

<p>RABUN COUNTY SHERIFF'S OFFICE</p>  <p>General Order Number: 7.01</p>	<p>Date of Issue</p> <p>2/23/2016</p>	<p>Effective Date</p> <p>2/23/2016</p>	<p>Revision Date</p>
<p>Subject: ASSET FORFEITURE</p>	<p>Amends:</p>	<p>Rescinds:</p>	
<p>Index as:</p> <ul style="list-style-type: none"> Asset Forfeiture Criminal Investigation Division Seizure of Property 	<p>State Certification Standards: 4.6, 4.7, 4.8</p>		

PURPOSE

The purpose of this General Order is to prescribe the policies and procedures for the Rabun County Sheriff's Office regarding the seizure of real or personal property for the purpose of forfeiture.

STATEMENT OF POLICY

It shall be the policy of the Rabun County Sheriff's Office to pursue the seizure and forfeiture of property against criminals and criminal enterprises where such action is reasonable and justified.

DISCUSSION

The seizure of property used or intended for use in the commission of criminal acts or assets obtained with the profits of illegal activity is an effective method of combating criminal gain. Seizure and ultimately forfeiture of certain property removes the means by which criminals may continue to operate their illegal enterprises and removes the profit from criminal activity. In each of the following sections can be found threshold amounts for seizures, variances, maximum number of days to notify the District Attorney and various crimes under which a seizure can be made.

DEFINITIONS

SEIZURE — The act of taking and removing personal property or some meaningful interference with a person's possessory interests' in the property

FORFEITURE — Something to which the possessory right is lost by the commission of a crime or fault of something by way of penalty

PROPERTY — Anything of value including any interest in anything of value, including real property and any fixtures thereon, and tangible and intangible personal property, including but not limited to currency, instruments, securities, or any other kind of privilege, interest, claim or right

PROCEEDS — Any property derived directly or indirectly from, maintained by, or realized through an act or omission and includes any benefit, interest, or property of any kind without reduction for expenses incurred for acquisition, maintenance, or any other purpose

I. GENERAL CONSIDERATIONS

- A. All Federal asset forfeitures proceedings will be conducted in accordance with Federal laws and established Federal procedures.
- B. All State asset forfeitures proceedings will be conducted in accordance with State laws and established State procedures.
- C. Any monetary proceeds or tangible property derived from the lawful seizure of assets through either Federal or State procedures will be used for law enforcement purposes.
- D. All property will be disposed of in accordance with applicable Federal or State legal procedures.
- E. All seized property will be secured in accordance to established policies and procedures regarding property and evidence unless said property cannot be secured. In that case, the Property and Evidence Officer will be contacted as to the location of the property.
- F. All seized property will be accounted for by Rabun County Sheriff's Office Property and Evidence Form and/or other documentation such as incident reports.

II. GENERAL LEGAL GUIDELINES

- A. Seizures For The Purpose Of Forfeiture Under The Controlled Substances Act (16-13-49)
 1. Minimum threshold for seizure under Controlled Substance Act:
 - a. Possession of more than (01) gram of cocaine;
 - b. Possession of more than four (04) ounces of marijuana; or
 - c. No minimum amount of cocaine or marijuana if property was used to facilitate a transaction in or a purchase of or sale of a controlled substance or marijuana.

2. Types of property subject to seizure under the Controlled Substances Act:
 - a. All controlled substances, raw materials, or controlled substance analogs that have been manufactured, distributed, dispensed, possessed, or acquired in violation of the Controlled Substances Act;
 - b. All property, including real property, which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of the Controlled Substances Act or any proceeds derived or realized there from;
 - c. All weapons possessed, used, or available for use in any manner to facilitate a violation of the Controlled Substances Act;
 - d. Any interest, security, claim or property 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 a violation of the Controlled Substances Act, or any proceeds derived or realized there from; and
 - e. Any moneys, negotiable instruments, securities, or other things of value, which are found in close proximity to any controlled substance or marijuana or other property, which is subject to forfeiture under the Controlled Substances Act.
 3. A property interest shall not be subject to forfeiture if the owner or interest holder establishes innocence as defined under 16-13-49 (e) and (f).
 4. Seizures under the Controlled Substances Act must be reported to the District Attorney's Office, in writing, within twenty (20) days of the time of seizure.
- B. Seizures For The Purpose Of Forfeiture Under The Street Gang Terrorism And Prevention Act (16-15-5)
1. Types of property subject to seizure under the Street Gang Terrorism and Prevention Act:
 - a. All property which is directly or indirectly used or intended for use in any manner to facilitate a violation of the Street Gang Terrorism and Prevention Act; and
 - b. Any property constituting or derived from gross profits or other proceeds obtained from a violation of the Street Gang Terrorism and Prevention Act.
 2. A property interest shall not be subject to forfeiture if the owner or interest holder establishes innocence as defined under 16-13-49 (e) and (f),
 3. Seizures under the Street Gang Terrorism and Prevention Act must be reported to the District Attorney's Office, in writing, within twenty (20) days of the time of seizure.
- C. Seizures For The Purpose Of Forfeiture Under Vehicles And Components With Altered Identification Numbers Statutes (40-11-20)
1. Types of property subject to seizure under Vehicles and Components with Altered Identification Numbers:

