

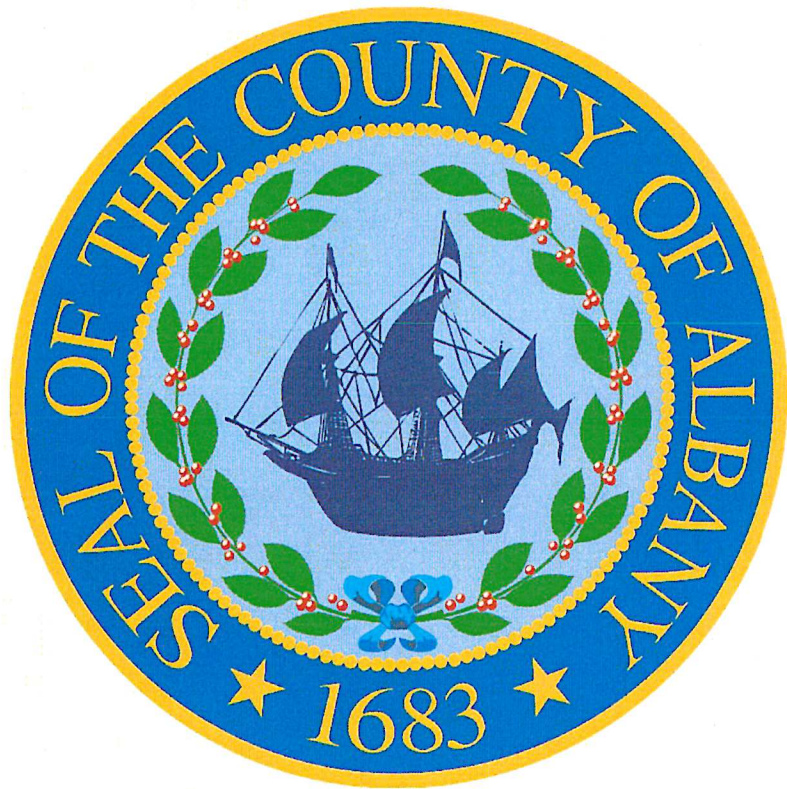
ALBANY COUNTY

# Department of Audit and Control

## Final Report

Asset Forfeiture

Albany County Sheriff's Office



September 2022

Susan Rizzo, Comptroller

Stephanie Slominski CIA, CFE, Chief Auditor

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## **Executive Summary**

The Albany County Sheriff's Office requires improvements related to the evaluation and approval of expenditures utilizing forfeited funds in accordance with permissibility regulations.

As a result of this review, it was also determined that the procedures for expending forfeited funds must be maintained by the Albany County Comptroller's Office, Department of Audit and Control (DAC) according to legal requirements<sup>1</sup>. The Albany County Sheriff's Office agreed that the custody and process for expending of forfeited funds will be migrated to the DAC and will be processed in the same manner as all other County funds. At the time this report was issued, the DAC and the Albany County Sheriff's Office staff were engaged in steps necessary to prepare for the migration.

## **Background**

The Albany County Sheriff's Office conducts investigations and makes arrests for alleged criminal offenses in Albany County and participates in joint investigations with other State, Federal and local law enforcement agencies. During the course of arrests and investigations, assets, including cash, vehicles and other property are seized from suspects alleged to have committed a crime. At the time of disposition of a case, all seized assets are forfeit if determined<sup>2</sup>:

- To have been used to conduct criminal activity;
- Are the proceeds of a criminal activity; or
- Were purchased with the proceeds of a criminal activity.

These assets are dispersed according to Federal and New York State regulations.<sup>3</sup> Funds are utilized to satisfy liens against said property, provide restitution to the crime victims and reimburse actual expense incurred to seize, protect and maintain said property. Remaining funds are divided among the respective law enforcement agencies and the respective District Attorney's Office. Additionally, a portion of funds from New York State cases must be dispersed to NYS Office of Addiction Services and Supports (OASAS). The DAC audits all financial processes and controls, in all Albany County Departments, including controls over forfeited funds on a periodic basis. The balances of the Federal and NY State accounts at the end of April 2022 were \$ 2.6 million and \$90,000 respectively.

