



Lexington Police Department

Lexington, Kentucky

GENERAL ORDER

BY THE AUTHORITY OF THE CHIEF OF POLICE

G.O. 1982-05H Asset Forfeiture Procedures

Rescinds: GO 1982-05G

Effective Date: 05/21/18

Originally Issued: 1982

Distribution

| All Department Employees

I. PURPOSE

The purpose of this policy is to standardize 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 the department when involved in the seizure and forfeiture of property.

II. POLICY

The Kentucky Controlled Substances Act of 1972 (KRS 218A.310 and what follows), 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 Lexington Police Department to utilize the forfeiture provisions to the fullest extent possible in order to impact upon crime, yet protect innocent owners, while providing the department with the maximum amount of economic benefit for the continued enforcement of the Kentucky Controlled Substances Act.

It is also department policy to comply with KRS 218A.420 below:

KRS 218A.420 [Excerpt]

- (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. [Effective: June 24, 2015]

It is also department policy to participate in and to fully comply with the requirements of the U.S. Department of Justice (DOJ) Asset Forfeiture Equitable Sharing Program and to comply with program procedures, including procedures outlined in the "Guide to Equitable Sharing for State and Local Law Enforcement Agencies" (2009, and as amended in 2014), in the "Asset Forfeiture Policy Manual" (2016), and in the "Equitable Sharing Agreement Certification (ESAC) User's Guide" (2016).

Officers are prohibited from using the race, ethnic background, national origin, gender, gender identity, sexual orientation, religion, socioeconomic status, age, disability, cultural group, or political status of a person as the reason for seizing assets, or seeking asset forfeiture.

III. GENERAL PROVISIONS

A. The Chief of Police has designated the Executive Officer in the Office of the Chief to serve as the department's asset forfeiture coordinator. The asset forfeiture coordinator is responsible for the overall management and direct oversight of the Fiscal Office and of the department's asset forfeiture program.

1. The asset forfeiture coordinator shall designate assistant coordinators to assist in the maintenance of the department's asset forfeiture files, inspections of seizure items, coordination of vehicle sales and general report routing.

2. Positions designated as assistant coordinators include, and are not limited to:

- a. The fiscal officer in the Fiscal Office
- b. The civilian Property and Evidence Unit supervisor
- c. The civilian Technical Services Unit supervisor

B. The fiscal officer in the Fiscal Office is responsible for tracking and maintaining all department fiscal activities and expenditures. The fiscal officer will regularly compare the department's federal and state level asset forfeiture program funds records with the LFUCG's (Lexington-Fayette Urban County Government) asset forfeiture funds records to ensure accuracy.

C. The Chief of Police has designated the fiscal officer to serve as the department's Department of Justice Equitable Sharing Agreement Certification (ESAC) eShare Administrator. The eShare Administrator provides authorized employees with an eShare account and an appropriate ESAC security role and/or eShare User Group.

1. ESAC Submitter: Can add, change, delete, and submit ESAC forms, can reply to correspondence and can add/edit contact information.

- a. Only the eShare Administrator (the fiscal officer in the Fiscal Office) has eShare ESAC Submitter security role rights.

2. ESAC Creator: Can add, change, and delete ESAC forms or contact information and can respond to correspondence. (ESAC Creators cannot submit ESAC forms.)

3. ESAC Reader: Can view ESAC information, but cannot add, modify, or submit ESAC forms or respond to correspondence.

- a. Department positions assigned eShare ESAC Reader security role rights by the eShare Administrator are:

- 1. The Asset Forfeiture Coordinator (Executive Officer)

2. A BOI DEA Task Force Detective

4. Department positions assigned eShare DAG-71 Submitter User Group access by the eShare Administrator are:

- a. The eShare Administrator (fiscal officer in the Fiscal Office)
- b. The BOI FBI/Joint Terrorism Task Force Detective
- c. The BOI ATF Task Force Detective
- d. Two BOI DEA Task Force Detectives
- e. The BOI Special Investigations Section lieutenant with task forces oversight

5. Department positions assigned eShare DAG-71 Reader User Group access by the eShare Administrator are:

- a. The Asset Forfeiture Coordinator (Executive Officer)

IV. U.S. DEPARTMENT OF JUSTICE ASSET FORFEITURE PROGRAM

A. The mission of the Department of Justice Asset Forfeiture Program is to disrupt and dismantle criminal enterprises, deprive criminals of the proceeds of illegal activity, deter crime, and restore property to victims.

