

GUIDELINES
42 PA. C.S.A. §5801 ET SEQ.

I. PURPOSE

- a. Provide the Appropriations and Judiciary Committees of both the Senate and House of Representatives with a report specifying the forfeited property or proceeds of the forfeited property obtained under 42 Pa. C.S.A. §5801 et seq. during the fiscal year beginning July 1 and ending June 30.
- b. Provide the Attorney General and the District Attorneys procedures and guidelines for governing the release of information to protect the confidentiality of forfeited property or proceeds, subject to 42 Pa. C.S.A. §5801 et seq. and used in ongoing law enforcement activities.

II. STATUTORY REQUIREMENTS

a. STATUTORY LANGUAGE

i. Section 5803 (j) – Audit

Annual audit of forfeited property — Every county in this Commonwealth shall provide, through the controller, board of auditors or other appropriate auditor and the District Attorney, an annual audit of all forfeited property and proceeds obtained under this chapter. The audit shall not be made public but shall be submitted to the Office of Attorney General. By September 30 of each year, the county shall report all forfeited property and proceeds obtained under this chapter and the disposition of the property during the preceding year to the Attorney General. The Attorney General and each District Attorney shall maintain and create appropriate records to account for the property forfeited in a fiscal year and the use made of the property forfeited. Each audit shall include:

- (1) Date property was seized.
- (2) The type of property seized.
- (3) Where property was seized.
- (4) The approximate value.
- (5) The alleged criminal behavior with which the property is associated.
- (6) The disposition or use of property forfeited.

(7) Whether the forfeiture was related to a criminal case and the outcome of the criminal case.

(8) Date of forfeiture decision.

ii. Section 5803 (k) – Report

Annual report and confidential information — The Attorney General shall annually submit a report to the Appropriations Committee and Judiciary Committee of the Senate and to the Appropriations Committee and Judiciary Committee of the House of Representatives specifying the forfeited property or proceeds of the forfeited property obtained under this chapter during the fiscal year beginning July 1 and the following shall apply:

(1) The report shall include all information required under subsection (j) subject to the limitations provided under paragraph (2).

(2) The Attorney General shall adopt procedures and guidelines, which shall be public, governing the release of information by the Attorney General or the District Attorney to protect the confidentiality of forfeited property or proceeds used in ongoing law enforcement activities.

(k.1) Reporting — By November 30 of each year. The Office of Attorney General shall notify the Appropriations Committee and Judiciary Committee of the Senate and the Appropriations Committee and Judiciary Committee of the House of Representatives of any county, which has not submitted an audit and complied with the requirements in subsection (j).

iii. Section 5807.2 – Federal Reporting Requirement

The audit required under section 5803(j) (relating to asset forfeiture) shall include a copy of each equitable sharing agreement and certification form filed with the United States Department of Justice within the last 12 months.

iv. Section 5803(f) – Use of property held in custody

When property is forfeited under this chapter, the property shall be transferred to the custody of the District Attorney, if the law enforcement authority seizing the property has local or county jurisdiction, or the Attorney General, if the law enforcement authority seizing the property has statewide jurisdiction. The District Attorney or the Attorney General, where appropriate, may:

(1) retain the property for official use; or

(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, except that the proceeds from the sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be used and distributed in accordance with this chapter.

v. Section 5803 (g) – Use of cash or proceeds of property

Cash or proceeds of property, subject to forfeiture under section 5802 and transferred to the custody of the District Attorney under subsection (f) shall be placed in the operating fund of the county in which the District Attorney is elected. The appropriate county authority shall immediately release from the operating fund, without restriction, a like amount for the use of the District Attorney for the enforcement of or prevention of a violation of the provisions of The Controlled Substance, Drug, Device and Cosmetic Act. The funds shall be maintained in an account or accounts separate from other revenues of the office. The entity having budgetary control shall not anticipate future forfeitures or proceeds from future forfeitures in adoption and approval of the budget for the District Attorney.

