



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan  
County Executive

Charles W. Thompson, Jr.  
County Attorney

**MEMORANDUM**

TO: Charles A. Moose, Ph.D.  
Chief of Police

VIA: Marc Hansen, Chief *MPH KBJ*  
General Counsel Division

FROM: Michael A. Fry *MAF*  
Assistant County Attorney

DATE: January 6, 2003

RE: Use of Drug Enforcement Forfeiture Fund to Purchase Weapons for Police Department

I have been asked to review the laws and regulations regarding the use of the County's Drug Enforcement Forfeitures Fund as a source of monies for the possible purchase of new handguns for the Police Department. The specific question asked was whether that fund could be used to purchase those handguns. I believe that the fund may be used for that purpose. Below are my findings.

**BACKGROUND**

During the year 2000, the Police Department made 2295 arrests for narcotics, 429 of those, or 19%, were made by the Special Investigations Division, ("SID"), the specialized unit responsible for complex drug investigations. The remaining 81% of drug arrests in 2000 were made by street officers. In 2001, that number fell slightly to 2147 arrests, with 394 being made by SID, or 82% and 18% respectively. SID, alone, seized \$4,500,300 in currency in 2000, and \$2,193,415 in 2001.<sup>1</sup> The amount of currency seized by street officers is not available.

**FEDERAL LAW**

The United States Attorney General is empowered to share federally forfeited property with state and local law enforcement agencies that participate in federally sponsored drug investigations. The amount of sharing depends upon the "relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture . . . ." 21 U.S.C.

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<sup>1</sup>Not all of these funds, however, were subject to forfeiture.

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§881(e)(3). The primary purpose of the federal forfeiture program is law enforcement directed at deterring crime by depriving criminals of the profits and proceeds of their illegal activities and to weaken criminal enterprises by removing the instrumentalities of the crime. *See, A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies*, U.S. Department of Justice, March 1994.

Among the various permissible uses of equitably shared property is the purchase of body armor, *firearms*, radios, cell telephones, computer equipment, software to be used in support of law enforcement purposes, vehicles, electronic surveillance equipment, uniforms, travel, transportation, supplies, leasing of office and other space for task force and undercover operations, and leasing of other types of equipment that support law enforcement activities.<sup>2</sup> *Id.*

With respect to the purchase of weapons, the Department of Justice ("DOJ") has indicated that this is a permissible use of the funds. In the Guide described above, DOJ relates a situation where a county sheriff's department purchased 118 semi-automatic weapons. While the Sheriff thought the weapons should have been paid for out of the county general fund, the county refused to do so. Because the sheriff considered having the weapons to be an officer safety issue, he approved buying them with sharing proceeds rather than going without them. DOJ found this use proper. In their commentary, they remarked, "The sheriff was correct to say that this is the type of purchase that should be financed with appropriate funds. However, absent such funds, the purchase of additional equipment of any type is permissible so long as it enhances the ability of the agency to do its job." *Id.*

### COUNTY CODE

The Chief of Police must administer the Drug Enforcement Forfeitures fund ("DEF fund") and its use is restricted to "expenses related to enforcement of laws regarding controlled dangerous substances." §35-13B(c)(2). Among the permissible uses of the DEF fund are (1) payments to informants, (2) purchase or lease of equipment, and (3) any other expense related to such activities. §35-13B(c)(2)(A)-(C).

Prior versions of §35-13B(c)(2) limited the use of funds to expenses "related to narcotics investigations." County Council Bill 18-93 changed that language to its current form. *See*, 1993 L.M.C., ch. 40, §1. The Legislative Request Report accompanying Bill 18-93 reveals that the intent of the legislation was to broaden the permissible uses of the DEF fund. The bill was described as "clarif[ying] the law regarding the use of the Drug Enforcement Forfeitures Fund for all activities

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<sup>2</sup>Other permissible uses include activities calculated to enhance future investigations, law enforcement training, detention facilities, law enforcement facilities and equipment, and drug education and awareness programs. *See A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies*.

