

July 15, 2019

To: Fire and Police Commission, MPD Inspector Terrence Gordon, MPD Chief of Staff Nick DeSiato, Deputy City Attorney Jan A. Smokowicz, Alderwoman Milele Coggs

Re: [FPC19242](#) Resolution to amend Standard Operating Procedure 765 Asset Forfeiture, which is scheduled to be heard by the FPC Board at their regular meeting on July 25, 2019

From: Paul Mozina

Summary

The new version of SOP 765 Asset Forfeiture is a superficial outline of a very complicated and ethically challenging area of the MPD's operations. It does not explain how the MPD will comply with 2017 Wisconsin Act 211, which became law on 4/5/2018. It does not provide any feedback mechanisms for the FPC to monitor the execution and outcomes of the MPD's asset forfeiture proceedings. It does not adequately explain how and by whom these proceedings will be commenced and under what circumstances. The SOP continually begs the question as to what the procedures for confiscating money and other property will be by deferring to HIDTA, which is the new name for the Narcotics Division within the MPD.

Review of the Duties of the Fire and Police Commission

[Wisconsin State Statutes §62.50\(1m\)](#) (1m) Policy review. "The board shall conduct at least once each year a policy review of **all aspects of the operations** of the police and fire departments of the city."

Former FPC Executive Director La Keisha Butler declined to do this stating: "Instead, what the FPC has implemented is a process which points more towards the spirit of the law and is a continuous review process of all proposed *changes* to MPD and MFD policies and procedures."

In "the spirit of the law" and a "continuous review process", I am asking the FPC and the MPD to consider the following regarding the MPD's asset forfeiture operations:

What does it mean to comply with the federal code and Wisconsin state statutes?

How is the MPD complying with [2017 Wisconsin Act 211](#), which stipulates that the MPD can only receive a maximum of 50% of the proceeds from any asset forfeiture, and then, only for expenses incurred in the action that resulted in the forfeiture and upon providing an itemized expense report to the Wisconsin Department of Administration? There is no mention of this requirement or the expense report in SOP 765.

Here is the language of the applicable Wisconsin state statute 961.55(1r) <https://docs.legis.wisconsin.gov/statutes/statutes/961/V/55/1r>, which was updated effective April 3, 2018 via 2017 Wisconsin Act 211:

(1r) If a law enforcement officer or agency or state or local employee or agency refers seized property to a federal agency directly, indirectly, by adoption, through an intergovernmental joint task force, or by other means, for the purposes of forfeiture

litigation, the agency shall produce an itemized report of actual forfeiture expenses, as defined in sub. (5) (b), and submit the report to the department of administration to make it available on the department's website. If there is a federal or state criminal conviction for the crime that was the basis for the seizure, the agency may accept all proceeds. If there is no federal or state criminal conviction, the agency may not accept any proceeds, except that the agency may accept all proceeds if one of the following circumstances applies and is explained in the report submitted under this subsection:

Is the MPD subject to this statute? If not, why not? If it is, then the following restrictions apply to the use of proceeds of the forfeiture and the requirement to create the expense reports should be explicitly documented in the SOP.

(5) When property is forfeited under this chapter, the agency whose officer or employee seized the property shall do one of the following:

(a) If the property is a vehicle, retain it for official use for a period of up to one year.

Before the end of that period, the agency shall do one of the following:

1. Sell the property and use a portion, not to exceed 50 percent, of the amount received for payment of forfeiture expenses if the agency produces an itemized report of actual forfeiture expenses and submits the report to the department of administration to make it available on the department's website. The remainder shall be deposited in the school fund as proceeds of the forfeiture.

2. Continue to retain the property, if the agency deposits 30 percent of the value of the vehicle, as determined by the department of revenue, in the school fund as proceeds of the forfeiture. If the agency sells the vehicle at a later time and receives as proceeds from the sale an amount in excess of the amount previously deposited in the school fund, the agency shall deposit the excess in the school fund.

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The agency may use a portion, not to exceed 50 percent, of the amount received for payment of forfeiture expenses if the agency produces an itemized report of actual forfeiture expenses and submits the report to the department of administration to make it available on the department's website. The remainder shall be deposited in the school fund as proceeds of the forfeiture. In this subsection, "forfeiture expenses" include all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs and the costs of investigation and prosecution reasonably incurred.

