

July 30, 2020

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

From: Paul Mozina

Re: Response to version of (003) of [FPC19242](#) Resolution to amend Standard Operating Procedure 765 Asset Forfeiture

Summary

The taking/seizure of assets from a person with or without an arrest and 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.

Please consider the changes suggested below.

Definitions

The SOP currently includes:

B. FORFEITURE

Note: Department members shall only initiate forfeiture proceedings under federal asset forfeiture laws and shall not initiate any forfeiture proceedings under state asset forfeiture laws.

But there is a type of forfeiture action that is started/initiated as a State case and then is moved (adopted or referred) to Federal. These types of cases must be reported to the State DOA in compliance with [Wisconsin 2017 Act 211](#). The MPD has reported 2 such cases to the DOA since July 22, 2019. Is the MPD declaring in this Note that they **will not initiate any cases under State asset forfeiture laws and THEN later have them adopted or referred to Federal jurisdiction?**

There are two definitions that are either missing or incomplete:

- Define what it means for a member to be assigned to a state or federal task force. Does that mean they are deputized? The task forces that the MPD partners with should be listed and a list of those members who are currently assigned to a task force and their status, deputized or not, should be made available to the FPC on an ongoing basis.
- Define HIDTA more specifically to ensure that when the term is used in this SOP we can know whether it is referring to the MPD's HIDTA Division or to the ONDCP's High Intensity Drug Trafficking Area (HIDTA) Program. Currently one must infer this distinction from the context in which the word HIDTA appears, and this is subject to confusion.

Has the MPD established a Memorandum of Understanding (MOU) between itself and the Federal Department of Justice (FBI, DEA, ATF, USPIS, 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? If not, they must be created. The existence of these MOUs must be documented in the SOP so that no member can claim later that they were not aware of the existence of a governing MOU.

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.

Why are **all** members of the Special Investigations Division exempted from SOP 765? What areas of the MPD's operations are handled by the Special Investigations Division and what is the justification for excluding them from this SOP?

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? Training requirements should be enumerated in the SOP.

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 FPC should interview people who have had their assets seized and those whose seized assets were subjected to forfeiture, 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

- There is still a question about whether or not the MPD will initiate State cases and then later refer them to Federal.
- A definition of what it means to be a member of a state or federal task force and a list of the task forces that the MPD partners with is missing.
- The definition of the word HIDTA is ambiguous and fails to differentiate the MPD HIDTA Division from the ONDCP's HIDTA Program.
- There is no justification or explanation for why members of the Special Investigations Division are exempted from the SOP, or even what MPD responsibilities are encompassed by this Division.
- The training requirements for MPD members handling asset forfeiture cases must be defined and meet DOJ standards.
- Auditing requirements for all MPD activity related to asset forfeitures must be enumerated and regular reporting deadlines set.