

Disclaimer: A juror had a potential conflict of interest with respect to this report and was not involved in its writing or adoption by the Grand Jury.

SHARE AND SHARE ALIKE
A REPORT ON ASSET FORFEITURE
“Law Enforcement is the principal objective of Forfeiture.”

May 24, 2007

The following acronyms will be referred to throughout this report:

AF (Asset Forfeiture)
BNE (Bureau of Narcotics Enforcement)
BOS (Mendocino County Board of Supervisors)
CHP (California Highway Patrol) Garberville and Ukiah Divisions
COMMET (County of Mendocino Marijuana Eradication Team)
CSP (California State Parks)
FBPD (Fort Bragg Police Department)
H&SC (California Health and Safety Code)
LEAA (Law Enforcement Administrators Association)
MCACO (Mendocino County Auditor-Controller's Office)
MCAFU (Mendocino County Asset Forfeiture Unit)
MCDA (Mendocino County District Attorney)
MCDAO (Mendocino County District Attorney Office)
MCEO (Mendocino County Executive Office)
MCPD (Mendocino County Probation Department)
MCS (Mendocino County Sheriff)
MCSO (Mendocino County Sheriff's Office)
MMCTF (Mendocino Major Crimes Task Force)
MOU (Memorandum of Understanding)
UPD (Ukiah Police Department)
WPD (Willits Police Department)

SUMMARY

The 2006/2007 Grand Jury conducted an oversight of AF funds, their distribution, use, and accountability. The Grand Jury examined accounts and records of AF funds that included revenue and expenditures. The procedures of the MCACO were reviewed to verify that oversight and accountability was provided. AF on the surface appears to be a somewhat simple subject, however, it is very complex, involving many areas of responsibility. In some cases no clear guidance is provided by the governing statutes dealing with expenditure of AF funds. Contained within this report is a brief summary of each agency or organization that plays an active role in AF. The Grand Jury reviewed

local law enforcement procedures, requirements, and compliance as defined within State mandated guidelines.

BACKGROUND

The State authority for AF is documented in H&SC §11369-§11495. “Civil forfeiture is intended to be remedial by removing the tools and profits from those engaged in the illicit drug trade.” A brief summary is given below of the structure of organizations and/or agencies, who take part in AF seizures, distribute AF funds, receive AF funds or provide oversight and accounting. In order to ensure the proper utilization of the State laws permitting the seizure and forfeiture of property, limited guidelines have been established. (*Ref: Appendix A and B*)

The following agencies or organizations are in one way or another bound by these guidelines: COMMET, MCAFU, MCDA, MMCTF, LEAA, MCACO, MCPD.

COMMET is staffed by one full time Sergeant and one Deputy provided by the MCSO. In addition, volunteer reservists assist with routine documentation. COMMET interacts with various multi-agency law enforcement task forces, organized expressly to assist smaller local sheriff’s departments in their efforts to eradicate marijuana cultivation and drug trafficking in California. Without COMMET, the local MCSO would not have the resources to effectively eradicate marijuana production within the County.

MCAFU consists of the MCSO, MCDA, UPD, FBPD, WPD, CHP (Garberville and Ukiah divisions), and a special agent of BNE. MCAFU may provide forfeiture services to the participating agencies. This unit has an operational MOU to which all parties are signatory. MCAFU also determines the distribution of seized AF funds to its members based on a sharing formula within the operational MOU as illustrated in **Fig. 1; Method A**. For comparative purposes, an illustration of the H&SC sharing formula is shown in **Fig. 1; Method B**.

MCDA maintains an AF division consisting of one AF Officer, an attorney; an AF Investigator, a sworn law enforcement officer; and a paralegal, who assists in AF matters. MCDA receives AF funds to defray the legal costs involved with AF. In addition to receiving AF funds, MCDA dispenses AF funds to the members of MCAFU as directed.

MMCTF is a partnership formed between BNE, CSP, CHP and local participating agencies. It “endeavors to effectively enforce the controlled substance laws in California as expressed in State and Federal laws, relating to the trafficking of controlled substances.” MMCTF is governed by an MOU signed by each participating party. The management and supervision of MMCTF is the responsibility of the assigned BNE task force commander.