(c) Require the sheriff of the county in which the property was seized to take custody of the property and remove it for disposition in accordance with law.

(d) Forward it to the bureau for disposition.

(e) If the property forfeited is money, retain a portion, not to exceed 50 percent, of the amount received for payment of forfeiture expenses, as defined in par. (b), if the agency produces an itemized report of actual forfeiture expenses and submits the report to the department of administration to make it available on the department's website and deposit the money in the school fund.

For your reference per the Wisconsin Department of Administration website <https://doa.wi.gov/Pages/AboutDOA/DOA-Forfeitures.aspx>:

Under [2017 Wisconsin Act 211](#), the Department of Administration is required to collect and post on its website forfeiture reports from law enforcement agencies in order for these agencies to retain a percentage of the value of the forfeited property to pay for forfeiture-related expenses. See ss. [961.55 \(1r\)](#), [961.55 \(5\)](#), [973.075 \(1r\)](#), and [973.075 \(4\)](#), Wis. Stats., for disposition of forfeiture proceeds.

[DOA-7200 - Forfeiture Form](#) must detail that forfeiture expenses are proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs and the costs of investigation and prosecution reasonably incurred.

As of July 15, 2019 there is no documentation posted by the MPD at the [WI DOA's asset forfeiture website](#).

Note that 2017 Wisconsin Act 211 did not address the most egregious injustice of asset forfeiture in that law enforcement still takes possession of the accused person's assets before they are found guilty. It is true now, that if you are not convicted your assets will be returned, but there is no doubt that a person's ability to defend themselves can be seriously damaged if their home, vehicle or money is taken from them while the case is pending. When it comes to asset forfeiture – you are guilty until proven innocent – and this is why it is a very ethically challenging aspect of the MPD's operations.

How will the new procedures work exactly?

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?

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, USPIS, USDA, DCIS, DSS, FDA), Federal Department of Treasury (IRS, ICE, CBP, USSS) or any other State or Federal law enforcement entity or task force regarding how they will handle asset forfeiture proceedings? If yes, has the FPC reviewed these MOU's? Whether or not there is a relevant MOU, how exactly will the MPD proceed in either the state or federal Courts to process asset forfeitures (criminal, civil, judicial, administrative, adoption etc.)?

There is no mention of the *Request for Adoption of State and Local Seizure* ("adoption form") required by federal legal counsel. Will the MPD be using this form and, if so, will the FPC review and audit their submissions?

What is the justification for reducing Federal Money Seizure requirements from \$5,000 to \$1,000 and how can this be reconciled with the DOJ's Asset Forfeiture Manual for 2019?

SOP 765 C. MONEY SEIZURE REQUIREMENTS

1. Federal Money Seizure Requirements

- a. \$1,000 and above from one person or from one location with an arrest for a qualifying charge.
- b. \$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.

[DOJ Asset Forfeiture Manual 2019](#) Page 28

2. (2) **Vehicles**—minimum net equity must be at least \$5,000 (based on National Automobile Dealers Association "Trade-In Value"). The value of multiple vehicles seized at the same time may *not* be aggregated for purposes of meeting the minimum net equity.
3. (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.

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...". Why are the MPD's procedures not consistent with the DOJ's? Why is the MPD authorizing the taking of assets without a qualifying charge?

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

Why is this unjustified, unwarranted, open-ended invitation to escalate **any investigation** being added to the new version of this SOP?

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)).

What is the justification for this exception? How many MPD employees are members of a state or federal task force (federally deputized task force officers)? In addition to the High Intensity Drug Trafficking Area (HIDTA) task forces: Fugitive, Interdiction, Investigative Support, Drug Gang and Opioid, what other state or federal task forces does the MPD participate in? Why is the Special Investigations Division exempted from SOP 765? How will the FPC monitor the compliance of those MPD members who are participating in a state or federal task force, or are members of the Special Investigations Division, with the federal codes and Wisconsin state statutes governing asset forfeitures?

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?

How will the FPC monitor the MPD’s compliance with the asset forfeiture rules outlined in the [DOJ’s Asset Forfeiture Policy Manual for 2019](#) (especially Chapter 3, B. Federal adoption procedure page 65)?

How will the FPC ensure that asset forfeiture proceedings are not racially biased against people of color?