- a. Any motor vehicle the manufacturer's vehicle identification number of which has been removed, altered, defaced, falsified, or destroyed; and
 - b. Any component part of a motor vehicle the manufacturer's identification number of which has been removed, altered, defaced, falsified, or destroyed.
 2. Seizures under Vehicles and Components with Altered Identification Numbers Statutes must be reported to the District Attorney's Office, in writing, within ten (10) days of the time of seizure.
- D. Seizures For The Purpose Of Forfeiture Under The Motor Vehicle Chop Shops And Stolen And Altered Property Act (16-8-85)
 1. Types of property subject to seizure under the Motor Vehicle Chop Shops and Stolen and Altered Property Act:
 - a. Unless obtained by theft, fraud, or conspiracy to defraud and the rightful owner is known or can be identified and located, the following are subject to forfeiture:
 - i. Any tool, any implement; or any instrumentality, including, but not limited to, any motor vehicle or motor vehicle part, whether or not owned by the person from whose possession or control it was seized, which is used or possessed either in violation of, or to promote or facilitate a violation of the Motor Vehicle Chop Shops and Stolen and Altered Property Act; and
 - ii. Any motor vehicle, other conveyance, or motor vehicle part used by any person as a common carrier, where the owner or other person in charge of the motor vehicle, other conveyance, or motor vehicle part is a consenting party to a violation of the Motor Vehicle Chop Shop and Stolen and Altered Property Act;
 2. A property interest shall not be subject to forfeiture by reason of an act of omission, which the owner proves to have been committed or omitted without the owner's knowledge or consent.
 3. Seizing agencies shall utilize their best efforts to identify any seized motor vehicle or motor vehicle part to determine ownership or the identify of any person having a right or interest in the seized property through the procedure outlined in the Motor Vehicle Chop Shops and Stolen and Altered Property Act.
 4. Seizures under the Motor Vehicle Chop Shops and Stolen and Altered Property Act must be reported to the District Attorney's Office, in writing, within twenty (20) days of the time of seizure.
- E. Seizures For The Purpose Of Forfeiture Under Gambling Statutes (16-12-32)
 1. Types of property subject to seizure under Gambling Statutes:

Types of property used in, intended for use in, used to facilitate, or derived from or realized through a violation of illegal gambling or which is located within any gambling place or within any vehicle or other conveyance used to transport any gambling device, any subassembly or essential part thereof, card, stub, ticket, check, funds, things of value, or other device designed to facilitate participation in any lottery.

2. For the purpose of Gambling forfeitures, "property" means any personal property of any type, tangible or intangible, including but not limited to vehicles, conveyances, aircraft, watercraft, funds, other things of value or choses in action or any interest in such property.
 3. Seizures under Gambling Statutes must be reported to the District Attorney's Office, in writing, within ten (10) days of the time of seizure.
- F. Seizures For The Purpose Of Forfeiture Under Commission Of Burglary Or Armed Robbery Statutes (16-16-2)
1. Types of property subject to seizure under Commission of Burglary or Armed Robbery Statutes:

All motor vehicles, tools, and weapons which are used or intended for use in any manner in the commission of or to facilitate the commission of a burglary or armed robbery.
 2. No motor vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture unless it appears that the owner or other person in charge of the motor vehicle is a consenting party or privy to the commission of a burglary or armed robbery.
 3. Seizures under Commission Of Burglary Or Armed Robbery Statutes must be reported to the District Attorney's Office, in writing, within twenty (20) days of the time of seizure.
 4. No motor vehicle is subject to forfeiture by reason of any act or omission established by the owner thereof to have been committed or omitted without his or her knowledge or consent.
 5. A forfeiture of a motor vehicle encumbered by a bona fide security interest is subject to the interest of the secured party if he or she had knowledge of or nor consented to the act or omission.
- G. Seizures For The Purpose Of Forfeiture Under Motor Vehicle Hijacking Statutes (16-5-44.1)
1. Types of property subject to seizure under Motor Vehicle Hijacking:

Any property, which is used, intended for use, derived, or realized, directly or indirectly, from a violation of Motor Vehicle Hijacking.
 2. Seizures under Motor Vehicle Hijacking Statutes must be reported to the District Attorney's Office, in writing, within twenty (20) days of the time of seizure.
- H. Seizures For The Purpose Of Forfeiture Under Bombs, Explosives, Chemical And Biological Weapons Statutes (16-7-95)
1. Types of property subject to seizure under Bombs, Explosives, Chemical and Biological Weapons Statutes:
 - a. All property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of statutes concerning Bombs, Explosives, Chemical and Biological Weapons; and
 - b. Any proceeds derived or realized there from.
 2. A property interest shall not be subject to forfeiture if the owner of such interest or interest holder establishes innocence as defined under 16-13-49 (e).

3. Seizures under Bombs, Explosives, Chemical and Biological Weapons Statutes must be reported to the District Attorney's Office, in writing, within twenty (20) days of the time of seizure.
- I. Seizures For The Purpose Of Forfeiture Under Pimping Or Pandering Statutes (16-6-13.2) And (16-6-13.3)
 1. Types of property subject to seizure under Pimping or Pandering Statutes:
 - a. Any proceeds or money which is used, intended for use, used in any manner to facilitate, or is derived from a violation of Pimping, wherein any of the persons involved in performing an act of prostitution is under the age of 18 years;
 - b. Any motor vehicle operated by a person to facilitate a violation of Pimping where the offense involved;
 - c. The pimping of a person under the age of 18 years to perform an act of prostitution and involved a motor vehicle; or
 - d. A motor vehicle operated by a person who has been convicted of or pleaded nolo contendere to two previous violations of Pimping or Pandering involving a motor vehicle within a five-year period and who is convicted or pleads nolo contendere to a third violation of Pimping and Pandering involving a motor vehicle within the same five-year period.
 2. Seizures under Pimping or Pandering Statutes must be reported to the District Attorney's Office, in writing, within twenty (20) days of the time of seizure.
 - J. Seizures For The Purpose Of Forfeiture Under Habitual Violator Statutes (40-6-391.2)
 1. Types of property subject to seizure under Habitual Violator Statutes:

Any motor vehicle operated by a person who has been declared a habitual violator for three (3) violations of Driving Under the Influence and whose license has been revoked and who is arrested and charged with a violation of Driving Under the Influence provided that said forfeiture shall not be absolute unless the defendant is finally convicted of such offense.
 2. Seizures under Habitual Violator Statutes must be reported to the District Attorney's Office, in writing, within twenty (20) days of the time of seizure.
 - K. Seizures For The Purpose Of Forfeiture Under The Racketeer Influenced And Corrupt Organizations Act (RICO) (16-14-7)
 1. Types of property subject to seizure under RICO:

All property of every kind used or intended for use in the course of, derived from, or realized through a pattern of "racketeering activity" as defined under the Racketeer Influenced and Corrupt Organizations Act.
 2. Seizures under the Racketeer Influenced and Corrupt Organizations Act must be reported to the District Attorney's Office, in writing, within ten (10) days of the time of seizure.

L. Seizures For The Purpose Of Forfeiture Under Weapons Declared Contraband Statutes (17-5-51).

1. Types of property subject to seizure under Weapons Declared Contraband:

Any device, excluding a motor vehicle, which is used as a weapon in the commission of any crime against any person or any attempt to commit any crime against any person, any weapon the possession or carrying of which constitutes a crime or delinquent act, and any weapon for which a person has been convicted of the crime of carrying a concealed weapon (16-11-126).

2. There is no requirement requiring notification to the District Attorney's Office under this statute.

M. When Forfeitable Property May Be Seized

Property subject to forfeiture may be seized by any law enforcement officer of this state or any political subdivision thereof who has the power to make arrests upon process issued by any court having jurisdiction over the property. Seizure may occur:

1. Pursuant to a Seizure Warrant for the property;

2. Incident to the execution of a Search Warrant;

3. Incident to the execution of an Inspection Warrant;

4. Incident to an Arrest;

5. If Probable Cause exists to believe that the property is subject to seizure, and the officer is legally at the location of the property; or

6. The property has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding.

N. Filing A Forfeiture Through Constructive Seizure

1. The District Attorney may file a lien for forfeiture of property upon the initiation of any civil or criminal proceeding pursuant to 16-13-49. The District Attorney may place property under constructive seizure by posting notice of pending forfeiture, by giving notice of pending forfeiture to its owners and interest holders, or by filing notice of seizure in any appropriate public record relating to the property.

