
Asset Forfeiture

602.1 PURPOSE AND SCOPE

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

602.1.1 DEFINITIONS

Definitions related to this policy include:

Blockchain - A digital and decentralized ledger in which all cryptocurrency transactions are publicly recorded. This digital ledger records each transaction chronologically and is done without a third-party provider (i.e., a bank).

Bitcoin - Bitcoin is a type of cryptocurrency. Unlike the United States dollar, there is no physical manifestation of Bitcoin or other cryptocurrencies. Bitcoin was released in 2009 by an unknown person or group using the alias, "Satoshi Nakamoto". Bitcoin is the most widely-adopted cryptocurrency in the world. Bitcoin payments are recorded on a public ledger (blockchain) that is maintained by peer-to-peer verification, and is thus not maintained by a single administrator or entity. Bitcoin is a peer-to-peer currency, which means that no central authority issues new money or tracks transactions. Individuals can acquire Bitcoins either by "mining" or by purchasing Bitcoins from other individuals or exchanges. An individual can "mine" for Bitcoins by allowing his/her computing power to verify and record the Bitcoin payments into a public ledger. Individuals who are determined to be the first to verify the block of transactions are rewarded with newly created Bitcoins. Due to the demand and continual growth of cryptocurrencies, miners need increasingly more powerful computers or graphics processing power to be awarded Bitcoin. As a result, miners will often maintain specially configured computers ("rigs") in order to mine cryptocurrency. These "rigs" may be linked together to create a mining "pool" which is the grouping of resources by miners, who share their processing power over a network, to split the potential reward equally. Cryptocurrencies such as Bitcoin are based on technology known as public key cryptography. Examples of other cryptocurrencies include, but are not limited to Bitcoin Cash ZCash, Monero, Litecoin, Ripple, and Ethereum.

Cold Storage Wallet - A cryptocurrency wallet that is kept offline on a hard disc drive, electronic storage media, a bearer instrument, or in paper hard copy ("paper wallet"). Whenever possible, the Investigators shall use paper wallets to seize/store cryptocurrencies.

Cryptocurrency - A cryptocurrency is known as a digital currency or virtual currency and generally defined as an electronic-sourced unit of value that can be used as a substitute for fiat currency (i.e., currency created and regulated by a government). Cryptocurrency transactions are open source and can be seen on the blockchain, a ledger enforced by a network of computers.

Most digital currencies are not issued or regulated by any government, bank, or company and are instead generated and controlled through a computer software operating on a decentralized peer-to-peer network. Digital currency is not illegal in the United States and may be used for legitimate

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financial transactions. However, digital currency is often used for conducting illegal transactions due to its decentralization and anonymity.

Cryptography - Cryptography is a method of protecting information and communications through the use of codes so that only those for whom the information is intended can read and process it. Cryptography is used to encrypt the identities of the sender and receiver in a cryptocurrency transaction, as each completed transaction will reflect on the public ledger. In principle, the cryptography guarantees the security of the transactions and the participants involved, independence of operations from a central authority, and protection from double spending.

Exchange - An exchange is a digital marketplace where traders can buy, sell, and trade cryptocurrencies using different fiat currencies or altcoins. For example, a Bitcoin currency exchange is an online platform that acts as an intermediary between buyers and sellers of the cryptocurrency. E.g. Coinbase, Binance, Kraken, etc.

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 Irvine Police Department seizes property for forfeiture or when the Irvine 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 assigned attorney.

Hot Storage Wallet - A cryptocurrency wallet that is online and connected in some way to the Internet. E.g. MyCelium, Blockchain wallet, BRD wallet, etc.

Private Key - A sophisticated form of cryptography that allows a user to access his or her cryptocurrency. The private key is a secret number that allows cryptocurrencies to be spent. Every Bitcoin wallet contains one or more private keys, which are saved in the wallet file. The private keys are mathematically related to all Bitcoin addresses generated for the wallet.

