Asset Forfeiture

601.1 PURPOSE AND SCOPE

This policy describes the authority and procedure for the seizure, forfeiture and liquidation of property associated with specified designated offenses.

601.1.1 DEFINITIONS

Definitions related to this policy include:

Fiscal agent - The person designated by the Chief of Police to be responsible for securing and maintaining seized assets and distributing any proceeds realized from any forfeiture proceedings. This includes any time the Fargo Police Department seizes property for forfeiture or when the Fargo Police Department is acting as the fiscal agent pursuant to a multi-agency agreement.

Forfeiture - The process by which legal ownership of an asset is transferred to a government or other authority.

Forfeiture reviewer - The department member assigned by the Chief of Police who is responsible for reviewing all forfeiture cases and for acting as the liaison between the Department and the forfeiture counsel.

Property subject to forfeiture - Includes the following:

(a) Property subject to general criminal forfeiture includes (N.D.C.C. § 29-31.1-01):

1. Property that is illegally possessed or is contraband.
2. Property, other than a residence or real estate, that has been used or is intended to be used to commit a criminal offense or flee, where the co-owner has not been convicted of the criminal offense.
3. Proceeds of a criminal offense.
4. Property offered or given to another as an inducement for the commission of a criminal offense.
5. A vehicle or other means of transportation used in the commission of a felony, the escape from the scene of a felony, or in the transportation of property that is the subject matter of a felony.
6. Personal property used in the theft of livestock or the transportation of stolen livestock.

(b) Property subject to forfeiture under the Uniform Controlled Substances Act includes (N.D.C.C. § 19-03.1-36):

1. All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of the Uniform Controlled Substances Act, imitation controlled substances and the containers for the preceding items.

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2. 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 and the containers for the preceding items.
3. All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt of controlled substances.
4. Drug paraphernalia.
5. All money or anything else of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Uniform Controlled Substances Act, and all real and personal property, assets, profits, etc., acquired or derived from the unlawful purchase, attempted purchase, delivery, attempted delivery, manufacturing or attempted manufacturing of any controlled substance or imitation controlled substance.

Seizure - The act of law enforcement officials taking property, cash or assets that have been used in connection with or acquired by specified illegal activities.

601.2 POLICY

The Fargo Police Department recognizes that appropriately applied forfeiture laws are helpful to enforce the law, deter crime and reduce the economic incentive of crime. However, the potential of revenue shall not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations or any person’s due process rights.

It is the policy of the Fargo Police Department that all members, including those assigned to internal or external law enforcement task force operations, shall comply with all state and federal laws pertaining to forfeitures.

601.3 ASSET SEIZURE

Property may be seized for forfeiture as provided in this policy and in accordance with applicable state and federal law.

Whenever practicable, obtaining a search warrant or court order for seizure prior to making a seizure is the preferred method.

601.3.1 PROPERTY SUBJECT TO SEIZURE

A large amount of money standing alone is insufficient to establish the probable cause required to make a seizure.

The following may be seized upon review and approval of a supervisor and in coordination with the forfeiture reviewer (N.D.C.C. § 29-31.1-03; N.D.C.C. § 19-03.1-36):

(a) Property subject to forfeiture authorized for seizure by a court order.

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(b) Property that officers have probable cause to believe qualifies as property subject to forfeiture and the property is seized under circumstances in which a warrantless seizure would be reasonable (i.e., property would be lost without immediate seizure).

601.3.2 PROPERTY NOT SUBJECT TO SEIZURE
The following property should not be seized for forfeiture:

(a) Property of someone who had no part in the commission of the offense and who had no knowledge of the criminal use or intended use of the property (N.D.C.C. § 29-31.1-07; N.D.C.C. § 19-03.1-36).

(b) Cash and property with a value less than $250.

