



SOLANO COUNTY GRAND JURY
2016-2017

**CIVIL ASSET FORFEITURE: A FUNCTIONAL
REVIEW**

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2016-2017 Solano County Grand Jury

I. SUMMARY

California's Health and Safety Code establishes Civil Asset Forfeiture as a legal process for the confiscation of cash and property if law enforcement suspects the owner of the property is involved with criminal activity. Seizure of cash and property is intended to be a tool to deny persons involved in illicit drug trafficking the means to continue to operate. The code establishes procedural control requirements for the receipting, verifying, accounting, protecting and distributing of these assets.

The 2016-2017 Solano County Grand Jury investigated each of the Solano County law enforcement agencies conducting civil asset forfeitures to examine and understand the integrity of participating agencies' process for control and management of seized assets and the administration of assets that have been forfeited.

Activity amongst the agencies varied greatly. The 2016-2017 Solano County Grand Jury concluded the agencies generally complied with the majority of applicable control requirements. However, deficiencies were noted in three areas: (1) compliance with performing required annual financial audit of credit and debit activity to the seized proceeds holding accounts, (2) in properly maintaining seized proceeds in a separate fund or account while reporting cases to the District Attorney's (DA) Office, and (3) failure to notify the California Franchise Tax Board when applicable. Additionally, weaknesses were noted in the process relative to printed general ledger reports and the manual case tracking information log used within the DA's office.

II. INTRODUCTION

California's Health and Safety Code establishes Civil Asset Forfeiture as a legal process allowing for the confiscation of cash and property if law enforcement suspects the owner of the asset is involved in criminal activity. Seizure of cash and property is intended to be a tool to deny persons involved in illicit drug trafficking the means to continue to operate. California Health and Safety Code §11469 states law enforcement is the principal objective of forfeiture. California law entitles the law enforcement agency making the seizure, the District Attorney prosecuting the forfeiture case, and the municipality in which the assets were seized to become the principle beneficiaries of funds that are forfeited.

Civil asset forfeiture is not uncommon and the value of the property seized and forfeited under the program is significant. In 2015, the California Attorney General (AG) reported 3,286 forfeiture proceedings were initiated within the state with seized property worth an estimated \$49,233,688. In the same year, Solano County law enforcement agencies initiated 74 forfeiture cases against property worth an estimated \$308,765.

Asset forfeiture may be prosecuted locally by the District Attorney (DA) or through a parallel Federal program that, until a recent change in California law, returned a greater percentage of the assets to local law enforcement. The United States Attorney General reports that the deposits into

the Federal asset forfeiture program from seizures in California during fiscal year 2015 amounted to \$170,919,808. The significant total value of forfeited assets returned to the law enforcement agencies seizing the property and the DA prosecuting the case has raised public concern.

Few citizens in our community understand the concept of civil asset forfeiture. The legal rationale is that the property itself may be involved in the commission of a crime, and thus may be seized. The California Health and Safety Code puts the burden of proof upon the owner who must fight to have his or her property returned. Public concern arises from the perceived loss of their property rights in regard to the seized private property.

Several recently published articles and reviews of the civil asset forfeiture process in California have observed a pattern of recurrent problems with the administration of asset forfeiture programs, particularly in medium and small cities.

With these facts in mind the 2016-2017 Solano County Grand Jury undertook a detailed examination of the administration and management of the process of civil asset forfeiture by law enforcement agencies within Solano County.

