

DALTON POLICE DEPARTMENT

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Subject Asset Forfeiture			
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I. Policy

It is the policy of the Dalton Police Department to utilize applicable state and federal statutes to accomplish the goals of disrupting criminal conduct by the lawful seizure and forfeiture of assets and proceeds used unlawfully or obtained through various criminal acts.

II. Purpose

The purpose of this policy is to standardize the procedures used in lawfully seizing, maintaining, and moving for forfeiture of assets, as enumerated in O.C.G.A. (Official Code Georgia Annotated) 16-13-49, obtained unlawfully through various criminal acts and / or the resulting proceeds, with special emphasis on violations of the Georgia Controlled Substances Act. The Department's intent, by participating in asset forfeiture, is to:

- A. Provide additional tools to Officers to hamper the operations of drug violators.
- B. Make it more difficult to use illegal proceeds to continue a criminal enterprise if the "leader" is incarcerated.
- C. Remove the financial incentive to participate and / or invest in the drug trade.

III. Definition

Asset Forfeiture Review Coordinator (AFRC) – The ~~agent~~ employee responsible for ensuring all reports, reviews, and processes are completed in a timely manner in accordance with this policy. The AFRC shall be appointed by the Criminal Investigations Division Commander.

IV. Types of Property Subject to Seizure

Anything with value or any interest in anything of value, including real property and any fixtures thereon, any tangible and intangible personal property, including, but not limited to, currency, instruments, securities, or any other kind of privilege, interest, claim, or right, which has been used or obtained in violation of the Georgia Controlled Substances Act

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(GCSA) and / or other unlawful activities listed in Appendix A of this policy, is subject to seizure.

V. **Statutory Basis for Seizure**

- A. Any Officer may seize property for forfeiture if the Agency Department determines there is probable cause to believe that the property falls within any of the following categories:
1. All property that is, directly or indirectly, used or intended for use in any manner to facilitate a violation, as outlined in Code Section 16-13-49, or any proceeds derived or realized there from;
 2. All property located in this state which was, directly or indirectly, used or intended for use in any manner to facilitate a violation of any of the code sections listed in Appendix A of this policy or of the laws of the United States or any of the several states relating to any of the listed code sections in Appendix A of this policy, which is punishable by imprisonment for more than one (1) year, or any proceeds derived or realized there from;
 3. All weapons possessed, used, or available for use in any manner to facilitate a violation of the code sections listed in Appendix A of this policy or of the laws of the United States or any of the several states relating to the listed code sections in Appendix A of this policy, which is punishable by imprisonment for more than one (1) year;
 4. Any interest, security, claim, property right, or contractual right of any kind affording a source of influence over any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of in violation of the code sections listed in Appendix A of this policy or any of the laws of the United States or any of the several states relating to the listed code sections in Appendix A of this policy, which is punishable by imprisonment for more than one (1) year, or any proceeds derived or realized there from;
 5. All monies, negotiable instruments, securities, or other thing of value which are found in close proximity to any controlled substance or marijuana or other property which is subject to forfeiture under any of the code sections listed in Appendix A of this policy.
- B. Seizure of property subject to forfeiture may be made without prior judicial approval if there is probable cause to believe the property is subject to forfeiture under Code Section 16-13-49, or the seizure is incident to arrest or search pursuant to a search warrant or to an inspection under an inspection warrant.
- C. Property not seized pursuant to an arrest warrant, search warrant, inspection warrant, or legally recognized exception to a warrant requirement, which property is located on private premises, should be seized pursuant to a seizure warrant issued by a Superior Court Judge in the circuit in which the property is presently located.

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- D. A property interest shall not be subject to forfeiture under GCSA for a violation involving one gram of cocaine or less, or four ounces of marijuana or less, unless said property was used to facilitate a transaction in, or a purchase of or sale of, a controlled substance or marijuana.
- E. A rented or leased vehicle shall not be subject to forfeiture unless it can be established in forfeiture proceedings that the owner of the rented or leased vehicle is legally accountable for the conduct which would otherwise subject the vehicle to forfeiture, consented to the conduct, or knew, or reasonably should have known the conduct, or that it was likely to occur. O.C.G.A. 16-13-49(f) requires the rented or leased vehicle to be returned to the owner or its agent as soon as practicable.
- F. When property that was used in violation of any of the code sections listed in Appendix A of this policy has been removed from the jurisdiction of this **Agency Department** before the seizure is to take place, then the seizure should be done jointly with an Officer having jurisdiction in the area where the property is located. That Officer may then return the property over to this **Agency Department**.

