

		<b>DIRECTIVE 6.13</b>	
SUBJECT <b>Seizures and Asset Forfeitures</b>		NO. PAGES 7	
DISTRIBUTION All Personnel	AMENDS Directive 6.13 Dated: 04/03/07	THIS ORDER CANCELS	
Admin Board Approved: 12/15/09	DATE OF ISSUE: 12/17/09	Applicable Accreditation Standards	
ISSUED BY: Chief Michael J. Szczerba <i>Michael J. Szczerba</i> Chief of Police Reviewed: 11/24/09			

A. INTRODUCTION:

The Wilmington Police Department will pursue seizures and asset forfeitures for items involved in all felonies and certain misdemeanors committed within the City of Wilmington that fall in one of the following categories.

1. Any controlled substance as defined in Title 16, Del.C., or any substance, device, paraphernalia or currency or other means of exchange, which has been, is being, or is intended to be used in violation of any provision of Title 16, Del.C.
2. Any gambling paraphernalia, lottery tickets, money and currency used or intended to be used in violation of the gambling laws of the State of Delaware, or of the City of Wilmington.
3. Any equipment or liquid or solid materials being used or intended to be used in violation of the beverage or tobacco laws of the State of Delaware.
4. Any personal property including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which has been or is actually employed as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony, or which is acquired by proceeds obtained as a result of a violation of the R.I.C.O. Act.
5. Any vessel, motor vehicle, aircraft, or real property used to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband item, provided that when the contraband item is an illegal substance as defined I in Title 16, Del.C., and that the amount of illegal substance is sufficient to substantiate a charge of Possession With the Intent to Deliver or greater.



C. SPECIAL INSTRUCTIONS:

1. Contraband items as outlined in Section A, 1 - 6 may be seized without the necessity of filing criminal charges.

Although it is preferable to file criminal charges if there is sufficient probable cause, contraband items may be seized civilly. When items are seized without the filing of criminal charges, the following guidelines will be followed:

- a. The seizing officer must have sufficient reason to believe that the item seized falls into the guidelines of Section A, 1 - 6, making the item a gain by way of illegal means.
  - b. The seizing officer must articulate the basis for the seizure, noting the facts and circumstances, as well as any and all statements, supporting such assertion.
  - c. The item(s) is to be handled per existing policy for the handling of evidence and property.
  - d. The seizing officer will schedule a Felony Intake in the normal manner, presenting all pertinent information, including the appropriate copies of the Notification of Forfeiture Form, regarding the seizure to the Attorney General's Office.
  - e. The Attorney General's Office will determine if the case is to proceed civilly, or if the item(s) is to be returned.
2. The following limits will be imposed on the amount or value of property that may be seized:
    - a. Illegal substances as defined in Title 16, Del. C., will be seized in any amount.
    - b. All weapons as defined in Title 11 Del.C., will be seized.
    - c. All vehicles as defined by Title 11 Del.C. with a net worth of \$1,000 or greater, will be seized.
    - d. All property with a fair market value in excess of \$1,000.00 when seized in conjunction with a criminal case.
    - e. Currency in excess of \$250.00 for criminal cases and \$1,000.00 or more civilly.

D. SEIZURE OF VEHICLES:

When any member of the Wilmington Department of Police seizes a vehicle for the purpose of instituting possible forfeiture proceedings, the following procedures will be followed:

1. Authority

Vehicles will be seized only in those cases where it is applicable by State or Federal Law.

a. Title 11, DEL.C.

Vehicles actually employed as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony, or which is acquired by proceeds obtained as a result of a violation of the R.I.C.O. Act.

IE: A vehicle in which a kidnap victim is driven across state lines.

b. Title 16, DEL.C.

Vehicles used to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any illegal substance as defined in Title 16, DEL.C., provided that the amount of illegal substance is sufficient to substantiate a charge of Possession With the Intent to Deliver or greater.

These statutes allow police to seize vehicles which "are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, trafficking, or possession with intent to deliver of controlled substances or products and equipment used to manufacture controlled substances."

2. Exceptions

Certain vehicles for practical reasons will not be seized. For example:

a. A vehicle is not subject to forfeiture simply for violations of Sections 4753, 4754, 4757 and 4758.

b. Vehicles encumbered by a substantial loan or lien, when the lien holder has no knowledge of the Title 16 violation, should not be seized.

c. Vehicles with a net worth of less than \$1,000 should not be seized.

d. Additionally, the Court will not grant forfeiture applications in cases where an innocent owner negligently lends his vehicle to a person who

subsequently uses it to sell or transport controlled substances. For example, when a son uses his father's vehicle to sell or transport controlled substances, and the father neither knew, nor should have known that the son was dealing, the Court will not order forfeiture.

