

# Georgia Department of Public Safety Policy Manual

<b>SUBJECT</b> <b>ASSET FORFEITURE</b>	<b>POLICY NUMBER</b> <b>12.05</b>
<b>DISTRIBUTION</b> <b>ALL SWORN MEMBERS</b>	<b>DATE REVISED</b> <b>12/29/2015</b>

## 12.05.1 Purpose

To establish procedures and ensure uniformity for processing seized assets subject to forfeiture and for tracking and recording the disposition of all such assets or asset proceeds.

## 12.05.2 Policy

Department of Public Safety (DPS) shall actively seize any property that is subject to forfeiture under state and federal law when the forfeiture of such property would deter or prevent criminal activity. DPS employees shall comply with federal and state law and all procedures applicable to seized assets subject to forfeiture. Members of this Department participating in asset seizures shall cooperate fully with all law enforcement and prosecuting agencies so as to best serve public safety.

## 12.05.3 Procedures

### A. General Applicability

1. This policy governs all assets seized for the purpose of seeking forfeiture under Federal or State Forfeiture proceedings.
2. Assets may include vehicles, trailers, currency, computers, contraband or other property. Items subject to forfeiture involve items specifically related to facilitation, proceeds, proximity, or weapons.
3. The following general guidelines should be used when determining whether to seek forfeiture of assets:

Currency/Jewelry/personal property should be valued at:

- a. State Seizure - \$250.00 or more. Note: vehicles must have an estimated value of \$2,500.00 or more (unless the vehicle is specially equipped to conceal or promote criminal activity or can be used as a training tool -- in either case there is no value limitation.)
- b. Federal Seizure Minimum Adoption Thresholds
  - 1) Conveyances:
    - a) Vehicles \$5,000

b) Vessels \$10,000

c) Aircraft \$10,000

2) Real Property Land and Improvements:

\$20,000 or 20 percent of the appraised value, whichever is greater

3) All Other Property

Currency/Bank Accounts/Monetary Instruments/Jewelry, etc.: \$2,000

4) Firearms: May be forfeited regardless of value

B. Duties of Seizing Member

1. Seizure of Property

All property seized shall be properly secured in accordance with Department policy for evidence storage (Evidence and Property Policy, #12.01), until such time as the property is released to another agency or otherwise disposed of pursuant to applicable policy.

2. Cash/Currency/Negotiable Instrument Seizures

a. Cash/currency negotiable instrument seizures (herein referred to as currency seizures) must be handled with utmost care to prevent any appearance of impropriety. When reasonable to do so, all currency seizures shall be subject to a two-person rule. Two sworn officers should be present at any time should currency be transported, counted, or entered as evidence. All evidence handling procedures will apply to a currency seizure. Currency that does not meet state or federal guidelines for asset seizure or abandonment shall not be seized or entered as evidence.

b. Currency seizures that do meet state or federal guidelines should be turned over to the appropriate seizing agency as soon as practical. If time or safety constraints make an immediate count impractical, currency shall be taken by two members and placed in a sealed evidence bag(s) and properly sealed/marked. A count shall be made at the first available opportunity at a banking institution. The member must ensure that no bank fees are incurred on behalf of DPS for this service. The agency seeking to seize the funds may request that the currency be transferred by cashier's check.

c. The Comptroller's Office shall be contacted for purpose of locating a secure account to deposit the funds for currency not accepted by local or federal authorities for deposit in their accounts. This will be a temporary holding account until the funds receive final adjudication, are returned to the proper owner, or they are declared abandoned. Currency seizures must be deposited in a separate account from other operating accounts. Accounts must bear interest, if such an account is available. Seizures must be deposited in a financial institution that has a branch location within the county where the civil forfeiture proceeding is located (designated by Chief Superior Court Judge if no such institution exists). The Comptroller's Office shall maintain records associated with each deposit of the parties involved in the seizure and the location of occurrence.

- d. Any accrued interest for seized currency is required to be paid to the county Drug Abuse Treatment and Education Fund (OCGA § 9-16-10 and § 15-21-101). This interest payment shall be made at the same time the Comptroller files the Department's annual report under § 9-16-19(g).