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related to the enforcement of laws regarding controlled dangerous substances.” *See*, Legislative Request Report, attached hereto. When describing the problem for which the bill was introduced it was noted that “[c]urrent law can be interpreted to limit the use of the Fund to pay expenses of narcotics investigations.” *Id.* The precise “Goals and Objectives” of Bill 18-93 were defined as “[t]o clarify that the Fund can be used to pay expenses of all activities related to the enforcement of laws regarding controlled dangerous substances.” *Id.*

### **EXECUTIVE REGULATION 7-92: “DRUG ENFORCEMENT FORFEITURES FUND”**

To administer the DEF fund, the Council adopted Executive Regulation 7-92 on December 24, 1992. During review by the Public Safety Committee, information was provided that showed that the regulation in effect then allowed the use of the DEF fund *only* by SID. *See*, Public Safety Committee Minutes, September 24, 1992, attached hereto.

Assistant County Attorney Ramona Bell-Pearson advised the Committee that it was the opinion of “several members of the County Attorney’s Office that the [DEF fund] law is broad enough to allow” the purchase of handguns.<sup>3</sup> *Id.* Then-Chief of Police, Clarence Edwards told the Committee that most of the County’s crime was the result of the use or selling of narcotics. *Id.*

Executive Regulation 7-92 explains that the “intent of Section 35-13B [of the County Code] is to allow the Department of Police the discretion to use the [DEF] Fund for narcotics enforcement in the areas of investigations, training, and equipment procurement.” *See*, Executive Regulation 7-92, §1.3. That language is consistent with the stated goals and objectives of Bill 18-93 which was to broaden the permissible uses of the DEF fund for all law enforcement purposes.

Executive Regulation 7-92 specifically permits the Police Department to purchase equipment, including weapons. Section 1.3(c) provides, in part:

In order to allow the Police Department to utilize the most recently developed equipment and state-of-the-art technology in the enforcement of the narcotics laws, Fund monies may be used to purchase or lease equipment.”

Clearly, the intent of both §35-13B and Executive Regulation 7-92 is to permit the Police Department to make necessary equipment purchases from the DEF fund.

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<sup>3</sup>This statement appears to have been based on informal discussions and not a written document.

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## CONCLUSION

Arrest data shows that about 4 out of 5 drug arrests are made by street officers. Those numbers illustrate the importance of street officers in drug enforcement. Concomitant with that recognition is the conclusion that all police officers, but especially street officers, must be properly equipped to meet that task.

I believe that the Drug Enforcement Forfeitures Fund may be used as a source to purchase new handguns for the Police Department under existing federal law and County law and regulations. I think it is clear that in 1992, the County specifically decided to permit the Police Department to use the fund to purchase equipment not directly related to specific drug enforcement activity but to the broader enforcement goals.

### Attachments

cc: Joseph Beach  
Acting Director  
Office of Management and Budget

MAF:

BAF\Frym\DEF.opinion.2.wpd

**Department Narcotics Arrests**

2000 2,295  
2001 2,147

**SID Narcotics Arrests**

2000 429  
2001 394

19% of total CDS arrests  
18% of total CDS arrests

**SID Currency Seizure Numbers**

2000 \$4,500,300  
2001 \$2,193,415

Not all seized funds are subject to forfeiture.

**SID CDS Values Seized**

2000 \$1,603,157  
2001 \$4,704,765

APPROVED

Attachment 4

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

PUBLIC SAFETY COMMITTEE

Thursday, September 24, 1992  
9:05 A.M. to 12:05 P.M.  
Council Hearing Room

PRESENT

Betty Ann Krahnke, Chair

Gail Ewing

Nancy Dacek

SUBJECT: Executive Regulation 7-92, Drug Enforcement Forfeiture Fund

The Committee had before it the memorandum, dated September 22, 1992, from Senior Legislative Analyst Hughes transmitting the subject executive regulation. She explained that the current regulation only allows the use of the Fund by the Special Investigations Division, and the new regulation would allow the use of the Fund by other divisions. She said she believes the current law limits the use of the Fund, and recommended that, if the decision is to allow the use of the Fund to support enforcement activities, an amendment to the law be adopted.

