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## Firearm Forfeiture

### 526.1 PURPOSE

To define the process for the sale of firearms seized for forfeiture by KVET.

### 526.2 APPLICABLE STATE LAW

The following State statutes shall be adhered to when disposing of or auctioning off seized firearms.

#### 526.2.1 STATE STATUE 750.239A

(1) A law enforcement agency that seizes or otherwise comes into possession of a firearm or a part of a firearm subject to disposal under section 239 may, instead of forwarding the firearm or part of a firearm to the director of the department of state police or his or her designated representative for disposal under that section, retain that firearm or part of a firearm for the following purposes:

(a) For legal sale or trade to a federally licensed firearm dealer. The proceeds from any sale or trade under this subdivision shall be used by the law enforcement agency only for law enforcement purposes. The law enforcement agency shall not sell or trade a firearm or part of a firearm under this subdivision to any individual who is a member of that law enforcement agency unless the individual is a federally licensed firearms dealer and the sale is made pursuant to a public auction.

(b) For official use by members of the seizing law enforcement agency who are employed as peace officers. A firearm or part of a firearm shall not be sold under this subdivision.

(2) A law enforcement agency that sells or trades any pistol to a licensed dealer under subsection (1)(a) or retains any pistol under subsection (1)(b) shall complete a record of the transaction under section 2 or section 2a, as applicable.

(3) A law enforcement agency that sells or trades a firearm or part of a firearm under this section shall retain a receipt of the sale or trade for a period of not less than 7 years. The law enforcement agency shall make all receipts retained under this subsection available for inspection by the department of state police upon demand and for auditing purposes by the state and the local unit of government of which the agency is a part.

(4) Before disposing of a firearm under this section, the law enforcement agency shall do both of the following:

(a) Determine through the law enforcement information network whether the firearm has been reported lost or stolen. If the firearm has been reported lost or stolen and the name and address of the owner can be determined, the law enforcement agency shall provide 30 days' written notice of its intent to dispose of the firearm under this section to the owner, and allow the owner to claim the firearm within that 30-day period if he or she is authorized to possess the firearm. If the police agency determines that a serial number has been altered or has been removed or obliterated from the firearm, the police agency shall submit the firearm to the department of state police or a forensic laboratory for serial number verification or restoration to determine legal ownership.

# Kalamazoo Department of Public Safety

## Public Safety Procedures Manual

### *Firearm Forfeiture*

---

(b) Provide 30 days' notice to the public on a website maintained by the law enforcement agency of its intent to dispose of the firearm under this section. The notice shall include a description of the firearm and shall state the firearm's serial number, if the serial number can be determined. The law enforcement agency shall allow the owner of the firearm to claim the firearm within that 30-day period if he or she is authorized to possess the firearm. The 30-day period required under this subdivision is in addition to the 30-day period required under subdivision (a).

(5) The law enforcement agency is immune from civil liability for disposing of a firearm in compliance with this section.

(6) As used in this section, "law enforcement agency" means any agency that employs peace officers.

#### 526.2.2 STATE STATUTE MCL 333.7521

Firearms seized under MCL 333.7521, aka the Controlled Substance Forfeiture Statute, may be sold by public auction to the holder of a valid Federal Firearms License under the following circumstances:

- (a) Firearms suitable for sport / recreational use shall be eligible for consideration.
- (b) Assault-type / style firearms are ineligible.
- (c) Each firearm shall be checked against the NCIC stolen property list then submitted to the crime lab for ballistic examination.
- (d) Firearms are ineligible for sale until a ballistic examination has been conducted. Requests for this examination shall be submitted to the Public Safety Crime Lab on Form CL 1156 (Request for Laboratory Analysis).
- (e) Firearm sales shall be conducted in accordance with established City of Kalamazoo purchasing policy, existing Public Safety and K.V.E.T. policies, the Gun Control Act and MCL 333.7521, 750.239-239 a and 600.4708. These competitive public purchasing events are restricted to licensed Federal Firearms dealers.
- (f) Any firearm meeting the minimum requirements for sale shall be reviewed by the K.V.E.T. Unit Commander or his designee to determine if it is of sufficient value to warrant sale to the holder of a valid FFL as opposed to destruction in accordance with MCL 750.239.
- (g) Firearms failing to sell at public auction shall be surrendered to the State of Michigan for destruction.