LEAA is a panel consisting of the MCS, a police chief selected by the other chiefs in the County, the MCDA, and the MCPD. AF funds distributed to the LEAA are “for the sole

purpose of funding programs designed to combat drug abuse and divert gang activity, and shall wherever possible involve educators, parents, community-based organizations and local businesses, and uniformed law enforcement officers. Those programs that have been evaluated as successful shall be given priority.”

MCACO exercises general supervision over the accounting of all AF funds, and maintains separate accounts which are subject to mandated controls and annual audits of all deposits and expenditures. In addition, “the Controller, county auditor, or treasurer shall maintain a record of these disbursements which records shall be open to public inspection, subject to the privileges contained in Sections 1040, 1041, and 1042 of the Evidence Code.” “Upon request of the governing body of the jurisdiction in which the distributions are made, the Controller, auditor, or treasurer shall conduct an audit of these funds and their use.” (H&SC §11495)

MCPD is an integral part of the criminal justice system specializing in community supervision, and promoting public safety by reducing criminal behavior and its impact upon the community. This department is dedicated to offender accountability, cost-effective protection, swift and sure punishment, effective supervision in the community, advocacy for victim services and rights, and involvement of the community in developing and supporting a system of restorative justice with prevention, intervention, and treatment programs.

METHODS

The Grand Jury interviewed members of COMMET, MMCTF, and MCAFU. In addition, the Grand Jury interviewed staff of the MCACO, the MCSO, and MCCPD. Current and former staff of MCDAO were also interviewed. The accounts and records of each organization or agency were reviewed as necessary to confirm adherence to State mandated guidelines. A review of the operational MOU for MMCTF and MCAFU was conducted. The Grand Jury toured the MCSO evidence room and compound area, where seized autos, trucks, generators, etc. are kept until either given back to the owner or sold. State statutes and other documents governing AF were reviewed extensively and form the basic foundation of this report. Legal counsel was sought to clarify the State forfeiture guidelines and provide guidance.

FINDINGS

1. AF was instituted to deprive persons of profits made and tools used in illegal activities. “Law enforcement is the principal objective of forfeiture.”
2. When AF money is seized, it is deposited into a trust fund account and held until it is either returned to the owner or forfeited.
3. If the seized money is claimed by the owner and the AF officer deems the money is “ill gotten”, then a civil court case will be pursued.
4. The MCDAO AF division handles the civil portion of AF cases. Any case which may

involve criminal marijuana or drug activity is referred to the criminal division of the MCDAO.

5. Seized assets, other than cash or bank accounts, may include autos, coins, jewelry, real property, or other personal property.
6. Assets, other than cash, are held in evidence rooms or in the MCSO compound.
7. COMMET is a grant funded division of the MCSO. COMMET is staffed by a Sergeant and a Deputy. They are aided by unpaid volunteers.
8. The Grand Jury heard testimony regarding the recent application for COMMET grant money. It became necessary to “beg the Board of Supervisors to take the money” to fund the program.
9. The primary task of COMMET is the prevention and eradication of non-medical marijuana production.
10. COMMET makes a limited number of raids in cooperation with the Federal authorities. These raids result in larger seizures than other operations.
11. MMCTF is multi-jurisdictional, and consists of a BNE Commander, local law enforcement, and other State agencies. Their primary work involves hard drugs. The MMCTF uses their monthly meetings to discuss strategy, on-going investigations, planning drug raids, and probation sweeps.
12. The LEAA function is to direct AF funds toward anti-drug and anti-gang education and community based programs.
13. The LEAA does not have an MOU.
14. The LEAA has not held a meeting as a stand alone panel.
15. LEAA funds are distributed annually. H&SC §11489(b) requires these funds to be distributed quarterly. **(See Appendix B)**
16. LEAA funds are held in a separate County account until disbursement.
17. The MCPD has not been asked for input or opinion regarding the distribution or spending of LEAA funds.
18. The MCDAO disperses AF funds, as directed by the MCAFU. H&SC §11489(b) requires these funds to be distributed quarterly. **(See Appendix B)**
19. The sharing and spending of forfeited assets are different under Federal and State guidelines.
20. Federal AF funds are kept separate from State AF funds to prevent commingling.
21. H&SC §11489(b)(2)(A), with the exception of subparagraphs i & ii, is mute concerning AF expenditure guidelines. **(See Appendix B)**
22. Up to 80% of the net seizure proceeds in Federal cases may be returned to the finder agency. An agency makes a claim, based on their contribution, on a “DAG 71” form.
23. The Grand Jury heard testimony that AF monies could be spent on law enforcement equipment, supplies, salaries for new positions for a limited time, overtime pay, and anti-drug/anti-gang programs.
24. The MCACO has not conducted AF audits on a regular basis of agencies within their jurisdiction. There is no record of external audits.
25. The accounting records for the MCDAO are detailed. These details are not forwarded to the MCACO when reimbursements for AF funds are requested.
26. The MCACO has not matched requests for AF reimbursements with related records or invoices.

