ALBANY COUNTY

Department of Audit and Control

Final Report

Asset Forfeiture
Albany County District Attorney's Office

March 2022

Susan Rizzo, Comptroller

Stephanie Slominski CIA, CFE, Chief Auditor

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Executive Summary

The Albany County District Attorney's Office (ACDAO) requires improvements related to the documentation retained to support the occurrence and permissibility of transactions processed using forfeited funds. Additionally, an outstanding obligation[1] exists, payable to the NY State Office of Addiction Services and Supports (OASAS)[2]. This was largely a result of the District Attorney's decision[3] to respond in the most immediate way possible to an overwhelming increase in violent crime in Albany County, staff training limitations and the absence of an adequate process to track and document incoming funds and outgoing expenditures. During our review, we were able to verify that payments had resumed to OASAS and the ACDAO has developed and implemented an adequate plan to repay the outstanding balance in a timely manner.

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[4]. The ACDAO 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 two departments were engaged in steps necessary to prepare for the migration.

Background

The ACDAO prosecutes 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 commit a crime. At the time of disposition of a case, all seized assets are forfeit if determined:

- 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.[5] 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

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[1] At the time of calculation, the outstanding obligation was approximately $360,000.
[2] NYS Civil Practice Law & Rules (CVP) CHAPTER 8, ARTICLE 13-A §1349 (g)
[3] Per assertion stated by District Attorney P. David Soares during interviews with DAC.
[4] 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
[5] 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.

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).

On September 3, 2021, The DAC was made aware of and received a copy of an original report (OR) outlining significant deficiencies related to the Asset Forfeiture Program operated within the ACDAO. The author of the report asserts that they have identified several instances where internal controls are absent or not operating as designed to ensure:

- Compliance with Federal and State requirements that dictate accounting procedures for forfeited funds;
- That financial obligations to outside entities that arise as a result of the seizure of funds are met and processed in a timely manner;
- That funds allowable for internal use are expended in accordance with all applicable laws and regulations; and
- Adequate documentation is maintained for all transactions, receiving and expending funds forfeited by the ACDAO.

Objectives

- Determine whether adequate controls exist over the accounting treatment and expending of forfeited funds;
- Determine, if any adjustments should be made to accounting records to bring the program into compliance with all applicable laws and regulations;
- Determine if an adequate process exists to identify all external obligations that arise from the seizure of funds and process related payments in a timely manner;
- Determine if any outstanding obligations exist and ensure all external obligations resulting from the seizure of funds have been satisfied;
- Determine whether all expenditures charged to forfeited funds within the scope are allowable based on applicable laws and mandatory guidance;
- Determine if adequate documentation exists to support all transactions related to the expenditure of forfeited funds:
- Evaluate the validity of the assertions presented in the OR and provide confirmation; and
- Provide recommendations to management as necessary to ensure the program maintains compliance and meets all financial obligations that arise from the seizure of funds going forward.

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 ACDAO for the period from January 1, 2017 through December 31, 2020.

Approach

To accomplish these objectives the DAC performed the following:

- Review applicable Federal and State laws and regulations related to the accounting for and expending of forfeited funds;
- Review internal policies within the DA's Office related to forfeited funds;
- Conduct interviews with management to gain understanding of existing process related to accounting for and expending of forfeited funds;
- Identify transactions, test for compliance and determine if adequate documentation is available to support expenditures; and
- Perform follow up procedures as necessary to ensure any corrective actions have been implemented.

Observations

The DAC reviewed the OR and evaluated each of the major assertions [6](findings) in the OR, conducted multiple interviews with ACDAO staff and requested supporting documentation. Observations were confirmed or dismissed based on a thorough review. Specific major observations and our conclusions are detailed in the tables on the following pages. It should be noted that the OR contained instances of unfinished audit work, in that a more thorough audit process would have revealed that a significant amount of the exceptions were able to be sufficiently explained. While we noted weaknesses in the ACDAO process for maintaining adequate supporting documentation for expenditures, including a large expenditure[7] for Karate classes provided to local youths, we were able to verify that a majority of the expenditures noted in the OR were supported.

It appears that staff limitations, including inadequate training, and lack of consistent procedures were responsible for a significant portion of the control deficiencies within the ACDAO. The ACDAO will continue to take steps necessary to fill the position dedicated to this process to ensure the office has the capability to establish an adequate process to manage forfeited funds in compliance with all regulations. The additional staff will also allow the ACDAO to develop improvements to the process for tracking stipulations and collecting funds due.

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[6] Note: For purposes of brevity the DAC combined Federal and State observations in instances where the material facts were substantially alike, as noted in the narrative for the original observation within the corresponding tables.

