

**VILLAGE BOARD
COMMITTEE OF THE WHOLE MEETING**

JANUARY 23, 2012 – 7:30 P.M.

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. DISCUSSION ITEMS**
 - A. DISCUSSION OF ASSET FORFEITURE POLICY AND PROCEDURE
(ADMINISTRATION)(REAVES)(WEHMEIER/SCHAFER)**
 - B. DISCUSSION OF THIRD PARTY ELECTRICAL CONTRACT PROCESS
(VILLAGE ACCOUNTS)
(ADMINISTRATION)(REAVES)(WEHMEIER/SCHAFER)**
 - C. MARKETING DISCUSSION
(ECONOMIC DEVELOPMENT)(CHIALDIKAS)**
 - D. BELLA STRADA PROPOSAL
(PLANNING & ED)(STAPLETON)(BROWN)**
 - E. DISCUSSION OF AMENDMENT TO BUILDING CODE
(BUILDING DEPT.)(STAPLETON)(BUETTNER)**
 - F. I & M CANAL NATIONAL HERITAGE CORRIDOR MANAGEMENT PLAN PRESENTATION BY
CHAIRMAN, BOARD OF DIRECTORS, CANAL CORRIDOR ASSOCIATION**
- IV. UNFINISHED BUSINESS**
- V. NEW BUSINESS**
- VI. AUDIENCE PARTICIPATION**
- VII. ADJOURN**

**Village Board
Agenda Memorandum**

Item #

to: Mayor & Village Board

from: Ben Wehmeier, Village Administrator
George Schafer, Assistant Village Administrator
Kevin Shaughnessy, Police Chief
Ted Friedley, Village Treasurer

Subject: Discussion of Asset Forfeiture Policy

date: January 19, 2012

BACKGROUND/HISTORY

One of the final financial policies the Village Board needs to review is the asset forfeiture policy. Due to the many rules and regulations associated with different forfeitures received from the Police Department, the process can be rather complicated. This policy will provide consistent procedures for handling these proceeds. The attached policy is in draft format and will be discussed at the Committee Meeting.

PROS/CONS/ALTERNATIVES (IF APPLICABLE)

RECOMMENDATION

ATTACHMENTS (IF APPLICABLE)

1. Draft Asset Forfeiture Policy

SPECIFIC VILLAGE BOARD ACTION REQUIRED

Discussion

Village of Lemont
Asset Forfeiture and Restricted Fines Procedures Manual
Adopted January xx, 2012

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A. Objective

The Asset Forfeiture and Restricted Fines Procedures Manual provides an outline for asset forfeiture and restricted fine procedures. This manual shall be reviewed on a yearly basis for possible revisions by the current Village Treasurer and the Police Department to ensure that the manual is current with industry standards and practices, Illinois Compiled Statutes and the United States Department of Justice Requirements.

The responsibility for the administration of the asset forfeiture and restricted fine proceeds procedures has been delegated to the Village Treasurer and the Police Department Office Manager, who shall implement the following procedures and internal controls, as prescribed by the Revenue and Cash Management Policy.

B. Asset Forfeitures

The Village is eligible to participate in the sharing of forfeiture proceeds from the following sources:

1. Federal Department of Justice (DOJ) Forfeitures

The DOJ program is a nationwide law program under which the Attorney General shares federally forfeited property with participating state and local law enforcement agencies as outlined in the Equitable Sharing Agreement. Forfeitures processed under the DOJ Equitable Sharing Agreement are subject to the rules and regulations set forth in the Agreement

The Village is eligible to participate in the sharing of forfeiture proceeds under the DOJ Equitable Sharing Agreement if the Village provided personnel to assist with the investigation that led to the forfeited assets. The equitable shares allocated to a law enforcement agency must bear a reasonable relationship to the agency's direct participation in the investigation or law enforcement effort resulting in the forfeiture.

The DOJ Equitable Sharing Guidelines include specific guidelines for permissible uses of forfeiture asset proceeds. These include law enforcement investigations, training and machinery and equipment. Refer to the DOJ Equity Sharing Guidelines for additional details related to permissible uses, included as Attachment A.

2. Article 36 State Forfeitures

Illinois Compiled Statutes 720 ILCS 5/36 provides the Village with the right to seize vessels, vehicles and aircraft that are used with the knowledge and consent of the owner in the commission of crimes that are prohibited under certain sections of this law. Proceeds are to be used for general law enforcement purposes.

3. State General Forfeitures

The Illinois Compiled Statutes 725 ILCS 150 entitled “Drug Asset Forfeiture Procedures Act” and several subsections of 725 ILCS 5 provide guidelines for asset forfeitures. The proceeds from these forfeitures are typically restricted to expenditures related to the type of crime that led to the conviction (i.e., proceeds from forfeitures related to drugs must be spent for the purpose of training or enforcement purposes relating to drug prevention, investigation, or prosecution of drug crimes). Amounts distributed to units of local government by the state include the description of the ILCS section that governs the proceeds. All proceeds shall be used in accordance with the provisions of the Illinois Compiled Statutes that applies to the proceeds. See 725 ILCS 150 included as Attachment B.

C. Restricted Use Fines and Penalties

The Illinois Compiled Statutes provides guidelines for the Village to share in the proceeds of certain types of additional fines or penalties.

1. Court Supervision Vehicle Replacement Fines

Illinois Compiled Statute 625 ILCS 5/16-104c requires any person who receives a disposition of court supervision for a violation to pay a \$29 fine. Of this fee, \$20 shall be paid to the law enforcement agency that employed the arresting officer and shall be used for the acquisition or maintenance of police vehicles. See 625 ILCS 5/16 included as Attachment C.

2. State DUI Restricted Fines

Illinois Compiled Statute 625 ILCS 5/11-01 assesses an additional administrative fine for anyone found guilty of violations related to a DUI. If the Village assisted in the arrest, the Village will receive \$350 for DUI 1 (first offense) and \$200 for DUI 2 (second offense). These amounts are processed through the County Clerk’s office. Proceeds shall be used to purchase law enforcement equipment that will assist in the prevention of alcohol related criminal violence throughout the state. See ILCS 5/11 included as Attachment D.

D. Accounting Procedures and Internal Controls

1. Bank Account

The Village will maintain a separate bank account for asset forfeiture and restricted fine proceeds. This will be a pooled cash account for all forfeiture and restricted fine proceeds.

2. General Ledger Accounts

The Village will maintain a separate deferred revenue and revenue general ledger accounts for the following types of asset forfeiture and restricted fine revenues:

- a. Federal Department of Justice Forfeitures
- b. State Article 36 Forfeitures
- c. State General Forfeitures
- d. Court Supervision Vehicle Replacement Fines
- e. State DUI Restricted Fines

3. Forfeiture Log

The Police Department will maintain a log and supporting copies of all forms filed with the applicable departments for consideration of shared revenue participation. These forms include the DOJ DAG forms and the county court orders. The logs will include the seizure type, amount, share amount requested, amount received and date received. The Police Department Office Manager will reconcile the log to the general ledger account on a monthly basis.

4. Cash Receipts

The Village receives proceeds in the form of a direct deposit for DOJ proceeds and a check for all other proceeds. The Village shall contact all payees to verify all payments are made payable to the Village of Lemont and mailed directly to the Finance Department. The Finance Department processes the cash receipts as follows:

- a. When a DOJ receipt is posted in the forfeiture bank account, the Village receives a notice from the bank. The Police Department also receives an e-share notification from the DOJ. The Finance Department will record the receipt in the DOJ deferred revenue account and forward a copy to the Police Department who is responsible for updating the DOJ forfeiture log.
- b. Checks received at the Police Department are processed through the Police Department cash register¹. The Police Department Office Manager will record the receipt on the Receipt of Issued Funds form and forward to the Finance Department for recording. This form identifies the general ledger account to which this receipt should be recorded. The Police Department Office Manager will also update any applicable log for the forfeiture accounts.

Village of Lemont
Asset Forfeiture and Restricted Fines Procedures Manual
Adopted January xx, 2012

- c. Checks received in the Village Finance Department are processed through the main cash register¹. The Finance Department will deposit the checks and record the receipt in a general ledger transfer account. A copy of the check will be sent to the Police Department who is responsible for general ledger account coding on the Receipt of Issued Funds form. The Police Department will send the completed form to the Finance Department who will allocate the receipt from the transfer account to the appropriate general ledger deferred revenue account.

5. Expenditures

The asset forfeiture and restricted fine proceeds are restricted to Police Department expenditures. When the Police Department incurs an expense that would be eligible for payment from one of the deferred revenue accounts, the Police Department will submit the invoice for payment along with a Receipt of Issued Funds form that identifies which forfeiture or restricted fine general ledger account the expense should be applied to. This form must be reviewed by the Village Administrator and the Police Chief, who will verify the expense complies with the restrictive nature of the forfeiture or restricted fine account. The Village Treasurer will review to verify that there are sufficient funds available in the general ledger account. In addition, all expenses must be in compliance with the Village Purchasing Authority Policy. Upon recording the expenditure, the corresponding amount will be recognized as revenue.

6. Interest

Interest earned in the pooled forfeiture bank account will be allocated to the general ledger accounts that share in the pooled account on a proportionate basis.

7. Monthly Reconciliation

On a monthly basis, the Finance Department will reconcile the pooled forfeiture bank account to the general ledger. A copy of the completed reconciliation will be forwarded to the Police Department for review.

E. Department of Justice Annual Reporting Requirements

On an annual basis, the police department will prepare the DOJ Equitable Sharing Agreement and Certification. This must be signed by the Police Chief and the Mayor and filed within 60 days of the fiscal year-end.

F. Record Retention

The Village shall retain for a period of at least seven years all documents and records pertaining to participation in the DOJ Equitable Sharing Program and all state forfeiture programs.

¹ see additional cash receipts procedures in the Revenue and Cash Management Procedures and Internal Control Manual

Illinois Compiled Statutes

Information maintained by the Legislative Reference Bureau

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CRIMINAL PROCEDURE

(725 ILCS 150/) Drug Asset Forfeiture Procedure Act.

(725 ILCS 150/1) (from Ch. 56 1/2, par. 1671)

Sec. 1. Short Title. This Act shall be known and may be cited as the Drug Asset Forfeiture Procedure Act.
(Source: P.A. 86-1382.)

(725 ILCS 150/2) (from Ch. 56 1/2, par. 1672)

Sec. 2. Legislative Declaration. The General Assembly finds that the civil forfeiture of property which is used or intended to be used in, is attributable to or facilitates the manufacture, sale, transportation, distribution, possession or use of substances in certain violations of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act will have a significant beneficial effect in deterring the rising incidence of the abuse and trafficking of such substances within this State. While forfeiture may secure for State and local units of government some resources for deterring drug abuse and drug trafficking, forfeiture is not intended to be an alternative means of funding the administration of criminal justice. The General Assembly further finds that the federal narcotics civil forfeiture statute upon which this Act is based has been very successful in deterring the use and distribution of controlled substances within this State and throughout the country. It is therefore the intent of the General Assembly that the forfeiture provisions of this Act be construed in light of the federal forfeiture provisions contained in 21 U.S.C. 881 as interpreted by the federal courts, except to the extent that the provisions of this Act expressly differ therefrom.
(Source: P.A. 94-556, eff. 9-11-05.)

(725 ILCS 150/3) (from Ch. 56 1/2, par. 1673)

Sec. 3. Applicability. The provisions of this Act are applicable to all property forfeitable under the Illinois Controlled Substances Act, the Cannabis Control Act, the Illinois Food, Drug and Cosmetic Act, or the Methamphetamine Control and Community Protection Act.
(Source: P.A. 96-573, eff. 8-18-09.)

(725 ILCS 150/3.5)

Sec. 3.5. Preliminary Review.

(a) Within 14 days of the seizure, the State shall seek a preliminary determination from the circuit court as to whether there is probable cause that the property may be subject to forfeiture.

(b) The rules of evidence shall not apply to any proceeding conducted under this Section.

(c) The court may conduct the review under subsection (a) simultaneously with a proceeding pursuant to Section 109-1 of the Code of Criminal Procedure of 1963 for a related criminal offense if a prosecution is commenced by information or complaint.

(d) The court may accept a finding of probable cause at a preliminary hearing following the filing of an information or complaint charging a related criminal offense or following the return of indictment by a grand jury charging the related offense as sufficient evidence of probable cause as required under subsection (a).

(e) Upon making a finding of probable cause as required under this Section, and after taking into account the respective interests of all known claimants to the property including the State, the circuit court shall enter a restraining order or injunction, or take other appropriate action, as necessary to ensure that the property is not removed from the court's jurisdiction and is not concealed, destroyed, or otherwise disposed of by the property owner or interest holder before a forfeiture hearing is conducted.

(Source: P.A. 97-544, eff. 1-1-12.)

(725 ILCS 150/4) (from Ch. 56 1/2, par. 1674)

Sec. 4. Notice to Owner or Interest Holder.

(A) Whenever notice of pending forfeiture or service of an in rem complaint is required under the provisions of this Act, such notice or service shall be given as follows:

(1) If the owner's or interest holder's name and current address are known, then by either personal service or mailing a copy of the notice by certified mail, return receipt requested, to that address. For purposes of notice under this Section, if a person has been arrested for the conduct giving rise to the forfeiture, then the address provided to the arresting agency at the time of arrest shall be deemed to be that person's known address. Provided, however, if an owner or interest holder's address changes prior to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify the seizing agency of the change in address or, if the owner or interest holder's address changes subsequent to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify the State's Attorney of the change in address; or

(2) If the property seized is a conveyance, to the address reflected in the office of the agency or official in which title or interest to the conveyance is required by law to be recorded, then by mailing a copy of the notice by certified mail, return receipt requested, to that address; or

(3) If the owner's or interest holder's address is

not known, and is not on record as provided in paragraph (2), then by publication for 3 successive weeks in a newspaper of general circulation in the county in which the seizure occurred.

(B) Notice served under this Act is effective upon personal service, the last date of publication, or the mailing of written notice, whichever is earlier.

(Source: P.A. 86-1382; 87-614.)

(725 ILCS 150/5) (from Ch. 56 1/2, par. 1675)

Sec. 5. Notice to State's Attorney. The law enforcement agency seizing property for forfeiture under the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act shall, within 52 days of seizure, notify the State's Attorney for the county in which an act or omission giving rise to the forfeiture occurred or in which the property was seized of the seizure of the property and the facts and circumstances giving rise to the seizure and shall provide the State's Attorney with the inventory of the property and its estimated value. When the property seized for forfeiture is a vehicle, the law enforcement agency seizing the property shall immediately notify the Secretary of State that forfeiture proceedings are pending regarding such vehicle.

(Source: P.A. 94-556, eff. 9-11-05.)

(725 ILCS 150/6) (from Ch. 56 1/2, par. 1676)

Sec. 6. Non-Judicial Forfeiture. If non-real property that exceeds \$150,000 in value excluding the value of any conveyance, or if real property is seized under the provisions of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, the State's Attorney shall institute judicial in rem forfeiture proceedings as described in Section 9 of this Act within 45 days from receipt of notice of seizure from the seizing agency under Section 5 of this Act. However, if non-real property that does not exceed \$150,000 in value excluding the value of any conveyance is seized, the following procedure shall be used:

(A) If, after review of the facts surrounding the seizure, the State's Attorney is of the opinion that the seized property is subject to forfeiture, then within 45 days of the receipt of notice of seizure from the seizing agency, the State's Attorney shall cause notice of pending forfeiture to be given to the owner of the property and all known interest holders of the property in accordance with Section 4 of this Act.

(B) The notice of pending forfeiture must include a description of the property, the estimated value of the property, the date and place of seizure, the conduct giving rise to forfeiture or the violation of law alleged, and a summary of procedures and procedural rights applicable to the forfeiture action.

(C) (1) Any person claiming an interest in property which is the subject of notice under subsection (A) of Section 6 of this Act, may, within 45 days after the effective date of notice as described in Section 4 of this Act, file a verified claim with the State's Attorney expressing his or her interest in the property. The claim must set forth:

(i) the caption of the proceedings as set forth on the notice of pending forfeiture and the name of the claimant;

(ii) the address at which the claimant will accept mail;

(iii) the nature and extent of the claimant's interest in the property;

(iv) the date, identity of the transferor, and circumstances of the claimant's acquisition of the interest in the property;

(v) the name and address of all other persons known to have an interest in the property;

(vi) the specific provision of law relied on in asserting the property is not subject to forfeiture;

(vii) all essential facts supporting each assertion; and

(viii) the relief sought.

(2) If a claimant files the claim and deposits with the State's Attorney a cost bond, in the form of a cashier's check payable to the clerk of the court, in the sum of 10 percent of the reasonable value of the property as alleged by the State's Attorney or the sum of \$100, whichever is greater, upon condition that, in the case of forfeiture, the claimant must pay all costs and expenses of forfeiture proceedings, then the State's Attorney shall institute judicial in rem forfeiture proceedings and deposit the cost bond with the clerk of the court as described in Section 9 of this Act within 45 days after receipt of the claim and cost bond. In lieu of a cost bond, a person claiming interest in the seized property may file, under penalty of perjury, an indigency affidavit.

(3) If none of the seized property is forfeited in the judicial in rem proceeding, the clerk of the court shall return to the claimant, unless the court orders otherwise, 90% of the sum which has been deposited and shall retain as costs 10% of the money deposited. If any of the seized property is forfeited under the judicial forfeiture proceeding, the clerk of the court shall transfer 90% of the sum which has been deposited to the State's Attorney prosecuting the civil forfeiture to be applied to the costs of prosecution and the clerk shall retain as costs 10% of the sum deposited.

(D) If no claim is filed or bond given within the 45 day period as described in subsection (C) of Section 6 of this Act, the State's Attorney shall declare the property forfeited and shall promptly notify the owner and all known interest holders of the property and the Director of the Illinois Department of State Police of the declaration of forfeiture and the Director shall dispose of the property in accordance with law.

(Source: P.A. 97-544, eff. 1-1-12.)

(725 ILCS 150/7) (from Ch. 56 1/2, par. 1677)

Sec. 7. Presumptions. The following situations shall give rise to a presumption that the property described therein was furnished or intended to be furnished in exchange for a substance in violation of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control

and Community Protection Act, or is the proceeds of such an exchange, and therefore forfeitable under this Act, such presumptions being rebuttable by a preponderance of the evidence:

(1) All moneys, coin, or currency found in close proximity to forfeitable substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture or distribution of substances;

(2) All property acquired or caused to be acquired by a person either between the dates of occurrence of two or more acts in felony violation of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, or an act committed in another state, territory or country which would be punishable as a felony under the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, committed by that person within 5 years of each other, or all property acquired by such person within a reasonable amount of time after the commission of such acts if:

(a) At least one of the above acts was committed after the effective date of this Act; and

(b) At least one of the acts is or was punishable as a Class X, Class 1, or Class 2 felony; and

(c) There was no likely source for such property other than a violation of the above Acts.

(Source: P.A. 94-556, eff. 9-11-05.)

(725 ILCS 150/8) (from Ch. 56 1/2, par. 1678)

Sec. 8. Exemptions from forfeiture. A property interest is exempt from forfeiture under this Section if its owner or interest holder establishes by a preponderance of evidence that the owner or interest holder:

(A)(i) in the case of personal property, is not legally accountable for the conduct giving rise to the forfeiture, did not acquiesce in it, and did not know and could not reasonably have known of the conduct or that the conduct was likely to occur, or

(ii) in the case of real property, is not legally accountable for the conduct giving rise to the forfeiture, or did not solicit, conspire, or attempt to commit the conduct giving rise to the forfeiture; and

(B) had not acquired and did not stand to acquire substantial proceeds from the conduct giving rise to its forfeiture other than as an interest holder in an arms length commercial transaction; and

(C) with respect to conveyances, did not hold the property jointly or in common with a person whose conduct gave rise to the forfeiture; and

(D) does not hold the property for the benefit of or as nominee for any person whose conduct gave rise to its forfeiture, and, if the owner or interest holder acquired the interest through any such person, the owner or interest holder acquired it as a bona fide purchaser for value without knowingly taking part in the conduct giving rise to the forfeiture; and

(E) that the owner or interest holder acquired the interest:

(i) before the commencement of the conduct giving rise to

its forfeiture and the person whose conduct gave rise to its forfeiture did not have the authority to convey the interest to a bona fide purchaser for value at the time of the conduct; or

(ii) after the commencement of the conduct giving rise to its forfeiture, and the owner or interest holder acquired the interest as a mortgagee, secured creditor, lienholder, or bona fide purchaser for value without knowledge of the conduct which gave rise to the forfeiture; and

(a) in the case of personal property, without knowledge of the seizure of the property for forfeiture; or

(b) in the case of real estate, before the filing in the office of the Recorder of Deeds of the county in which the real estate is located of a notice of seizure for forfeiture or a lis pendens notice.

(Source: P.A. 86-1382.)

(725 ILCS 150/9) (from Ch. 56 1/2, par. 1679)

Sec. 9. Judicial in rem procedures. If property seized under the provisions of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act is non-real property that exceeds \$20,000 in value excluding the value of any conveyance, or is real property, or a claimant has filed a claim and a cost bond under subsection (C) of Section 6 of this Act, the following judicial in rem procedures shall apply:

(A) If, after a review of the facts surrounding the seizure, the State's Attorney is of the opinion that the seized property is subject to forfeiture, then within 45 days of the receipt of notice of seizure by the seizing agency or the filing of the claim and cost bond, whichever is later, the State's Attorney shall institute judicial forfeiture proceedings by filing a verified complaint for forfeiture and, if the claimant has filed a claim and cost bond, by depositing the cost bond with the clerk of the court. When authorized by law, a forfeiture must be ordered by a court on an action in rem brought by a State's Attorney under a verified complaint for forfeiture.

(B) During the probable cause portion of the judicial in rem proceeding wherein the State presents its case-in-chief, the court must receive and consider, among other things, all relevant hearsay evidence and information. The laws of evidence relating to civil actions shall apply to all other portions of the judicial in rem proceeding.

(C) Only an owner of or interest holder in the property may file an answer asserting a claim against the property in the action in rem. For purposes of this Section, the owner or interest holder shall be referred to as claimant.

