

DRUG DEALERS SUPPORT LOCAL LAW ENFORCEMENT!!!

A REPORT ON ASSET FORFEITURE

JUNE 21, 2010

Summary

The 2009-2010 Grand Jury, (GJ), conducted an oversight of Asset Forfeiture funds, (AF); their distribution, use, and accountability.

AF is a complex process, involving several areas of responsibility and distribution of funds. Multiple agencies are involved in the process.

AF was instituted to deprive persons of the *ill-gotten gains* from illegal activities. Law enforcement is the principal objective of AF, which is a civil, not a criminal, matter. The Mendocino County District Attorney's Office, (MCDAO), is in charge of AF cases. A primary source of AF funds in Mendocino County comes from the growing and/or selling of illegal marijuana.

California Health and Safety Code §11489 provides two limits for spending AF funds: they must be used for law enforcement, but not supplant their budgets; funds are not restricted to narcotics enforcement. It appears that local law enforcement has been using Federal guidelines, which are more definitive than State guidelines.

AF funds can be used for law enforcement equipment, training, anti-drug and gang prevention education, wages for a temporary new position for a limited time, and for officer overtime. AF funds may not be used to supplant any ordinary budgeted expense.

AF funds have been used to purchase vehicles, a fork lift, radios and related equipment, upgrades for equipment in a Property and Evidence Room, electronics and software, a microwave communication system, and a *Bear Cat* Rescue Vehicle.

The Memorandum of Understanding, (MOU), is an agreement for the distribution of AF funds and states that the Law Enforcement Administrators Association, (LEAA), creates a governing board. The board consists of the County Sheriff, District Attorney, Chief of Probation, California Highway Patrol Commander, and the Chiefs of Police of Ukiah, Willits, and Fort Bragg. The LEAA fund is used for the sole purpose of funding programs designed to combat drug abuse and divert gang activity.

Method

Between August, 2009 and March, 2010, the GJ interviewed law enforcement officials, staff, private and public attorneys. Documents reviewed included budgets, the *Code of Conduct*, the MOU, financial documents from local law enforcement agencies, the Federal Guide for Asset Forfeiture, and the State Guide for Asset Forfeiture.

One Grand Juror was recused due to conflict of interest.

Background

The Mendocino County Asset Forfeiture Unit is comprised of three members within the MCDAO: an attorney, a paralegal, and an asset forfeiture officer, who acts as an investigator.

Agencies within the County that receive AF distributions are: the Mendocino County Sheriff's Office, (MCSO); County of Mendocino Marijuana Eradication Team, (COMMET); the Ukiah Police Department; (UPD), Willits Police Department, (WPD); the Fort Bragg Police Department, (FBPD); MCDAO; and the Mendocino Major Crimes Task Force Unit, (Task Force). The California Highway Patrol may receive AF funds if they are the Finding Agency.

The MOU distribution of funds states that MCDAO, as provided in the Health and Safety Code §11489(b)(1), " ...provide legal services, storage, placement into service, liquidation of seized and forfeited property, accounting for and distribution of funds in conjunction with the Mendocino County Auditor's Office, financial investigations, assistance in drafting search warrants, three day hold and seizure orders, referral to Federal authorities for adoptive forfeiture, and any other forfeiture services as needed..."

Findings – General

1. Law enforcement is the principal objective of AF. Forfeited funds are used to supplement the cost of law enforcement for the eradication of illegal drugs. AF is a civil, not a criminal matter.
2. The primary objective of the Task Force is the prevention of sales and distribution of narcotics and illegal marijuana.
3. The primary objective of the County of Mendocino Marijuana Eradication Team, (COMMET), is the eradication of non-medical marijuana.
4. Members of the Task Force and local law enforcement are required to use the *Code of Conduct* when enforcing the law.
5. California law permits marijuana to be grown for medical purposes. Illegal marijuana grows and sales are a primary source of AF funds.
6. The MCDAO is in charge of collection and distribution of AF funds, seized under State law.