III. METHODOLOGY

The 2016-2017 Solano County Grand Jury has:

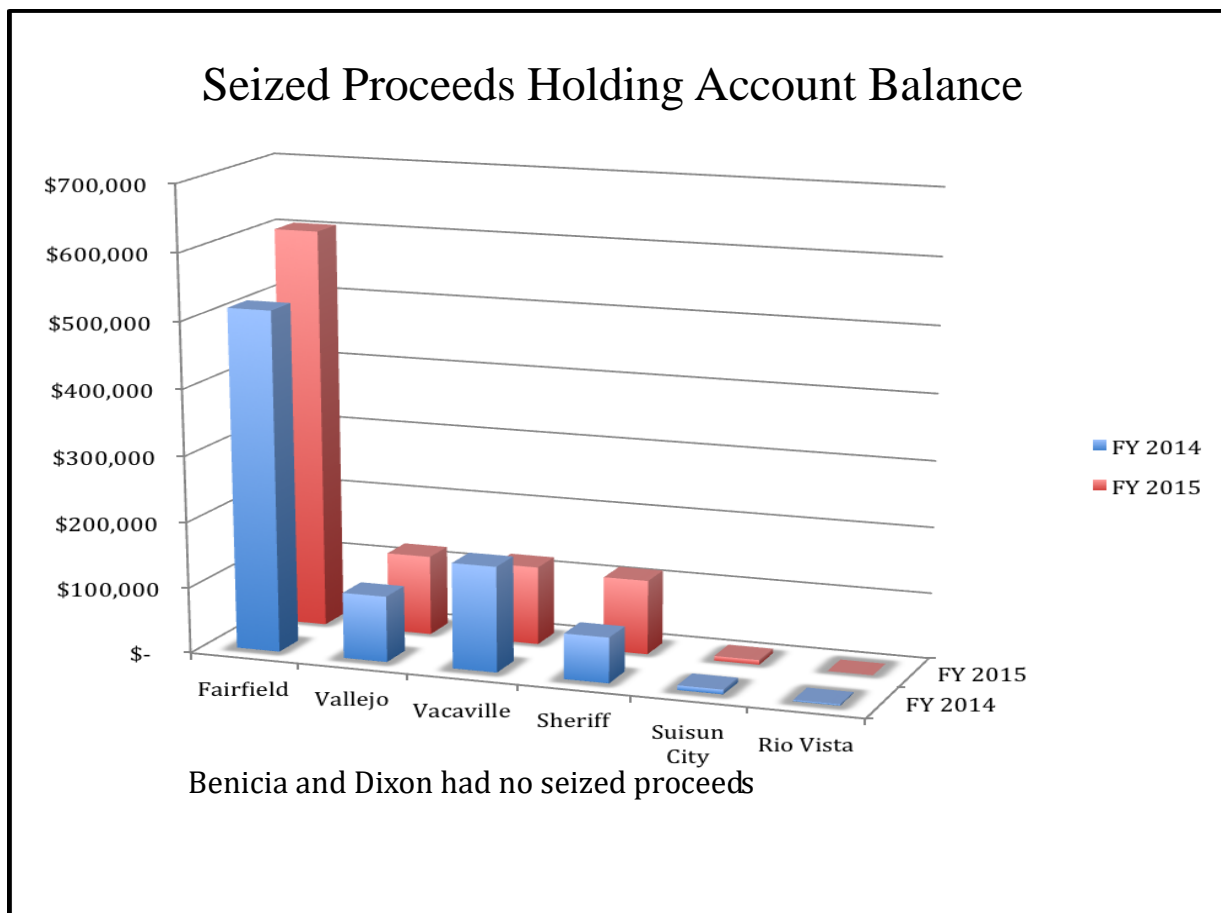
- reviewed the applicable California codes, Federal guidelines and local procedures for the process of civil asset forfeiture.
- traced the outcome and disposition of a number of specific forfeiture cases to perform a functional process review of the process by each agency.
- interviewed members of the Solano County Sheriff's Office, Vacaville Police Department, Fairfield Police Department, City of Suisun City personnel and the Solano County District Attorney's Office.
- requested and reviewed accounting records, procedure manuals, seized asset logs and other records from the District Attorney's Office, and the eight law enforcement agencies within the County.
- tracked the progress of representative cases from initial receipt by the District Attorney's office until the final disposition of the seized assets.
- reviewed Department of Justice annual reports to Congress and California Attorney General annual reports concerning civil asset forfeiture within Solano County.
- studied background reviews of the asset forfeiture program from other entities in order to gain an understanding of public sentiment:
 - Reports of other California Grand Juries
 - The Drug Policy Alliance
 - American Civil Liberties Union of California

- Numerous press reports.