(D) The answer must be signed by the owner or interest holder under penalty of perjury and must set forth:

(i) the caption of the proceedings as set forth on the notice of pending forfeiture and the name of the claimant;

(ii) the address at which the claimant will accept mail;

(iii) the nature and extent of the claimant's interest in the property;

(iv) the date, identity of transferor, and

circumstances of the claimant's acquisition of the

interest in the property;

(v) the name and address of all other persons known to have an interest in the property;

(vi) the specific provisions of Section 8 of this Act relied on in asserting it is not subject to forfeiture;

(vii) all essential facts supporting each assertion; and

(viii) the precise relief sought.

(E) The answer must be filed with the court within 45 days after service of the civil in rem complaint.

(F) The hearing must be held within 60 days after filing of the answer unless continued for good cause.

(G) The State shall show the existence of probable cause for forfeiture of the property. If the State shows probable cause, the claimant has the burden of showing by a preponderance of the evidence that the claimant's interest in the property is not subject to forfeiture.

(H) If the State does not show existence of probable cause or a claimant has established by a preponderance of evidence that the claimant has an interest that is exempt under Section 8 of this Act, the court shall order the interest in the property returned or conveyed to the claimant and shall order all other property forfeited to the State. If the State does show existence of probable cause and the claimant does not establish by a preponderance of evidence that the claimant has an interest that is exempt under Section 8 of this Act, the court shall order all property forfeited to the State.

(I) A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding under this Act regardless of the pendency of an appeal from that conviction. However, evidence of the pendency of an appeal is admissible.

(J) An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this Act; however, for good cause shown, on a motion by the State's Attorney, the court may stay civil forfeiture proceedings during the criminal trial for a related criminal indictment or information alleging a violation of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act. Such a stay shall not be available pending an appeal. Property subject to forfeiture under the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act shall not be subject to return or release by a court exercising jurisdiction over a criminal case involving the seizure of such property unless such return or release is consented to by the State's Attorney.

(K) All property declared forfeited under this Act vests in this State on the commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Any such property or proceeds subsequently transferred to any person remain subject to forfeiture and thereafter shall be ordered forfeited unless the transferee claims and establishes in a hearing under the provisions of this Act that the transferee's interest is exempt under Section 8 of this Act.

(L) A civil action under this Act must be commenced within 5 years after the last conduct giving rise to forfeiture became known or should have become known or 5 years after the

forfeitable property is discovered, whichever is later, excluding any time during which either the property or claimant is out of the State or in confinement or during which criminal proceedings relating to the same conduct are in progress.

(Source: P.A. 94-556, eff. 9-11-05.)

(725 ILCS 150/10) (from Ch. 56 1/2, par. 1680)

Sec. 10. Stay of time periods. If property is seized for evidence and for forfeiture, the time periods for instituting judicial and non-judicial forfeiture proceedings shall not begin until the property is no longer necessary for evidence.

(Source: P.A. 86-1382.)

(725 ILCS 150/11) (from Ch. 56 1/2, par. 1681)

Sec. 11. Settlement of Claims. Notwithstanding other provisions of this Act, the State's Attorney and a claimant of seized property may enter into an agreed-upon settlement concerning the seized property in such an amount and upon such terms as are set out in writing in a settlement agreement.

(Source: P.A. 86-1382.)

(725 ILCS 150/12) (from Ch. 56 1/2, par. 1682)

Sec. 12. Nothing in this Act shall apply to property which constitutes reasonable bona fide attorney's fees paid to an attorney for services rendered or to be rendered in the forfeiture proceeding or criminal proceeding relating directly thereto where such property was paid before its seizure, before the issuance of any seizure warrant or court order prohibiting transfer of the property and where the attorney, at the time he or she received the property did not know that it was property subject to forfeiture under this Act.

(Source: P.A. 86-1382.)

(725 ILCS 150/13) (from Ch. 56 1/2, par. 1683)

Sec. 13. Construction. It shall be the intent of the General Assembly that the forfeiture provisions of this Act be liberally construed so as to effect their remedial purpose. The forfeiture of property and other remedies hereunder shall be considered to be in addition, and not exclusive of any sentence or other remedy provided by law.

(Source: P.A. 86-1382.)

(725 ILCS 150/14) (from Ch. 56 1/2, par. 1684)

Sec. 14. Judicial Review. If property has been declared forfeited under Section 6 of this Act, any person who has an interest in the property declared forfeited may, within 30 days of the effective date of the notice of the declaration of forfeiture, file a claim and cost bond as described in subsection (C) of Section 6 of this Act. If a claim and cost bond is filed under this Section, then the procedures described in Section 9 of this Act shall apply.

(Source: P.A. 87-614.)

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VEHICLES

(625 ILCS 5/) Illinois Vehicle Code.

(625 ILCS 5/Ch. 11 Art. V heading)
ARTICLE V. DRIVING WHILE INTOXICATED,
TRANSPORTING ALCOHOLIC LIQUOR,
AND RECKLESS DRIVING

(625 ILCS 5/11-500) (from Ch. 95 1/2, par. 11-500)
Sec. 11-500. Definitions. For the purposes of interpreting Sections 6-206.1 and 6-208.1 of this Code, "first offender" shall mean any person who has not had a previous conviction or court assigned supervision for violating Section 11-501, or a similar provision of a local ordinance, or a conviction in any other state for a violation of driving while under the influence or a similar offense where the cause of action is the same or substantially similar to this Code or similar offenses committed on a military installation, or any person who has not had a driver's license suspension pursuant to paragraph 6 of subsection (a) of Section 6-206 as the result of refusal of chemical testing in another state, or any person who has not had a driver's license suspension or revocation for violating Section 11-501.1 within 5 years prior to the date of the current offense, except in cases where the driver submitted to chemical testing resulting in an alcohol concentration of 0.08 or more, or any amount of a drug, substance, or compound in such person's blood or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act, a controlled substance listed in the Illinois Controlled Substances Act, or an intoxicating compound listed in the Use of Intoxicating Compounds Act, or methamphetamine as listed in the Methamphetamine Control and Community Protection Act and was subsequently found not guilty of violating Section 11-501, or a similar provision of a local ordinance.
(Source: P.A. 95-355, eff. 1-1-08; 96-607, eff. 8-24-09; 96-1344, eff. 7-1-11.)

(625 ILCS 5/11-500.1)
Sec. 11-500.1. Immunity.

(a) A person authorized under this Article to withdraw blood or collect urine shall not be civilly liable for damages when the person, in good faith, withdraws blood or collects urine for evidentiary purposes under this Code, upon the request of a law enforcement officer, unless the act is performed in a willful and wanton manner.

(b) As used in this Section, "willful and wanton manner" means a course of action that shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the health or safety of another.

(Source: P.A. 89-689, eff. 12-31-96.)

(625 ILCS 5/11-501) (from Ch. 95 1/2, par. 11-501)

Sec. 11-501. Driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof.

(a) A person shall not drive or be in actual physical control of any vehicle within this State while:

(1) the alcohol concentration in the person's blood or breath is 0.08 or more based on the definition of blood and breath units in Section 11-501.2;

(2) under the influence of alcohol;

(3) under the influence of any intoxicating compound or combination of intoxicating compounds to a degree that renders the person incapable of driving safely;

(4) under the influence of any other drug or combination of drugs to a degree that renders the person incapable of safely driving;

(5) under the combined influence of alcohol, other drug or drugs, or intoxicating compound or compounds to a degree that renders the person incapable of safely driving; or

(6) there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act, a controlled substance listed in the Illinois Controlled Substances Act, an intoxicating compound listed in the Use of Intoxicating Compounds Act, or methamphetamine as listed in the Methamphetamine Control and Community Protection Act.

(b) The fact that any person charged with violating this Section is or has been legally entitled to use alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof, shall not constitute a defense against any charge of violating this Section.

(c) Penalties.

(1) Except as otherwise provided in this Section, any person convicted of violating subsection (a) of this Section is guilty of a Class A misdemeanor.

(2) A person who violates subsection (a) or a similar provision a second time shall be sentenced to a mandatory minimum term of either 5 days of imprisonment or 240 hours of community service in addition to any other criminal or administrative sanction.

(3) A person who violates subsection (a) is subject to 6 months of imprisonment, an additional mandatory minimum fine of \$1,000, and 25 days of community service in a program benefiting children if the person was

transporting a person under the age of 16 at the time of the violation.

(4) A person who violates subsection (a) a first time, if the alcohol concentration in his or her blood, breath, or urine was 0.16 or more based on the definition of blood, breath, or urine units in Section 11-501.2, shall be subject, in addition to any other penalty that may be imposed, to a mandatory minimum of 100 hours of community service and a mandatory minimum fine of \$500.

(5) A person who violates subsection (a) a second time, if at the time of the second violation the alcohol concentration in his or her blood, breath, or urine was 0.16 or more based on the definition of blood, breath, or urine units in Section 11-501.2, shall be subject, in addition to any other penalty that may be imposed, to a mandatory minimum of 2 days of imprisonment and a mandatory minimum fine of \$1,250.

(d) Aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof.

(1) Every person convicted of committing a violation of this Section shall be guilty of aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof if:

(A) the person committed a violation of subsection (a) or a similar provision for the third or subsequent time;

(B) the person committed a violation of subsection (a) while driving a school bus with persons 18 years of age or younger on board;

(C) the person in committing a violation of subsection (a) was involved in a motor vehicle accident that resulted in great bodily harm or permanent disability or disfigurement to another, when the violation was a proximate cause of the injuries;

(D) the person committed a violation of subsection (a) and has been previously convicted of violating Section 9-3 of the Criminal Code of 1961 or a similar provision of a law of another state relating to reckless homicide in which the person was determined to have been under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds as an element of the offense or the person has previously been convicted under subparagraph (C) or subparagraph (F) of this paragraph (1);

(E) the person, in committing a violation of subsection (a) while driving at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect under subsection (a) of Section 11-605 of this Code, was involved in a motor vehicle accident that resulted in bodily harm, other than great bodily harm or permanent disability or disfigurement, to another person, when the violation of subsection (a) was a proximate cause of the bodily harm;

(F) the person, in committing a violation of subsection (a), was involved in a motor vehicle, snowmobile, all-terrain vehicle, or watercraft

accident that resulted in the death of another person, when the violation of subsection (a) was a proximate cause of the death;

(G) the person committed a violation of subsection (a) during a period in which the defendant's driving privileges are revoked or suspended, where the revocation or suspension was for a violation of subsection (a) or a similar provision, Section 11-501.1, paragraph (b) of Section 11-401, or for reckless homicide as defined in Section 9-3 of the Criminal Code of 1961;

(H) the person committed the violation while he or she did not possess a driver's license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit;

(I) the person committed the violation while he or she knew or should have known that the vehicle he or she was driving was not covered by a liability insurance policy;

(J) the person in committing a violation of subsection (a) was involved in a motor vehicle accident that resulted in bodily harm, but not great bodily harm, to the child under the age of 16 being transported by the person, if the violation was the proximate cause of the injury; or

(K) the person in committing a second violation of subsection (a) or a similar provision was transporting a person under the age of 16.

(2)(A) Except as provided otherwise, a person convicted of aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof is guilty of a Class 4 felony.

(B) A third violation of this Section or a similar provision is a Class 2 felony. If at the time of the third violation the alcohol concentration in his or her blood, breath, or urine was 0.16 or more based on the definition of blood, breath, or urine units in Section 11-501.2, a mandatory minimum of 90 days of imprisonment and a mandatory minimum fine of \$2,500 shall be imposed in addition to any other criminal or administrative sanction. If at the time of the third violation, the defendant was transporting a person under the age of 16, a mandatory fine of \$25,000 and 25 days of community service in a program benefiting children shall be imposed in addition to any other criminal or administrative sanction.

(C) A fourth violation of this Section or a similar provision is a Class 2 felony, for which a sentence of probation or conditional discharge may not be imposed. If at the time of the violation, the alcohol concentration in the defendant's blood, breath, or urine was 0.16 or more based on the definition of blood, breath, or urine units in Section 11-501.2, a mandatory minimum fine of \$5,000 shall be imposed in addition to any other criminal or administrative sanction. If at the time of the fourth violation, the defendant was transporting a person under the age of 16 a mandatory fine of \$25,000 and 25 days of community service in a program benefiting children shall be imposed in addition to any other criminal or administrative sanction.

provision is a Class 1 felony, for which a sentence of probation or conditional discharge may not be imposed. If at the time of the violation, the alcohol concentration in the defendant's blood, breath, or urine was 0.16 or more based on the definition of blood, breath, or urine units in Section 11-501.2, a mandatory minimum fine of \$5,000 shall be imposed in addition to any other criminal or administrative sanction. If at the time of the fifth violation, the defendant was transporting a person under the age of 16, a mandatory fine of \$25,000, and 25 days of community service in a program benefiting children shall be imposed in addition to any other criminal or administrative sanction.

(E) A sixth or subsequent violation of this Section or similar provision is a Class X felony. If at the time of the violation, the alcohol concentration in the defendant's blood, breath, or urine was 0.16 or more based on the definition of blood, breath, or urine units in Section 11-501.2, a mandatory minimum fine of \$5,000 shall be imposed in addition to any other criminal or administrative sanction. If at the time of the violation, the defendant was transporting a person under the age of 16, a mandatory fine of \$25,000 and 25 days of community service in a program benefiting children shall be imposed in addition to any other criminal or administrative sanction.

(F) For a violation of subparagraph (C) of paragraph (1) of this subsection (d), the defendant, if sentenced to a term of imprisonment, shall be sentenced to not less than one year nor more than 12 years.

(G) A violation of subparagraph (F) of paragraph (1) of this subsection (d) is a Class 2 felony, for which the defendant, unless the court determines that extraordinary circumstances exist and require probation, shall be sentenced to: (i) a term of imprisonment of not less than 3 years and not more than 14 years if the violation resulted in the death of one person; or (ii) a term of imprisonment of not less than 6 years and not more than 28 years if the violation resulted in the deaths of 2 or more persons.

(H) For a violation of subparagraph (J) of paragraph (1) of this subsection (d), a mandatory fine of \$2,500, and 25 days of community service in a program benefiting children shall be imposed in addition to any other criminal or administrative sanction.

(I) A violation of subparagraph (K) of paragraph (1) of this subsection (d), is a Class 2 felony and a mandatory fine of \$2,500, and 25 days of community service in a program benefiting children shall be imposed in addition to any other criminal or administrative sanction. If the child being transported suffered bodily harm, but not great bodily harm, in a motor vehicle accident, and the violation was the proximate cause of that injury, a mandatory fine of \$5,000 and 25 days of community service in a program benefiting children shall be imposed in addition to any other criminal or administrative sanction.

(J) A violation of subparagraph (D) of paragraph (1) of this subsection (d) is a Class 3 felony, for which a sentence of probation or conditional discharge may not be

imposed.

(3) Any person sentenced under this subsection (d) who receives a term of probation or conditional discharge must serve a minimum term of either 480 hours of community service or 10 days of imprisonment as a condition of the probation or conditional discharge in addition to any other criminal or administrative sanction.

(e) Any reference to a prior violation of subsection (a) or a similar provision includes any violation of a provision of a local ordinance or a provision of a law of another state or an offense committed on a military installation that is similar to a violation of subsection (a) of this Section.

(f) The imposition of a mandatory term of imprisonment or assignment of community service for a violation of this Section shall not be suspended or reduced by the court.

(g) Any penalty imposed for driving with a license that has been revoked for a previous violation of subsection (a) of this Section shall be in addition to the penalty imposed for any subsequent violation of subsection (a).

(h) For any prosecution under this Section, a certified copy of the driving abstract of the defendant shall be admitted as proof of any prior conviction.

(Source: P.A. 95-149, eff. 8-14-07; 95-355, eff. 1-1-08; 95-400, eff. 1-1-09; 95-578, eff. 6-1-08; 95-778, eff. 8-4-08; 95-876, eff. 8-21-08; 96-289, eff. 8-11-09.)

(625 ILCS 5/11-501.01)

Sec. 11-501.01. Additional administrative sanctions.

(a) After a finding of guilt and prior to any final sentencing or an order for supervision, for an offense based upon an arrest for a violation of Section 11-501 or a similar provision of a local ordinance, individuals shall be required to undergo a professional evaluation to determine if an alcohol, drug, or intoxicating compound abuse problem exists and the extent of the problem, and undergo the imposition of treatment as appropriate. Programs conducting these evaluations shall be licensed by the Department of Human Services. The cost of any professional evaluation shall be paid for by the individual required to undergo the professional evaluation.

(b) Any person who is found guilty of or pleads guilty to violating Section 11-501, including any person receiving a disposition of court supervision for violating that Section, may be required by the Court to attend a victim impact panel offered by, or under contract with, a county State's Attorney's office, a probation and court services department, Mothers Against Drunk Driving, or the Alliance Against Intoxicated Motorists. All costs generated by the victim impact panel shall be paid from fees collected from the offender or as may be determined by the court.

(c) Every person found guilty of violating Section 11-501, whose operation of a motor vehicle while in violation of that Section proximately caused any incident resulting in an appropriate emergency response, shall be liable for the expense of an emergency response as provided in subsection (i) of this Section.

(d) The Secretary of State shall revoke the driving privileges of any person convicted under Section 11-501 or a

similar provision of a local ordinance.

(e) The Secretary of State shall require the use of ignition interlock devices on all vehicles owned by a person who has been convicted of a second or subsequent offense of Section 11-501 or a similar provision of a local ordinance. The person must pay to the Secretary of State DUI Administration Fund an amount not to exceed \$30 for each month that he or she uses the device. The Secretary shall establish by rule and regulation the procedures for certification and use of the interlock system, the amount of the fee, and the procedures, terms, and conditions relating to these fees.

(f) In addition to any other penalties and liabilities, a person who is found guilty of or pleads guilty to violating Section 11-501, including any person placed on court supervision for violating Section 11-501, shall be assessed \$750, payable to the circuit clerk, who shall distribute the money as follows: \$350 to the law enforcement agency that made the arrest, and \$400 shall be forwarded to the State Treasurer for deposit into the General Revenue Fund. If the person has been previously convicted of violating Section 11-501 or a similar provision of a local ordinance, the fine shall be \$1,000, and the circuit clerk shall distribute \$200 to the law enforcement agency that made the arrest and \$800 to the State Treasurer for deposit into the General Revenue Fund. In the event that more than one agency is responsible for the arrest, the amount payable to law enforcement agencies shall be shared equally. Any moneys received by a law enforcement agency under this subsection (f) shall be used to purchase law enforcement equipment that will assist in the prevention of alcohol related criminal violence throughout the State. This shall include, but is not limited to, in-car video cameras, radar and laser speed detection devices, and alcohol breath testers. Any moneys received by the Department of State Police under this subsection (f) shall be deposited into the State Police DUI Fund and shall be used to purchase law enforcement equipment that will assist in the prevention of alcohol related criminal violence throughout the State.

(g) The Secretary of State Police DUI Fund is created as a special fund in the State treasury. All moneys received by the Secretary of State Police under subsection (f) of this Section shall be deposited into the Secretary of State Police DUI Fund and, subject to appropriation, shall be used to purchase law enforcement equipment to assist in the prevention of alcohol related criminal violence throughout the State.

(h) Whenever an individual is sentenced for an offense based upon an arrest for a violation of Section 11-501 or a similar provision of a local ordinance, and the professional evaluation recommends remedial or rehabilitative treatment or education, neither the treatment nor the education shall be the sole disposition and either or both may be imposed only in conjunction with another disposition. The court shall monitor compliance with any remedial education or treatment recommendations contained in the professional evaluation. Programs conducting alcohol or other drug evaluation or remedial education must be licensed by the Department of Human Services. If the individual is not a resident of Illinois, however, the court may accept an alcohol or other drug evaluation or remedial education program in the individual's state of residence. Programs providing treatment must be licensed under existing applicable alcoholism and drug

treatment licensure standards.

(i) In addition to any other fine or penalty required by law, an individual convicted of a violation of Section 11-501, Section 5-7 of the Snowmobile Registration and Safety Act, Section 5-16 of the Boat Registration and Safety Act, or a similar provision, whose operation of a motor vehicle, snowmobile, or watercraft while in violation of Section 11-501, Section 5-7 of the Snowmobile Registration and Safety Act, Section 5-16 of the Boat Registration and Safety Act, or a similar provision proximately caused an incident resulting in an appropriate emergency response, shall be required to make restitution to a public agency for the costs of that emergency response. The restitution may not exceed \$1,000 per public agency for each emergency response. As used in this subsection (i), "emergency response" means any incident requiring a response by a police officer, a firefighter carried on the rolls of a regularly constituted fire department, or an ambulance.

(Source: P.A. 95-578, eff. 6-1-08; 95-848, eff. 1-1-09; 96-1342, eff. 1-1-11.)

(625 ILCS 5/11-501.1)

Sec. 11-501.1. Suspension of drivers license; statutory summary alcohol, other drug or drugs, or intoxicating compound or compounds related suspension or revocation; implied consent.

(a) Any person who drives or is in actual physical control of a motor vehicle upon the public highways of this State shall be deemed to have given consent, subject to the provisions of Section 11-501.2, to a chemical test or tests of blood, breath, or urine for the purpose of determining the content of alcohol, other drug or drugs, or intoxicating compound or compounds or any combination thereof in the person's blood if arrested, as evidenced by the issuance of a Uniform Traffic Ticket, for any offense as defined in Section 11-501 or a similar provision of a local ordinance, or if arrested for violating Section 11-401. If a law enforcement officer has probable cause to believe the person was under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or any combination thereof, the law enforcement officer shall request a chemical test or tests which shall be administered at the direction of the arresting officer. The law enforcement agency employing the officer shall designate which of the aforesaid tests shall be administered. A urine test may be administered even after a blood or breath test or both has been administered. For purposes of this Section, an Illinois law enforcement officer of this State who is investigating the person for any offense defined in Section 11-501 may travel into an adjoining state, where the person has been transported for medical care, to complete an investigation and to request that the person submit to the test or tests set forth in this Section. The requirements of this Section that the person be arrested are inapplicable, but the officer shall issue the person a Uniform Traffic Ticket for an offense as defined in Section 11-501 or a similar provision of a local ordinance prior to requesting that the person submit to the test or tests. The issuance of the Uniform Traffic Ticket shall not constitute an arrest, but shall be for the purpose of notifying the person that he or

she is subject to the provisions of this Section and of the officer's belief of the existence of probable cause to arrest. Upon returning to this State, the officer shall file the Uniform Traffic Ticket with the Circuit Clerk of the county where the offense was committed, and shall seek the issuance of an arrest warrant or a summons for the person.