Assistant County Attorney Bell-Pearson advised that the issue of consistency with the law was raised at the time the Department considered using the Fund for the purchase of handguns, and it was the opinion of several members of the County Attorney's Office that the law is broad enough to allow such an expenditure. She advised that the current law indicates that the Director of the Police Department must administer the program according to the regulations which are adopted, and noted that any division of the Police Department may be called upon to do narcotics enforcement at any time. Ms. Ewing said she does support additional legislation if it has been determined that the existing law is broad enough to allow for the use of the Fund for other than narcotics investigations.

With respect to whether the use of the Fund should be expanded, Chief Edwards, Director, Police Department, noted that most of the County's crime is the result of the use or selling of narcotics.

Ms. Hughes noted that currently the Council receives information on the use of the Fund, but it is not reviewed during the budget process. She recommended that, should the use of the Fund be expanded, its use be reviewed in the context of the budget review. Although the Council has no direct authority over the use of the Fund, Ms. Krahnke suggested that the Council receive a report, when it reviews the budget, on how the Department proposes to use the Fund for the following year.

9/24/92

In response to Ms. Ewing's inquiry, Captain McKenna, Police Department, advised that the records on the use of the Fund are available for auditing, and that there have been two audits since the Fund was established. Ms. Ewing said she believes the Fund should be audited on a regular basis. Ms. Krshnke noted that the frequency of audits is not the same for every account, and said she believes this may be an issue the Management and Fiscal Policy Committee should review.

**ACTION:** Recommended approval of Executive Regulation 7-92  
by motion of Ms. Dacek, without objection.

Agreed that, during review of the operating budget, the Council will receive a report on how the Department intends to use the Fund for the following year.

Requested that the County Attorney's Office review the existing law to determine whether clarification is needed with respect to the use of the Fund to support activities other than narcotics investigations.

**SUBJECT:** Bill 2-92, Alarms

The Committee had before it the memorandum, dated September 24, 1992, from Legislative Attorney Beninger summarizing the public hearing testimony, reviewing the alarm laws which have been adopted in other jurisdictions, and setting forth issues for the Committee's consideration.

Chief Edwards noted the increase in serious crime in the County over the past few years and the need to develop ways to more effectively utilize the Department's staff resources to respond to the increase in crime. He said he believes reducing the number of false alarms to which the Police Department must respond is an important objective, and expressed confidence that alarm legislation can be adopted to meet the concerns of citizens, the industry, and the Department. Although he believes financial incentives will help reduce the number of false alarms, he said he believes the legislation must also include provisions requiring the suspension of police response after eight false alarms in a one-year period.

Ms. Gregg, Director, Office of Consumer Affairs (OCA), expressed support for the goal of reducing the number of false alarms without overregulation. She recommended that the legislation provide clear incentives to reduce the number of false alarms and to encourage the industry to develop standards for the installation of alarm systems, that the alarm companies be required to pay the alarm response fees, that an appeal process be considered, and that police response be suspended after eight false alarms.

Ms. Krahnke reviewed the actions taken by the Committee on the last worksession on the bill.

Post-It® Fax Note

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Date	# of pages ▶ 4
To Ed Presen	From Linda Mc
Co/Dept.	Co.
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### LEGISLATIVE REQUEST REPORT

Bill 18-93

Drug Enforcement Forfeitures Fund

**DESCRIPTION:** Clarifies the law regarding the use of the Drug Enforcement Forfeitures Fund for all activities related to the enforcement of laws regarding controlled dangerous substances.

**PROBLEM:** Current law can be interpreted to limit the use of the Fund to pay expenses of narcotics investigations.

**GOALS AND OBJECTIVES:** To clarify that the Fund can be used to pay expenses of all activities related to the enforcement of laws regarding controlled dangerous substances.

**COORDINATION:** Police Department.

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** None.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** Unknown.

