



Forfeiture Program Audit Audit Report 201920-03

March 26, 2020

Executive Summary

The Florida Contraband Forfeiture Act empowers Florida law enforcement with the ability to seize any property which was used, attempted to be used, or was intended to be used in violation of the Florida Contraband Forfeiture Act. The goal of the Florida Highway Patrol's (FHP) use of forfeiture is to employ asset forfeiture powers in a manner which enhances public safety and security. This is accomplished by removing the proceeds of crime and other assets relied upon by criminals and their associates to perpetuate their criminal activity against the citizens and visitors of Florida. Stopping criminal activity and protecting public safety is essential to the Department's mission of promoting a safe and secure Florida through excellence in service, education, and enforcement.

The purpose of this audit was to review and evaluate the efficiency and effectiveness of FHP's forfeiture process and compliance with applicable laws, Department policy, and procedure. We reviewed: seizure notifications and forfeiture reports, verified complaints, seized property storage and tracking, seized property disposal, forfeiture training records, and interviewed Department of Highway Safety and Motor Vehicles (Department) members involved in the Forfeiture Program.

Our review determined seizure notifications and Felony Forfeiture Report Checklists should be completed in accordance with FHP policy. We recommend FHP formally communicate the notification and reporting requirements to all members conducting seizures and involved in the forfeiture process. We also recommend FHP create and implement a method to track completion and submission of Felony Forfeiture Report Checklists and Packets.

Our review also determined improving tracking of forfeiture training records would improve compliance with Florida Statute (F.S.) and FHP policy. We recommend FHP formally communicate training record keeping requirements, including proper documentation and submission, to troop training coordinators. We also recommend FHP implement a method to track training record submission to ensure records are received from all troops required to participate in annual forfeiture training.

Our review further determined improved tracking and oversight would enhance accountability of seized property. We recommend FHP officially communicate evidence documentation and recordkeeping requirements for seized property to all members involved with processing, documenting, and maintaining evidence. We also



recommend FHP ensure evidence obtained through seizure is listed under the correct case number during the periodic evidence inspections and audits.

Background and Introduction

The Florida Contraband Forfeiture Act is comprised of Sections 932.701 to 932.7062, F.S. Contraband is currency or property, including any controlled substance used in the commission of criminal activity or acquired by proceeds of criminal activity. Any property or currency used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized by law enforcement and forfeited subject to the Florida Contraband Forfeiture Act.

FHP's goal for the use of forfeiture is to employ asset forfeiture powers in a manner which enhances public safety and security. This is accomplished by removing the proceeds of crime and other assets relied upon by criminals and their associates to perpetuate criminal activity against the citizens and visitors of Florida. Stopping criminal activity and protecting public safety is essential to the Department's mission of promoting a safe and secure Florida through excellence in service, education, and enforcement. It is the policy of FHP to ensure all seizures made under the Florida Contraband Forfeiture Act adhere to federal and state constitution limitations regarding an individual's right to be free from unreasonable searches and seizures. This includes the use of illegal stops, coercive consent, or biased policing.

The Forfeiture Program is a multi-divisional effort within the Department. FHP, the Office of General Counsel (OGC), and the Bureau of Accounting (Accounting) work together conducting activities associated with the Forfeiture Program. During the 2018-19 Fiscal Year, the Department received a total of \$220,220.21 from state forfeiture cases.

FHP

The Forfeiture Process is generally initiated by FHP through a traffic stop or arrest. If a felony offense involves property or currency subject to seizure under the Florida Contraband Forfeiture Act, FHP may seize the property or currency. FHP Policy 12.03, *Contraband Seizure and Forfeiture* details the seizure and forfeiture process.

When an FHP member believes property or currency was used, attempted to be used, or was intended to be used in violation of the Florida Contraband Forfeiture Act, and the member intends to seize the property and/or currency, the member will notify a supervisor and a Troop Legal Advisor (TLA). The member and TLA will discuss the case and the TLA will advise whether there is probable cause to seize the property. If



the TLA believes there is probable cause to seize the property, then the member will seize the property and begin the forfeiture process.

When FHP is determining whether to seize a vehicle for forfeiture, they consider:

- whether the vehicle was used, attempted to be used or intended to be used in violation of the Florida Contraband Forfeiture Act;
- whether the trade-in value is at least \$5,000;
- whether the vehicle was driven by a person charged with any traffic-related felony which would create a threat to the public safety if the vehicle was not seized; and
- whether the vehicle identification number (VIN), title, or odometer is fraudulent, as vehicles in such conditions are legally classified as contraband per the statutory definition, regardless of value.