### 3. Vehicles Subject to Seizure

- a. Vehicles subject to forfeiture may be released to the agency that will pursue forfeiture. Vehicles maintained by DPS pending forfeiture shall be stored in a secure location in the county where the seizure occurred. Vehicles will be maintained in a place where storage fees will not be assessed. The seizing member shall ensure that the seized vehicle is properly prepared for long-term storage to minimize any risk of damage or deterioration.
- b. Generally, DPS will not seek a share of the proceeds from the sale of a vehicle or other seized property. However, in special circumstances DPS does have the option of receiving forfeited vehicles and property. If the vehicle/property is subject to state forfeiture, DPS may file for forfeiture with approval of the Commissioner. If federal forfeiture action is taken, DPS should receive a share of the federal proceeds from the sale of the vehicle/property or may receive the vehicle itself. Any member involved in processing these cases, should ensure that the proper documentation is prepared and should maintain good communication with the prosecutor. A member involved in these proceedings shall contact Legal Services for guidance and/or the commander of the CIU for assistance.
- c. Members involved in the seizure of a vehicle must adhere to OCGA § 9-16-5 that states, "If a seized vehicle is registered to a person or entity that was not present at the scene of the seizure and whose conduct did not give rise to the seizure, the seizing officer or his or her designee shall make reasonable effort to determine the name of the registered owner...and upon learning such registered owner's telephone number or address, inform such registered owner that the vehicle has been seized."

### 4. Jewelry or Other Valuables

Jewelry or other valuables subject to forfeiture shall be released to the agency that will pursue forfeiture. Jewelry or other valuables temporarily maintained by DPS shall be securely stored in the evidence/property room until properly turned over to a seizing authority. All evidence procedures shall be followed. (Evidence and Property Policy, #12.01)

### 5. Reporting:

#### a. Notification of Supervisors

Any Member involved in a seizure of assets for purposes of forfeiture shall notify their Post/Station Commander/Unit Supervisor immediately.

#### b. Notification to District Attorney's Office

- 1. When property is seized for forfeiture, the law enforcement officer seizing the property shall report the seizure, in writing, within 30 days thereof to the district attorney of the judicial circuit having jurisdiction in the county where the seizure was made.

2. The member is also required, within 30 days of seizure, to conduct an inventory and estimate the value of the property seized. This value is to be reported to the district attorney and thru the chain of command to the Comptroller's Office for annual mandatory reporting.
  3. If the seizing officer fails to comply with the notification requirements under § 9-16-5, or the state attorney fails to comply with the initiation of forfeiture requirements, "the property must be released on the request of an owner or interest holder, pending a complaint for forfeiture...unless the property is being held as evidence."
- c. Incident Report
- 1) An incident report shall be completed on all seizures and should include as much detail as possible regarding events leading to the seizure.
  - 2) The seizing officer shall ensure that the following information is placed on the incident report:
    - a) Basis for the traffic stop (or Affidavit/Search Warrant);
    - b) Probable cause for the search;
    - c) Was consent given – if so, what was the reasonable, articulable suspicion generating the request for consent;
    - d) Canine alerts/final indications, including length of time for canine to be brought to the traffic stop;
    - e) What was found and where it was found;
    - f) Statements made by any of the occupants of the vehicle;
    - g) Statements made by an owner when contacted under § 9-16-5;
    - h) Denominations of currency located (exact number of each bill that was located; for example: one hundred \$20 bills, seventy \$10 bills, etc.)
    - i) Criminal history of the occupants of the vehicle, if known at time of the report (Note: do not attach the actual GCIC copy of the criminal history);
    - j) Information about the automobile if seized (rental, lien holder, year, make, model, VIN, odometer reading, special equipment, estimated value);
    - k) Complete name, address and agency of each potential witness that will be needed for court;
    - l) Identity and detailed description of all items seized including quantity, estimated value, and total amount of currency;
    - m) Party to whom the asset was released and the date of release;

- n) Indication of the agency, agents, or prosecutor (by name, court and telephone number) that will be processing the forfeiture action;

- d. Lab Report

If a lab report comes directly to the officer, the officer shall forward a copy to the district attorney's office. If the seizure involved marijuana and it can be tested locally, the officer shall ensure that the marijuana is tested and that a copy of the test report is sent to the district attorney for inclusion in the forfeiture file.