B. On July 19, 2017, the Attorney General issued an Order allowing Department of Justice components and agencies to forfeit assets seized by state or local law enforcement (referred to in the order as "federal adoptions"). Under the Attorney General's Order, federal adoption of all types of assets seized lawfully by state or local law enforcement under their respective state laws is authorized whenever the conduct giving rise to the seizure violates federal law.

C. The net equity and value thresholds listed below from the Department of Justice Asset Forfeiture Policy Manual (2016) will continue to apply. These guidelines set minimum net equity levels that generally must be met, preferably before property is seized and certainly before federal forfeiture actions are instituted. The net equity values are intended to decrease the number of federal seizures, thereby enhancing case quality and expediting processing of the cases that are initiated. The thresholds are also intended to encourage state and local law enforcement agencies to use state forfeiture laws. In general, the minimum net equity requirements are:

1. Residential/Commercial real property and vacant land—minimum net equity must be at least \$30,000 or 20 percent of the appraised value, whichever amount is greater. No property with a net equity less than \$30,000 should be targeted for forfeiture, although individual districts may set higher thresholds to account for local real estate markets.
2. Vehicles—minimum net equity must be at least \$5,000 (based on National Automobile Dealers Association "Trade-In Value"). The value of multiple vehicles seized at the same time may not be aggregated for purposes of meeting the minimum net equity.

3. Cash—minimum amount must be at least \$5,000, unless the person from whom the cash was seized either was, or is, being criminally prosecuted by state or federal authorities for criminal activities related to the property, in which case the amount must be at least \$1,000.
4. Aircraft—minimum net equity must be at least \$30,000. Note that failure to obtain the log books for the aircraft will reduce the aircraft's value significantly.
5. Vessels—minimum net equity must be at least \$15,000.
6. All other personal property—minimum net equity must be at least \$2,000 in the aggregate.
7. Businesses—refer to the Asset Forfeiture Policy Manual (2016) for additional information.

D.

The “Request for Adoption of State and Local Seizure” form (“adoption form”), used by state and local agencies seeking federal adoption of seized assets, will document the probable cause determination justifying the seizure and provide federal legal counsel with the relevant information relating to probable cause for review.

1. State and local agencies are required to complete the adoption form only when seeking federal adoptions. Seizures made as part of joint federal-state investigations or pursuant to federal seizure warrants are not considered adoptions. Agency participants must review the circumstances of a seizure by state and local law enforcement to determine whether it is a federal adoption.
2. State and local law enforcement agencies must request federal adoption within 15 calendar days following the date of seizure. The adopting federal agency must send notice to interested parties within 45 days of the date of seizure.

E. Uses of Equitably Shared Property

Asset forfeiture is a powerful tool that provides valuable resources to state and local law enforcement that may not have otherwise been available. Equitably shared funds must be used in accordance with the Guide to Equitable Sharing for State and Local Law Enforcement Agencies for law enforcement purposes that directly supplement the appropriated resources of the department. Sharing will be withheld from the department where the governing body, state or local law, regulation, or policy requires or directs 1) specific expenditures of shared funds, 2) the transfer of federal equitable sharing funds to non-law enforcement agencies, or 3) expenditures for non-law enforcement purposes.

1. General Guidance on Supplantation and Budgeting

- a. Supplantation—Shared funds must be used to increase or supplement the resources of the department or any other ultimate recipient agency. Shared funds shall not be used to replace or supplant the appropriated resources of the recipient. The recipient agency must benefit directly from the sharing. In determining whether supplantation has occurred, the Department of Justice will examine the department's budget as a whole and allow the department to use equitable sharing funds for any permissible purpose as long as shared funds increase the entire department budget. The Department of Justice may terminate sharing with the department if it is not permitted by the LFUCG to

benefit directly from equitable sharing.

b. Anticipated shared property should not be budgeted—The department should not “spend it before we get it” or budget anticipated receipts. The department may not commit to the spending of sharing funds for a certain purpose in advance. For example, if the department electronically files a Form DAG-71 and anticipates a 50 percent share of \$100,000, the anticipated \$50,000 should not be obligated or budgeted for two reasons: (1) the completion of the forfeiture is uncertain; and (2) the amount of the sharing that will ultimately be approved is also uncertain. However, the department may earmark or budget sharing funds already received.

