

**POLICY
504**

**EFFECTIVE
DATE
01-15-15**

**Eugene
Police Department**



CRIMINAL FORFEITURE

504.1 PURPOSE AND SCOPE

This policy provides the accepted and proper procedures for processing forfeitures for the Eugene Police Department (EPD.) Additionally, the procedures in this policy are intended to protect the value and integrity of the seized assets prior to and during the forfeiture process.

504.1.1 REFERENCES

Eugene City Code 4.255; revision 6/26/12

ORS 98.245; Disposition of Unclaimed Property

ORS 131.550; Criminal Forfeiture Definitions

ORS 131.561; Seizure of Property Subject to Forfeiture

ORS 131.564; *Status of Seized Property; Release; Maintenance and Use*

ORS 131.570; Notice of Seizure for Forfeiture; Publication of Notice

ORS 131.591; Equitable Distribution of Property or Proceeds

ORS 131.594; Disposition and Distribution of Forfeited Property,

ORS 131.600; Records and Reports

EPD/LCDA Intergovernmental Agreement; Aug. 1, 2006, Contract 2006-03206

EPD, Evidence Control Unit, Policy and Procedures Manual; Disposal Options, Destruction by Incineration, Mutilation, Dumping, revision 6/26/13

504.1.2 DEFINITIONS

Criminal Forfeiture – Any forfeiture that has been ordered through a “Judgment of Criminal Forfeiture” by the Lane County District Attorney’s Office (LCDAO) and/or the Lane County Circuit Court (LCCC.)

Forfeited Asset – Personal property that was seized by a removing authority as evidence, abandoned property, or stolen property, and that has remained in the physical possession of that removing authority for the legally required period of time following the conclusion of all criminal actions related to the seizure of the evidence, abandoned property, or stolen property, or conclusion of the investigation if no criminal action is filed.

Persons Known to Have Interest – Any person who has, prior to the time the property is seized, filed notice of interest with any public office as may be required or permitted by law to be filed with respect to the property that has been seized; any person from whose custody the property was seized; or any person who has an interest in the property, including all owners and occupants of the property, whose identity and address is known or is ascertainable upon reasonable inquiry and whose rights and interest in the property may be affected by the action. (*ORS 131.550*)

Financial institution – Any person lawfully conducting business as defined in (ORS 131.550).

Seizing Agency – Any law enforcement agency that seizes property or evidence that results in a criminal forfeiture or abandoned property.

Property – Any interest in anything of value, including the whole of any lot or tract of land and tangible and intangible personal property, including currency, instruments or securities or any other kind of privilege, interest, claim or right whether due or to become due (ORS 131.550.)

504.2 POLICIES AND PROCEDURES

The EPD Forfeiture Analyst will process all State and Federal forfeitures in accordance with all applicable Federal Laws, ORS', and Eugene City Code. The Forfeiture Analyst will gain access to all documentation and resources necessary to research, process disposition, and distribute the proceeds for forfeitures under the authority of EPD's Chief of Police or the assigned designee. Forfeitures will be processed by the Forfeiture Analyst under the direction of the Chief of Police and the Forfeiture Analyst's direct supervisor. Reconciliation of forfeiture distribution will be tracked, calculated and coordinated by the Forfeiture Analyst and reviewed by the EPD Finance Manager or designee prior to being reviewed by Central Finance and City Auditors, as needed. The EPD Finance Manager will have conclusive fiscal authority over all forfeitures.

504.2.1 INITIATION OF FORFEITURE

All non-federal forfeitures that result from an EPD case must be processed through the State of Oregon, Criminal Justice Commission, and the allocation of funds must be distributed and processed according to ORS 131.591, ORS 131.594, Eugene City Code 4.255, and the EPD/LCDA Intergovernmental Agreement.