**SOURCE OF INFORMATION:** Elizabeth Beninger, County Council Staff, 217-7949.

**APPLICATION WITHIN MUNICIPALITIES:** Applies in Barnesville, Brookville, Chevy Chase Village, Chevy Chase Sec. 3, Town of Chevy Chase, Chevy Chase Sec. 5, Gaithersburg, Glen Echo, Laytonsville, Martin's Addition, and Takoma Park.

**PENALTIES:** Not applicable.

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

35-13B. Drug Enforcement Forfeitures Fund.

\* \* \*

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

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

- (A) payments to informants;
- (B) purchase or lease of equipment; and
- (C) any other expense related to [narcotics investigations] such enforcement activities.

\* \* \*

Approved:

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Marilyn J. Praisner, President, County Council

\_\_\_\_\_  
Date

Approved:

\_\_\_\_\_  
Neal Potter, County Executive

\_\_\_\_\_  
Date

(Z)

Sec. 35-13B. Drug Enforcement Forfeitures Fund.

- (a) In the department of police, there is created the Drug Enforcement Forfeitures Fund.
- (b) The county executive or a designee must deposit in the Drug Enforcement Forfeitures Fund money that is forfeited to the county under state law as drug-related contraband. Forfeited money may include cash and:
  - (1) proceeds from the sale of real property;
  - (2) criminal proceeds;
  - (3) proceeds from the sale of means of transport, including vehicles, boats, and airplanes;
  - (4) personal property, including financial instruments;
  - (5) funds turned over to the county by other government agencies through drug enforcement asset sharing procedures; and
  - (6) any other funds to which the county is entitled as the result of drug forfeiture proceedings.
- (c)
  - (1) The Director of the Department of Police must administer the Drug Enforcement Forfeitures Fund.
  - (2) The Director must use the Drug Enforcement Forfeitures Fund for expenses related to enforcement of laws regarding controlled dangerous substances. These expenses may include:
    - (A) payments to informants;
    - (B) purchase or lease of equipment; and
    - (C) any other expense related to such enforcement activities.
  - (3)
    - (A) The director may transfer funds to another law enforcement agency if the other law enforcement agency initiated the forfeiture proceeding or was significantly involved in the arrest or investigation leading to the forfeiture.
    - (B) The director must transfer to the Maryland-National Capital Park Police all funds in the Drug Enforcement Forfeitures 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.
- (d) The money in this fund:

(1) is subject to audit by the county executive; and

(2) must be included and identified in any financial report of the police department.

(e) The county executive may adopt regulations under method (2) to implement this section. (1986 L.M.C., ch. 34, § 1; 1989 L.M.C., ch. 37, § 1; 1990 L.M.C., ch. 20, § 1; 1993 L.M.C., ch. 40, § 1.)

## DEPARTMENT OF POLICE

### DRUG ENFORCEMENT FORFEITURE FUND

Regulation No. 7-92

Authority: Montgomery County Code Section 35-13B(b)(2)  
Council Review: Method (2) under Code Section 2A-15

#### Sec. 1 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.

U.S. Department of Justice  
Washington, D.C. 20530

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# A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies

*March 1994*



## I. SHARING AUTHORITY

The Attorney General's authority to share federally forfeited property with participating state and local law enforcement agencies is established in federal law.<sup>1</sup> The exercise of this authority is discretionary. The Attorney General is not required to share property in any case.

The Controlled Substances Act most fully states the intent of Congress in the sharing of forfeited property. It provides that:

*The Attorney General shall assure that any property transferred to a State or local law enforcement agency . . .*

- (A) *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, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based; and*
- (B) *will serve to encourage further cooperation between the recipient State or local agency and Federal law enforcement agencies.*

21 U.S.C. § 881(e)(3).

## II. PURPOSES OF THE DEPARTMENT OF JUSTICE FORFEITURE PROGRAM

The primary purpose of the Department's Forfeiture Program is law enforcement: to deter crime by depriving criminals of the profits and proceeds of their illegal activities and to weaken criminal enterprises by removing the instrumentalities of crime. An ancillary purpose of the program is to enhance cooperation among federal, state, and local law enforcement agencies through the equitable sharing of federal forfeiture proceeds.

