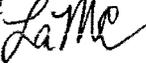


**MEMORANDUM**

TO: Public Safety/Health and Human Services Committee

FROM: Robert H. Drummer, Legislative Attorney   
Linda McMillan, Senior Legislative Analyst 

SUBJECT: **Worksession:** Expedited Bill 35-09, Police – Drug Enforcement Forfeitures Fund  
- Amendments

Expedited Bill 35-09, Police – Drug Enforcement Forfeitures Fund - Amendments, sponsored by Councilmember Trachtenberg, Council President Andrews, Councilmember Elrich, Council Vice President Berliner, Councilmember Leventhal, and Councilmember Navarro, was introduced on October 13. A public hearing was held on November 3.

The Public Safety Committee's previously scheduled briefing on the Drug Enforcement Forfeitures Fund was combined with the worksession before the Joint Public Safety/Health and Human Services Committee on Bill 35-09. This packet includes information supporting both.

**Background**

Md. Code, Criminal Procedure Article, §12-402 authorizes the Circuit Court, after a full hearing, to order property, or the proceeds of the sale of property, that was used in violation of the State Controlled Dangerous Substances Law to be forfeited to the general fund of the State or the political subdivision that seized the property. The County receives funds through this program periodically.

Property seized in violation of Federal controlled dangerous substance laws can be forfeited to the United States under 21 U.S.C. §881. The U.S. Attorney General is authorized to "transfer the property to ... any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property" under 21 U.S.C. §881(e)(1)(A). The U.S. Attorney General must ensure that the property shared is in proportion to the effort of the State or local law enforcement agency's participation in the seizure and serves to further cooperation between the Federal law enforcement agency and the State or local law enforcement agency. The U.S. Department of the Treasury operates a similar equitable sharing program for forfeited property. The County also receives funds through both of these programs periodically.

County Code §35-13B established the Drug Enforcement Forfeitures Fund (DEFF), administered by the Chief of Police, to hold funds received under both the State and Federal forfeiture laws described above. Section 35-13B(c)(2) requires the funds to be used for "expenses related to enforcement of laws regarding controlled dangerous substances." Bill 35-

09 would expand the permitted uses of the DEFF to include drug prevention and treatment programming and Drug Court operations. The Bill would also require the Chief of Police to report quarterly to the Council concerning the revenue and expenses of the Fund.

### **Public Hearing**

There were 9 speakers at the Council's public hearing on November 3. Police Chief Thomas Manger (©8-9), Police Captain David Gillespie (©10-11), and Takoma Park Police Chief Ron Ricucci (©12-13) all testified in general support for permitting the DEFF to be used for drug education and treatment as long as the primary purpose of funding narcotics enforcement is satisfied. Patricia Sullivan (©14-15), Co-Vice Chair of the Montgomery County Drug and Alcohol Advisory Council, Eric E. Sterling (©16-17), and Roger Larson (©20), all testified as professionals working in the field in support of increased funding for drug treatment. Charles Hardy, President of the Outpatient Addiction Services Alumni Association (©18-19), and Linda Dyson both testified as recovering addicts in support of increased funding for drug treatment and education. Finally, Circuit Court Judge Nelson Rupp, Jr. testified about the success of the Montgomery County Drug Court and in support of increased funding.

### **Issues**

#### **1. Are there restrictions on the use of the DEFF that conflict with Bill 35-09?**

There are several layers of constraints on the use of the DEFF depending on the source of the funds. Funds transferred to the County by Federal law enforcement agencies come with restrictions on its use. The U.S. Department of Justice (DOJ) published a "Guide to Equitable Sharing for State and Local Law Enforcement Agencies" in April 2009. Excerpts from this Guide are at ©21-35. The DOJ Guide generally permits these funds to be used for law enforcement investigations, training, equipment, travel, awards, and memorials. The DOJ guide also permits these funds to be used for detention facilities, drug and gang education and awareness programs, and language assistance services. The DOJ Guide permits a State or local law enforcement agency to use up to 15% of the transferred funds for drug abuse treatment, drug and crime prevention education, housing and job skills programs, or other nonprofit community-based programs or activities approved by the Chief of Police. Finally, the DOJ Guide permits the transfer of forfeited real property through the law enforcement agency to a community nonprofit program for drug related programs under the DOJ Weed and Seed Initiative.

The U.S. Department of the Treasury published a similar Guide to Equitable Sharing for funds transferred to a State or local law enforcement agency from forfeitures initiated by Treasury in 2004. The permitted uses in the Treasury Guide are similar to the DOJ Guide except that the funds may not be used to support community-based programs.

Property forfeited under State law can be deposited in the County's general fund and used for any purpose pursuant to Council appropriation. However, the Executive Regulation approved by the Council (COMCOR 35.13B.01) further restricts the use of the DEFF funds for drug investigations, training for drug investigations, equipment, and general narcotics enforcement expenses.

Bill 35-09 would expand the permitted uses of the DEFF for drug prevention and treatment programming and Drug Court<sup>1</sup> operations. Enactment of Bill 35-09 would therefore require a corresponding amendment to COMCOR 35.13B.01 (©36-39) to expand the permitted uses to cover drug prevention and treatment programming. Up to 15% of the funds transferred from the DOJ could be used for community based drug treatment programs. Funds transferred from the Department of the Treasury, absent approval for a specific program, may only be used for drug prevention and treatment programs by a law enforcement agency.

## 2. What are the current revenues and expenditures for the DEFF?

The following table shows the revenues, expenditures, and available unreserved fund balances for the DEFF for FY07-09.

<b>Drug Enforcement Forfeitures Fund</b>						
	Beginning Fund Balance	Expenditures	Revenues Received	Investment Income	Other	Ending Fund Balance (unreserved)*
<b>FY 2007</b>						
Source:						
County/State		(304,741)	822,353	14,008	4,340	
Justice Department		(58,512)	898,304	57,539	-	
Department of Treasury		(45,356)	37,341	4,427	-	
<b>TOTAL</b>	<b>1,349,559</b>	<b>(408,609)</b>	<b>1,757,998</b>	<b>75,974</b>	<b>4,340</b>	<b>2,699,039</b>
<b>FY 2008</b>						
Source:						
County/State		(416,297)	186,032	47,050	-	
Justice Department		(84,262)	115,453	22,287	-	
Department of Treasury		(176,990)	214,389	54,479	-	
<b>TOTAL</b>	<b>2,699,039</b>	<b>(677,549)</b>	<b>515,874</b>	<b>123,816</b>	<b>-</b>	<b>2,686,145</b>
<b>FY 2009</b>						
Source:						
County/State		(375,530)	155,011	21,672	-	
Justice Department		(92,801)	109,595	17,964	-	
Department of Treasury		(7,703)	133,809	5,062	4,950	
<b>TOTAL</b>	<b>2,686,145</b>	<b>(476,034)</b>	<b>398,415</b>	<b>44,698</b>	<b>4,950</b>	<b>2,548,933</b>
*due to encumbrances and other reconciling adjustments columns do not add across						

<sup>1</sup> The Montgomery County Drug Court was established by the Montgomery County Circuit Court to provide eligible adult and juvenile offenders with drug treatment programs supervised by the Court.

Generally, the DEFF has \$500,000 to \$700,000 in both revenues and expenditures per year. However, the table shows that in FY07 over \$1.7 million in shared assets were received. In FY08 and FY09, the revenues deposited into the funds were much lower, \$515,000 and \$398,000 respectively. Expenditures in both FY08 and FY09 were greater than revenues received and drew down the fund balance.

### Types of Expenditures funded through DEFF

The following table shows expenditures by category for FY07, FY08, and FY09. Some constraints contained in the current regulations include a limit of \$25,000 for any single investigation unless specifically authorized by the Police Chief and training must be related to expertise required for narcotics investigations.

<b>Drug Enforcement Forfeitures Fund</b>			
<b>(expenditures funded by all sources - local, Justice, Treasury)</b>			
<b>Category:</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
Transfer to Motorpool	(8,700)		
Canine	1,895	3,371	847
Communications	67,200	86,265	92,784
Computer Equipment	59,484	126,190	35,503
Facilities	-	11,058	78,860
Investigations	126,118	135,178	110,917
New Programs	-	-	3,098
Personnel/Positions	68,891	28,378	18,615
Technology and Related Expenses	-	16,002	24,682
Travel/Education/Training	50,842	50,605	54,422
Dues and Subscriptions	244	499	-
Department Training Related Expenses	-	8,415	-
Vehicle Repairs	22,073	26,399	19,077
Vehicle Purchases	-	126,217	21,800
Weapons and Tactical Equipment	20,562	58,972	15,429
Wire Tap and Pen Register Fees	-	-	-
<b>TOTAL EXPENDITURES</b>	<b>408,609</b>	<b>677,549</b>	<b>476,034</b>

### Appropriation of the DEFF

As noted in the executive regulations, the expenditure of funds from the DEFF must be authorized by appropriation pursuant to Article 3 of the Montgomery County Charter. At least as far back as FY90, the Council has appropriated the DEFF by re-appropriating the end-of-year fund balance. For FY10, this was included in budget provision #3 which reads:

3. This resolution re-appropriates the fund balances of the following funds:
  - Central Duplicating Fund
  - Drug Enforcement Forfeitures Fund
  - Economic Development Fund
  - Housing Initiative Fund

Motor Pool (DGS) Internal Service Fund  
 Rehabilitation Loan fund  
 Restricted Donation Special Revenue Fund

Because there is no appropriation based on expected revenues/expenditures in the coming year, the DEFF expenditures can be no more than the amount available at the beginning of the fiscal year. For example, the appropriation for FY10 is the same as the FY09 end-of-year balance. If additional revenues are received during FY10, a supplemental appropriation would be required to spend them.

The executive regulations require that the director of the Special Investigations Division submit a report to the Chief of Police during the month of July that reflects the monies available and the amount of money necessary to supplement the Drug Enforcement Section during the fiscal year. However, because the final end-of-year balance is not determined by July, the internal approval of a DEFF budget for a given fiscal year is generally not approved until October or November. It may be amended during the year, again within the re-appropriated amount approved by the Council as a part of the May resolution. The executive regulation requires monthly and annual reports to the Chief of Police and an annual report to the Council by March 1 of each year. The DEFF is included in the County's Comprehensive Annual Financial Report (CAFR). The exhibit included in the CAFR for the Fiscal Year that ended June 30, 2008 (FY08) is attached at ©40.