In accordance with Eugene City Code 4.255, any money or security that is not retained for evidentiary purposes must be deposited with the City Finance Officer in an interest bearing account, pending the outcome of the forfeiture proceeding. All property seized must be maintained in a manner which complies with ORS 131.564.

The LCDAO may file an "indictment", a "stipulated motion and order for forfeiture of seized property" or other notice of intent to criminally forfeit assets. These notices do not constitute an approval for the forfeiture to be processed. A Lane County Court must issue a "Judgment of Criminal Forfeiture" before the forfeiture can be processed by the Eugene Police Department. Final judgments for all defendants named in the forfeiture must be received prior to proceeding with forfeiture procedures.

504.2.1.1 PROCEDURE

- a) If the LCDAO has filed any notice of intent to criminally forfeit property and the fair market value of the property exceeds \$1,000, EPD must, as soon as is practical, publish a notice of seizure for criminal forfeiture. The notice must comply with the guidelines in ORS 131.570 and should be published in the largest local

publication. The publication must run for at least four consecutive weeks.

- b) Following publication an “Affidavit of Publication” will be generated by the distributor. As soon as the affidavit is received by the Forfeiture Analyst, it must be sent to LCDAO or other forfeiture counsel.
- c) Once a Judgment of Criminal Forfeiture has been issued by LCDAO, EPD must wait 60 days past the date of final court disposition before processing the forfeiture.
- d) EPD will work with the forfeiture counsel to confirm validation or deny any legal ownership interest claims made by any person, other than the defendant, who is claiming interest in the seized assets.

504.3 FEDERAL CASES

Any case where federal charges/forfeiture is being pursued must not be processed through the State of Oregon.

504.3.1 PROCEDURE

- a. As soon as possible after notification of federal charges from the LCDAO, LCCC, or the responsible officer/detective, the Federal agency who is adopting the case must be contacted.
- b. An IRS “DAG71” form must be completed for all federal forfeitures. The Forfeiture Analyst will research pertinent case information in order to complete the DAG71. If requested by the forfeiting agency, the Forfeiture Analyst will process the form through the Department of Justice Equitable Sharing website ([http://www.justice.gov/criminal/afmls/equitable-sharing/.](http://www.justice.gov/criminal/afmls/equitable-sharing/))
- c. All work related to the pursuit and processing of federal forfeitures will be completed on a federal level and is not the responsibility of EPD.
- d. Funds received from a federal forfeiture do not get reported through the State of Oregon.
- e. Once proceeds from a federal forfeiture are received, EPD’s Finance Manager must be notified, in order for the funds to be distributed into a federal sharing account.

504.4 VEHICLES SUBJECT TO FORFEITURE

All vehicles seized that are subject to forfeiture must be protected, serviced and/or maintained in a manner reasonably appropriate to preserve the value of the vehicle.

504.4.1 PROCEDURE

- a. A copy of the Evidence Property Receipt (EPR) must be retained for each vehicle subject to forfeiture.

- b. Upon receiving a “Notice of Intent to Forfeit” from the forfeiture council, the Evidence Control Unit (ECU) Supervisor must be contacted in order to obtain the mileage of the vehicle at the time the property was seized for forfeiture. The mileage must be recorded and retained.
- c. The ECU Supervisor will assist in assessing, documenting, and retaining the general condition of the vehicle per ECU Policy and Procedure. The ECU Supervisor will also assist in gaining all relevant information needed to assess a fair market value for the vehicle.
- d. Initial research must be conducted by the Forfeiture Analyst and if necessary, the arresting officer regarding potential security and/or ownership interest and market value. The information will be used to evaluate if the City of Eugene will accept the responsibility of processing for forfeited vehicle (see 504.5 below.)
- e. The vehicle must be maintained to preserve the state in which it was received.
 - 1. On a monthly basis an EPD designated personnel member must attempt to start the vehicle to ensure functionality, and record the mileage. The Forfeiture Analyst shall track all maintenance and time costs associated with maintaining the vehicle.
 - 2. The vehicle must be assessed for any damage that has occurred while in possession of EPD. If any damage has been found, it must be documented and the documentation must be forwarded as soon as possible to the Forfeiture Analyst and the Analyst’s appointed supervisor.
 - 3. The vehicle must be assessed for any potential for damage to occur while in the custody of EPD.