#### 526.3 KDPS PROCEDURE

- (a) When firearm related evidence is seized, it shall be retained until final disposition of the case, and/or until release or other disposition is approved by the Divisional Commander.
  - 1. Final disposition involves any sentence (including probation or a suspended sentence) and shall include the appeal period as indicated below (unless earlier release was authorized).

# Kalamazoo Department of Public Safety

## Public Safety Procedures Manual

### *Firearm Forfeiture*

---

- (a) A defendant who pleads guilty has no right to appeal.
- (b) In district court cases, evidence shall be held for the 20 day appeal period. The Division responsible for the case shall contact the court clerk's office to see if an appeal or a motion is pending.
- (c) Evidence in unsolved homicides and first degree murder convictions shall be retained indefinitely (or until the convicted person dies). In other circuit court cases, evidence shall be held for the 56 day appeal period. The Division responsible shall contact the appeals assistant at the Prosecutor's Office, and determine if the file has been re-opened by a motion or appeal.

#### 526.3.1 EVIDENCE CUSTODIAN DUTIES UPON RELEASE OF FIREARMS

- (a) Once a firearm is placed into evidence, it shall be the duty of the evidence custodian to generate a Form 151A and a barcode for each case.
- (b) To release the firearm to COPS, the evidence custodian shall contact CID or COPS command and request a signature for release, depending on which division the case is assigned to.
  - 1. The COPS or CID commander shall sign Form 151A authorizing the release of the firearm.
- (c) Once Form 151A is signed, the evidence custodian shall enter the disposition into the evidence Quetel computer.
- (d) The evidence custodian shall retrieve the firearm from holding and ensure the firearm is safe.
  - 1. The firearm shall be left in the original packaging for release to COPS.
- (e) The evidence custodian shall contact COPS for release of the firearm. A COPS officer shall respond to KDPS Headquarters and meet with the evidence custodian.
- (f) A COPS officer shall sign Form 151A to complete the release to COPS.
  - 1. The evidence custodian shall scan each firearms barcode via handheld computer.
  - 2. The handheld computer shall be downloaded into the evidence Quetel computer.
  - 3. The evidence custodian shall take a photograph of the COPS officer with the firearm being released.
  - 4. The photographs shall be downloaded into the evidence Quetel computer.

#### 526.3.2 COPS RESPONSIBILITIES FOR PREPARING FIREARM FOR AUCTION

- (a) A COPS officer shall meet with the evidence custodian handling Firearms and sign Form 151A, releasing firearm to COPS. A copy of the signed Form 151A shall be placed in the original case file. The original Form 151A shall be retained by Evidence.
  - 1. A COPS officer shall not retrieve assault rifles, fully automatic firearms and/or any altered firearm

# Kalamazoo Department of Public Safety

## Public Safety Procedures Manual

### *Firearm Forfeiture*

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- (a) i.e.: sawed off shotgun, obliterated serial number
  2. A COPS officer shall not retrieve any firearm used in a violent felony, murder, or suicide
  3. A COPS officer shall not retrieve any facsimile firearms
    - (a) i.e. air soft guns, pellet guns
  4. A COPS officer shall not retrieve any stolen firearm unless the firearm is associated with a COPS case.
  5. The COPS officer shall check the ILEADS case for compliance to the previous restrictions prior to obtaining any firearms.
- (b) A COPS officer shall transport the firearm to COPS headquarters for processing.
1. Each firearm shall be described and photographed utilizing a COPS issued camera and downloaded into the COPS data computer. A copy of the photograph shall be placed in the case file.
  2. A gun case file and gun tracking worksheet must be completed for every firearm released to COPS. Every firearm released to COPS must be given an assigned gun number.
  3. All firearms shall be stored in the COPS firearms safe.
- (c) A COPS officer shall generate a case file upon receiving a firearm from the Evidence Custodian. The case file shall include
1. Gun tracking worksheet
  2. Form 151A showing release of firearm to COPS
  3. Photograph of firearm
  4. Copy of LEIN work
  5. Copy of E-trace
  6. Copy of MSP IBIS report (if applicable)
  7. Copy of certified letter and response card (if applicable)
  8. Form 151, owner photographs, and CCH (if released to owner)
  9. Copy of I/leads entry for disposition of firearm
  10. Copy of M&W Auction form (when released)
  11. Any additional paperwork
- (d) A COPS officer shall query the firearm in LEIN/NCIC and E-Trace. An owner history shall be printed and placed in the original case file.
1. A COPS officer shall conduct follow up on the owner history by certified letter. If contact is not made by the owner 10 days after notice of receiving the certified letter, the firearm can be released for auction.