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<sup>1</sup> US Departments of Justice and Treasury; "Guide to Equitable Sharing for State, Local and Tribal Law Enforcement Agencies", 2019 update, "Equitable Sharing Account Maintenance Requirements" and NYS General Municipal (GMU) Article 2 §6-V

<sup>2</sup> In the instance that a defendant is not found guilty or where the case is disposed and no stipulation to forfeit funds is established, funds are returned to the original owner.

<sup>3</sup> US Departments of Justice and Treasury; "Guide to Equitable Sharing for State, Local and Tribal Law Enforcement Agencies", NYS Civil Practice Law & Rules (CVP) CHAPTER 8, ARTICLE 13-A §1349 "Disposal of Property", et.al.

### **Objectives**

- Identify the process for the life cycle of seized assets from the inception at the time of an arrest to the eventual disposition;
- Determine whether adequate controls exist over all steps involved with the maintenance of seized assets;
  - Logging and secure storage of seized assets at the time of arrest;
  - Appropriate liquidation (sale) of non-cash assets;
  - Remittance of funds to the appropriate agency (party) at time of disposition;
  - Accounting and processing expenditure of Department portion of forfeited funds.
- Determine whether all expenditures charged to forfeited funds are permissible based on applicable laws and mandatory guidance;
- Determine if adequate documentation exists to support all transactions related to the expenditure of seized assets; and
- Provide recommendations to the Albany County Sheriff's Office as necessary.

### **Scope**

This audit was conducted pursuant to Article 4, Section 403(f) of the Albany County Charter which states that the "Comptroller shall audit the financial records and accounts of all officers and employees charged with any duty relating to County funds or funds for which the County is responsible." The scope of this review includes all transactions related to all forfeited funds in possession of the Office for the period from January 1, 2019 through May 31, 2022.

### **Approach**

To accomplish these objectives the DAC performed the following:

- Review all applicable Federal and State laws and regulations related to seized assets;
- Review internal policies within the Albany County Sheriff's Office related to seized assets;
- Conduct interviews with the Albany County Sheriff's Office management to gain understanding of existing process related to seized assets; and
- Identify all transactions, test for compliance and determine if adequate documentation is available to support all expenditures.

### **Observations**

Our observations were essentially identified during preliminary discussions and analysis of data reports and bank statements. It was determined that the process for maintaining and expending forfeited funds would be migrated to the Comptroller's Office at the commencement of this audit. The Albany County Sheriff's Office further agreed to participate in any recommended actions to bring forfeiture funds management into compliance with legal requirements and best practices.

<b>I: Maintaining and Expending Funds</b>	
<b>Observation and Impact</b>	<b>Recommendation</b>
<p>Based on legal requirements and best practices forfeited funds must be maintained in bank accounts managed by the County Comptroller's Office and all transactions must be processed in the same manner as all other County funds.</p> <p>Forfeiture accounts are currently managed by the Albany County Sheriff's Office staff. Expenditures of forfeited funds are approved and processed entirely within the Sheriff's Office<sup>4</sup>.</p> <p>Failure to comply with legal requirements in the processing of forfeited funds creates the risk of being sanctioned by governing authorities and potentially banned from participating in forfeited funds programs.</p>	<p>The Comptroller's Office has recently developed a process to maintain forfeited funds and provide structured procedures for expending said funds in accordance with all legal requirements.</p> <p>During the course of this audit, the Albany County Sheriff's Office has agreed to transfer custody of forfeited funds to the DAC. Claims for the expenditure of forfeited funds will be subject to the same controls and procedures utilized for all County funds and will include an additional approval and required certification<sup>5</sup> process that focuses specifically on the unique restrictions that govern the use of forfeited funds.</p>

<sup>4</sup> This is a recurring observation, noted in a 2011 Audit performed by the previous Albany County Comptroller. Failure to provide adequate post-audit oversight in monitoring the implementation of corrective action has resulted in this issue remaining open.