7. When cash or property is seized, the owner is advised of his/her right to claim the cash and/or property within 30 days. If no claim is made, the property is forfeited.
8. If the owner claims the assets and the AF Officer deems the assets ill-gotten, then a civil court case is pursued. It is estimated that more than half of the seizures are claimed. Unclaimed funds of \$25,000 or less do not require a court process.
9. Seized assets may include: cash, bank accounts, autos, coins, jewelry, and other personal and real property.
10. Cash seized is deposited and held in a trust account until it is either returned to the owner or forfeited.
11. Equipment and vehicles seized are stored until returned to the owner or sold at auction. Other assets are held in evidence rooms.
12. As provided in the Health and Safety Code §11489(b)(1), the MCDAO shall be reimbursed for all expenditures made or incurred in connection with the sale of property.
13. The MOU for the *Distribution of Seized & Forfeited Funds* states that local law enforcement agencies (UPD, WPD, FBPD, MCSO) receive approximately \$46 of every \$1,000 forfeited. (Appendix A)

Findings – Federal vs. State

14. The process for Federal and State AF is different and the funds are separated to prevent co-mingling.
15. When assets are seized under Federal law, the Federal Government retains 20% of the amount for administrative fees, and returns 80% of the funds to the MCSO or finding agency.
16. When the Federal Agents decide not to prosecute, the case may be turned over to the MCDAO.
17. Federally seized equipment, autos, etc. can be purchased for 20% of their value by local law enforcement for agency use. Other assets are sold at auction.
18. Assets seized under State law must be sold at auction, and the net proceeds are returned to the MCDAO for distribution in accordance with the MOU.
19. California Health and Safety Code §11489 states that: AF funds may not be used to supplant expenses in a budget that would ordinarily be incurred, and are not required to be spent on narcotics enforcement.
20. Federal AF funds generally may not be spent for uses that are not approved by the State.
21. AF funds may be spent on law enforcement equipment, vehicles, computers, supplies, salary for a new position for a limited time, overtime pay, training expenses, etc.
22. According to their reporting period, (fiscal or calendar), Federal and State AF proceeds were distributed to local law enforcement agencies in 2009, as follows:

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MCSO, State	\$ 166,114	FBPD, State	\$46,913
MCSO, Federal	\$0	UPD, State	\$63,893
COMMET, State	\$3,176	WPD, State	\$84,096
COMMET, Federal	\$384,894	Task Force, State	\$76,839
MCDAO, (10%)	\$154,743	MCDAO, (33 1/3%)	\$241,744

23. Some recent AF funds have been used to purchase vehicles, a fork lift, radios and related equipment, to upgrade property and evidence room equipment, electronics and software, a microwave communication system and equipment, officer overtime, and a *Bear Cat* rescue vehicle, (with matching funds from a Homeland Security Grant).

24. Other permissible uses of AF funds include training, storage rent, and donations to local non-profits.

25. Permissible uses of Federal funds are restricted to law enforcement for investigations, training, detention facilities, equipment, travel and transportation, awards and memorials, drug and gang education and awareness programs, matching funds, pro-rata funding for asset fund accounting and tracking, language assistance services, transfers to other law enforcement agencies, and support of community-based programs.

26. Impermissible uses of Federal funds are:

- a. use of forfeited property by non-law enforcement personnel,
- b. payment of education related costs, for non-law enforcement classes,
- c. uses contrary to the law of the State or local jurisdictions,
- d. non-official government use of shared assets,
- e. to make permanent improvements on the property of others.
- f. salaries are impermissible except for:
 - express statutory authorization,
 - overtime for officers and investigators,
 - new positions and temporary or not to exceed 1 year appointments,
 - salary of an officer hired to replace an officer assigned to a Task Force,
 - specialized programs.

27. On March 31, 2010, the balances of accumulated and unspent AF monies for the following County accounts were:

MCDAO	\$886,563	COMMET, State	\$39,643
MCSO, State	\$414,599	COMMET, Federal	\$617,135
MCSO, Federal	\$577		

Findings – LEAA

28. The LEAA Board consists of the Mendocino County Sheriff, the three Chiefs

of Police (Willits, Ukiah, and Fort Bragg), Mendocino County District Attorney, and the MCDAO Chief of Detectives, the Mendocino County Chief Probation Officer, the Commander of the Highway Patrol, and the Commander of the Task Force. The Chair of the LEAA Board is elected by the Board members.