# Kalamazoo Department of Public Safety

## Public Safety Procedures Manual

### Firearm Forfeiture

---

2. If the owner contacts COPS/KDPS within the given time frame, the COPS officer shall abide by the COPS policy for releasing a firearm to its owner.
- (e) A COPS officer shall contact Lt. Crump at MSP forensic lab in Grand Rapids. Once contacted, the semi-automatic firearms (handguns only) shall be transported to the MSP forensic lab for ballistic testing and IBIS entry.
1. MSP form FSD-007 must be completed and transported to MSP with the firearms. \*See attached template
  2. The firearm shall remain in the original KDPS evidence box and be sealed with evidence tape
  3. Firearms shall remain at MSP forensic lab until ballistic testing has been completed.
- (f) A COPS officer will be contacted by the MSP forensic lab once ballistic testing has been completed. A COPS officer shall retrieve the firearms and transport them back to COPS headquarters.
1. The firearms shall be stored in the COPS firearm safe.
- (g) A COPS officer shall contact Mike Deshetler at M & W Incorporated advising the number of firearms prepared for auction. The firearms shall be transported to M & W Inc. by a COPS command officer.
1. It shall be the duty of the COPS command officer to prepare a receipt authorizing the sale of firearms. \*See attached template
  2. The receipt shall document the COPS gun number, original case number, make, model, caliber and serial number of each firearm.
  3. The receipt shall be signed by the COPS divisional commander, COPS command officer, and the receiving M & W Inc auction employee (Mike Deshetler).
  4. The original receipt will be retained by the COPS division and a copy placed into each case folder.
- (h) A COPS command officer will be contacted by Mike Deshetler at M & W Inc. upon completion of auction.
1. All paperwork including acquired funds will be sent by M & W Inc. via mail to KDPS headquarters.
  2. The COPS administrative assistant shall obtain all paperwork at KDPS headquarters and transport to COPS headquarters.
  3. The COPS administrative assistant shall make a copy of funds (i.e. check) and deposit acquired funds at COPS headquarters.
  4. All paperwork shall be turned over to a COPS officer and placed in the gun case file.
- (i) Reporting

# Kalamazoo Department of Public Safety

## Public Safety Procedures Manual

### *Firearm Forfeiture*

---

1. A COPS officer shall document the following in I/Leads case management for every firearm.
    - (a) How firearm was obtained including date and time.
    - (b) E-trace results and follow-up (i.e. last known owner)
    - (c) IBIS entry (if applicable)
    - (d) The location the firearm was released (i.e. MSP forensic lab, M &W Inc)
    - (e) Disposition of firearm (i.e. sold on this date, released to owner)
  2. The COPS officer shall update the COPS firearm spreadsheet with the firearm disposition
  3. The firearm case folder and all applicable paperwork will be retained at COPS Headquarters.
- (j) Evidence Box Destruction
1. Once a firearm is released to M&W for auction, the COPS command officer shall transport the original KDPS evidence box back to COPS HQ.
  2. A COPS officer shall ensure that all KDPS identifying stickers are removed from the evidence box.
  3. The box shall then be disposed of in the recycling bin at KDPS HQ.

#### 526.3.3 COPS POLICY FOR RELEASING A FIREARM TO ITS OWNER

- (a) If LEIN or E-trace locates an owner for a firearm, contact must be attempted with the owner by certified mail
- (b) Once the certified mail proof of delivery is returned to COPS, the owner has 10 days to contact COPS/KDPS to claim ownership of the firearm.
- (c) If COPS is contacted, a COPS officer must run a CCH and LEIN check on the owner prior to the subject retrieving the firearm.
  1. If the owner has any felony or domestic assault convictions, the firearm cannot be released
  2. If the firearm was seized from its owner and the owner was later convicted of a misdemeanor gun offense regarding the original case, the firearm is forfeited to the state per MCL 750.239. \* See attachment for included crimes
- (d) If the firearm is cleared to be released to the owner after the previous restrictions, an appointment must be set up to release the firearm at KDPS HQ.
  1. Appointments will be set by a COPS officer and can be done M-F, between 8a-4p.
- (e) The owner must bring a copy of the certified letter and positive identification to retrieve the firearm.