Property Subject to Forfeiture - The following may be subject to forfeiture:

- (a) Property related to a narcotics offense, which includes (Health and Safety Code § 11470; Health and Safety Code § 11470.1):
 1. Property (not including real property or vehicles) used, or intended for use, as a container for controlled substances, materials to manufacture controlled substances, etc.
 2. Interest in a vehicle (car, boat, airplane, other vehicle) used to facilitate the manufacture, possession for sale or sale of specified quantities of controlled substances.

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3. Money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, proceeds traceable to an exchange, etc.
 4. Real property when the owner is convicted of violating Health and Safety Code § 11366, Health and Safety Code § 11366.5 or Health and Safety Code § 11366.6 (drug houses) when the property was not used as a family residence or for other lawful purposes, or property owned by two or more persons, one of whom had no knowledge of its unlawful use.
 5. The expenses of seizing, eradicating, destroying or taking remedial action with respect to any controlled substance or its precursors upon conviction for the unlawful manufacture or cultivation of any controlled substance or its precursors.
- (b) Property related to criminal profiteering (may include gang crimes), to include (Penal Code § 186.2; Penal Code § 186.3):
1. Any property interest, whether tangible or intangible, acquired through a pattern of criminal profiteering activity.
 2. All proceeds acquired through a pattern of criminal profiteering activity, including all things of value that may have been received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity.

Public Key - A cryptographic code that allows a user to receive cryptocurrencies into his or her account.

Seizing Officer - Sworn officer of the agency responsible for the seizure of cryptocurrency. This officer is also responsible for maintaining chain-of-custody. The Seizing Officer will have sufficient knowledge, skills, and abilities to perform the seizure in a forensically sound manner.

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.

Wallet - A software program in which one or more private keys are stored, a bearer instrument in which one or more private keys are stored; or a paper hard copy on which one or more private keys are written. A Bitcoin wallet stores the Bitcoin.

Witnessing Officer - Sworn officer of the agency responsible for observing the seizure and storage of seized cryptocurrency. The Witnessing Officer will have sufficient knowledge, skills, and abilities to fully understand the seizure process and safeguards being employed. The Witnessing Officer may be a member of another law enforcement agency (federal or local) that is assisting in a joint-operation and/or investigation with the Irvine Police Department.

602.2 POLICY

The Irvine 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 for revenue should never compromise the effective investigation of criminal offenses, officer safety or any person's due process rights.

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It is the policy of the Irvine 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 forfeiture.

It is the policy of the Irvine Police Department to seize virtual currencies and cryptocurrencies in a forensically sound manner. Specific requirements will be followed to ensure properly conducted seizures occur and to protect against the appearance of improperly conducted seizures.

602.3 ASSET SEIZURE

Property may be seized for forfeiture as provided in this policy.

602.3.1 PROPERTY SUBJECT TO SEIZURE

The following may be seized upon review and approval of a supervisor and in coordination with the forfeiture reviewer:

- (a) Property subject to forfeiture authorized for seizure under the authority of a search warrant or court order.
- (b) Property subject to forfeiture not authorized for seizure under the authority of a search warrant or court order when any of the following apply (Health and Safety Code § 11471; Health and Safety Code § 11488):
 - 1. The property subject to forfeiture is legally seized incident to an arrest.
 - 2. There is probable cause to believe that the property was used or is intended to be used in a violation of the Uniform Controlled Substances Act and the seizing officer can articulate a nexus between the property and the controlled substance offense that would lead to the item being property subject for forfeiture.

Officers aware of assets that may be forfeitable as a result of criminal profiteering or human trafficking should consider contacting the district attorney regarding a court order to protect the assets (Penal Code § 186.6; Penal Code § 236.6).

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

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

602.3.2 PROPERTY NOT SUBJECT TO SEIZURE

The following property should not be seized for forfeiture:

- (a) Cash and property that does not meet the forfeiture counsel's current minimum forfeiture thresholds should not be seized.
- (b) Real property is not subject to seizure, absent exigent circumstances, without a court order (Health and Safety Code § 11471).

