

483A.33 Disposition of property seized as public nuisance.

The disposition of property seized pursuant to [section 483A.32](#) shall be conducted as follows:

1. The officer taking possession of property seized as a public nuisance shall make a written inventory of the property and deliver a copy of the inventory to the person from whom the property was seized. The inventory shall include the name of the person taking custody of the seized property, the date and time of seizure, location of the seizure, and the name of the seizing public agency. Property which has been seized shall be safely secured and stored by the public agency which caused its seizure unless directed otherwise by the county attorney of the county where the property was seized or by the attorney general.

2. *a.* The county attorney or attorney general may file with the clerk of the district court for the county in which the property was seized a notice of condemnation which shall include a description of the property claimed to be condemned by the state, the grounds upon which the state claims that the property has been condemned, the date and place of seizure, and the name of the person from whom the property was seized.

b. The notice shall be filed not later than six months after the property was seized. Failure to file within the time limit terminates the state's right to claim a condemnation of the property.

c. The state shall give notice of condemnation to the person from whom the property was seized and any person identified as an owner or lien holder, by certified mail, personal service, or publication.

3. *a.* The person from whom the property was seized may make application for its return in the office of the clerk of the district court for the county in which the property was seized. The application shall be filed within thirty days after the receipt of the notice of condemnation or the person is convicted of the violation for which the property was seized, whichever occurs later. Failure to file the application within this time period terminates the interest of the person and the ownership of the property shall be transferred to the state, except that a person who is not convicted of the violation for which the property was seized is not required to file an application and is entitled to the return of the property in accordance with [section 483A.32](#).

b. The application for return of condemnable property shall be written and shall state the specific item or items sought, the nature and the source of the claimant's interest in the property, and the grounds upon which the claimant seeks to avoid condemnation. The ownership of property is not sufficient grounds for its return. The written application shall be specific and the claimant shall be limited at the judicial hearing to proof of the grounds set forth in the application for return. The fact that the property is inadmissible as evidence or that it may be suppressed is not grounds for its return. If specific grounds for return are not provided in the application for return, or the grounds are insufficient as a matter of law, the court may enter judgment on the pleadings without further hearing.

4. If an application for return of condemnable property is timely and of sufficient grounds, the claim shall be set for hearing. The hearing shall be held not less than ten nor more than thirty days after the claim is filed or the person is convicted for the violation for which the property was seized as a public nuisance, whichever occurs later. The proceeding shall be conducted by a magistrate or a district associate judge. All claims to the same property shall be heard in one proceeding unless it is shown that the proceeding would result in prejudice to one or more of the parties.

5. *a.* Upon a finding by the court that the property is condemnable, the court shall enter an order transferring title of the property to the state, and placed at the disposal of the director, who may use or sell the property, depositing the proceeds of the sale in the state fish and game protection fund.

b. Upon a finding by the court that the property should not be condemned, the property shall be returned to the person from whom it was seized. If the property is necessary for use as evidence in a criminal proceeding, the property shall not be returned until its use as evidence is no longer required.

c. On or before December 31, 2018, and on or before December 1 each year thereafter, the department shall report to the general assembly's standing committees on government oversight regarding the amount of the proceeds deposited to the state fish and game

protection fund pursuant to [this subsection](#). The report shall also contain all information recorded pursuant to paragraph “d”.

d. A seizing public agency that has custody of any property that is seized pursuant to a provision of [this subchapter](#) shall adopt and comply with a written internal control policy that does all of the following:

(1) Provides for keeping detailed records as to the amount of property acquired by the agency and the date property was acquired.

(2) Provides for keeping detailed records of the disposition of the property, which shall include the manner in which the property was disposed, the date of disposition, and detailed financial records concerning any property sold. The records shall not identify or enable identification of the individual officer who seized any item of property or the name of any person or entity who received any item of property.

e. The records kept under the internal control policy shall be open to public inspection during the agency’s regular business hours. The policy adopted under [this section](#) is a public record open for inspection under [chapter 22](#).

6. a. An employee of the seizing public agency or a member of the immediate family of the employee shall not purchase a fish, fur, bird, animal, mussel, clam, or frog seized pursuant to [section 481A.12](#), a device, contrivance, or material condemned pursuant to [section 483A.32](#), or a weapon seized pursuant to [section 483A.32](#) and disposed of pursuant to [this section](#) or [section 809.21](#). For purposes of [this subsection](#), “*member of the immediate family*” means a spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or stepparent of an employee of the seizing public agency who resides in the same household in the same principal residence of the employee of the seizing public agency.

b. The department shall provide a form on which a person purchasing property seized pursuant to [section 481A.12](#) or [483A.32](#) shall declare that the person is not an employee of the seizing public agency or a member of the immediate family of an employee of the seizing public agency.

7. For purposes of [this section](#), “*convicted*” means the same as in [section 481A.13A, subsection 3](#).

[C35, §1794-e17,-e18; C39, §1794.100, 1794.101; C46, 50, 54, 58, 62, 66, §110.19, 110.20; C71, 73, 75, 77, §110.20, 110.21; C79, 81, §110.33]

C93, §483A.33

[98 Acts, ch 1125, §2](#); [2018 Acts, ch 1150, §6 – 9](#)

Referred to in [§462A.27](#)