27. The AF accounting records for the MCSO and COMMET are detailed and can be readily matched with the records of the MCACO.
28. AF purchases totaling \$10,000 or more, require BOS approval.
29. The MCSO used AF money for law enforcement equipment, supplies, and donations.
30. As shown by Figure 1, the disbursement formulas contained in the MCAFU MOU and H&SC §11489(b), result in different disbursements.
31. Use of AF funds to supplant budgets is forbidden.
32. Testimony revealed that morale among most of the agencies is high and they work well together.

RECOMMENDATIONS

The Grand Jury recommends that:

1. the grant application for COMMET always be approved. Without this resource, the MCSO can not effectively eradicate marijuana production within the county. (Finding 8)
2. an operational MOU for the LEAA panel be written, stating its mission and intended goals consistent with H&SC §11489(b)(2)(A)(ii). (Findings 12-15, 17)
3. LEAA scheduled meetings be held, published, and open to the public. (Findings 13-14)
4. funds dispersed to the LEAA occur quarterly as required by H&SC §11489(b). (Finding 15)
5. the MCPD participate fully as an equal on the LEAA panel as required by H&SC §11489(b)(2)(A)(ii), and the MCAFU. (Findings 12-14, 17)
6. all State AF funds be accumulated, transferred, and distributed quarterly to local agencies as required by H&SC §11489(b). (Finding 18)
7. MCAFU revise their operational MOU to reflect the strictest possible definition of expenditures to avoid the appearance of supplanting. The MCEO and the MCACO should be consulted for budget and audit purposes. (Findings 23, 28, 31)
8. audits of AF funds and their use be conducted annually as required by H&SC §11469(h). (Finding 24)
9. details of all AF expenditures with their reimbursement requests be forwarded to the MCACO in a timely manner. (Findings 24-25)
10. AF reimbursement requests be matched to records or invoices. (Findings 25-27)
11. all AF expenditures and their purposes be directly linked to "law enforcement needs", e.g. training, equipment, and community anti-drug programs etc. (Findings 1, 9, 12, 19)
12. all County AF expenditures of \$5,000 or more require BOS approval. (Findings 23, 28-29, 31) **Ref: Fig. 1; Method 2**
13. AF disbursements made to the MCDAO fall within the spirit of H&SC §11469(b) and H&SC §11489(b)(2)(A). (Finding 30) **Ref: Fig. 1; Method 2**
14. MCAFU disbursements to agencies under the operational MOU, be revised to reflect H&SC §11469(b) and H&SC §11489(b)-§11489(b)(2)(A)(ii). (Findings 15, 18, 30-31) **Ref: Fig. 1; Method 2**

COMMENTS

It became clear during the investigation, that to most people, the Asset Forfeiture program is confusing and commonly misunderstood. While the pertaining statutes and codes are clear about percentages of funds to be distributed to the law enforcement agencies, they are not as clear as they could be about how funds can be used for drug education and law enforcement needs.

It is also clear that there is confusion on how AF funds can be used, which may have resulted in some inadvertent violations of the pertinent codes and statutes. Agencies need to implement a self-policing policy to insure the proper use of AF funds. Budgets must include all items that would “normally” be purchased through a budget. Reliance upon anticipated AF funds is supplanting, regardless of how it is done.