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- (c) A vehicle which may be lawfully driven on the highway if there is a community property interest in the vehicle by a person other than the suspect and the vehicle is the sole vehicle available to the suspect's immediate family (Health and Safety Code § 11470).
- (d) Vehicles, boats or airplanes owned by an "innocent owner," such as a common carrier with no knowledge of the suspected offense (Health and Safety Code § 11490).
- (e) Any property when the associated activity involves the possession of marijuana or related paraphernalia that is permissible under the Control, Regulate and Tax Adult Use of Marijuana Act (Health and Safety Code § 11362.1).

602.3.3 SEIZED VEHICLES

Vehicles seized subject to forfeiture will be taken to a designated secure storage facility. A seized vehicle should not be impounded. The officer seizing the vehicle shall notify the detective supervisor of the seizure of the vehicle and circumstances of the seizure as soon as possible.

If the vehicle cannot be driven, a tow truck will be used to tow the vehicle to the storage facility.

Personal property located in a seized vehicle shall be removed and booked into Property as either evidence or for safekeeping.

602.4 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 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 within two days of 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.

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602.5 PROCESSING SEIZED CRYPTOCURRENCY FOR FORFEITURE PROCEEDINGS

When cryptocurrency is subject to seizure and is stored in a cryptocurrency exchange such as, but not limited to Coinbase, Gemini, or Binance and the exchange will comply with a seizure order issued by judicial authority, such order will be served on the exchange by the seizing officer. The cryptocurrency will then be transferred to an IPD-controlled wallet. The standard procedure for the process of transferring the cryptocurrency will be described below.

When cryptocurrency is subject to seizure and is either in a hot storage wallet, when the exchange will not comply with a seizure order issued by judicial authority, when exigency exists such that it is not feasible to serve a seizure order on the exchange, or when cryptocurrency is in a cold storage wallet, the following seizure process will be utilized:

- (a) The seizing officer will utilize a computer owned by the agency to create a cold storage wallet. When possible, the seizing officer should use a paper wallet as the cold storage wallet of choice. This process will be observed at all times by the witnessing officer. The seizing officer will label the wallet with the seizing officer's name, badge number, date, and DR number.
- (b) The seizing officer will take a screen capture, photograph, or otherwise document the amount of cryptocurrency subject to seizure. The amount of cryptocurrency will be labeled as its respective type (e.g. 0.01234 BTC). This process will be observed at all times by the witnessing officer.
- (c) The seizing officer will use the private key for the cryptocurrency subject to seizure to transfer the cryptocurrency to the cold storage wallet controlled by the agency. This wallet may be a "paper" wallet or a hardware wallet maintained by the Irvine Police Department. This process will be observed at all times by the witnessing officer.
- (d) The seizing officer will take a screen capture, photograph, or otherwise document the amount of cryptocurrency transferred for purpose of ensuring the exchange was successfully accomplished from the wallet subject to seizure to the wallet controlled by the agency. This process will be observed at all times by the witnessing officer.
- (e) The seizing officer will take a screen capture, photograph, or otherwise document the amount of cryptocurrency transferred for purpose of seizure and housed in the wallet controlled by the agency. This process will be observed at all times by the witnessing officer.
- (f) In instances in which more than one private key exists in the same wallet subject to seizure, the same wallet controlled by the agency may be utilized. A new wallet controlled by the agency will be created for each wallet subject to seizure (e.g. if the same subject has multiple hot storage wallets using either multiple exchanges or multiple applications/companies, a new cold storage wallet controlled by the agency will be created and used for each wallet subject to seizure.).
- (g) When possible, the seizing officer will use the blockchain to confirm that the exchange was successfully accomplished from the wallet subject to seizure to the wallet controlled by the agency. The seizing officer will take a screen capture, photograph, or otherwise document the blockchain ledger transaction. This process will be observed at all times by the witnessing officer. When feasible, the transaction information from

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the blockchain should be kept with the seized cryptocurrency on the IPD-controlled wallet.

- (h) The cold storage (e.g. paper) wallet shall be booked, along with any available printed transaction information from the blockchain, in accordance with Irvine Police Department policy.