[7] Approximately $160,000, however the observation was related to the continuance of the class during the COVID lockdowns and lack of documentation to support that the class had taken place via remote meeting (Zoom).

The process for expending forfeited funds will be migrated to the Chief Fiscal Officer (Comptroller's Office) as prescribed by law, strengthening the approval process as a result. Additionally, we recommend that the ACDAO develop written policy and procedure guidelines that outline the entire life cycle of seized assets, as we noted deficiencies related to tracking and collections of funds after cases were disposed.

Observation I: Process of expending Funds ~ Confirmed	
Original Observation: The ACDAO is not compliant with regulations that govern the expenditure of State forfeiture funds. Based on legal requirements state and federal forfeited funds must be maintained separately and in the custody of the municipality's chief fiscal officer[8] (Comptroller). **Note:** *A corresponding observation was noted as it relates to Federal forfeiture funds.*	
DAC Review: The ACDAO maintains separate accounts for Federal and State Forfeiture Funds. However expenditures of forfeited funds are approved and processed entirely within the ACDAO.	Recommendation/Plan of Corrective Action: In compliance with regulations, ACDAO has agreed to transfer custody of forfeited funds to the DAC. Additionally, the two offices will collaborate to establish a process for expending funds through DAC subject to the same controls and procedures utilized for all County funds, including an approval and required certification[9] process that focuses specifically on the unique restrictions that govern the use of forfeited funds. Discussions have commenced between the appropriate individuals related to the necessary corrective action and it is expected that steps will be substantially completed within the first two quarters of 2022.
Management Response: See Appendices II & III for Management Response and Comptroller's Reply	

[8] 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
[9] NY State General Municipal (GMU) Article 2 § 6-v (5)

<table>
<tr><td colspan="2">Observation 2: Distribution of Funds to OASAS and Claiming Agents ~ Partially Confirmed</td></tr>
<tr><td colspan="2">Original Observation:

The ACDAO's state program is not compliant with regulations that govern the distribution of forfeiture funds to OASAS and claiming agents.</td></tr>
<tr><td>DAC Review:

In 2017, the District Attorney, in response to a substantial increase in violent crime, made a decision to suspend the payments for the portion of forfeited funds that were due to OASAS and instead utilized the funds to support local efforts to mitigate the extreme circumstances.

In an effort to address the outstanding balance owed to OASAS, the ACDAO hired an individual during the summer of 2020 to review records and establish an accounting of past due obligations to OASAS. It should be noted, the individual hired by the ACDAO to assist in correcting the problem, instead gathered information and documented the work performed in the OR (the basis for this review).

Our review was able to confirm that of the 49 cases reviewed, only 2 of the corresponding payments to respective claiming agents (law enforcement) were in arrears.</td>
<td>Recommendation/Plan of Corrective Action:

Prior to the DAC involvement in this matter, ACDAO began making payments related to current forfeited funds received, (February 2021). ACDAO staff contacted OASAS and informed the agency of the arrears and the proposal plan for repayment.

Additionally, the ACDAO verbalized the following approach to addressing the amount in arrears:
• Review all closed cases for which funds[10] have yet to be received from police agencies.
• Utilize the portion of future forfeited funds received that would normally stay with the ACDAO to pay OASAS.

Additionally, the ACDAO is engaged in developing process improvements that are necessary to ensure that all stipulations are submitted to ACDAO accounting staff in a timely manner to promote efficient tracking and collection.</td></tr>
<tr><td colspan="2">Management Response: See Appendices II & III for Management Response and Comptroller's Reply</td></tr>
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[10] At the time of this review the ACDAO was in possession of approximately $300,000 in stipulations that have yet to be processed by the respective agencies.

Observation 3: Impermissible Fund Uses ~ Confirmed	
Original Observation: The ACDAO is not compliant with regulations and guidance governing the use of state forfeiture funds. *Note a corresponding observation was noted as it relates to Federal forfeiture funds.*	
DAC Review: The District Attorney stated that he acted in response to a significant increase in violent crime in the immediate locality, an area that he identified as lacking in other funding sources. However, based the strictest interpretation of the legal criteria available, including an inquiry to the NYS Comptroller's Office, the expenditures detailed in the OR were in fact impermissible.	Recommendation: We recommend that the ACDAO establish a process to review and approve all expenditures that will be processed using forfeited funds. The formation of a Review Committee (within the ACDAO) was recommended by the author of the OR, however if staffing limitations prohibit that, 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 ACDAO 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. Additionally, it is incumbent on the ACDAO to contact the appropriate and respective Federal and New York State governing agencies to self-report issues that have been identified as well as to inquire about potential reparations. The DAC does not contain the necessary expertise to provide guidance in this matter.
Management Response: See Appendices II & III for Management Response and Comptroller's Reply	