**When the Department approves a budget for the fiscal year, it proposes a plan for expending the entire undesignated reserve, even though these expenditures may not actually occur.** By category, the FY09 expenditure plan included:

**FY09 Budget for DEFF**

(\$2,686,145 unreserved balance appropriated)

**Category:**

Transfer to Motorpool	-
Canine	-
Communications	145,000
Computer Equipment	1,000
Facilities	340,000
Investigations	225,234
New Programs	26,500
Personnel/Positions	260,000
Technology and Related Expenses	547,400
Travel/Education/Training	102,500
Dues and Subscriptions	-
Department Training Related Expenses	24,930
Vehicle Repairs	50,000
Vehicle Purchases/Equipment	557,000
Weapons and Tactical Equipment	44,475
Wire Tap and Pen Register Fees	362,106
<b>TOTAL EXPENDITURES</b>	<b>2,686,145</b>

For example, the FY09 budget for the DEFF approved by the Chief of Police showed potential expenditures for the entire undesignated reserve of \$2,686,145, which was the rolled-over amount appropriated by the Council. However, as shown in the table on page 4, less than \$500,000 was actually expended in FY09.

The DOJ Guide has guidance regarding budgeting forfeiture funds (©28). Specifically, it says that:

- **Anticipated shared property should not be budgeted** – Agencies should not “spend it before you get it” or budget by anticipated receipts. This is because the completion of forfeiture is uncertain and the amount of the sharing that will be approved is also uncertain.
- **Shared monies should not be retained unnecessarily** – Shared monies should generally be expended as they are received. They may be retained for up to three years to satisfy special needs or for major long-term expenditures such as special improvements.
- **Funds must be used to supplement and not supplant spending for the law enforcement agency.** However, both the DOJ Guide and the Treasury Guide note that the total budget for the law enforcement agency is what is used to judge whether there is a supplanting issue. For example, if an agency receives \$100,000, the agency’s local budget cannot be reduced in total by \$100,000; it would have to increase by \$100,000 or more.

### **3. Should the Bill require quarterly reporting to the Council?**

Bill 35-09 would require the Chief of Police to report quarterly to the Council concerning the revenue and expenses of the Fund. COMCOR 35.13B.01.02 currently requires an annual report to the Council on March 1. The need for additional reporting depends upon the Council’s desire to change the method of appropriating these funds.

**Options for Discussion** (these are options for the appropriation resolution which do not require any change in law or regulation and can be changed in any fiscal year depending on the Council’s budget decisions):

#### **Option #1 – Continue current practice**

Continuation of the current practice would re-appropriate the end-of-year balance and have the specific budget and expenditures remain a process that is internal to the Police Department, Department of Finance, and Office of Management and Budget.

Bill 35-09 would provide the Council with quarterly reporting that would identify the quarterly balance, expenditures, and deposits, but would not provide the Council with a proposed budget for the coming year or any additional Council input on how funds are actually spent.

**Option #2 – Request the estimated end-of-year balance be included in the County Executive’s Recommended Budget and appropriate a specific total amount for DEFF.**

This would provide the Council with information on the expected unreserved balance that would be available for expenditures in the coming fiscal year. If, for example, an estimate of \$1 million was provided as a part of the budget, the Council could appropriate this amount or some lesser amount. Given the instructions in the DOJ Guide, the projected amount from Federal sources would have to be the amount on hand. This could be revised before the May action if additional resources were actually received. However, if revenues were received between Council action in May and June 30<sup>th</sup>, it would not be appropriated as a roll-over.

**Option #3 – Request an estimated end-of-year balance and place limits by category.**

The Council could either appropriate a specific amount or continue to allow the end-of-year balance to be rolled over, but could include a budget provision with any limitations on expenditures by category. For example, if the Council had a concern about expenditures for computer equipment, a budget provision could be included in the Operating Budget Resolution stating that no more than \$200,000 may be spent on computer equipment. If the Police Department had a need to exceed this amount, they would need to return to the Council for approval.

**Option #4 – Request an estimated end-of-year balance and reserve a part of the DEFF for certain purposes.**

Again, the Council could either appropriate a specific amount or continue to allow the end-of-year balance to be rolled over, but could include a budget provision with any limitations on expenditures by category. If the Council wanted to make sure that a certain amount was available for a certain purpose this could be included in the Operating Budget Resolution. For example, if the Council wanted to make sure there were funds available for a specific computer purchase, a provision could state that \$200,000 must be reserved for the purchase of computer equipment and may not be spent for other purposes.

**Council staff recommendation:** Tie the reporting requirement for the DEFF to the Council’s consideration of the operating budget. Council staff suggests the following amendment as an alternative to the quarterly reporting required by Bill 35-09:

Amend lines 49-53 as follows:

- (e) The Chief must provide [[a quarterly report]] two reports on the Fund to the Executive and Council[. This report must include]] as follows:
  - (1) [[the current balance;
  - (2) all deposits from forfeitures; and
  - (3) all expenditures by category.]] On March 15, a report including:
    - (A) the beginning unreserved balance for the current fiscal year;

- (B) actual expenditures from July 1 to February 28 of the current fiscal year;
- (C) the projected expenditures for the remainder of the current fiscal year;
- (D) all deposits from forfeitures between July 1 and February 28 of the current fiscal year; and
- (E) the projected year end balance for the current fiscal year; and
- (2) On December 15, a report including:
  - (A) the actual beginning unreserved balance for the current fiscal year;
  - (B) DEFF approved budget by category;
  - (C) all deposits from forfeitures from July 1 to November 30 in the current fiscal year; and
  - (D) the current balance as of November 30.

**4. Technical amendments.**

- a. Council staff noticed that the numbering for lines 32-37 of the Bill is incorrect and needs to be renumbered.
- b. The County Attorney’s Office pointed out that the term “Chief” is used in the Bill without a definition. Although the context makes it clear that the term refers to the Chief of Police, it may cause confusion. Therefore, Council staff recommends that the term be changed to read “Chief of Police.”

<u>This packet contains:</u>	<u>Circle #</u>
Expedited Bill 35-09	1
Legislative Request Report	5
Fiscal Impact Statement	6
Public Hearing Testimony	
Police Chief Thomas Manger	8
Police Captain David Gillespie	10
Takoma Park Police Chief Ron Ricucci	12
Patricia Sullivan	14
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Charles Hardy	18
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DOJ Guide Excerpts	21
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Expedited Bill No. 35-09  
Concerning: Police – Drug Enforcement  
Forfeitures Fund - Amendments  
Revised: November 3, 2009 Draft No. 7  
Introduced: October 13, 2009  
Expires: April 13, 2011  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmember Trachtenberg, Council President Andrews, Councilmember Elrich, Council  
Vice President Berliner, Councilmember Leventhal, and Councilmember Navarro

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**AN EXPEDITED ACT** to:

- (1) authorize the use of the Drug Enforcement Forfeitures Fund for drug prevention and treatment programming and Drug Court operations;
- (2) require the Chief of Police to report quarterly to the Council concerning the revenue and expenses of the Drug Enforcement Forfeitures Fund; and
- (3) generally amend the law concerning the Drug Enforcement Forfeitures Fund.

By amending

Montgomery County Code  
Chapter 35, Police  
Section 35-13B

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Section 35-13B is amended as follows:**

2   **35-13B.     Drug Enforcement Forfeitures Fund**

3           (a) In the Department of Police, [there is created] the Chief must  
4           administer the Drug Enforcement Forfeitures Fund (hereinafter the  
5           Fund).

6           (b) The [county executive] County Executive or a designee must deposit  
7           in the [Drug Enforcement Forfeitures] Fund all money that is forfeited  
8           to the County under state law as drug-related contraband. Forfeited  
9           money may include cash and:

10           (1) proceeds from the sale of real property;

11           (2) criminal proceeds;

12           (3) proceeds from the sale of means of transport, including  
13           vehicles, boats, and airplanes;

14           (4) personal property, including financial instruments;

15           (5) funds turned over to the County by other government agencies  
16           through drug enforcement asset sharing procedures; and

17           (6) any other funds to which the County is entitled as the result of  
18           drug forfeiture proceedings.

19           (c) [(1) The Director of the Department of Police must administer the  
20           Drug Enforcement Forfeitures Fund.]

21           [(2)] The [Director] Chief must use the [Drug Enforcement  
22           Forfeitures] Fund for expenses related to enforcement of laws  
23           regarding controlled dangerous substances. These expenses  
24           may include:

25           [(A)] (1) drug prevention and treatment programs;

26           (2) Drug Court operations and programs;

27           (3) payments to informants;

28                    [(B)] (4)    purchase or lease of equipment; and  
 29                    [(C)] (5)    any other expense related to [such] enforcement  
 30                    [activities] of laws regarding controlled dangerous  
 31                    substances.

32                    (3)    (A)    The [director] Chief may transfer funds to another law  
 33                    enforcement agency if the other law enforcement agency  
 34                    initiated the forfeiture proceeding or was significantly  
 35                    involved in the arrest or investigation leading to the  
 36                    forfeiture.

37                    (B)    The [director] Chief must transfer to the Maryland-  
 38                    National Capital Park Police all funds in the [Drug  
 39                    Enforcement Forfeitures] Fund that result from any arrest  
 40                    [within the boundaries of] in any park under the  
 41                    Commission's jurisdiction [of the Maryland-National  
 42                    Capital Park and Planning Commission] if the arrest was  
 43                    initiated by the Park Police and another law enforcement  
 44                    agency was not involved in the arrest or investigation.

45                    (d)    The money in [this fund] the Fund:

46                    (1)    is subject to audit by the [county executive] Executive; and

47                    (2)    must be included and identified in any financial report of the  
 48                    [Police department] Department.

49                    (e)    The Chief must provide a quarterly report on the Fund to the  
 50                    Executive and Council. This report must include:

51                    (1)    the current balance;

52                    (2)    all deposits from forfeitures; and

53                    (3)    all expenditures by category.

54                    (f)    The [county executive] Executive may adopt regulations under

55 method (2) to implement this Section.

56 **Sec. 2. Expedited Effective Date.**

57 The Council declares that this legislation is necessary for the immediate  
58 protection of the public interest. This Act takes effect on the date it becomes law.

59 *Approved:*

60

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Philip M. Andrews, President, County Council

Date

61 *Approved:*

62

---

Isiah Leggett, County Executive

Date

63 *This is a correct copy of Council action.*

64

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Linda M. Lauer, Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

Expedited Bill 35-09

*Police – Drug Enforcement Forfeitures Fund - Amendments*

**DESCRIPTION:** To require quarterly reports to the Council on the Drug Enforcement Forfeitures Fund (DEFF) and to expand the authorized uses of the Fund to include drug prevention and treatment programming and Drug Court operations.

**PROBLEM:** To identify additional funds for drug prevention and treatment programs and Drug Court operations. Recent shortfalls in County revenue have increased the need to find additional funds for these much needed services.