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<sup>1</sup> 21 U.S.C. § 881(e)(1)(A) and (e)(3), 18 U.S.C. § 981(e)(2), and 19 U.S.C. § 1616a.

## X. USES OF EQUITABLY SHARED PROPERTY

### A. Law Enforcement Uses

1. **Permissible Uses.** Subject to laws, rules, regulations, and orders of the state or local jurisdiction governing the use of public funds available for law enforcement purposes (see paragraph 2.e. of this section), the expenses noted below are pre-approved as permissible uses of shared funds and property.<sup>8</sup> Among the following uses, priority should be given to supporting community policing activities, training, and law enforcement operations calculated to result in further seizures and forfeitures:

- a. **Activities Calculated to Enhance Future Investigations** — The support of investigations and operations that may result in further seizures and forfeitures, e.g., payment of overtime for officers and investigators; payment of the first year's salaries for new law enforcement positions that supplement the workforce; payments for temporary or not-to-exceed-one-year appointments; payments to informants; "buy," "flash," or reward money; and the purchase of evidence.

**SEE ADDENDUM PG. 3**

- b. **Law Enforcement Training** — The training of 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, caselaw); (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; (4) due process rights; (5) protecting the rights of innocent third-parties (individuals and lienholders); and (6) this Guide.
- c. **Law Enforcement Equipment and Operations** — The purchase of body armor, firearms, radios, cellular telephones, computer equipment, software to be used in support of law enforcement purposes, vehicles (e.g., patrol vehicles, surveillance vehicles), electronic surveillance equipment, uniforms, travel, transportation, supplies, leasing of office and other space for task force and

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<sup>8</sup> See Appendix B for further examples of permissible and impermissible uses. Also note that expenditures for these uses are permissible only to the extent that they increase resources available to the receiving agency. See Section X.B. of this Guide.



undercover operations, and leasing of other types of equipment that support law enforcement activities.

- d. **Detention Facilities** — The costs associated with construction, expansion, improvement, or operation of detention facilities managed by the recipient agency.
- e. **Law Enforcement Facilities and Equipment** — The costs associated with basic and necessary facilities, government furniture, safes, file cabinets, telecommunications equipment, etc., that are necessary to perform official law enforcement duties.
- f. **Drug Education and Awareness Programs** — The costs associated with conducting drug education and awareness programs by law enforcement agencies.
- g. **Pro Rata Funding** — The costs associated with supporting multi-agency items or facilities. Example: a town purchases a new computerized payroll system; the police department payroll represents twenty percent of the total use of the payroll system. The police department may use shared money to fund its pro rata share (twenty percent) of the operating and maintenance expenses of the system.

Property, facilities, equipment, and other items and services acquired with shared monies must be used only for law enforcement purposes unless written approval is obtained from the Executive Office for Asset Forfeiture. Such property must continue to be used predominantly for law enforcement purposes.

- h. **Asset Accounting and Tracking** — The costs associated with the accounting, auditing, and tracking of expenditures for shared cash, proceeds, and tangible property.

***NOTE:*** *The fact that the 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 shared property does not have to be used in a department's drug program. Priority consideration should be given, however, to completely equipping units that generate forfeitures in order to foster future forfeiture investigations.*

This use is proper. The expenditure of funds to pay the cost to educate students using agency personnel is proper. The sharing agency should document actual expenditures for a project of this magnitude. Where an agency has a question, it should consult the LECC Coordinator or the Executive Office for Asset Forfeiture. It is not clear, though, why \$3 to \$4 million was necessary for this purpose. The money could not be used to cover salaries unless new positions were involved. It could be used to purchase training materials and to cover travel expenses.

- C. A county sheriff's department used \$7 million in sharing proceeds to pay for a treatment program to rehabilitate inmates with drug problems. Program costs included \$1.2 million spent in one year for the salaries of probation officers who worked directly with the inmates. Sharing proceeds also paid the salaries of sheriff's deputies working in the program.

