Board Agenda Item 51

DATE: September 13, 2016

TO: Board of Supervisors

SUBMITTED BY: Michael L. Elliott, Interim Chief Probation Officer

SUBJECT: Agreement and Annual Certification Report with the Federal Government for the Probation Department to participate in the Federal Equitable Sharing Program

RECOMMENDED ACTION(S):

1. **Approve and authorize Chairman to execute an Equitable Sharing Agreement with the Federal Government authorizing the Probation Department to participate in the Federal Equitable Sharing Program from September 13, 2016 through August 31, 2017 and certifying as to funds received and expended during FY 2015-16; and**

2. **Authorize the Interim Chief Probation Officer to submit Equitable Sharing Agreement and Certification and any and all "Applications for Transfer of Federally Forfeited Property (Form DAG-71)" as appropriate and authorize the Interim Chief Probation Officer to designate a department employee to accept forfeited property, transfer documents, and/or receive money.**

There is no increase in Net County Cost associated with the recommended actions, which will allow the Probation Department to participate in Federal asset forfeiture cases. The certification annual report is a requirement of this Agreement.

ALTERNATIVE ACTION(S):

If the recommended actions are not approved, the Probation Department will lose any Federal asset forfeiture funds which they would have been eligible for if the Agreement was in place.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended actions. The Agreement allows the Probation Department to participate in Federal asset forfeiture cases and the certification is an accounting of federal monies received and expended during FY 2015-16. During FY 2015-16, the Probation Department participated in several narcotics investigations. Payment of asset forfeiture funds for Probation's participation in these investigations is currently pending review by the U.S. Department of Justice, and no funds were received during FY 2015-16. A total of $358.73 in interest was earned in FY 2015-16 in the Federal Asset Forfeiture Special Revenue Fund bringing the balance on June 30, 2016 to $26,278.17. No funds have been expended at this time.

DISCUSSION:

In order for the County of Fresno to receive a share of asset forfeitures, as a result of the Probation Department's involvement in an arrest and confiscation of property/cash in accordance with asset forfeiture laws, an executed Federal Equitable Sharing Agreement must be on file with the Federal Government. The existing Equitable Sharing Agreement and Certification, approved by your Board on August 11, 2015, expired on August 31, 2016.

The Federal Equitable Sharing Agreement 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 the participating law enforcement agencies.

Shared funds must be used to increase or supplement the resources of the receiving state or local law enforcement agency. Shared resources shall not be used to replace or supplant the resources of the state or local law enforcement agency.

The certification annual report is a requirement of this agreement and must be filed within 60 days after the end of the fiscal year. The Department contacted the U. S. Department of Justice regarding submitting the application on September 13, 2016, and they approved the submission after 60 days.

Additionally, the Department of Justice requires that state and local law enforcement agencies requesting an equitable share of proceeds, complete and electronically submit an Application for Transfer of Federally Forfeited Property (Form DAG-71) within 45 days of the seizure. The field office will make a recommendation on the agency's sharing percentage based upon the information reported on this form. These percentages are ultimately approved by either the seizing agency headquarters, U.S. Attorney's Office, or the Criminal Division.

During FY 2015-16, the Probation Department participated in narcotics operations. Asset forfeiture payments are pending review for these operations, but no funds were transferred during FY 2015-16 by the U.S. Department of Justice to the Probation Department and this is reported as required in the Annual Certification Report section of the form. The Affidavit certifies that the Agency Head, Chief Probation Officer, and the Governing Body Head, Chairman of the Board of Supervisors, have read and understand their obligations under the Equitable Sharing Agreement and that the information submitted in conjunction with the document is an accurate accounting of funds received/spent by the Agency under the Justice and/or Treasury Guidelines during the reporting period and the recipient Agency is in compliance with the National Code of Professional Conduct for Asset Forfeiture. This includes certifying the recipient Agency (Probation) is in compliance with the nondiscrimination requirements of the laws cited therein, 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. It also certifies that the Probation Department has not suffered an adverse finding on claims that the Agency has violated the discrimination statutes or entered into a settlement of such claims.

Approval of the recommended actions will allow the Probation Department to continue to participate in Federal asset forfeiture cases and submit the required forms in the event of an asset seizure.

REFERENCE MATERIAL:

BAI # 49, August 11, 2015

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Equitable Sharing Agreement and Certification

CAO ANALYST:

Samantha Buck