2. Use of Shared Funds

Except as noted in the Guide to Equitable Sharing for State and Local Law Enforcement Agencies (amended in 2014), equitably shared funds shall be used by the department for law enforcement purposes only. The uses outlined below are examples of permissible and impermissible expenditures.

Shared funds may be used for any permissible department expenditure and may be used by both sworn and non-sworn department employees, except as noted in salaries. The fact that shared property was forfeited by a particular unit or as a result of a particular federal violation does not limit its use to purchases only for that unit or to further investigations only for that particular federal violation. If the department wishes to support a multi-agency expenditure, such as a new payroll system or city municipal building, with a non-law enforcement agency, the department’s costs based on its use may be calculated on a pro-rata basis.

a. Permissible Uses:

1. Law enforcement operations and investigations
2. Training and education
3. Law enforcement, public safety, and detention facilities
4. Law enforcement equipment
5. Joint law enforcement/public safety operations
6. Contracting for services
7. Law enforcement travel and per diem
8. Law enforcement awards and memorials
9. Drug, gang, and other education or awareness programs
10. Matching grants

11. Transfers to other participating law enforcement agencies
12. Support of community-based programs
13. Non-Categorized Expenditures

Note: For a further description of each line item permissible use listed above, refer to the Equitable Sharing Agreement Certification (ESAC) User's Guide (2016) and the Guide to Equitable Sharing for State and Local Law Enforcement Agencies (April 2009; Revised 2014).

b. Impermissible Uses:

1. Use of forfeited property by non-law enforcement personnel
2. Creation of endowments or scholarships
3. Uses contrary to the laws of the state or local jurisdiction
4. Personal or political use of shared assets
5. Purchase of food or beverages
6. Extravagant expenditures
7. Petty cash accounts and stored value cards
8. Purchase of items for other law enforcement agencies
9. Costs related to lawsuits
10. Loans

Note: Shared funds may not be used as advance payment for expenditures being reimbursed or paid by other funds.

11. Money laundering operations

Note: For a further description of the impermissible uses listed above, refer to the Guide to Equitable Sharing for State and Local Law Enforcement Agencies (April 2009; Revised 2014).

c. Salaries

1. Equitable sharing funds may not be used to pay the salaries and benefits of sworn or non-sworn department employees. The purpose of this rule is to protect the integrity of the Asset Forfeiture and Equitable Sharing Programs so that the prospect of receiving equitable sharing funds does not influence, or appear to influence, the department's law enforcement decisions.

Exceptions:

a. Equitable sharing funds may be used to pay the salaries and benefits of current department officers and employees in the limited situations listed below.

Task force agencies may only pay salaries as a match to a federal grant or officer overtime. To avoid a conflict of interest, at no time can a task force member's full salary be paid with equitable sharing funds.

1. Matching federal grants—Shared funds may be used to pay the match requirement for the salaries and benefits of current sworn and non-sworn department employees funded by federal grant programs.
2. Overtime of officers and investigators—Shared funds may be used to pay the overtime and benefits of current sworn and non-sworn department employees involved in law enforcement operations.
3. Salary of an officer hired to replace an officer assigned to a task force—Shared funds may be used to pay the salary and benefits of current, sworn department officers hired to fill vacancies created when the department assigns officers to a task force. The replacement officer cannot engage in the seizure of assets or narcotics law enforcement as a principal duty. A principal duty is a duty that the officer is expected to perform regularly.

In order to pay the replacement officer's salary with equitably shared funds, the task force to which the department assigned an officer must be a law enforcement entity constituted under federal, state, or local law that is primarily engaged in specific and targeted law enforcement activities involving more than one law enforcement agency. In addition, the Chief of Police after assigning an officer must not maintain direct day-to-day operational control of the task force although they may participate in the policy-level control of such task force.

When the department has assigned an officer and paid for the replacement as specified above, and it becomes necessary to return the officer from the task force, the department may continue to use forfeited funds to pay for the salary and benefits of the replacement officer for a period not to exceed six months.

4. Specialized programs—Shared funds may be used pay the salary and benefits of current, sworn department officers assigned to specialized programs which do not generally involve

traditional law enforcement functions. For example, School Resource Officers (SRO) or officers assigned to programs such as DARE. SROs and other officers assigned to specialized programs must be employed by the department. If the officer does not serve in this position on a full time basis, only the pro rata portion of the salary and benefits covering the time worked in the specialized position may be paid with shared funds.