vi. Section 5803 (i) – Authorization to utilize property

Cash or proceeds of property subject to forfeiture under section 5802 and transferred to the custody of the District Attorney or Attorney General under subsection (f) shall be utilized by the District Attorney or Attorney General for the enforcement of or prevention of a violation of the provisions of The Controlled Substance, Drug, Device and Cosmetic Act. In appropriate cases, the District Attorney and the Attorney General may designate proceeds from the forfeited property to be utilized by community-based drug and crime-fighting programs and for relocation and protection of witnesses in criminal cases. Real property may be transferred to a nonprofit organization to alleviate blight resulting from violations of The Controlled Substance, Drug, Device and Cosmetic Act.

vii. Section 5807 – Restrictions on Use

Property, money or other things of value received by a State law enforcement authority under any of the following laws may not be

used for contributions to political campaigns, expenses related to judicial trainings or the purchase of alcoholic beverages.

- (1) A Federal law which authorizes the sharing or transfer of all or a portion of forfeited property or the proceeds of the sale of forfeited property to a State law enforcement authority.
- (2) A State law which authorizes forfeiture.

b. AUDIT OBJECTIVES

- i. Evaluate controls over the Asset Forfeiture Accounts.
- ii. Evaluate deposit procedure of cash to the Accounts.
- iii. Evaluate controls over the disbursement of funds.
- iv. Evaluate controls over the general office procedure of handling forfeited property.
- v. Provide a Financial Statement of the Asset Forfeiture accounts with a Beginning and Ending Balance.

c. AUDIT FINDINGS

- i. Conduct a reconciliation of all accounts and state if all deposits and checks were reconciled.
 1. If a testing percentage was utilized, state the percentage used.
- ii. All receipts were traced to supporting documentation and bank statements.
- iii. All receipts were deposited in a reasonable time.
- iv. All invoices were approved by (state designated office person or persons).
- v. All invoices that were approved were for the statutory uses of forfeited funds.
- vi. Property forfeited during the Audit period were properly handled and accounted for pursuant to the statute.

III. GENERALLY STATED GUIDELINES

- a. All counties shall follow the Audit and Reporting requirements of the Statute.
- b. All counties shall provide, through their Controller, Board of Auditors or other appropriate auditor and the District Attorney, an annual Audit of all forfeited property and proceeds obtained to the Attorney General. After which, the Attorney General shall annually submit a report to the Appropriations Committee and Judiciary Committee of the Senate and to the Appropriations Committee and

Judiciary Committee of the House of Representatives specifying the forfeited property or proceeds of the forfeited property obtained.

- c. All counties shall follow the requirements of the Statute for use of forfeited property pursuant to Sections 5803 (f), (g), (i) and 5807.
- d. All counties shall maintain a separate account for Section 5802 (Drug) forfeitures and Section 5803 (All other statutes) forfeitures. Counties are permitted to maintain separate accounts for each legal category of property forfeited pursuant to Section 5803. However, when the general in/out accounting of forfeited and sold property along with a categorization of expenses is provided to the Attorney General, the county must provide a total accounting for all property forfeited under Section 5803.
- e. Only property forfeited pursuant to 42 Pa. C.S.A. §5801 et seq. is subject to the Audit and Reporting requirements.
- f. Any property forfeited pursuant to 42 Pa. C.S.A. §5801 et seq. shall have an executed order of court filed in the county of record.
- g. Only forfeited monetary items and forfeited property sold as result of Sections 5802 and 5803 shall be deposited in the established accounts.
 - i. NOTE: Reimbursements to the accounts are appropriate as long as the initiating expense originated from the forfeiture account(s).
 - ii. NOTE: If ‘other or miscellaneous’ monies are deposited in the forfeiture accounts, the Audit shall specifically identify this money and the source thereof.

IV. ASSET TRACKING SYSTEM GUIDELINES

- a. All counties shall track their assets using one of the following methods:
 - i. By using the County Asset Forfeiture Tracking application provided by the Office of Attorney General, or
 - ii. By using their own asset tracking application modified to comply with 42 Pa. C.S.A. §5803(j) requirements and capable of providing to the Attorney General a specifically formatted data file that will be used to update the County Asset Forfeiture Tracking application.
- b. All counties shall maintain an “Asset Tracking” system that identifies each asset with a unique number.
 - i. It is recommended that the number begin with the fiscal year the number was created, the county code and be sequential. For example: yyyy-cc-nnnnn (fiscal year-county code-sequential number) 1718-01-00001.