2. This method of forfeiture is most commonly utilized for forfeitures of real property, corporations, charters, or any situation where there is little likelihood that the property will be destroyed or removed during the forfeiture action, and a physical seizure of the property involving removal, maintenance, upkeep, and security of the property would place an unreasonable burden upon the seizing agency.

O. Seizure For The Purpose Of Forfeiture Of Negotiable Instruments Or Money:

1. Negotiable instruments or money which are forfeitable pursuant to 16-13-49, and which are not needed for evidentiary purposes, may be deposited in an interest-bearing account in a financial institution in this state, or

2. A Seizure Warrant or Search Warrant, authorizing the seizure of specific bank accounts, certificates of deposit, bonds, etc., which is served upon the bank or other financial institution holding the property, may order an authorized representative of the bank or financial institution to FREEZE the property, allowing no access to the property by the owner or any other person until a subsequent court order directs otherwise.
3. This method of seizure is most commonly utilized for seizures of certificates of deposit, bonds, or any situation where withdrawal of the funds may result in a penalty or loss of fund value. Should the forfeiture by the state fail, requiring the return of the property to the owner, the seizing agency may be financially responsible for the deficit in fund value.

P. Seizure For The Purpose Of Forfeiture Of Perishable Items

If any property which has been attached or seized pursuant to 16-13-49 is perishable or is liable to perish, waste, or be greatly reduced in value by keeping or if the expense of keeping the property is excessive or disproportionate to the value thereof, the court, upon motion of the state, a claimant, or the custodian, may order the property or any portion thereof to be sold upon such terms and conditions as may be prescribed by the court; and the proceeds shall be paid into the registry of the court pending final disposition of the action.

Q. Seizures For The Purpose Of Forfeiture Of Rented Or Leased Vehicles

1. A rented or leased vehicle shall not be subject to forfeiture unless it is 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 of the conduct or that it was likely to occur.
2. Upon learning of the address or phone number of the company which owns any rented or leased vehicle which is present at the scene of an arrest or other action taken pursuant to 16-13-49, the duly authorized authorities shall immediately contact the company to inform it that the vehicle is available for the company to take possession.

III. PROCEDURES

A. Considerations Prior To Seizure Of Property For The Purpose Of Forfeiture

1. In situations affording the case officer the opportunity to conduct planning prior to law enforcement action, such as Search Warrants, Seizure Warrants, Undercover Investigations, etc., the case officer should make a diligent effort to identify and determine ownership of forfeitable property prior to the law enforcement action.
2. The case officer should evaluate the case from all aspects, including the economic feasibility of proceeding with a forfeiture action. This evaluation, when possible, should be done in consultation with the case officer's supervisor and the District Attorney's Office.
3. It is the decision of the District Attorney to file or proceed with a forfeiture action.

- B. The standard procedure for preserving Real Estate prior to forfeiture will be by the filing, by the District Attorney, of a forfeiture lien against the real property, and the possible execution of an occupancy agreement. Only in rare circumstances, with good cause shown, and with the approval of the Sheriff or

his designee, will real property be seized prior to forfeiture. The decision to seize Real Estate prior to forfeiture should be made in consultation with the District Attorney and possibly the County Attorney.

- C. When planning the seizure of negotiable instruments or money from a bank or financial institution, due consideration should be given to the most appropriate method of conducting the seizure:
1. Freezing the funds in place allowing no access without court order;
 2. Transferring the funds into an identical account in the same institution under the name of the District Attorney allowing no access without court order;
 3. Withdrawing the funds and depositing the funds into an account designated by the District Attorney;
 4. Withdrawing the funds and placing the funds into property and evidence;
 5. Filing a forfeiture lien with a constructive seizure; and
 6. The seized funds should be handled as evidence to maintain the integrity of a chain of custody, and with due regard for officer safety. At least two (2) officers should be present at all times during the transfer of seized funds from a bank or other financial institution.
- D. Responsibilities of seizing deputy at time of seizure for the purpose of forfeiture:
1. Record the exact physical location of each item of property at the time of seizure;
 2. Record the specific justification for seizure and forfeiture of each item of property;
 3. Record the date and time of the seizure, all officers involved in the seizure, and any witnesses to the seizure;
 4. Record the Identification data of all possible Claimants, including:
 - a. Any person who was in physical possession of the property at the time of seizure;
 - b. Any person who claims any interests in the seized property, as well as any person who denies any ownership intent;
 - c. Any person who is a possible owner or lien holder of the seized property; and
 - d. Any person who may have a legal right in the property based on any evidence.
 5. Make a diligent effort to identify and contact any person who may be an owner or have any right or interest in the seized property.
 6. Interview all potential Claimants as to their rights or interests in the seized property and to identify any other persons who may possess a right or interest in the seized property.
 7. Notify all potential Claimants known at the time of the seizure, of the fact that the property was seized for forfeiture.
 8. Gather all other information needed to complete a Rabun County Asset Forfeiture Report.
 9. Take photographs of the property prior to seizure when possible.
 10. Document all seized items on Property and Evidence forms in the same manner as evidence seizures. Property seized for forfeiture should be sorted and grouped according to Claimants. Each Claimant or group of Claimants will necessitate a separate Property and Evidence form.
 11. Currency seized for forfeiture, after being sorted and grouped by Claimants, should be subsequently sorted by denominations and listed on each Property and Evidence form recording the number of bills of each denomination with a total for each group of denominations and with a grand total of all currency seized.