- 6. Reporting Disposition of assets

It is the responsibility of the seizing member to supplement the incident report with any information received regarding the disposition of the seizure. If a court order is received a copy shall also be forwarded to Legal Services along with a copy of any incident reports or supplemental report.

- C. Post/Station Commander/Unit Supervisor

The Post/Station Commander/Unit Supervisor shall immediately notify the Troop/Region Commander/Section Supervisor of any involvement in any asset forfeiture seizures. Post/Station Commanders/Unit Supervisors are responsible for ensuring that the procedures outlined in this policy are followed.

- D. Troop/Region Commander/Section Supervisor

The Troop/Region Commander/Section Supervisor shall notify Commanding Officer of any asset forfeiture seizures within a reasonable time. Troop/Region Commanders/Section Supervisors are responsible for ensuring that the procedures outlined in this policy are followed.

- E. Commanding Officer/MCCD Chief

The GSP/MCCD Commanding Officer shall ensure that the Deputy Commissioner is notified of any asset forfeiture seizures within a reasonable time. The GSP/MCCD Commanding Officer shall also notify the Commissioner of the Department of Public Safety of significant seizures in a timely manner.

- F. Initiation of Forfeiture Proceedings

A member seizing assets subject to forfeiture shall ensure forfeiture proceedings are initiated. Two avenues of asset forfeiture seizure exist – state or federal. Contact shall be made with the appropriate adopting agency or prosecutor. The member, Post Commander/Unit Supervisor or Troop/Region Commander/Section Supervisor may initiate contact as directed by the Troop/Region Commander/Section Supervisor.

- G. Contact with Prosecutors/Investigators

Nothing in this policy shall be construed as limiting a member's ability to contact Federal or State Prosecutors or Investigators for the purpose of sharing information regarding any case. Contact with federal prosecutors/investigators should be made, even in cases where the state prosecutor conducts the forfeiture proceeding, if there is an indication that the criminal activity originated outside of Georgia and the ultimate destination was outside of Georgia, so that Georgia was only a conduit for the

transportation of the contraband. Also, contact should be encouraged in large cases which may be connected to criminal activity occurring on a multi-state level.

#### H. Records of Forfeiture Proceedings

The Incident Report shall be completed accurately reflecting the identity of the state prosecutor accepting responsibility for the forfeiture action and identity of the agency accepting custody of the released assets and the date of these transactions. The location and jurisdiction of the court shall also be placed on the incident report (For example: Fed. Dist. Ct. – Statesboro Division; or Clayton County Superior).

#### I. State Forfeiture Proceedings

1. State Prosecutors – Local agency investigators/state prosecutors/local drug task forces shall be contacted in all cases where there is a possibility of state jurisdiction to conduct forfeiture proceedings. The member must notify the state prosecutor having jurisdiction in writing within 20 days of the seizure. State forfeiture proceedings must be initiated within 60 days from the date of the seizure.
2. The local/state prosecutor generally has jurisdiction to conduct forfeiture proceedings in cases where controlled substances (drugs) are located at or near the location of the asset seizure so that the assets seized are identified as drug related assets. The prosecutor in the county where the seizure was made shall be contacted to determine if the State Prosecutor will conduct the forfeiture proceedings. If a prosecutor has previously indicated that the state prosecutor's office does not intend to conduct any forfeiture proceedings or a particular type of seizures, there is no need for additional contacts in each case.
3. Small seizures of cocaine or marijuana may be insufficient to confer state jurisdiction. If there is no evidence to suggest that the property is being used to facilitate a transaction in or a purchase of or sale of a controlled substance or marijuana, and the amount of drugs seized involved possession of one gram of cocaine or less; or 4 ounces of marijuana or less, then the State Prosecutor has no jurisdiction to conduct the forfeiture. There is no requirement to contact the state prosecutor in these cases.
4. State prosecutors also have jurisdiction over forfeiture proceedings involving:
  - a. Profits from child sexual exploitation;
  - b. Materials used to manufacture, distribute or possess imitation controlled substances;
  - c. Motor vehicles operated by a habitual violator;
  - d. Proceeds from violations of Georgia Gambling provisions;
  - e. Property used to hijack motor vehicles;
  - f. Vehicle forfeitures for third conviction of pandering (pandering was done from a vehicle in each case);
  - g. Proceeds from pimping;
  - h. Proceeds from violations of Georgia RICO Act;