504.5 CONTACT OF PERSONS KNOWN TO HAVE LEGAL INTEREST

Any person known to have legal interest in forfeited property, whose identity and contact information is known or is ascertainable through reasonable inquiry, must be notified of the intent to forfeit the property prior to processing the forfeiture. These persons may include but are not limited to: financial institutions, lien-holders, insurance companies, registered owners, and real-property occupants.

504.5.1 PROCEDURE

- a. Upon receipt of a “Notice of Intent to Forfeit”, the Forfeiture Analyst must make three reasonable attempts to serve the notice of seizure for criminal forfeiture (*ORS 131.561*) to persons, other than the defendant, whom may have legal interest in the forfeited property.
 - 1. Attempts to contact an individual must include at least one written notice to the last known address. The notice must be sent via

certified mail.

2. All attempts to contact an individual must be recorded and retained with the date the attempt was made, the manner in which the attempt was made (phone/written), and the name of the person who made the attempt. A copy of any written attempt must be retained.
 3. The notice must include a description and/or inventory of the property that is the subject of the seizure.
 4. The written notice must include:
 - The identity of the person from whom the property was seized.
 - The name, address and telephone number of the seizing agency.
 - The name, address and telephone number of the office where further information concerning the seizure and criminal forfeiture may be obtained.
 5. The notice must include information stating that a potential claimant must follow the process outlined in *ORS 131.500-131.600*. The notice must direct a potential claimant to seek legal assistance with any questions they have regarding the process.
- b. If property seized is a vehicle the registered owner or lien-holder may report, in writing, their desire to give up their rights to the vehicle or proceeds from the sale of the vehicle. If the estimated market value of the vehicle is less than the anticipated cost associated with the maintenance and sale of the item or to satisfy lien-holder claims, EPD can choose to refuse the rights to the vehicle, and the responsibility transfers back to the registered owner or lien-holder to remove the vehicle from EPD custody.

504.6 DISPOSITION RESEARCH

Once 60 days after the date of final court disposition has passed, the Forfeiture Analyst must verify that the case has been approved to proceed with the forfeiture. Disposition research must be completed for every defendant named in the case.

504.6.1 PROCEDURE

- a. Disposition information should be acquired by the use of Oregon Judicial Information Network (OJIN) and DACMS (District Attorney Case Management System), as well as any database that is compliant with regulations for disposition research.
 1. Document that no active appeals have been filed for any defendants that are named in the forfeiture judgment. *If there is an appeal pending then the forfeiture cannot be processed.* The

forfeiture processing can only resume if the appeal is denied and cleared through the LCDAO. Documentation must include the date/time that the information was obtained.

2. Document that no active warrants have been issued for any defendants that are named in the forfeiture judgment. *If there is an outstanding warrant the forfeiture cannot be processed.* The forfeiture processing can only resume if the warrant is cleared and written approval is given through the LCDAO.
- b. Obtain copies of all judgments, including revised judgments, pertaining to the case and. Verify that final judgments have been received and retained with the ECU for every defendant named in the case.
 - c. Verify with the ECU records that the funds seized have been outlined in the forfeiture judgment(s) and are eligible for forfeiture, for each defendant named.
 1. If an item has been forfeited but it is not possible to retain the value of the original item due to its condition, (i.e. damaged currency that in its current form, has no monetary value) the forfeiting council must be notified and a revised forfeiture judgment may be required.
 - d. Notify in writing, the ECU of all items that have been ordered to be forfeited.
 - e. Notify in writing, the responsible officer and/or investigator assigned to the case of all items that have been ordered to be forfeited.

