Kentucky Controlled Substance Act, KRS 218A. 410 et seq, authorizes law enforcement agencies to seize and forfeit any property or contraband article which has been used, is being used, or was intended to be used in violation of any provision of the Act. It is the policy of the law enforcement agencies in this state to utilize the forfeiture provisions to the fullest extent possible in order to impact upon crime, yet protect innocent owners, while providing law enforcement agencies with the maximum amount of economic benefit for the continued enforcement of the Kentucky Controlled Substances Act.

II. PURPOSE

The purpose of this policy is to standardize the law enforcement policies and procedures used in seizing, maintaining, and forfeiting assets pursuant to the provisions of law, and to ensure that seized property is seized and maintained in an efficient and lawful manner. The provisions contained in this policy are intended to serve as guidelines for law enforcement agencies involved in the seizure and forfeiture of property. Substantial compliance will further the goal of uniform practice throughout the State.

III. PROCEDURES

A. SEIZURE OF VESSELS, VEHICLES, AIRCRAFT, CURRENCY, OR OTHER PERSONAL PROPERTY OR CONTRABAND ARTICLES

1. The seizing agency may seize property for forfeiture under the Act without process if it determines that:
 - (a) The seizure is incident to an arrest or a search under a search warrant; or,
 - (b) The property subject to seizure has been the subject of a prior final order of forfeiture;
or,
 - (c) The agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or,

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- (d) The agency has probable cause to believe the property is subject to forfeiture pursuant to KRS 218A.410.
2. Probable cause seizures taking place at the time of violations may be made without prior judicial approval.
 3. Property not seized at the time of violations presently located on private premises should be seized pursuant to a court order authorizing entry onto the private premises, unless otherwise authorized by law.
 4. As soon as practicable following seizure, the agency shall make a diligent effort to determine ownership of the seized property, including the identification of the registered owner (s), title holder (s), and bona fide lien holder (s), if any.
 5. The seizing agency shall give notice of the seizure to the owner (s) and/or bona fide lien holder (s), if any, once identified , within twenty-one (21) days after the identification is made. Such notice may be made by certified mail, return receipt requester.
 6. Following an agency's determination not to proceed with a forfeiture based upon innocent owner considerations, the agency shall release the seized property to the lawful owner or his legally authorized designee.
 7. As soon as practicable after the seizure, the seizing officer, deputy, or agent should complete an offense or seizure report, particularly describing the circumstances attendant to the seizure and forward same to the Commonwealth attorney who will be handling the forfeiture action. Attached as Exhibits I and II are sample suggested forms.

B. SEIZED VESSELS, VEHICLE & AIRCRAFT STORAGE MAINTENANCE

1. At the time of seizure, the agency should have vessels, vehicles, aircrafts, etc. transported or towed to a secure storage facility or other appropriate storage location as may be authorized by the agency. If the law enforcement agency has its own towing service, it should be used whenever possible to minimize costs.
2. A complete inventory of the seized property and all containers, open or closed, found therein shall be completed at the time of the seizure. As soon as practicable after seizure, a seizing agency shall make a good faith attempt to release to the lawful owner all personal property (e.g., clothing) seized with items impounded and not being retained as evidence or for forfeiture. If the owner is unknown, has been arrested, or is otherwise

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unavailable to take possession of the property, the property shall be placed in a secure location to be released to the owner at a later date.

3. ***ANY PERSONAL PROPERTY SEIZED AS EVIDENCE SHALL BE PACKAGED AND STORED SEPARATELY AND HANDLED IN ACCORDANCE WITH ESTABLISHED PROCEDURES FOR THE PROCESSING OF EVIDENCE.***
4. Reasonable attempts shall be made to maintain the property in time-of-seizure-conditions. Although all rights, interest in and title to seized assets vest immediately in the seizing agency upon seizure, seized items shall not be used for any purpose until the rights, interest in and title to the seized property are perfected by final order of forfeiture. This section does not prohibit use or operation necessary for reasonable maintenance of seized property.
5. If special maintenance is required to maintain seized property in time-of-seizure-condition as may be necessary with aircraft and vessels, the seizing agency shall ensure that such maintenance is provided within a reasonable time after seizure, with such care continuing through the pendency of the forfeiture action. Appropriate agency forms should be maintained with seized property to document special or required maintenance.
6. Agency personnel shall make periodic inspections of all property which has been seized subject to forfeiture to insure continued the time of seizure conditions of the property is being maintained. Such inspections shall be documented appropriately.