(b) Any person who is dead, unconscious, or who is otherwise in a condition rendering the person incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this Section and the test or tests may be administered, subject to the provisions of Section 11-501.2.

(c) A person requested to submit to a test as provided above shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test will result in the statutory summary suspension of the person's privilege to operate a motor vehicle, as provided in Section 6-208.1 of this Code, and will also result in the disqualification of the person's privilege to operate a commercial motor vehicle, as provided in Section 6-514 of this Code, if the person is a CDL holder. The person shall also be warned that a refusal to submit to the test, when the person was involved in a motor vehicle accident that caused personal injury or death to another, will result in the statutory summary revocation of the person's privilege to operate a motor vehicle, as provided in Section 6-208.1, and will also result in the disqualification of the person's privilege to operate a commercial motor vehicle, as provided in Section 6-514 of this Code, if the person is a CDL holder. The person shall also be warned by the law enforcement officer that if the person submits to the test or tests provided in paragraph (a) of this Section and the alcohol concentration in the person's blood or breath is 0.08 or greater, or any amount of a drug, substance, or compound resulting from the unlawful use or consumption of cannabis as covered by the Cannabis Control Act, a controlled substance listed in the Illinois Controlled Substances Act, an intoxicating compound listed in the Use of Intoxicating Compounds Act, or methamphetamine as listed in the Methamphetamine Control and Community Protection Act is detected in the person's blood or urine, a statutory summary suspension of the person's privilege to operate a motor vehicle, as provided in Sections 6-208.1 and 11-501.1 of this Code, and a disqualification of the person's privilege to operate a commercial motor vehicle, as provided in Section 6-514 of this Code, if the person is a CDL holder, will be imposed.

A person who is under the age of 21 at the time the person is requested to submit to a test as provided above shall, in addition to the warnings provided for in this Section, be further warned by the law enforcement officer requesting the test that if the person submits to the test or tests provided in paragraph (a) of this Section and the alcohol concentration in the person's blood or breath is greater than 0.00 and less than 0.08, a suspension of the person's privilege to operate a motor vehicle, as provided under Sections 6-208.2 and 11-501.8 of this Code, will be imposed. The results of this test shall be admissible in a civil or criminal action or proceeding arising from an arrest for an offense as defined in Section 11-501 of this Code or a similar provision of a local ordinance or pursuant to Section 11-501.4 in prosecutions for

reckless homicide brought under the Criminal Code of 1961. These test results, however, shall be admissible only in actions or proceedings directly related to the incident upon which the test request was made.

(d) If the person refuses testing or submits to a test that discloses an alcohol concentration of 0.08 or more, or any amount of a drug, substance, or intoxicating compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act, a controlled substance listed in the Illinois Controlled Substances Act, an intoxicating compound listed in the Use of Intoxicating Compounds Act, or methamphetamine as listed in the Methamphetamine Control and Community Protection Act, the law enforcement officer shall immediately submit a sworn report to the circuit court of venue and the Secretary of State, certifying that the test or tests was or were requested under paragraph (a) and the person refused to submit to a test, or tests, or submitted to testing that disclosed an alcohol concentration of 0.08 or more.

(e) Upon receipt of the sworn report of a law enforcement officer submitted under paragraph (d), the Secretary of State shall enter the statutory summary suspension or revocation and disqualification for the periods specified in Sections 6-208.1 and 6-514, respectively, and effective as provided in paragraph (g).

If the person is a first offender as defined in Section 11-500 of this Code, and is not convicted of a violation of Section 11-501 of this Code or a similar provision of a local ordinance, then reports received by the Secretary of State under this Section shall, except during the actual time the Statutory Summary Suspension is in effect, be privileged information and for use only by the courts, police officers, prosecuting authorities or the Secretary of State, unless the person is a CDL holder, is operating a commercial motor vehicle or vehicle required to be placarded for hazardous materials, in which case the suspension shall not be privileged. Reports received by the Secretary of State under this Section shall also be made available to the parent or guardian of a person under the age of 18 years that holds an instruction permit or a graduated driver's license, regardless of whether the statutory summary suspension is in effect. A statutory summary revocation shall not be privileged information.

(f) The law enforcement officer submitting the sworn report under paragraph (d) shall serve immediate notice of the statutory summary suspension or revocation on the person and the suspension or revocation and disqualification shall be effective as provided in paragraph (g). In cases where the blood alcohol concentration of 0.08 or greater or any amount of a drug, substance, or compound resulting from the unlawful use or consumption of cannabis as covered by the Cannabis Control Act, a controlled substance listed in the Illinois Controlled Substances Act, an intoxicating compound listed in the Use of Intoxicating Compounds Act, or methamphetamine as listed in the Methamphetamine Control and Community Protection Act is established by a subsequent analysis of blood or urine collected at the time of arrest, the arresting officer or arresting agency shall give notice as provided in this Section or by deposit in the United States mail of the notice in an envelope with postage prepaid and addressed to the person at

his address as shown on the Uniform Traffic Ticket and the statutory summary suspension and disqualification shall begin as provided in paragraph (g). The officer shall confiscate any Illinois driver's license or permit on the person at the time of arrest. If the person has a valid driver's license or permit, the officer shall issue the person a receipt, in a form prescribed by the Secretary of State, that will allow that person to drive during the periods provided for in paragraph (g). The officer shall immediately forward the driver's license or permit to the circuit court of venue along with the sworn report provided for in paragraph (d).

(g) The statutory summary suspension or revocation and disqualification referred to in this Section shall take effect on the 46th day following the date the notice of the statutory summary suspension or revocation was given to the person.

(h) The following procedure shall apply whenever a person is arrested for any offense as defined in Section 11-501 or a similar provision of a local ordinance:

Upon receipt of the sworn report from the law enforcement officer, the Secretary of State shall confirm the statutory summary suspension or revocation by mailing a notice of the effective date of the suspension or revocation to the person and the court of venue. The Secretary of State shall also mail notice of the effective date of the disqualification to the person. However, should the sworn report be defective by not containing sufficient information or be completed in error, the confirmation of the statutory summary suspension or revocation shall not be mailed to the person or entered to the record; instead, the sworn report shall be forwarded to the court of venue with a copy returned to the issuing agency identifying any defect.

(i) As used in this Section, "personal injury" includes any Type A injury as indicated on the traffic accident report completed by a law enforcement officer that requires immediate professional attention in either a doctor's office or a medical facility. A Type A injury includes severely bleeding wounds, distorted extremities, and injuries that require the injured party to be carried from the scene.

(Source: P.A. 96-1080, eff. 7-16-10; 96-1344, eff. 7-1-11; 97-333, eff. 8-12-11; 97-471, eff. 8-22-11.)

(625 ILCS 5/11-501.2) (from Ch. 95 1/2, par. 11-501.2)

(Text of Section from P.A. 97-450)

Sec. 11-501.2. Chemical and other tests.

(a) Upon the trial of any civil or criminal action or proceeding arising out of an arrest for an offense as defined in Section 11-501 or a similar local ordinance or proceedings pursuant to Section 2-118.1, evidence of the concentration of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof in a person's blood or breath at the time alleged, as determined by analysis of the person's blood, urine, breath or other bodily substance, shall be admissible. Where such test is made the following provisions shall apply:

1. Chemical analyses of the person's blood, urine,

breath or other bodily substance to be considered valid under the provisions of this Section shall have been performed according to standards promulgated by the Department of State Police by a licensed physician,

registered nurse, trained phlebotomist, certified paramedic, or other individual possessing a valid permit issued by that Department for this purpose. The Director of State Police is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, to issue permits which shall be subject to termination or revocation at the discretion of that Department and to certify the accuracy of breath testing equipment. The Department of State Police shall prescribe regulations as necessary to implement this Section.

2. When a person in this State shall submit to a blood test at the request of a law enforcement officer under the provisions of Section 11-501.1, only a physician authorized to practice medicine, a licensed physician assistant, a licensed advanced practice nurse, a registered nurse, trained phlebotomist, or certified paramedic, or other qualified person approved by the Department of State Police may withdraw blood for the purpose of determining the alcohol, drug, or alcohol and drug content therein. This limitation shall not apply to the taking of breath or urine specimens.

When a blood test of a person who has been taken to an adjoining state for medical treatment is requested by an Illinois law enforcement officer, the blood may be withdrawn only by a physician authorized to practice medicine in the adjoining state, a licensed physician assistant, a licensed advanced practice nurse, a registered nurse, a trained phlebotomist acting under the direction of the physician, or certified paramedic. The law enforcement officer requesting the test shall take custody of the blood sample, and the blood sample shall be analyzed by a laboratory certified by the Department of State Police for that purpose.

3. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of their own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

4. Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to the person or such person's attorney.

5. Alcohol concentration shall mean either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood or breath at the time alleged as shown by analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

1. If there was at that time an alcohol concentration

of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

2. If there was at that time an alcohol concentration in excess of 0.05 but less than 0.08, such facts shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

3. If there was at that time an alcohol concentration of 0.08 or more, it shall be presumed that the person was under the influence of alcohol.

4. The foregoing provisions of this Section shall not be construed as limiting the introduction of any other relevant evidence bearing upon the question whether the person was under the influence of alcohol.

(c) 1. If a person under arrest refuses to submit to a chemical test under the provisions of Section 11-501.1, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof was driving or in actual physical control of a motor vehicle.

2. Notwithstanding any ability to refuse under this Code to submit to these tests or any ability to revoke the implied consent to these tests, if a law enforcement officer has probable cause to believe that a motor vehicle driven by or in actual physical control of a person under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof has caused the death or personal injury to another, that person shall submit, upon the request of a law enforcement officer, to a chemical test or tests of his or her blood, breath or urine for the purpose of determining the alcohol content thereof or the presence of any other drug or combination of both.

This provision does not affect the applicability of or imposition of driver's license sanctions under Section 11-501.1 of this Code.

3. For purposes of this Section, a personal injury includes any Type A injury as indicated on the traffic accident report completed by a law enforcement officer that requires immediate professional attention in either a doctor's office or a medical facility. A Type A injury includes severe bleeding wounds, distorted extremities, and injuries that require the injured party to be carried from the scene.

(Source: P.A. 96-289, eff. 8-11-09; 97-450, eff. 8-19-11.)

(Text of Section from P.A. 97-471)

Sec. 11-501.2. Chemical and other tests.

(a) Upon the trial of any civil or criminal action or proceeding arising out of an arrest for an offense as defined in Section 11-501 or a similar local ordinance or proceedings pursuant to Section 2-118.1, evidence of the concentration of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof in a person's blood or breath at the time alleged, as determined by analysis of the person's blood, urine, breath or other bodily substance, shall

be admissible. Where such test is made the following provisions shall apply:

1. Chemical analyses of the person's blood, urine, breath or other bodily substance to be considered valid under the provisions of this Section shall have been performed according to standards promulgated by the Department of State Police by a licensed physician, registered nurse, trained phlebotomist, certified paramedic, or other individual possessing a valid permit issued by that Department for this purpose. The Director of State Police is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, to issue permits which shall be subject to termination or revocation at the discretion of that Department and to certify the accuracy of breath testing equipment. The Department of State Police shall prescribe regulations as necessary to implement this Section.

2. When a person in this State shall submit to a blood test at the request of a law enforcement officer under the provisions of Section 11-501.1, only a physician authorized to practice medicine, a registered nurse, trained phlebotomist, or certified paramedic, or other qualified person approved by the Department of State Police may withdraw blood for the purpose of determining the alcohol, drug, or alcohol and drug content therein. This limitation shall not apply to the taking of breath or urine specimens.

When a blood test of a person who has been taken to an adjoining state for medical treatment is requested by an Illinois law enforcement officer, the blood may be withdrawn only by a physician authorized to practice medicine in the adjoining state, a registered nurse, a trained phlebotomist acting under the direction of the physician, or certified paramedic. The law enforcement officer requesting the test shall take custody of the blood sample, and the blood sample shall be analyzed by a laboratory certified by the Department of State Police for that purpose.

3. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of their own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

4. Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to the person or such person's attorney.

5. Alcohol concentration shall mean either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol, the

concentration of alcohol in the person's blood or breath at the time alleged as shown by analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

1. If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

2. If there was at that time an alcohol concentration in excess of 0.05 but less than 0.08, such facts shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

3. If there was at that time an alcohol concentration of 0.08 or more, it shall be presumed that the person was under the influence of alcohol.

4. The foregoing provisions of this Section shall not be construed as limiting the introduction of any other relevant evidence bearing upon the question whether the person was under the influence of alcohol.

(c) 1. If a person under arrest refuses to submit to a chemical test under the provisions of Section 11-501.1, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof was driving or in actual physical control of a motor vehicle.

2. Notwithstanding any ability to refuse under this Code to submit to these tests or any ability to revoke the implied consent to these tests, if a law enforcement officer has probable cause to believe that a motor vehicle driven by or in actual physical control of a person under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof has caused the death or personal injury to another, the law enforcement officer shall request, and that person shall submit, upon the request of a law enforcement officer, to a chemical test or tests of his or her blood, breath or urine for the purpose of determining the alcohol content thereof or the presence of any other drug or combination of both.

This provision does not affect the applicability of or imposition of driver's license sanctions under Section 11-501.1 of this Code.

3. For purposes of this Section, a personal injury includes any Type A injury as indicated on the traffic accident report completed by a law enforcement officer that requires immediate professional attention in either a doctor's office or a medical facility. A Type A injury includes severe bleeding wounds, distorted extremities, and injuries that require the injured party to be carried from the scene.

(Source: P.A. 96-289, eff. 8-11-09; 97-471, eff. 8-22-11.)

(625 ILCS 5/11-501.4) (from Ch. 95 1/2, par. 11-501.4)

Sec. 11-501.4. Admissibility of chemical tests of blood or urine conducted in the regular course of providing emergency medical treatment.

(a) Notwithstanding any other provision of law, the results of blood or urine tests performed for the purpose of determining the content of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof, of an individual's blood or urine conducted upon persons receiving medical treatment in a hospital emergency room are admissible in evidence as a business record exception to the hearsay rule only in prosecutions for any violation of Section 11-501 of this Code or a similar provision of a local ordinance, or in prosecutions for reckless homicide brought under the Criminal Code of 1961, when each of the following criteria are met:

(1) the chemical tests performed upon an individual's blood or urine were ordered in the regular course of providing emergency medical treatment and not at the request of law enforcement authorities;

(2) the chemical tests performed upon an individual's blood or urine were performed by the laboratory routinely used by the hospital; and

(3) results of chemical tests performed upon an individual's blood or urine are admissible into evidence regardless of the time that the records were prepared.

(b) The confidentiality provisions of law pertaining to medical records and medical treatment shall not be applicable with regard to chemical tests performed upon an individual's blood or urine under the provisions of this Section in prosecutions as specified in subsection (a) of this Section. No person shall be liable for civil damages as a result of the evidentiary use of chemical testing of an individual's blood or urine test results under this Section, or as a result of that person's testimony made available under this Section. (Source: P.A. 96-289, eff. 8-11-09.)

(625 ILCS 5/11-501.4-1)

Sec. 11-501.4-1. Reporting of test results of blood or urine conducted in the regular course of providing emergency medical treatment.

(a) Notwithstanding any other provision of law, the results of blood or urine tests performed for the purpose of determining the content of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof, in an individual's blood or urine conducted upon persons receiving medical treatment in a hospital emergency room for injuries resulting from a motor vehicle accident shall be disclosed to the Department of State Police or local law enforcement agencies of jurisdiction, upon request. Such blood or urine tests are admissible in evidence as a business record exception to the hearsay rule only in prosecutions for any violation of Section 11-501 of this Code or a similar provision of a local ordinance, or in prosecutions for reckless homicide brought under the Criminal Code of 1961.

(b) The confidentiality provisions of law pertaining to medical records and medical treatment shall not be applicable with regard to tests performed upon an individual's blood or urine under the provisions of subsection (a) of this Section. No person shall be liable for civil damages or professional discipline as a result of the disclosure or reporting of the tests or the evidentiary use of an individual's blood or urine test results under this Section or Section 11-501.4 or as a

result of that person's testimony made available under this Section or Section 11-501.4, except for willful or wanton misconduct.

(Source: P.A. 90-779, eff. 1-1-99; 91-125, eff. 1-1-00.)

(625 ILCS 5/11-501.5) (from Ch. 95 1/2, par. 11-501.5)

Sec. 11-501.5. Preliminary Breath Screening Test.

(a) If a law enforcement officer has reasonable suspicion to believe that a person is violating or has violated Section 11-501 or a similar provision of a local ordinance, the officer, prior to an arrest, may request the person to provide a sample of his or her breath for a preliminary breath screening test using a portable device approved by the Department of State Police. The person may refuse the test. The results of this preliminary breath screening test may be used by the law enforcement officer for the purpose of assisting with the determination of whether to require a chemical test as authorized under Sections 11-501.1 and 11-501.2, and the appropriate type of test to request. Any chemical test authorized under Sections 11-501.1 and 11-501.2 may be requested by the officer regardless of the result of the preliminary breath screening test, if probable cause for an arrest exists. The result of a preliminary breath screening test may be used by the defendant as evidence in any administrative or court proceeding involving a violation of Section 11-501 or 11-501.1.

(b) The Department of State Police shall create a pilot program to establish the effectiveness of pupillometer technology (the measurement of the pupil's reaction to light) as a noninvasive technique to detect and measure possible impairment of any person who drives or is in actual physical control of a motor vehicle resulting from the suspected usage of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof. This technology shall also be used to detect fatigue levels of the operator of a Commercial Motor Vehicle as defined in Section 6-500(6), pursuant to Section 18b-105 (Part 395-Hours of Service of Drivers) of the Illinois Vehicle Code. A State Police officer may request that the operator of a commercial motor vehicle have his or her eyes examined or tested with a pupillometer device. The person may refuse the examination or test. The State Police officer shall have the device readily available to limit undue delays.

If a State Police officer has reasonable suspicion to believe that a person is violating or has violated Section 11-501, the officer may use the pupillometer technology, when available. The officer, prior to an arrest, may request the person to have his or her eyes examined or tested with a pupillometer device. The person may refuse the examination or test. The results of this examination or test may be used by the officer for the purpose of assisting with the determination of whether to require a chemical test as authorized under Sections 11-501.1 and 11-501.2 and the appropriate type of test to request. Any chemical test authorized under Sections 11-501.1 and 11-501.2 may be requested by the officer regardless of the result of the pupillometer examination or test, if probable cause for an arrest exists. The result of the examination or test may be used by the defendant as evidence in any administrative or

court proceeding involving a violation of 11-501 or 11-501.1.

The pilot program shall last for a period of 18 months and involve the testing of 15 pupillometer devices. Within 90 days of the completion of the pilot project, the Department of State Police shall file a report with the President of the Senate and Speaker of the House evaluating the project.

(Source: P.A. 91-828, eff. 1-1-01; 91-881, eff. 6-30-00; 92-16, eff. 6-28-01.)

(625 ILCS 5/11-501.6) (from Ch. 95 1/2, par. 11-501.6)

Sec. 11-501.6. Driver involvement in personal injury or fatal motor vehicle accident not involving an arrest for a violation of Section 11-501; driving under the influence of alcohol, other drug or drugs, intoxicating compounds, or any combination thereof; chemical test.

(a) Any person who drives or is in actual control of a motor vehicle upon the public highways of this State and who has been involved in a personal injury or fatal motor vehicle accident, shall be deemed to have given consent to a breath test using a portable device as approved by the Department of State Police or to a chemical test or tests of blood, breath, or urine for the purpose of determining the content of alcohol, other drug or drugs, or intoxicating compound or compounds of such person's blood if arrested as evidenced by the issuance of a Uniform Traffic Ticket for any violation of the Illinois Vehicle Code or a similar provision of a local ordinance, with the exception of equipment violations contained in Chapter 12 of this Code, or similar provisions of local ordinances. This Section shall not apply to those persons arrested for a violation of Section 11-501 or a similar violation of a local ordinance, in which case the provisions of Section 11-501.1 shall apply. The test or tests shall be administered at the direction of the arresting officer. The law enforcement agency employing the officer shall designate which of the aforesaid tests shall be administered. A urine test may be administered even after a blood or breath test or both has been administered. Compliance with this Section does not relieve such person from the requirements of Section 11-501.1 of this Code.

(b) Any person who is dead, unconscious or who is otherwise in a condition rendering such person incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (a) of this Section. In addition, if a driver of a vehicle is receiving medical treatment as a result of a motor vehicle accident, any physician licensed to practice medicine, licensed physician assistant, licensed advanced practice nurse, registered nurse or a phlebotomist acting under the direction of a licensed physician shall withdraw blood for testing purposes to ascertain the presence of alcohol, other drug or drugs, or intoxicating compound or compounds, upon the specific request of a law enforcement officer. However, no such testing shall be performed until, in the opinion of the medical personnel on scene, the withdrawal can be made without interfering with or endangering the well-being of the patient.

(c) A person requested to submit to a test as provided above shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test, or submission to the test resulting in an alcohol concentration

of 0.08 or more, or any amount of a drug, substance, or intoxicating compound resulting from the unlawful use or consumption of cannabis, as covered by the Cannabis Control Act, a controlled substance listed in the Illinois Controlled Substances Act, an intoxicating compound listed in the Use of Intoxicating Compounds Act, or methamphetamine as listed in the Methamphetamine Control and Community Protection Act as detected in such person's blood or urine, may result in the suspension of such person's privilege to operate a motor vehicle and may result in the disqualification of the person's privilege to operate a commercial motor vehicle, as provided in Section 6-514 of this Code, if the person is a CDL holder. The length of the suspension shall be the same as outlined in Section 6-208.1 of this Code regarding statutory summary suspensions.

