

DC CODE §48-905.02
Controlled Substances Act:
Forfeitures

4 of 12 DOCUMENTS

LEXIS DISTRICT OF COLUMBIA CODE ANNOTATED
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*** CURRENT THROUGH D.C. LAW 16-163, EFFECTIVE SEPTEMBER 19, 2006, AND THROUGH D.C. ACT
16-474 ***

*** ANNOTATIONS CURRENT THROUGH JUNE 22, 2006 ***

TITLE 48. FOOD AND DRUGS
SUBTITLE III. ILLEGAL DRUGS
CHAPTER 9. CONTROLLED SUBSTANCES
UNIT A. CONTROLLED SUBSTANCES ACT
SUBCHAPTER V. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

GO TO DISTRICT OF COLUMBIA CODE ARCHIVE DIRECTORY

D.C. Code § 48-905.02 (2006)

§ 48-905.02. Forfeitures [Formerly § 33-552]

(a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter;

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, or delivering any controlled substance in violation of this chapter;

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;

(4) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (1) or (2) of this subsection; provided, that:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(B) No conveyance is subject to forfeiture under this section 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;

(C) Repealed; or

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used, or intended for use, in violation of this chapter;

(6) All cash or currency which has been used, or intended for use, in violation of this chapter;

(7) Everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of this chapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of this chapter.

(A) No property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the owner's knowledge or consent; and

(B) All moneys, coins and currency found in close proximity to forfeitable controlled substances, forfeitable drug manufacturing or distributing paraphernalia or records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof is upon any claimant of the property to rebut this presumption; and

(8) Any real property that is used or intended to be used in any manner to commit or facilitate the commission of a violation of this chapter, except that:

(A) No real property shall be forfeited under this paragraph by reason of an act or omission established by the owner to have been committed or omitted without the knowledge and consent of the owner;

(B) Real property shall not be subject to forfeiture for a violation of § 48-904.01(d); and

(C) The forfeiture of real property encumbered by a bona fide security interest shall be subject to the interest of the secured party if the secured party had no knowledge and did not consent to the act or omission that constituted a violation of this chapter.

(a-1) All moneys, coins and currency forfeited pursuant to this chapter shall be deposited as provided in § 23-527 [sic].

(b) Property subject to forfeiture under this chapter may be seized by law enforcement officials, as designated by the Mayor, or designated civilian employees of the Metropolitan Police Department, upon process issued by the Superior Court of the District of Columbia having jurisdiction over the property, or without process if authorized by other law.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(d) (1) All controlled substances, the lawful possession of which is not established or the title to which cannot be ascertained, which come into the custody of law-enforcement officials of the District of Columbia, or any designated civilian employees of the Metropolitan Police Department, shall be delivered promptly to the United States Department of Justice or its delegate for disposal, except that controlled substances which may be needed as evidence in any criminal or administrative proceeding pursuant to the provisions of this chapter or the provisions of any federal controlled substances law shall, upon delivery to the United States Department of Justice, not be so disposed of until the public official in charge of prosecuting any violation under this chapter shall certify that such controlled substances are no longer needed as evidence.

(2) Property, other than controlled substances, taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the Mayor. When property is seized under this chapter, the Mayor shall:

(A) Place the property under seal;

(B) Remove the property to a place designated by the Mayor; or

(C) Remove the property to an appropriate location for disposition in accordance with law.

(3) (A) After a proper showing of probable cause for the seizure is made, the Mayor shall cause notice of the seizure of property, other than controlled substances, and the Mayor's intention to forfeit and sell or otherwise dispose of the property in accordance with this chapter to be published for at least 2 successive weeks in a local newspaper of general circulation. In addition, the Mayor shall provide written notice of the seizure together with information on the applicable procedures for claiming the property to each party who is known or in the exercise of reasonable diligence should be known by the Mayor to have a right of claim to the seized property. Notice to each party shall be by registered or certified mail, return receipt requested.

(B) Any person claiming the property may, at any time within 30 days from the date of receipt of notice of seizure, file with the Mayor a claim stating his or her interest in the property. Upon the filing of a claim, the claimant shall give a bond to the District government in the penal sum of \$ 2,500 or 10% of the fair market value of the claimed property (as appraised by the Chief of the Metropolitan Police Department), whichever is lower, but not less than \$ 250, with

sureties to be approved by the Mayor. In case of forfeiture of the claimed property, the costs and expenses of the forfeiture proceedings shall be deducted from the bonds. Any costs that exceed the amount of the bond shall be paid by the claimant. In determining the fair market value of the property seized, the Chief of the Metropolitan Police Department shall consider any verifiable and reasonable evidence of value that the claimant may present. The balance of the proceeds shall be transferred to the Drug Interdiction and Demand Reduction Fund ("Fund") created by subchapter VII of this chapter. The Fund shall remain available until expended regardless of the expiration of the fiscal year in which the proceeds were collected. The Fund shall be distributed in the following descending order of priority:

(i) To fund law enforcement activities of the Metropolitan Police Department of the District of Columbia, except that, beginning October 1, 1990, not more than 49% of the total amount deposited to the Fund in the immediately preceding quarter-year period shall be used for this purpose in the next succeeding quarter-year period; and

(ii) To provide grants to fund community-based drug education, prevention, and demand reduction programs;

(C) If a claim and bond (or application for a waiver of bond) are not filed within 30 days of receipt of notice, and if either the property seized has a value of less than \$ 250,000 or the property seized is a conveyance subject to forfeiture under the provisions of paragraph (a)(4) of this section, the Mayor, after determining that the property is forfeitable under this chapter, shall declare the property forfeited and shall dispose of the property in accordance with the provisions of paragraph (4) of this subsection. If the Mayor determines that the seized property is not forfeitable under this chapter and is not otherwise subject to forfeiture, the Mayor shall return the property to its rightful owner.