IV. STATEMENT OF FACTS

The California Health and Safety Code sections 11469-11495 establish the procedures for seizure of private property from persons suspected of involvement in certain types of criminal activity. Seized proceeds are to be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all credits and debits. Seizing agencies shall ensure that property is protected and its value preserved. The majority of seized assets are cash proceeds. The physical cash is verified and receipted by the authorities and booked into evidence. Subsequently, seized cash is deposited in the primary bank account of the County or City. Law enforcement agency general ledger (GL) accounting entries are made to the appropriate fund where the seized proceeds are to be held in a liability account.

The 2016-2017 Solano County Grand Jury reviewed GL activity of the eight law enforcement agencies within Solano County. These included the Solano County Sheriff's Office and the seven city police departments. To facilitate the review, the Grand Jury obtained GL reports and a copy of the handwritten log used by the District Attorney's Office to assign and track asset forfeiture cases for a twenty-four-month period, July 1, 2013 through June 30, 2015. The District Attorney's log shows 200 seizure cases recorded during this period. Transactional reviews of credit and debit activity to the seized proceeds holding accounts were matched to these cases. Outstanding balances in these accounts at the time of review are shown in the following chart.



The 2016-2017 Solano County Grand Jury also verified the information appearing on the California Department of Justice Annual Asset Forfeiture Report for 2014 and 2015 published by the California Attorney General (AG). In the 2014 report, Solano County law enforcement agencies initiated 89 seizures with an estimated value of \$233,353 and completed 45 forfeitures disbursing \$85,577 to state and local agencies. In 2015, there were 74 cases initiated with an estimated seized value of \$308,765. A total of 31 forfeitures were completed disbursing \$73,422 in accordance with the California Health and Safety Code requirements.

Law Enforcement Agencies

1. Benicia Police Department

This agency reported no seized proceeds being held in their custody during the review period. Additionally, no activity was reported on their annual Federal Equitable Sharing Agreement and Certification for fiscal years 2014 and 2015.

2. Dixon Police Department

This agency reported no seized proceeds being held in their custody during the review period. Their annual Federal Equitable Sharing Agreement and Certification for fiscal years 2014 and 2015 reflected receipt of shared forfeited funds with Solano County.

3. Fairfield Police Department

General ledger (GL) activity reviews found this agency had the largest outstanding balance of seized proceeds within the county. A large portion of the \$604,614 balance arises from two high value 2013 cases. Review of credits and debits for the twenty-four-month period, July 1, 2013 through June 30, 2015, found a number of posting anomalies. These included:

- credit totals differing from figures on the DA asset forfeiture log
- reversing debits posting before associated credits
- credits posted for case numbers not located on the DA asset forfeiture log
- two different DA administration numbers issued for a single agency case number with totals not matching
- double posting of interest for an account
- car sale proceeds deposited to the liability account
- motorcycle auction deposited to the liability account
- the inability to verify offsetting credit and debit activity due to missing or consolidating entries

According to city personnel, Fairfield does not perform an annual financial audit of all credits and debits made to the seized proceeds holding account. An annual review functions as a detective control¹ to identify and correct accounting anomalies to ensure that seized property is protected and its value preserved.

The 2016-2017 Solano County Grand Jury also noted that the transaction descriptions printed on the GL reports did not always include an adequate identifying reference number for research. Key case information was either missing or not accurate due to bookkeeping software limitations when the report was printed. This truncation dropped some identifying digits when printed, making the reference inaccurate.