F. Bookkeeping Procedures and Internal Controls

The department must:

1. Establish a separate revenue account or accounting code through the LFUCG Department of Finance for the proceeds from the Department of Justice Equitable Sharing Program. This account or accounting code will be used solely for funds from the Department of Justice Equitable Sharing Program. No other funds may be included in this account or with this accounting code.
2. Not commingle Department of Justice equitable sharing funds with funds from any other source.

Note: When the fiscal officer (the DOJ eShare Administrator) is electronically notified by the LFUCG Department of Finance of an incoming EFT (electronic funds transfer) credit involving DOJ Equitable Sharing Fund revenue, the fiscal officer, via PeopleSoft, is responsible to electronically route the EFT credit into the LFUCG DOJ Equitable Sharing Account fund #1131, which is non-comingled and has a separate accounting code.

3. The LFUCG Department of Finance is responsible to direct the EFT credit the fiscal officer routed into the LFUCG DOJ Equitable Sharing Account fund #1131 into a non-interest bearing Demand Deposit Account (DDP) with JP Morgan (Account #192186106). This account is FDIC insured up to \$250,000.⁰⁰. All balances over that amount are collateralized by a letter of credit #70283 issued by the Federal Government up to \$182,000,000.⁰⁰.
4. Establish an internal procedure to recommend expenditures from the revenue account.

a. The department's internal procedure is as follows:

1. All awards from DOJ equitable sharing funds shall be deposited into the LFUCG DOJ Equitable Sharing Account fund #1131.
2. Requests for expenditures from the LFUCG DOJ Equitable Sharing Account fund #1131 shall be electronically forwarded by the requestor to the asset forfeiture coordinator.
3. The asset forfeiture coordinator will forward the request, and any additional information needed to make the expenditure decision, to the Chief of Police.
4. The Chief of Police must authorize all expenditures from the LFUCG

DOJ Equitable Sharing Account fund #1131.

5. The asset forfeiture coordinator will notify the requestor of the Chief's expenditure decision.

a. If the request was approved by the Chief of Police, the asset forfeiture coordinator will also instruct the requestor to electronically enter the purchase request via PeopleSoft.

5. Use tangible property placed into official use for a law enforcement purpose for at least two years following the transfer. After two years, the property may be sold for the benefit of the department. All proceeds from the sale of such property must be deposited into the LFUCG DOJ Equitable Sharing Account fund #1131. If the department requests to sell property prior to two years, the department must obtain approval from AFMLS (the Department of Justice's Asset Forfeiture and Money Laundering Section).

6. Use purchased or acquired luxury automobiles only for undercover assignments.

7. Obtain approval for expenditures from the LFUCG, if appropriate.

8. Upon final approval, issue contracts or purchase orders to formally disburse deposited assets for goods or services. Deduct purchase orders and contracts from the account balance.

9. Maintain a record of all expenditures from the revenue account or accounting code. These expenditures must be in accordance with the *Guide*.

10. Issue a yearly ESAC report that details the actual amounts and uses of the federal asset sharing funds and property within their jurisdiction, if appropriate.

G. Reporting and Audit Requirements

To ensure effective management, promote public confidence in the integrity of the Equitable Sharing Program, and protect the Asset Forfeiture Program against potential waste, fraud, and abuse, the Department of Justice has established for participating law enforcement agencies reporting requirements that include the annual submission of the Equitable Sharing Agreement and Certification form and, if applicable, an audit report. The department must be in compliance with the reporting requirements set forth in the *Guide* to receive any distribution of money or property under the Equitable Sharing Program. The department is considered to be in compliance once the Equitable Sharing Agreement and Certification form is submitted electronically and the signed Affidavit/Signature page is received within the required deadlines.

H. Federal Equitable Sharing Agreement and Certification Form

1. As a prerequisite to participating in the Department of Justice Equitable Sharing Program, the department must annually submit to AFMLS a signed electronic Equitable Sharing Agreement and Certification (ESAC) form. The agreement must be signed by the head of the department (the Chief of Police) and a designated official of the LFUCG (the mayor). By signing the Affidavit, the signatories agree to be bound by the statutes and guidelines that

regulate the equitable sharing program and certify that the department will comply with these guidelines and statutes.

a. The online Equitable Sharing Agreement Certification (ESAC) form is available from the eShare portal.