**GOALS AND OBJECTIVES:** To protect the interest of the public.

**COORDINATION:** Department of Police, Department of Finance

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Robert H. Drummer, Legislative Attorney, 240-777-7895

**APPLICATION WITHIN MUNICIPALITIES:** To be researched.

**PENALTIES:** None



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

Joseph F. Beach  
Director

MEMORANDUM

November 3, 2009

TO: Phil Andrews, President, County Council

FROM: Joseph F. Beach, Director, Office of Management and Budget

SUBJECT: Expedited Council Bill 35-09 – Drug Enforcement Forfeitures Fund

2009 NOV -3 AM 11:35  
MONTGOMERY COUNTY  
COUNCIL

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

**LEGISLATION SUMMARY**

Expedited Bill 35-09 would authorize the use of the Drug Enforcement Forfeitures Fund (DEFF) for drug prevention and treatment programming and Drug Court operations. The Bill would also require the Chief of Police to report quarterly to the Council concerning the revenue and expenses of the DEFF.

**FISCAL IMPACT SUMMARY**

DEFF receives revenue that is forfeited to the County under State law as drug-related contraband. Forfeited money may include cash, proceeds from the sale of real property, criminal proceeds, proceeds from the sale of means of transport, including vehicles, boats, and airplanes, personal property, including financial instruments, funds turned over to the County by other government agencies through drug enforcement asset sharing procedures, and any other funds to which the County is entitled as the result of drug forfeitures proceedings. The County also adheres to the Federal regulations pertaining to drug enforcement forfeitures. The DEFF is used primarily to fund a portion of the costs of the Special Investigative Division. The collection of revenue varies from year to year and is directly dependent on the results of the County's drug enforcement activities. Therefore, DEFF revenues cannot be viewed as a reliable and recurring source of funds. For this reason, it has been the County's practice to generally limit the usage of DEFF funds to non-recurring expenses.

Expedited Bill 35-09 expands the allowable uses of the DEFF to include drug prevention and treatment programming, and Drug Court operations. Since it does not mandate funding the additional programs, the proposed legislation does not have a fiscal impact.

Office of the Director

Phil Andrews, President, County Council  
November 3, 2009  
Page 2

However, these programs are essentially on-going and recurring activities involving both operating expenses and personnel costs. Since the DEFF revenue varies from year to year, funding sustainability of the two programs cannot be assured, which could adversely impact the General Fund.

**ECONOMIC IMPACT SUMMARY**

The Department of Finance indicates Expedited Bill 35-09 has no economic impact to the County.

The following contributed to and concurred with this analysis: Police Chief J. Thomas Manger, David Platt, Department of Finance, and Ed Piesen, Office Management and Budget.

JFB:ep

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Dee Gonzalez, Offices of the County Executive
- J. Thomas Manger, Chief of Police
- Ed Piesen, Office of Management and Budget
- John Cuff, Office of Management and Budget

## Bill 35-09, Drug Enforcement Forfeiture Fund

Public Hearing  
November 2, 2009

### Testimony of Police Chief Tom Manger

Good afternoon. I appreciate the opportunity to speak today about the importance of the Drug Enforcement Forfeiture Fund (DEFF) and its critical role in the County's law enforcement efforts. The County Executive supports Bill 35-09 but also believes that it is essential that the Council understand the original intent of the DEFF and that future use of the DEFF be consistent with that original intent. I would like to speak to that original intent in my testimony today.

As Chief Ricucci will testify, the primary purpose of the DEFF is to provide funding for narcotics enforcement. As stated in Executive Regulation 7-92, which was adopted on December 24, 1992, the original legislative intent was to give the Department of Police discretion to use the fund for narcotics enforcement in the areas of investigations, training, and equipment. The County Executive and I believe that this should remain the fund's primary purpose. We are not opposed to making other programs eligible for DEFF funding, as long as sufficient funds are dedicated to combating drug trafficking organizations operating in our county and preying upon our youth and young adults. Narcotics **enforcement** must remain the priority of the DEFF. The DEFF is a valuable source of income and we must use it intelligently to help the County combat drug trafficking and make our community safer.

The DEFF has grown a great deal over the past 10 years. Its lowest amount during that time was \$644,000 in FY02 and its highest amount was \$2.7 million in FY08. However, you should know that until FY07 the fund balance was never more than \$1.3 million. With operating costs over \$600,000 for the Special Investigations Division (SID), it is a relatively modest amount of money. In FY08 the DEFF doubled from the previous year with the intent to explore moving SID to a new covert location. Neil Shorb and Dave Gillespie were in negotiations with a Real Estate Developer and had made significant progress before I decided that the move was going to be too costly. Had it not been for carrying over monies from the previous years during that period, the DEFF fund balance would not be as high as it is today. In fact, the average amount of new contributions to the DEFF over the past 12 years has been \$1.2 million.

As the County faces financial difficulties, it is critical that the Council look at its various revenue sources to help defray the costs for programs that are facing cuts. I support that line of thinking. However, we must remain steadfast and uncompromising in our principles with regard to how the DEFF is used and how it will best support the goal of keeping our community safe. There are also federal regulations that prohibit supplanting the County's budget with the DEFF and we need to keep those regulations in mind.

In closing, the County Executive and I are open to funding drug treatment and drug court programs when sufficient funds are available in the DEFF. However, the DEFF must

fund the annual operating expenses of SID before any monies are spent for other purposes. This ensures that the DEFF will remain the primary source of support to narcotics investigations. I urge you to allow the Police Department to maintain the discretion on how these funds should be spent. I am accountable for crime statistics and trends and need to have the ability to utilize these funds to maintain a sustained effort to combat drug organizations from operating in our County.

Thank you for your time and consideration.

**Bill 35-09, Drug Enforcement Forfeiture Fund**

**Public Hearing  
November 2, 2009**

**Testimony of Captain David Gillespie  
Chief, Special Investigations Division, Montgomery County Police Department**

Good afternoon, my name is Captain David Gillespie and I am the Director of the Special Investigations Division. The mission of the Special Investigations Division is to arrest those individuals using or selling controlled dangerous substances, disrupt and dismantle major drug trafficking organizations, investigate organized crime, and arrest violent fugitives and those responsible for gang related crime. The types of investigations we do are often complex and require specialized electronic, technical, or surveillance equipment and/or a variety of other tools. In order to have the resources to effectively conduct our investigations the Division relies on the Drug Enforcement Forfeiture Fund (DEFF) to pay for these necessary expenses.

As Chief Ricucci stated, the intent of the DEFF is to allow the Police Department to use funds generated by seized assets to combat narcotic trafficking. This includes training officers on how to conduct complex undercover investigations, purchasing new technology to assist in these investigations, and covering the various costs associated with conducting complex narcotics investigations.

Although the DEFF is mainly used to support the operating expenses for the Special Investigations Division, it also supports a variety of units throughout the Department that contribute to narcotics enforcement, including the Special Assignment Teams, Police Community Action Teams, Gang Unit, Drug Lab, Training Academy, SWAT Team and more. As a result these units are better trained and better equipped.

Each year we get involved in significant cases surrounding narcotics trafficking and organized crime activities. In 2007, we assisted the DEA in locating Zhenli Yi Gon, allegedly the World's largest methamphetamine supplier. He was a fugitive from Mexico, being hunted by Interpol. It was our Electronic and Technical Support Unit that located him in a residence in Rockville. Recently, our Major Offender Conspiracy Unit participated in an investigation involving individuals associated with a Mexican Cartel supplying cocaine to residents of our County. In addition, our Tactical Narcotics Unit is out on County streets almost every night buying drugs from street level dealers who prey on our communities. They all have a very dangerous job and it is essential that they have the absolute best surveillance equipment. The DEFF ensures that we have continued training, state of the art technology, and superior equipment to keep our personnel as safe as possible.

Every year when I prepare our budget, I look at the needs of the Special Investigations Division. We have annual operating expenses in excess of \$600,000. In FY10 it is anticipated that they will exceed \$750,000. These expenses relate to Communications

and Electronics, Computers and Related Supplies, Facilities and Related Expenses, Investigations, New Programs that support narcotics enforcement, Technology and Related Equipment, Training, Vehicles, Wiretap Modifications and Pen Register Fees.

While the DEFF can be a valuable funding resource, we must always keep our primary focus on disrupting drug offenders rather than seizing assets. If seizing assets was our goal, it would compromise the integrity of our mission of keeping County residents safe. I am not opposed to expanding the law to allow for the use of the DEFF to help cover the costs for drug prevention and other related programs. It is important to note, however, that the DEFF receives money from three different sources and two of them are federal. The County funds make up approximately 35% of our annual seizures and that number fluctuates from year to year. I mention this because federal law limits the amount of DEFF funds that an agency can use to support community based programs. The limit is up to 15% of the total shared monies received by an agency in the last two fiscal years. There are also rules against supplanting our current budget. A violation of the 15% limit or the non-supplantation prohibition could jeopardize the County's ability to participate in the federal asset forfeiture program.

As you can see, the DEFF is put to good use and has allowed us to operate effectively. We are not involved in a war on drugs. Rather, we are involved in a focused and concentrated effort to keep our community safe. Safe from those who sell drugs to our children and other County residents, safe from those who use children to sell drugs for them, and safe from the violence that is so frequently associated with drug trafficking. The DEFF is absolutely necessary to support the function and mission of the Special Investigations Division. Regardless of whether Bill 35-09 is passed, I urge you to ensure that we are always able to use the DEFF to pay for our annual operating expenses in the Special Investigations Division and other Police Department priorities that help us make our community safer. Thank you.

**Chief Ron Ricucci**  
**Testimony for Public Hearing on DEFF**  
**Tuesday, November 3<sup>rd</sup>**

Good afternoon. My name is Ron Ricucci and I am the Chief of the Takoma Park Police Department. I also retired as the Deputy Chief of Police in Montgomery County in 1995.

In 1982, as a Sergeant in the Narcotics section, I was asked by Rose Crenca, a member of the Council, to research asset forfeiture laws. Her request to me was based on her concern for the drug problem in Montgomery County. She felt that there was a serious problem and the county needed to do more. At that time, drugs were becoming a serious problem nationwide. She felt we needed more money but knew that there was only so much money to be given to the police. My research indicated that several jurisdictions in Florida had adopted forfeiture laws. Working with Councilwoman Crenca, we drafted the current forfeiture law. It was a unique piece of legislation at that time. No other jurisdiction in Maryland had that type of law. The Council passed the legislation with the intent we would always have enough money for drug enforcement. I served 13 years in the Special Investigations Division, the last six as the director. This fund has kept the department on the front of the battle against narcotics. Because of this fund, we were able to work high-level investigations which impacted the flow of drugs in the county. As director, we formed a municipal task force, which allowed the department to assist the municipalities. It is one of the reasons I am here today.