Note: The father must be the owner of the vehicle in order to succeed with this defense. He must be able to show that he paid for the car.

3. IMPOUND PROCEDURES - VEHICLES WHICH ARE SAFE AND OPERABLE:

- a. Vehicles that are in a safe and operable condition will be impounded and [REDACTED] utilizing due care and employing proper driving procedures.
- b. Once at Central, the investigating officer will conduct a complete and thorough inventory search of the vehicle. The officer will complete a Departmental Impound Form (noting that the vehicle is seized in the appropriate block) and a Departmental Inventory Form. The hard copy of the Impound Form and a copy of the Inventory Form *are* to be placed on the dashboard of the vehicle. The originals of both forms will be submitted with the original reports as per standard Departmental Procedure.

Note: Both the Impound Form and the Inventory Form must be signed by a supervisor, prior to being submitted.

- c. The seizing officer will then contact a supervisor of the Drug, Organized Crime and Vice Division, advising them of the seizure and a member of that Division will respond to take custody of the vehicle.
- d. On those occasions when no supervisor of the Drug, Organized Crime and Vice Division is available to respond, the vehicle will be locked inside the [REDACTED]. The officer will then turn the keys over to the House Sergeant in the event that the [REDACTED]. The House Sergeant will then have the responsibility to contact a supervisor of the Drug, Organized Crime and Vice Division as soon as they are available.
- e. The Drug, Organized Crime and Vice division supervisor will be responsible for the proper storage of the vehicle.

4. IMPOUND PROCEDURES - VEHICLES WHICH ARE UNSAFE OR INOPERABLE:

- a. If a vehicle is unsafe or can not be driven for any location of seizure, if at

all possible. A Departmental Impound Form and a Departmental Inventory Form (in duplicate) will be completed.

Again, the forms must be completed accurately and thoroughly, with the seized vehicle block so marked and they must be signed by a supervisor.

- b. The vehicle will then be towed by the City's contracted towing service. The hard copy of the Impound Form and a copy of the Inventory Form will be given to the tow service's driver, in order that they may accompany the vehicle.
- c. The original copies of the Impound Form and the Inventory Form will be turned in with the original reports and will be held on file in the Support Services Division.
- d. The Support Services Division will be responsible for forwarding a copy of both forms to the Drug, Organized Crime and Vice Division.

Finally, you must remember that if the Department seizes a vehicle, and the Court decides that the vehicle was not subject to forfeiture, the Department will be required to pay for storage. So it is important to use discretion in seizing a vehicle that is to be stored.

E. CIVIL SEIZURES:

In certain cases where an investigation reveals that a property was purchased with funds obtained by way of illegally obtained assets, the property may be seized upon the application to the Court and the issuance of a Seizure Warrant.

For example, [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] Based on enough probable cause to believe that the vehicle was purchased with funds obtained by selling drugs, an application may be presented to the Court requesting a Seizure Warrant. If the warrant is granted, you are authorized to seize the vehicle.

Note: In all cases where property is seized, whether due to a criminal violation, a drug violation, or civilly, the seizing officer must schedule a Felony Intake in the prescribed manner. The officer will present all pertinent information regarding the seizure to the Attorney General's Office or the Federal Prosecutor's Office. The Attorney General's Office or the Federal Prosecutor's Office will determine if the case is to proceed, or if the property is to be returned.

F. RESPONSIBILITIES:

1. The Support Services Division will:

- a. Be responsible for maintaining a log of all seized property and impounded vehicles.
- b. Ensure that copies of the appropriate paperwork on seized vehicles are forwarded to the Drug, Organized Crime and Vice Division.
- c. Be responsible for the release of any seized property that is to be returned as per existing Departmental Policy.

2. The Drug, Organized Crime and Vice Division will:

- a. Be responsible for maintaining a secondary log of all seized vehicles.
- b. Monitor the status of the vehicle as it proceeds through the forfeiture process.
- c. Notify the Support Services Division of any seized vehicle that was not subject to forfeiture, as determined by the Attorney General's Office or the Federal Prosecutor's Office.
- d. Be responsible for obtaining the State of Delaware Division of Motor Vehicle Title for all vehicles granted to the Department via forfeiture.
- e. Make the necessary arrangements for the sale and/or disposal of unwanted forfeited vehicles.

3. [REDACTED]

G. FORFEITURE - WILMINGTON POLICE

All items that are forfeited to the Wilmington Police Department will be used consistent with the requirements set forth under the law in which the item was seized, at the direction of the Chief of Police or his designee.

H. FORFEITURE - AUCTION

Any item not intended for the use of the City of Wilmington will be subject to public auction.