(d) If the person refuses testing or submits to a test which discloses an alcohol concentration of 0.08 or more, or any amount of a drug, substance, or intoxicating compound in such person's blood or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act, a controlled substance listed in the Illinois Controlled Substances Act, an intoxicating compound listed in the Use of Intoxicating Compounds Act, or methamphetamine as listed in the Methamphetamine Control and Community Protection Act, the law enforcement officer shall immediately submit a sworn report to the Secretary of State on a form prescribed by the Secretary, certifying that the test or tests were requested pursuant to subsection (a) and the person refused to submit to a test or tests or submitted to testing which disclosed an alcohol concentration of 0.08 or more, or any amount of a drug, substance, or intoxicating compound in such person's blood or urine, resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act, a controlled substance listed in the Illinois Controlled Substances Act, an intoxicating compound listed in the Use of Intoxicating Compounds Act, or methamphetamine as listed in the Methamphetamine Control and Community Protection Act.

Upon receipt of the sworn report of a law enforcement officer, the Secretary shall enter the suspension and disqualification to the individual's driving record and the suspension and disqualification shall be effective on the 46th day following the date notice of the suspension was given to the person.

The law enforcement officer submitting the sworn report shall serve immediate notice of this suspension on the person and such suspension and disqualification shall be effective on the 46th day following the date notice was given.

In cases where the blood alcohol concentration of 0.08 or more, or any amount of a drug, substance, or intoxicating compound resulting from the unlawful use or consumption of cannabis as listed in the Cannabis Control Act, a controlled substance listed in the Illinois Controlled Substances Act, an intoxicating compound listed in the Use of Intoxicating Compounds Act, or methamphetamine as listed in the Methamphetamine Control and Community Protection Act, is established by a subsequent analysis of blood or urine collected at the time of arrest, the arresting officer shall give notice as provided in this Section or by deposit in the United States mail of such notice in an envelope with postage prepaid and addressed to such person at his address as shown

on the Uniform Traffic Ticket and the suspension and disqualification shall be effective on the 46th day following the date notice was given.

Upon receipt of the sworn report of a law enforcement officer, the Secretary shall also give notice of the suspension and disqualification to the driver by mailing a notice of the effective date of the suspension and disqualification to the individual. However, should the sworn report be defective by not containing sufficient information or be completed in error, the notice of the suspension and disqualification shall not be mailed to the person or entered to the driving record, but rather the sworn report shall be returned to the issuing law enforcement agency.

(e) A driver may contest this suspension of his or her driving privileges and disqualification of his or her CDL privileges by requesting an administrative hearing with the Secretary in accordance with Section 2-118 of this Code. At the conclusion of a hearing held under Section 2-118 of this Code, the Secretary may rescind, continue, or modify the orders of suspension and disqualification. If the Secretary does not rescind the orders of suspension and disqualification, a restricted driving permit may be granted by the Secretary upon application being made and good cause shown. A restricted driving permit may be granted to relieve undue hardship to allow driving for employment, educational, and medical purposes as outlined in Section 6-206 of this Code. The provisions of Section 6-206 of this Code shall apply. In accordance with 49 C.F.R. 384, the Secretary of State may not issue a restricted driving permit for the operation of a commercial motor vehicle to a person holding a CDL whose driving privileges have been suspended, revoked, cancelled, or disqualified.

(f) (Blank).

(g) For the purposes of this Section, a personal injury shall include any type A injury as indicated on the traffic accident report completed by a law enforcement officer that requires immediate professional attention in either a doctor's office or a medical facility. A type A injury shall include severely bleeding wounds, distorted extremities, and injuries that require the injured party to be carried from the scene.

(Source: P.A. 96-1344, eff. 7-1-11; 97-450, eff. 8-19-11.)

(625 ILCS 5/11-501.7) (from Ch. 95 1/2, par. 11-501.7)

Sec. 11-501.7. (a) As a condition of probation or discharge of a person convicted of a violation of Section 11-501 of this Code, who was less than 21 years of age at the time of the offense, or a person adjudicated delinquent pursuant to the Juvenile Court Act, for violation of Section 11-501 of this Code, the Court may order the offender to participate in the Youthful Intoxicated Drivers' Visitation Program. The Program shall consist of a supervised visitation as provided by this Section by the person to at least one of the following, to the extent that personnel and facilities are available:

(1) A State or private rehabilitation facility that cares for victims of motor vehicle accidents involving persons under the influence of alcohol.

(2) A facility which cares for advanced alcoholics to observe persons in the terminal stages of alcoholism,

under the supervision of appropriately licensed medical personnel.

(3) If approved by the coroner of the county where the person resides, the county coroner's office or the county morgue to observe appropriate victims of motor vehicle accidents involving persons under the influence of alcohol, under the supervision of the coroner or deputy coroner.

(b) The Program shall be operated by the appropriate probation authorities of the courts of the various circuits. The youthful offender ordered to participate in the Program shall bear all costs associated with participation in the Program. A parent or guardian of the offender may assume the obligation of the offender to pay the costs of the Program. The court may waive the requirement that the offender pay the costs of participation in the Program upon a finding of indigency.

(c) As used in this Section, "appropriate victims" means victims whose condition is determined by the visit supervisor to demonstrate the results of motor vehicle accidents involving persons under the influence of alcohol without being excessively gruesome or traumatic to the observer.

(d) Any visitation shall include, before any observation of victims or disabled persons, a comprehensive counseling session with the visitation supervisor at which the supervisor shall explain and discuss the experiences which may be encountered during the visitation in order to ascertain whether the visitation is appropriate.

(Source: P.A. 86-1242.)

(625 ILCS 5/11-501.8)

Sec. 11-501.8. Suspension of driver's license; persons under age 21.

(a) A person who is less than 21 years of age and who drives or is in actual physical control of a motor vehicle upon the public highways of this State shall be deemed to have given consent to a chemical test or tests of blood, breath, or urine for the purpose of determining the alcohol content of the person's blood if arrested, as evidenced by the issuance of a Uniform Traffic Ticket for any violation of the Illinois Vehicle Code or a similar provision of a local ordinance, if a police officer has probable cause to believe that the driver has consumed any amount of an alcoholic beverage based upon evidence of the driver's physical condition or other first hand knowledge of the police officer. The test or tests shall be administered at the direction of the arresting officer. The law enforcement agency employing the officer shall designate which of the aforesaid tests shall be administered. A urine test may be administered even after a blood or breath test or both has been administered.

(b) A person who is dead, unconscious, or who is otherwise in a condition rendering that person incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this Section and the test or tests may be administered subject to the following provisions:

(i) Chemical analysis of the person's blood, urine,

breath, or other bodily substance, to be considered valid under the provisions of this Section, shall have been performed according to standards promulgated by the

Department of State Police by an individual possessing a valid permit issued by that Department for this purpose. The Director of State Police is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct analyses, to issue permits that shall be subject to termination or revocation at the direction of that Department, and to certify the accuracy of breath testing equipment. The Department of State Police shall prescribe regulations as necessary.

(ii) When a person submits to a blood test at the request of a law enforcement officer under the provisions of this Section, only a physician authorized to practice medicine, a licensed physician assistant, a licensed advanced practice nurse, a registered nurse, or other qualified person trained in venipuncture and acting under the direction of a licensed physician may withdraw blood for the purpose of determining the alcohol content therein. This limitation does not apply to the taking of breath or urine specimens.

(iii) The person tested may have a physician, qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer a chemical test or tests in addition to any test or tests administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the consideration of the previously performed chemical test.

(iv) Upon a request of the person who submits to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to the person or that person's attorney.

(v) Alcohol concentration means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(vi) If a driver is receiving medical treatment as a result of a motor vehicle accident, a physician licensed to practice medicine, licensed physician assistant, licensed advanced practice nurse, registered nurse, or other qualified person trained in venipuncture and acting under the direction of a licensed physician shall withdraw blood for testing purposes to ascertain the presence of alcohol upon the specific request of a law enforcement officer. However, that testing shall not be performed until, in the opinion of the medical personnel on scene, the withdrawal can be made without interfering with or endangering the well-being of the patient.

(c) A person requested to submit to a test as provided above shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test, or submission to the test resulting in an alcohol concentration of more than 0.00, may result in the loss of that person's privilege to operate a motor vehicle and may result in the disqualification of the person's privilege to operate a commercial motor vehicle, as provided in Section 6-514 of this Code, if the person is a CDL holder. The loss of driving privileges shall be imposed in accordance with Section 6-208.2 of this Code.

(d) If the person refuses testing or submits to a test

that discloses an alcohol concentration of more than 0.00, the law enforcement officer shall immediately submit a sworn report to the Secretary of State on a form prescribed by the Secretary of State, certifying that the test or tests were requested under subsection (a) and the person refused to submit to a test or tests or submitted to testing which disclosed an alcohol concentration of more than 0.00. The law enforcement officer shall submit the same sworn report when a person under the age of 21 submits to testing under Section 11-501.1 of this Code and the testing discloses an alcohol concentration of more than 0.00 and less than 0.08.

Upon receipt of the sworn report of a law enforcement officer, the Secretary of State shall enter the suspension and disqualification on the individual's driving record and the suspension and disqualification shall be effective on the 46th day following the date notice of the suspension was given to the person. If this suspension is the individual's first driver's license suspension under this Section, reports received by the Secretary of State under this Section shall, except during the time the suspension is in effect, be privileged information and for use only by the courts, police officers, prosecuting authorities, the Secretary of State, or the individual personally, unless the person is a CDL holder, is operating a commercial motor vehicle or vehicle required to be placarded for hazardous materials, in which case the suspension shall not be privileged. Reports received by the Secretary of State under this Section shall also be made available to the parent or guardian of a person under the age of 18 years that holds an instruction permit or a graduated driver's license, regardless of whether the suspension is in effect.

The law enforcement officer submitting the sworn report shall serve immediate notice of this suspension on the person and the suspension and disqualification shall be effective on the 46th day following the date notice was given.

In cases where the blood alcohol concentration of more than 0.00 is established by a subsequent analysis of blood or urine, the police officer or arresting agency shall give notice as provided in this Section or by deposit in the United States mail of that notice in an envelope with postage prepaid and addressed to that person at his last known address and the loss of driving privileges shall be effective on the 46th day following the date notice was given.

Upon receipt of the sworn report of a law enforcement officer, the Secretary of State shall also give notice of the suspension and disqualification to the driver by mailing a notice of the effective date of the suspension and disqualification to the individual. However, should the sworn report be defective by not containing sufficient information or be completed in error, the notice of the suspension and disqualification shall not be mailed to the person or entered to the driving record, but rather the sworn report shall be returned to the issuing law enforcement agency.

(e) A driver may contest this suspension and disqualification by requesting an administrative hearing with the Secretary of State in accordance with Section 2-118 of this Code. An individual whose blood alcohol concentration is shown to be more than 0.00 is not subject to this Section if he or she consumed alcohol in the performance of a religious service or ceremony. An individual whose blood alcohol

concentration is shown to be more than 0.00 shall not be subject to this Section if the individual's blood alcohol concentration resulted only from ingestion of the prescribed or recommended dosage of medicine that contained alcohol. The petition for that hearing shall not stay or delay the effective date of the impending suspension. The scope of this hearing shall be limited to the issues of:

(1) whether the police officer had probable cause to believe that the person was driving or in actual physical control of a motor vehicle upon the public highways of the State and the police officer had reason to believe that the person was in violation of any provision of the Illinois Vehicle Code or a similar provision of a local ordinance; and

(2) whether the person was issued a Uniform Traffic Ticket for any violation of the Illinois Vehicle Code or a similar provision of a local ordinance; and

(3) whether the police officer had probable cause to believe that the driver had consumed any amount of an alcoholic beverage based upon the driver's physical actions or other first-hand knowledge of the police officer; and

(4) whether the person, after being advised by the officer that the privilege to operate a motor vehicle would be suspended if the person refused to submit to and complete the test or tests, did refuse to submit to or complete the test or tests to determine the person's alcohol concentration; and

(5) whether the person, after being advised by the officer that the privileges to operate a motor vehicle would be suspended if the person submits to a chemical test or tests and the test or tests disclose an alcohol concentration of more than 0.00, did submit to and complete the test or tests that determined an alcohol concentration of more than 0.00; and

(6) whether the test result of an alcohol concentration of more than 0.00 was based upon the person's consumption of alcohol in the performance of a religious service or ceremony; and

(7) whether the test result of an alcohol concentration of more than 0.00 was based upon the person's consumption of alcohol through ingestion of the prescribed or recommended dosage of medicine.

At the conclusion of the hearing held under Section 2-118 of this Code, the Secretary of State may rescind, continue, or modify the suspension and disqualification. If the Secretary of State does not rescind the suspension and disqualification, a restricted driving permit may be granted by the Secretary of State upon application being made and good cause shown. A restricted driving permit may be granted to relieve undue hardship by allowing driving for employment, educational, and medical purposes as outlined in item (3) of part (c) of Section 6-206 of this Code. The provisions of item (3) of part (c) of Section 6-206 of this Code and of subsection (f) of that Section shall apply. The Secretary of State shall promulgate rules providing for participation in an alcohol education and awareness program or activity, a drug education and awareness program or activity, or both as a condition to the issuance of a restricted driving permit for suspensions imposed under this Section.

(f) The results of any chemical testing performed in accordance with subsection (a) of this Section are not admissible in any civil or criminal proceeding, except that the results of the testing may be considered at a hearing held under Section 2-118 of this Code. However, the results of the testing may not be used to impose driver's license sanctions under Section 11-501.1 of this Code. A law enforcement officer may, however, pursue a statutory summary suspension or revocation of driving privileges under Section 11-501.1 of this Code if other physical evidence or first hand knowledge forms the basis of that suspension or revocation.

(g) This Section applies only to drivers who are under age 21 at the time of the issuance of a Uniform Traffic Ticket for a violation of the Illinois Vehicle Code or a similar provision of a local ordinance, and a chemical test request is made under this Section.

(h) The action of the Secretary of State in suspending, revoking, cancelling, or disqualifying any license or permit shall be subject to judicial review in the Circuit Court of Sangamon County or in the Circuit Court of Cook County, and the provisions of the Administrative Review Law and its rules are hereby adopted and shall apply to and govern every action for the judicial review of final acts or decisions of the Secretary of State under this Section.

(Source: P.A. 96-1080, eff. 7-16-10; 96-1344, eff. 7-1-11; 97-333, eff. 8-12-11; 97-450, eff. 8-19-11.)

(625 ILCS 5/11-502) (from Ch. 95 1/2, par. 11-502)

Sec. 11-502. Transportation or possession of alcoholic liquor in a motor vehicle.

(a) Except as provided in paragraph (c), no driver may transport, carry, possess or have any alcoholic liquor within the passenger area of any motor vehicle upon a highway in this State except in the original container and with the seal unbroken.

(b) Except as provided in paragraph (c), no passenger may carry, possess or have any alcoholic liquor within any passenger area of any motor vehicle upon a highway in this State except in the original container and with the seal unbroken.

(c) This Section shall not apply to the passengers in a limousine when it is being used for purposes for which a limousine is ordinarily used, the passengers on a chartered bus when it is being used for purposes for which chartered buses are ordinarily used or on a motor home or mini motor home as defined in Section 1-145.01 of this Code. However, the driver of any such vehicle is prohibited from consuming or having any alcoholic liquor in or about the driver's area. Any evidence of alcoholic consumption by the driver shall be prima facie evidence of such driver's failure to obey this Section. For the purposes of this Section, a limousine is a motor vehicle of the first division with the passenger compartment enclosed by a partition or dividing window used in the for-hire transportation of passengers and operated by an individual in possession of a valid Illinois driver's license of the appropriate classification pursuant to Section 6-104 of this Code.

(d) (Blank).

(e) Any driver who is convicted of violating subsection

(a) of this Section for a second or subsequent time within one year of a similar conviction shall be subject to suspension of driving privileges as provided, in paragraph 23 of subsection (a) of Section 6-206 of this Code.

(f) Any driver, who is less than 21 years of age at the date of the offense and who is convicted of violating subsection (a) of this Section or a similar provision of a local ordinance, shall be subject to the loss of driving privileges as provided in paragraph 13 of subsection (a) of Section 6-205 of this Code and paragraph 33 of subsection (a) of Section 6-206 of this Code.

(Source: P.A. 94-1047, eff. 1-1-07; 95-847, eff. 8-15-08.)

(625 ILCS 5/11-503) (from Ch. 95 1/2, par. 11-503)

Sec. 11-503. Reckless driving; aggravated reckless driving.

(a) A person commits reckless driving if he or she:

- (1) drives any vehicle with a willful or wanton disregard for the safety of persons or property; or
- (2) knowingly drives a vehicle and uses an incline in a roadway, such as a railroad crossing, bridge approach, or hill, to cause the vehicle to become airborne.

(b) Every person convicted of reckless driving shall be guilty of a Class A misdemeanor, except as provided under subsections (b-1), (c), and (d) of this Section.

(b-1) Except as provided in subsection (d), any person convicted of violating subsection (a), if the violation causes bodily harm to a child or a school crossing guard while the school crossing guard is performing his or her official duties, is guilty of a Class 4 felony.

(c) Every person convicted of committing a violation of subsection (a) shall be guilty of aggravated reckless driving if the violation results in great bodily harm or permanent disability or disfigurement to another. Except as provided in subsection (d) of this Section, aggravated reckless driving is a Class 4 felony.

(d) Any person convicted of violating subsection (a), if the violation causes great bodily harm or permanent disability or disfigurement to a child or a school crossing guard while the school crossing guard is performing his or her official duties, is guilty of aggravated reckless driving. Aggravated reckless driving under this subsection (d) is a Class 3 felony.

(Source: P.A. 95-467, eff. 6-1-08.)

(625 ILCS 5/11-504)

Sec. 11-504. (Repealed).

(Source: P.A. 83-831. Repealed by P.A. 95-310, eff. 1-1-08.)

(625 ILCS 5/11-505) (from Ch. 95 1/2, par. 11-505)

Sec. 11-505. No person shall operate any motor vehicle in such a manner as to cause or allow to be emitted squealing, screeching or other such noise from the vehicle's tires due to rapid acceleration or excessive speed around corners or other such reason.

This Section shall not apply to the following conditions:

(a) an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator; nor

(b) the emergency operation of a motor vehicle when avoiding imminent danger; nor

(c) any raceway, racing facility or other public event, not part of a highway, sanctioned by the appropriate governmental authority.

(Source: P.A. 86-664.)

(625 ILCS 5/11-506)

Sec. 11-506. Street racing; aggravated street racing.

(a) No person shall engage in street racing on any street or highway of this State.

(b) No owner of any vehicle shall acquiesce in or permit his or her vehicle to be used by another for the purpose of street racing.

(c) For the purposes of this Section, the following words shall have the meanings ascribed to them:

"Acquiesce" or "permit" means actual knowledge that the motor vehicle was to be used for the purpose of street racing.

"Street racing" means:

(1) The operation of 2 or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other; or

(2) The operation of one or more vehicles over a common selected course, each starting at the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit; or

(3) The use of one or more vehicles in an attempt to outgain or outdistance another vehicle; or

(4) The use of one or more vehicles to prevent another vehicle from passing; or

(5) The use of one or more vehicles to arrive at a given destination ahead of another vehicle or vehicles; or

(6) The use of one or more vehicles to test the physical stamina or endurance of drivers over long-distance driving routes.

(d) Penalties.

(1) Any person who is convicted of a violation of subsection (a) shall be guilty of a Class A misdemeanor for the first offense and shall be subject to a minimum fine of \$250. Any person convicted of a violation of subsection (a) a second or subsequent time shall be guilty of a Class 4 felony and shall be subject to a minimum fine of \$500. The driver's license of any person convicted of subsection (a) shall be revoked in the manner provided by Section 6-205 of this Code.

(2) Any person who is convicted of a violation of subsection (b) shall be guilty of a Class B misdemeanor. Any person who is convicted of subsection (b) for a second or subsequent time shall be guilty of a Class A misdemeanor.

(3) Every person convicted of committing a violation

of subsection (a) of this Section shall be guilty of aggravated street racing if the person, in committing a violation of subsection (a) was involved in a motor vehicle accident that resulted in great bodily harm or permanent disability or disfigurement to another, where the violation was a proximate cause of the injury. Aggravated street racing is a Class 4 felony for which the

defendant, if sentenced to a term of imprisonment shall be sentenced to not less than one year nor more than 12 years.

(Source: P.A. 95-310, eff. 1-1-08.)

(625 ILCS 5/11-507)

Sec. 11-507. Supervising a minor driver while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof.

(a) A person shall not accompany or provide instruction, pursuant to subsection (a) of Section 6-107.1 of this Code, to a driver who is a minor and driving a motor vehicle pursuant to an instruction permit under Section 6-107.1 of this Code, while:

(1) the alcohol concentration in the person's blood or breath is 0.08 or more based on the definition of blood and breath units in Section 11-501.2 of this Code;

(2) under the influence of alcohol;

(3) under the influence of any intoxicating compound or combination of intoxicating compounds to a degree that renders the person incapable of properly supervising or providing instruction to the minor driver;

(4) under the influence of any other drug or combination of drugs to a degree that renders the person incapable of properly supervising or providing instruction to the minor driver;

(5) under the combined influence of alcohol, other drug or drugs, or intoxicating compound or compounds to a degree that renders the person incapable of properly supervising or providing instruction to the minor driver; or

(6) there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act, a controlled substance listed in the Illinois Controlled Substances Act, an intoxicating compound listed in the Use of Intoxicating Compounds Act, or methamphetamine as listed in the Methamphetamine Control and Community Protection Act.

(b) A person found guilty of violating this Section is guilty of an offense against the regulations governing the movement of vehicles.

(Source: P.A. 96-1237, eff. 1-1-11.)

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Guide to Equitable Sharing for State and Local Law Enforcement Agencies

April 2009

Foreword

In the nearly 25 years since the Comprehensive Crime Control Act of 1984 authorized federal officials to implement a national asset forfeiture program, asset forfeiture has become one of the most powerful tools for targeting criminals—including drug dealers and white collar criminals—who prey on the vulnerable for financial gain. Forfeiture statutes are now prevalent throughout the federal legal code and their use, along with other important anti-crime measures, has had a significant impact on crime.

One of the most important provisions of asset forfeiture is the authorization to share federal forfeiture proceeds with cooperating state and local law enforcement agencies. The Department of Justice Asset Forfeiture Program serves not only to deter crime but also to provide valuable additional resources to state and local law enforcement agencies. As this is written, the Department of Justice has shared over \$4.5 billion in forfeited assets with more than 8,000 state and local law enforcement agencies.

