



Board Agenda Item 20

DATE: August 22, 2023

TO: Board of Supervisors

SUBMITTED BY: Lisa A. Smittcamp, District Attorney

SUBJECT: Federal Asset Forfeiture Equitable Sharing Agreement and Certification

RECOMMENDED ACTION(S):

- 1. Approve and authorize Chairman to execute as Governing Body Head annual Equitable Sharing Agreement and Certification with the United States Department of Justice, authorizing the District Attorney's Office to participate in the Federal Equitable Sharing Program and potentially receive a share of asset forfeitures, and certifying as to funds received and expended during FY 2022-23;**
- 2. Authorize the District Attorney to execute as Agency Head, and submit the Equitable Sharing Agreement and Certification; and**
- 3. Authorize the District Attorney, or her designee, to execute any and all "Applications for Transfer of Federally Forfeited Property (Form DAG-71)," and other required documents, as appropriate, and designate a department employee to accept forfeited property, transfer documents, and/or receive funds.**

This program allows the District Attorney's Office (DA) to receive a share of federally forfeited assets to be used according to the guidelines, which restrict the use of these assets. The DA and Governing Body Head (Chairman) must certify they have read and understand their obligations under the Equitable Sharing agreement, that the information submitted in conjunction with the document is an accurate accounting of funds received/spent by the DA under the Justice and/or Treasury Guidelines during the reporting period, and that the DA is in compliance with the National Code of Professional Conduct for Asset Forfeiture. The Department of Justice (DOJ) 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 a seizure. Action Item 3 authorizes the District Attorney, or her designee, to execute a required certification on the Application for Transfer of Federally Forfeited Property Form. The certification annual report is also a requirement of the recommended agreement and must be filed within 60 days after the end of the fiscal year. This item is countywide.

ALTERNATIVE ACTION(S):

If the recommended agreement and certification is not executed, the DA would not receive a share of federally forfeited assets.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended actions. The recommended agreement allows the DA to participate in the program, and the certification is an accounting of federal monies received and expended during FY 2022-23. In FY 2022-23, the DA received \$0 in Federal Sharing funds and does not have any spending to report.

DISCUSSION:

The Comprehensive Crime Control Act of 1984 provided federal investigators and prosecutors with the ability to conduct a national asset forfeiture program and authorized the sharing of federal forfeiture proceeds with cooperating state and local law enforcement agencies.

One requirement of the Equitable Sharing agreement is the electronic submission of an annual certification report for an accounting of funds received and expended during the fiscal year. The DA and Chairman certify they have read and understand their obligations under the Equitable Sharing agreement, that the information submitted in conjunction with the document is an accurate accounting of funds received/spent by the DA under the Justice and/or Treasury Guidelines during the reporting period, and that the DA is in compliance with the National Code of Professional Conduct for Asset Forfeiture. This includes certifying the DA 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 the DA has not suffered an adverse finding on any claims that the DA violated the discrimination statutes, nor has the DA entered into a settlement of any such claims.

Additionally, the DOJ 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 Form DAG-71 contains a certification that the number of workhours and the narrative contributions to the investigation are true and accurate, that the property transferred will be used for permissible law enforcement purposes, and that all monies received will be deposited and reported annually in accordance with the DOJ policies on Equitable Sharing. The field office will make a recommendation on the DA'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.

Approval of the recommended actions will allow the DA to continue to participate in Federal Asset Forfeiture cases and submit the required forms in the event of an asset seizure.

REFERENCE MATERIAL:

BAI #21, August 23, 2022

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Equitable Sharing Agreement and Certification

CAO ANALYST:

Fine Nai