12. The counting of currency should be conducted by at least two officers, with both officers conducting individual counts of each group of currency. When a discrepancy occurs, both officers will recount the currency in question until both agree on the amount. Both of the counting officers will sign the Property and Evidence form verifying the count.
- E. Responsibilities of Seizing Deputy Immediately Following Seizure for the Purpose of Forfeiture
1. Attempt to locate any additional property or assets that may be forfeitable under the same forfeiture action.
 2. Continue to make a diligent effort to identify and contact any person who may be an owner or have any right or interest in the seized property. Check for lien holders and innocent owners.
 3. Interview any newly identified Claimants as to their rights or interests in the seized property.
 4. Conduct an inventory and estimate the value of each item seized. List the source of the value such as Bluebook, fair market value of gold, or actual appraisal.
 5. Complete a Rabun County Asset Forfeiture Report and deliver the report to the Rabun County District Attorney's Office within the specified time limit under the appropriate forfeiture statute.
 6. Deliver two copies of the forfeiture report to the District Attorney's Office. Both copies should be signed as received by the District Attorney's Office with one of the copies returned with the case officer for his/her case file.
 7. If innocent owners of lien holders are identified after the seizure, or any other information develops that may make a forfeiture action undesirable, this information should be forwarded to the seizing officer's supervisor. If a determination is made to not proceed with forfeiture against the property, the case officer should make arrangements for the prompt return of the property to the owner, lien holder, or other authorized claimant.
 8. The original Property and Evidence form should document that the property was returned and should be signed legibly by the authorized person receiving the property.
 9. Insure that the property is secured, stored, and maintained in accordance with established departmental guidelines and in a manner to protect the value of the property.
- F. When a vehicle is seized for the purpose of forfeiture and placed in impound
1. A Rabun County Sheriff's Office Seized Vehicle/Property Log Form shall be immediately completed and forwarded to the Division Commander of CID or his designee. A copy of the Rabun County Sheriff's Office Seized Vehicle/Property Log Form shall be left in the seized vehicle in a conspicuous place.
 2. A complete inventory of the seized vehicle including all containers located therein should be completed at the time of seizure or as soon as practical thereafter. A diligent effort should be made to release to the owner or other authorized claimant, all personal property seized with the vehicle that is not being retained as evidence or for forfeiture action.
- G. Responsibilities Of Seizing Deputy During Forfeiture Process

1. Perform any necessary follow up investigation to collect evidence justifying the forfeiture action.
 2. Complete all necessary reports and forward all information justifying the forfeiture to the District Attorney's office in a timely manner.
 3. Insure that the seized property is properly maintained and the value of the property is preserved. Reasonable attempts should be made to maintain the property in the same condition as at the time of seizure. Seized property should not be used for any purpose during the forfeiture action without a court order authorizing such action unless the action is reasonably necessary for the proper maintenance of the property.
- H. Responsibilities Of Seizing Deputy Upon Completion Of The Forfeiture Process
1. Obtain a copy of the court order stipulating the disposition of the property.
 2. Any property ordered to be returned to the owner or other claimant should be promptly returned.
 3. The original Property and Evidence form should document that the property was returned and should be signed legibly by the authorized person receiving the property.
 4. Any property ordered to be destroyed, should be promptly destroyed in accordance with established departmental guidelines.
 5. Any property transferred to the state, should be distributed as specified in the court order and should only be utilized as directed or authorized by the court order.
 6. A copy of the court order should be maintained by the division or unit utilizing the seized property or to which the seized property is assigned.
 7. Any subsequent transfer of forfeited property must be within the guidelines of the court order and should be properly documented.
- I. In regard to any property placed in Rabun County Sheriff's Office Impound, a copy of the courts final order relating to the property shall be furnished to the Criminal Investigations Division Commander or his designee.



By Order of the Sheriff: **Chad K. Nichols**
Sheriff, Rabun County