504.7 WEAPONS SUBJECT TO FORFEITURE

All weapons that have been ordered for forfeiture will be destroyed in accordance with the ECU Policy and Procedure Manual.

504.7.1 PROCEDURE

- a. Once disposition research is complete and the disposition is clear, provide ECU a list of all weapons that have been ordered to be forfeited. This notification must include a copy of the judgment that includes the order for criminal forfeiture.

504.8 STATE REPORTING POLICY

All non-federal forfeitures that are processed through EPD must be submitted to the State of Oregon Asset Forfeiture Oversight Advisory Committee (AFOAC) using the Oregon Online Grant System (<http://www.cjcgrants.com>) by the Forfeiture Analyst.

A copy of the written documentation of each sale, determination to retain, transfer or other disposition of forfeiture property or proceeds from the sale of forfeited property must be retained.

Submissions that are generated from Jan. 1st – June 30th of any year, must have processing and funds distribution completed by June 30th of the same year. Any submissions that are generated from Jan. 1st – June 30th of any year, must have processing and funds distribution completed by December 31st of the same year.

504.8.1 PROCEDURE

- a. AFOAC “Form 1” describes the property seized and the circumstances of the seizure. This form must be completed in compliance with *ORS 131.600*.
- b. AFOAC “Form 2” describes the judgment and the manner in which any forfeited property and the proceeds from any sales of the property may be distributed. This form must be completed in compliance with *ORS 131.600*.
- c. AFOAC “Form 4” describes payment distributions and accounting information relating to each case. This form must be completed prior to the distribution of any funds that result from forfeited property, and must be completed in compliance with *ORS 131.600*.
- d. AFOAC “Form 3” summarizes and reconciles the entirety of the cases submitted with the AFOAC within the same calendar year. This form must be completed by December 30th of each year and must be completed in compliance with *ORS 131.600*.

504.9 ASSET DISTRIBUTION

Once the specified State reporting requirements have been met (Forms 1, 2 and 4) and the disposition research has been completed, asset distribution must occur in compliance with *ORS 131.591*, *ORS 131.594*, *Eugene City Code 4.255*, and the EPD/LCDA Intergovernmental Agreement.

504.9.1 PROCEDURE

- a) An accounting spreadsheet must be used to track the asset distribution for all forfeitures. The spreadsheet must include:
 1. All associated EPD, AFOAC, and outside agency case numbers.
 2. Defendant(s) name(s.)
 3. Date of seizure.
 4. Date of deposit(s.)
 5. A description of the assets seized, including the total amount of currency.
 6. The total amount of any assets sold.
 7. Interest earned on all assets. The interest is calculated from the date of deposit.

8. The allocated cost for publication of the legal ad.
 9. Any additional costs associated with the service, maintenance, and/or storage of property seized.
 10. Any additional costs or fees as outlined in *ORS 131.594*.
 11. Any fines or fees paid on behalf of the defendant(s.)
 12. Any amount returned to the defendant(s.)
 13. Any amount paid to a victim.
 14. The amount to be distributed to political subdivisions of the State as outlined in *ORS 131.594*.
- b) A copy of the accounting spreadsheet and a cover letter outlining the purpose of the distribution must accompany all funds distributed to a political subdivision.
- c) Any funds distributed must be sent via certified mail. The return receipt or a copy of the receipt must be retained.

504.10 RECONCILIATION

After the closing of each fiscal year (July 1st - June 30th) The Forfeiture Analyst must send written notification to the EPD Finance Manager that summarizes any fund distribution that has occurred throughout the fiscal year.

504.11 PROCESSING FORFEITED ASSETS/CURRENCY

Any property that is classified as a “forfeited asset” will be the responsibility of the ECU to process the final disposition of the property in accordance with the unit’s, Policies and Procedures Manual, as well as, *ORS 98.245*. Any currency that is a forfeited asset will be researched for final disposition and reported to the ECU.