

February 20, 2020

To: Board of Fire and Police Commissioners, FPC Executive Director Griselda Aldrete, MPD
Inspector Terrence Gordon, MPD Chief of Staff Nick DeSiato

From: Paul Mozina

Re: [FPC19242](#) Resolution to amend Standard Operating Procedure 765 Asset Forfeiture

Summary

At the Common Council's [Finance and Personnel Committee meeting on July 24, 2019](#) MPD Chief of Staff, Nick DeSiato, described three scenarios in which the MPD may participate in an asset forfeiture action:

- "Straight" State cases with no Federal involvement
- State cases that are referred to Federal jurisdiction
- Federal cases start to finish

The procedures relevant to each of these scenarios are not clearly explained in the proposed new version of SOP 765 – Asset Forfeiture. The taking of assets from a person with or without an arrest, with only a reasonable suspicion that the seizure would be subject to forfeiture, before charges are even filed and before they are found guilty of any crime, is morally and ethically questionable, ripe for abuse and needful of careful scrutiny.

"Straight" State cases with no Federal involvement

At the July 24, Finance Committee meeting, MPD Chief of Staff Nick DeSiato explained that when it comes to asset forfeitures litigated under state law: "...we're not doing any straight State cases because we don't have a district attorney or corporate counsel to be doing straight State cases... So, in effect nothing is happening at the State Level, we don't have a prosecutor to do that." This should be explicitly noted in the SOP.

State cases that are referred to Federal jurisdiction

Again, MPD Chief of Staff Nick DeSiato: "That kind of third bucket is: It started State and then moved to Federal and those we have to report as well. That'll happen because we have these State cases that we bring Federal. And that's something that needs to be reported to the DOA." On July 22, 2019, in compliance with [Wisconsin 2017 Act 211](#), the MPD filed their first asset forfeiture expense report on the [Department of Administration website](#). They filed a second set of reports on February 5, 2020. The procedures specific to this type of case should be documented in the SOP.

Federal case start to finish – Federal investigation, law and regulations

The regulations and procedures documented in the [DOJ Asset Forfeiture Manual 2019](#) apply. The MPD must have entered into a memorandum of understanding (MOU) with all parties to the transfer, utilize the Deputy Attorney General's Application for Transfer of Federally Forfeited Property (Form DAG-71) or the Treasury Department's TD F form, and produce an Equitable Sharing Agreement and Certification – Annual Certification Report. These requirements should be documented in the SOP.

Definitions to add to SOP 765

- Define Criminal, Civil and Administrative asset forfeitures and differentiate procedures specific to each.
- Define “straight” State asset forfeiture cases and explain that they will no longer be pursued because there is no prosecutor available.
- Define “refer” and “adoption” as they regard to cases that start out State but move to Federal and provide an explanation of the various ways a case can be referred, moved or adopted. Compliance with [Wisconsin 2017 Act 211](#) should be explicitly mentioned.
- Define cases that are Federal “start to finish”.
- Define what does it mean for a member to be assigned to a state or federal task force? Does that mean they are deputized? List task forces that the MPD partners with.
- Define HIDTA. Is it just the Chief’s new name for the Narcotics Division of the MPD or is the SOP referring to the ONDCP’s High Intensity Drug Trafficking Area (HIDTA) Program?

How will the new procedures work in the three scenarios outlined above?

Are there any Standard Operating Instructions or Standard Operating Directives in addition to SOP 765 that govern the MPD’s activities related to asset forfeiture? If yes, what are they and when were they last reviewed by the FPC?

What type of pre-seizure planning is required and under what circumstances? Who will do it?

How will warrant and warrantless seizures be documented?

What procedures will be followed to comply with [2017 Wisconsin Act 211](#) for State cases that are referred to Federal e.g., completion of [DOA-7200 Forfeiture Form](#)?

Has the MPD established a Memorandum of Understanding (MOU) between itself and the Wisconsin Department of Justice, the Federal Department of Justice (FBI, DEA, ATF, USPIA, USDA, DCIS, DSS, FDA), Federal Department of Treasury (IRS, ICE, CBP, USSS) or any other State or Federal ([DOJ](#) pg. 78) law enforcement entity or task force regarding how they will handle asset forfeiture proceedings?

SOP 765 authorizes the taking of \$1,000 or more **with no arrest and only reasonable suspicion** while the DOJ manual requires that the person “was, or is, being criminally prosecuted by state or federal authorities...”.

SOP 765 C. MONEY SEIZURE REQUIREMENTS

1. Federal Money Seizure Requirements

- a. \$1,000 and above from one person with no arrest and reasonable suspicion it is proceeds of drug trafficking. Department members must contact a HIDTA supervisor prior to seizing monies with no arrest.

2. (3) **Cash**—minimum amount must be at least \$5,000, unless the person from whom the cash was seized either was, or is, being criminally prosecuted by state or federal authorities for criminal activities related to the property, in which case the amount must be at least \$1,000.