Any vehicle that is inoperable and damaged to the extent that repairs would be more expensive than the value of the vehicle itself will not be seized or considered for forfeiture. Seized vehicles are towed to a Vehicle Impound Facility (VIF) or another government agency's secure storage facility to prevent storage costs and multiple towing fees. If a vehicle is towed to a wrecker company impound lot, a hold will be placed on the vehicle which should not exceed five working days. The vehicle must either be moved to a government-owned storage lot where fees won't accrue or be released to the owner if it is determined forfeiture will not be pursued.

When FHP is determining whether to seize currency for forfeiture, the member must establish a connection between the currency and felony criminal activity and consider the amount of currency seized (which should be at least \$5,000.00 in order to pay the cost of litigation); or if currency is not claimed, then it is seized as unclaimed or abandoned property or evidence, regardless of amount. In all cases involving seized currency with criminal charges, the investigating member contacts the appropriate State Attorney's Office to determine whether the currency needs to be held as evidence or may be deposited. In cases involving seized currency and criminal charges where the State Attorney's Office requests the currency not be deposited, the currency is secured inside the evidence and property room safe or another secured container.

If no criminal charges are made, or the currency is considered unclaimed or abandoned property, no prior consultation with the State Attorney's Office is necessary in order to deposit the currency into an FHP authorized account. The seizing member will document the currency by noting the exact number of each denomination/dollar increment and photographing the money at the time of the seizure or by the end of the member's shift.

All seized property being considered for forfeiture is logged in SmartEvidence, the FHP Evidence Tracking System, by the Evidence Property Custodian.



The member making the seizure must submit an email notification with all documentation pertaining to the seized property to the member's chain of command up to and including the Deputy Director, and the TLA who determined probable cause existed for the seizure.

If a preliminary determination is made to proceed with the forfeiture, the member must complete a Felony Forfeiture Report Checklist (HSMV 61074) and associated documents within 72 hours following the seizure of property. A supervisor will ensure the preliminary report packet is forwarded to the OGC. The appropriate Chief, in consultation with the OGC, will determine whether to move forward in the forfeiture process. If the decision is made to proceed with forfeiture, the Chief will notify the TLA.

OGC

OGC conducts legal activities and provides legal guidance related to the Forfeiture Program. FHP notifies the OGC when it is determining whether to seize property for forfeiture. A TLA will review the case with the member who requested assistance and provide guidance on whether there is probable cause to seize the property.

When the appropriate Chief elects to pursue forfeiture, the OGC is required to file a Verified Complaint in circuit court within 45 days from the date of seizure. The Verified Complaint adopts and incorporates, by reference, the sworn affidavit from the arresting member. It is critical that the complete forfeiture packet be provided to the OGC without delay to ensure sufficient time to prepare the necessary pleadings to be filed in the circuit court.

Upon notification that FHP has seized property and is moving forward with the forfeiture process, the TLA will provide a Notice of Seizure and Right to Adversarial Preliminary Hearing Form (HSMV 61023) to all persons entitled to notice. The form will be sent via certified mail within five working days of the seizure to all persons with an interest or claim to the property (claimant).

The OGC will also notify the Department's Division of Motorist Services within 24 hours of a vehicle seizure to place a hold on the vehicle's registration and title.

The TLA will file a motion for an order finding probable cause with the appropriate circuit court. According to Section 932.703, F.S., the seizing agency has 10 business days after the date of the seizure to file this motion. If the court finds that there is probable cause to continue with the seizure, the TLA will commence forfeiture proceedings.

If a claimant requests an adversarial preliminary hearing within 15 days of notice of seizure, the court will review the verified affidavit and any other supporting documents



and take any testimony to determine whether there is probable cause to believe the property was used, is being used, was attempted to be used, or was intended to be used in violation of the Florida Contraband Forfeiture Act. If the judge finds there was no probable cause, the property is returned to the owner or lien holder and the Department may be required to pay the claimants attorney's fees and costs.

If the judge finds there was probable cause, the court enters an Order Finding Probable Cause and a certified copy of the order and the Verified Complaint are served on the potential claimants, who have 20 days to respond. If the claimants do not respond, the property is awarded to the Department after all other statutory conditions are met. If the claimant files a response, the Department will respond, and discovery begins. After discovery, the case will be set for jury trial according to Section 923.704(3), F.S. The OGC may file a motion for Summary Judgment, and the property may be awarded to the Department if the motion is successful, but if it is denied, the case will proceed to trial.