<sup>5</sup> NY State General Municipal (GMU) Article 2 § 6-v (5)

## 2: Impermissible Fund Uses

Observation and Impact	Recommendation
<p>State and Federal laws generally outline the permissible uses of forfeited funds. Funds are to be expended to further efforts in law enforcement and criminal prosecution. Federal law allows for an annual total of \$25,000 forfeiture funds from Department of Justice to be transferred to community based organizations that meet very specific criteria<sup>6</sup>.</p> <p>Utilizing a multiple person review and approval process assures the best possible outcome.</p> <p>Based on the strictest interpretation of the legal criteria available, several expenditures processed with forfeited funds were impermissible. State and Federal forfeiture funds were donated to community based organizations, sports programs and town events which do not meet the criteria for law enforcement or criminal prosecution purposes.</p> <p>The absence of a written process to provide adequate support for the permissibility of expenditures creates a risk that funds are spent in a manner that is not in accordance with the applicable federal and State requirements. Instances of non-compliance could result in Federal sanctions or termination of the rights to participate in forfeiture programs.</p>	<p>We recommend that the Albany County Sheriff's Office establish a process to review and approve all expenditures that will be processed using forfeited funds. The formation of a Review Committee (within the Department) is recommended, however if staffing limitations are prohibitive, a process that includes two or more individuals with adequate training and knowledge of permissibility guidelines will ensure that the department remains in compliance with all requirements going forward. The written approval process within the Sheriff's Office must identify an individual responsible for purchase requests and a separate individual responsible for department approvals. The processing of expenditures must not be confined to a single individual.</p>

<sup>6</sup> US Departments of Justice and Treasury; "Guide to Equitable Sharing for State, Local and Tribal Law Enforcement Agencies" pp. 16, item K "Support of Community Based Organizations.

**3: Maintain Separate Accounts**

Observation and Impact	Recommendation and Action Steps
<p>NY State General Municipal Law §6-V "Asset forfeiture escrow fund" states</p> <ul style="list-style-type: none"> <li>• All monies and proceeds so deposited in such fund shall be kept in a separate bank account, and</li> <li>• The separate identity of such fund shall be maintained, whether its assets consist of cash, investments, or both.</li> </ul> <p>Adequate communication did not exist between the Albany County Sheriff's Office and the County Law Department. As a result, we identified that funds for unrelated sub organizations to fundraise for K9 and various other programs were being processed through the NY State Seized assets account. We determined that County Departments are not legally permitted to directly operate fundraising organizations or activity.</p> <p>Noncompliance with State and federal Laws could result in sanctions and dismissal from programs. Additionally, improper comingling of funds creates the risk that loss caused by error, waste or theft might go undetected.</p>	<p>The Albany County Sheriff's Office has removed all fundraising proceeds from the account.</p> <p>The fundraising organizations will be restructured to operate compliant with all applicable laws.</p> <p>The K9 program is a preexisting 501(c) (3) entity, subject to other legal requirements. As such, the Sheriff's Office was referred to Albany County Law Department to obtain clarification and discuss potential options for the future operation of this nonprofit program.</p>

**Conclusion**

Establishing written policy and developing stronger process for review and approval will ensure that forfeited funds are managed in accordance with all legal requirements. The migration of the final approval and payment stage of the expenditure process to the DAC will serve as an additional level of control.

I would like to thank the Albany County Sherriff and his staff for their cooperation and assistance, and for providing us with the materials and documentation to complete this audit. The DAC will continue to perform follow up procedures and work closely with the Sheriff's Office to ensure there are adequate controls over all aspects related to forfeited funds.