- ii. The recommended number format will be automatically pre-populated in the County Asset Tracking application. If a county utilizes a number other than the recommended number format, then the pre-populated number in the County Asset Tracking application will be the asset's primary number and the county's number will be considered a secondary number. If a county utilizes a number other than the recommended number format, then that number must be unique to that asset and shall not be utilized for any other assets in that fiscal year or any assets in subsequent fiscal years.
- iii. The pre-populated number will be viewable in the County Asset Tracking application. The District Attorney will be permitted to search the County Asset Tracking application via the pre-populated number as well as the county's secondary number.
- c. An Asset is defined as an identifiable piece or pieces of property.
 - i. For example:
 1. A bulk amount of US Currency seized at one location and on one date from one or more individuals.
 2. An account describing the custodian, number, and contents of the account(s).
 3. The Deed and Book Number of a piece of real estate, and an address if known.
 4. The make, model, year and VIN, if available, of any conveyance.
 5. The make, model, and serial number, if known, of any weapon.
 6. A description of similarly typed electronic items, such as video gambling machines, cellular telephones, computers, and other such items.
 7. A description of similarly typed jewelry, such as necklaces, watches, or rings.
 8. A description of prepaid or gift cards by vendor.
 9. A description of similarly typed collectible items, such as the number of gold or silver coins, any type of memorabilia, and other such items.
 10. A description of any other similarly grouped items.
- d. The "Asset Tracking" system shall identify the following for each forfeited property
 - i. Date Seized
 1. The "Asset Tracking" system shall identify the month, day and year the property was seized.

- ii. Type of Property
 - 1. The “Asset Tracking” system shall identify the Type of Property generally.
 - 2. For example, Bank Account, Real Estate, Vehicle, U.S. Currency.
- iii. Property Description
 - 1. The “Asset Tracking” system shall identify the Property Description as the specific property forfeited.
 - 2. For example, address for real estate, year, make and model of a vehicle, model and caliber of a firearm, and type of account and financial institution for a bank account (without identifying the account number).
- iv. Location Seized – City, Township, Borough
 - 1. The “Asset Tracking” system shall identify the City, Township or Borough where the property was seized.
- v. Location Seized – County
 - 1. The “Asset Tracking” system shall identify the County where the property was seized.
- vi. Approximate Value/Sale Amount
 - 1. The “Asset Tracking” system shall identify the approximate value of the property or sale amount.
 - 2. For all assets that are not sold, please provide the approximate value. For all assets that are sold, please enter the proceeds from the sale of the asset (i.e. the sale amount).
- vii. Criminal Behavior (Legal Category)
 - 1. The “Asset Tracking” system shall identify the criminal behavior that supports forfeiture of the property seized.
- viii. Disposition of Monetary Assets
 - 1. For U.S. Currency, Negotiable Instruments, Securities, identify the final amount deposited.
- ix. Disposition of Non-monetary Assets
 - 1. The “Asset Tracking” system shall identify the Disposition generally.
 - 2. For all other Non-monetary forfeited property, identify the disposition as donated, destroyed, in-service, pending sale, sold.
- x. Specific Use/Audit (Non-monetary Assets)
 - 1. The “Asset Tracking” system shall identify how the Non-monetary forfeited property is specifically being used.

2. For Currency, Negotiable Instruments, Securities, this is not applicable.
 3. For all other Non-monetary forfeited property in use, specifically identify the use made of a forfeited property that is not sold.
 4. For example, property used by a specific Task Force, donated to a specific charity or utilized by victim witness offices.
- xi. Whether the forfeiture was related to a criminal case
 1. The “Asset Tracking” system shall identify whether the forfeiture was related to a criminal case.
 - xii. Related Criminal Case Disposition
 1. The “Asset Tracking” system shall identify the disposition of the related criminal case. For example, guilty, not guilty, dismissed, withdrawn, ARD, diversion.
 - xiii. Date of forfeiture decision
 1. The “Asset Tracking” system shall identify the month, day and year of the forfeiture decision
 - xiv. Explanatory note
 1. The “Asset Tracking” system shall identify any additional information deemed appropriate by the District Attorney.
- e. If the District Attorney deems the information will jeopardize law enforcement activities, then the District Attorney may identify the information for that particular asset record as confidential by providing a “Y” flag for the asset.