C. SEIZURE AND FORFEITURE OF REAL PROPERTY

1. The agency may seize real property only with process:
 - a. Real property subject to forfeiture may be seized pursuant to final judgment and order of forfeiture by the court with jurisdiction over the forfeiture action; or,
 - b. Real property may be seized prior to final judgment by the agency if it obtains a seizure order from the court following a hearing. Seizure prior to the judgment in only permissible on a showing by the Commonwealth that seizure is necessary to preserve the property pending final judgment.
2. Real property which is seized prior to final judgment must be maintained at time-of-seizure condition. On-going Businesses, including agricultural enterprises, must be

Appendix A

continued. For this reason, seizure of real property prior to final judgment of forfeiture is not recommended.

3. Agencies with probable cause to believe that real property is subject to forfeiture will as soon as practicable consult with the appropriate Commonwealth Attorney to perfect the lien created in KRS 218A_____. A lien is preferred over pre-judgment seizure of real property.

D. RELEASE OF SEIZED PROPERTY

1. If at the conclusion of the judicial process the claimant prevails, the seized property shall be released to the lawful owner immediately. Under these circumstances, the seizing agency shall not assess any towing charges, storage fees, administrative costs, maintenance costs, etc. against the claimant, unless so authorized by the appropriate court.
2. In all other instances, if a seized vessel, vehicle, aircraft, etc. is to be released to the lawful owner, the seizing agency may assess against the owner the actual cost of towing, storage, and maintenance of the seized property. Absent settlement, administrative costs which do not reflect actual expenses shall not be assessed.
3. Property which has been seized as having evidentiary value shall be treated accordingly, and shall NOT be released pursuant to this policy.

IV. RETENTION FOR OFFICIAL USE, SALE, AND DISTRIBUTION

A. RETENTION OF VEHICLES

1. Any vehicle seized and subsequently forfeited to a law enforcement agency may be retained by that agency for official use.
2. Any vehicle retained may be sold by the agency. Funds from such sale shall not be considered as funds to be distributed.
3. Proceeds from sale of retained vehicles must be spent on a specific law enforcement purpose. "Specific law enforcement purpose" means any agency activity which materially facilitates enforcement of the law of the Commonwealth of Kentucky.

Appendix A

4. The recipient agency must pay any bona fide perfected security interest on any forfeited vehicle retained for official use.

B. SALE OF FORFEITED PROPERTY

1. All sales of property forfeited pursuant to the controlled Substance Act must be advertised, public sales.
2. The Commonwealth may transfer any forfeited real property sold by deed of general warranty.
3. All bona fide, perfected security interests on forfeited property must be paid from proceeds of sale of such property.
4. Controlled substances which have been forfeited but which have a lawful purpose may be sold to proper buyer as determined by the regulations of the Cabinet for Human Resources.

C. DISTRIBUTION OF SALE PROCEEDS

1. Following deduction of any direct expenses related to the sale of forfeited assets, the agency retains eighty-five percent of the sale of assets itemized in any final order of forfeiture. Fifteen percent of the sale of assets is paid to the office of the Commonwealth Attorney or County Attorney which handled the forfeiture action.
2. All proceeds from sales of forfeited property must be expended for specific law enforcement purposes.
3. When money or property is seized in a joint operation involving more than one law enforcement agency, the apportionment of funds shall be made among the agencies in such a manner as to reflect the degree of participation of each agency in the law enforcement effort resulting in the forfeiture, taking in to account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based. The trial court shall determine the proper division and include the determination in the final order of forfeiture.

V. REPORTING REQUIREMENTS

A. SEIZURE REPORTS

Appendix A

1. Any agency which seizes property subject to forfeiture without court order shall immediately prepare a report completely describing and inventorying the property so seized. The original of the report shall be included in the criminal case file. Duplicates of the report shall be forwarded to the appropriate prosecutorial office and the Kentucky Justice Cabinet.
2. Any agency which wishes to obtain a court order to seize property shall submit a “Request For Forfeiture” form to the appropriate prosecutorial office. Property seized pursuant to such order should be reported in the same manner as property seized without order. A copy of the Court Order shall be attached to the seizure report.
3. Any agency which wishes to place a lien against forfeitable real property shall submit a “Request for Forfeiture Lien” to the appropriate Commonwealth Attorney. A copy of the forfeiture lien notice shall be maintained in the criminal case file and a copy shall be forwarded to the Kentucky Justice Cabinet.
4. A copy of all final orders of forfeiture shall be forwarded to the Kentucky Justice Cabinet by the appropriate Commonwealth’s Attorney.
5. Agencies shall notify the Kentucky Justice Cabinet of each forfeited vehicle retained for official use or sold for the benefit of the agency.