A Guide to Equitable Sharing for State and Local Law Enforcement Agencies serves to promote and maintain the integrity of the equitable sharing program so that it can continue to merit public confidence and support. For this reason it is supplemented with the National Code of Professional Conduct for Asset Forfeiture (see Appendix B). All seizing and prosecutorial agencies should ensure compliance with this Code.

Most importantly, this *Guide* seeks to assist state and local law enforcement agencies participating in the program by clarifying the directives they must follow to obtain and use equitably shared funds. The goal is to make the process as clear as possible so that local communities and the nation can thrive from reduced crime and from quality law enforcement.

Richard Weber, Chief
Asset Forfeiture and Money Laundering Section
Criminal Division
Department of Justice

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I. What Is the Department of Justice Asset Forfeiture Program?

The Department of Justice Asset Forfeiture Program (the Program) is a nationwide law enforcement initiative that removes the tools of crime from criminal organizations, deprives wrongdoers of the proceeds of their crimes, recovers property that may be used to compensate victims, and deters crime. The most important objective of the Program is law enforcement. Equitable sharing further enhances this law enforcement objective by fostering cooperation among federal, state, and local law enforcement agencies.

Federal law authorizes the Attorney General to share federally forfeited property with participating state and local law enforcement agencies.¹ The exercise of this authority is discretionary and limited by statute. The Attorney General is not required to share property in any case.

The Controlled Substances Act most fully states the intent of Congress in the sharing of forfeited property. Section 881(e)(3) of Title 21, United States Code, provides that:

The Attorney General shall assure that any property transferred to a State or local law enforcement agency...

(A) has a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort as a whole; and with respect to the violation of law on which the forfeiture is based; and

(B) will serve to encourage further cooperation between the recipient State or local agency and Federal law enforcement agencies.²

A Guide to Equitable Sharing for State and Local Law Enforcement Agencies applies only to the sharing of assets that were seized by Department of Justice investigative agencies and federal agencies participating in the Department of Justice Asset Forfeiture Program and that were forfeited judicially or administratively to the United States by the United States Attorney's Offices or Forfeiture Program participants. Participating agencies and components currently approved include:

U.S. Department of Justice agencies and components:

- Criminal Division, Asset Forfeiture and Money Laundering Section (AFMLS)
- Justice Management Division, Asset Forfeiture Management Staff (AFMS)
- Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
- Drug Enforcement Administration (DEA)

¹ 21 U.S.C. § 881(e)(1)(A) and (e)(3), 18 U.S.C. § 981(e)(2), and 19 U.S.C. § 1616a.

² 21 U.S.C. § 881(e)(3).

- Federal Bureau of Investigation (FBI)
- U.S. Attorney's Offices (USAO)
- U.S. Marshals Service (USMS)

Components outside of the U.S. Department of Justice:

- U.S. Department of Agriculture, Office of Inspector General (USDA-OIG)
- U.S. Department of Defense, Criminal Investigative Service (DCIS)
- U.S. Department of State, Bureau of Diplomatic Security (DSS)
- U.S. Food and Drug Administration, Office of Criminal Investigations (FDA-OCI)
- U.S. Postal Inspection Service (USPIS)

The FBI, DEA, ATF, and USPIS are the only agencies participating in the Department of Justice Program that directly adopt seizures by state or local law enforcement agencies. Under limited circumstances, the USAOs may directly adopt such seizures.³

As soon as assets are identified for seizure/forfeiture in a federal investigation or an adoptive forfeiture, the USAO or seizing agency handling the case should contact the USMS to discuss pre-seizure planning to determine the necessary resources for property management and disposal requirements.⁴ Pre-seizure planning is required to seize real property, businesses, or any unusual, complex, or unique assets (e.g., animals, property contaminated with hazardous material, leasehold agreements, partnership interests, valuable arts and antiques, or a large quantity of assets posing potential storage problems).

The U.S. Department of the Treasury administers its own Asset Forfeiture Program.⁵ For policies and participating agencies, please visit the Treasury Executive Office for Asset Forfeiture website at www.treas.gov/offices/enforcement/teof/.

³ In accordance with *Asset Forfeiture Policy Manual* (2008), Chap. 1, Sec. VIII.G.

⁴ See Pre-Seizure Planning Guide, USMS Pub. No. 106 (June 2000) for further information regarding pre-seizure planning.

⁵ Participating agencies in the Treasury Asset Forfeiture Program include the Internal Revenue Service (IRS), U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), U.S. Secret Service (USSS), and U.S. Coast Guard.

II. Which Non-federal Agencies Are Eligible to Participate in the Justice Equitable Sharing Program?

A. State or local law enforcement agencies

Any state or local law enforcement agency that directly participates in an investigation or prosecution that results in a federal forfeiture may request an equitable share of the net proceeds of the forfeiture.⁶

For purposes of equitable sharing, the Department of Justice defines *law enforcement agency* as a state or local government organization authorized to engage in as its primary function the investigation and apprehension, or the prosecution of individuals suspected or convicted of offenses against the criminal laws of the United States or of any state, county, municipality, or territory of the United States. Furthermore, a law enforcement agency is primarily composed of or employs individuals designated or qualified under state statutes as peace officers or those who are authorized to prosecute criminal violations or to exercise police powers such as making arrests, seizing property, executing warrants and court orders, and carrying firearms.

A *primary function* is one that: (1) occupies a clear majority of the agency's working time over a typical work cycle; and (2) is performed on a regular and recurring basis by the agency and a majority of its officers, employees, and agents. Functions that are of an emergency, incidental, or temporary nature are not considered primary even if they should amount to a majority of an agency's working time.

Typically, a law enforcement agency will include city, district, local, county, or state police, sheriff, or highway patrol departments, and state or local prosecutors' offices. Determinations of agency eligibility are solely within the discretion of the Department of Justice, Criminal Division.

Department of Justice policy requires shared monies and property to be used for law enforcement purposes. Sharing will be withheld from any state or local law enforcement agency where state or local law, regulation, or policy requires federal equitable sharing funds to be transferred to non-law enforcement agencies or expended for non-law enforcement purposes.

No sharing request or recommendation, including shares negotiated in a task force or other agreement, is final until approved by the federal deciding authority.

In accordance with the Crime Victims' Rights Act and the Attorney General's authority, the Department of Justice gives priority in the distribution of forfeited assets to valid owners, lienholders, federal financial regulatory agencies, and victims (in that order) through petitions for remission or mitigation or requests for restoration.⁷ After losses to the above parties have been satisfied, any remaining net proceeds can be shared with state and local law enforcement agencies.⁸

⁶ See part VII on how to calculate sharing percentages for participating agencies.

⁷ Remission or mitigation is the return of forfeited property to an owner or lienholder of the property or to a victim of the crime underlying the forfeiture. See 28 C.F.R. § 9.8 (2008). Restoration is the use of forfeited funds to pay restitution to the victim of a criminal offense in accordance with a restoration order entered as part of a criminal judgment.

⁸ Sharing is always based on net proceeds. See part III.E.

B. State National Guard agency or unit

A state National Guard generally does not meet the law enforcement agency criteria for participation in the Department of Justice Equitable Sharing Program because its primary mission serves a military or other non-law enforcement purpose. An individual National Guard unit, however, may qualify for sharing if:

- (1) It is a distinct unit of a state National Guard that has counterdrug activities as its primary mission and receives funding solely for this purpose; or
- (2) It is a military police or similar state National Guard unit that provides support to federal law enforcement agencies in counterdrug activities.

In determining whether a National Guard unit qualifies to participate in the sharing program, the Department of Justice will consider the following:

- (1) The unit directly performs or operationally supports law enforcement functions, e.g., marijuana eradication, surveillance, air transport, or field communications, as opposed to clerical assistance;
- (2) Direct or supporting law enforcement functions occupy a clear majority of the unit's working time over a typical work cycle and are performed on a regular and recurring basis;
- (3) State law vests the unit with peace officer authority, i.e., to investigate criminal activity and conduct searches, seizures, or arrests; and
- (4) State law permits the unit to receive equitably shared funds to finance law enforcement functions.

The Department of Justice will determine whether individual National Guard units are eligible to participate in the Equitable Sharing Program on a case-by-case basis. Once a state National Guard unit has been determined to be eligible, it will participate in the program in the same manner as any other state or local law enforcement agency, including adherence to reporting and compliance requirements, procedures to apply for shares of forfeiture properties, and all equitable sharing policies.

C. State and local prosecutorial agencies

State and local prosecutorial agencies are eligible to receive equitable sharing for assistance they provide in federal forfeiture cases. The following are examples of ways prosecutorial agencies may qualify for an equitable share:

- (1) Providing assistance in the preparation of search and seizure warrants and other documents relating to the seizure and forfeiture. (Sharing percentage will be based on the degree of participation in the investigation, usually calculated by the work hours expended.)
- (2) Providing a key informant or substantially assisting throughout the investigation that leads to a federal forfeiture. (Sharing percentage will be based on the degree of participation in the investigation, usually calculated by the work hours expended.)

- (3) Cross-designating state or local attorneys to handle the federal forfeiture or related criminal cases in federal court. (The Department will authorize sharing of up to five percent of the total net forfeiture proceeds with local prosecutors who cross-designate attorneys to handle adoptive and/or joint forfeiture cases in federal court as Special Assistant United States Attorneys. That sharing amount will be deducted from the Federal Government's share.)
- (4) Prosecuting criminal cases under state law directly related to a federal forfeiture. (Sharing percentage will be determined on a case-by-case basis.)

III. How Do Agencies Participate in the Equitable Sharing Program?

A. Joint investigation

Joint investigations are those in which federal agencies work with state or local law enforcement agencies or foreign countries to enforce federal criminal laws. Joint investigations may originate from participation on a federal task force or a formal task force comprised of state and local agencies or from state or local investigations that are developed into federal cases.

B. Adoption of a state or local seizure

An adoption occurs when a state or local law enforcement agency seizes property and requests one of the federal seizing agencies⁹ 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.

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. When required by state law, a state transfer order should be obtained for assets seized pursuant to a state search warrant or a warrantless search to which state jurisdiction has attached. Federal officials should consult with appropriate state or local authorities in adoption situations.

State and local agencies have **30 calendar days** from the date the property is seized to 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.

⁹ See part I for details on federal agencies that adopt state and local agency seizures.

IV. What Are the Minimum Monetary Thresholds for Adoptive Forfeitures?

Generally, seized property will not be adopted for federal forfeiture unless the equity in the property exceeds the following thresholds:

Minimum Adoption Thresholds

Conveyances	Vehicles	\$5,000
	Vessels	\$10,000
	Aircraft	\$10,000
Real Property	Land and Improvements	\$20,000 or 20 percent of the appraised value, whichever is greater
All Other Property	Currency Bank Accounts Monetary Instruments Jewelry, etc.	\$2,000
	Firearms	May be forfeited regardless of value

The United States Attorneys, in consultation with federal seizing agencies and state and local law enforcement, may institute higher or lower district-wide thresholds for judicial forfeiture cases as law enforcement or management needs require. Department of Justice Asset Forfeiture Program participating agencies and the Department of the Treasury may set their own thresholds.

Exceptions may be made in individual cases where an overriding law enforcement benefit requires the seizure of an asset that does not meet the thresholds. In such cases, the thresholds may be waived when forfeiture will serve a compelling law enforcement interest, such as the forfeiture of a crack house, a conveyance with hidden compartments, or a vehicle used in alien smuggling that is seized at an international border. Any downward departure from the monetary thresholds in individual cases must be approved in writing by a supervisory level official, and an explanation of the reason for the departure must be noted in the case file. For example, an appropriate basis for a downward departure is that the owner or person in possession of the property has been arrested or will be criminally prosecuted.

Lower thresholds may not necessarily result in increased sharing with state and local law enforcement agencies. Because sharing is always based on net proceeds, forfeiture of property with a lower value may result in no net proceeds to share.¹⁰

¹⁰ See part VII.E for a definition of *net proceeds*.

V. How Is Property Federally Forfeited?

Forfeiture is the taking of property derived from a crime, involved in a crime, or that which makes a crime easier to commit or harder to detect without compensating the owner.

A. Administrative forfeiture

Administrative forfeiture is the process by which federal seizing agencies may declare property forfeited to the United States without judicial involvement.¹¹ Seizures must be based on probable cause. Federal law authorizes the seizing or adopting federal agency to administratively forfeit:

Maximum Administrative Forfeiture Thresholds

Monetary Instruments	(e.g., cash, checks, stocks, bonds)	Unlimited Value
Hauling Conveyances	(e.g., vehicles, vessels, and aircraft used to transport illegal drugs)	Unlimited Value
Other Property	(e.g., bank accounts, jewelry, etc.)	\$500,000 or less

B. Judicial forfeiture

Judicial forfeiture, both civil and criminal, is the process by which property is declared forfeited to the United States by a court.¹² It is required for any property other than monetary instruments and hauling conveyances if:

- (1) the value of the other property exceeds \$500,000;
- (2) a valid, timely claim has been filed in an administrative forfeiture; or
- (3) the property is real estate.

¹¹ See Appendix A for additional information on the different types of federal forfeiture.

¹² *Id.*

VI. How Do Agencies Apply For An Equitable Share?

After the seizure in a joint investigation or adoption in an adoptive case, a state or local agency may request a share of the property by submitting a Form DAG-71, Application for Transfer of Federally Forfeited Property, to the federal seizing agency.¹³ A separate Form DAG-71 must be completed for each asset to be shared.¹⁴

A. Completing the Form DAG-71

1. In the upper right-hand corner of the Form DAG-71, enter the date, the name of the federal agency handling the seizure, and the federal agency case number.
2. Leave Part I of the Form DAG-71 blank. It is for federal use only.
3. In Part II, provide the state or local law enforcement agency's name, address, and the National Crime Information Center (NCIC) code or ORI tracking number. Enter the agency's name exactly as listed on the NCIC registration or the Equitable Sharing Agreement and Certification form.
4. The contact person is the person who has knowledge of the case and will be able to answer questions about the investigation.
5. In Part III under "Asset Requested" and "Property Requested," provide a complete description of the asset. If the asset is a vehicle, include the VIN, make, model, and type. If the asset is real property, include the full address and the block and lot number.
6. Place a check in the "Item" block if the agency requests an asset for official use, or place a check in the "Cash/Proceeds" block if requesting cash or proceeds and include the requested percentage.
7. In Part IV, state how the shared funds are intended to be used. Check all blocks that are appropriate and complete "Other" if the intended use is not listed.
8. In Part V, provide all pertinent information about the agency's contribution to the investigation. Include work hours spent by law enforcement officers on the seizure or subsequent hours expended in support of the forfeiture. For cases involving multiple assets, a separate Form DAG-71 needs to be submitted for each asset. Work hours must be stated for each seizure, not the total number of hours worked on the investigation.
9. Complete Part VI by providing a brief description of the case and a thorough explanation of the agency's contribution to the investigation. Never assume the deciding authority knows the details of the case or the agency's role.

¹³ See Appendix D for a copy of the Form DAG-71 and other supplemental instructions.

¹⁴ The Form DAG-71 (see Appendix D) and the Equitable Sharing Agreement and Certification (see Appendix E) are current as of the date of the printing of this *Guide*. The most current versions of these forms are available on the Department of Justice Web site at www.usdoj.gov/criminal/afmls/forms.

10. In Part VII.B, the county attorney, city attorney, district attorney, state attorney, or law enforcement agency counsel can sign as legal counsel.

Sharing requests must be submitted within 60 days after the seizure or within 60 days after the federal adoption of a state or local seizure. The 60-day rule may be waived by the federal seizing agency in exceptional circumstances upon a written request stating the reasons for the late submission of the equitable sharing request which would justify the waiver. The waiver request must accompany the Form DAG-71. In judicial forfeitures, an agency may amend its Form DAG-71 within 60 days after forfeiture to reflect any continued participation in the case.

No sharing request will be considered after the forfeited property has been distributed, deposited into the Assets Forfeiture Fund, or otherwise disposed of according to law.

B. Common causes of delay

Forfeiture, like all legal proceedings, takes time. Equitable sharing may occur only after the federal forfeiture has been completed, the United States has taken clear title to the property, the property has been sold or otherwise disposed of as provided by law, and a final sharing decision has been made by the appropriate federal official. Listed below are some factors that may delay sharing:

1. If the forfeiture involves victims of crime who may be entitled to remission or restitution, sharing cannot occur until the victims' claims are resolved. All available funds must be used to compensate victims before any sharing payments are made.
2. If the forfeiture involves property that must be sold, the sale must be completed and the net proceeds determined before sharing may occur.
3. If the agency submits an incomplete Form DAG-71, the missing information must be provided before sharing can occur. For example, if the form does not contain complete or specific information about the contribution of the local law enforcement agency, such as the number of hours expended and any unique or indispensable contribution by the local law enforcement agency, then that information must be provided before sharing will be authorized. Federal agencies submitting equitable sharing packets must also include federal agency work hours. Federal investigative work hours are always required in joint cases so that the relative degree of participation of the agencies can be determined. The equitable sharing deciding authority cannot evaluate the sharing request without this information.
4. Distribution in equitable sharing cases involving forfeited assets with a total value of \$1 million or more requires the approval of the Deputy Attorney General. Equitable sharing packages forwarded to AFMLS must include all assets listed in the forfeiture order. For example, where a forfeiture order includes cash in the amount of \$1.5 million, a bank account containing \$500,000, and six other assets such as automobiles and pieces of jewelry worth \$30,000, the Deputy Attorney General is the equitable sharing decision-maker for all eight assets.
5. The USMS electronically transfers equitable sharing payments to a participating state or local law enforcement agency's bank account. If the USMS does not have an agency's

banking information, the funds cannot be transferred. To facilitate wire transfers, all participating agencies must complete and submit an Automated Clearing House (ACH) Vendor form to the USMS. If an agency's banking information changes, an updated ACH Vendor form must be submitted. The ACH Vendor form may be downloaded from www.usdoj.gov/criminal/afmls/forms or www.usmarshals.gov/assets/eshare.

6. In cases involving both domestic and international sharing, international sharing must be completed before domestic sharing can occur. International sharing, which requires both Department of Justice and Department of State approval and concurrence by the Department of the Treasury, often takes additional time to complete.

VII. How Is an Agency's Equitable Share Determined?

A. Adoptive seizures

The federal share in adoptive cases where 100 percent of pre-seizure activity was performed by a state or local agency will generally be 20 percent of the net proceeds.

B. Joint investigations with federal agencies

Equitable shares allocated to a law enforcement agency must bear a reasonable relationship to the agency's direct participation in the investigation or law enforcement effort resulting in the forfeiture. The deciding authority ordinarily determines equitable shares by comparing the number of work hours expended by each agency participating in the seizure. Where the work hours alone do not reflect the contribution of a law enforcement agency, the deciding authority considers qualitative factors in making a sharing allocation. In determining the amount of an adjustment based on qualitative factors, the deciding authority will consider such factors as:

- the inherent importance of the activity;
- the length of the investigation;
- whether the agency otherwise entitled to an adjustment would already receive a comparatively large share based on reported work hours;
- whether an agency originated the information leading to the seizure;
- whether an agency provided unique and indispensable assistance;
- whether an agency initially identified the assets for seizure;
- whether an agency seized one or more assets that were forfeited in non-federal proceedings during the same investigation; or
- whether the agency could have achieved forfeiture under state law but instead joined forces with the United States to conduct a more effective investigation or prosecution.

The presence of any of the above qualitative factors may warrant an adjustment in the percentage awarded to an agency. If, and to what extent, an adjustment is warranted is within the discretion of the deciding authority and will be done on a case-by-case basis.

If certain criteria are satisfied, state and local law enforcement agencies that are members of a task force may receive equitable sharing based upon the task force written sharing agreement. In no case will the federal share be less than 20 percent.

1. Spin-off investigations

In a case where assets are seized in an investigation that is a spin-off of a larger multi-agency investigation, the deciding authority may approve sharing with an agency that contributed work hours to both the initial investigation and the spin-off seizure. In limited instances, the deciding authority may

determine that an agency which did not participate in the subsequent seizure but provided indispensable assistance in the initial investigation that aided investigators in the spin-off investigation is eligible for a share of the asset from that spin-off case. The determination of an agency's eligibility to share in assets seized in spin-off investigations will be made on a case-by-case basis.

C. Sharing in task force cases

Many task forces involving federal, state, and local law enforcement agencies have pre-arranged, written equitable sharing agreements based upon relative numbers of personnel and other contributions to the task force operation. The following criteria apply to both formal and informal task forces and these pre-arranged percentages will be honored only when:

- the agreement is in writing, signed, and dated by all participating agencies, and reviewed and updated annually;
- the pre-arranged sharing percentages fairly reflect overall agency contributions to the task force, including accounting for any participation by a federal agency;
- the deciding authority is satisfied that the pre-arranged percentages continue to reflect the true overall agency contributions to the task force, including accounting for any participation by a federal agency;
- the task force has a well-defined subject area or organization target as its focus, and the specific seizures are part of the overall investigative function of the task force (e.g., an airport seizure by an airport interdiction task force is part of an investigation of airport drug smuggling, not simply an investigation of a particular smuggler); and
- the agreement is made before or at the onset of an investigation; the deciding authority will not honor informal sharing agreements agreed upon following the conclusion of an investigation.

If the total appraised value of all assets in a single administrative or judicial forfeiture order is \$1 million or greater, a copy of the task force agreement must be submitted along with the completed Form DAG-71.

1. Formally chartered task forces

The Department of Justice will generally honor written sharing agreements by formal task forces that are legal entities entitled to receive and spend money. A formal task force may receive a sharing disbursement by indicating its NCIC/ORI tracking number or equitable sharing tracking number assigned by AFMLS on the Form DAG-71. Alternatively, separate disbursements may be made to the members of a formally chartered task force based on its agreed sharing percentages.

2. Informal task forces

The Department of Justice will generally honor written sharing agreements by informal task forces when the informal task force itself is a permanent or semi-permanent entity established to conduct a long-term investigation of multiple targets committing similar violations in a particular location or of a single target engaged in multiple criminal activities over a lengthy period of time such that multiple forfeiture cases over the life of the task force are likely. If the informal task force and its pre-arranged percentages are acceptable, separate sharing amounts will be disbursed to each individual law enforcement agency in the task force. No funds will be disbursed to the informal task force itself. A joint investigation of a specific target or organization does not constitute an informal task force simply because it is labeled as such. So-called task force agreements based merely on jurisdictional boundaries will not be honored.