- i. Profits from gang or subversive organization activity, and/or Weapons.
5. Property that is subject to seizure under state proceedings may be seized under two courses of action. Law enforcement can obtain a seizure warrant from the court allowing for the seizure of the item or, law enforcement can seize the property without a warrant if probable cause exists to believe that the property is subject to forfeiture under state law. Probable cause does not exist in cases where the sole suspicious activity involves a large amount of currency alone, or when the purported owner is unable to produce proof of where they obtained the currency.
  6. Property seized pending forfeiture does not automatically belong to the state upon seizure and once seized, it becomes the duty of the state to maintain it in the same condition as seized. Any property seized may be returned to the purported owner after investigation of the case or at some other point during the forfeiture proceedings.
  7. If the local prosecutor elects to conduct the forfeiture proceedings, the assets shall be turned over to the local sheriff/drug task force for retention during the proceedings along with a copy of any incident report or supplemental report and any other investigative materials. Unless special circumstances are approved by the Commissioner or in his absence the Deputy Commissioner, the prosecutor will be informed that pursuant to OCGA § 16-13-49(k), DPS relinquishes its interest in the property and will not seek a share of the asset proceeds.
- J. Federal Forfeiture Proceedings
1. Effective January 16, 2015, the Attorney General of the United States issued a Policy Directive that severely limits situations in which participants in the Department of Justice Asset Forfeiture Program are authorized to adopt assets seized by state or local law enforcement under state law in order for the property to be forfeited under federal law. Pursuant to that order, federal agencies are only allowed to adopt assets seized by state or local law enforcement agencies that directly implicate public safety concerns, namely firearms, ammunition, explosives, and property associated with child pornography. Any other property that a federal prosecutor or agency believes might fall under the public safety exception may only be federally adopted with the express approval of the Assistant Attorney General for the Criminal Division. The adoption of all other property, including, but not limited to, vehicles, valuables, and cash or currency instrument is prohibited.
  2. This policy applies to federal adoptions. It does not, therefore, apply to the following circumstances: (1) seizures by state and local authorities working together with federal authorities in a joint task force, (2) seizures by state and local authorities that are the result of joint-federal state investigations or that are coordinated with federal authorities as part of ongoing federal investigations, (3) seizures pursuant to federal warrants, obtained from federal courts to take custody of assets originally seized under state law.
  3. An adoption occurs when a state or local law enforcement agency seizes property and requests one of the federal seizing agencies to adopt the seizure and proceed with federal forfeiture. Federal agencies may adopt such seized property for forfeiture where the conduct giving rise to the seizure is in violation of federal law and where federal law provides for forfeiture.