For example, the IPD wallet (with the seized cryptocurrency) shall be placed inside an evidence bag along with the printed copy of the transaction information from the blockchain (e.g. blockchain.info). These items will then be sealed inside an IPD currency envelope.

- (i) Both the seizing officer and the witnessing officer will affix their signature, badge numbers, date, time, and other pertinent information to both the wallet and the transaction information (if available).
- (j) The seizing officer will present the evidence envelope and wallet to their supervisor(s). The supervisor, in accordance with IPD policy, will validate that the information is correct, and affix their signature and badge number to the envelope.
- (k) The envelope containing the seized cryptocurrency and transaction information will then be booked into an evidence locker at the Irvine Police Department evidence room in accordance with current IPD policy.
- (l) The seized cryptocurrency will not be converted to United States Currency until a forfeiture order is issued. This is consistent with existing policy and practice when seizing other items that can fluctuate in value (e.g. precious metals, houses, negotiable instruments, vehicles, works of art, and foreign currencies).

602.6 MAINTAINING SEIZED PROPERTY

The Property and Evidence Section Supervisor 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.
- (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.

602.7 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 department-approved course on asset forfeiture.

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The responsibilities of the forfeiture reviewer include:

- (a) Remaining familiar with forfeiture laws, particularly Health and Safety Code § 11469 et seq. and Penal Code § 186.2 et seq. and the forfeiture policies of the forfeiture counsel.
- (b) Serving as the liaison between the Department and the forfeiture counsel and ensuring prompt legal review of all seizures.
- (c) Making reasonable efforts to obtain annual training that includes best practices in pursuing, seizing and tracking forfeitures.
- (d) Ensuring that property seized under state law is not referred or otherwise transferred to a federal agency seeking the property for federal forfeiture as prohibited by Health and Safety Code § 11471.2.
- (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.
- (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 Department Directives. 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.

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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 (Health and Safety Code § 11488.4).
 4. Property is promptly released to those entitled to its return (Health and Safety Code § 11488.2).
 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) Ensuring that a written plan 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 the department's regular inventory is in accordance with all applicable laws and consistent with the department's use and disposition of similar property.
 - (k) Keeping a manual that details the statutory grounds for forfeitures and department procedures related to asset forfeiture, including procedures for prompt notice to interest holders, the expeditious release of seized property, where appropriate, and the prompt resolution of claims of innocent ownership (Health and Safety Code § 11469).
 - (l) Providing copies of seized business records to the person or business from whom such records were seized, when requested (Health and Safety Code §11471).
 - (m) Notifying the California Franchise Tax Board when there is reasonable cause to believe that the value of seized property exceeds \$5,000.00 (Health and Safety Code § 11471.5).

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 (Health and Safety Code § 11495).

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602.8 DISPOSITION OF FORFEITED PROPERTY

Forfeited funds distributed under Health and Safety Code § 11489 et seq. shall only be used for purposes allowed by law, but in no case shall a peace officer's employment or salary depend upon the level of seizures or forfeitures he/she achieves (Health and Safety Code § 11469).

The Department may request a court order so that certain uncontaminated science equipment is relinquished to a school or school district for science classroom education in lieu of destruction (Health and Safety Code § 11473; Health and Safety Code § 11473.5).

602.8.1 RECEIVING EQUITABLE SHARES

When participating in a joint investigation with a federal agency, the Irvine Police Department shall not receive an equitable share from the federal agency of all or a portion of the forfeiture proceeds absent either a required conviction under Health and Safety Code § 11471.2 or the flight, death or willful failure to appear of the defendant. This does not apply to forfeited cash or negotiable instruments of \$40,000 or more.

602.9 CLAIM INVESTIGATIONS

An investigation shall be made as to any claimant of a vehicle, boat or airplane whose right, title, interest or lien is on the record in the Department of Motor Vehicles or in an appropriate federal agency. If investigation reveals that any person, other than the registered owner, is the legal owner, and that ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, boat or airplane, notice shall be made to the legal owner at his/her address appearing on the records of the Department of Motor Vehicles or the appropriate federal agency (Health and Safety Code § 11488.4).