For example, an acceptable investigation of multiple targets includes a long-term interdiction operation at a local airport. An acceptable investigation of a single-target might be a long-term investigation of a major drug trafficking organization where participating agencies work on different aspects of the investigation.

D. Equitable sharing deciding authorities

1. Investigative agency

If the total appraised value of all the assets forfeited in a single *administrative* forfeiture order is less than \$1 million, the investigative agency determines the appropriate equitable share for each asset and requesting agency.

2. United States Attorney

If the total appraised value of all the assets forfeited in a single *judicial* forfeiture order is less than \$1 million, the United States Attorney determines the appropriate equitable share for each asset and requesting agency.

3. Deputy Attorney General¹⁵

In either multi-district cases, cases involving the equitable transfer of real property, or cases where the total appraised value of all the assets forfeited in a single administrative or judicial forfeiture order is \$1 million or more, the Deputy Attorney General determines the appropriate equitable share of each asset. In determining whether the \$1 million threshold has been reached, the federal seizing agency and the United States Attorney processing a sharing request must combine the current “Asset Value” listed in the Consolidated Asset Tracking System (CATS) of each of the assets included in the forfeiture order or declaration of forfeiture. If the total value for all of the assets is \$ 1 million or greater, the Deputy Attorney General is the equitable sharing decision-maker for all of the assets. Property forfeited under a single judicial order cannot be split up or separated so that only those individual

¹⁵ By order dated June 5, 1995, the Deputy Attorney General delegated his authority to make final equitable sharing decisions to the Assistant Attorney General for the Criminal Division in cases where the seizing agency, the United States Attorney, and AFMLS agree on the allocation of forfeited property.

pieces of property with values greater than \$1 million are sent to the Deputy Attorney General for sharing decisions.

E. Sharing always based on net proceeds

Equitable sharing is based on the net proceeds of the forfeiture, which is calculated as follows:

Gross receipts	From forfeiture or the sale of forfeited property
Less	<p>Qualified third-party interests (e.g., valid liens or mortgages)</p> <p>Money paid to victims (persons who incurred a monetary loss of a specific amount as a direct result of the offense underlying the forfeiture, or a related offense)</p> <p>Federal case-related expenses (e.g., advertising costs, out-of-pocket investigative or litigation expenses)</p> <p>Federal property management and disposition expenses (e.g., appraisal, storage, security, sale)</p> <p>Any award paid to a federal informant</p> <p>Payments for the services of experts and consultants with whom the Department of Justice has contracted to assist in asset identification, seizure, management, forfeiture, or disposition, wherever it is feasible and economically practicable to directly trace such costs and allocate them on a reasonable and consistent basis among the assets subject to forfeiture</p> <p>International sharing</p> <p>Any reimbursements relating to the seizure from the Assets Forfeiture Fund to the requesting agency (e.g., overtime, leased space)</p>
Equals	Net Proceeds of the Forfeiture

Federal law mandates that sharing is discretionary. Therefore, any equitable sharing payments to be disbursed to state and local law enforcement agencies that amount to less than \$50.00 after all expenses are paid will be extinguished and the funds will remain in the Assets Forfeiture Fund.

VIII. What Are the Uses of Equitably Shared Property?

A. Law enforcement uses

Except as noted in this *Guide*, equitably shared funds shall be used by law enforcement agencies for law enforcement purposes only. Subject to laws, rules, regulations, and orders of the state or local jurisdiction governing the use of public funds available for law enforcement purposes, the expenses noted below are pre-approved as permissible uses of shared funds and property.

To avoid a conflict of interest or the appearance of a conflict of interest, any employee of any federal, state, or local governmental agency (or members of his or her immediate family or those residing in his or her household) who was involved in the investigation which led to the forfeiture of the property to be sold by the USMS contractor is prohibited from purchasing, either directly or indirectly, forfeited property. Additionally, Department of Justice employees and contractors may not, without prior written approval of a designated agency official, directly or indirectly purchase property that has been forfeited to the United States; or personally use such property that has been directly or indirectly purchased from the United States by a member of his or her immediate family.

The fact that shared property was forfeited as a result of a particular federal violation does not limit its use. For example, when an agency receives a share of property that was forfeited for a federal drug violation, the recipient is not limited in its use of the property in the recipient agency's drug enforcement program. Among the following uses, priority should be given to supporting community policing activities, training, and law enforcement operations:

1. Permissible uses

- a. **Law enforcement investigations**—the support of investigations and operations that may result in furthering the law enforcement goals and mission, e.g., payment of overtime for officers and investigators; payments to informants; “buy,” “flash,” or reward money; and the purchase of evidence.
- b. **Law enforcement training**—the training of officers, investigators, prosecutors, and law enforcement support personnel in any area that is necessary to perform official law enforcement duties. Priority consideration should be given to training in: (1) asset forfeiture in general (statutory requirements, policies, procedures, case law); (2) the Fourth Amendment (search and seizure, probable cause, drafting affidavits, confidential informant reliability); (3) ethics and the National Code of Professional Conduct for Asset Forfeiture,¹⁶ (4) due process; (5) protecting the rights of innocent third parties (individuals and lienholders); (6) use of computers and other equipment in support of law enforcement duties; and (7) this *Guide*.
- c. **Law enforcement and detention facilities**—the costs associated with the purchase, lease, construction, expansion, improvement, or operation of law enforcement or detention facilities used or managed by the recipient agency. For example, the costs of leasing,

¹⁶ See Appendix B for a copy of the National Code of Professional Conduct for Asset Forfeiture.

operating, and furnishing an off-site undercover narcotics facility is a permissible use of shared funds. Capital improvements should not be made on leased property or space since the law enforcement agency will not benefit from the improvements upon termination of the lease; improvement costs are generally covered in the terms of the lease. Approval from AFMLS is required prior to making such capital expenditures.

- d. **Law enforcement equipment**—the costs associated with the purchase, lease, maintenance, or operation of law enforcement equipment for use by law enforcement personnel that supports law enforcement activities. For example, furniture, file cabinets, office supplies, telecommunications equipment, copiers, safes, fitness equipment, computers, computer accessories and software, body armor, uniforms, firearms, radios, cellular telephones, electronic surveillance equipment, and vehicles (e.g., patrol cars and surveillance vehicles).
- e. **Law enforcement travel and transportation**—the costs associated with travel and transportation to perform or in support of law enforcement duties and activities. All related costs must be in accordance with the agency’s state per diem and must not create the appearance of extravagance or impropriety.
- f. **Law enforcement awards and memorials**—the cost of award plaques and certificates for law enforcement personnel, provided that the plaque or certificate is in recognition of a law enforcement achievement, activity, or the completion of law enforcement training, and the cost does not create the appearance of extravagance or impropriety. Shared funds may not be used to pay cash awards.

Shared funds may be used to pay the costs for modest commemorative plaques, displays, or memorials that serve to recognize or memorialize a law enforcement officer’s contributions, such as a memorial plaque or stone at a police department facility in honor of officers killed in the line of duty.

- g. **Drug and gang education and awareness programs**—the costs associated with conducting drug or gang education and awareness programs by law enforcement agencies. Such costs include meeting costs, anti-drug abuse literature costs, travel expenses, and salaries for officers working in a drug education program such as DARE.
- h. **Matching funds**—the costs associated with paying a state or local law enforcement agency’s matching contribution or share in a federal grant program, provided that the grant funds are used for a permissible law enforcement purpose in accordance with this *Guide* or where such use is authorized by federal law.
- i. **Pro rata funding**—a law enforcement agency’s percentage of the costs associated with supporting multi-agency items or facilities. For example, if a town purchases a new computerized payroll system, and the police department payroll represents 20 percent of the total use of the payroll system, then the police department may use shared money to fund its pro rata share (20 percent) of the operating and maintenance expenses of the system.

- j. **Asset accounting and tracking**—the costs associated with the accounting, auditing, and tracking of expenditures for federally shared cash, proceeds, and tangible property. For example, the use of shared funds to pay the fees associated with the contracting of a bookkeeper is permissible.

The OMB Single Audit Act requires any agency that expends more than \$500,000 in federal funds in an agency's fiscal year to complete an external audit. The use of forfeiture funds to perform this audit is permissible.

- k. **Language assistance services**— In connection with their law enforcement activities and operations, recipient agencies are encouraged to consider the need for language services for persons with limited English proficiency and, consistent with the provisions of this *Guide*, may use shared funds to provide such services. Examples of such permissible uses include the costs of language training for law enforcement personnel and 911 operators, contracting for interpretation services, and printing law enforcement documents in foreign languages.
- l. **Transfers to other law enforcement agencies**—Cash transfers of shared funds from one state or local law enforcement agency to another are permitted. In order to receive a cash transfer of shared funds, the law enforcement agency must be in compliance with the Agreement, Certification and Audit provisions of this *Guide* (see part X). All cash transfers must be used in accordance with the permissible use provisions of this *Guide*. The agency transferring the 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 donor and recipient agencies.
- m. **Support of community-based programs**—A state or local law enforcement agency or prosecutor's office may use up to 15 percent of the total of shared monies received by that agency in the last two fiscal years for the costs associated with drug abuse treatment, drug and crime prevention education, housing and job skills programs, or other nonprofit community-based programs or activities that are formally approved by the chief law enforcement officer (e.g., chief, sheriff, prosecutor). All expenditures must be supportive of and consistent with a law enforcement effort, policy, and/or initiative.

Cash transfers to community-based programs are not permitted. State and local law enforcement agencies are prohibited from making cash transfers or donations to support community-based programs. Instead, agencies may directly purchase supplies, equipment, and/or services for eligible community-based programs, or reimburse such programs for eligible expenditures with a valid, itemized receipt. See Appendix C for guidelines to determine a community-based program's eligibility.

- n. **Windfall situations**—Where the total amount of federal equitable sharing received within one fiscal year represents over 25 percent of a state or local law enforcement agency's annual budget, recipient agencies may utilize the amount over 25 percent to provide additional support to community-based programs as referenced in letter m above. For

example, if an agency's annual appropriated budget is \$1 million and the agency receives a total of \$300,000 in equitable sharing funds during the fiscal year, the amount above \$250,000 (25 percent of the agency's budget), or \$50,000, is considered a "windfall." The agency, in its discretion, may use all or part of this money in addition to the 15 percent permitted under section m above. In windfall situations, AFMLS may require additional auditing and/or reporting regarding the agency's handling and expenditure of funds.

2. Impermissible uses

- a. **Salaries—Equitable sharing monies may not be used to pay the salaries and benefits of current, permanent law enforcement personnel, except in limited circumstances.** The purpose of this rule is to protect the integrity of the asset forfeiture and equitable sharing programs so that the prospect of receiving equitable sharing monies does not influence, or appear to influence, law enforcement decisions.

Exception: Equitable sharing funds may be used to pay the salaries and benefits of law enforcement officers in the following limited situations:

- (1) **Express statutory authorization**—When federal law expressly permits state and local law enforcement agencies to use equitably shared funds to pay the salaries and benefits of local law enforcement officers or as matching funds in federal grant programs, such use is permissible. For example, the Community Oriented Policing Services (COPS) program established by the Violent Crime Control and Law Enforcement Act of 1994, allows state and local law enforcement agencies to use equitably shared funds to meet the local match requirements of that program, including grants for salaries and benefits.
- (2) **Overtime of officers and investigators**—Shared funds may be used to pay the overtime of officers and investigators involved in law enforcement operations. This policy is applicable to all officers and is not limited to those working on drug-related investigations.
- (3) **New positions and temporary or not-to-exceed one year appointments**—Shared funds may be used to pay the first year's salary and benefits of an individual hired for a new sworn law enforcement position that supplements the current law enforcement work force. After the first year, the salary and benefits for that position must be paid entirely from the agency's appropriated funds. Shared funds may also be used to pay the salaries of temporary (less than one year) positions or not-to-exceed one year appointments. This exception applies strictly to sworn law enforcement positions. Shared funds may not be used to provide funding for unsworn, support personnel (e.g., administrative, secretarial, or clerical positions).

- (4) **Salary of an officer hired to replace an officer assigned to a task force**—When a law enforcement agency assigns a law enforcement officer to a task force¹⁷ for a period of at least one year or the life of the task force and hires a new law enforcement officer to replace the officer so assigned, the agency may pay the salary and benefits of the replacement officer from equitably shared funds so long as the replacement officer does not engage in the seizure of assets or narcotics law enforcement as a principal duty.¹⁸

A principal duty is a duty that the officer is expected to perform regularly. In order to pay the replacement officer's salary with equitably shared funds, the task force must be a law enforcement entity constituted under federal, state, or local law that is primarily engaged in specific and targeted law enforcement activities involving more than one law enforcement agency. In addition, the chief administrative officer of the law enforcement agency assigning an officer must not maintain direct day-to-day operational control of the task force although he or she may participate in the policy-level control of such task force.

When a law enforcement agency has assigned an officer and paid for the replacement as specified above, and it becomes necessary to return the officer from the task force, the law enforcement agency may continue to use forfeited funds to pay for the salary and benefits of the replacement officer for a period not to exceed six months.¹⁹

- (5) **Specialized programs**—A law enforcement agency may pay the salary and benefits of a law enforcement officer assigned to specific approved specialized programs which do not generally involve traditional law enforcement functions. Officers assigned to programs such as DARE do not routinely perform narcotics law enforcement or seizure duties. Accordingly, there is little risk that their conduct will actually influence law enforcement priorities or create a conflict of interest.

- b. Use of forfeited property by non-law enforcement personnel**—Non-law enforcement agency personnel are not permitted to use shared vehicles, forfeited property, or items purchased with shared funds.

¹⁷ For example, groups of state and local law enforcement agencies frequently establish separate units under the command of an experienced officer. All assigned agents have full law enforcement power within the combined area of the constituent agencies. The chief of police of any one constituent agency does not exercise day-to-day individual command authority over the task force but may sit as a member of a Steering Committee, Board of Directors, or other supervisory authority which sets general task force policies.

¹⁸ For example, Officer Y is assigned to a task force. The agency may then hire Officer Z and may pay Officer Z's salary from asset forfeiture funds. Officer Z may not be assigned to a narcotics unit and he may not be assigned to a unit that identifies assets for seizure. If during Officer Z's routine patrol duties, he stops a vehicle found to contain narcotics and cash, the agency may continue to pay Officer Z's salary from asset forfeiture funds.

¹⁹ This provision is designed to afford law enforcement agencies the opportunity to rearrange staffing assignments without suffering severe financial hardships and also recognizes that the hiring process can take time.

- c. **Payment of education-related costs**—Shared funds may not be used for scholarships, financial aid, or non-law enforcement classes. Only tuition for law enforcement classes necessary to the performance of an officer’s official duties is permitted.
 - d. **Uses contrary to the laws of the state or local jurisdiction**—Shared funds and property may not be used for any purpose that would constitute an illegal or improper use of state or local law enforcement funds or property under the laws, rules, regulations, and orders of the state or local jurisdiction of which the agency is a part.
 - e. **Non-official government use of shared assets**—Any use that creates the appearance that shared funds are being used for political or personal purposes is not permitted. For example, the use of shared funds for a sheriff’s campaign paraphernalia is impermissible.
 - f. **Purchase of food and beverages**—Shared funds generally may not be used to pay for food and beverages (alcoholic and non-alcoholic) for consumption by law enforcement personnel or their guests, except for the limited circumstances listed below:
 - (1) **Conference package policy**—Shared funds may be used to purchase food and beverages provided as part of a conference package. For example, a hotel provides complimentary coffee and bagels for breakfast with the rental of its conference room for an authorized training event. The same conference package rule applies to food or beverages served at a banquet or party to recognize law enforcement achievements.
 - (2) **Meals during local operations**—Shared funds may also be used to purchase food and beverages if state or local law or rules governing reimbursement of expenses permit officers to be reimbursed for such expenses, e.g., meals purchased while an officer is on official travel, attending a training conference, or engaged in a disaster operation, such as earthquake or hurricane relief.
 - g. **Extravagant expenditures**—Receiving agencies should use federal sharing monies prudently and in such a manner as to avoid any appearance of extravagance, waste, or impropriety. For example, tickets to social events, hospitality suites at conferences, or meals outside of the per diem are impermissible uses of shared funds.
3. **General guidance concerning use**
- a. **Windfall situation**—In a windfall situation, where an agency receives equitable sharing funds totaling more than 25 percent of its budget in a fiscal year, the agency may be subject to additional audit and reporting requirements.
 - b. **Use of interest income**—Interest earned on forfeited cash or proceeds must be deposited into the agency’s equitable sharing revenue account and used for law enforcement purposes and is subject to the same use restrictions as shared cash or proceeds.

- c. **Anticipated shared property should not be budgeted**—Agencies should not “spend it before you get it” or budget anticipated receipts. Receiving agencies may not commit to the spending of sharing monies for a certain purpose in advance. For example, if a local law enforcement agency files a Form DAG-71 to request a 50 percent share of \$100,000, the \$50,000 should not be obligated or budgeted for two reasons: (1) the completion of the forfeiture is uncertain; and (2) the amount of the sharing that will ultimately be approved is also uncertain.
- d. **Shared monies should not be retained unnecessarily**—Shared monies normally should be expended for their designated use or other permissible law enforcement purpose as they are received. Shared monies may be retained in a holding account for up to three years to satisfy future needs or retained longer for major long-term expenditures such as capital improvements.
- e. **Use of proceeds from sale of shared property**—Proceeds from the sale of shared property, facilities, equipment, and other items acquired with shared funds must be deposited into the agency’s equitable sharing revenue account and are subject to the same permissible use restrictions and reporting requirements as shared cash or proceeds, in accordance with the provisions of this *Guide*.

B. Increase and not replace

Sharing must be used to increase or supplement the resources of the receiving state or local law enforcement agency or any other ultimate recipient agency. Shared resources **shall not be used** to replace or supplant the appropriated resources of the recipient. The recipient agency must benefit directly from the sharing. In determining whether supplantation has occurred, the Department of Justice will examine the law enforcement agency’s budget as a whole and allow agencies to use equitable sharing funds for any permissible purpose as long as shared funds **increase the entire law enforcement budget**. The Department of Justice may terminate sharing with law enforcement agencies that are not permitted by their governing authorities to benefit directly from equitable sharing.

Example of Improper Supplantation: A police department receives \$100,000 in federal sharing money only to have its budget cut \$100,000 by the city council. In this instance, the police department has received no direct benefit from equitable sharing whatsoever. Rather, the city as a whole has received the benefit of the sharing.

C. Transfer of forfeited real property

The transfer of federally forfeited real property is permitted only in the following three situations:

1. Through the equitable sharing process, real property may be transferred to a state or local agency which substantially participated in the investigation that led to the seizure of the property. The agency must demonstrate a compelling law enforcement need for the property and outline its intended use on the DAG-71 form. The agency must also sign a memorandum of understanding with regard to the use of the property and agree to pay any federal costs/expenses as well as the federal share before the transfer will be approved.

Example: A state police department assists in the seizure of a farm where drugs were grown. The agency may request the property instead of the proceeds from its sale if the agency has a compelling need, such as a law enforcement training facility or a police substation.

2. The Weed and Seed Initiative²⁰ authorizes the transfer of federally forfeited real property through state or local law enforcement agencies to private, nonprofit organizations to support drug abuse treatment, drug and crime prevention and education, housing, and job skills programs, or other community-based programs. The requirements of the Weed and Seed Initiative are as follows:
 - a. The initial recipient of the property must be a state or local law enforcement agency which participated in the investigation that resulted in the forfeiture;
 - b. The ultimate recipient must be an appropriate nonprofit organization, which agrees to use the property in compliance with the initiative and agrees that if the property ceases to be used for its intended purposes for a specified time period, title may revert back to the United States.
 - c. Any state or local agency with a claim to an equitable share of the property must agree to waive the claim.
 - d. A Form DAG-71 must be submitted by the initial recipient to the USAO identifying the property to be transferred to the nonprofit organization pursuant to the Weed and Seed Initiative.
 - e. The USAO must submit a “Request for Transfer of Real Property Pursuant to the Weed and Seed Initiative” and a draft Memorandum of Understanding along with the Form DAG-71 to AFMLS.
 - f. AFMLS will submit the completed package to the Deputy Attorney General for approval of the transfer.

Generally, title to real property will be transferred to the state or local law enforcement agency. If the initial recipient state or local law enforcement agency is not authorized to take title to the real property, then either the state or local government agency authorized to accept title on behalf of the law enforcement agency will receive title, or under certain circumstances, the Department of Housing and Urban Development may be able to take title to the property for re-transfer to the Weed and Seed recipient.

Questions on transfers pursuant to the Weed and Seed Initiative should be directed to AFMLS.

²⁰ See *Asset Forfeiture Policy Manual* (2008), Chap. 6, Sec. VIII.

3. A governor of a state in which a forfeited property is located may request that the property be transferred to that state for recreational or historic purposes or for the preservation of natural conditions. See 21 U.S.C. § 881(e)(4)(B). The Deputy Attorney General must approve these transfers.

D. Transfer of forfeited tangible personal property

1. Any forfeited tangible property (any property other than real estate) transferred to a state or local agency for official use must be used for law enforcement purposes only. Moreover, such transferred property is subject to the rules applicable to similar property purchased by a state or local agency with appropriated funds. Finally, forfeited luxury motor vehicles—an automobile with a National Automotive Dealers Association (NADA) wholesale value of \$50,000 or more—may be placed in official use only for undercover law enforcement purposes.

Example: A federally forfeited SUV is assigned to a state or local law enforcement official who is not authorized to use a government vehicle under local rule. This is impermissible because the forfeited SUV would be subject to the same use restrictions as purchased vehicles.

Example: A federally forfeited luxury car worth more than \$50,000 is assigned to a law enforcement official who is authorized to use a government vehicle, but the luxury vehicle is used for routine law enforcement work. This is impermissible because a luxury vehicle is being used for purposes other than undercover work, thereby misusing government resources and creating an appearance of impropriety.

2. The recipient law enforcement agency may, at its discretion, transfer the tangible property to another governmental department or agency to support drug abuse treatment, drug and crime prevention and education, housing, and job skills programs, or other community-based programs. Such governmental department or agency may, in turn, transfer any tangible property so received to a private, nonprofit community organization to be used for such purposes.