4. A state or local law enforcement agency requesting federal adoption of a state or local seizure must comply with all applicable state laws and regulations pertaining to the transfer of seized property to a federal law enforcement agency, including any requirement for a state judicial order or prosecutorial consent (e.g., declination letter) for such transfer.
5. State and local agencies have 30 calendar days from the date the property is seized to officially request a federal adoption. The adopting federal agency may waive the 30-day deadline where the state or local law enforcement agency requests a waiver in writing, which must include a written explanation of exceptional circumstances that justify the delay. The lack of personnel to process paperwork will not be considered an exceptional circumstance that would justify an untimely request for federal adoption.
6. The following categories of assets are subject to forfeiture in federal proceedings only. Only federal prosecutors have jurisdiction to proceed with the forfeiture (state forfeiture is not an option):
  - a. Drug Cases where no drugs are seized (or 1 gram of cocaine or less; or 4 ounces of marijuana or less) and there is no evidence that the asset seized was used for a transaction, purchase or sale of a controlled substance or marijuana.
  - b. Violation of the Food Drug & Cosmetic Act for distribution of growth hormones;
  - c. Federal Money laundering & bank fraud violations;
  - d. Federal Gambling and Racketeering Crimes (covers transportation of gambling devices);
  - e. Child pornography and Federal Obscenity Violations;
  - f. Forfeiture of automobiles involved in Auto and Electronic Communication Theft;
  - g. Illegal Export of War Munitions, arms, or other articles;
  - h. Property used to transport or make illegal manufacture, reproduction of copyrighted materials;
  - i. Smuggling of Aliens, and/or
  - j. Drug paraphernalia.
7. If the State Prosecutor declines to present forfeiture proceedings or if the forfeiture can only be made under federal provisions, then the case will be presented for federal forfeiture action. Contact shall be made within seven days of the seizure.
  - a. The seizing member is responsible for providing the Comptroller's Office with all necessary documentation to properly complete the eShare Portal submission. All original completed documentation shall be delivered to the Comptroller's Office within 10 days of the seizure.



- b. The appropriate federal forms shall be completed by the Comptroller's Office within 14 days following the seizure. Forms shall be completed on behalf of DPS even if other agencies or officials have filed forms on our behalf.
8. DAG and other Federal Forfeiture forms:
- a. Federal Forms shall be filed with the proper federal authorities in a timely manner:
    - 1) Where DPS is requesting a share of proceeds in any federal case (adoption or federal; primary seizing agency or agency assist) the Comptroller's Office shall file the appropriate Federal Forms (usually on the eShare Portal) with federal authorities within 30 days of the seizure.
    - 2) Any federal form shall have the DPS incident number placed on the form in the narrative section.
  - b. Any DAG-71 or other request for federal equitable sharing shall be filled out in its entirety. The narrative section shall provide as much information as possible to include the names of additional participating law enforcement agencies if any and if known.
  - c. Forfeiture proceeds are divided based on various factors. One of the most important factors is the amount of time an agency spends on the case. Therefore, all DAG and forfeiture forms shall completely and accurately reflect total department hours spent on any arrest or investigation. The seizing member will ensure that all agency time is accounted for.
  - d. Any case where assets are seized and presented for federal forfeiture, but GSP is not the seizing or initiating agency (but merely took part in an arrest, investigation, or operation conducted by another law enforcement agency), the member shall ensure that the appropriate DAG or other federal forfeiture forms are processed, executed and filed in a timely manner on behalf of DPS. Members participating in operations which could possibly lead to federal forfeiture sharing are responsible for notifying the appropriate supervisor in that area of operations.
  - e. Seizures that do meet the federal guidelines for case adoption must have a Request for Adoption of State or Local Seizure form filed with the Department of Justice or Department of Treasury. The request must meet the following guidelines:
    - 1) Federal Adoptions of state or local seizures are limited to firearms, ammunitions, explosives, and child pornography instrumentalities.
    - 2) Request must be submitted to the federal investigative agency within 30 calendar days of the state and local seizure date unless circumstances merit a waiver, which must be attached.
    - 3) Federal investigative agency shall review all requests for adoptions.
    - 4) Requests for adoption of assets other than firearms, ammunition, explosives, and child pornography instrumentalities must be forwarded to the Asset Forfeiture and Money Laundering Section or the Treasury Executive Office for Asset Forfeiture for approval.