Does the FPC review the MPD’s [Equitable Sharing Agreement and Certification — Annual Certification Report](#), which shows its asset forfeiture accounts and how funds from these accounts are being spent? In the [2008 Annual Certification Report](#) under the section called “Civil Rights Cases” there were 25 listed. Only 1 civil rights case was reported between 2009 – 2013 and this section of the report was removed beginning in 2014. What is the history of the Civil Rights Cases filed in 2008? Why was this section of the report removed? Is there racial bias in the execution and outcomes of the asset forfeiture program?

The FPC should require the MPD to produce an annual report of the asset forfeiture proceedings (criminal, civil, judicial, administrative, adoptions etc.) they have participated in including the felony charged, the court where the proceedings occurred, the disposition, the

assets forfeited and their value, and the race and other demographic information of the defendant(s).

Has the FPC interviewed anyone who had their assets forfeited or reviewed any of their case records? If not, this should be investigated. How many citizen complaints (FPC and MPD) or internally generated MPD complaints involved asset forfeitures?

MPD rebranding Narcotics Division as HIDTA and why it matters

The [MPD's Organizational Chart](#) published April 12, 2018 presumably reflects Chief Morales' "new strategy". The Narcotics Division has been replaced by the High Intensity Drug Trafficking Area (HIDTA) Division. MPD's 2020 budget request lists the Narcotics HIDTA Division. Was the FPC aware of this change? Did Chief Morales make any corresponding changes to any Standard Operating Instructions, Directives or Procedures to communicate this change to the members and if so, did the FPC also review those changes?

Are there any other law enforcement entities in the country that have adopted the HIDTA "brand" as a division in their organizational structure?

Is the FPC aware that in the MPD's [HIDTA grant applications submitted for Common Council](#) approval that it characterizes the HIDTA Program as a "Project", which absolves it from producing any progress reports regarding the execution of the grants? ONDCP/HIDTA's lack of accountability for measuring outcomes has been repeatedly called out by the Government Accountability Office (GAO).

Has the FPC and its research staff examined the history of HIDTA? Does the FPC understand the structure the Office of National Drug Control Policy's (ONDCP) HIDTA Program? Has the FPC examined any of [HIDTA's annual reports to Congress](#) or the [North Central HIDTA's \(MPD is a member\) annual reports](#) to the ONDCP? Has the FPC examined any of the Federal Government Accountability Office's (GAO) reports on the outcomes produced by the ONDCP and its flagship HIDTA Program?

[Preliminary Observations on the 2019 National Drug Control Strategy](#) by the GAO

According to ONDCP, the 2019 National Drug Control Strategy provides a high-level vision of federal drug control efforts by focusing on prevention, treatment and recovery, and reducing the availability of illicit drugs. The 2019 National Drug Control Strategy designates one overarching strategic objective—to reduce the number of lives lost to drug addiction— and provides some general descriptions of federal agencies' activities. However, our preliminary observations related to the 2019 National Drug Control Strategy indicate that it does not include several pieces of required information, including the following:

Quantifiable and measurable objectives. The National Drug Control Strategy was required to include “annual quantifiable and measurable objectives and specific targets to accomplish long-term quantifiable goals that the [ONDCP] Director determines may be achieved during each year beginning on the date on which the National Drug Control Strategy is submitted.” However, our work showed that the 2019 National Drug Control Strategy does not include this information.

Program and budget priorities. The National Drug Control Strategy was required to include “a 5-year projection for program and budget priorities.” While the 2019 National Drug Control Strategy outlines several high-level priorities, including a top priority to address the current opioid crisis and its associated deaths, it does not include such a 5-year projection.

Specific assessments. The National Drug Control Strategy was required to include specific assessments related to illicit drug use.²⁰ For example, the National Drug Control Strategy was required to include “an assessment of the reduction of illicit drug availability.” This assessment was to be measured by, among other things, the quantities of cocaine, heroin, marijuana, methamphetamine, ecstasy, and other drugs available for consumption in the United States; the amount of marijuana, cocaine, heroin, methamphetamine, ecstasy, and precursor chemicals and other drugs entering the United States; and the number of illicit manufacturing laboratories seized and destroyed as well as the number of hectares of marijuana, poppy, and coca cultivated and destroyed domestically and in other countries. The 2019 National Drug Control Strategy does not include this information. In addition, the National Drug Control Strategy was required to include “an assessment of the reduction of the consequences of illicit drug use and availability.” This assessment was to include the burden illicit drug users placed on hospital emergency departments; the annual national health care cost of illicit drug use; and the extent of illicit drug-related crime and criminal activity. Similarly, the 2019 National Drug Control Strategy does not include this information.