(D) If it appears to the Mayor that any property seized under this paragraph is liable to perish, waste, or be greatly reduced in value by the keeping, or that the expense of keeping is disproportionate to the value of the property, the Mayor may proceed to advertise and sell the property at auction or otherwise dispose of the property under rules promulgated by the Mayor.

(E) If the property seized is not forfeited or disposed of in accordance with subparagraphs (C) and (D) of this paragraph, the Mayor shall request the Attorney General to apply to the Superior Court of the District of Columbia for forfeiture of the property in accordance with the rules of the Superior Court of the District of Columbia.

(F) Whenever any person who has an interest in forfeited property files with the Mayor, either before or after the sale or disposition of property, a petition for remission or mitigation of the forfeiture, the Mayor shall remit or mitigate the forfeiture upon the terms and conditions as the Mayor deems reasonable if the Mayor finds:

(i) That the forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law; or

(ii) That mitigating circumstances justify the remission or mitigation of the forfeiture.

(G) In all suits or actions brought for forfeiture of any property seized under this chapter when the property is claimed by any person, the burden of proof shall be on the claimant once the Mayor has established probable cause as provided in subsection (a) of this section.

(H) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this paragraph. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(4) When property, other than controlled substances, is forfeited under this chapter, the Mayor shall:

(A) Retain it for official use;

(B) Sell that which is not required by law to be destroyed and which is not harmful to the public. All proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs shall be deducted from the proceeds. The balance of the proceeds shall be used, and shall remain available until expended regardless of the expiration of the fiscal year in which they were collected, to finance law enforcement activities of the Metropolitan Police Department of the District of Columbia, with any remaining balance used to finance programs which shall serve to rehabilitate drug addicts, educate citizens, or prevent drug addiction;

(C) Remove the property for disposition in accordance with law; or

(D) Forward it to the D.E.A. for disposition.

(e) During the course of any civil forfeiture proceeding pursuant to this section, which involves real property, the Mayor shall file a notice of the proceeding with the Recorder of Deeds. The notice shall include the legal description of the property and indicate that civil forfeiture is being sought. The Recorder of Deeds shall record the notice against the title of any real property for which civil forfeiture is being sought. Upon resolution of the proceeding, the Recorder of Deeds shall be notified of the disposition of the action.

HISTORY: 1981 Ed., § 33-552; Aug. 5, 1981, D.C. Law 4-29, § 502, 28 DCR 3081; Apr. 3, 1982, D.C. Law 4-96, § 2, 29 DCR 762; Sept. 29, 1988, D.C. Law 7-162, § 2, 35 DCR 5733; Dec. 12, 1989, 103 Stat. 1901, Pub. L. 101-223, § 6; June 13, 1990, D.C. Law 8-138, § 2(d), 37 DCR 2638; Sept. 26, 1992, D.C. Law 9-155, § 2(a), 39 DCR 5679; Mar. 25, 1993, D.C. Law 9-253, § 3, 40 DCR 790; May 16, 1995, D.C. Law 10-255, § 25, 41 DCR 5193; June 12, 1999, D.C. Law 12-284, § 10(c), 46 DCR 1328; Oct. 4, 2000, D.C. Law 13-160, § 403(b), 47 DCR 4619; May 26, 2004, Mayor's Order 2004-92, § 4, 51 DCR 6052.

NOTES:

SECTION REFERENCES. --This section is referenced in § 7-2507.06a, § 22-902, § 22-2723, and § 48-907.01.

EFFECT OF AMENDMENTS. --D.C. Law 13-160 inserted (a-1).

LEGISLATIVE HISTORY OF LAW 4-29. --See note to § 48-901.02.

LEGISLATIVE HISTORY OF LAW 4-96. --Law 4-96 was introduced in Council and assigned Bill No. 4-307. The Bill was adopted on first and second readings on January 12, 1982, and January 26, 1982, respectively. Signed by the Mayor on February 9, 1982, it was assigned Act No. 4-154 and transmitted to both Houses of Congress for its review.

LEGISLATIVE HISTORY OF LAW 7-162. --Law 7-162 was introduced in Council and assigned Bill No. 7-361. The Bill was adopted on the first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on July 15, 1988, it was assigned Act No. 7-217 and transmitted to both Houses of Congress for its review.

LEGISLATIVE HISTORY OF LAW 8-50. --See note to § 48-901.02.

LEGISLATIVE HISTORY OF LAW 8-138. --See note to § 48-904.03a.

LEGISLATIVE HISTORY OF LAW 9-123. --See note to § 48-907.03.

LEGISLATIVE HISTORY OF LAW 9-155. --See note to § 48-907.03.

LEGISLATIVE HISTORY OF LAW 9-253. --Law 9-253 was introduced in Council and assigned Bill No. 9-154. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-399 and transmitted to both Houses of Congress for its review. D.C. Law 9-254 became effective on March 25, 1993.

LEGISLATIVE HISTORY OF LAW 10-255. --Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

LEGISLATIVE HISTORY OF LAW 12-282. --See note to § 48-903.02.

LEGISLATIVE HISTORY OF LAW 12-284. --See note to § 48-903.02.

LEGISLATIVE HISTORY OF LAW 13-160. --Law 13-160, the "Omnibus Police Reform Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-118. The Bill was adopted on first, amended first, and second readings on February 1, 2000, March 7, 2000, and April 4, 2000, respectively. Signed by the Mayor on April 24, 2000, it