The Grand Jury wishes to thank all the interviewees for their cooperation. They were also pleased to discover that the county’s law enforcement agencies are cooperative and are performing their duties in a most professional way.

REQUIRED RESPONSES

Board of Supervisors (All Findings; All Recommendations)
Mendocino County Executive Office (All Findings; All Recommendations)
County of Mendocino Marijuana Eradication Team (Findings 7-10; Recommendation 1)
Law Enforcement Administrators Association (Findings 12-17; Recommendations 2-5, 14)
Mendocino County Auditor-Controller’s Office (Findings 15, 24-26, 28, 31; Recommendations 4, 6-10, 12)
Mendocino County Asset Forfeiture Unit (Findings 13-18, 30; Recommendations 2-7, 12, 14)
Mendocino County District Attorney Office (Findings 13-17, 25-26, 28-31; Recommendations 2-7, 9-14)
Mendocino County Probation Department (Findings 12-17, 31; Recommendations 2-3, 5-7, 11, 13-14)
Mendocino County Sheriff’s Office (Findings 8-10, 12-19, 27-32; Recommendations 1-12, 14)
Fort Bragg Police Department (Findings 12-17, 23, 28-32; Recommendations 2-8, 11, 13-14)
Ukiah Police Department (Findings 12-17, 23, 28-32; Recommendations 2-8, 11, 13-14)
Willits Police Department (Findings 12-17, 23, 28-32; Recommendations 2-8, 11, 13-14)

REQUESTED RESPONSES

California Highway Patrol, Ukiah Division (Finding 30; Recommendations 7, 13-14)
California Highway Patrol, Garberville Division (Finding 30; Recommendations 7, 13-14)
Mendocino Major Crimes Task Force (Finding 11-17, 31; Recommendations 7, 14)

Appendix A

H&SC 11469

11469. In order to ensure the proper utilization of the laws permitting the seizure and forfeiture of property under this chapter, the Legislature hereby establishes the following guidelines:

(a) Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens.

(b) No prosecutor's or sworn law enforcement officer's employment or salary shall be made to depend upon the level of seizures or forfeitures he or she achieves.

(c) Whenever appropriate, prosecutors should seek criminal sanctions as to the underlying criminal acts which give rise to the forfeiture action.

(d) Seizing agencies shall have a manual detailing the statutory grounds for forfeiture and all applicable policies and procedures. The manual shall include procedures for prompt notice to interest holders, the expeditious release of seized property, where appropriate, and the prompt resolution of claims of innocent ownership.

(e) Seizing agencies shall implement training for officers assigned to forfeiture programs, which training should be ongoing.

(f) Seizing agencies shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.

(g) Seizing agencies shall not put any seized or forfeited property into service.

(h) Unless otherwise provided by law, forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.

(i) Seizing agencies shall ensure that seized property is protected and its value preserved.

(j) Although civil forfeiture is intended to be remedial by removing the tools and profits from those engaged in the illicit drug trade, it can have harsh effects on property owners in some circumstances. Therefore, law enforcement shall seek to protect the interests of innocent property owners, guarantee adequate notice and due process to property owners, and ensure that forfeiture serves the remedial purpose of the law.

Appendix B

H&SC 11489

11489. Notwithstanding Section 11502 and except as otherwise provided in Section 11473, in all cases where the property is seized pursuant to this chapter and forfeited to the state or local governmental entity and, where necessary, sold by the Department of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

(a) To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, up to the amount of his or her interest in the property, when the court declaring the forfeiture orders a distribution to that person.

(b) The balance, if any, to accumulate, and to be distributed and transferred quarterly in the following manner:

(1) To the state agency or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary costs of notice required by Section 11488.4, and for any necessary repairs, storage, or transportation of any property seized under this chapter.

(2) The remaining funds shall be distributed as follows:

(A) Sixty-five percent to the state, local, or state and local law enforcement entities that participated in the seizure distributed so as to reflect the proportionate contribution of each agency.