601.4 PROCESSING SEIZED PROPERTY FOR FORFEITURE PROCEEDINGS

When property or cash subject to this policy is seized, the officer making the seizure should ensure compliance with the following:

(a) Complete the applicable seizure forms and present the appropriate copy to the person from whom the property is seized. If cash or property is seized from more than one person, a separate copy must be provided to each person, specifying the items seized. When property is seized and no one claims an interest in the property, the officer must leave the copy in the place where the property was found, if it is reasonable to do so.

(b) Complete and submit a report and original seizure forms within 24 hours of the seizure, if practicable.

(c) Forward the original seizure forms and related reports to the forfeiture reviewer promptly after the seizure.

The officer will book seized property as evidence with the notation in the comment section of the property form, “Seized Subject to Forfeiture.” Property seized subject to forfeiture should be booked on a separate property form. No other evidence from the case should be booked on this form.

Photographs should be taken of items seized, particularly cash, jewelry and other valuable items.

Officers who suspect property may be subject to seizure but are not able to seize the property (e.g., the property is located elsewhere, the whereabouts of the property is unknown, it is real estate, bank accounts, non-tangible assets) should document and forward the information in the appropriate report to the forfeiture reviewer.

601.5 MAINTAINING SEIZED PROPERTY

The Property Evidence Manager is responsible for ensuring compliance with the following:

(a) All property received for forfeiture is reasonably secured and properly stored to prevent waste and preserve its condition.

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(b) All property received for forfeiture is checked to determine if the property has been stolen.

(c) All property received for forfeiture is retained in the same manner as evidence until forfeiture is finalized or the property is returned to the claimant or the person with an ownership interest.

(d) Property received for forfeiture is not used unless the forfeiture action has been completed.

(e) Forfeitable property is retained until such time as its use as evidence is no longer required (N.D.C.C. § 29-31.1-08).

601.6 FORFEITURE REVIEWER

The Chief of Police will appoint an officer as the forfeiture reviewer. Prior to assuming duties, or as soon as practicable thereafter, the forfeiture reviewer should attend a course approved by the Department on asset forfeiture.

The responsibilities of the forfeiture reviewer include:

(a) Remaining familiar with forfeiture laws, particularly N.D.C.C. § 19-03.1-36 et seq., N.D.C.C. § 29-31.1-01 et seq. and the forfeiture policies of the forfeiture counsel.

(b) Serving as the liaison between the Department and legal counsel or the appropriate court while ensuring prompt legal review and court processes of all seizures.

(c) Making reasonable efforts to obtain annual training that includes best practices in pursuing, seizing, and tracking forfeitures.

(d) Reviewing each seizure-related case and deciding whether the seizure is more appropriately made under state or federal seizure laws. The forfeiture reviewer should contact federal authorities when appropriate.

(e) Ensuring that responsibilities, including the designation of a fiscal agent, are clearly established whenever multiple agencies are cooperating in a forfeiture case.

(f) Ensuring that seizure forms are available and appropriate for department use. These should include notice forms, a receipt form, and a checklist that provides relevant guidance to officers. The forms should be available in languages appropriate for the region and should contain spaces for:

1. Names and contact information for all relevant persons and law enforcement officers involved.
2. Information as to how ownership or other property interests may have been determined (e.g., verbal claims of ownership, titles, public records).
3. A space for the signature of the person from whom cash or property is being seized.
4. A tear-off portion or copy, which should be given to the person from whom cash or property is being seized, that includes the legal authority for the seizure, information regarding the process to contest the seizure, and a detailed description of the items seized.

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(g) Ensuring that officers who may be involved in asset forfeiture receive training in the proper use of the seizure forms and the forfeiture process. The training should be developed in consultation with the appropriate legal counsel and may be accomplished through traditional classroom education, electronic media, Daily Training Bulletins (DTBs), or General Orders. The training should cover this policy and address any relevant statutory changes and court decisions.

