Department of Law and Public Safety
Attorney General’s Law Enforcement
Forfeiture Account

July 1, 2000 to January 15, 2003

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State Auditor
The Honorable James E. McGreevey  
Governor of New Jersey

The Honorable John O. Bennett  
President of the Senate

The Honorable Richard J. Codey  
President of the Senate

The Honorable Albio Sires  
Speaker of the General Assembly

Mr. Albert Porroni  
Executive Director  
Office of Legislative Services

Enclosed is our report on the audit of the Department of Law and Public Safety, Attorney General’s Law Enforcement Forfeiture Account for the period July 1, 2000 to January 15, 2003. If you would like a personal briefing, please call me at (609) 292-3700.

May 29, 2003
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Department of Law and Public Safety  
Attorney General’s Law Enforcement Forfeiture Account

**Scope**

We have completed an audit of the Department of Law and Public Safety, Attorney General’s Law Enforcement Forfeiture Account for the period July 1, 2000 to January 15, 2003. Financial activities of the program are accounted for in the state’s General Fund and Cash Management Fund.

Total expenditures of the program were $6.6 million for fiscal years 2001 and 2002. The primary use of the funds is to support law enforcement programs chiefly within the Division of Criminal Justice and the Division of State Police. Revenues totaled $6.2 million over that same period. The major components of revenues were forfeitures prosecuted by the Division of Criminal Justice, forfeiture shares received from other prosecuting agencies and interest earnings on seizures held while cases are litigated. The prime responsibility of the program is to administer the proceeds and property resulting from seizure and forfeiture actions in accordance with applicable laws, directives, guidelines and standard operating procedures.

**Objectives**

The objectives of our audit were to determine whether financial transactions were related to the program, were reasonable, and were recorded properly in the accounting systems. We also tested for resolution of the significant conditions noted in our prior report.

This audit was conducted pursuant to the State Auditor’s responsibilities as set forth in Article VII, Section 1, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

**Methodology**

Our audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States.
In preparation for our testing, we studied legislation, administrative codes, circular letters promulgated by the State Comptroller, and policies of the program. Provisions that we considered significant were documented and compliance with those requirements was verified by interview, observation, and through our samples of financial transactions. We also read the budget message, reviewed financial trends, and interviewed agency personnel to obtain an understanding of the program and the internal controls.

A nonstatistical sampling approach was used. Our samples of financial transactions were designed to provide conclusions about the validity of transactions as well as internal control and compliance attributes. Sample populations were sorted and transactions were judgmentally selected for testing.

To ascertain the status of findings included in our prior report, we identified corrective action taken, if any, by the Department of Law and Public Safety and walked through the system to determine if the corrective action was effective.

**Conclusions**

We found that the financial transactions included in our testing were related to the program, were reasonable, and were properly recorded in the accounting systems. In making this determination, we noted certain internal control weaknesses and matters of compliance with laws and regulations meriting management’s attention. We also found that the department has resolved one of the five significant issues noted in our prior report. Those issues not resolved have been restated in our current report.
Forfeiture Program Financial Activity

Funds seized by state law enforcement agencies, where the state will be the prosecuting agency, are deposited into a series of cash management accounts where they accumulate interest awaiting disposition. These cash management accounts are administered by the Division of Criminal Justice’s Property Management Office (PMO). Dispositions of the principal amounts seized, upon the case being closed, include returning it to the claimant, sharing it with other law enforcement agencies, releasing it for restitution in related criminal matters, and depositing it into the Attorney General’s Law Enforcement Forfeiture Account (AGLEFA). Interest earnings are retained by the state and separately deposited into the Asset Maintenance Account (AMA). The AGLEFA and AMA accounts represent the aggregate available for the administration of the forfeiture program and provide a supplemental source of funding for various law enforcement programs, including witness protection, confidential investigations, and enhancing the computer-aided dispatching system. An additional program supported by the fund is the Hepatitis Inoculation Program administered by the Department of Health and Senior Services. Our review of these accounts as of June 30, 2002 revealed the following issues related to the finances of this program:

a) Three accounts totaling $896,000 as of June 30, 2002 included $534,000 in interest which had accumulated over a number of years. In addition, the division could not identify balances of $195,000 as to ownership of the funds. The interest and unidentified funds should have been transferred to the AMA and the state’s unclaimed personal property fund, respectively. The transfer of the interest on a regular basis would have resulted in additional funds for the program or lapsed to the General Fund.
b) Twenty-nine cash management accounts with cases ranging from 7 to 15 years old had balances totaling $383,000. The division could not determine if the cases should be closed and transferred to either AGLEFA or the state’s unclaimed personal property fund. These cases should have been processed in a more timely manner.