The intent of the law was for the police department to have the discretion to use the fund for narcotics enforcement in the areas of investigations, training and equipment. Expenditures had to be authorized by the Chief of Police or his designee. Primarily, the purpose was to spend DEFF on three components:

- (1) **Investigations** – In order to conduct narcotic investigations, officers must be able to purchase drugs, pay informants, travel to interview cooperating defendants and informants and work with various law enforcement agencies.
- (2) **Training Narcotics Investigators** – Attending specialized narcotics training is critical because officers must learn to operate in an undercover capacity and gain experience making critical decisions under extreme stress. They must be prepared and the team must train together. This can be expensive and is not something the department's budget can typically support. In addition, there is technical training that is critical to the safety of the undercover operatives. Training includes allowing officers to attend, participate in, and conduct training programs and professional meetings regarding drug investigations.
- (3) **Equipment** – Drug Enforcement Funds are also spent on obtaining a variety of new surveillance equipment, wiretap equipment and to lease equipment. There are numerous advancements in technology that the department funds with DEFF monies. As technology continues to advance at a record pace, it is critical that

law enforcement maintain state of the art technology to help investigators combat drug traffickers operating in Montgomery County.

The intent of the fund in 1982 has been met and continues to allow the department to be at the forefront of narcotics. During my tenure in SID, I assisted numerous other jurisdictions with drafting forfeiture laws. Montgomery County paved the path. The amount of money saved to be used in other areas as a result of this law could not be measured after all these years.

I want to thank Chief Manger for the opportunity to speak here today. This is a very important topic to me. Since leaving Montgomery County, I have had the honor to serve as Chief in two other jurisdictions besides Takoma Park, and serve as Public Safety Director in another city. A question asked when applying for these positions was always – “[W]hat is your proudest achievement?” I always answered that it was the Drug Enforcement Forfeiture bill because it has made a difference in saving lives. This bill has given my old department the extra edge which has made a difference in quality of life in Montgomery County.

I believe after all these years, it continues to serve that purpose to protect our community from drugs. Training and equipping our officers to be the best, and keeping our officers safe, is our ultimate goal. Taking money away from the police department in these difficult times could adversely affect our residents and our officers. The intent in 1982 by Councilwoman Crenca was to make a long-term difference. She has - and her legacy lives on in this legislation.

**BILL 35-09**

**Public Hearing**

**November 3, 2009**

Good afternoon. I am Patricia Sullivan, Co-Vice Chairman of the Montgomery County Drug and Alcohol Advisory Council. I am here to give my voice of support to Bill 35-09 which allows Drug Enforcement Forfeiture Funds to be used for Substance Abuse Prevention and Treatment Programs.

I have worked in the Substance Abuse Treatment Field for over 25 years. I have been a consistent voice for change in New York State and for the past 3 years in Maryland.

The recent recession has affected Maryland and Montgomery County, resulting in Budget Cuts across the board. Unfortunately those areas, which are traditionally underfunded, will be getting less funding. Yet, Addiction and its consequences don't become less or go away, in fact they increase. Admissions in local treatment facilities are trending up not down.

I would like to talk about some facts:

Any further cuts in funding will seriously compromise the Montgomery County Continuum of Care, a continuum that is currently in jeopardy. **It is important to note that for every \$1.00 that goes into treatment, the public saves \$7.00 in health care and criminal justice costs.**

Due to the FY 2010 appropriation for Safe and Drug Free Schools, Montgomery County Public Schools is losing federal support for important programs. This is a major mistake because it will decimate the substance abuse and violence prevention infrastructure that is currently in place in our county. Resulting in:

- No gang prevention or awareness

- No student assistance programs in secondary schools.
- No alcohol and other drug prevention intervention/staff development.

The public schools were one of the concerns brought up at a Public Forum conducted by the Alcohol and Drug Advisory Council earlier this year.

Heroin addiction is becoming a huge problem in our community. It is not, however, primarily an adult, inner city, problem. It is a suburban adolescent problem. I have worked with parents who are beside themselves and don't know what to do for their children. They constantly ask "why aren't our elected officials doing more?" They want their children in treatment not jail. I don't want to push the alarm button but Montgomery County, as things now stand, runs the risk of becoming the next Fairfax County with juveniles dying to keep their addiction alive. Montgomery County cannot allow this to happen.

Prevention is already in serious jeopardy. Treatment is in the same jeopardy. Solid research shows that alternatives to incarceration, such as mental health and substance abuse treatment, followed by effective after care, are supports that through which adolescents can get their lives back on track. **The use of evidence based interventions in the community with juvenile offenders reduces recidivism by 38 per cent and saves \$10 for every tax payer dollar spent. (Rehabilitating Juvenile Offenders.) The McArthur Foundation**

Drug Courts are evidence based practices and the gold standard of collaboration between the Justice System and the Treatment System. Reduction in funding could seriously jeopardize the magnificent work that Judge Nelson Rupp and his staff are doing. They have funding for 100 slots but could use 100 more and still not have enough. Drug Courts save money, Drug Courts, save lives we cannot, not support them.

ERIC E. STERLING, J.D.

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Prepared Statement  
of  
Eric E. Sterling, J.D.  
on  
Expedited Bill 35-09 – Drug Enforcement Forfeiture Fund –  
Amendments  
November 3, 2009  
Montgomery County Council

Council President Andrews and honorable Council Members, my name is Eric E. Sterling. I live at 2805 Blaine Drive, Chevy Chase in Council District 5. For the past twenty years, I have been the President of The Criminal Justice Policy Foundation, based in downtown Silver Spring.

My relevant background

I serve on the county's Alcohol and Other Drug Abuse Advisory Council (AODAAC), as a representative of the legal profession. I am testifying as a private citizen.

For more than a dozen years, I've been active with the American Bar Association Standing Committee on Substance Abuse. From 1979-89, I was counsel to the U.S. House Judiciary Committee Subcommittee on Crime responsible for laws regarding drug enforcement, gun control, organized crime, money laundering and pornography, among many issues. One of the issues I worked on was the federal drug forfeiture law. I have also been an adjunct professor at American University and George Washington University where I have taught undergraduate and graduate courses in criminal justice, drug policy and sociology.

The Criminal Justice Policy Foundation works to improve public safety and the administration of justice and to support the nation's police, in large part, by advocating for effective drug control.

In 2007, CJPF gave a grant of \$2100.00 to the Montgomery County Police Department to purchase software to enable the police to catalogue gang graffiti to improve the prosecution of gang crimes, and the opportunity for private and public victims of gang graffiti to obtain restitution for damaged property.

Support Expedited Bill 35-09

Pursuant to Title 12 of Maryland Criminal Procedure law, property used or intended to be used in illegal drug distribution, as well as "everything of value" received or intended to be received in exchange for illegal drugs, is subject to seizure and forfeiture. In general, whenever property is forfeited under this title, **the governing body where the property was seized may keep or sell the property**, provided that the proper expenses of the proceeding are first paid.

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Federal law also provides for the seizure and forfeiture of property used to produce or distribute controlled substances. When state and local law enforcement agencies participate directly in the seizure or forfeiture of property, federal law provides that property **be transferred to that agency** that "has a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture," and that "will serve to encourage further cooperation between the recipient State and local agency and Federal law enforcement agencies." (21 U.S.C. 881(e)). Federal forfeitures are in the range of \$1 billion annually for a variety of crimes and agencies.

Apparently, funds from various seizures and sources are being transferred to the Montgomery County Police Department. This bill amends the County Code to authorize the Police Chief to use the Drug Enforcement Forfeiture Fund for drug prevention and treatment programs and for the operations and programs of the Drug Court. I urge you to enact this bill.

Drug treatment programs reduce crime and reduce demand for drugs from the most heavy users. Recidivism is a characteristic of the disease of addiction, but most treatment programs are dramatically cost-effective overall in reducing the costs of crime and addiction to a community. Such programs are a critical component of any intelligent comprehensive anti-crime program.

The State of Maryland provides funds to Montgomery County for its drug treatment programs. It is likely that the state will cut the sum it provides to the county later this year. Yet the demand for drug treatment in the county is growing. The county drug treatment programs are operating at capacity, with waiting lists.

To use forfeiture funds for programs that will reduce drug use and drug-related crime is a perfectly appropriate use of these funds.

Recognizing these facts, the AODAAC adopted the following resolution by a unanimous vote on September 10, 2009,

"Whereas addiction treatment is crime prevention, therefore be it resolved that the Montgomery County Drug Enforcement Forfeiture Fund regulations be amended to include as an authorized use of funds for 'drug abuse treatment and prevention services'."

Due to the FY 2010 Federal appropriation for Safe and Drug Free Schools, Montgomery County Public Schools is losing federal support for those important programs beginning next Spring. The county forfeiture fund might also provide vital support for such an important effort.

I urge the County Council to adopt this bill.

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BILL 35-09  
Public Hearing  
November 3, 2009

**IN SUPPORT OF USING DRUG ENFORCEMENT FORFEITURE FUNDS FOR  
SUBSTANCE ABUSE PREVENTION AND TREATMENT PROGRAMS**

Hello, I am Charles Hardy, President of the Outpatient Addiction Services Alumni Association and citizen of Montgomery County. I come before you to strongly support Bill 35-09 which allows money seized from drug criminals to be used for drug treatment and prevention programs.

I am an advocate for changing the law on how funds are to be spent. As we are all aware funding for treatment and prevention is cut at the state, federal and local levels.

While I benefited tremendously from addiction services here in the County, I speak because I know I would have had a much different earlier life journey if prevention of substance use had been a part of my upbringing. I know from first hand experience that once it grabs hold and takes control of you, it is extremely difficult to part company with substance abuse and addiction. It controls you 24 hours, 365 days; it destroys your personal integrity and relations with most meaningful people in your life such as family members and friends.

Together, we can prevent others from a similar experience. I have dedicated my life to educating and working to prevent addictions. Currently, I devote one evening a week to work with at-risk children and their addicted parents to prevent substance abuse with the Strengthening Families Program. I am witness to the transformation of youth and their parents. Many arrive at the Strengthening Families Program angry, disillusioned and detached from family members. As I co-lead the adolescent group, I witness these youth and families become resilient people, capable of open communication with problem solving skills leading productive drug free lives at home, in school and work and in the community.

It is essential that we continue to invest in youth and continue our campaign to prevent or forestall youth's initiation to drugs and alcohol. This can be accomplished by allowing money seized from drug criminals to be used for prevention programs. It allows funding to be devoted to offering activities and education that focuses on strengthening and expanding protective factors such support for families, neighborhood resources, and adults who demonstrate their concern for youth.

Additional funding can be used to fully fund mini- grants to community groups. Competitive grants up to \$1,500 are awarded community groups to offer activities to at-risk youth. All grants are required to include a substance abuse prevention

component and be delivered at an out-of-school time. Most competing applicants apply for the full amount of \$1,500 for very worthy activities, but in recent years most have not received full funding due to decreases in the total funding amount available for the grants.

