



## Legislation Details (With Text)

**File #:** 2021-0851

**Type:** Consent Calendar Item **Status:** Agenda Ready

**File created:** 8/5/2021 **In control:** District Attorney

**On agenda:** 9/14/2021 **Final action:**

**Title:** Annual Federal Equitable Sharing Agreement and Certification with the U.S. Department of Justice and the U.S. Treasury.

**Sponsors:** District Attorney

**Indexes:**

**Attachments:** 1. Summary Report, 2. Cover letter to Department of Justice, 3. FY 20-21 Equitable Sharing Agreement and Certification.pdf

Date	Ver.	Action By	Action	Result
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**To:** County of Sonoma Board of Supervisors  
**Department or Agency Name(s):** District Attorney's Office  
**Staff Name and Phone Number:** Gina Burk, 565-3893  
**Vote Requirement:** Majority  
**Supervisory District(s):** Countywide

### Title:

Annual Federal Equitable Sharing Agreement and Certification with the U.S. Department of Justice and the U.S. Treasury.

### Recommended Action:

Authorize the Chairperson of the Board of Supervisors to execute annual Federal Equitable Sharing Agreement and Certifications with the U.S. Department of Justice and the U.S. Treasury for fiscal year 2020-2021, as annual reporting ensures eligibility for future funding.

### Executive Summary:

Upon execution of the Agreement and Certification, the District Attorney's Office will be authorized to continue to participate in the Department of Justice Equitable Sharing Program. Through this program, the Department of Justice distributes an equitable share of forfeited property and proceeds to participating state and local law enforcement agencies that directly participate in an investigation or prosecution that result in a federal forfeiture. For example, if the District Attorney's Office prosecutes a narcotics trafficking case and the related asset forfeiture matter is pursued federally, or the District Attorney's Office assists local law enforcement investigate a narcotics trafficking case that is prosecuted federally by reviewing search warrants, the District Attorney's Office will receive a proportionate share of any forfeited assets from the case.

Each year, the District Attorney's Office must submit an agreement and certification within 60 days of the close of its fiscal year. The District Attorney's Office must report all equitably shared funds received during the last fiscal year and how those funds were spent.

### Discussion:

The action requested of the Board is an annual activity required since 1997. It allows the District Attorney's Office, when working with federal agencies to enforce federal criminal laws, to receive the County's equitable share of federal asset forfeiture proceeds. The U.S. Department of Justice and Treasury requires the Chairperson of the Board of Supervisors to execute an annual Federal Equitable Sharing Agreement and Certification that confirms the proceeds received are allocated as required by federal statutes and regulations established by the U.S. Department of Justice and Treasury. The Agreement sets forth the statutory and regulatory requirements for participating in the program, and the restrictions upon the use of federally forfeited case property, proceeds, and any interest earned. All shared assets are required to be used only for law enforcement purposes. Backfilling locally funded programs with the County's share of forfeitures is not allowed.

These laws and regulations require that:

The action requested of your Board is an annual activity required since 1997. It allows the District Attorney's Office, when working with federal agencies to enforce federal criminal laws, to receive the County's equitable share of federal asset forfeiture proceeds. The U.S. Department of Justice and Treasury requires the Chairperson of the Board of Supervisors to execute an annual Federal Equitable Sharing Agreement and Certification that confirms the proceeds received are allocated as required by federal statutes and regulations established by the U.S. Department of Justice and Treasury. The Agreement sets forth the statutory and regulatory requirements for participating in the program, and the restrictions upon the use of federally forfeited case property, proceeds, and any interest earned. All shared assets are required to be used only for law enforcement purposes. Backfilling locally funded programs with the County's share of forfeitures is not allowed.

These laws and regulations require that:

1. Forfeited funds or property must be kept separate from state or other forfeitures.
2. A federal Equitable Sharing Agreement and Certification be filed annually with both agencies.
3. A record shall be maintained of the funds or property and any expenditures; and
4. Funds exceeding \$100,000 shall be audited annually.

The fund balances in the Department of Justice and the Treasury Special Revenue Funds at the end of the fiscal year are as follows:

	<u>Justice</u>	<u>Treasury</u>
Fiscal year 2020-2021	\$7,628.90	\$3,215.54

It is the District Attorney's practice to use these funds for law enforcement purposes in accordance with statutes and guidelines governing equitable sharing. These funds are audited annually as part of the Single Audit of Federal Funds, which is performed by the Sonoma County Auditor-Controller-Treasurer-Tax Collector's Office.

The forfeited proceeds received through the Equitable Sharing Agreement vary greatly year to year (from \$0 to several thousand) as the receipt of funds are based on the resolution of specific court cases.

Equitable shares allocated to a law enforcement agency such as the District Attorney's Office must bear a reasonable relationship to the agency's direct participation in the investigation or law enforcement effort resulting in the forfeiture. The U.S. Department of Justice ordinarily determines equitable shares by comparing

the number of work hours expended by each agency participating in the seizure. Where the work hours alone do not reflect the contribution of a law enforcement agency, the U.S. Department of Justice considers qualitative factors in making a sharing allocation. When received, monies are placed into special asset forfeiture funds and must be used for law enforcement purposes only. Funds are held in a separate Special Revenue Fund as prescribed by the Guide to Equitable Sharing for State and Local Law Enforcement Agencies.

Due to the unpredictable nature of revenue receipts, the District Attorney's Office usually recommends these funds be used for one-time projects. Expenditure appropriations in asset forfeiture special revenue funds are approved by the Board either through the Board's annual budget adoption process or through a separate Board Item, depending on the timing of the project requiring funding. Past expenditures include overtime for District Attorney Investigators, training for Deputy District Attorneys, and outreach. In January 2015, the Attorney General announced that the Justice Department was taking an important step to prohibit federal agency adoptions of state and local seizures. This major change to asset seizures has negatively impacted the level of proceeds that are distributed to local law enforcement. The Certification Report included with the Agreement requires an electronic signature by the Agency Head, (the District Attorney) and the Governing Body Head (the Chair of the Board) to certify under penalty of perjury that the County understands its obligations under the Agreement and that the reported financial information regarding the County's receipt and expenditure of the funds is true and correct. County Counsel has reviewed the language of the Certification, and has recommended that a letter accompany the Certification stating that it is being signed with the understanding that it is a *pro forma* document which does not require either the District Attorney or the Chair of the Board to personally verify the matters being certified. A copy of the letter is attached for reference.

Asset forfeiture funds generated as a result of the Agreement are handled through the County's annual budget processes. For fiscal year 2021-2022, the District Attorney's Office does not anticipate expending any Department of Justice or Treasury Asset Forfeiture Funds.

#### Prior Board Actions:

Board approval for the Federal Equitable Sharing Agreements and Annual Certification Reports for fiscal years 1999-2000 through 2019-2020.

#### FISCAL SUMMARY

Expenditures	FY 21-22 Adopted	FY22-23 Projected	FY 23-24 Projected
Budgeted Expenses			
Additional Appropriation Requested			
<b>Total Expenditures</b>			
<b>Funding Sources</b>			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
<b>Total Sources</b>			

**Narrative Explanation of Fiscal Impacts:**

Action on the Equitable Sharing Agreement does not have a direct fiscal impact to the current fiscal year budget. The Agreement allows the District Attorney's Office to participate in the Federal Equitable Sharing Program which may result in unanticipated revenue for the County.

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

**Narrative Explanation of Staffing Impacts (If Required):**

No staffing impacts.

**Attachments:**

FY 20-21 Equitable Sharing Agreement and Certification  
Cover Letter to Department of Justice

**Related Items "On File" with the Clerk of the Board:**

N/A