Why are the MPD's procedures not consistent with the DOJ's? Why is the MPD authorizing the seizure of assets "with no arrest and reasonable suspicion", while the DOJ requires that the person was, or is, being criminally prosecuted?

765.15 ASSET FORFEITURE PROCEDURES

A. Members shall notify their shift commander in the following circumstances:

2. If money in the amount of \$1,000 or above is found during an investigation

Is the discovery of \$1,000 or more grounds for suspicion warranting escalation in **any** investigation? Does the alleged suspect assume the burden of proving the money is "innocent"? Can it be seized based on belief and suspicion prior to any in-depth investigation?

Does the FPC understand exactly who in the MPD is exempt from the processes enumerated in SOP 765 by virtue of 765.20 EXCEPTIONS?:

Department members assigned to state or federal task forces and the Specialized Investigations Division are not subject to the process enumerated in this SOP provided that the asset forfeiture procedures utilized by the task force and the Specialized Investigations Division are in compliance with state laws and federal codes governing the seizure of property.

According to the U.S. Department of Justice's [Asset Forfeiture Policy Manual for 2019](#) (page 66):

There is no circumstance that would warrant a blanket "federalization" of every seizure made by a state or local law enforcement agency simply because the state or local agency has an officer assigned to a federal task force or initiative (e.g., High Intensity Drug Trafficking Area (HIDTA) or Organized Crime Drug Enforcement Task Force (OCDETF)).

So, according to the DOJ, mere assignment to a federal task force is not sufficient justification for the exception we see in SOP 765. What is the justification for the exceptions in SOP 765 given the warning in the DOJ Policy Manual cited above? How many MPD employees are members of a state or federal task force? Are they deputized? Who are they and what task forces are they members of?

Why are **all** members of the Special Investigations Division exempted from SOP 765?

Does the MPD have any members assigned to State Task Forces and does it participate in asset forfeitures with them? If yes, how is this handled?

Asset Forfeiture Training

Per [DOJ Policy Directive 17-1](#): “Beginning in 2018, law enforcement agencies participating in the Department of Justice Asset Forfeiture Program must provide annual training on state and federal laws related to asset forfeiture to their law enforcement officers.” Has the MPD conducted this training? If yes, who has been trained and how was the training accomplished?

SOP 765 Monitoring, Auditing, Reporting

How will the FPC monitor the execution of SOP 765 to ensure that MPD members adhere to federal codes and Wisconsin state statutes governing asset forfeitures?

The FPC should require the MPD to produce an annual report of the asset forfeiture proceedings (criminal, civil, judicial, administrative, referrals, adoptions etc.) they have participated in including: the felony charged; the court where the proceedings occurred; the disposition; the value of the assets forfeited; their application to pay fines, court costs, or restitution; and the race and other demographic information of the defendant(s).

The SOP should explain how forfeited assets are used: as evidence; applied to court costs, restitution, fines; to compensate MPD’s expenses in the case; contributed to the school fund; distributed back to the MPD via the Federal Equitable Sharing program; etc.

The FPC should reconcile the Funds Spent documented in the Equitable Sharing Agreement and Certification – Annual Certification Report with the expenses documented in the resolutions authorizing transfer of those funds to the MPD’s accounts that are submitted to the Finance Committee (see appendix).

How will the FPC monitor the compliance of those MPD members who are exempted from SOP 765, with the federal codes and Wisconsin state statutes governing asset forfeitures?

The SOP should explain how the forfeited assets are managed pending the disposition of the case. Does the MPD have an MOU with the U.S. Marshal’s Service?

The FPC should interview people who have had their assets forfeited with the participation of the MPD and review their case records to verify how they were treated and, if found innocent, were they able to recover their assets.

How many citizen complaints (FPC and MPD) or internally generated MPD complaints involved asset forfeitures?

Conclusion

The MPD has presented only the barest thumbnail sketch of the very complex realm of asset forfeiture. They have not defined terms necessary for understanding the domain. They delegate actions to HIDTA, which is just the new name for the Narcotics Division, as if it were a black box into which the FPC Commissioners should not attempt to look. They are asserting authority to seize assets without an arrest on “reasonable suspicion”. They have not explained the disparities between their SOP and the DOJ’s “SOP”. There is no reporting of any asset forfeiture related activity back to the FPC Board for review. They have not provided a justification for the exceptions made for some department members. In fine, the MPD’s proposed SOP 765 is woefully lacking in the detail necessary for it to serve as a useful guide to members and to provide the Board of FPC Commissioners the insight they need to oversee compliance.



