

PLANNING AND DEPLOYMENT

TRANSMITTAL OF A DRAFT WRITTEN DIRECTIVE AND FORMS

FOR SIGNATURE OF: Chief of Police, James E. Craig

TYPE OF DIRECTIVE: Draft Manual Directive 203.~~14~~¹⁵ and associated forms

SUBJECT: CIVIL ASSET FORFEITURE

ORIGINATED OR REQUESTED BY: Planning and Deployment

APPROVALS OR COMMENTS:

The attached draft directive and forms were prepared by Lieutenant Michael Parish, assigned to Narcotics PPU / Forfeiture.

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**AFTER THE DIRECTIVE IS APPROVED AND SIGNED, PLEASE RETURN TO
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Series 200 Operations	Effective Date	Review Date Annually	Directive Number
Chapter 203 – Criminal Investigations			203.15
Reviewing Office Narcotics PPU / Forfeiture			<input checked="" type="checkbox"/> New Directive <input type="checkbox"/> Revised Revisions in <i>italics</i>
References			

CIVIL ASSET FORFEITURE

203.15 - 1 Policy

Civil asset forfeiture is a method of combatting illegal drug trafficking and organized crime, as well as curbing lewd, licentious, or other wanton behavior ranging from certain alcohol-related offenses to drag racing. Over the years, civil asset forfeiture has gained popular acceptance as an effective crime-fighting tool. Many criminals are motivated by greed or at least deterred by the threat of losing valuable possessions. Civil asset forfeiture, therefore, adds (sometimes very significant) disincentives for engaging in such illegal conduct.

In addition to personal deterrence, however, civil asset forfeiture can help undermine the economic infrastructure of certain criminal enterprises. Large-scale drug operations, for example, require employees, equipment, and money flow to operate. Coupled with the enforcement of criminal laws, civil asset forfeiture can disrupt illegal operations by dissuading people from participating in the industry, removing the tools and moneys needed to carry on operations, and by providing additional funding for those agencies that enforce the laws those participating in the industry are violating. Importantly, civil asset forfeiture provides a mechanism for taking money and other assets out of the hands of criminals and placing them back into a legitimate stream of commerce.

Like any law enforcement effort, legitimacy and public acceptance are key to a successful civil asset forfeiture program. Adherence to applicable local, state, and federal laws is a must, and no investigation should be prolonged merely to obtain more assets by way of civil asset forfeiture. Members may not under any circumstances base a forfeiture confiscation on a suspect's race, religion, national origin, gender, sexual orientation, or economic status.

It is important to note that the civil asset forfeiture is tied to a very litigious system within the criminal justice system. Any failure to abide by applicable laws or department policy can potentially result in dismissal of the case or unnecessary litigation costs.

203.14 Civil Asset Forfeiture**203.15 - 2 Definitions****203.15 – 2.1 Civil Asset Forfeiture**

A legal process that involves a divestiture without compensation of property that was used in a manner contrary to local, state, or federal law.

203.15 – 2.2 Conveyance

A mode of transportation used for the purpose of sale or receipt of any prohibited materials or prohibited substances. A conveyance includes but is not limited to a vehicle, aircraft, or vessel.

203.15 – 2.3 Drug Forfeiture (DF) Case

A forfeiture confiscation authorized under MCL 333.7521, et seq., that includes a seizure of a controlled substance as evidence.

203.15 – 2.4 DET Case

Any forfeiture confiscation that is not classified as a DF-Case.

203.15 – 2.5 Prohibited Materials

A raw material, product, or equipment of any kind that is used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance, a controlled substance analogue, or other drug in violation of this article; or a raw material, product, or equipment of any kind that is intended for use in manufacturing, compounding, processing, delivering, importing, or exporting an imitation controlled substance in violation of MCL 333.7521, et seq.

203.15 – 2.6 Prohibited Substances

Any controlled substance, an imitation controlled substance, a controlled substance analogue, other drug that has been manufactured, distributed, dispensed, used, possessed, or acquired in violation of MCL 333.7521, et seq.

203.15 – 2.6 PUSH OFF

An acronym significant in forfeiture matters referring to cases involving the receipt or attempted purchase of narcotics. PUSH OFF stands for Purchasers and Users of our Streets and Highways Opt For Forfeiture.

203.14 Civil Asset Forfeiture**203.15- 3 Policy****203.15 – 3.1 General**

Any member encountering property subject to forfeiture under local, state, or federal law shall initiate the civil asset forfeiture process in all cases where the property involved is—

- U.S. currency where the amount exceeds \$500.00;
- A conveyance (e.g. car, motorcycle, or boat) in good working condition that has a projected feasible resale value;
- Any combination of assets that is valued at \$1,000.00 or more.