VI. **Training**

All sworn Officers shall receive annual training on lawful procedures for the seizure of property.

VII. **Asset Forfeiture Review Coordinator (AFRC)**

The AFRC is responsible for the following:

- A. Ensuring the strict adherence to the provisions of this policy
- B. Reviewing all asset forfeiture cases
- C. Completing an annual inspection of all asset forfeiture cases and files
- D. Maintaining a record of all asset forfeiture / seizure cases and their current status

VIII. **Initial Steps for Seized Property**

- A. When property is seized pursuant to the forfeiture laws of Georgia, Code Section 16-13-49, the facts of the seizure shall be reported immediately on the Asset Forfeiture Form accompanied by a copy of the Law Incident Report. The reports shall contain the following information and be forwarded to the AFRC for review:
 - 1. Time, date, and location of the offense(s) and seizure of assets
 - 2. Names of all suspects, witnesses, and other persons at the scene of the seizure
 - 3. An itemized description of the property that was seized
 - 4. The legal basis for seizure(s), as outlined in Code Section 16-13-49 and / or other code sections listed in Appendix A of this policy

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5. Type and quantity, if any, of drugs or contraband located in close proximity to the defendant and the seized property
- B. If not completed through pre-seizure planning, the AFRC or designee 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.
- C. This ~~Agency~~ Department shall conduct an inventory and estimate the value of property seized and shall forward a copy of the inventory and appraisal to the AFRC. This should be done as soon as possible so as to provide the District Attorney's Office with information needed to properly evaluate the case.
- D. The AFRC shall review the basis for each seizure of property and, if approved, notify and provide all documentation to the District Attorney's Office within twenty (20) days of the date of seizure of the property.
- E. The AFRC or designee shall evaluate each case from all aspects, including the factual nexus with criminal activity and the economic feasibility of proceeding with a forfeiture action. This shall be done in consultation with the District Attorney's Office.
 1. All case information shall be reviewed to verify a connection to illegal activity in violation of any code sections listed in Appendix A.
 2. All seized property shall be evaluated for condition, value, sale, and usability. It is the decision of the District Attorney's Office to file a forfeiture action.
 3. All seized property shall be properly maintained and stored in order to ensure its protection and value. No seized property shall be used for any purpose prior to forfeiture.
 4. If the District Attorney's Office does not file a forfeiture action, then all seized property shall be promptly returned to the owner, his / her agent, or a valid lien holder upon the District Attorney's direction.

IX. **Processing Seized Property**

The following procedures shall apply to the processing of seized property under the authority of code sections listed in Appendix A. All seized property shall be submitted to the Property and Evidence Section, in accordance with policy GO88-4.10, Property and Evidence Policy and Procedure. The Officer placing the property into evidence shall fill out the Property Record / Receipt Form and the Asset Forfeiture Form. The forfeiture form shall be submitted to the AFRC by the next working day.

- A. Currency

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1. Photographs shall be taken of all monies at the scene of the seizure and their relative proximity to contraband, if applicable. All forensic processing should be accomplished prior to moving, if feasible.
2. A Supervisor and two (2) Officers each shall count the money in the presence of the others at one sitting. After each has made an individual count, the three (3) ~~will~~ shall compare results, thus identifying any possible counting errors. When there is a discrepancy in the count, recounts ~~must~~ shall be made until all counters agree on the amount of currency. During the money count process, the number of people in the immediate area, i.e., the counting room, should be minimized. Counting of currency shall always be accomplished with at least two (2) Officers and one (1) Supervisor.
3. Supplements, property sheets, and property envelopes listing money amounts shall be specific, listing money by groups in which they were located, by number of bills for each denomination, and by totals for each denomination with the grand total listed.
4. Seized currency shall be placed in a sealed property bag with the item number, date, and case number noted on the appropriate form along with the initials of all Officers who counted the money. Only actual counters of monies ~~should~~ shall sign the property form(s) containing those monies and only after agreeing that the amounts listed match their figures.
5. After completion of evidentiary tests, if any, all seized currency, subject to forfeiture in the Superior Court, shall be placed in the Property and Evidence Section. All seized currency, subject to federal forfeiture proceedings, shall be turned over to the appropriate federal agency.