K. Department's Central Intelligence Office

1. The SAFE Database:

- a. The Department's Central Intelligence Office (CIO) shall be maintained for the purpose, among others, of collecting, storing and retrieving information on assets seized for forfeiture. All asset forfeiture information shall be maintained on the Department's "Seized Asset Forfeiture Exchange" (SAFE). The information maintained on SAFE shall be confidential and privileged for purposes of public safety and ongoing investigations. However, information on the SAFE database shall be made readily available to all law enforcement and prosecutorial agencies for public safety purposes.
  - b. It is the duty of the CIO to act as a liaison for seizure information with the appropriate state and federal investigative agencies. DPS shall share information with the National Seizure System (NSS) as administered by the El Paso Intelligence Center (EPIC) in accordance with EPIC rules and guidelines.
  - c. The CIO will maintain on SAFE by incident number the following information regarding an asset seizure for a period of no less than ten years:
    - 1) A log of the assets seized, including date, location identity of seizing member, description of asset, estimated value;
    - 2) The party to whom any asset was released;
    - 3) A log of disposition of all seized assets. Disposition shall be by court order or documentation from the seizing member that both the state and federal authorities declined to proceed with the forfeiture and the property had to be released to the lawful owner or processed as abandoned property, and
    - 4) A log indicating forms filed to request federal forfeiture proceeds including date/location of filing.
2. The CIO will conduct an annual review of pending files more than 12 months old to determine the status of the pending case and whether further action is warranted.

L. Comptroller's Office

The Comptroller's Office for the Department of Public Safety shall implement accounting procedures for maintaining and accounting for currency seizures and forfeiture proceeds in accordance with state and federal forfeiture regulations. The Comptroller's Office shall ensure that all equitable sharing funds receipts and disbursements are reported accurately and in a timely manner pursuant to Section IX of the *Guide to Equitable Sharing for State and Local Law Enforcement Agencies*.

The Comptroller's Office shall receive all original DAG-71 Forms and other federal forms from the investigating officer. The Comptroller's Office is then responsible for obtaining any signatures needed; including the Commissioner's and agency attorney's signatures. Signatures should be obtained as soon as reasonably possible. The Comptroller or his designee is responsible for timely filing of all original federal forms through the federal eShare Portal. The Comptroller's Office shall also maintain a copy of all forms in the appropriate asset tracking file.

1. Forfeiture Asset Proceeds

a. State Proceeds

Any state proceeds received by DPS shall be transferred to the state treasury pursuant to OCGA § 16-13-49(k). DPS will relinquish its interest in the property and will not seek a share of the asset proceeds. State proceeds received by DPS are not subject to sharing provisions.

b. Federal Proceeds

- 1) Two separate interest bearing accounts for the deposit of federal equitable sharing proceeds shall be maintained by the Comptroller's Office - one account for Department of Justice funds, and one account for Treasury funds. Both accounts will be established to accept direct deposits of shared asset funds. Checks for equitable sharing proceeds shall be deposited by the next business date of receipt.

2. Expenditure of Forfeiture Funds

All expenditures of forfeiture funds obtained through federal asset forfeiture will be in accordance with the guidelines set forth by the U.S. Department of Justice and the U.S. Department of the Treasury. Direct approval of the Commissioner or in his absence the Deputy Commissioner is required prior to the expenditure of any funds obtained through the federal equitable sharing program. The Comptroller's Office shall take all necessary measures to ensure that expenditures meet federal and state laws, rules, and guidelines prior to processing the expenditure request.

a. Federal Equitable Sharing Agreement

A Federal Equitable Sharing Agreement shall be filed with the appropriate federal agency on behalf of DPS in accordance with federal rules and guidelines. It shall be the responsibility of the Comptroller's Office to ensure that the Equitable Sharing Agreement is properly and timely filed. The Agreement must be filed a minimum of every three years or at the time of a change in the Commissioner who authorized the filing of the Agreement. The Agreement shall be filed with both the U.S. Department of Justice and the U.S. Department of Treasury.