(i) Fifteen percent of the funds distributed pursuant to this subparagraph shall be deposited in a special fund maintained by the county, city, or city and county of any agency making the seizure or seeking an order for forfeiture. This fund shall be used for the sole purpose of funding programs designed to combat drug abuse and divert gang activity, and shall wherever possible involve educators, parents, community-based organizations and local businesses, and uniformed law enforcement officers. Those programs that have been evaluated as successful shall be given priority. These funds shall not be used to supplant any state or local funds that would, in the absence of this clause, otherwise be made available to the programs.

It is the intent of the Legislature to cause the development and continuation of positive intervention programs for high-risk elementary and secondary school age students. Local law enforcement should work in partnership with state and local agencies and the private sector in administering these programs.

(ii) The actual distribution of funds set aside pursuant to clause (i) is to be determined by a panel consisting of the sheriff of the county, a police chief selected by the other chiefs in the county, and the district attorney and the chief probation officer of the county.

(B) Ten percent to the prosecutorial agency which processes the forfeiture action.

(C) Twenty-four percent to the General Fund. Notwithstanding Section 13340 of the Government Code, the moneys are hereby continuously appropriated to the General Fund. Commencing January 1, 1995, all moneys deposited in the General Fund pursuant to this subparagraph, in an amount not to exceed ten million dollars (\$10,000,000), shall be made available for school safety and security, upon

appropriation by the Legislature, and shall be disbursed pursuant to Senate Bill 1255 of the 1993-94 Regular Session, as enacted.

(D) One percent to a private nonprofit organization composed of local prosecutors which shall use these funds for the exclusive purpose of providing a statewide program of education and training for prosecutors and law enforcement officers in ethics and the proper use of laws permitting the seizure and forfeiture of assets under this chapter. (c) Notwithstanding Item 0820-101-469 of the Budget Act of 1985 (Chapter 111 of the Statutes of 1985), all funds allocated to the Department of Justice pursuant to subparagraph (A) of paragraph (2) of subdivision (b) shall be deposited into the Department of Justice Special Deposit Fund-State Asset Forfeiture Account and used for the law enforcement efforts of the state or for state or local law enforcement efforts pursuant to Section 11493.

All funds allocated to the Department of Justice by the federal government under its Federal Asset Forfeiture program authorized by the Comprehensive Crime Control Act of 1984 may be deposited directly into the Narcotics Assistance and Relinquishment by Criminal Offender Fund and used for state and local law enforcement efforts pursuant to Section 11493.

Funds which are not deposited pursuant to the above paragraph shall be deposited into the Department of Justice Special Deposit Fund-Federal Asset Forfeiture Account.

(d) All the funds distributed to the state or local governmental entity pursuant to subparagraphs (A) and (B) of paragraph (2) of subdivision (b) shall not supplant any state or local funds that would, in the absence of this subdivision, be made available to support the law enforcement and prosecutorial efforts of these agencies.

The court shall order the forfeiture proceeds distributed to the state, local, or state and local governmental entities as provided in this section.

For the purposes of this section, "local governmental entity" means any city, county, or city and county in this state.

Fig. 1

Comparison of MCAFU and H&SC §11489 sharing formulas

Methods 1 and 2 make the assumption that H&SC §11489(a)-§11489(b)(1) have been met and remaining funds to be distributed = \$100.00 (100%)

Method 1 **MCAFU by MOU**

10% to MCDA	\$10.00
24% to State general fund	\$24.00
01% to California District Attorney's Association	\$1.00
Remaining 65% (\$65.00) to be distributed as follows:	
15% to LEAA	\$9.75
Remainder of funds (\$55.25) distributed as follows:	
33.33% to MCDA	\$18.42
33.33% to Finder	\$18.42
33.33% to Others (with exceptions)	\$18.42

Method 2 **H&SC 11489(b)(2)(A)** **(Ref: Appendix B)**

10% to MCDA	\$10.00
24% to State general fund	\$24.00
01% to California District Attorney's Association	\$1.00
Remaining 65% (\$65.00) to be distributed as follows:	
15% to LEAA	\$9.75
Remainder of funds (\$55.25) to be distributed as follows:	
Proportionately to each participating agency	TBD