The Fairfield Police Department manual concerning civil asset forfeiture states that there is a responsibility to notify the California Franchise Tax Board when there is reasonable cause to believe that the value of the seized property exceeds \$5,000. Interviews with City personnel found this task was not being accomplished. A count of credits posting during the review period found 28 were for \$5,000 or more.

¹ **Detective controls** are designed to detect errors or irregularities that may have occurred.

4. Rio Vista Police Department

This agency reported no new seized proceeds were being held in their custody during the review period. However, there were old outstanding balances totaling \$2,413.51 noted in the account used to hold seized proceeds. The City's initial response to the 2016-2017 Solano County Grand Jury indicated the Finance Department had reviewed the account in June 2015. The Police Department's response to the Finance Department at that time was the case had been "adjudicated completely and the statute of limitations has passed" so it was decided to transfer the balance to revenue. The 2016-2017 Solano County Grand Jury made a follow-up inquiry regarding the movement of these funds to revenue to ensure it was disbursed according to California Health and Safety Code §11489. The City indicated the balance was comprised of receipts, returns, and payments for nine cases originating from 2004 to 2010. The 2016-2017 Solano County Grand Jury's analysis of entries posted between July 1, 2004 and June 30, 2013 disclosed a variety of reconciliation errors and accounting differences contributing to the aged balance. The analysis identified thirteen transactions made up the remaining aged balance; however, the City does not appear to be entitled to all of these funds based on the information available. At least \$1,682.18 appears to be citizens' money. Two of the cases comprising this balance were not reported to the DA's office as asset forfeiture-based cases. Tracing the case numbers to court records disclosed the case was dismissed against one suspect and in the other the person pleaded guilty to a felony. Neither was classified as forfeited.

The 2016-2017 Solano County Grand Jury found no evidence of an annual financial audit of all credits and debits made to the seized proceeds holding account. An annual review functions as a detective control to identify and correct accounting anomalies to ensure that seized property is protected and its value preserved.

The 2016-2017 Solano County Grand Jury also noted that the transaction descriptions printed on the GL reports did not always include an adequate identifying reference number for research. Key case information was either missing or not accurate due to bookkeeping software limitations when the report was printed. This truncation dropped some identifying digits when printed, making the reference inaccurate.

5. City of Suisun City Police Department

This agency reported two governmental funds associated with asset forfeiture activity. These are Fund 767-06680, which is used to hold the proceeds seized in a drug enforcement action and Fund 025-74310, which contains forfeited funds that are for use to further drug enforcement efforts.

The 2016-2017 Solano County Grand Jury reviewed GL reports for Fund 767 and found it had an aged balance of \$6,623.82. Interviews and research confirmed the balance was aged and portions of the balance dated back prior to 2004. In fact, a notation was found indicating cash (\$1,005) collected in a 1998 case was not credited until July 2, 2003. Between July 1, 2004 and December 4, 2009 (last date of activity) the balance fluctuated from a credit of \$1,033.93 to a credit of \$6,623.82. According to city personnel, activity for seized proceeds was erroneously credited to Fund 025 rather than Fund 767 starting some time in 2010. It is important to note

Fund 025 account is not a separate account specifically for seized drug related proceeds but is an account co-mingled with the proceeds from the auction of found articles and cash, safekeeping items and former evidence that goes unclaimed.

The 2016-2017 Solano County Grand Jury's review of GL entries to the Fund 025 account appears to include proceeds from new asset seizure activity in the twenty-four-month period July 1, 2013 through June 30, 2015, but without corresponding notification to the DA's Office. The review found there were twenty-one entries with the GL description of "asset forfeiture case" posted during the review period. Consultation with the DA's Office determined they have no record of these being reported as asset forfeiture based cases. Tracing the case numbers to court records disclosed nine cases were dismissed and/or rejected for insufficient evidence, four were drug related, three were not drug related and five were never filed with the court at all.