Observation 4: Commingled Funds ~ Confirmed & Corrected	
Original Observation: The ACDAO is not compliant with guidance which prohibits commingling of Federal forfeiture funds.	
DAC Review: As a result of an error which occurred during the processing of deposits by the Federal Government, Federal funds were placed in the same account as State funds. To remain in compliance with legal regulations, funds must not be comingled.	Recommendation/Plan of Corrective Action: At the time this report was issued, the erroneous transaction had been corrected and funds were appropriately separated in compliance with legal requirements. ACDAO will perform semiannual reviews to ensure current and future deposits are processed through the appropriate accounts. This will ensure that no further errors occur. A written process and procedure must identify the individual(s) responsible for this review as well as set parameters for the format of documenting the review and how long documentation will be retained.
Management Response: See Appendices II & III for Management Response and Comptroller's Reply	

Conclusion

During the course of the review, the ACDAO has taken significant steps in correcting issues identified. ACDAO staff has contacted OASAS and made the agency aware of the obligation in arrears. Additionally, a payment of $97k has been submitted against said obligation resulting in a balance due of $268k.

Establishing written policy and procedures, developing stronger processes and obtaining adequate accounting staff 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.

Additionally, as stated in the table on page nine, it is strongly recommended that the ACDAO take the initiative to self-disclose the issues of impermissibility related to the expenditure of forfeited funds and seek the best possible course for reparation with the guidance of the respective and appropriate governing agencies.

I would like to thank the District Attorney and 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 ACDAO 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: Edward Dott, Executive Deputy Comptroller
Michael Wheeler, Executive Deputy Comptroller

Appendix I

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

- P. David Soares, Albany County District Attorney
- Heather Orth, Chief of Staff, Albany County District Attorney's Office

Appendix II

P. DAVID SOARES
DISTRICT ATTORNEY

CHRISTOPHER D. HORN
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DAVID M. ROSSI
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DEPUTY CHIEF ASSISTANT
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March 4, 2022

Susan A. Rizzo
Albany County Comptroller
Department of Audit & Control
Harold L. Joyce Albany County Office Building
112 State Street, Room 1030
Albany, NY 12207

RE: Comments on the Draft Report on the Financial Condition of the Albany County District Attorney's Office Asset Forfeiture Program

I write in relation to your report on the financial condition of the Asset Forfeiture program maintained by the Albany County District Attorney's Office. My staff and I have carefully reviewed the report, and we would like to thank the Albany County Comptroller and her staff for their professionalism and assistance throughout the audit process.

In general, we agree with a majority of the observations, findings, and recommendations made by the DAC in the report. The report covers the period from January 1, 2017 through December 31, 2020, a period that presented significant challenges to the ACDAO: changes to the laws governing assess forfeiture, a dramatic reshaping of the legal landscape around public safety, a drastic rise in violent crimes, and the COVID-19 epidemic, which physically separated members of the Office for a significant period of time.

Coming out of this period, we were aware of possible outstanding obligations. As your report correctly notes, we hired additional staff to perform an internal audit that eventually prompted the present report. And, as you again correctly note, my Office had identified outstanding obligations, self-reported the arrears, proposed a repayment plan, and began making payments a full six months prior to DAC beginning this audit. We fully agree with your assessment that this Office has "developed and implemented an adequate plan to repay the outstanding balance in a timely manner," and we are committed to following that plan. And of course we agree with and appreciate your observation that my Office was cooperative in providing the materials and documentation necessary to complete this audit in a timely fashion.

We also agree that additional accounting and control measures are necessary to address deficiencies in regulatory compliance related to the forfeiture program. We agree that the specific corrective actions related to control and outlined in Observations 1, 2, 4 should be adopted, and we are in the process of adopting them now. But as your report correctly noted, staffing limitations and inadequate expertise were responsible for a "significant portion" of the identified control deficiencies. Accordingly, during the next budget cycle we will be requesting "adequate accounting staff" from the County Legislature to ensure we can comply with DAC's sound recommendations.

On one point, however, we must respectfully disagree with the DAC's assessment. In Observation 3 of your report, you write that certain expenditures of forfeiture funds by my Office were for "impermissible" purposes. And while DAC disclaims the "necessary expertise" to give full guidance in this area, it made this assessment based on the "strictest interpretation" of the law, relying in part on an inquiry to the NYS Comptroller's Office. Having reviewed the expenditures in question, we believe the assessment is based on a misapprehension of the applicable, vague laws.