Performance measurement system. The ONDCP Director was required to submit “as part of the National Drug Control Strategy a description of a national drug control performance measurement system”. Among other things, this system was to describe the sources of information and data that would be used for each performance measure incorporated into the performance measurement system. This system was also to coordinate the development and implementation of national drug control data collection and reporting systems to support policy formulation and performance measurement. Further, the system was to monitor consistency across the drug-related goals and objectives of the National Drug Control Program agencies and ensure that each agency’s goals and budgets support are fully consistent with the National Drug Control Strategy. The 2019 National Drug Control Strategy does not contain a description of such national drug control performance measurement system.

In March 2018, we reported on federal agencies' efforts—including those of ONDCP—to limit the availability of and enhance their response to illicit opioids, such as heroin and fentanyl. We reviewed five strategies related to combating illicit opioids and determined that only one included outcome-oriented performance measures that aim to assess the effectiveness of its efforts—ONDCP's Heroin Availability Reduction Plan (HARP). In contrast, we found that ONDCP's High Intensity Drug Trafficking Areas (HIDTA) programs' Heroin Response Strategy did not include any outcome-oriented performance measures. Outcome measures address the results of programs and services, such as reductions in overdose deaths, and they can help in assessing the status of program operations, identifying areas that need improvement, and ensuring accountability for results. Among other things, we recommended in March 2018 that ONDCP coordinate with the HIDTAs to establish outcome-oriented performance measures to assess progress towards the goals set out in the Heroin Response Strategy. While ONDCP neither agreed nor disagreed with our recommendation, ONDCP told us in June 2018 that they had engaged with leaders from the HIDTAs participating in the Heroin Response Strategy to develop performance measures, including some outcome performance measures. As of March 4, 2019, this recommendation has not yet been addressed and ONDCP has not provided additional information on these efforts. We continue to believe that establishing these measures would enhance the HIDTAs' ability to assess whether these efforts are producing intended results.

GAO 2017 DRUG CONTROL POLICY:

Information on Status of Federal Efforts and Key Issues for Preventing Illicit Drug Use

GAO reported in March 2013 that the Office of National Drug Control Policy (ONDCP) and other agencies had not made progress toward achieving most of the goals in the 2010 National Drug Control Strategy (the Strategy) and ONDCP had established a new mechanism to monitor and assess progress. In the Strategy, ONDCP established seven goals related to reducing illicit drug use and its consequences to be achieved by 2015. As of March 2013, GAO's analysis showed that of the five goals for which primary data on results were available, one showed progress and four showed no progress. GAO also reported that ONDCP established a new monitoring system intended to provide information on progress toward Strategy goals and help identify performance gaps and options for improvement. At that time, the system was still in its early stages, and GAO reported that it could help increase accountability for improving progress. In November 2015, ONDCP issued its annual Strategy and performance report, which assess progress toward all seven goals. The Strategy shows progress in achieving one goal, no progress on three goals, and mixed progress on the other three goals. Overall, none of the goals in the Strategy have been fully achieved.

The “success” of the HIDTA Program is currently measured by its return on investment in drugs and money and the numbers of drug trafficking organizations and money laundering organizations that it has “disrupted”. This is akin to measuring the success of the U.S. military's efforts in the Vietnam War by counting how many enemy troops were being killed. The failure of HIDTA is not measured by how cheap and readily accessible illegal drugs still are. HIDTA's

July 15, 2019

failure is not measured by the crime and violence that accompany the War on Drugs. Its failure is not measured by the number of overdose deaths that have resulted from the introduction of fentanyl into the market – a direct result of the obscene profits caused by drug prohibition and the illegal market that accompanies it.

Despite the fact that the War on Drugs is a complete failure by any measure, the MPD is doubling down by rebranding its narcotics division as the High Intensity Drug Trafficking Area (HIDTA) division.

It appears that part of MPD Chief Morales' "new strategy" is a stepped-up War on Drugs which is only creating more chaos on the streets of Milwaukee as evidenced by the recent deaths of 3 MPD members, arguably, all in service of, or as a result of, the War on Drugs.