The TLA handling the case may settle the case through negotiation with the claimant and their attorney. Proposed settlements are reviewed by the appropriate Chief and TLA and are approved by the Director of FHP or their designee. Once approved by the Director, the OGC or Chief will obtain approval from the Executive Director or designee for all settlements. Settlements enable the Department to reduce costs and take significantly less time to complete.

If forfeiture is not pursued or the claimant prevails in court, the Department must return the seized property. If the court issues a Final Order of Forfeiture, the case is concluded. Seized property becomes the Department's property and it may be used or sold based on what the Department determines is the best use of the property. At the conclusion of the case, the OGC will send a memorandum and the court order stating the case's disposition to the appropriate Chief, Troop Commander, and Accounting.

Accounting

Accounting's role is to track seized currency and vehicles. Each month the OGC sends a forfeiture report to Accounting detailing all the cases which are open and cases which have been closed. Accounting uses this report to track all seized currency and vehicles. Additionally, Accounting reaches out to FHP to request updates on the seized property associated with the case updates from the OGC. They will reconcile their records monthly based on the information from both FHP and OGC.

When forfeiture cases are closed, Accounting coordinates with the Evidence Property Custodians to dispose of the property in an appropriate manner. If a court order awards currency to the Department, Accounting will recognize deposited currency as revenue when they verify the currency has been deposited. If the property is a seized vehicle



and a court order awards the vehicle to the Department, Accounting will coordinate the disposal with the Evidence Property Custodian in accordance with FHP leadership's decision on method of disposal. If determined to be used by the Department, Accounting completes title and registration documentation and recognizes the vehicle as Department owned. If determined to be sold, Accounting coordinates with the Department of Management Services to sell the vehicle at auction.

Accounting submits an annual report to the Florida Department of Law Enforcement indicating whether the agency has seized or forfeited property under the Florida Contraband Forfeiture Act in accordance with Section 932.7061, F.S. Accounting gathers all necessary information from both the OGC and FHP to complete the report. Once completed, Accounting must submit the report to the Florida Department of Law Enforcement by December 1 of each year.

Findings and Recommendations

Seizure Notification and Reporting

Finding No. 1: Seizure Notifications and Felony Forfeiture Report Checklists should be completed in accordance with FHP Policy.

FHP Policy 12.03, *Contraband Seizure and Forfeiture* requires members to submit an email notification, including all documentation pertaining to the contraband article(s) seized to the member's chain of command up to and including the Deputy Director, and the TLA who determined probable cause existed for the seizure by the end of their shift.

FHP Policy 12.03, *Contraband Seizure and Forfeiture* also requires the member to complete a Felony Forfeiture Report Checklist (HSMV 61074) and associated documents within 72 hours following the seizure of property. A supervisor must ensure that this preliminary report packet is forwarded to the OGC.

We reviewed all forfeiture cases which were active during the 2018-19 Fiscal Year to determine if members submitted a seizure notification by the end of their shift in accordance with FHP Policy. There were 70 forfeiture cases which were active during the 2018-19 Fiscal Year.

Our review of 70 forfeiture cases noted FHP could not provide support that a seizure notification was submitted within 2 days of seizure for 52 (74 percent) cases.

Furthermore, we reviewed the same 70 forfeiture cases to determine if Felony Forfeiture Report Checklists were submitted within 72 hours of seizure to the OGC in accordance with FHP policy. We reviewed the Forfeiture Report Checklists and Packets within the



Forfeiture Folder on the T-Drive and submission dates provided by the OGC which were documented in the OGC's case management software Legal Files. Our review noted the following:

- 9 Felony Forfeiture Report Checklists and Packets were submitted from 6 days to 26 days after seizure; and
- 5 Forfeiture Report Checklists and Packets submitted to the OGC did not include the entire Forfeiture Report Checklists and Packets.

Recommendations

We recommend FHP formally communicate the notification and reporting requirements to all members conducting seizures and involved in the forfeiture process.

We also recommend FHP create and implement a method to track completion and submission of Felony Forfeiture Report Checklist and packets.

Management Response

FHP will implement an electronic solution to automate notifications to the OGC when property is seized for forfeiture. The OGC will maintain a database which tracks forfeiture case lists. The OGC will coordinate with the seizing member to receive pertinent reports and documents and will communicate status updates with the member's chain of command and/or Evidence Property Custodians, as appropriate.

Forfeiture Training Records

Finding No. 2: Improving tracking of forfeiture training records would improve compliance with Florida Statute and FHP policy.