No annual financial audit of all credits and debits has been performed in several years as required. An annual review functions as a detective control to identify and correct accounting anomalies to ensure that seized property is protected and its value preserved.

6. Vacaville Police Department

General ledger (GL) activity reviews found the agency had \$100,277 and \$121,476 outstanding in the seized proceeds holding account for fiscal years ending on June 30, 2014 and 2015, respectively. Review of credits and debits for the twenty-four-month period July 1, 2013 through June 30, 2015 found a number of posting anomalies. These included:

- two credits posted for a 2013 case included \$975 in seized cash and \$2,267.80 seized from bank accounts. The bank accounts were not listed on the DA asset forfeiture log. The cash amount was forfeited and reported on 2014 AG report, however, the bank funds appear to still be outstanding
- two forfeiture disbursements reported on 2015 AG report were funded from an expense account entitled "OTHER PROFESSIONAL SERVICES" rather than the seized proceeds holding account
- cash held as evidence, unrelated to asset forfeiture, was deposited to the seizure holding account in error. In at least one instance it still appears to be outstanding in the seizure holding account
- petty cash debit posted to the seizure holding account in error and not reversed.
- "PD Parking Bail Collection" credit to the seizure holding account was posted in error and not reversed

Discussions with city personnel determined that an annual financial audit of all credits and debits made to the seized proceeds holding account is not performed. An annual review functions as a detective control to identify and correct accounting anomalies to ensure that seized property is protected and its value preserved.

The 2016-2017 Solano County Grand Jury also noted that the transaction descriptions printed on the GL reports did not always include an adequate identifying reference number for research. Key case information was either missing or not accurate due to bookkeeping software limitations

when the report was printed. This truncation dropped some identifying digits when printed, making the reference inaccurate.

7. Vallejo Police Department

General ledger (GL) activity reviews by the Grand Jury found this agency had \$159,889 and \$118,988 outstanding in the seized proceeds holding account for fiscal years ending on June 30, 2014 and 2015, respectively. Our review of credits and debits for the twenty-four-month period July 1, 2013 through June 30, 2015 found twelve instances where reversing debits on forfeited cases reported on annual AG reports were unverifiable due to missing or consolidated entries in the City's GL.

The GL review also disclosed a 2013 case that the DA reflected as being forfeited and expected to be reported on the 2015 AG report but did not appear on that report. Additionally, the reversing forfeiture distribution debit for this case was not located through June 30, 2015. We also noted a 2014 case that had activity posting in January 2015, which was not located on the DA asset forfeiture log. Consultation with the DA's Office determined there was no record of this being reported as an asset forfeiture based case. Tracing the case number to court records disclosed it was rejected for insufficient evidence and a federal agency picked up the case.

The analysis also determined there is no evidence of an annual financial audit of all credits and debits made to the seized proceeds holding account. An annual review functions as a detective control to identify and correct accounting anomalies to ensure that seized property is protected and its value preserved.

8. Solano County Sheriff's Office

General ledger (GL) activity reviews showed this agency had \$69,170 and \$113,218 outstanding in the seized proceeds holding account for fiscal years ending on June 30, 2014 and 2015, respectively. Review of credits and debits for the twenty-four-month period July 1, 2013 through June 30, 2015 revealed the release debit for a 2014 case returning \$360 to the claimant could not be located to substantiate the funding of the release.

The 2016-2017 Solano County Grand Jury also noted that the transaction descriptions printed on the GL reports do not always include an adequate identifying reference number for research. Key case information was either missing or not accurate due to bookkeeping software limitations when the report is printed. This truncation dropped some identifying digits when printed, making the reference inaccurate.

V. FINDINGS AND RECOMMENDATIONS

Finding 1 – Annual financial audit of all credits and debits to the seized proceeds holding account is not performed as required by California Health and Safety Code §11469. The code also specifies seizing agencies shall ensure seized property is protected and its value preserved.