2. The asset forfeiture coordinator is responsible to ensure that the fiscal officer submits the ESAC form within 60 days after the end of the department's fiscal year, regardless of whether funds were received or maintained during the fiscal year. The fiscal officer shall reconcile the account ledger for DOJ equitable sharing funds with LFUCG's balance sheet provided by the LFUCG Department of Finance to ensure accuracy with the ESAC report. The ESAC form must be completed and submitted electronically.

Note: The LFUCG's fiscal year ends on June 30. The ESAC form shall be completed and submitted electronically no later than 60 days after June 30.

3. In order to remain compliant in the Equitable Sharing Program, the department's eShare Administrator must submit a new ESAC form annually. The department must report equitable sharing funds received during the last fiscal year, report how those funds were spent, and report any funds remaining in the department's account.

a. Funds Received: This section of the ESAC form is used to report all equitable sharing funds received, including those transferred from other state or local agencies. This section captures data in two columns (Justice Funds and Treasury Funds).

1. The Justice Funds column includes funds from Justice Asset Forfeiture Program participants (i.e., FBI, DEA, ATF, USPIS, USDA, DCIS, DSS, and FDA).

2. The Treasury Funds column includes funds from the Treasury Asset Forfeiture Program participants (e.g., IRS, ICE, CBP, and USSS).

3. Funds from the Department of Justice and funds from the Department of the Treasury must be recorded and maintained separately on this form.

b. Funds Spent: In this section, the department must report all equitable sharing funds that were spent. This section captures data in two columns: Justice Funds and Treasury Funds.

1. Expenditures must be reported in the appropriate column based on which funds were used for each purchase.

2. Funds from the Department of Justice and the Department of the Treasury must be recorded and maintained separately on this form.

I. Annual Audit

1. When the department receives equitable sharing cash, proceeds, or tangible property it is

required to perform an audit consistent with the Single Audit Act Amendments of 1996, and 2 C.F.R. 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). Per those guidelines, if the department expends more than \$750,000 in federal funds (e.g., Justice and/or Treasury forfeiture funds, grants, cooperative agreements) within the fiscal year the department must have a “single audit” performed annually covering all federal funds expended that year.

Note: A ‘single audit’ means an audit which includes both the department’s financial statements and Federal awards.

2. In such circumstances, the LFUCG Department of Finance is responsible to contract with an independent accounting firm to perform the required single audit.

a. The *Government Auditing Standards*, issued by the Comptroller General of the United States and the U.S. Government Accountability Office, must be followed by auditors and audit organizations conducting the required independent financial audit. These standards pertain to the auditor’s professional qualifications, the quality of the audit effort, and the characteristics of professional and meaningful audit reports.

b. The Single Audit Report is required to include a Schedule of Expenditures of Federal Awards for the period covered by the auditee’s financial statements.

c. The asset forfeiture coordinator is responsible to ensure that the fiscal officer provides required documentation to the LFUCG Department of Finance within 60 days after the end of the department’s fiscal year for use during the single audit.

d. The LFUCG Department of Finance must submit its Single Audit Report to the Federal Audit Clearinghouse no later than 9 months after the end of the fiscal year covered by the audit.

e. The department shall retain copies of the Single Audit Report.

f. Forfeiture funds may be used to pay the fees associated with conducting such audits.

J. Record Retention

1. The department shall retain for a period of at least five years all documents and records pertaining to the department’s participation in the Department of Justice Equitable Sharing Program and the department’s receipt and expenditure or use of shared cash, proceeds, real property, or tangible personal property, including but not limited to, electronic Equitable Sharing Agreement and Certification (ESAC) forms, accounting and bookkeeping documents, logs and records, bank records and statements, and audit reports.

V. STATE ASSET FORFEITURE PROCEDURES

KRS 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 or she 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 or her 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 or she neither had knowledge of nor consented to the act or omission; and

4. The forfeiture provisions of this paragraph shall not apply to any misdemeanor offense relating to marijuana or salvia;
 - (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 or her to have been committed or omitted without his or her 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; and
 - (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, synthetic drugs, or salvia, 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 or she 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: April 11, 2012

A. Expenditure of Proceeds from the LFUCG State/Local Seizure Fund (#1132)

1. All awards from state and local courts shall be deposited into the LFUCG State/Local Seizure Fund (#1132).

a. The LFUCG Department of Finance has established the LFUCG State/Local Seizure Fund (#1132) as a non-comingled fund.