c) Total available receipts of the program for fiscal years 2000, 2001 and 2002 were $2.4 million, $2.9 million and $3.7 million, respectively. The appropriation act requires that receipts in excess of $2 million lapse to the General Fund up to a cap of $1.9 million. For each fiscal year the division’s transfers to the state’s accounting system did not exceed the $2 million thus the excess receipts of $3.0 million were not lapsed to the General Fund.

d) In fiscal year 2002 AGLEFA monies of $250,000 were used to fund administrative costs of the forfeiture program which per division policy should have been funded with AMA monies.

e) Fringe benefits of employees working on the program were not reimbursed to the state as required by Treasury Circular Letter 96-16. In addition, we found no evidence that a waiver from this requirement had been obtained by the division. For the period July 1, 2000 to June 30, 2002 $137,000 should have been reimbursed.

f) Since June 1999 interest earnings on cash management accounts have not been considered as part of the calculation of funds due to the Department of Health and Senior Services for the Hepatitis Inoculation Fund. An additional $40,000 would have been due the fund if interest earnings were included in the calculation.

These issues resulted in the department having sources of funding beyond that provided for in the appropriation act and increases the risk that the unidentified amounts could be lost or misappropriated.
**Recommendation**

We recommend that the division:

a) Develop a policy that includes a periodic “sweep” of interest from the various cash management accounts to AMA.

b) Review unidentified amounts and identify those that should remain open and if closed transferred to AGLEFA or the state’s unclaimed personal property fund.

c) Transfer excess funds of $3 million to the General Fund as per the appropriation act.

d) Reimburse the AGLEFA account for administrative costs of $250,000 from AMA.

e) Reimburse the state for fringe benefits of $137,000 or obtain necessary waivers as previously recommended.

f) Include interest earnings from cash management accounts in the calculation of monies due the Hepatitis Inoculation Fund.

**Auditee’s Response**

a) The department will explore with the state’s investment firm the feasibility of having interest posted to accounts then transferred to AMA automatically as interest is earned. If the investment firm cannot provide this service, then a sweep of appropriate interest will be done on an annual basis. Transactions are being processed to clear interest in the Seized Monies and Seized Money Transfer cash management accounts through March 2003.

The department agrees that the $195,000 was not identifiable within the Seized and Forfeited Property database. However, the Division of Criminal Justice suggests that the majority of these funds represent unresolved cases prior to 1996. These cases were never entered into the current database. Only full year data was entered into the database starting with 1996. Years prior to 1996 are maintained in an Excel
sheet used to track those cases. The division is in the process of reviewing these pre-1996 cases to determine what appropriate action can be taken to dispose of these funds. Once this review is complete, all remaining unresolved cases will be loaded into the current database for tracking purposes. All CMA cases have been loaded into DCJ’s Seized and Forfeited Property database since 1996.

b) The majority of the 29 cash management accounts are believed to represent cases prior to 1996 that were not loaded into the Seized and Forfeited Property database when it was created. The Division of Criminal Justice tracks these cases using and Excel spreadsheet similar to the one used for Small Money Seizures prior to 1996. The division is in the process of reviewing these pre-1996 cases to determine what appropriate action can be taken to dispose of these funds. Once this review is complete, all remaining unresolved cases will be loaded into the current database for tracking purposes. All CMA cases have been loaded into DCJ’s Seized and Forfeited Property database since 1996.