B. Vehicles

1. Any seized vehicles, regardless of value or lien, shall be towed to the ~~Agency's~~ Department's official impound lot or placed in a secure storage area.
2. The keys and documents related to ownership status of any seized vehicle shall be placed into evidence utilizing established policies. The vehicle shall be inventoried in accordance with policy GO91-4.7, Impounding, Towing, and Inventory of Vehicles.
3. A complete inventory of the seized property and all containers, open or closed, found therein shall be completed at the time of the seizure or as soon as practicable after the seizure. A good faith attempt shall be made to release to the lawful owner all personal property not being retained as evidence or for forfeiture that was seized with impounded items, pursuant to the Georgia Civil Practice Act. If the owner is unknown, has been arrested, or is otherwise unavailable to take possession of the property, such items shall be placed in the Property and Evidence Section to be released to the owner at a later date. Perishable foods may be released to a responsible person or have to be destroyed and should not be left in a car that may be stored for an extended period of time, i.e. milk, meat, etc.

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4. Any personal property seized as evidence shall be packaged, stored separately from vehicles, and handled in accordance with policy GO88-4.10, Property and Evidence Policy and Procedure.
5. Reasonable attempts shall be made to maintain property in the same condition as at the time of seizure. Seized items shall not be used for any purpose until the property is forfeited and all the rights, interests, and title are transferred pursuant to a court order. This section does not prohibit use or operation reasonably necessary for the proper maintenance of seized property.
6. Vehicles and all contraband or evidence should be photographed in the positions in which they were found, if possible.
7. All paperwork related to the seizure of the vehicle shall be forwarded to the AFRC immediately.

C. Miscellaneous Property

1. All other seized property, including jewelry, furniture, tools, electronics, and other personal property, shall be placed in the Property and Evidence Section, in accordance with policy GO88-4.10, Property and Evidence Policy and Procedure.
2. The seizing Officer shall complete ~~the forfeiture form~~ and submit the Asset Forfeiture Form and a copy of the report to the AFRC immediately.
3. Reasonable attempts shall be made to maintain the property in the same condition as at the time of seizure. Seized items shall not be used for any purpose until the property is forfeited and all rights, interests, and title to the seized property are transferred to the State pursuant to court order. This policy does not prohibit use or operations reasonably necessary for the proper maintenance of seized property.

D. Real Property – The standard procedure for preserving real estate prior to forfeiture shall be the District Attorney filing a forfeiture lien against the real property in the Superior Court of the Conasauga Judicial Circuit and the possible execution of any occupancy agreement. Only in rare circumstances, for good cause shown and with the approval of the District Attorney, shall real property be seized prior to forfeiture.

E. Substituted or Derived Assets – Because of the uniqueness, special needs, and legal complexities of such property, any consideration or contemplation of seizure of such property shall require consultation with the District Attorney's Office.

F. Firearms – All firearms shall be placed into evidence following procedures outlined in directive GO88-4.10, Property and Evidence Policy and Procedure. The seizing Officer shall run the serial number of the weapon through NCIC and shall include a hard copy of the result with the Property Record / Receipt Form.

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X. **Release of Seized Property**

- A. If, at the conclusion of the forfeiture process, the claimant prevails, the seized property shall be released to the owner(s) immediately upon the presentation of an order from a Superior Court, unless it is also evidence in an active criminal case. Under no circumstances ~~will~~ shall there be towing charges, storage fees, administrative costs, or maintenance costs assessed against the claimant, unless such costs are included in a court order.
- B. If the State declines to initiate forfeiture proceedings, the property ~~must~~ shall be released to the owner upon request, unless the property is being held as evidence. The Department may require the owner to pay any costs associated with handling or storing of the property.