Department members shall have the discretion to seize any other property subject to forfeiture but should bear in mind the costs associated with litigating forfeiture matters.

203.15 – 3.2 Forfeiture Section

The Forfeiture Section is responsible for—

- Receiving and processing all forfeiture petitions and corresponding paperwork;
- Serving as a liaison between the Detroit Police Department and the Wayne County Prosecutors Office or other prosecuting agency;
- Tracking the status of forfeiture cases;
- Maintaining statistics as required by law or department directive;
- Serving as a final repository of all forfeiture case files; and
- Providing information, guidance, and training in matters pertaining to civil asset forfeiture.

203.15- 4 Authority to Confiscate for Forfeiture

A member's authority to confiscate property for forfeiture comes emanates from state law. In other words, unless Michigan law provides that the property at issue is subject to forfeiture, a member is without the authority to seize the property for the purposes of initiating a forfeiture action against the owner. The Detroit Police Department recognizes and encourages forfeiture actions initiated under the following state laws or their local or common law equivalents:

- Drug Asset Forfeiture (MCL 333.7521)
- Nuisance Abatement (MCL 600.3801)
- OWI Repeat Offender (MCL 257.625)
- Drag Racing Forfeiture (MCL 257.626)
- Felony Identity Theft (MCL 445.79)
- Omnibus Forfeiture (MCL 600.4701)
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203.15 – 4.1 Drug Asset Forfeiture

Drug asset forfeitures refers specifically to property seized under any violation of MCL 333.7521. Violations under MCL 333.7521 include, for example, violations of the controlled substance act (VCSA) or crimes involving the attempted receipt of narcotics (push offs).

Under MCL 333.7521, the following property, among other forms of property, is subject to forfeiture:

- Prohibited substances;
- Prohibited materials;
- Property used or intended for use as a container for any prohibited substance or prohibited material;
- A conveyance;
- Anything of value used to transact or facilitate a violation of Michigan's drug code;
- Books, records, and research products and materials; and
- Drug paraphernalia.

Property seized under MCL 333.7521 shall be processed as evidence. In addition, a forfeiture packet consisting of the following documents must be prepared:

- CRISNET reports
- Notice of Seizure and Intent to Forfeit (DPD 740)
- Impound cars
- Copy of any citations issued
- Copy of the driver's license
- LEIN registration printout (if seizing a vehicle)
- Tracker property tag
- Release of liability
- Any supplemental reports generated that may be relevant in subsequent litigation (e.g. search warrant packet, chemical lab sheet, 24 hr. information sheet, narcotic activity form)

The completed forfeiture packet shall be promptly hand-delivered to the Forfeiture Section if completed during regular business hours. In the event a forfeiture packet is completed during non-business hours, the completed packet shall be hand-delivered to Narcotics PPU without delay.

203.14 Civil Asset Forfeiture**203.15 – 4.2 Nuisance Abatement Forfeiture**

Michigan's nuisance abatement laws comprehend a group of relatively minor criminal offenses based on at least some interference with the interests of the community or comfort or convenience of the general public. To be considered a nuisance, there generally has to be some potential harm to the public health, an interference in the use of a travel way, some threat to public morality, or in some way prevent the public from the peaceful use of their land and the public streets. "Offering to engage" and "blind pigs" are violations that often result in some form of nuisance abatement forfeiture.

Under MCL 600.3801, a building, vehicle, boat, aircraft, or place is a nuisance in one or more of the following apply:

- It is used for the purpose of lewdness, assignation, prostitution, or gambling;
- It is used by, or kept for the use of, prostitutes or other disorderly persons;
- It is used for the unlawful manufacture, transporting, sale, keeping for sale, bartering, or furnishing of a controlled substance;
- It is used for the unlawful manufacture, transporting, sale, keeping for sale, bartering, or furnishing of vinous, malt, brewed, fermented, spirituous, or intoxicating liquors or mixed liquors or beverages, any part of which is intoxicating;
- It is used for conduct prohibited under MCL 750.49 (dog fighting, baiting, and shooting);
- It is used for conduct prohibited under MCL 750.462a to 750.462h (human trafficking laws);
- It is used to facilitate armed violence in connection with the unlawful use of a firearm or other dangerous weapon.

In addition, Michigan also considers a nuisance all furniture, fixtures, and contents of a building, vehicle, boat, aircraft, or place described in above and all intoxicating liquors in the building, vehicle, boat, aircraft, or place.