Recommendation 1 – Applicable agencies perform annual audits by working with the Solano County District Attorney's Office to track their cases that are still currently being adjudicated.

Finding 2 - Agencies are not returning proceeds that are not forfeited or claimed to the property owner and following proper escheatment procedures per California Government Code sections 50050 – 50057.

Recommendation 2 - Agencies return proceeds that are not forfeited or claimed to the property owner and follow proper escheatment procedures per California Government Code sections 50050 – 50057.

Finding 3 – City of Suisun City lacked appropriate accounting controls to properly segregate and maintain seized proceeds in a separate fund or account.

Recommendation 3 – City staff review their policies and procedures and determine the appropriate custody and controls needed to properly segregate and maintain seized proceeds in a separate fund or account.

Finding 4 - In recurrent instances, proceeds posted from what were described as asset forfeiture cases were never reported to the District Attorney's Office as being asset forfeiture based and therefore were never logged as such.

Recommendation 4 - All asset seizures must be reported to the District Attorney's Office within 15 days per California Health and Safety Code §11488.2 or the property shall be returned to the individual designated in the receipt.

Finding 5 – Transaction descriptions printed on General Ledger reports do not always include an adequate identifying case reference number for research. Key information is either missing or not accurate due to bookkeeping software system limitations that cause information to truncate when printed. (Fairfield, Rio Vista, Vacaville, and County Sheriff's Office)

Recommendation 5 – County and City staff responsible for GL data input review their policies and procedures to ensure key case reference information is entered at beginning of the description to be available on printed reports.

Finding 6 – Solano County District Attorney's (DA) Office personnel use a handwritten log to assign and track asset forfeiture cases. There is no back up in the event the log is lost or destroyed.

Recommendation 6 – The DA’s Office review their internal policies and procedures and consider establishing an electronic database (such as an Excel spreadsheet) that can replace the handwritten log and allow for back-up.

Finding 7 – The Fairfield City Police Department failed to notify the California Franchise Tax Board when there was reasonable cause to believe that the value of seized property was \$5,000.00 or more as per California Health and Safety Code §11471.5.

Recommendation 7 – Fairfield City Police Department personnel follow the prescribed notification procedures in their policy manual and per California Health and Safety Code §11471.5.

COMMENTS

Civil asset forfeiture is not a secret or rare legal process. Much of the current public discussion of the seizure of private assets by law enforcement articulates concerns regarding the potential damage to the legal foundation of judicial indifference, and the lack of transparency in the conduct of a civil process before a public court. Transparency in civil court proceedings involving the seizure and forfeiture of personal property is essential to maintain public trust in the legitimacy of judicial outcomes.

The current execution of the asset forfeiture process in Solano County prevents a transparent review of the administration or effectiveness of the program. Concerned citizens should have access to basic information on the disposition of private property taken from the public such as: the number of cases filed, percentage of successful claims for restitution of property, crimes for which the assets were seized and the conviction rate for the underlying criminal activity.

The District Attorney’s office should strongly consider the creation of a searchable database that removes sensitive police information and protected personal data. Accessible data on the conduct of asset forfeiture actions would allow effective public oversight of the program. Transparency also provides the understanding essential for public support of the deterrence effect of the use of this process by Solano County law enforcement agencies.

REQUIRED RESPONSES

City of Fairfield Police Chief (Findings 1, 2, 4, 5 & 7)
City of Rio Vista Police Chief (Findings 1, 2, 4 & 5)
City of Suisun City Police Chief (Findings 1, 2, 3 & 3)
City of Vacaville Police Chief (Findings 1, 2 & 5)
City of Vallejo Police Chief (Findings 1, 2 & 4)
Solano County Sheriff (Finding 5)
Solano County District Attorney (Finding 6)

COURTESY COPIES

Clerk, Solano County Board of Supervisors
City of Benicia Police Chief
City of Dixon Police Chief