Tangible property transferred for official law enforcement use must be used for at least two years. If, however, the property becomes unsuitable for the stated purpose before the end of the two-year period, it may be sold with approval from AFMLS and the proceeds deposited in the agency's federal equitable sharing revenue account and used in compliance with this *Guide*.

E. Reimbursement of federal costs

State and local law enforcement agencies that receive real property or tangible personal property must pay the Department of Justice Assets Forfeiture Fund for any liens, costs related to storage or maintenance, costs of shares to other agencies, and the federal share. If the agency is unable to pay these expenses with appropriated or equitably shared funds, these costs can be charged against the agency's equitable share of other assets in the case. If the requesting agency is unable to pay the federal share, costs, and the shares of other agencies, the property will be sold and the proceeds equitably distributed to participating agencies.

F. Return of equitably shared funds

On occasion, a criminal conviction, forfeiture order, or equitable sharing decision may be reversed after the equitable sharing payments have been disbursed to state and local law enforcement agencies. In such cases, it may be necessary for the shared funds to be returned to the United States. The state and local agency recipients will be notified of the reversal by the Department of Justice component that rendered the equitable sharing decision. When such a return of funds is necessary, the recipient state or local agency will have the option of either: (A) returning the funds via a check to the USMS or (B) having an equivalent amount off-set against future equitable sharing. When an agency elects to have the funds off-set against future sharing, it must contact the USMS District Office in writing.

IX. What Are the Accounting Procedures and Requirements for Shared Cash, Proceeds, and Tangible Property?

All participating state and local law enforcement agencies must implement standard accounting procedures and internal controls (e.g., tracking share requests and receipts, electronically depositing shares into a separate revenue account or accounting code) to track equitably shared monies and tangible property. Those procedures must be consistent with those set forth below.

A. Bookkeeping procedures and internal controls

The state or local participating law enforcement agency must:

1. Establish a separate revenue account or accounting code through the agency's finance department for the proceeds from the Department of Justice Equitable Sharing Program. This account or accounting code will be used solely for funds from the Department of Justice Equitable Sharing Program. No other funds may be included in this account or with this accounting code.

This bank account information must be provided to the USMS on the ACH Vendor form. The process of electronic payments, known as E-Share, provides a fast, efficient, and secure method of making equitable sharing payments. Participation in the program is mandatory. The form may be downloaded from www.usmarshals.gov/assets.eshare or www.usdoj.gov/criminal.afmls.

2. Not commingle Department of Justice equitable sharing funds with funds from any other source. Corrective measures must be taken if this occurs.
3. Deposit any interest income earned on equitably shared funds in the same revenue account or under the accounting code established solely for the shared funds.
4. Maintain a log and copies of all Forms DAG-71 forwarded to the Department of Justice. A consecutive numbering system should be used for control purposes. The log should contain seizure type (property or currency), amount, share amount requested, amount received, and date received.
5. Update the log when an E-Share notification is received. The amount received may differ from the amount requested.
6. Establish an internal procedure to recommend expenditures from the revenue account. In many small agencies, the chief of police determines the purposes for which the funds are used. In larger agencies, committees have been formed to make recommendations for expenditures to the agency head. The agency head must authorize all expenditures from the federal sharing revenue account.
7. Use tangible property placed into official use for a law enforcement purpose for at least two years following the transfer. After two years, the property may be sold for the benefit of the law enforcement agency. All proceeds from the sale of such property must be deposited into

the agency's equitable sharing account. Agencies requesting to sell property prior to two years must obtain approval from AFMLS.

8. Use purchased or acquired luxury automobiles only for undercover assignments.
9. Obtain approval for expenditures from the governing body, such as the town council or city manager's office, if appropriate.
10. Upon final approval, issue contracts or purchase orders to formally disburse deposited assets for goods or services. Deduct purchase orders and contracts from the account balance.
11. Maintain a record of all expenditures from the revenue account or accounting code. These expenditures must be in accordance with this *Guide*.
12. Issue quarterly and yearly reports that detail the actual amounts and uses of the federal asset sharing funds and property within their jurisdiction, if appropriate.

X. What Are the Reporting and Audit Requirements?

To ensure effective management, promote public confidence in the integrity of the Equitable Sharing Program, and protect the Asset Forfeiture Program against potential waste, fraud, and abuse, the Department of Justice has established for participating law enforcement agencies reporting requirements that include the annual submission of the Equitable Sharing Agreement and Certification form and, if applicable, an audit report. A state or local law enforcement agency must be in compliance with the reporting requirements set forth in this *Guide* to receive any distribution of money or property under the Equitable Sharing Program. An agency is considered to be in compliance once the Equitable Sharing Agreement and Certification form is submitted electronically and the signed Affidavit/Signature page is received within the required deadlines.

A. Federal Equitable Sharing Agreement and Certification Form

As a prerequisite to participating in the Department of Justice Equitable Sharing Program, a state or local law enforcement agency must annually submit to AFMLS a signed Equitable Sharing Agreement and Certification form. (See Appendix E.) The agreement must be signed by the head of the law enforcement agency and a designated official of the governing body.²¹ By signing the Affidavit, the signatories agree to be bound by the statutes and guidelines that regulate the equitable sharing program and certify that the law enforcement agency will comply with these guidelines and statutes.

State and local law enforcement agencies must submit this form within 60 days after the end of an agency's fiscal year, regardless of whether funds were received or maintained during the fiscal year. The report must be completed electronically and emailed to aca.submit@usdoj.gov.

Once the agency has emailed the form, the Affidavit/Signature page must be printed, signed, and faxed to AFMLS.

²¹ For purposes of the Equitable Sharing Agreement and Certification form, a governing body is an institution or organization that has budgetary oversight over the law enforcement agency. A law enforcement official should not sign for the governing body unless the official has budgetary oversight over the agency.

New participants will check the “New Participant” button on the form, enter the agency’s fiscal year end date, current fiscal year budget information, and proceed to the Affidavit/Signature page. Existing participants will check the “Existing Participant” button on the form and complete the Annual Certification Report and the Affidavit/Signature page. Participating agencies must notify AFMLS of any change in administration at the law enforcement agency and/or its governing body by checking the “Change in Administration” button and resubmitting the Agreement and Certification form electronically.

Where the agency or organization submitting the Agreement is a multi-agency task force, Table A of the Equitable Sharing Agreement and Certification form must be completed providing a list of the task force members or participating law enforcement agencies. If the task force distributes or transfers any equitably shared monies or property to any member or participating state or local law enforcement agency, it must ensure that each such recipient agency has a valid Equitable Sharing Agreement and Certification form on file with AFMLS.

If equitable sharing receipts are deposited in an interest bearing account, interest income must be reported on the certification section of the form. Agencies are not required to use interest bearing accounts. If an agency enters a zero in the “interest income accrued,” it must check the non-interest-bearing account box.

If the reporting law enforcement agency uses any funds for “other law enforcement expenses,” “transfers to other law enforcement agencies,” “permissible use transfers,” or “matching grants,” the tables in the certification section of the form must be completed with all requested information. The total values will auto-populate into the certification section of the form.

Agencies that do not receive federal equitable sharing funds or property during a fiscal year must submit the Equitable Sharing Agreement and Certification form listing “0” receipts. The head of the law enforcement agency and a designated official of the governing body must sign the Affidavit page of the Equitable Sharing Agreement and Certification form.

B. Annual audit

State and local law enforcement agencies that receive federally shared cash, proceeds, or tangible property are required to perform an audit consistent with the Single Audit Act Amendments of 1996 and OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*. Per those guidelines, agencies that expend more than \$500,000 in federal funds (e.g., Justice and/or Treasury forfeiture funds, grants, cooperative agreements) per fiscal year are required to conduct an external audit. In such circumstances, an independent accounting firm may be contracted to perform the required audit. Copies of this audit must be retained by the law enforcement agency. Forfeiture funds may be used to pay the fees associated with conducting such audits.

The *Government Auditing Standards*, issued by the U.S. General Accounting Office, must be followed by auditors and audit organizations conducting the required independent financial audit. These standards pertain to the auditor’s professional qualifications, the quality of the audit effort, and the characteristics of professional and meaningful audit reports.

C. Record retention

State and local law enforcement agencies shall retain for a period of at least five years all documents and records pertaining to their participation in the Department of Justice Equitable Sharing Program and their receipt and expenditure or use of shared cash, proceeds, real property, or tangible personal property, including but not limited to Forms DAG-71, Equitable Sharing Agreement and Certification forms, accounting and bookkeeping documents, logs and records, bank records and statements, and audit reports.

XI. What If Agencies Do Not Fulfill the Compliance Requirements?

This *Guide* describes the sharing process and is binding upon all state and local agencies seeking federal sharing transfers.

At the time agencies receive shared funds, they will be asked to certify that the cash or property shared will be used consistent with the Form DAG-71 or as otherwise authorized and consistent with the policies set forth in this *Guide*. Noncompliance with the policies of this *Guide* may subject recipient agencies to one or more of the following sanctions:

1. Denial of an agency's sharing request;
2. Temporary or permanent exclusion from further participation in the equitable sharing program;
3. Offsets from future sharing in amounts equal to impermissible uses;
4. Civil enforcement actions in U.S. District Court for breach of contract; or
5. Where warranted, federal criminal prosecution for false statements under 18 U.S.C. § 1001, fraud involving theft of federal program funds under 18 U.S.C. § 666, or other sections of the criminal code, as applicable.

No equitable sharing funds or property will be distributed to any state or local law enforcement agency that is not in compliance with the annual reporting requirements outlined in this *Guide*. A law enforcement agency that has requested an equitable share of federally forfeited money or property in accordance with the provisions of the *Guide* but is not in compliance with the reporting requirements will be notified in writing by AFMLS and will be given 60 calendar days to come into compliance. If the requesting agency comes into compliance within the 60-day period, it will receive any withheld sharing funds or property.

Additional time to comply may be granted upon request. However, if the agency fails to become compliant within one year, the agency's sharing requests will be denied and extinguished, and any equitable sharing money and/or property being held will be deposited into the Department of Justice Assets Forfeiture Fund. Any such denial and the deposit of money and/or property into the Assets Forfeiture Fund shall be final and irrevocable. Any sharing requests for money and/or property not yet forfeited are not affected.

APPENDIX A:

What Are the Types of Federal Forfeiture?

Forfeiture is the taking of property derived from a crime, involved in a crime, or that which makes a crime easier to commit or harder to detect.

A. Administrative Forfeiture

Administrative forfeiture is the process by which property may be forfeited to the United States without judicial involvement. Federal seizing agencies perform administrative forfeitures. Seizures must be based on probable cause. The authority for a seizing agency to start an administrative forfeiture action is found in 19 U.S.C. § 1607.

Administrative forfeiture can be used to seize and forfeit the following:

- any amount of currency;
- personal property valued at \$500,000 or less, including cars, guns, and boats;
- hauling conveyances of unlimited value.

Real property cannot be forfeited administratively.

If the property owner files a claim, the administrative forfeiture process stops and the Government must bring a forfeiture action in federal court or return the property to the claimant. The seizing agency forwards the claim to the United States Attorney's Office for action.

B. Judicial Forfeiture

Judicial forfeiture, civil and criminal, is the process by which property may be forfeited to the United States by filing a forfeiture action in federal court.

- Criminal Forfeiture

Criminal forfeiture is an action brought as part of the criminal prosecution of a defendant that includes the forfeiture of property used or derived from the crime. If the defendant is convicted, the judge or the jury may find that the property is forfeitable. Forfeiture is limited to the property interests of the defendant and only to property involved in the particular counts on which the defendant is convicted. Only the defendant's interest can be forfeited in a criminal case because criminal forfeiture is part of the sentence in the criminal case. For example, if the defendant used someone else's car to commit a crime and the owner of the car was not indicted for the crime in which the car was used, the car cannot be forfeited in the criminal case. Instead, a civil forfeiture case can be filed against the car.

If a third party claims an interest in the property that the Government seeks to forfeit criminally, the issue is determined in an ancillary hearing before the court only after the criminal trial is completed, the defendant convicted, and a preliminary order of forfeiture is entered. Once the interests of third

parties are resolved, the court issues a final order of forfeiture. The order of forfeiture might not happen for months or years, even if the forfeiture is uncontested, resulting in a delay in the disposal of the property.

If the property subject to forfeiture is no longer available, the court can enter a money judgment or order the forfeiture of substitute assets.

- Civil Forfeiture

Civil forfeiture is a proceeding brought against the property rather than against the person who committed the offense. Civil forfeiture does not require either criminal charges against the owner of the property or a criminal conviction.

To obtain a federal forfeiture, the Government must prove the forfeiture and the connection between the property and the crime by a preponderance of the evidence. Forfeiture may be applicable to property that is traceable as proceeds of the offense, that facilitated the offense, or that was involved in money laundering. All claims of interest or ownership in the property, such as property owned by third parties, are resolved in a single trial.

APPENDIX B:

National Code of Professional Conduct for Asset Forfeiture

1. 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.
2. The Constitution and Federal Statutes prohibit the improper use of personal characteristics such as race, color, national origin, gender, or religion to target individuals for law enforcement action.
3. 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.
4. Whenever practicable, and in all cases involving real property, a judicial finding or probable cause shall be secured when property is seized for forfeiture. Seizing agencies shall strictly comply with all applicable legal requirements governing seizure practice and procedures.
5. If no judicial finding of probable cause is secured, the seizure shall be approved in writing by a prosecuting or agency attorney or by a supervisory-level official.
6. Seizing entities shall have a manual detailing the statutory grounds for forfeiture. This manual will 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.
7. Seizing entities retaining forfeited property for official law enforcement use shall ensure that the property is subject to internal controls consistent with those applicable to property acquired through the normal appropriations processes of that entity.
8. 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.
9. Seizing agencies shall strive to ensure that seized property is protected and its value preserved.
10. Seizing entities shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.

APPENDIX C:

Guidelines for Determining a Community-Based Program's Eligibility

To ensure that recipient law enforcement agencies administer these guidelines for determining a community-based program's eligibility in accordance with the federal law and Department of Justice policy, an agency's chief law enforcement officer must ensure his or her agency's adherence to the following requirements governing eligibility, background, and compliance of applicants to be eligible to benefit from shared funds. The federal investigating agencies and the United States Attorney's Offices also are tasked with helping to ensure applicants' suitability to receive guidelines for shared funds use expenditures. Once completed, the chief law enforcement officer's certification that an applicant is eligible to benefit from shared funds will remain effective for one year.

I. Eligibility

For an applicant to benefit from permissible use expenditures, the chief law enforcement officer shall determine that the applicant fulfills the following eligibility requirements:

A. Type of Entity

The applicant must be either:

- (1) a state, county, or local governmental department or agency; or
- (2) a private, nonprofit organization, pursuant to 26 U.S.C. § 501(c)(3) or (4).

B. Activity of Entity

The applicant also must be primarily engaged in providing a program that is both:

- (1) community-based; and
- (2) supportive of and consistent with a law enforcement effort, policy, or initiative.

Such programs include, but are not limited to, the following:

- (1) drug abuse treatment;
- (2) drug and crime prevention education;
- (3) providing housing; or
- (4) providing job skills.

In order to assist chief law enforcement officers in determining whether a potential recipient of benefits under the guidelines for supporting community-based programs with shared funds is eligible,

the Department of Justice provides the following non-exclusive list of examples of activities that it has approved in the past as qualifying to benefit from equitable sharing:

- (1) establish a detoxification center;
- (2) fund a Police Athletic League’s “Summer Playstreets” program for crime and drug prevention;
- (3) fund a city parks department’s anti-gang initiative;
- (4) fund “Law Enforcement Explorer Posts,” a Boy Scouts program promoting law enforcement training and community service;
- (5) fund a “Crime Stoppers” program providing reward money and assistance to neighborhood watch groups including training on observance and effective witness skills;
- (6) purchase a computer for teaching job skills and drug and alcohol awareness to probationers;
- (7) fund programs for incarcerated youth, parents of murdered children, and domestic violence victims; and
- (8) fund a methadone clinic.

Considering each of these approved activities, the Department of Justice based its approval on the activity’s nexus to a law enforcement interest, whether:

- (1) direct (e.g., paying rewards for key information);
- (2) preventative (e.g., funding a methadone clinic, drug awareness program, anti-gang initiative, and probationer training); or
- (3) developmental in promoting community policing (e.g., incorporating law enforcement awareness in a Boy Scout program).

II. Background and Compliance with Law and Policy

A. Certification by Applicant

An applicant for benefits to support community-based programs with shared funds must certify in writing the following aspects of its background and compliance with federal law and Department of Justice guidelines:

- (1) The applicant fulfills the basic eligibility requirements set forth in parts I.A and B above.
- (2) The applicant agrees:
 - a. to account separately for all guidelines for shared funds use benefits received; and
 - b. to subject such accounting to the standard accounting requirements and practices employed under state or local law for recipients of federal, state, or local funds.

- (3) The applicant is in compliance with the federal civil rights laws.
- (4) The applicant is in compliance with federal laws that apply to the applicant.
- (5) No officer, director, trustee, or fiduciary of the applicant has been:
 - a. convicted of a felony offense under federal or state law; or
 - b. convicted of any drug offense.
- (6) No shared benefits will be used for political or personal purposes.
- (7) No shared benefits will be used for any purpose that would constitute an improper or illegal use under the laws, rules, regulations, or orders of the state or local jurisdiction in which the applicant is located or operates.

The applicant's certification must be signed by the head of the applicant entity and must be submitted to the chief law enforcement officer who will approve expenditures on the applicant's behalf. The chief law enforcement officer shall maintain this certification as a record as long as the applicant may benefit from shared funds, and thereafter, for as long as the chief law enforcement officer is required to maintain records under applicable state or local laws or regulations.

Any applicant that cannot certify its compliance with number 5 above (criminal record of principals) should provide the chief law enforcement officer with a detailed explanation of the aspects in which, and the reasons why, certification is not possible. A chief law enforcement officer who wishes to provide support to an applicant that cannot certify compliance with number 5 above shall provide an explanation for his or her position, along with a copy of the applicant's explanation, as an attachment to the law enforcement agency's Form DAG-71 (Application of Transfer of Federally Forfeited Property) to the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division, Department of Justice. AFMLS will make the final decision on whether the provision of guidelines for shared funds use benefits is appropriate.

An applicant for benefits under these guidelines that cannot certify the other aspects of its background and compliance with federal law and Department of Justice guidelines (numbers 1–4, 6 and 7 above) will be denied guidelines for shared funds use benefits.

B. Statement by Chief Law Enforcement Officer

The chief law enforcement officer shall explain in writing why the applicant's receipt of permissible use benefits for the particular activity or use is supportive of and consistent with a law enforcement effort, policy, and/or initiative within the guidelines to support community-based programs. The chief law enforcement officer also shall maintain this written statement as a record as specified in section II.A above.

C. Inquiry by the Chief Law Enforcement Officer

A chief law enforcement officer is also responsible for determining whether an applicant for benefits under these guidelines or its principals (e.g., officer, director, trustee, or fiduciary) currently is the subject of federal, state, or local criminal investigation. Accordingly, a chief law enforcement officer shall:

- (1) utilize all investigative resources available (e.g., National Crime Information Computer) to determine the applicant's status and provide the findings to the federal investigative agency on the Form DAG-71; and
- (2) fully identify the applicant and its principals on the Form DAG-71.

D. Inquiry by the Federal Investigating Agency

The federal investigative agency that receives the Form DAG-71 shall use the information identifying the applicant and its principals to conduct further checks of whether the applicant or its principals currently are the subject of a federal, state, or local criminal investigation. The federal investigative agency also shall provide this identifying information to the United States Attorney in the district where the applicant is located, and where the applicant is operating, and to the chief law enforcement officer involved (unless non-disclosure is required to safeguard a federal investigation in progress).

E. Inquiry by the United States Attorney

The United States Attorney in the district where an applicant or one of its principals is located, or where it or one of its principals is operating, shall determine whether the applicant or principal currently is the subject of grand jury proceedings or other prosecutorial scrutiny in that district, and the United States Attorney shall notify the federal investigative agency of the findings, and also shall notify the chief law enforcement officer involved (unless non-disclosure is required by federal law or to safeguard a federal investigation in progress).

APPENDIX D:

Form DAG-71: Application for Transfer of Federally Forfeited Property

Date:
 Investigative Agency:
 Case Number: _____

U.S. Department of Justice

Application for Transfer of Federally Forfeited Property
 (For Use By United States Law Enforcement Agencies Only)

For Federal Use Only

(For Additional Information - See Instructions)

I.

Asset #: _____
Seizure Date: _____
Judicial District: _____
Case Type: Adoption: <input type="checkbox"/> Joint: <input type="checkbox"/>
(Check One)

- All assets transferred must be used for the law enforcement purpose stated in the request.
- Deadline for submission of this request is sixty (60) days following the seizure.
- The requesting agency will be responsible for reimbursing the Federal Government its costs and may be responsible, in a single-asset case, for reimbursing the federal share.

II. Requesting Agency Name: _____

Address: _____

NCIC Code: Date:

Contact Person: _____ Telephone Number: (_____) _____

III. Asset Requested: _____

Property Description: _____

Other assets in this case (Attach list)

Request Type:

Item Cash/Proceeds _____%

IV. Specific Intended Law Enforcement Use:

- Salaries Purchase of Equipment Other (Please explain): _____
- Purchase of Vehicles Place Into Official Use
 (If other than cash)

V. Contribution (If any answer to A thru E is yes, provide details in Part VI):

	Yes	No
A. Did your agency originate the information leading to the seizure?	<input type="checkbox"/>	<input type="checkbox"/>
B. Were any other assets seized under state law?	<input type="checkbox"/>	<input type="checkbox"/>
C. Were extraordinary expenses incurred?	<input type="checkbox"/>	<input type="checkbox"/>
D. Did your agency supply any unique or indispensable assistance?	<input type="checkbox"/>	<input type="checkbox"/>
E. Are there any assets located in foreign countries associated with this case?	<input type="checkbox"/>	<input type="checkbox"/>
F. How many hours were expended? _____ hours	<input type="checkbox"/>	<input type="checkbox"/>

Case Number: _____

U.S. Department of Justice

**Application for Transfer of Federally Forfeited Property
(Page 2)**

VI. Additional space for detailed answers (Indicate Part to which answer(s) apply)

This form is available online
at www.usdoj.gov/criminal/afmls/forms

(If more space is required, use a separate sheet of paper and attach.) Attachment: Yes No

VII. Certifications:

A. The requester certifies that the above information is true and accurate, that the property transferred will be used for the law enforcement purpose stated, and that all monies received pursuant to this request will be deposited and accounted for consistent with applicable state laws, regulations, and orders. The requester agrees to report on the actual use of equitably transferred property upon request. The requester agrees to pay fees and expenses necessary to effect transfer of title not later than the time of transfer. The requester understands that if it is unable to pay the necessary fees and expenses at the time of transfer, the asset will be sold and the maximum percent of net sale proceeds will be forwarded in lieu of the asset.