How forfeiture funds are divided and what they may be used for is determined by statute. If there is no victim, forfeiture funds are divided as follows: 27% to the prosecutor as claiming authority, 41% to the investigative agency as claiming agent, and the remaining 32% to OASAS. The percentage due to the prosecutor comes to it under two separate portions of statute: 12% under CPLR 1349(2)(h)(ii) and 15% under CPLR 1349(2)(e).

CPLR 1349(2)(h)(ii) stipulates that the 12% obtained under it must be used "for the prosecution of penal law offenses." That phrase is not defined in statute. Unsurprisingly, that lack of clarity has led to some differences of opinion. It is true that an old advisory opinion of the New York State Comptroller interpreted that phrase to not include crime prevention programs (in that instance the D.A.R.E program), which it said were merely "indirectly and generally associated with law enforcement" (1995 Ops St Comp No. 95-08). With respect, that represents an outdated and obsolete understanding of both crime-fighting and the role of a prosecutor. It is also inconsistent with current law; in 2012 the legislature specifically amended County Law 700 to explicitly recognize a DA's ability to contract for crime prevention services (L 2012, ch 358). Even the Office of the State Comptroller has backed off its 1995 opinion to some extent; we have reviewed an informal opinion issued to another DA's Office in 2015 approving of a program that attempted to prevent crime by providing services to recovering addicts. To us, this program seems as "indirectly and generally associated with law enforcement" as D.A.R.E. In the quarter century since 1995, society's understanding of the purposes, goals, and role of prosecution has matured. It has escaped the straightjacketed bonds of the "strictest interpretation" of the words "for the prosecution of penal law offenses." Rather than a strict interpretation, a reasonable interpretation now rules the day.

But even if that were not so, the other 15% paid to a DA's Office under CPLR 1349(2)(e) does not come with the same restrictions. Under the State Comptroller's 1995 opinion, those monies constitute "general funds," and it appears they can be used for any lawful purpose a DA chooses (1995 Ops St Comp No. 95-08). Put another way, our reading of the Comptroller's own legal opinion is that 55% of the money a DA collects through forfeiture can be spent without restriction.

Nevertheless, while we strongly believe that the funds expended were not for impermissible purposes and were instead used for legitimate prosecutorial functions, we acknowledge the vagueness inherent in the statutory text. It is therefore our intention to pursue new or refresher training on permissibility guidelines for staff responsible for reviewing and approving forfeiture expenditures moving forward. It is also our intention to reach out to the District Attorney's Association of the State of New York (DAASNY), a collection of DA's offices from across the state, to seek advice and guidance on best practices to adjudge permissibility criteria. We hope that this renewed focus on permissibility training will bring some clarity to an uncertain area.

With that one qualification based on our divergent reading of the relevant legal text, we commend the staff of the DAC for a thorough, speedy, and capable audit. We look forward to working with you and your staff in the future to implement the best practices and corrective actions the report has identified.

Thank you for your courtesy in this matter.

Very truly yours,

P. David Soares

P. DAVID SOARES
DISTRICT ATTORNEY
ALBANY COUNTY

Appendix III

SUSAN A. RIZZO
COUNTY COMPTROLLER

STEPHANIE SLOMINSKI CIA CFE
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EDWARD L. DOTT
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MICHAEL WHEELER
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March 24, 2022

Hon. P. David Soares, Albany County District Attorney
6 Lodge Street
Albany, NY 12207

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

Hon. P. David Soares:

Thank you for your response pertaining to our observations. Our position has not changed relating to Observation 3 (Impermissible Fund Uses), based on longstanding available guidance presented by the governing authority, (NYS Comptroller Opinion 95-8). The Office of State Comptroller has recently confirmed Opinion 95-8 continues to be the most relevant guidance to the County for assessing permissible expenditures under CPLR §1349.

With regards to the Albany County District Attorney's Office (ACDAO) response related to the breakdown of seized funds, the strictest interpretation is that the 15% of forfeited funds mentioned in NYS CPLR § 1349 (2)(e) are restricted to actual costs incurred in the activities necessary to the seizure and forfeit of said funds. We acknowledge that precisely measuring incurred costs for each case could be a difficult albeit necessary task. Additionally, we note that there is a high likelihood that actual costs incurred reach beyond the portion of seized funds received at the disposition of the case.

The Department of Audit and Control (DAC) will follow any new guidance received from the governmental authorities overseeing seized funds. The DAC will also review any future guidance the ACDAO 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 will show that the expense is reasonably connected to law enforcement or prosecution. 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 or prosecution and the necessary certification as required by law[1].

Sincerely,

Susan Rizzo,
Albany County Comptroller

Stephanie Slominski CIA, CFE
Chief Auditor

cc: Michael Wheeler, Executive Deputy Comptroller

[1] NYS GMU Chapter 24, Article 2 § 6-V (5)