Cash Management Account funds cannot be closed until all legal proceedings have been completed and the court has issued an order for the disposition of the proceeds.

c) The department did not transfer funds in excess of $2 million to ensure that sufficient funds could exist at the start of the next fiscal year. The total amount of funds carried forward and those collected in any year should not exceed an amount determined by the Attorney General in conjunction with the Annual Forfeiture Plan for the next fiscal year programs. The department has recommended that the appropriation language be modified to more accurately reflect how the funds are administered and establish an annual cap on carry forward and collected funds in each fiscal year as set by the Attorney General consistent with the law regarding how funds are to be administered and utilized.
d) The department agrees with the determination to reimburse the AGLEFA account and has taken action to make the necessary adjustments to correct this error. In addition, the department is requesting the establishment of a separate Revenue Source Code to facilitate this type of transaction in the future.

e) The department has prepared a request for the exemption of fringe benefits cost for personnel assigned to this program for fiscal year 2003. This will be submitted annually thereafter.

f) Per Forfeiture Program Administration Standard Operating Procedure, all interest is to be transferred to the Asset Maintenance Account. Consistent with the recommendation and response regarding interest sweeps from CMAs to AMA, there would be no interest present in CMA accounts at time of forfeiture.

Hold Checks

The use of hold checks should be limited.

The Department of the Treasury, Office of Management and Budget Circular Letter 94-17 established general guidelines for the processing of hold checks to minimize the possibility of the misuse of this service. A hold check results when an agency requests state-issued checks be returned to the agency for special processing rather than being mailed directly to the vendor. The Property Management Office within the Division of Criminal Justice maintains the case files associated with seized property, and submits requests for checks through the Office of the Attorney General fiscal unit to: return seized funds, share forfeiture proceeds with other law enforcement agencies, or pay restitution to injured parties. It is their practice that all of these checks are requested as hold checks and returned to the Property Management Office (PMO) for further processing. During the period July 1, 2000 to June 30, 2002, 260 checks totaling $4.6 million, including amounts as little as $1.25, were processed as hold checks. This is being
done so that a letter can be attached to explain the check. The explanatory letter could be sent stating that a separate state check will follow. This practice results in additional work for the PMO and increase the risks of loss or misuse associated with the handling of checks. The development of more stringent policies and procedures in regards to hold checks could reduce the number of checks held for convenience rather than necessity. There were no instances of irregularities noted during our testing.

**Recommendation**

We recommend management strengthen internal controls by implementing policies and procedures that prevent checks from being held without reasonable justification.

**Auditee’s Response**

The Division of Criminal Justice has established policies and procedures regarding the use of hold checks. A prompt audit trail in the file is important as a matter of best practices. In addition, DCJ management personnel review any and all requests to hold checks. The department concurs with the recommendation to review its current policies and procedures to determine if any further hold check situations can be eliminated. In forfeiture cases resolved by settlement, a material term of the settlement may be expediting return of the funds. In such cases, an expedited check and expedited delivery is requested. This process would be impossible to control, if others are to send out the check. The division needs to confirm delivery expeditiously in order to avoid unnecessary litigation. In such cases, delivery fulfills the division’s obligation under the settlement agreement, not the negotiation of the check. Without the hold-check procedure, the alternative would be to wait until the check is negotiated, and the confirmation appears on Treasury’s database, which is likely to cause undue delay. Also, some County Sherriffs’ offices require a check before they will make service.
State Share of County Forfeitures

When property is seized as a result of the combined efforts of more than one law enforcement agency, each agency can apply to receive a proportionate share of the forfeiture proceeds. The application requires filing a share request (generally 50 percent is requested by the state) with the prosecuting agency. The ultimate distribution is at the discretion of the agency prosecuting the case but should be based on factors enumerated in Forfeiture Program Administration, Standard Operating Procedure No. 12.

The department has no procedures to review the share requests and the amounts ultimately received. These procedures could be added to the department investigative unit’s audit of the county prosecutor offices. The current practice increases the risk that the state law enforcement units are not receiving a proportionate share based on their role in the seizure cases. An analysis of cases on the department’s case tracking database indicated that the state received $2.5 million of the $6.1 million in seizures prosecuted by the county prosecutor offices since 1996. Overall percentages received from counties ranged from 12 percent to 69 percent.

Recommendation

We recommend that the department develop procedures that include reviewing share requests for accuracy. Additionally, these procedures could be incorporated in the audits conducted by the investigative unit.

Auditee’s Response

The state’s share of funds from county forfeiture cases may vary significantly based on the level of involvement by the department in the development and prosecution of a case. It would be ideal to quantify the basis for shares to the extent possible to create more uniformity and consistency in determination of shares by requiring agencies requesting a share request to at
least estimate the number of hours invested. The division will consider incorporating a review of share requests in its recently organized Forfeiture Review Unit.