_____ Signature/Title _____ Date

B. As legal counsel, I have reviewed this Application for Transfer of Federally Forfeited Property and I certify that the contract person identified in Part II has the authority to accept forfeited property and is the official to whom transfer documents and/or money should be delivered.

_____ Signature/Title _____ Date

Address: _____

Telephone Number: (____) _____

U.S. DEPARTMENT OF JUSTICE
Instructions for Completing Form DAG-71
Application for Transfer of Federally Forfeited Property

General Instructions

- Transfer of federally forfeited property is governed by the Department of Justice Attorney General's Guidelines on Seized and Forfeited Property (Guidelines).
- Requesting **state or local** law enforcement agency (Agency) head or designee must complete the DAG-71. (**Note:** Incomplete or inaccurate information is the most common cause of delay in processing.)
- For international transfer of federally forfeited property, contact the Asset Forfeiture Office, Criminal Division, Department of Justice, Washington D.C.
- A **separate** DAG-71 must be completed for **each** asset (or proceeds) requested.
- The **deadline** for submitting the DAG-71 to the federal investigative agency processing the forfeiture (federal agency) is **60 days from the date of the last seizure in the case**. No DAG-71 will be considered if submitted after the deadline.
- In a one-asset case where the Agency requests the tangible property in lieu of proceeds, the Agency must return costs and the appropriate federal equitable share to the United States. If the Agency is unable to return the costs and federal share, the property will be liquidated and the proceeds distributed proportionally. (Upon adequate justification, exceptions may be granted by the deciding official.)

DAG-71

- Part I:** For federal use only. (**Note:** Asset Number refers to federal investigative agency case number or uniform identifier.)
- Part II:** Provide information requested. If **NCIC code** is not known, contact the federal agency responsible for processing this forfeiture. **Contact person** is the person who has authority to accept property and transfer documents, and/or money.
- Part III:** Provide as complete a property description as possible. Include serial or vehicle identification number. You must check either **"Item"** (if requesting the asset) or **"Cash/Proceeds"** (if requesting a percentage of the asset). Attach list of any other assets in this case.
- By law, **percentage requested** must be based on the "degree of direct law enforcement effort by the state or local agency resulting in the forfeiture, taking into account the total value of all property forfeited and total law enforcement effort, including any related criminal prosecution with respect to the violation of law on which the forfeiture is based." (21 U.S.C. 881(e)(3)).
- Part IV:** Indicate specific intended law enforcement purpose(s) for requested cash, proceeds or tangible property. Pursuant to the Guidelines, all property, including cash and proceeds, must be used for the specific law enforcement purpose(s) approved.
- Part V:** Answer all items A-F. If an answer to A thru E is yes, provide details in Block VI.
- Part VI:** Space for additional information.
- Part VII:** Agency head or his designee and appropriate legal office must certify that information provided in Blocks I-VI is true and accurate.

SUPPLEMENTAL INSTRUCTIONS FOR MULTIPLE ASSETS

Where multiple assets are seized on the same date, in the same case, and the same request is made for each asset, preparation of paperwork can be simplified by using the following method:

- (1) Complete one original of the DAG-71. In Block III, Asset Requested, enter "See asset marked by an 'x' on the attached list."
- (2) Prepare a list of all assets seized in the case, as shown in the sample below.
- (3) Photocopy the DAG-71 and the list as many times as needed. You will need one copy for each asset.
- (4) Enter an "x" in the appropriate place next to one asset on each copy of the list. That copy will serve as the original DAG-71 for the asset marked with an "x."
- (5) Provide original signatures on all DAG-71s.

Below is a sample of such a list:

LISTING OF ASSETS SEIZED

CASE NO. _____

<u>Asset ID No.</u> (Fed. Use Only)	<u>Asset Description</u>	<u>Serial Number</u>
— 93DEA000789	\$32,000 U.S. currency	n/a
— 93DEA000790	1993 Lexus 4 dr sedan, metallic gold	345YG89FE9332
— 93DEA000791	One Panasonic cellular phone	678954321
<u>X</u> 93DEA000792	1992 Jeep Cherokee, red	777HG90QRW772
— 93DEA000793	Electronic Equipment: IBM PS/1 computer 60 MB hard drive Okidata printer	8833IBM76321 954673021 785432976

Note: This list can also fulfill the requirement to provide a list of all assets seized in a case.

APPENDIX E:

Equitable Sharing and Agreement Annual Certification Report



Equitable Sharing Agreement and Certification



OMB Number 1123-0011
Expires 7-31-2011

- Police Department
 Sheriff's Office
 Task Force (Complete Table A, page 2)
 Prosecutor's Office
 Other (specify) _____

Agency Name: _____

NCIC/ORI/Tracking Number:

Street Address: _____

City: _____ State: _____ Zip: _____

Contact: Title: _____ First: _____ Last: _____

Contact Phone: _____ Contact Fax: _____

Contact e-mail: _____

Last Fiscal Year End (mm/dd/yyyy):

- New Participant:** Read the Equitable Sharing Agreement (page 4) and sign the Affidavit (page 5)
 Existing Participant: Complete the Annual Certification Report, read the Equitable Sharing Agreement (page 4), and sign the Affidavit (page 5).
 Change in Administration: Select to report change to Agency or Governing Body head DURING the current fiscal year. Read the Equitable Sharing Agreement (page 4) and sign the Affidavit (page 5).
 Amended Form: Revise the Annual Certification Report, read the Equitable Sharing Agreement (page 4), and sign the Affidavit (page 5).

Annual Certification Report

Summary of Equitable Sharing Activity		Justice Funds	Treasury Funds
1	Beginning Equitable Sharing Funds Balance (must match Ending Equitable Sharing Funds Balance from prior FY)		
2	Federal Sharing Funds Received		
3	Federal Sharing Funds Received from Other Law Enforcement Agencies and Task Forces (complete Table B, page 2)		
4	Other Income		
5	Interest Income Accrued <input type="checkbox"/> Check box if non-interest-bearing account.		
6	Total Equitable Sharing Funds (total of lines 1 - 5)	\$0.00	\$0.00
7	Federal Sharing Funds Spent (total of lines a - n below)	\$0.00	\$0.00
8	Ending Balance (subtract line 7 from line 6)	\$0.00	\$0.00

Summary of Shared Monies Spent		Justice Funds	Treasury Funds
a	Total spent on salaries for new, temporary, not-to-exceed one year, employees		
b	Total spent on overtime		
c	Total spent on informant and "buy money"		
d	Total spent on travel and training		
e	Total spent on communications and computers		
f	Total spent on firearms and weapons		
g	Total spent on body armor and protective gear		
h	Total spent on electronic surveillance equipment		
i	Total spent on building and improvements		
j	Total spent on other law enforcement expenses (complete Table C, page 3)		
k	Total transfers to other state and local law enforcement agencies (complete Table D, page 3)		
l	Total 15% Expenditures in Support of Community-based Programs (complete Table E, page 3)		
m	Total 25% Windfall Transfers to Other Government Agencies (complete Table F, page 3)		
n	Total spent on matching grants (complete Table G, page 3)		
Total		\$0.00	\$0.00

Miscellaneous Data

o	Agency's budget for current fiscal year		
p	Jurisdiction's budget for current fiscal year		
q	Appraised Value of Other Assets Received		

Table A: Members of Task Force

Agency Name	Address

Table B: Equitable Sharing Funds Received from other Agencies

Transferring Agency Name, City, and State	Justice Funds	Treasury Funds
Agency Name		
Agency Address		

Table C: Other Law Enforcement Expenses

Description of Expense	Justice Funds	Treasury Funds

Table D: Equitable Sharing Funds Transferred to Other Agencies

Receiving Agency Name, City, and State	Justice Funds	Treasury Funds
Agency Name		
Agency Address		

Table E: 15% Expenditures in Support of Community-based Programs

Recipient	Justice Funds	

Table F: 25% Windfall Transfers to Other Government Agencies

Recipient	Justice Funds	Treasury Funds

Table G: Matching Grants

Matching Grant Name	Justice Funds	Treasury Funds

Table H: Civil Rights Cases

Name of Case	Type of Discrimination Alleged				Status
	<input type="checkbox"/> Race	<input type="checkbox"/> Color	<input type="checkbox"/> National Origin	<input type="checkbox"/> Gender	<input type="radio"/> Settled <input type="radio"/> Pending
	<input type="checkbox"/> Disability	<input type="checkbox"/> Age	<input type="checkbox"/> Other _____		

Paperwork Reduction Act Notice

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create accurate and easily understood forms that impose the least possible burden on you to complete. The estimated average time to complete this form is 30 minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, please write to the Asset Forfeiture and Money Laundering Section, Program Unit, 1400 New York Avenue, N.W., Second Floor, Washington, DC 20005.

Equitable Sharing Agreement

This Federal Equitable Sharing Agreement, entered into among (1) the Federal Government, (2) the above-stated law enforcement agency ("Agency"), and (3) the governing body, sets forth the requirements for participation in the federal equitable sharing program and the restrictions upon the use of federally forfeited cash, property, proceeds, and any interest earned thereon, which are equitably shared with participating law enforcement agencies. By its signatures, the Agency agrees that it will be bound by the statutes and guidelines that regulate shared assets and the following requirements for participation in the federal equitable sharing program. Receipt of the signed Equitable Sharing Agreement and Certification (this "Document") is a prerequisite to receiving any equitably shared cash, property, or proceeds.

1. **Submission.** This Document must be submitted to aca.submit@usdoj.gov within 60 days of the end of the Agency's fiscal year. This Document must be submitted electronically with the Affidavit/Signature page (page 5) submitted by fax. This will constitute submission to the Department of Justice and the Department of Treasury.

2. **Signatories.** This agreement must be signed by the head of the Agency and the head of the governing body. Examples of Agency heads include police chief, sheriff, director, commissioner, superintendent, administrator, chairperson, secretary, city attorney, county attorney, district attorney, prosecuting attorney, state attorney, commonwealth attorney, and attorney general. The governing body's head is the person who allocates funds or approves the budget for the Agency. Examples of governing body heads include city manager, mayor, city council chairperson, county executive, county council chairperson, director, secretary, administrator, commissioner, and governor.

3. **Uses.** Any shared asset shall be used for law enforcement purposes in accordance with the statutes and guidelines that govern the federal equitable sharing program as set forth in the current edition of the Department of Justice's *Guide to Equitable Sharing (Justice Guide)*, and the Department of the Treasury's *Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies (Treasury Guide)*.

4. **Transfers.** Before the Agency transfers cash, property, or proceeds to other state or local law enforcement agencies, it must first verify with the Department of Justice or the Department of Treasury, depending on the source of the funds, that the receiving agency is a federal equitable sharing program participant and has a current Equitable Sharing Agreement and Certification on file.

5. **Internal Controls.** The Agency agrees to account separately for federal equitable sharing funds received from the Department of Justice and the Department of the Treasury. Funds from state and local forfeitures and other sources must not be commingled with federal equitable sharing funds. The Agency shall establish a separate revenue account or accounting code for state, local, Department of Justice, and Department of the Treasury forfeiture funds. Interest income generated must be accounted for in the appropriate federal forfeiture fund account.

The Agency agrees that such accounting will be subject to the standard accounting requirements and practices employed for other public monies as supplemented by requirements set forth in the current edition of the *Justice Guide* and the *Treasury Guide*.

The misuse or misapplication of shared resources or the supplantation of existing resources with shared assets is prohibited. Failure to comply with any provision of this agreement shall subject the recipient agency to the sanctions stipulated in the current edition of the *Justice* or *Treasury Guides*, depending on the source of the funds/property.

6. **Audit Report.** Audits will be conducted as provided by the Single Audit Act Amendments of 1996 and OMB Circular A-133. The Department of Justice and Department of the Treasury reserve the right to conduct periodic random audits.

Affidavit

Under penalty of perjury, the undersigned officials certify that **they have read and understand their obligations under the Equitable Sharing Agreement** and that the information submitted in conjunction with this Document is an accurate accounting of funds received and spent by the Agency under the *Justice and/or Treasury Guides* during the reporting period and that the recipient Agency is in compliance with the National Code of Professional Conduct for Asset Forfeiture.

The undersigned certify that the recipient agency is in compliance with the nondiscrimination requirements of the following laws and their Department of Justice implementing regulations: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), which prohibit discrimination on the basis of race, color, national origin, disability, or age in any federally assisted program or activity, or on the basis of sex in any federally assisted education program or activity.

During the past fiscal year, has the Agency been part of any proceedings alleging discrimination by the Agency? Yes No

If you answered yes, complete Table H. Please disclose (1) all proceedings pending before any court or administrative agency, (2) any nondiscrimination laws the Agency has been found in violation of, and (3) any settlement agreements the Agency has entered into during the last fiscal year.

Agency Head

Governing Body Head

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

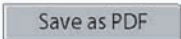
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Date: _____

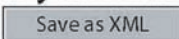
Date: _____

Final Instructions:

Step 1: Click button to save in PDF format for your records



Step 2: Click button to save in XML format



Step 3: E-mail the XML file as attachment to aca.submit@usdoj.gov

Step 4: Fax a signed copy of THIS PAGE ONLY to (202) 616-1344

Note: The Agency will not be in compliance until the e-mail and the fax of this page are received.

<p>FOR AGENCY USE ONLY Entered by _____ Entered on _____ FY End: _____ NCIC: _____ Agency: _____ State: _____ Contact: _____</p>		
		<p>Phone: _____ E-mail: _____</p>

**Village Board
Agenda Memorandum**

Item #

to: Mayor & Village Board
from: Ben Wehmeier, Village Administrator
George Schafer, Assistant Village Administrator
Subject: Discussion of Third Party Electrical Contract Process (Village Accounts)
date: January 18, 2012

BACKGROUND/HISTORY

Back in 2007 the Village first began to utilize a third party supplier of energy for its wells and pumping stations. In 2009, the parking garage was converted over from ComEd to third party as well. Recently, all the streetlight accounts were also converted to a third party supplier.

All of the Village's municipal accounts (excluding the recently approved streetlight contracts) are up for renewal in May of 2012. Due to the state of the energy market, it is an ideal time to go back out for bid for competitive rates. The attached spreadsheet shows the Village's 14 accounts that will be up for renewal in May, with prices reflective of a 1 year contract. 2 and 3 year analysis will be presented at meeting. Due to lead time needed in the process, staff should begin this process soon to enter into the new contracts.

The Village has been working with Energy Choices since the inception of this process in 2007. Energy Choices, an energy consultant/broker, began working with the Village through the recommendation of the Metropolitan Mayors' Caucus. Attached to this memo is a letter from Energy Choices further describing their organization.

The Village has had a good relationship with Energy Choices, and as a result of this process the Village has realized substantial savings on its various accounts. However, there are many other consulting/brokerage firms that do this type of work, and staff has been contacted by a few of these firms. Staff is presenting this to the Committee of the Whole as a discussion topic on how this process should be handled going forward.

PROS/CONS/ALTERNATIVES (IF APPLICABLE)

RECOMMENDATION

ATTACHMENTS (IF APPLICABLE)

1. Spreadsheet showing the Village's accounts up for renewal
2. Memo from Energy Choices

SPECIFIC VILLAGE BOARD ACTION REQUIRED

Discussion

Address	Account	12 Month kWh	12 month Max Demand	Capacity PLC	Current All-In Price	Potential Extension Price	Potential Annual Savings
12900 Waterford Drive - Glens of Connemara	227019043	15,840.0	12.44	2.7681	\$0.05827	0.04523	\$206
1345 Acorn Street - Eagle Ridge Lift Station	383091085	9,804.0	4.34	1.6241	\$0.05827	0.04523	\$128
310 River St. Garage	1535019018	220,528.0	41.11	21.4565	\$0.05908	0.04523	\$3,054
13488 S. Archer Avenue Target-Kohl's L/S	1587115090	17,492.0	15.63	2.8388	\$0.05827	0.04523	\$228
1153 State Street - Well #3	1667003028	304,093.0	135.38	111.2834	\$0.05827	0.04523	\$3,964
731 Houston Street - Well #4	1827046114	59,402.0	222.34	3.7862	\$0.05827	0.04523	\$774
12836 S. Archer Avenue - Keepataw Lift	1827145032	22,278.0	13.19	0.8888	\$0.05827	0.04523	\$290
13675 McCarthy Road - Well #6	1843088050	1,447,685.0	283.5	123.7345	\$0.05827	0.04523	\$18,871
16190 127th Street - Well #5	2243082048	1,509,939.0	354.64	136.3647	\$0.05827	0.04523	\$19,682
1199 Arbor Drive - Harper's Grove Lift	2739070030	13,096.0	5.46	0.5595	\$0.05827	0.04523	\$171
16742 Pasture Dr., Lift Station	3012109011	8,022.0	1.67	0.7142	\$0.05827	0.04523	\$105
14411 131st St. - Ruffled Feathers	3235123013	47,340.0	34.2	21.2277	\$0.05827	0.04523	\$617
12163 Oak Tree Lane - Oak Tree Lift	3395113026	24,524.0	14.28	1.7713	\$0.05827	0.04523	\$320
1695 Ashbury Drive - Chestnut Xing Lift	4643058113	18,424.0	17.58	1.3859	\$0.05827	0.04523	\$240

\$48,650

Energy Choices, Inc.
1954 First Street, Suite 106
Highland Park, IL 60035

January 11, 2012

Mr. George Schafer
Village of Lemont
418 Main St.
Lemont, IL 60439

Dear George:

Thank you for your business over the past 6 years. I am looking forward to working with you on your next contract for electricity.

Currently, the Village of Lemont is in a contract with Exelon Energy through May, 2012 for all pumping accounts, plus the parking structure. You will need to have a new contract in place by April 1, 2012 to allow time to potentially switch to a new supplier depending on the outcome of a bid. **At current market rates, it is estimated you could save over \$38,000/year over your current contract on a new contract.** This is in part because of a decline in energy prices since the last agreement and because capacity prices are steeply declining in June.

Energy Choices is an energy consultant, endorsed by the Metropolitan Mayors' Caucus. We have been working in Illinois since 1997 and currently serve over 25 municipalities, in addition to the other commercial and industrial accounts we serve. We have also pioneered the Energy Savings Program (ESP) for municipal residential accounts. This is an alternative municipal aggregation and has actually been shown to save money over the average aggregation price other communities have received. We are also assisting communities with municipal aggregation.

Scope of Services

We will use the following protocol with your contract:

- 1) Discuss length of contract and budget expectations
- 2) Issue RFP to a select number of reputable suppliers (usually four)
- 3) Evaluate RFP responses (including contract terms)
- 4) Make supplier recommendation
- 5) Help evaluate and negotiate contracts
- 6) Ensure that supplier's pricing is being applied properly to your first bill

References

The following is a list of recent clients who can attest to our ability:

- Village of Bedford Park – Mayor David Brady – 708-458-2067
- Village of Oak Park – Vic Sabaliauskas – 708-358-5710
- Village of Bartlett – Paula Schumacher – 630-837-0800

Additional References can be provided upon request.

Thank you for the opportunity to present this proposal to you. I look forward to your response.

Sincerely,

Mollie VanderLaan
Consultant, Energy Choices, Inc.



Village of Lemont
Planning & Economic Development Department

418 Main Street · Lemont, Illinois 60439
phone 630-257-1595 · fax 630-257-1598

TO: Committee of the Whole #7-12

FROM: James A. Brown, Planning & Economic Development Director

THRU

SUBJECT: **Bella Strada Proposal**

DATE: 18 January 2012

Background

In August 2005 (two weeks prior to my arrival) the Village amended its zoning regulations to create the DD Downtown zoning district. The draft of the DD district provisions was largely the work of Marquette and an architecture consulting firm from Florida. The DD district provisions were touted as a “form-based code.” The new provisions contained a unique approval process: (1) the community development director would verify adherence to architectural standards in the code; (2) a “downtown architect” would verify adherence to architectural standards in the code; and (3) the Village Board would verify adherence to architectural standards in the code. There were no requirements for discretionary review before either the PZC or Village Board, i.e. it was not a special use and did not require a public hearing. The omission of a review by the PZC was intended, in part, to expedite the approval process.

Only two projects in the downtown were approved in accordance with these provisions: the Lofts and Bella Strada. When the Village updated its zoning regulations and created the Unified Development Ordinance (2006-2008), the approval provisions for the DD district were changed. Thresholds for special use approval were inserted. These thresholds have been modified once through amendment. Now the code requires that any construction adjacent to the I&M Canal or reserve strip be approved as a special use. Additionally, the public hearing for a special use (as required by state law) is to be held by the Village Board rather than the PZC. This provision was to honor the original intention of expediting the approval process.

The Village Board approved the Bella Strada townhouse project per resolution (not a special use ordinance) in May 2006. The first of four buildings was completed and the units are now occupied. The project and construction of the other three buildings stalled after the installation of the buildings’ foundations.

The financial institution that owns the property has sought to market it, and staff has been approached by several potential buyers over the last year or so. Concerns over the project's costly architecture have been raised by every interested party.

Proposal

Local builder Tony Hegarty approached me about zoning entitlements and what the process for approval would be if someone desired to change the project's architecture. Since the project is adjacent to the I&M Canal changes will require a special use approval. The hearing would be conducted by the Village Board rather than the PZC. Before he submits an application or purchases the property, Mr. Haggerty would like feedback from the COW on his proposed re-design of Bella Strada's architecture. A digital scan of a color architectural rendition is attached. I will distribute color renditions and digital scans of material samples at the COW meeting.

Attachments

Color rendition of proposed townhouse building