REVISED SEPTEMBER 26, 2007

Appendix B

Request For Forfeiture

To be submitted to prosecutor

DATE OF REQUEST _____ PROPERTY NO: _____
CASE NO: _____

PROPERTY: ___ MONEY ___ VEHICLE ___ WEAPON ___ JEWELERY ___ REAL PROPERTY

DESCRIPTION OF PROPERTY: _____

NAME AND ADDRESS OF PERSON IN POSSESSION _____

OWNER'S NAME AND ADDRESS (if different from above): _____

LIENHOLDER'S NAME AND ADDRESS (if any): _____

CHARGE (s) MADE OR PENDING _____

ADDITIONAL INFORMATION (not on offense report but relevant to probable cause for forfeiture) _____

CASE OFFICER (s) _____

ESTIMATED COSTS: VALUE OF PROPERTY _____
LIEN AMOUNT _____
COST OF LITIGATION _____
NET PROFIT _____

RECOMMENDATION

_____ INITIATE FORFEITURE PROCEEDINGS
_____ RETURN PROPERTY TO OWNER _____ SETTLEMENT

COMMENTS: _____

DATE _____

FINAL DISPOSITION
_____ FORFEITURE PROCEEDINGS INITIATE
_____ PROPERTY RELEASED TO OWNER
_____ STEELEMENT WITH OWNER
_____ PROPERTY AWARDED TO LAW
ENFORCEMENT TRUST FUND

COMMENTS _____

_____ COMMONWEALTH ATTORNEY

Appendix C

Property Seizure and Storage Form

- 1. Case No. _____
- 2. Date/Time of Seizure _____
- 3. Location of Seizure _____
- 4. Operator of Vehicle _____
- 5. Operator's Address _____
- 6. License No. _____
- 7. License Year _____
- 8. License Co/State _____
- 9. VIN _____
- 10. Color _____
- 11. Make _____
- 12. Model _____
- 13. Year _____
- 14. Mileage _____

Boat Data

- 15. Hull No. _____
- 16. Name _____
- 17. Type _____
- 18. Engine Hours _____
- 19. Transom No. _____
- 20. State Registration No. _____

Aircraft Data

- 21. Tail No. _____
- 22. No. of Engines 1 2 3 4
- 23. Engine Hours _____

24. Vehicle Inventory
(See attached Form)

25. NARRATIVE (include condition of vehicle, items, and reason for seizure)

- 26. Registered Owner _____
- 27. Owner's Address _____
- 28. Owner's DOB/Sex _____ / _____
- 29. Signature of owner and/or operator when seized _____
- 30. Date/Time Stored _____
- 31. Daily Storage Rate _____
- 32. Name and Location of Storage _____
- 33. Agent Storing Vehicle _____
- 34. Signature of Storage Attendant _____

- 35. Hold For _____
- 36. Forfeiture Anticipated Yes No
- 37. Value of Vehicle _____
- 38. Lien Amount (if known) _____
- 39. Date Forfeiture Submitted _____
- 40. Forfeiture Submitted to _____
- 41 Reason Released _____

- 42. Signature of Person Released to: _____
- 43. Date/Time Released _____
- 44. Released by _____

[Note: these forms are suggested only. The agency may use any form which supplies the necessary information]

In addition to our legal inquiry email, The Legal Training Section of the Department of Criminal Justice Training now offers many of the frequently used legal publications electronically and free of charge on our website.



<http://docjt.ky.gov/legal>

Among the publications available are:

- ▶ *The Kentucky Criminal Law Manual*
- ▶ *Kentucky Law Enforcement Discipline Manual*
- ▶ *Kentucky Legal Handbook for Patrol*
- ▶ *Statutory Updates*
- ▶ *Case Law Updates (summary)*
- ▶ *Open Records Decisions*
- ▶ *U.S. Supreme Court (summary)*

Check out our website for a full list of available materials, plus links to other sites of interest.

Our legal inquiry email is available for officers and agencies with specific legal question concerning state and federal statutes, current case law and general issues related to law enforcement by contacting us at:



docjt.legal@ky.gov

Please remember to include your name, rank, agency and a contact number should we need further information regarding your inquiry.

Questions concerning the Kentucky Law Enforcement Council policies and KLEPPF will be forwarded to the DOCJT General Counsel for consideration.

Please allow two to three business days for us to review and respond to your inquiry.



Department of
CRIMINAL JUSTICE TRAINING
KENTUCKY JUSTICE AND PUBLIC SAFETY CABINET