3. Annual Certification of Asset Forfeiture Accounts

a. Federal Reporting Requirements

The Comptroller's Office shall be responsible for executing an Annual Certification of the Federal Proceeds account. The certification must account for:

- 1) Reporting all fund balances;
- 2) Reporting the sharing of any proceeds including the case number, amount, date and identity of recipient of any proceeds;
- 3) Interest accrued, and

- 4) Identify expenditures (including date, amount, purpose)
- 5) The Annual Certification along with a copy of the agency's standard accounting procedures utilized to track shared proceeds shall be submitted within 30 days of the start of the receiving agency's fiscal year to the U.S. Department of Justice, Criminal Division and the U.S. Department of Treasury, Executive Office for Asset Forfeiture.

b. State Reporting Requirements

The Comptroller's Office shall be responsible for executing an Annual Report to the State Auditor and to the Carl Vinson Institute of Government. The annual report is to be submitted by January 31 each year for the previous calendar year. The report shall include:

- 1) Itemized sales of property and proceeds from such sales;
- 2) Itemized property received as in-kind distribution and uses to which such property was put;
- 3) Itemized list of property destroyed;
- 4) Itemized list of all property returned to owners or interest holders;
- 5) Itemized receipt of forfeited currency;
- 6) The total amount received for the reporting year;
- 7) A description of the use and expenditure for the reporting year;
- 8) The total amount held in a financial institution, including interest earned

M. Legal Services Division

1. Asset proceeds received by any member shall be forwarded through the chain of command to the Adjutant. The Adjutant shall forward it to the Legal Services Director. Legal Services shall collect information needed to make all appropriate contacts regarding the sharing of proceeds, including verification that the appropriate Federal Report and Certifications are on file with the Federal agencies. Legal Services shall forward proceed checks to the Comptroller's Office with a cover memorandum directing:
  - a. The funds may be deposited for use by DPS;
  - b. Hold the funds pending possible sharing of proceeds with local officials;
  - c. The transfer of funds to the state treasury, or
  - d. How the funds should be disbursed and the names and addresses of the parties to receive the funds.
2. When funds are pending sharing decisions, it is the duty of Legal Services to update the Comptroller's Office in writing and in a timely manner regarding the decision to share or waive participation.

N. Sharing Federal Proceeds

1. Sharing with Local Law Enforcement: In any case where the Department receives 80% of the federal currency proceeds, Legal Services shall contact the local law enforcement agency head having primary jurisdiction in the location where the assets were seized and offer 35% of the 80% share.
2. Sharing with local Prosecutor's Office: In any case where DPS receives any percentage of federal currency proceeds, the State Prosecutor in the county where the proceeds were seized shall be contacted by Legal Services and offered 10% of the total proceeds received by DPS.
3. Certification of Ability to Accept Proceeds: Should there be a decision to share in the proceeds, the Head of the local agency or District Attorney shall be required to certify in writing that the proceeds will be utilized in a manner required by federal guidelines and that they are authorized to receive federal proceeds. DPS's offer to share proceeds will not be deemed accepted until receipt of the signed certification. The Comptroller's Office shall also verify the recipients' ability to accept proceeds by verifying they are eligible to receive sharing funds by using the web page provided by the Asset Forfeiture and Money Laundering Section. The Comptroller's Office shall keep a record of this verification by saving a screen shot of the approved list on the date of verification. In the event that an offer to share is accepted, the appropriate amounts will be passed through within ten business days of the Comptroller's Office receiving notification of the acceptance of the share offer and signed certification.

O. Return of Assets Not Forfeited

1. In the event that return of the assets is required, the seized property shall be released to the lawful owner immediately. The property may be returned to the owner or lawful representative. Owner may include a valid lien holder. Where property was held for forfeiture but no forfeiture resulted, no administrative or maintenance costs shall be assessed against the lawful owner. The Post/Station Commander of the Post where such property was originally seized shall assign the seizing member or other appropriate staff to attempt to locate the property owner in an effort to return the seized property.
2. The procedures for return of evidence shall be followed to document the release of all seized assets. In addition, prior to the return of any seized asset, the DPS-369 shall be completed. A copy of the completed form shall be attached to the incident report.
3. In the event that a lawful owner cannot be established, the asset shall be treated as abandoned property and held for the appropriate time necessary to establish the State's legal claim to abandoned property. If the local agencies elect to conduct abandonment proceedings, the assets may be released to the sheriff or prosecutor having jurisdiction over the location of the seizure. If DPS retains the abandoned property, Legal Services should be contacted regarding the necessary procedures and length of retention governing abandoned property.