In addition, Maryland is one of the 16 states where more people died from drugs than car crashes<sup>1</sup>. Many of the deaths were related to misuse of prescription drugs such as methadone, Vicodin, OxyContin and fentanyl. Additional funding will be devoted to mounting a vigorous County-wide campaign to prevent the non-medical use or abuse of prescription drugs which is a serious and growing public health problem for people ages 12 and over.

In closing, I again strongly support, support Bill 35-09 which allows money seized from drug criminals to be used for drug treatment and prevention programs.

<sup>1</sup> U.S. Center for Disease Control and Prevention (CDC) in the Associated Press, September 30, 2009

KHI Services, Inc.  
Presentation at Public Hearing  
Montgomery County Council  
November 3, 2009  
Presented by Roger D. Larson, MGA/HCA; CRCCPA  
Chief Executive Officer

KHI Services began providing alcohol and substance abuse counseling and educational services to Montgomery County youth in 2001, as part of a contract with the county's Department of Health and Human Services. KHI Services and Suburban Hospital provide similar Level I outpatient services.

During the past 8 years our Step Ahead Program has served 758\* youth in a six-month counseling program and 662\* youth in a six week education-only program. 69.6% of youth successfully completed counseling programs while 73.7% successfully completed education-only programs. These results are positive, but much more needs to be done.

During the past two months we received 30 referrals for our adolescent counseling program and 45 referrals for our adolescent education-only program. Our contract requires us to serve 25 youth (down from 50 in previous years) in the counseling program at any given time. We currently serve 47 youth with 22 more waiting for assessments and admission into the program.

Evidence shows drug courts successfully serve this population. But the community need is far greater than the capacity of drug courts alone. We have a license for intensive outpatient counseling programs, which require a greater commitment to treatment on the part of the client and family, and more costs for our program. We have not implemented an intensive outpatient program because we have not had start-up funding. And yet, to my knowledge, the county only has one intensive outpatient program; Journeys. The northern half of the county is growing rapidly and intensive outpatient services are desperately needed.

No doubt the Montgomery County Police Department would benefit from the use of monies obtained through the apprehension and conviction of drug dealers. But what better way to use drug trafficking money than to give it back to the community, through alcohol and drug treatment programs for youth, the very individuals affected most by the sale of drugs and alcohol?

Montgomery County contract provides financial support for a portion of our budget, but it is not sufficient to balance the program budget. Families struggling to put food on the table, let alone pay for drug treatment. Over half the youth we serve either have Medical Assistance insurance or no insurance at all. The combination of income has not been sufficient for us to make ends meet.

Our Step Ahead Program budget has been supported by fund-raising efforts, which have significantly decreased over the past four years. We offset the shortfalls of the program with retained earnings gathered from other programs we operate, but those programs no longer provide the funding needed to support the Step Ahead Program. Captured funds from police drug raids could stabilize our program financially and allow us to expand our services with much needed intensive outpatient treatment.

KHI Services, Inc. urges you to support legislation to utilize seized drug money for treatment of individuals with alcohol and substance abuse problems.

\*Through June 30, 2009



# Guide to Equitable Sharing for State and Local Law Enforcement Agencies

April 2009

## VIII. What Are the Uses of Equitably Shared Property?

### A. Law enforcement uses

Except as noted in this *Guide*, equitably shared funds shall be used by law enforcement agencies for law enforcement purposes only. Subject to laws, rules, regulations, and orders of the state or local jurisdiction governing the use of public funds available for law enforcement purposes, the expenses noted below are pre-approved as permissible uses of shared funds and property.

To avoid a conflict of interest or the appearance of a conflict of interest, any employee of any federal, state, or local governmental agency (or members of his or her immediate family or those residing in his or her household) who was involved in the investigation which led to the forfeiture of the property to be sold by the USMS contractor is prohibited from purchasing, either directly or indirectly, forfeited property. Additionally, Department of Justice employees and contractors may not, without prior written approval of a designated agency official, directly or indirectly purchase property that has been forfeited to the United States; or personally use such property that has been directly or indirectly purchased from the United States by a member of his or her immediate family.

The fact that shared property was forfeited as a result of a particular federal violation does not limit its use. For example, when an agency receives a share of property that was forfeited for a federal drug violation, the recipient is not limited in its use of the property in the recipient agency's drug enforcement program. Among the following uses, priority should be given to supporting community policing activities, training, and law enforcement operations:

#### 1. Permissible uses

- a. **Law enforcement investigations**—the support of investigations and operations that may result in furthering the law enforcement goals and mission, e.g., payment of overtime for officers and investigators; payments to informants; “buy,” “flash,” or reward money; and the purchase of evidence.
- b. **Law enforcement training**—the training of officers, investigators, prosecutors, and law enforcement support personnel in any area that is necessary to perform official law enforcement duties. Priority consideration should be given to training in: (1) asset forfeiture in general (statutory requirements, policies, procedures, case law); (2) the Fourth Amendment (search and seizure, probable cause, drafting affidavits, confidential informant reliability); (3) ethics and the National Code of Professional Conduct for Asset Forfeiture,<sup>16</sup> (4) due process; (5) protecting the rights of innocent third parties (individuals and lienholders); (6) use of computers and other equipment in support of law enforcement duties; and (7) this *Guide*.
- c. **Law enforcement and detention facilities**—the costs associated with the purchase, lease, construction, expansion, improvement, or operation of law enforcement or detention facilities used or managed by the recipient agency. For example, the costs of leasing,

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<sup>16</sup> See Appendix B for a copy of the National Code of Professional Conduct for Asset Forfeiture.

operating, and furnishing an off-site undercover narcotics facility is a permissible use of shared funds. Capital improvements should not be made on leased property or space since the law enforcement agency will not benefit from the improvements upon termination of the lease; improvement costs are generally covered in the terms of the lease. Approval from AFMLS is required prior to making such capital expenditures.

- d. **Law enforcement equipment**—the costs associated with the purchase, lease, maintenance, or operation of law enforcement equipment for use by law enforcement personnel that supports law enforcement activities. For example, furniture, file cabinets, office supplies, telecommunications equipment, copiers, safes, fitness equipment, computers, computer accessories and software, body armor, uniforms, firearms, radios, cellular telephones, electronic surveillance equipment, and vehicles (e.g., patrol cars and surveillance vehicles).
- e. **Law enforcement travel and transportation**—the costs associated with travel and transportation to perform or in support of law enforcement duties and activities. All related costs must be in accordance with the agency's state per diem and must not create the appearance of extravagance or impropriety.
- f. **Law enforcement awards and memorials**—the cost of award plaques and certificates for law enforcement personnel, provided that the plaque or certificate is in recognition of a law enforcement achievement, activity, or the completion of law enforcement training, and the cost does not create the appearance of extravagance or impropriety. Shared funds may not be used to pay cash awards.

Shared funds may be used to pay the costs for modest commemorative plaques, displays, or memorials that serve to recognize or memorialize a law enforcement officer's contributions, such as a memorial plaque or stone at a police department facility in honor of officers killed in the line of duty.

- g. **Drug and gang education and awareness programs**—the costs associated with conducting drug or gang education and awareness programs by law enforcement agencies. Such costs include meeting costs, anti-drug abuse literature costs, travel expenses, and salaries for officers working in a drug education program such as DARE.
- h. **Matching funds**—the costs associated with paying a state or local law enforcement agency's matching contribution or share in a federal grant program, provided that the grant funds are used for a permissible law enforcement purpose in accordance with this *Guide* or where such use is authorized by federal law.
- i. **Pro rata funding**—a law enforcement agency's percentage of the costs associated with supporting multi-agency items or facilities. For example, if a town purchases a new computerized payroll system, and the police department payroll represents 20 percent of the total use of the payroll system, then the police department may use shared money to fund its pro rata share (20 percent) of the operating and maintenance expenses of the system.

- j. **Asset accounting and tracking**—the costs associated with the accounting, auditing, and tracking of expenditures for federally shared cash, proceeds, and tangible property. For example, the use of shared funds to pay the fees associated with the contracting of a bookkeeper is permissible.

The OMB Single Audit Act requires any agency that expends more than \$500,000 in federal funds in an agency's fiscal year to complete an external audit. The use of forfeiture funds to perform this audit is permissible.

- k. **Language assistance services**— In connection with their law enforcement activities and operations, recipient agencies are encouraged to consider the need for language services for persons with limited English proficiency and, consistent with the provisions of this *Guide*, may use shared funds to provide such services. Examples of such permissible uses include the costs of language training for law enforcement personnel and 911 operators, contracting for interpretation services, and printing law enforcement documents in foreign languages.
- l. **Transfers to other law enforcement agencies**—Cash transfers of shared funds from one state or local law enforcement agency to another are permitted. In order to receive a cash transfer of shared funds, the law enforcement agency must be in compliance with the Agreement, Certification and Audit provisions of this *Guide* (see part X). All cash transfers must be used in accordance with the permissible use provisions of this *Guide*. The agency transferring the funds is responsible for verifying that the recipient agency is eligible to receive sharing. The transfer must be reported on the Equitable Sharing Agreement and Certification form filed by both the donor and recipient agencies.
- m. **Support of community-based programs**—A state or local law enforcement agency or prosecutor's office may use up to 15 percent of the total of shared monies received by that agency in the last two fiscal years for the costs associated with drug abuse treatment, drug and crime prevention education, housing and job skills programs, or other nonprofit community-based programs or activities that are formally approved by the chief law enforcement officer (e.g., chief, sheriff, prosecutor). All expenditures must be supportive of and consistent with a law enforcement effort, policy, and/or initiative.

**Cash transfers to community-based programs are not permitted.** State and local law enforcement agencies are prohibited from making cash transfers or donations to support community-based programs. Instead, agencies may directly purchase supplies, equipment, and/or services for eligible community-based programs, or reimburse such programs for eligible expenditures with a valid, itemized receipt. See Appendix C for guidelines to determine a community-based program's eligibility.

- n. **Windfall situations**—Where the total amount of federal equitable sharing received within one fiscal year represents over 25 percent of a state or local law enforcement agency's annual budget, recipient agencies may utilize the amount over 25 percent to provide additional support to community-based programs as referenced in letter m above. For

example, if an agency's annual appropriated budget is \$1 million and the agency receives a total of \$300,000 in equitable sharing funds during the fiscal year, the amount above \$250,000 (25 percent of the agency's budget), or \$50,000, is considered a "windfall." The agency, in its discretion, may use all or part of this money in addition to the 15 percent permitted under section m above. In windfall situations, AFMLS may require additional auditing and/or reporting regarding the agency's handling and expenditure of funds.