XI. **Ethical Considerations**

- A. No Officer's employment or salary shall be made to depend upon the level of seizures or forfeitures the Officer achieves.
- B. Any forfeited property retained by the ~~Agency~~ Department for official law enforcement use is subject to all internal controls applicable to property acquired through the normal appropriations process.
- C. Forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.
- D. This ~~Agency~~ Department shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.

XII. **Reporting**

- A. The Chief of Police shall complete an itemized annual report of all property received through court-ordered forfeiture and all goods and services procured from the proceeds of such court-ordered forfeitures.
 - 1. The Chief of Police shall submit a copy of the annual asset forfeiture report to the finance committee as part of the annual budget process.
 - 2. The Chief of Police shall cause a copy of the annual asset forfeiture report to be uploaded electronically to the Tax and Expenditure Data website maintained by the Carl Vinson Institute of Georgia (CVIOG).
- B. The AFRC shall submit an itemized monthly report to the Chief of Police listing any property which has been seized and its pending disposition.
- C. The Chief of Police shall submit an annual report listing all property received through federal forfeiture statutes through the U.S. Department of Justice and / or Treasury Department. The report shall include a renewal of the Department's

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agreement to abide by all portions of the Federal Equitable Sharing Agreement, as prescribed by federal statute.

This policy supersedes any policies previously issued.

BY ORDER OF

CHIEF OF POLICE

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Appendix A

OCGA 3-2-33	<i>Sale, possession, concealment, storage, or conveyance of untaxed alcoholic beverages; declaration of untaxed or otherwise unlawful alcoholic beverages as contraband; seizure and disposition of contraband alcoholic beverages</i>
OCGA 3-10-10	<i>Existence of property rights in distilled spirits or vessels kept or used in violation of chapter; contraband</i>
OCGA 3-10-11	<i>Contraband apparatus and appliances; existence of property rights therein; summary destruction of contraband; procedure for seizure and condemnation of vehicles and conveyances and boats and vessels</i>
OCGA 7-1-916	<i>Forfeiture of property involved in illegal transactions</i>
OCGA 10-1-454	<i>Forged or counterfeited trademarks, service marks, or copyrighted or registered designs; unauthorized reproductions</i>
OCGA 16-7-95	<i>Forfeiture and destruction or disposition of property</i>
OCGA 16-8-85	<i>Forfeiture of personal property seized</i>
OCGA 16-11-112	<i>Vehicles with false or secret compartments</i>
OCGA 16-12-32	<i>Seizure and disposition of property used in or derived from violation of article</i>
OCGA 16-12-100	<i>Sexual exploitation of children; reporting violation; forfeiture; penalties</i>
OCGA 16-13-30	<i>Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana; penalties</i>
OCGA 16-13-30.1	<i>Unlawful manufacture, delivery, distribution, possession, or sale of non-controlled substances</i>
OCGA 16-13-32	<i>Transactions in drug related objects; forfeitures and penalties</i>
OCGA 16-13-32.1	<i>Transactions in drug related objects; evidence as to whether object is drug related; forfeitures and penalties</i>
OCGA 16-13-49	<i>Forfeitures</i>
OCGA 16-14-7	<i>Forfeiture proceedings</i>
OCGA 16-15-5	<i>Contraband; seizure and forfeiture</i>
OCGA 16-16-2	<i>Forfeiture</i>
OCGA 17-5-51	<i>Forfeiture of weapons used in commission of crime, possession of which</i>

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constitutes crime or delinquent act, or illegal concealment generally; motor vehicles; definitions; return of firearm to innocent owner

OCGA 17-5-52 *Sale or destruction of weapons used in commission of crime or delinquent act involving possession; sale of weapons not the property of the defendant; disposition of proceeds of sale; record keeping*

OCGA 40-6-391.2 *Seizure and forfeiture of motor vehicle operated by habitual violator*

OCGA 40-11-20 *Items subject to forfeiture*

OCGA 49-4-146.3 *Forfeiture of property and proceeds obtained through Medicaid fraud; fraud forfeiture proceedings; seizure of property subject to forfeiture; lien; inventory; court orders*

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