Equitable Sharing Agreement and Certification



NCIC/ORI/Tracking Number: WIMPD0000
Agency Name: Milwaukee Police Department
Mailing Address: 749 W. State Street
 Milwaukee, WI 53233

Type: Police Department

Finance Contact

Name: Rotar, Daniel
Phone: 4149357452 **Email:** drotar@milwaukee.gov

ESAC Preparer

Name: Rotar, Daniel
Phone: 4149357452 **Email:** drotar@milwaukee.gov

FY End Date: 12/31/2017

Agency FY 2018 Budget: \$293,672,222.00

Annual Certification Report

Summary of Equitable Sharing Activity		Justice Funds ¹	Treasury Funds ²
1	Beginning Equitable Sharing Fund Balance <small>(Must match Ending Balance from prior FY)</small>	\$1,198,928.48	\$137,268.45
2	Equitable Sharing Funds Received	\$503,403.58	\$14,449.59
3	Equitable Sharing Funds Received from Other Law Enforcement Agencies and Task Force <small>(Complete Table B)</small>	\$0.00	\$0.00
4	Other Income	\$0.00	\$0.00
5	Interest Income	\$16,125.00	\$0.00
6	Total Equitable Sharing Funds Received <small>(total of lines 1-5)</small>	\$1,718,457.06	\$151,718.04
7	Equitable Sharing Funds Spent <small>(total of lines a - n below)</small>	\$212,194.29	\$92,958.54
8	Ending Equitable Sharing Funds Balance <small>(difference between line 7 and line 6)</small>	\$1,506,262.77	\$58,759.50

¹Department of Justice Asset Forfeiture Program participants are: FBI, DEA, ATF, USPIS, USDA, DCIS, DSS, and FDA

²Department of the Treasury Asset Forfeiture Program participants are: IRS, ICE, CBP and USSS.

Summary of Shared Funds Spent		Justice Funds	Treasury Funds
a	Law enforcement operations and investigations	\$0.00	\$0.00
b	Training and education	\$0.00	\$33,623.55
c	Law enforcement, public safety and detention facilities	\$82,972.28	\$59,334.99
d	Law enforcement equipment	\$56,384.67	\$0.00
e	Joint law enforcement/public safety operations	\$0.00	\$0.00
f	Contracting for services	\$72,837.34	\$0.00
g	Law enforcement travel and per diem	\$0.00	\$0.00
h	Law enforcement awards and memorials	\$0.00	\$0.00
i	Drug, gang and other education or awareness programs	\$0.00	\$0.00
j	Matching grants <small>(Complete Table C)</small>	\$0.00	\$0.00
k	Transfers to other participating law enforcement agencies <small>(Complete Table D)</small>	\$0.00	\$0.00
l	Support of community-based programs <small>(Complete Table E)</small>	\$0.00	\$0.00
m	Non-categorized expenditures <small>(Complete Table F)</small>	\$0.00	\$0.00
n	Salaries <small>(Complete Table G)</small>	\$0.00	\$0.00
Total		\$212,194.29	\$92,958.54

Version Substitute 1

Substitute resolution authorizing the acceptance and expenditure of contributions received by the Milwaukee Police Department from federally forfeited tangible property or cash for increased or enhanced law enforcement efforts. (Police Department)

Analysis

This resolution authorizes \$556,000 to fund items in accordance with the guidelines of the Asset Forfeiture Sharing Program.

Body

Whereas, The Federal government has established specific guidelines for expending funds received as a result of the Asset Forfeiture Sharing Program; and

Whereas, The Police Department currently has funds held in trust (Fund No. 0678) to increase or enhance law enforcement efforts in the City of Milwaukee; now therefore be it

Resolved, By the Common Council of the City of Milwaukee, that the City Comptroller is authorized to transfer up to \$556,000 from the Police Department's Federal Forfeiture Trust Fund (Account Number 0678-3310-R999-2017-662201), to the contribution/revenue account entitled Federal Forfeiture Contribution Revenue (Account Number 00013311-2017-985012); and, be it

Further Resolved, That upon transfer of these funds, the City Comptroller is authorized and directed to transfer \$556,000 from the Federal Forfeiture Revenue Contribution Account to the Police Department's budget as follows:

0001-3310-0001-D3XX-006300	\$496,000
----------------------------	-----------

0001-3310-0001-D3XX-006800	\$ 60,000
----------------------------	-----------

;and be it

Further Resolved, That all funds are to be expended to enhance law enforcement efforts in the City of Milwaukee in the following categories and corresponding amounts:

CATEGORY	AMOUNT
Tasers Lease and Supplies	\$125,000
Security Cameras at Districts	\$100,000
Training	\$50,000
Fuel Tank Monitoring System	\$75,000
Computer Workstations/Software	\$65,000
Bicycle Patrol	\$30,000
Neighborhood Initiatives	\$55,000
Canine Unit	\$6,000
Administrative & Miscellaneous Expenses for Commands	\$50,000
Total	\$536,000

Requestor Milwaukee Police Department

Drafter Daniel F Rotar