P. Donations

The Department may not accept donations of items purchased with equitable shared funds. The Department may accept the transfer of equitable shared funds from another participating agency. The acceptance of any transferred funds shall be approved by the Commissioner or in his absence the Deputy Commissioner. In the event that any member receives an offer for a transfer for equitable sharing funds, a

memorandum shall be forwarded through the Chain of Command to the Office of the Commissioner. Transfers will be processed before the Board of Public Safety in accordance with State law and Department policy.

Q. Purchasing and Inventory Controls

All equipment or items purchased with equitable shared funds must be properly identified and tracked in accordance with the Inventory Policy #7.10. Additionally, all purchasing and procurement policies and procedures must be adhered to. Inventory of tangible property purchased with equitable shared funds shall include items exceeding \$1,000 per item - with exceptions for firearms, ammunition, electronics, or non-consumable items that have a traceable serial number (i.e. flashlights). Property Management will continue to track items meeting the threshold identified in the Inventory Policy #7.10. Supply will track items below that threshold that have traceable serial numbers. State purchase cards (P-card) shall not be used for Asset Forfeiture funded purchases except as authorized by the Comptroller for emergency purchases. Routine purchases with equitable shared funds must be made by a requisition/purchase order or the AP voucher process for proper tracking of item, approvals, and fund sources. Non-tangible item expenses (i.e. per diem while on authorized travel) will only be allowed if they meet the requirements set forth in the *Guide to Equitable Sharing for State and Local Law Enforcement Agencies*. Purchase requests that are approved will be routed back down the Chain of Command with a cover sheet form that specifies which purchase route (requisition/purchase order, AP voucher, or P-card) must be used.

R. Transfers of Equitable Shared Funds

Transfers to or from other law enforcement agencies refers to cash transfers of shared funds from one state or local law enforcement agency to another. In order to receive a cash transfer of shared funds, the law enforcement agency must be compliant with the Agreement, Certification, and Audit provisions of the *Guide to Equitable Sharing for State and Local Law Enforcement Agencies* (see Section X). All cash transfers must be used in accordance with the permissible use provisions of the *Guide*. The agency transferring 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 transferring and recipient agencies. Transferring agencies must verify the recipient agency's compliance at the time of transfer on the agency compliance list found on AFMLS' public website.

S. Drug Task Force

Nothing in this policy should be construed as a prohibition against working with other law enforcement agencies or entering into agreements to create drug task force operations so long as the approved task force operates consistently with Federal and State law, regulations and guidelines.

T. Policy Compliance

The GSP/MCCD Commanding Officer and the Capitol Police Division Director shall be responsible for ensuring that all sworn members are familiar with and follow these procedures. The GSP/MCCD Commanding Officer and the Capitol Police Division Director will direct mandatory initial orientation for all staff and continuous training/updating of the asset forfeiture policy and procedures.

#### U. Quality Control Process

The Commissioner shall designate a panel of relevant staff to conduct a quality control inspection designed to provide a timely comprehensive review of the asset forfeiture process of authorizing, expending, and documenting asset forfeiture funds. The panel shall consist of members from the Comptroller's Office, Property Management, Supply, and the Central Intelligence Office. No panel member shall have direct responsibility for the asset forfeiture process (i.e. the Comptroller). The panel shall be under the direction of the Asset Forfeiture Liaison. This review shall include, at minimum, the following items:

- a. Proper recording, for accounting purposes, of each transaction
- b. Proper expenditure approvals based on GDPS policies
- c. Permissible expenditures
- d. ESAC categorization
- e. Property inventory and control
- f. Training of relevant staff, including documentation of satisfactory completion
- g. Eligibility of agencies receiving forfeiture proceeds

The frequency of the reviews shall be determined by the Commissioner based on the rate of errors detected. All inspections shall include a sufficient sample of transactions to verify the integrity of the process. Review results shall be used to determine training needs or additional policy revisions.