Section 932.704, F.S., requires law enforcement personnel involved in the seizure of property for forfeiture to receive basic training and continuing education as required by the Florida Contraband Forfeiture Act. Each agency shall maintain records demonstrating each law enforcement officer's compliance with this requirement.

FHP Policy 12.03, *Contraband Seizure and Forfeiture* requires members involved in seizing property for forfeiture under the Florida Contraband Forfeiture Act to receive basic recruit training and annual continuing education training as required by the Florida Contraband Forfeiture Act. The Chief Training Officer or designee will coordinate with the OGC and the Learning and Development Office to ensure maintenance of the training curriculum and provide records demonstrating compliance with these training requirements.



FHP Policy 26.01, *Training Academy*, requires lead instructors to submit the appropriate training documentation as a packet, forwarding it to the Training Academy via the Troop Training Coordinator within 30 days of the completing the training program.

The Chief Training Officer, in cooperation with the Training Committee and Troop Commanders, implements in-service training programs on an annual basis for all sworn personnel. The Chief Training Officer is required to confirm attendance records are submitted to the FHP Training Academy.

We reviewed Department seizure and forfeiture training records for the 2018-19 Fiscal Year to determine if OGC and FHP members completed required annual seizure and forfeiture training. Our review noted seizure and forfeiture training records were not maintained by the Academy for troops D, E, F, H, and K. Upon further inquiry, the records were provided by the individual troop training coordinators.

While documentation showing completion of training was available at the troop level, complete records demonstrating FHP's compliance with the requirements of Section 932.704, F.S., were not maintained by the Academy in accordance with FHP Policy 26.01. Additionally, four of five troop training coordinators advised they previously sent forfeiture training records to the Academy, while one stated they were unsure whether they submitted the records to the Academy.

Further, two troops titled the training rosters "Legal Updates," without specifying the training included seizure or forfeiture topics. Upon further inquiry, training agendas or other documentation to demonstrate Legal Update training included seizure or forfeiture topics was not provided.

Recommendations

We recommend FHP formally communicate training record-keeping requirements, including proper documentation and submission, to troop training coordinators.

We also recommend FHP implement a method to track training record submissions to ensure records are received from all troops required to participate in annual forfeiture training.

Management Response

The OGC will develop web-based training to meet statutory requirements. Training will be completed annually and will be tracked by the Learning and Development Office and/or FHP Policy Accreditation Inspection and Forms section.



Seized Property Tracking

Finding No. 3: Improved tracking and oversight would enhance accountability of seized property.

FHP Policy 12.03, *Contraband Seizure and Forfeiture* requires a prompt return of seized property if the claimant prevails at an adversarial preliminary hearing or in a forfeiture trial. If the claimant prevails at an adversarial preliminary hearing or in a forfeiture trial, the property must be released within five days.

FHP *Evidence/Property Procedures Manual* requires Evidence Property Custodians to ensure submitted articles are properly accounted for in the evidence program that reflects the location of the evidence/property, date and time when the evidence/property was received or released, character, type, amount of evidence/property on hand, and chain of custody from the time the evidence/property was seized until its destruction or other final disposition. Troop evidence and property supervisors are responsible for ensuring the day-to-day operations of the evidence and property control function being conducted in accordance with policy and procedure.

We reviewed disposal information and documentation supporting the final disposal for a sample of seized property and currency. Our review consisted of 70 forfeiture cases which were active at some point during the 2018-19 fiscal year to determine if the seized property and currency were disposed in an appropriate manner. During our review, we noted seized property and currency was not always accurately tracked in SmartEvidence. Specifically, we noted:

- 3 cases where seized property and/or currency was returned to owner, but SmartEvidence does not list when the item was returned to owner;
- 3 cases were listed under case numbers different from their Offense/Incident reports in SmartEvidence;
- 1 case had 2 case numbers from Offense/Incident reports, but only 1 case number could be located in SmartEvidence; and
- 1 case with conflicting currency counts: On January 17, 2018, seized currency in the amount of \$64,200 was entered into evidence. On March 6, 2018, the seized currency was deposited at the bank and the official count was \$64,120. On June 8, 2018, the Final Order of Forfeiture awarded the Department \$64,200.

Recommendations

We recommend FHP officially communicate evidence documentation and record-keeping requirements for seized property to all members involved with processing, documenting, and maintaining evidence.



We also recommend FHP ensure evidence obtained through seizure is listed under the correct case number during the periodic evidence inspections and audits.