## 2. Impermissible uses

- a. **Salaries—Equitable sharing monies may not be used to pay the salaries and benefits of current, permanent law enforcement personnel, except in limited circumstances.** The purpose of this rule is to protect the integrity of the asset forfeiture and equitable sharing programs so that the prospect of receiving equitable sharing monies does not influence, or appear to influence, law enforcement decisions.

Exception: Equitable sharing funds may be used to pay the salaries and benefits of law enforcement officers in the following limited situations:

- (1) **Express statutory authorization**—When federal law expressly permits state and local law enforcement agencies to use equitably shared funds to pay the salaries and benefits of local law enforcement officers or as matching funds in federal grant programs, such use is permissible. For example, the Community Oriented Policing Services (COPS) program established by the Violent Crime Control and Law Enforcement Act of 1994, allows state and local law enforcement agencies to use equitably shared funds to meet the local match requirements of that program, including grants for salaries and benefits.
- (2) **Overtime of officers and investigators**—Shared funds may be used to pay the overtime of officers and investigators involved in law enforcement operations. This policy is applicable to all officers and is not limited to those working on drug-related investigations.
- (3) **New positions and temporary or not-to-exceed one year appointments**—Shared funds may be used to pay the first year's salary and benefits of an individual hired for a new sworn law enforcement position that supplements the current law enforcement work force. After the first year, the salary and benefits for that position must be paid entirely from the agency's appropriated funds. Shared funds may also be used to pay the salaries of temporary (less than one year) positions or not-to-exceed one year appointments. This exception applies strictly to sworn law enforcement positions. Shared funds may not be used to provide funding for unsworn, support personnel (e.g., administrative, secretarial, or clerical positions).

- (4) **Salary of an officer hired to replace an officer assigned to a task force**—When a law enforcement agency assigns a law enforcement officer to a task force<sup>17</sup> for a period of at least one year or the life of the task force and hires a new law enforcement officer to replace the officer so assigned, the agency may pay the salary and benefits of the replacement officer from equitably shared funds so long as the replacement officer does not engage in the seizure of assets or narcotics law enforcement as a principal duty.<sup>18</sup>

A principal duty is a duty that the officer is expected to perform regularly. In order to pay the replacement officer's salary with equitably shared funds, the task force must be a law enforcement entity constituted under federal, state, or local law that is primarily engaged in specific and targeted law enforcement activities involving more than one law enforcement agency. In addition, the chief administrative officer of the law enforcement agency assigning an officer must not maintain direct day-to-day operational control of the task force although he or she may participate in the policy-level control of such task force.

When a law enforcement agency has assigned an officer and paid for the replacement as specified above, and it becomes necessary to return the officer from the task force, the law enforcement agency may continue to use forfeited funds to pay for the salary and benefits of the replacement officer for a period not to exceed six months.<sup>19</sup>

- (5) **Specialized programs**—A law enforcement agency may pay the salary and benefits of a law enforcement officer assigned to specific approved specialized programs which do not generally involve traditional law enforcement functions. Officers assigned to programs such as DARE do not routinely perform narcotics law enforcement or seizure duties. Accordingly, there is little risk that their conduct will actually influence law enforcement priorities or create a conflict of interest.

- b. **Use of forfeited property by non-law enforcement personnel**—Non-law enforcement agency personnel are not permitted to use shared vehicles, forfeited property, or items purchased with shared funds.

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<sup>17</sup> For example, groups of state and local law enforcement agencies frequently establish separate units under the command of an experienced officer. All assigned agents have full law enforcement power within the combined area of the constituent agencies. The chief of police of any one constituent agency does not exercise day-to-day individual command authority over the task force but may sit as a member of a Steering Committee, Board of Directors, or other supervisory authority which sets general task force policies.

<sup>18</sup> For example, Officer Y is assigned to a task force. The agency may then hire Officer Z and may pay Officer Z's salary from asset forfeiture funds. Officer Z may not be assigned to a narcotics unit and he may not be assigned to a unit that identifies assets for seizure. If during Officer Z's routine patrol duties, he stops a vehicle found to contain narcotics and cash, the agency may continue to pay Officer Z's salary from asset forfeiture funds.

<sup>19</sup> This provision is designed to afford law enforcement agencies the opportunity to rearrange staffing assignments without suffering severe financial hardships and also recognizes that the hiring process can take time.

- c. **Payment of education-related costs**—Shared funds may not be used for scholarships, financial aid, or non-law enforcement classes. Only tuition for law enforcement classes necessary to the performance of an officer’s official duties is permitted.
- d. **Uses contrary to the laws of the state or local jurisdiction**—Shared funds and property may not be used for any purpose that would constitute an illegal or improper use of state or local law enforcement funds or property under the laws, rules, regulations, and orders of the state or local jurisdiction of which the agency is a part.
- e. **Non-official government use of shared assets**—Any use that creates the appearance that shared funds are being used for political or personal purposes is not permitted. For example, the use of shared funds for a sheriff’s campaign paraphernalia is impermissible.
- f. **Purchase of food and beverages**—Shared funds generally may not be used to pay for food and beverages (alcoholic and non-alcoholic) for consumption by law enforcement personnel or their guests, except for the limited circumstances listed below:
  - (1) **Conference package policy**—Shared funds may be used to purchase food and beverages provided as part of a conference package. For example, a hotel provides complimentary coffee and bagels for breakfast with the rental of its conference room for an authorized training event. The same conference package rule applies to food or beverages served at a banquet or party to recognize law enforcement achievements.
  - (2) **Meals during local operations**—Shared funds may also be used to purchase food and beverages if state or local law or rules governing reimbursement of expenses permit officers to be reimbursed for such expenses, e.g., meals purchased while an officer is on official travel, attending a training conference, or engaged in a disaster operation, such as earthquake or hurricane relief.
- g. **Extravagant expenditures**—Receiving agencies should use federal sharing monies prudently and in such a manner as to avoid any appearance of extravagance, waste, or impropriety. For example, tickets to social events, hospitality suites at conferences, or meals outside of the per diem are impermissible uses of shared funds.

### 3. General guidance concerning use

- a. **Windfall situation**—In a windfall situation, where an agency receives equitable sharing funds totaling more than 25 percent of its budget in a fiscal year, the agency may be subject to additional audit and reporting requirements.
- b. **Use of interest income**—Interest earned on forfeited cash or proceeds must be deposited into the agency’s equitable sharing revenue account and used for law enforcement purposes and is subject to the same use restrictions as shared cash or proceeds.

- c. **Anticipated shared property should not be budgeted**—Agencies should not “spend it before you get it” or budget anticipated receipts. Receiving agencies may not commit to the spending of sharing monies for a certain purpose in advance. For example, if a local law enforcement agency files a Form DAG-71 to request a 50 percent share of \$100,000, the \$50,000 should not be obligated or budgeted for two reasons: (1) the completion of the forfeiture is uncertain; and (2) the amount of the sharing that will ultimately be approved is also uncertain.
- d. **Shared monies should not be retained unnecessarily**—Shared monies normally should be expended for their designated use or other permissible law enforcement purpose as they are received. Shared monies may be retained in a holding account for up to three years to satisfy future needs or retained longer for major long-term expenditures such as capital improvements.
- e. **Use of proceeds from sale of shared property**—Proceeds from the sale of shared property, facilities, equipment, and other items acquired with shared funds must be deposited into the agency’s equitable sharing revenue account and are subject to the same permissible use restrictions and reporting requirements as shared cash or proceeds, in accordance with the provisions of this *Guide*.

## **B. Increase and not replace**

Sharing must be used to increase or supplement the resources of the receiving state or local law enforcement agency or any other ultimate recipient agency. Shared resources **shall not be used** to replace or supplant the appropriated resources of the recipient. The recipient agency must benefit directly from the sharing. In determining whether supplantation has occurred, the Department of Justice will examine the law enforcement agency’s budget as a whole and allow agencies to use equitable sharing funds for any permissible purpose as long as shared funds **increase the entire law enforcement budget**. The Department of Justice may terminate sharing with law enforcement agencies that are not permitted by their governing authorities to benefit directly from equitable sharing.

*Example of Improper Supplantation:* A police department receives \$100,000 in federal sharing money only to have its budget cut \$100,000 by the city council. In this instance, the police department has received no direct benefit from equitable sharing whatsoever. Rather, the city as a whole has received the benefit of the sharing.

## **C. Transfer of forfeited real property**

The transfer of federally forfeited real property is permitted only in the following three situations:

1. Through the equitable sharing process, real property may be transferred to a state or local agency which substantially participated in the investigation that led to the seizure of the property. The agency must demonstrate a compelling law enforcement need for the property and outline its intended use on the DAG-71 form. The agency must also sign a memorandum of understanding with regard to the use of the property and agree to pay any federal costs/ expenses as well as the federal share before the transfer will be approved.

*Example:* A state police department assists in the seizure of a farm where drugs were grown. The agency may request the property instead of the proceeds from its sale if the agency has a compelling need, such as a law enforcement training facility or a police substation.

2. The Weed and Seed Initiative<sup>20</sup> authorizes the transfer of federally forfeited real property through state or local law enforcement agencies to private, nonprofit organizations to support drug abuse treatment, drug and crime prevention and education, housing, and job skills programs, or other community-based programs. The requirements of the Weed and Seed Initiative are as follows:
  - a. The initial recipient of the property must be a state or local law enforcement agency which participated in the investigation that resulted in the forfeiture;
  - b. The ultimate recipient must be an appropriate nonprofit organization, which agrees to use the property in compliance with the initiative and agrees that if the property ceases to be used for its intended purposes for a specified time period, title may revert back to the United States.
  - c. Any state or local agency with a claim to an equitable share of the property must agree to waive the claim.
  - d. A Form DAG-71 must be submitted by the initial recipient to the USAO identifying the property to be transferred to the nonprofit organization pursuant to the Weed and Seed Initiative.
  - e. The USAO must submit a "Request for Transfer of Real Property Pursuant to the Weed and Seed Initiative" and a draft Memorandum of Understanding along with the Form DAG-71 to AFMLS.
  - f. AFMLS will submit the completed package to the Deputy Attorney General for approval of the transfer.

Generally, title to real property will be transferred to the state or local law enforcement agency. If the initial recipient state or local law enforcement agency is not authorized to take title to the real property, then either the state or local government agency authorized to accept title on behalf of the law enforcement agency will receive title, or under certain circumstances, the Department of Housing and Urban Development may be able to take title to the property for re-transfer to the Weed and Seed recipient.

Questions on transfers pursuant to the Weed and Seed Initiative should be directed to AFMLS.

<sup>20</sup> See *Asset Forfeiture Policy Manual* (2008), Chap. 6, Sec. VIII.