2. Expenditures from the LFUCG State/Local Seizure Fund (#1132) shall be authorized only by the Chief of Police. Requests for expenditures from LFUCG the State/Local Seizure Fund (#1132) shall be electronically forwarded by the requestor to the asset forfeiture coordinator, who will forward the request to the Chief of Police along with the necessary information for the Chief to make the expenditure decision.

3. The asset forfeiture coordinator will notify the requestor of the Chief's expenditure decision.

a. If the request was approved by the Chief of Police, the asset forfeiture coordinator will also instruct the requestor to electronically enter the purchase request via PeopleSoft.

B. Seizure of Vessels, Vehicles, Aircraft, Currency, or Other Personal Property or Contraband Articles

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: [KRS 218A.415 (1); Effective July 13, 1990]

a. The seizure is incident to an arrest or a search under a search warrant; [KRS 218A.415 (1) (a); Effective July 13, 1990]

b. The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter; [KRS 218A.415 (1) (b); Effective July 13, 1990]

c. The law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or, [KRS 218A.415 (1) (c); Effective July 13, 1990]

d. The law enforcement agency has probable cause to believe that the property is subject to forfeiture pursuant to this chapter. [KRS 218A.415 (1) (d); Effective July 13, 1990]

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 i.e., search warrants.

4. As soon as practicable following seizure, the case officer 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 case officer 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 requested.

6. Following the department's determination not to proceed with a forfeiture based upon innocent owner considerations, the case officer shall release the seized property to the lawful owner or their legally authorized designee.

7. As soon as practicable after the seizure, the case officer should complete an electronic case report documenting the seizure. When a vehicle is seized and likely to be forfeited, the case officer will refer to GO series 1979-01H Vehicle Procedures for long term holds procedures. The case officer is also responsible to notify the appropriate prosecutor's office of the seizure.

C. Seized Vessels, Vehicle and Aircraft Storage and Maintenance

1. At the time of seizure, the case officer should have vessels, vehicles, aircraft, etc. transported or towed to a secure storage facility or other appropriate storage location as may be authorized by the department.

2. An examination of the seized property and all containers, open or closed, found therein shall be completed at the time of seizure. As soon as practicable after seizure, the case officer 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 unavailable to take possession of the property, the property shall be booked in as personal property to the Property and Evidence Unit to be released to the owner at a later date.

3. Any personal property seized as evidence shall be packaged 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 are vested immediately in the department 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 department 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 department forms should be maintained with seized property to document special or required maintenance.

6. As directed by the asset forfeiture coordinator, assistant coordinator(s) shall make quarterly inspections of all property which has been seized subject to forfeiture to insure continued time of seizure conditions of the property are being maintained. The assistant coordinator(s) will electronically submit the completed quarterly inspections report to the asset forfeiture coordinator.

D. Seizure and Forfeiture of Real Property

1. The department 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 department if it obtains a seizure order from the court following a hearing. Seizure prior to judgment is only permissible on a showing by the Commonwealth that seizure is necessary to preserve the property pending final judgment.

c. Real property which is seized prior to final judgment must be maintained at time-of-seizure condition. Ongoing businesses, including agricultural enterprises, must be continued. For this reason, seizure of real property prior to final judgment of forfeiture is not recommended. Prior approval of this type of seizure must be reviewed by the asset forfeiture coordinator and authorized by the Chief of Police.

2. Case officers 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 notice. A lien is preferred over pre-judgment seizure of real property.

Note: "Forfeiture lien notice" means the notice provided for in KRS 218A.450.
[KRS 218A.405 (2); Effective July 13, 1990]

E. 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 department 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 department 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.

VI. RETENTION FOR OFFICIAL USE, SALE AND DISTRIBUTION

A. Retention of Vehicles

1. Any vehicle seized and subsequently forfeited to the department may be retained by the department for official use.
2. Any vehicle retained may be sold by the department. Funds from such sale shall not be considered as funds to be distributed, and shall be deposited into the LFUCG State/Local Seizure Fund (#1132).
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 laws of the Commonwealth of Kentucky.
4. The department shall pay any bona fide perfected security interest on any forfeited vehicle retained for official use upon review by the asset forfeiture coordinator and the approval of the Chief of Police.