Management Response

FHP will include Evidence Property Custodians in annual Forfeiture training. The FHP Evidence Coordinator will assign a member to verify seized property is properly documented and tracked on a biannual basis.

Purpose, Scope, and Methodology

The objective of this audit was to review and evaluate the efficiency and effectiveness of FHP's forfeiture process and compliance with applicable laws, Department policy, and procedure.

The scope of this audit included all Department forfeiture documentation for the 2018-2019 Fiscal Year.

The methodology included:

- Reviewing applicable Florida Statutes and Administrative Code;
- Reviewing applicable Department policies and procedures;
- Reviewing seizure notification emails;
- Reviewing Felony Forfeiture Report Checklists and associated documentation;
- Reviewing Notice of Seizure and Right to Adversarial Preliminary Hearing Forms;
- Reviewing Verified Complaint submission dates;
- Reviewing seized property storage, tracking, disposition, and disposals;
- Reviewing Department Forfeiture Training Records; and
- Interviewing Department members involved in the Forfeiture Program.



Distribution, Statement of Accordance, and Project Team

Distribution

Terry L. Rhodes, Executive Director
Jennifer Langston, Chief of Staff
Susan Carey, Director of Finance
Christie Utt, General Counsel
Col. Gene Spaulding, Director of the Florida Highway Patrol
Lt. Col. Troy Thompson, Deputy Director of the Florida Highway Patrol
Jennifer Ford, Chief Learning Officer
Kevin Bailey, Director of Administrative Services
Steve Burch, Chief of Accounting

Melinda M. Miguel, Chief Inspector General
Sherrill F. Norman, Auditor General

Statement of Accordance

Section 20.055, Florida Statutes, requires the Florida Department of Highway Safety and Motor Vehicles' Inspector General to review, evaluate, and report on policies, plans, procedures, accounting, financial, and other operations of the Department and to recommend improvements. This audit engagement was conducted in accordance with applicable *International Standards for the Professional Practice of Internal Auditing* published by the Institute of Internal Auditors and *Principles and Standards for Offices of Inspector General* published by the Association of Inspectors General.

Project Team

Engagement conducted by:
Sean Shrader, Auditor

Under the supervision of:
Erin Mook, Acting Audit Director

Approved by:


Mike Stacy, Acting Inspector General


ATTACHMENT - Management Response



Terry L. Rhodes
Executive Director

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MEMORANDUM

DATE: March 17, 2020
TO: Erin Mook, FLHSMV Acting Audit Director
FROM: Lieutenant Colonel Troy Thompson, FHP Deputy Director 
SUBJECT: Management Response to the Forfeiture Program Audit (201920-03)

The following is our response to the findings and recommendations presented in the report.

Finding 1 - Seizure Notification and Reporting

Seizure Notifications and Felony Forfeiture Report Checklists should be completed in accordance with FHP Policy.

Recommendations

We recommend FHP formally communicate the notification and reporting requirements to all members conducting seizures and involved in the forfeiture process.

We also recommend FHP create and implement a method to track completion and submission of Felony Forfeiture Report Checklist and packets.

Management Response

FHP will implement an electronic solution to automate notifications to the Office of General Council (OGC) when property is seized for forfeiture. The OGC will maintain a database that tracks forfeiture case lists. The OGC will coordinate with the seizing member to receive pertinent reports and documents, and will communicate status updates with the member's chain of command and/or Evidence Property Custodians, as appropriate.

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Finding 2 - Forfeiture Training Records

Improving tracking of forfeiture training records would improve compliance with Florida Statute and FHP policy.

Recommendations

We recommend FHP formally communicate training record keeping requirements, including proper documentation and submission, to troop training coordinators.

We also recommend FHP implement a method to track training record submission to ensure records are received from all troops required to participate in annual forfeiture training.

Management Response

OGC will develop web-based training to meet statutory requirements. Training will be completed annually and will be tracked by the Learning and Development Office and/or the FHP Policy Accreditation Inspection and Forms (PAIF) section.

Finding 3 - Seized Property Tracking

Improved tracking and oversight would enhance accountability of seized property.

Recommendations

We recommend FHP officially communicate evidence documentation and recordkeeping requirements for seized property to all members involved with processing, documenting, and maintaining evidence.

We also recommend FHP ensure evidence obtained through seizure is listed under the correct case number during the periodic evidence inspections and audits.

Management Response

FHP will include evidence property custodians in annual Forfeiture training.

The FHP Evidence Coordinator will assign a member to verify seized property is properly documented and tracked on a biannual basis.

TLT/jt

Cc: Colonel Gene Spaulding, FHP Director