Property seized under MCL 600.3801 shall be processed as evidence, and the seizing officer shall prepare a forfeiture packet consisting of the following:

203.14 Civil Asset Forfeiture

- Copy of Property Memorandum;
 - Push-off / Nuisance Abatement / Drag Racing Notice of Seizure and Intent to Forfeit (DPD 741);
 - Release of Liability
 - Impound card
 - CRISNET
 - Tracker Property Tag
- Citation
 - Copy of drivers license
 - Copy of registration
 - LEIN (SOS) registration printout
 - Any supplemental reports prepared for the purpose of subsequent litigation (e.g. search warrant packet, VICE enforcement sheets, etc.

203.15 – 4.3 Forfeitures under MCL 257.625n

In an effort to deter certain driving offenses, Michigan law provides for the forfeiture of vehicles upon conviction in cases involving certain alcohol-related offenses, reckless driving and DWLS offenses. Under MCL 257.625n, a vehicle may be ordered forfeited if an individual is convicted of—

Charge	Condition Required
<i>Operating While Intoxicated</i>	1 prior conviction within the last seven years 2 or more prior convictions Causing the death of another Causing serious impairment of bodily function Occupant less than 16 years of age in vehicle
<i>Operating While Visibly Impaired</i>	1 prior conviction within the last seven years 2 or more prior convictions Causing the death of another Causing serious impairment of bodily function Occupant less than 16 years of age in vehicle
<i>Driving While License Suspended</i>	Causing the death of another Causing serious impairment of bodily function
<i>Reckless Driving</i>	Causing the death of another Causing serious impairment of bodily function

203.14 Civil Asset Forfeiture

It is imperative, therefore, that officers serve an individual with the appropriate Notice of Seizure and Intent to Forfeit at the time of arrest. The Ex Parte Motion generally required in cases of forfeitures under this statute will be completed by personnel assigned to Forfeiture or by a designated court officer.

Vehicles seized under MCL 257.625n shall be processed as evidence, and the seizing officer shall prepare a forfeiture packet consisting of the following:

- Copy of Property Memorandum
- OWI Forfeiture / Nuisance Abatement Notice of Seizure and Intent to Forfeit (DPD 742)
- Release of Liability
- Impound card
- RMS Report
- Tracker Property Tag
- Copy of drivers license
- Copy of registration
- LEIN (SOS) registration printout
- Any supplemental reports prepared for the purpose of subsequent litigation

203.15 – 4.4 Drag-Racing Forfeitures

Unlawful drag racing poses substantial risks of injury or death to both participants and bystanders. Moreover, the activity typically results in a number of unnecessary citizen congestion and road hazards and can disrupt the peace and good order of a community. In this context, civil asset forfeitures aim at deterring drag racing by taking away the (often very expensive) devices needed to carry out the crime. Although there is no specific provision under 257.626, local courts have authorized such forfeitures under Michigan common law and applicable local ordinances.

Vehicles seized for forfeiture for violating 257.626 or local equivalents shall be processed as evidence, and the seizing officer shall prepare a forfeiture packet consisting of the following:

- Copy of Property Memorandum;
- Nuisance Abatement Notice of Seizure and Intent to Forfeit (Drag Racing);
- Release of Liability
- Impound card
- CRISNET
- Tracker Property Tag
- Copy of drivers license
- Copy of registration
- LEIN (SOS) registration printout

203.15 – 4.6

Forfeitures under Michigan's Identify Theft Law

MCL 445.79 provides for forfeiture of certain property obtained through a felony violation of Michigan's identity-theft laws. Under this statute, the following property may be subject to forfeiture:

- Personal or real property that has been used, possessed, or acquired in a violation of Michigan's identity-theft laws;
- A conveyance used or intended for use to transport, or in any manner to facilitate the transportation of, for the purpose of sale or receipt, any personal or real property that has been used, possessed, or acquired in a violation of Michigan's identity-theft laws; and
- Books, records, computers, electronic equipment, and research products and materials.

By statute, Michigan has programed some presumptions that can assist members in determining whether certain property is subject to forfeiture. Michigan law provides that any money, negotiable instruments, securities, or any other thing of value that is found in close proximity to any property that is subject to forfeiture is presumed to be subject to forfeiture.

Certain provisions of this law aim to protect "innocent owners." Under this law, property used to commit a violation of Michigan's identity-theft law is not subject to forfeiture unless the owner of the property actively participates in or consents to the violation.

203.15 – 4.7

Residences or other Buildings Subject to Forfeiture

In cases where a member believes a residence or other building may be subject to forfeiture, members should contact Forfeiture for further guidance.