V. LEGISLATIVE REPORTING GUIDELINES

- a. Pursuant to 42 Pa. C.S.A. §5803(k), the Attorney General shall submit an annual report to the Appropriations Committee and Judiciary Committee of the Senate and to the Appropriations Committee and Judiciary Committee of the House of Representatives specifying the forfeited property and proceeds of the forfeited property for the fiscal year.
- b. Each District Attorney shall provide a general in/out accounting of forfeited and sold property along with a categorization of expenses, such as Confidential Case Expenditures, Education/Training, Investigative Equipment and Supplies, Salaries, Task Force Support, etc., for Section 5802 (Drug) forfeitures and a general in/out accounting of forfeited and sold property along with a categorization of expenses, such as Confidential Case Expenditures, Education/Training, Investigative Equipment and Supplies, Salaries, Task Force Support, etc., for Section 5803 (All other statutes) forfeitures.

- i. The general in/out accounting of forfeited and sold property and the categorization of expenses is the same information provided in previous fiscal year reporting for Drug, Chop Shop and Terrorism forfeitures.
- c. Each District Attorney shall provide the following data specifying the forfeited property or proceeds of the forfeited property for the fiscal year in the Office of Attorney General provided computer program, “County Asset Forfeiture Tracking” for reporting to the legislature:
 - i. Date Seized
 - ii. Type of Property
 - iii. Location Seized – County
 - iv. Approximate Value/Sale Amount
 - v. Criminal Behavior (Legal Category)
 - vi. Disposition
 - vii. Whether the forfeiture was related to a criminal case
 - viii. Related Criminal Case Disposition
 - ix. Date of forfeiture decision.
- d. The Attorney General shall issue one Report for forfeited property under 42 Pa. C.S.A. §5802 and under 42 Pa. C.S.A. §5803 for each county.
- e. The following “Asset Tracking” data for each forfeited property will be included in the annual report to the Appropriations Committee and Judiciary Committee of the Senate and to the Appropriations Committee and Judiciary Committee of the House of Representatives as required by 42 Pa. C.S.A. §5803(k):
 - i. Date Seized
 - ii. Type of Property
 - iii. Location Seized – County
 - iv. Approximate Value/Sale Amount
 - v. Criminal Behavior (Legal Category)
 - vi. Disposition
 - vii. Whether the forfeiture was related to a criminal case
 - viii. Related Criminal Case Disposition
 - ix. Date of forfeiture decision.

VI. ATTORNEY GENERAL AUDIT GUIDELINES

- a. Each District Attorney shall provide the information, more specifically described in Section IV(d)(i-xiv) and Section V(b) and (c), for forfeited property under 42 Pa. C.S.A. §§5802 and 5803 to the Attorney General to be maintained in each county’s audit file.

- b. The following data, which provides more specific details from the “Asset Tracking” system, shall remain confidential pursuant to statutory requirements when requested by the District Attorney via the use of the “Y” flag stated above:
 - i. Property Description
 - ii. Location Seized – City, Township, Borough
 - iii. Specific Use/Audit
- c. The controller/auditor shall review this information in the District Attorney’s Office for completing their responsibilities for the audit subject to Section VII of the Guidelines.

VII. RELEASE OF INFORMATION

- a. It is recommended that the controller/auditor and the District Attorney work together to complete the annual audit, but it is clear that the audit must be completed pursuant to the statute.
- b. Pursuant to Section 5803(j), the audit shall not be made public.
- c. The District Attorney shall release all information to the controller/auditor necessary for the audit except that which may jeopardize law enforcement activities as determined by the District Attorney.
 - i. If the District Attorney deems the information will jeopardize law enforcement activities, the District Attorney shall provide such reason in writing to the controller/auditor.
 - ii. The District Attorney shall not allow the controller/auditor to become involved in the chain of custody of any property seized and forfeited under this Act.
 - 1. If the District Attorney determines that an inspection may jeopardize law enforcement activities, the controller/auditor shall not have a right to inspect any property purchased with forfeited funds or used in investigations as long as documentation supports the proper possession of the property pursuant to 42 Pa. C.S.A. §5801 et seq.
 - iii. The District Attorney shall not release internal operating memoranda that in the District Attorney’s determination will jeopardize law enforcement activities. However, the District Attorney must provide the controller/auditor with documents that substantiate the forfeiture and subsequent sale or use of property.
- d. The District Attorney and Attorney General shall maintain proper documentation on all property forfeited under this Act and the disposition thereof and shall not

release information that could identify, among other confidential matters, police officers, informants and/or targets of law enforcement activities.