Sincerely,



Susan Rizzo,  
County Comptroller



Stephanie Slominski CIA, CFE  
Chief Auditor

cc: Michael Monteleone, Executive Undersheriff  
William Rice, Undersheriff  
Edward Dott, Executive Deputy Comptroller  
Michael Wheeler, Executive Deputy Comptroller

## **Appendix I**

To complete this audit we conducted interviews with the following individuals:

- Craig D. Apple Sr., Albany County Sheriff
- Michael Monteleone, Executive Undersheriff
- William Rice, Undersheriff
- John Cox, Budget Analyst
- Hector Fernandez, Investigator

**Appendix II**



**MICHAEL S. MONTELEONE**  
EXECUTIVE UNDERSHERIFF

**SHAWN P. NOONAN**  
CHIEF DEPUTY

**ALBANY COUNTY SHERIFF'S OFFICE**

County Court House Albany, New York 12207 (518) 487-5400  
[WWW.ALBANYCOUNTYSHERIFF.COM](http://WWW.ALBANYCOUNTYSHERIFF.COM)

**CRAIG D. APPLE, SR.**  
SHERIFF



**WILLIAM M. RICE**  
UNDERSHERIFF

**LEON A. BORMANN**  
CHIEF DEPUTY

October 18, 2022

Hon. Susan Rizzo, County Comptroller  
112 State Street  
Room 1030  
Albany, New York 12207

Dear Comptroller Rizzo:

I am writing in regards to the recent audit conducted by your office. First of all, thank you for taking the time to explain the scope and purpose of the audit. Also, I would be remiss if I didn't point out the professionalism displayed by your staff auditors.

After reviewing the audit, it seems we would have to agree to disagree on the use of certain forfeiture funds. All of our funds are spent following the federal guidelines due to the convoluted state opinions. Also, the opinion that seems to be followed in this audit is a 27 year old opinion that seems a bit archaic. In addition, today all the more so, I see the need to fund youth sports, programs, and organizations that promote positive youth engagements. With the amount of violence occurring in our community it is more important now with great reason to keep our youth engaged and out of the justice system. Our expenditures helped do just that.

Nonetheless, I understand your position and look forward to working with you in the future.  
Be well.

Sincerely,

Craig D. Apple, Sr.  
Sheriff

**Appendix III**



SUSAN A. RIZZO  
COUNTY COMPTROLLER

STEPHANIE SLOMINSKI CIA, CFE  
CHIEF AUDITOR

COUNTY OF ALBANY  
OFFICE OF THE COMPTROLLER  
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EDWARD L. DOTT  
EXECUTIVE DEPUTY COMPTROLLER

MICHAEL WHEELER  
EXECUTIVE DEPUTY COMPTROLLER

October 21, 2022

Craig D. Apple Sr., Albany County Sheriff  
16 Eagle Street  
Albany, NY 12207

Re: Seized Asset and Forfeiture Program Audit  
Auditor's Response to Management

Sheriff Apple:

Thank you for your response pertaining to our observations. The Department of Audit and Control (DAC) position has not changed relating to Observation 2 (Impermissible Fund Uses) as the finding is based on available guidance presented by the governing authorities.

The DAC will follow any new guidance issued by the governmental authorities overseeing seized funds. The DAC will also review any future guidance the Albany County Sheriff's Office receives from governing authorities with respect to the criteria for the permissible use of seized funds. In the interim, requests submitted to the DAC for payment using seized funds must show the expense is reasonably connected to law enforcement. The DAC has developed a claim form specifically for expenditures to be processed using forfeited funds to allow for a description of how an expenditure is related to law enforcement and the necessary certification as required by law.

Sincerely,

Susan Rizzo,  
Albany County Comptroller

Stephanie Slominski CIA, CFE  
Chief Auditor

cc: Ed Dott, Executive deputy Comptroller  
Michael Wheeler, Executive Deputy Comptroller  
Michael Monteleone, Executive Deputy Sheriff