3. A governor of a state in which a forfeited property is located may request that the property be transferred to that state for recreational or historic purposes or for the preservation of natural conditions. See 21 U.S.C. § 881(e)(4)(B). The Deputy Attorney General must approve these transfers.

#### **D. Transfer of forfeited tangible personal property**

1. Any forfeited tangible property (any property other than real estate) transferred to a state or local agency for official use must be used for law enforcement purposes only. Moreover, such transferred property is subject to the rules applicable to similar property purchased by a state or local agency with appropriated funds. Finally, forfeited luxury motor vehicles—an automobile with a National Automotive Dealers Association (NADA) wholesale value of \$50,000 or more—may be placed in official use only for undercover law enforcement purposes.

*Example:* A federally forfeited SUV is assigned to a state or local law enforcement official who is not authorized to use a government vehicle under local rule. This is impermissible because the forfeited SUV would be subject to the same use restrictions as purchased vehicles.

*Example:* A federally forfeited luxury car worth more than \$50,000 is assigned to a law enforcement official who is authorized to use a government vehicle, but the luxury vehicle is used for routine law enforcement work. This is impermissible because a luxury vehicle is being used for purposes other than undercover work, thereby misusing government resources and creating an appearance of impropriety.

2. The recipient law enforcement agency may, at its discretion, transfer the tangible property to another governmental department or agency to support drug abuse treatment, drug and crime prevention and education, housing, and job skills programs, or other community-based programs. Such governmental department or agency may, in turn, transfer any tangible property so received to a private, nonprofit community organization to be used for such purposes.

Tangible property transferred for official law enforcement use must be used for at least two years. If, however, the property becomes unsuitable for the stated purpose before the end of the two-year period, it may be sold with approval from AFMLS and the proceeds deposited in the agency's federal equitable sharing revenue account and used in compliance with this *Guide*.

#### **E. Reimbursement of federal costs**

State and local law enforcement agencies that receive real property or tangible personal property must pay the Department of Justice Assets Forfeiture Fund for any liens, costs related to storage or maintenance, costs of shares to other agencies, and the federal share. If the agency is unable to pay these expenses with appropriated or equitably shared funds, these costs can be charged against the agency's equitable share of other assets in the case. If the requesting agency is unable to pay the federal share, costs, and the shares of other agencies, the property will be sold and the proceeds equitably distributed to participating agencies.

#### **F. Return of equitably shared funds**

On occasion, a criminal conviction, forfeiture order, or equitable sharing decision may be reversed after the equitable sharing payments have been disbursed to state and local law enforcement agencies. In such cases, it may be necessary for the shared funds to be returned to the United States. The state and local agency recipients will be notified of the reversal by the Department of Justice component that rendered the equitable sharing decision. When such a return of funds is necessary, the recipient state or local agency will have the option of either: (A) returning the funds via a check to the USMS or (B) having an equivalent amount off-set against future equitable sharing. When an agency elects to have the funds off-set against future sharing, it must contact the USMS District Office in writing.

## APPENDIX C:

### Guidelines for Determining a Community-Based Program's Eligibility

To ensure that recipient law enforcement agencies administer these guidelines for determining a community-based program's eligibility in accordance with the federal law and Department of Justice policy, an agency's chief law enforcement officer must ensure his or her agency's adherence to the following requirements governing eligibility, background, and compliance of applicants to be eligible to benefit from shared funds. The federal investigating agencies and the United States Attorney's Offices also are tasked with helping to ensure applicants' suitability to receive guidelines for shared funds use expenditures. Once completed, the chief law enforcement officer's certification that an applicant is eligible to benefit from shared funds will remain effective for one year.

#### I. Eligibility

For an applicant to benefit from permissible use expenditures, the chief law enforcement officer shall determine that the applicant fulfills the following eligibility requirements:

##### A. Type of Entity

The applicant must be either:

- (1) a state, county, or local governmental department or agency; or
- (2) a private, nonprofit organization, pursuant to 26 U.S.C. § 501(c)(3) or (4).

##### B. Activity of Entity

The applicant also must be primarily engaged in providing a program that is both:

- (1) community-based; and
- (2) supportive of and consistent with a law enforcement effort, policy, or initiative.

Such programs include, but are not limited to, the following:

- (1) drug abuse treatment;
- (2) drug and crime prevention education;
- (3) providing housing; or
- (4) providing job skills.

In order to assist chief law enforcement officers in determining whether a potential recipient of benefits under the guidelines for supporting community-based programs with shared funds is eligible,

the Department of Justice provides the following non-exclusive list of examples of activities that it has approved in the past as qualifying to benefit from equitable sharing:

- (1) establish a detoxification center;
- (2) fund a Police Athletic League's "Summer Playstreets" program for crime and drug prevention;
- (3) fund a city parks department's anti-gang initiative;
- (4) fund "Law Enforcement Explorer Posts," a Boy Scouts program promoting law enforcement training and community service;
- (5) fund a "Crime Stoppers" program providing reward money and assistance to neighborhood watch groups including training on observance and effective witness skills;
- (6) purchase a computer for teaching job skills and drug and alcohol awareness to probationers;
- (7) fund programs for incarcerated youth, parents of murdered children, and domestic violence victims; and
- (8) fund a methadone clinic.

Considering each of these approved activities, the Department of Justice based its approval on the activity's nexus to a law enforcement interest, whether:

- (1) direct (e.g., paying rewards for key information);
- (2) preventative (e.g., funding a methadone clinic, drug awareness program, anti-gang initiative, and probationer training); or
- (3) developmental in promoting community policing (e.g., incorporating law enforcement awareness in a Boy Scout program).

## **II. Background and Compliance with Law and Policy**

### **A. Certification by Applicant**

An applicant for benefits to support community-based programs with shared funds must certify in writing the following aspects of its background and compliance with federal law and Department of Justice guidelines:

- (1) The applicant fulfills the basic eligibility requirements set forth in parts I.A and B above.
- (2) The applicant agrees:
  - a. to account separately for all guidelines for shared funds use benefits received; and
  - b. to subject such accounting to the standard accounting requirements and practices employed under state or local law for recipients of federal, state, or local funds.

- (3) The applicant is in compliance with the federal civil rights laws.
- (4) The applicant is in compliance with federal laws that apply to the applicant.
- (5) No officer, director, trustee, or fiduciary of the applicant has been:
  - a. convicted of a felony offense under federal or state law; or
  - b. convicted of any drug offense.
- (6) No shared benefits will be used for political or personal purposes.
- (7) No shared benefits will be used for any purpose that would constitute an improper or illegal use under the laws, rules, regulations, or orders of the state or local jurisdiction in which the applicant is located or operates.

The applicant's certification must be signed by the head of the applicant entity and must be submitted to the chief law enforcement officer who will approve expenditures on the applicant's behalf. The chief law enforcement officer shall maintain this certification as a record as long as the applicant may benefit from shared funds, and thereafter, for as long as the chief law enforcement officer is required to maintain records under applicable state or local laws or regulations.

Any applicant that cannot certify its compliance with number 5 above (criminal record of principals) should provide the chief law enforcement officer with a detailed explanation of the aspects in which, and the reasons why, certification is not possible. A chief law enforcement officer who wishes to provide support to an applicant that cannot certify compliance with number 5 above shall provide an explanation for his or her position, along with a copy of the applicant's explanation, as an attachment to the law enforcement agency's Form DAG-71 (Application of Transfer of Federally Forfeited Property) to the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division, Department of Justice. AFMLS will make the final decision on whether the provision of guidelines for shared funds use benefits is appropriate.

An applicant for benefits under these guidelines that cannot certify the other aspects of its background and compliance with federal law and Department of Justice guidelines (numbers 1-4, 6 and 7 above) will be denied guidelines for shared funds use benefits.

**B. Statement by Chief Law Enforcement Officer**

The chief law enforcement officer shall explain in writing why the applicant's receipt of permissible use benefits for the particular activity or use is supportive of and consistent with a law enforcement effort, policy, and/or initiative within the guidelines to support community-based programs. The chief law enforcement officer also shall maintain this written statement as a record as specified in section II.A above.

### **C. Inquiry by the Chief Law Enforcement Officer**

A chief law enforcement officer is also responsible for determining whether an applicant for benefits under these guidelines or its principals (e.g., officer, director, trustee, or fiduciary) currently is the subject of federal, state, or local criminal investigation. Accordingly, a chief law enforcement officer shall:

- (1) utilize all investigative resources available (e.g., National Crime Information Computer) to determine the applicant's status and provide the findings to the federal investigative agency on the Form DAG-71; and
- (2) fully identify the applicant and its principals on the Form DAG-71.

### **D. Inquiry by the Federal Investigating Agency**

The federal investigative agency that receives the Form DAG-71 shall use the information identifying the applicant and its principals to conduct further checks of whether the applicant or its principals currently are the subject of a federal, state, or local criminal investigation. The federal investigative agency also shall provide this identifying information to the United States Attorney in the district where the applicant is located, and where the applicant is operating, and to the chief law enforcement officer involved (unless non-disclosure is required to safeguard a federal investigation in progress).

### **E. Inquiry by the United States Attorney**

The United States Attorney in the district where an applicant or one of its principals is located, or where it or one of its principals is operating, shall determine whether the applicant or principal currently is the subject of grand jury proceedings or other prosecutorial scrutiny in that district, and the United States Attorney shall notify the federal investigative agency of the findings, and also shall notify the chief law enforcement officer involved (unless non-disclosure is required by federal law or to safeguard a federal investigation in progress).

## SEC. 35-13B DRUG ENFORCEMENT FORFEITURES FUND — REGULATIONS

### COMCOR 35.13B.01 Drug Enforcement Forfeiture Fund

#### 35.13B.01.01 Administration

1.1. Source of Funds. Monies forfeited to Montgomery County, Maryland, under Sections 297 and 297A, Article 27, Annotated Code of Maryland 1957, 1982 Repl. Vol. as amended, after April 29, 1986, must be the source of the funds for the Drug Enforcement Forfeiture Fund ("Fund"). These funds shall include cash or currency, proceeds derived from sale of real property, criminal proceeds, conveyances, personal property, including financial instruments, and funds turned over to Montgomery County from other governmental agencies through drug enforcement asset sharing procedures, as well as any other funds to which the county is entitled as a result of drug forfeiture proceedings.

1.2. Authorization to Expend Funds. All expenditures of the fund must be authorized by appropriation pursuant to Article 3 of the Montgomery County Charter.

1.3. Use of Funds. The intent of Section 35-13B is to allow the Department of Police the discretion to use the Fund for narcotics enforcement in the areas of investigations, training, and equipment procurement. Subject to authorization by the Chief of Police or his designee, Fund monies must be used in the following manner:

(a) Investigations. Fund monies must be used for the controlled purchase of drugs, to pay informants, and other expenses related to drug investigations.