- e. The District Attorney and Attorney General may release all other forfeiture matters which will not jeopardize law enforcement activities in his/her county or in any other county.
- f. At the discretion of the District Attorney their respective legislative annual report may be published only after the Attorney General delivers the cumulative legislative annual report to the Pennsylvania General Assembly as proscribed by this Act.
- g. The District Attorney may notate on the Asset Tracking system the word “confidential” if the District Attorney determines that without the notation law enforcement activities would be jeopardized.

VIII. EFFECTIVENESS

- a. These guidelines shall become effective upon publication to the county controller/auditor of each county and the District Attorneys of Pennsylvania by the Pennsylvania Office of Attorney General.
- b. These Guidelines will be published on the PA. Office of Attorney General public website at www.attorneygeneral.gov.
- c. These guidelines shall supersede any and all prior published guidelines.
- d. These guidelines are subject to review and amendment by the Attorney General of Pennsylvania.

IX. ATTACHMENTS/EXHIBITS

- a. List of affected Statutes
- b. List of exempted Statutes
- c. Form for County Asset Forfeiture Tracking System

LIST OF AFFECTED STATUTES

1. 4 Pa. C.S. § 1518 -- Gaming Statute relating to prohibited acts; penalties
2. 18 Pa. C.S. §910 -- relating to manufacture, distribution, use or possession of devices for theft of telecommunications services.
3. 18 Pa. C.S. §2717 -- relating to Terrorism
4. 18 Pa. C.S. §3141 -- Sex Crimes relating to the General rule
5. 18 Pa. C.S. §4116 -- relating to copying; recording devices
6. 18 Pa. C.S. §4119 -- relating to trademark counterfeiting
7. 18 Pa. C.S. §5513 -- relating to gambling devices, gambling, etc.
8. 18 Pa. C.S. §5707 -- relating to seizure and forfeiture of electronic, mechanical or other devices
9. 18 Pa. C.S. §6501 -- relating to scattering rubbish
10. 18 Pa. C.S. §7707 -- Chop Shop relating to loss of property rights to Commonwealth
11. 30 Pa. C.S. §927 -- relating to forfeiture of fish and devices
12. 42 Pa. C.S. §5802 -- relating to controlled substances forfeitures
13. 75 Pa. C.S. §4909 -- relating to transporting foodstuffs in vehicles used to transport waste
14. 75 Pa. C.S. §9405 -- Liquid Fuels and Conveyances relating to forfeitures; process and procedures
15. 47 P.S. §6-601 -- Liquor Code relating to property illegally possessed or used
16. 35 P.S. §6018.614 -- Solid Waste Management Act relating to forfeiture of contraband

17. The forfeiture of property specified in section 1 of the act of July 3, 1941 (P.L. 263, No. 121), entitled “An act providing for the forfeiture and condemnation of vehicles used to store, possess or transport narcotics or drugs, the possession or transportation of which is in violation of law.”
18. The forfeiture of property specified in section 1715 of the act of July 28, 1988 (P.L. 556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act

LIST OF EXEMPTED STATUTES

1. Items bearing a counterfeit mark under 18 Pa. C.S. § 4119 (relating to trademark counterfeiting).
2. Liquor, alcohol or malt or brewed beverages illegally manufactured or possessed under section 601 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.
3. Unlawfully stamped cigarettes under section 307 of the act of December 30, 2003 (P.L.441, No.64), known as the Tobacco Product Manufacturer Directory Act.
4. Unstamped cigarettes under section 1285 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.
2. Abandoned and unclaimed property under Article XIII.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.