(h) Reviewing each asset forfeiture case to ensure that:

1. Written documentation of the seizure and the items seized is in the case file.
2. Independent legal review of the circumstances and propriety of the seizure is made in a timely manner.
3. Notice of seizure has been given in a timely manner to those who hold an interest in the seized property.
4. Property is promptly released to those entitled to its return (N.D.C.C. § 29-31.1-02).
5. All changes to forfeiture status are forwarded to any supervisor who initiates a forfeiture case.
6. Any cash received is deposited with the fiscal agent.
7. Assistance with the resolution of ownership claims and the release of property to those entitled is provided.
8. Current minimum forfeiture thresholds are communicated appropriately to officers.
9. This policy and any related policies are periodically reviewed and updated to reflect current federal and state statutes and case law.

(i) A written plan should be available that enables the Chief of Police to address any extended absence of the forfeiture reviewer, thereby ensuring that contact information for other law enforcement officers and attorneys who may assist in these matters is available.

(j) Ensuring that the process of selling or adding forfeited property to department inventory is in accordance with all applicable laws and consistent with the use and disposition of similar property (N.D.C.C. § 29-31.1-06).

(k) Upon completion of any forfeiture process, ensuring that no property is retained by the Fargo Police Department unless the Chief of Police authorizes in writing the retention of the property for official use.

(l) Complying with any reporting requirements as set forth in N.D.C.C. § 19-03.1-36.8.

Forfeiture proceeds should be maintained in a separate fund or account subject to appropriate accounting control, with regular reviews or audits of all deposits and expenditures.

Forfeiture reporting and expenditures should be completed in the manner prescribed by the law and City financial directives.

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601.7 DISPOSITION OF FORFEITED PROPERTY

(a) For property forfeited under general criminal forfeiture laws (N.D.C.C. § 29-31.1-01 et seq.), the Fargo Police Department may (N.D.C.C. § 29-31.1-06):

1. Retain forfeited property for official use, or transfer the custody or ownership of any forfeited property to any federal, state or local agency.
2. Sell forfeited property that does not require destruction and is not harmful. The proceeds from the sale and other forfeited funds, must be used first for the payment of all costs and expenses related to all forfeiture actions and processes with any remaining proceeds to be deposited, subject to N.D.C.C. § 54-12-14, in the appropriate general fund.
3. Dispose of forfeited property in accordance with the order of the court if the property cannot be retained, used or sold by the Fargo Police Department.

(b) For property forfeited under the Uniform Controlled Substances Act (N.D.C.C. § 19-03.1-36 et seq.), the Fargo Police Department may (N.D.C.C. § 19-03.1-36):

1. Retain forfeited property for official use, or transfer the custody or ownership of any forfeited property to any federal, state or local agency. The department shall ensure the equitable transfer of any forfeited property to the appropriate federal, state or local law enforcement agency so as to reflect generally the contribution of that agency participating directly in any of the acts that led to the seizure or forfeiture of the property. A decision to transfer the property is not subject to review.
2. Sell forfeited property which is not required to be destroyed by law and which is not harmful to the public. The proceeds must be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs, with any remaining proceeds to be deposited, subject to N.D.C.C. § 54-12-14, in the appropriate general fund. When two or more law enforcement agencies are involved in seizing a conveyance, the remaining proceeds may be divided proportionately.
3. Require the attorney general to take custody of forfeited property and remove it for disposition in accordance with law.
4. Forward forfeited property to the U.S. Department of Justice Drug Enforcement Administration (DEA) for disposition.
5. Use the forfeited property, including controlled substances, imitation controlled substances and plants to enforce the Uniform Controlled Substances Act. However, forfeited controlled substances should not be used to arrest a person for simple possession of a controlled substance under N.D.C.C. § 19-03.1-23 when the forfeited controlled substances were supplied by a law enforcement officer or the officer's agent

No member of this department may use property that has been seized for forfeiture until the forfeiture action has been completed and the Chief of Police has given written authorization to retain the property for official use. No department member involved in the decision to seize property should be involved in any decision regarding the disposition of the property

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601.8 REVISION DATE 10/15/2024

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