29. AF funds distributed to the LEAA are for the sole purpose of funding programs to combat drug abuse, anti-gang programs, and for educators, parents, community organizations and local businesses to involve their interest in the programs.
30. Contradictory to Health & Safety Code, LEAA funds are distributed annually by the MCDAO. California Health and Safety Code §11489(b) requires these funds to be distributed quarterly.
31. The last LEAA distribution studied by the GJ was paid in May 2009, in the amount of \$32,500 to each of the following: MCSO, FBPD, UPD, and WPD.
32. In 2009, LEAA funds were used for various programs, including the Police Activity Program, National Child Safety Council, Nuestra Alianza, Kid's Club, AODP/GRIP Program, Mendocino Juvenile Drug Court, after-school soccer programs, Big Brothers Big Sisters, Teen Peer Court, Ukiah Dolphins, Little League, Girl Scouts, Sober Graduation, YES Camp, and Manzanita Services/Healing Hands.
33. MCDAO does not receive LEAA funds. In 2009, the MCDAO used AF funds to donate \$73,472 to local programs and non-profit organizations.

Recommendations

The Grand Jury recommends that:

1. all law enforcement personnel be given quarterly training regarding the *Code of Conduct*, (Finding 4)
2. the Mendocino County District Attorney Asset Forfeiture Unit be diligent in discovering ill-gotten assets, (Findings 6, 16-17)
3. all agencies within the County request reimbursement from AF funds to defray costs to the County for employees' time spent tracking and accounting AF funds, (Findings 6, 12, 25)
4. the Mendocino County District Attorney distribute the unused portion of AF funds in the MCDAO account to local law enforcement agencies, (Findings 13, 33)
5. the Law Enforcement Administrators Association Board update the MOU, to distribute the *Discretionary Funds*, in consideration of the special needs of the participating agencies, (Findings 13, 22, 27)
6. MCDAO distribute LEAA funds on a quarterly basis, as per Health & Safety Code §11489. (Finding 30)

Discussion

AF funds need to be spent using every available and legal means to meet the needs of Mendocino County Law enforcement agencies and to alleviate some of the County's financial burdens.

According to Federal guidelines, AF funds may be spent to hire an officer to replace the officer that was assigned to a Task Force. Funds are not presently being used for this purpose. The GJ believes that this would not violate State law regarding supplanting the budget because the contribution of an officer to the Task Force is not an ordinary and expected expense, such as rent, utilities, or regular salaries.

The excessive AF fund balance in the MCDAO deprives the County of needed funds to provide services, such as AODP, GRIP, Mendocino Juvenile Court, and other anti-drug and anti-gang programs.

Required Responses

Mendocino County Board of Supervisors (All Findings; All Recommendations)

Mendocino County District Attorney (All Findings; All Recommendations)

Mendocino County Sheriff (All Findings; All Recommendations)

Mendocino County Auditor (Findings 24-25)

City of Fort Bragg, Chief of Police (Findings 1, 4, 14-26, 33; Recommendations 1, 5-6)

City of Ukiah, Chief of Police (Findings 1, 4, 14-26, 28-33; Recommendations 1, 5-6)

City of Willits, Chief of Police (Findings 1, 4, 14-26, 28-33; Recommendations 1, 5-6)

Appendix A

Asset Forfeiture Distribution Table **\$1,000 Example**

State General Fund	24%	\$240.00	(\$1000 x 24%)
Ca. State DA's Assoc	1%	\$10	(\$1000 x 1%)
MCDAs Office	10%	\$100	(\$1000 x 10%)
		<u>\$350.00</u>	<u>(\$1000 x 35%)</u>

LEAA get 15% of \$650 of the \$650.00 (the Remaining 65%)
(or) \$97.50
\$650.00 - 97.50 = \$552.50

the Remaining funds are divided as follows:

1/3 to MCDAO investigator	\$184.165	(\$552.50 x 33 1/3%)
1/3 to Finder Agency	\$184.165	(\$552.50 x 33 1/3%)
1/3 to MCSO, Willits, FP & Ukiah PDs	<u>\$184.165</u>	<u>(\$552.50 x 33 1/3%)</u>
		<u>\$552.49</u>

The result is that each of the four local law enforcement agencies receives \$46.04 of each \$1000