This use is part proper and part improper. Funding an inmate drug rehabilitation program may be a proper law enforcement use when the agency has custodial responsibility for the inmates in question. However, part of the money is going to pay for agency salaries. This use is proper if limited to new positions, and only for the payment of the first year's salaries. See answer to II.A above. The use of sharing proceeds to pay for probation officers' salaries is clearly an improper pass-through to another entity, as the officers are employees of the court and not a law enforcement agency.

#### IV. EQUIPMENT

- A. A local police department received a forfeited luxury sports car in May of 1989. Six months later, the department traded the vehicle to a car dealer for six other vehicles to be used in police investigations. The transaction did not involve the exchange of cash.

This use may be proper depending on the original intent. The question that needs to be answered is whether the agency had a bona fide use for the luxury car when it first acquired it. Under Department rules, when cars are transferred to local agencies, they must be used by that agency for law enforcement purposes for two years before they may be sold. However, an earlier disposition is proper if the vehicle ceases to be of use after a period of time. Here, it is entirely possible that the vehicle was needed for a legitimate undercover operation, was used for that purpose, and once used, had become known to the criminal element and thus could not be used again. It would be entirely proper, then, to trade the car for six regular cars, which could be used to carry on the agency's mission. As a matter of prudence, the agency should request Department of Justice approval in writing prior to such a trade.

If there was no bona fide intended use for the luxury vehicle, this activity would constitute a violation of the two-year rule. The reason for this rule is to assure that when a local agency places a car into official use, it has a legitimate law enforcement purpose in mind.

- B. A local police department used \$13,000 in shared cash to purchase a property tracking system that tracks all police property using scannable bar codes.

This use is proper. As a capital expenditure, there is no supplantation problem. The system is clearly of benefit to the efficient operation of the agency.

- C. A county sheriff's department purchased 118 semi-automatic weapons. According to the sheriff, he thought the weapons should have been paid for out of the county general fund. However, the county

refused to do so. Because the sheriff considered having the weapons to be an officer safety issue, he approved buying them with sharing proceeds rather than going without them.

This use is proper. The sheriff was correct to say that this is the type of purchase that should be financed with appropriated funds. However, absent such funds, the purchase of additional equipment of any type is permissible so long as it enhances the ability of the agency to do its job.

## V. FACILITY COSTS

- A. A state police department used shared cash to make lease payments on substation buildings. General fund monies paid the substation leases in prior years. The leases were paid from an account that contained shared cash and other revenues such as fees for accident reports and a state cellular phone tax. There were no restrictions on uses of the other revenues, which made up about 20 percent of the funds in the account.

This use is an improper supplantation. Sharing proceeds can be used to temporarily lease new facilities, by analogy to the rule on temporary salaries. See II.A above. These appear to be recurring expenditures, and appropriated funds have been made available in the past. Therefore, there is a supplantation problem under these facts.

- B. A city police department used shared cash to pay the costs of operating an off-site undercover narcotics facility. Included in these costs were lease payments, telephone bills, furniture, improvements to the building, and paving the parking lot. The department did not have an off-site narcotics facility prior to using the funds for this purpose.

This use is proper. This is a temporary facility and appropriated funds were not available. This is an excellent use for shared funds.

- C. City council minutes stated that sharing proceeds were being used to fund new carpeting for the city library. This was not readily apparent in the official police department appropriation legislation. However, this legislation reduced the narcotics unit's overtime allocation. At the same time, the library's appropriation was raised by the same amount.

This use is clearly improper. It is clear from the stated facts that the sharing proceeds in fact paid for the carpeting in the public library. Accounting gimmicks made it appear that the money went to agent overtime, but in fact that did not happen. Had the city council minutes not been so candid, the city might have been able to disguise this fact. The justification that all budgets were in fact increased makes no difference where it is clear that but for sharing proceeds, the carpeting would not have been purchased.

## VI. USE OF INTEREST INCOME

- A. At two city police departments, interest earned on shared cash maintained in seized asset funds went to the city general funds pursuant to city policy. In both cases, the interest did not maintain a separate identity in the general fund so it could not be determined for what purpose it was spent.

This use is clearly improper. This Guide is clear that interest on equitable sharing monies is subject to the same rules as the monies themselves.