(1) Expenditures for investigations are limited to monies available in the Fund. No amount greater than \$25,000 may be spent on any single investigation. In cases where a single investigation requires an expenditure greater than the \$25,000 limit, the Chief of the Investigative Services Bureau must recommend the expenditure to the Chief of Police who will have final authority to approve the request, subject to the status of the account balance.

(b) Training. To remain current with investigative techniques and to maintain the technical expertise required for narcotics investigations, Fund monies must be used to allow officers to attend, participate in, and conduct training programs and professional meetings in the field of drug investigations and other topics relevant to those investigations including interagency gatherings for the purpose of information exchange.

(1) Expenditures for training purposes must be for travel, lodging, registration, instructional expenses, per diem, meeting expenses, consultants, and other costs approved by the Chief of Police consistent with the appropriate county administrative procedures or executive regulations.

(2) Fund monies for training purposes may be spent only after authority has been given by the director of the Special Investigations Division, the chief of the Investigative Services Bureau, the Training Selection Committee, and the Chief of Police.

(c) Equipment. In order to allow the Police Department to utilize the most recently developed equipment and state-of-the art technology in the enforcement of narcotics laws, Fund monies may be used to purchase or lease equipment. The Special Investigations Division also may lease equipment to

increase or supplement the

Department's present capabilities in individual cases, where appropriate, including the lease of motor vehicles.

(1) Expenditures for equipment purposes must be made in accordance with Montgomery County Government Procurement Regulations.

(A) Purchases. A committee, comprised of the chief of the Investigative Services Bureau, the police Management and Budget director, and the director of the Special Investigations Division, must determine if a requested item should be purchased, and must forward the recommendation for an item's purchase to the Chief of Police for review and approval. If the Chief of Police approves the committee's decision, a purchase request must be sent to the Office of Procurement for action.

The Department of Police must recommend the appropriate method of procurement for the item(s) requested based on the department's needs. Expenditures of \$500 or less can be authorized by the director of Special Investigations Division.

(B) Leasing/Rental. Leases or rentals that will not exceed a total of \$500 or 30 days are within the discretion of the director of Special Investigations Division. Leases or rentals that exceed these limits must have the additional approval of the chief of the Investigative Services Bureau. All leases and rentals must be consistent with, and subject to, the Procurement Regulations of Montgomery County.

(d) Asset Sharing. Where monies have been forfeited because of controlled dangerous substance violations, and the forfeiture arose from interagency action between the county police department and other law enforcement agencies including the Maryland National Capital Park Police, the County Chief of Police is authorized to make an equitable distribution of such funds after receiving a recommendation from the chief of the Investigative Services Bureau, the Police Management and Budget director and the director of the Special Investigations Division. The director must transfer to Maryland-National Capital Park Police all funds in the Drug Enforcement Forfeiture Fund that result from any arrest within the boundaries of any park under the jurisdiction of the Maryland-National Capital Park and Planning Commission if the arrest was initiated by the Park Police and another law enforcement agency was not involved in the arrest or investigation.

(e) Other Expenses. Should the fund have sufficient monies available after supplementing the Drug Enforcement Section of the Special Investigations Division, the Chief of Police may authorize use of the Fund to enhance the narcotics enforcement capabilities of other units within the Department of Police.

The director of the Special Investigations Division, will submit a report to the Chief of Police, through the normal chain of command, in the month of July which will reflect all monies available in the Fund and that amount of money necessary to supplement the Drug Enforcement Section.

#### 1.4. Maintenance of Monies.

(a) Special Revenue Fund. A special revenue fund must be established by the director of the Department of Finance for the deposit of forfeited monies.

(b) Liquid Assets. Cash monies in an amount not to exceed \$25,000 on hand may be drawn from the special revenue fund account and must be placed in a safe located in an area to be chosen by the

Chief of Police or his designee. Access to the liquid assets must be restricted to the chief of the Investigative Services Bureau and the director of the Special Investigations Division or his designee.

(1) Replenishment. Liquid assets must be maintained at the \$10,000 level by way of replenishment requests to the director of the Department of Finance from the director of the Special Investigations Division, or in his absence, the chief of the Investigative Services Bureau, via the Police Management and Budget director, or the director's designee.

(2) Accounting. A cash control log must be maintained by the Special Investigations Division to monitor the activity of the liquid assets under the control of the chief of the Investigative Services Bureau and the director of the Special Investigations Division.

(A) All requests for monies must have a cash expenditure memorandum and justification request. The memorandum and request must be assigned a control log number and must be maintained in a permanent file.

(B) The requests must be reviewed and approved by the director of the Special Investigations Division or the commander of the Drug Enforcement Section.

(C) All approved expenditure requests must be completed within three days of receipt of the funds unless an exception has been approved by the director of the Special Investigations Division and must be documented with an accompanying expenditure memorandum. Unused funds must be returned to the director of the Special Investigations Division and must be accounted for in the expenditure memorandum.

(D) All approved expenditure requests must be logged into a liquid asset control log that must be kept by the director of the Special Investigations Division. The log must reflect a reconciled balance between expenditure requests and actual expenditures.

(E) A checking and/or credit/debit account drawn on the Drug Enforcement Fund may be maintained by the director of the Special Investigations Division in order to pay for authorized expenses.

(c) Audit. All books, records, and control logs maintained by the Department of Police in connection with the Fund must be subject to periodic and unannounced audits by the Department of Finance.

(d) Pursuant to asset sharing provision of the Drug Enforcement Fund law, the director of the Special Investigations Division will recommend the transfer of funds when appropriate to other law enforcement agencies. This recommendation must be made to the Chief, Investigative Services Bureau and approved by the Chief of Police.

(e) A Special Investigations Division S.O.P. will be formulated to administer the flow of asset sharing funds to the affected agencies in conjunction with the Management and Budget Division, Montgomery County Department of Police.

### 1.5. Record Keeping

(a) Forfeiture Deposits. The Office of the County Attorney must notify the director of the Department of Finance of the forfeiture of monies to the County by either the Circuit Court or District Court and the amount forfeited. This notification must come via the Assistant County Attorney assigned

to the Department of Police. Copies of the notice also must be sent to the director of the Special Investigations Division and the Property and Supply supervisor. The Property and Supply supervisor must advise the director of the Special Investigations Division of the date when the forfeited monies are deposited in the special revenue fund.

(b) Account Balances. The director of the Special Investigations Division, must maintain a daily log/ledger showing the balance in the Investigative Advance account (cash on hand) and must submit appropriate reports at least monthly with supporting documentation to the Chief of Police and the director of the Management and Budget Division, Department of Police for verification. The report will reflect all replenishment and disbursements from the investigative advance account for the month. The Director of Accounts must submit to the director for Management and Budget, Department of Police, and to the director of the police department's Special Investigations Division a monthly report on monies in the account.

(c) Supporting Documentation. The documentation which is to accompany the monthly account balance report must consist of the following: the written notification received from the County Attorney's Office advising of the forfeiture award, Section 1.5(a); the written notice from the Property and Supply supervisor of the date the forfeited monies were deposited to the special revenue fund, Section 1.5(a); copies of the account activity log, Section 1.5(b); and copies of the memoranda requesting withdrawal of funds, actual expenditures, and any reconciliation information received from the assigned investigator(s) (Section 1.4(b)(2)(A) and (C)).

### **35.07.01.02 Reports**

2.1. Monthly Report. The director of the Special Investigations Division must submit a copy of the latest monthly Operating Budget Report for the Drug Enforcement Fund to the Chief of Police via the chief of the Investigative Services Bureau along with the divisional monthly report. The report must include a statement of the total amount of money in the Drug Enforcement Fund; the amount of money expended for investigative advances, supplies, travel, education and training, repairs to equipment, rental of equipment, personal computer costs, dues and subscriptions, and miscellaneous. This report will also show the balance of the fund on hand for the period. Copies must be provided to the director of Police Management and Budget and to the Assistant County Attorney assigned to the Department of Police.

2.2. Year-End Report. The director of the Special Investigations Division must submit to the Chief of Police a year-end report which must include those areas specified in Section 2.1, Monthly Report, via the chain of command. Year-end totals for all categories of the Fund must be provided. Copies of the year-end report must be submitted to the director of Police Management and Budget, the director of the Department of Finance, and the Assistant County Attorney assigned to the Department of Police. The year must commence and terminate with the anniversary date of the effective date of the legislation.

2.3. Report to County Council. A report must be submitted to the County Council on March 1 of every year.

### **35.07.01.03 Effective Date**

3.1. This regulation becomes effective 30 days after adoption by the County Council.

(Administrative History: Reg. No. 7-92 (Method 2); Dept.: Police; Supersedes Reg. Nos. 25-90AM and 7-92E)

MONTGOMERY COUNTY, MARYLAND  
 SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE - BUDGET AND ACTUAL  
 DRUG ENFORCEMENT FORFEITURES SPECIAL REVENUE FUND  
 FOR THE FISCAL YEAR ENDED JUNE 30, 2008  
 Exhibit B-22

	Budget			Actual	Variance Positive (Negative)
	Prior Year Encumbrances	Current Year	Total		
Revenues:					
Fines and forfeitures	\$ -	\$ -	\$ -	\$ 515,874	\$ 515,874
Investment income	-	-	-	123,817	123,817
Miscellaneous	-	-	-	11,824	11,824
Total Revenues	<u>-</u>	<u>-</u>	<u>-</u>	<u>651,515</u>	<u>651,515</u>
Expenditures:					
Personnel costs	-	310,000	310,000	14,398	295,602
Operating	52,167	1,689,039	1,741,206	529,759	1,211,447
Capital Outlay	-	700,000	700,000	164,382	535,618
Total Expenditures	<u>52,167</u>	<u>2,699,039</u>	<u>2,751,206</u>	<u>708,539</u>	<u>2,042,667</u>
Excess of Revenues over (under) Expenditures	<u>(52,167)</u>	<u>(2,699,039)</u>	<u>(2,751,206)</u>	<u>(57,024)</u>	<u>2,694,182</u>
Fund Balance - Beginning of Year	52,167	2,699,039	2,751,206	2,751,206	-
Fund Balance - End of Year	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 2,694,182</u>	<u>\$ 2,694,182</u>

Reconciliation of budgetary schedule to GAAP basis Combining Statement of Revenues, Expenditures, and Changes in Fund Balances:

Budgetary - Excess of Revenues and Other Financing Sources over (under) Expenditures and Other Financing Uses	Total
	\$ (57,024)
Reconciling items:	
Cancellation of prior year encumbrances	(11,824)
Elimination of encumbrances outstanding	30,990
GAAP - Net Change in Fund Balance	<u>\$ (37,858)</u>