# Kalamazoo Department of Public Safety

## Public Safety Procedures Manual

### *Firearm Forfeiture*

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- (f) The COPS officer must complete KDPS Form 151, documenting the release to the owner. It is the COPS officer's responsibility to confirm the identity of the owner prior to releasing the firearm.
- (g) The owner must sign KDPS Form 151 in front of the COPS officer and a photograph taken of the owner with the firearm. The photograph, Form 151, and CCH will be retained by the COPS division and placed into the case folder.
- (h) The COPS officer shall document the firearm release in I/Leads case management and the COPS firearm spreadsheet.

#### 526.3.4 COPS POLICY FOR FIREARM DESTRUCTION

- (a) If COPS retrieves a gun that is later deemed necessary for destruction, the following procedure will be adhered to:
  1. All firearms requiring destruction will be turned over to the MSP forensic lab in Grand Rapids.
  2. The COPS officer shall complete KDPS Form 151, documenting the release of the firearm for destruction to Lt. Jeff Crump, MSP.
  3. The firearm will be transported to the MSP forensic crime lab in Grand Rapids by a COPS command officer.
  4. Form 151 must be signed by MSP crime lab personnel, showing the release of the firearm to their custody.
  5. Form 151 will be retained by COPS and placed into the gun case folder.
  6. The COPS officer shall document the firearm disposition in I/Leads case management and the firearm spreadsheet.

#### **526.4 OFFENSES FORFEITING GUN TO STATE (IF CONVICTED)**

Found in Michigan Penal Code 750, Chapter XXXVII

Authority of 750.239 and 750.239(a)

- 750.223 Selling firearms and ammunition
- 750.224 Weapons; manufacture, sale, or possession as felony
- 750.224a Portable device or weapon directing electrical current, impulse, wave, or beam;
- sale or possession prohibited; exceptions; use of electro-muscular disruption technology
- 750.224b Short-barreled shotgun or rifle; manufacture, sale, or possession as felony
- 750.224c Armor piercing ammunition; manufacture, distribution, sale, or use prohibited
- 750.224e Conversion of semiautomatic firearm to fully automatic firearm
- 750.224f Possession of firearm by person convicted of felony

# Kalamazoo Department of Public Safety

## Public Safety Procedures Manual

### *Firearm Forfeiture*

---

- 750.226 Firearm or dangerous weapon; carrying with unlawful intent
- 750.227 Concealed weapons; carrying
- 750.227a Pistols; unlawful possession by licensee
- 750.227b Carrying or possessing firearm when committing or attempting to commit felony
- 750.227c Transporting or possessing loaded firearm in or upon vehicle
- 750.227d Transporting or possessing firearm in or upon motor vehicle or self-propelled vehicle designed for land travel
- 750.227f Committing or attempting to commit crime involving violent act or threat of violent act against another person while wearing body armor as felony
- 750.227g Body armor; purchase, ownership, possession, or use by convicted felon
- 750.228 Ownership of pistol greater than 26 inches in length
- 750.229 Pistols accepted in pawn, by second-hand dealer or junk dealer
- 750.230 Firearms; altering, removing, or obliterating marks of identity
- 750.232 Purchasers of firearms
- 750.232a Obtaining pistol in violation of MCL 28.422
- 750.233 Pointing or aiming firearm at another person
- 750.234 Firearm; discharge; intentionally aimed without malice
- 750.234a Intentionally discharging firearm from motor vehicle
- 750.234b Intentionally discharging firearm at dwelling or occupied structure
- 750.234c Intentionally discharging firearm at emergency or law enforcement vehicle
- 750.234d Possession of firearm on certain premises prohibited
- 750.234e Brandishing firearm in public
- 750.234f Possession of firearm by person less than 18 years of age
- 750.235 Maiming or injuring person by discharging firearm
- 750.235a Parent of minor guilty of misdemeanor
- 750.236 Spring gun
- 750.236a Computer-assisted shooting
- 750.236b Computer-assisted shooting
- 750.237 Liquor or controlled substance; possession or use of firearm by person under the influence
- 750.237a Individuals engaging in proscribed conduct