B. Sale of Forfeited Property

1. 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 advertised pursuant to KRS Chapter 424. [KRS 218A.420 (3); Effective June 24, 2015]
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. 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. [KRS 218A.420 (2); Effective June 24, 2015]

C. Distribution of Sale Proceeds

1. Coin, currency, or the proceeds from the sale of property forfeited shall be distributed as follows: [KRS 218A.420 (4); Effective June 24, 2015]
 - a. Eighty-five percent (85%) shall be paid to the department or agencies which seized the property, to be used for direct law enforcement purposes; and [KRS 218A.420 (4) (a); Effective June 24, 2015]
 - 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.

[KRS 218A.420 (4) (b) [Excerpt]; Effective June 24, 2015]

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.

[KRS 218A.420 [After (4) (b)]; Effective June 24, 2015]

c. 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.

[KRS 218A.420 (9); Effective June 24, 2015]

1. When practical a written recommendation may be submitted to the prosecutor which outlines an equitable sharing of assets on joint operation cases.
2. All court orders from state courts that award assets to the department shall be initially routed to the civilian Property and Evidence Unit supervisor.
 - a. The civilian Property and Evidence Unit supervisor is responsible to ensure that these court orders are forwarded to the asset forfeiture coordinator, who will route them to the fiscal officer.
3. The asset forfeiture coordinator shall ensure that the moneys awarded by the court are deposited in the LFUCG State/Local Seizure Fund (#1132) each month by the fiscal officer.
 - a. The fiscal officer is responsible for the electronic completion and submission of the Annual Asset Forfeiture Report to the Kentucky Justice and Public Safety Cabinet.
4. The civilian Technical Services Unit supervisor is responsible for completing and submitting a quarterly report to the asset forfeiture coordinator that lists all vehicles seized, awarded or auctioned. The civilian Technical Services Unit shall also electronically send a report to the fiscal officer which lists the vehicles that were sold, the amount for which each vehicle was sold, and a copy of the court order authorizing the sale.
5. The civilian Technical Services Unit supervisor shall forward the proceeds from the auction of forfeited vehicles to the fiscal officer, who is responsible to process the deposit into the LFUCG State/Local Seizure Fund (#1132).
 - a. The fiscal officer shall also arrange for the proceeds to be shared in the appropriate amount with the office of the Commonwealth's Attorney and/or County Attorney as appropriate.
6. The asset forfeiture coordinator shall manage the fiscal officer's process of issuing the

sharing checks as required by court order.

VII. STATE REPORTING REQUIREMENTS

A. Seizure Reports

1. The asset forfeiture coordinator will ensure that the fiscal officer annually electronically submits the appropriate seizure reports to the Kentucky Justice and Public Safety Cabinet.

VIII. HUMAN TRAFFICKING

A. It is the responsibility of the human trafficking detective to obtain assistance from the asset forfeiture coordinator and/or the fiscal officer as part of the process of completing any applicable forfeiture of property used in connection with human trafficking.

KRS 529.150 Forfeiture of property used in connection with human trafficking -- Distribution of proceeds.

- (1) All property used in connection with or acquired as a result of a violation of KRS 529.100 or 529.110 shall be subject to forfeiture under the same terms, conditions, and defenses and using the same process as set out in KRS 218A.405 to 218A.460, with the exception of the distribution of proceeds, which shall be distributed as required in this section.
- (2) Proceeds from the assets seized and forfeited shall be distributed as follows:
 - (a) Fifty percent (50%) shall be paid to the human trafficking victims fund;
 - (b) Forty-two and one-half percent (42.5%) shall be paid to the law enforcement agency or agencies that seized the property, to be used for direct law enforcement purposes; and
 - (c) Seven and one-half percent (7.5%) shall be paid to the Office of the Attorney General or, in the alternative, to the Prosecutors Advisory Council for deposit of the Commonwealth's attorney or county attorney who has participated in the forfeiture proceeding, as determined by the court pursuant to KRS 218A.420(9). Notwithstanding KRS Chapter 48, these funds shall be exempt from any state budget reduction 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.

Effective: June 25, 2013

IX. TRAINING

A. Training required per KRS:

KRS 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. [Excerpt]

- (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.

Effective: June 24, 2015

B. Training required per the U.S. Department of Justice:

1. Beginning in 2018, law enforcement agencies participating in the Department of Justice Asset Forfeiture Program must provide annual training on state and federal laws related to asset forfeiture to their law enforcement officers.

Issue Date: July 19, 2017