Managing the Drug Fund

August 2023

A joint presentation of MTAS and CTAS
What are we going to do?

• We’re going to learn what the drug fund is and what you can buy with the money.
• We're going to learn how to document or account for cash transactions.
• We’ll learn what “sensitive” property and evidence is.
• Then, we’ll learn when and how you should dispose of sensitive property and evidence.
Getting Credit – 4.0 hours

POST #23-133
CMFO
COCTP
Introduction

• MTAS
• CTAS
The “Drug Fund”

<table>
<thead>
<tr>
<th>Special Revenue Account</th>
</tr>
</thead>
<tbody>
<tr>
<td>Just like solid waste fund account or street aid fund account</td>
</tr>
<tr>
<td>Under the control of the city recorder/county trustee !!</td>
</tr>
</tbody>
</table>

* Confidential expenditures funded from a separate account (confidential account)
Sources of Revenue

- Fines from drug offenses
- Forfeited cash/proceeds from sale of forfeited property
- Appropriations from governing body
- Donations

50% Drug Fund
50% General Fund
Special Revenue Account
(City Recorder/Trustee)

**Does NOT include the proceeds from the sale of DUI and DRL vehicles**
Legitimate Expenditures

General Categories

- Local Drug Treatment
  *Drug Court Treatment

- Local Drug Education

- Drug Enforcement
  * Operational/Confidential Expenses

- General Law Enforcement Expenditures (non-recurring)

- Automated Fingerprint Machines**

TN Code § 39-17-420 (2021)
Drug Education

Drug Abuse Resistance Education (D.A.R.E.)

Drug awareness program materials
Drug Enforcement

- Purchase, maintenance, operation of vehicles
- Telephone charges, including monthly cellular charges
- Office supplies and equipment
- Drug Identification Kits
- Drug Enforcement Training
- Drug dogs, maintenance, incl. feed/vet service
General Drug Enforcement Expenditures ≠ Confidential

Must follow city/county purchasing guidelines
General Law Enforcement Expenditures (non-recurring)

* Not drug investigation related

- Patrol or administrative vehicles
- Blue lights, sirens, radios, and radar units
- Video cameras, including body cameras
- Handguns, shotguns, rifles, but not ammunition

This Photo by Unknown Author is licensed under CC BY-SA
General Law Enforcement Expenditures (non-recurring)

* Not drug investigation related

<table>
<thead>
<tr>
<th>Patrol Dogs</th>
<th>Fax machine or copier</th>
</tr>
</thead>
<tbody>
<tr>
<td>(non-drug dogs), but not feed or veterinary services</td>
<td>* Treat dual trained dogs as drug dogs</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Computers</th>
<th>Original software purchase, but not maintenance or upgrades</th>
</tr>
</thead>
</table>
General Law Enforcement Expenditures (non-recurring)

* Not drug investigation related

Body armor

Tasers (not refill cartridges)

Cell phones, incl. smart phones (not monthly bills)

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Automated Fingerprint Machines

• Must set aside 20% of drug fund revenues until machine is purchased or have an agreement with another agency (having a machine)

• After purchase or agreement, may use 20% of revenues to pay for line charges and maintenance
  • This may become important next year if the TBI stops paying for the line charges.
Residual Value

When items that are purchased with drug funds are sold, funds received from the sale must go back to the drug fund.
Donations

Any charitable donation *must* follow state law

Any donation from the drug fund *must* fit an allowable category!

Cities: TCA 6-54-111

Counties: TCA 5-9-109
Remember These Categories?

- Local Drug Treatment
  - *Drug Court Treatment*
- Local Drug Education
- Drug Enforcement
  - *Operational/Confidential Expenses*
- General Law Enforcement Expenditures (non-recurring)
- Automated Fingerprint Machines**
Donations, generally speaking

- Must be 501(c)(4) or (6) organizations
- Must provide financial reports, including audit, to government
- Notice must be published in a newspaper of general circulation, specifying amount and purpose (must be an allowable expenditure from the drug fund)
- Must be approved by governing body
Donations

Sponsoring a sports team is NOT drug education!

- Putting “Just say no to drugs,” on a sports team jersey does not justify the expenditure
- Buying an ad in the high school yearbook is not drug education

Ask:
“What is the true purpose of the expenditure?”

If it walks like a duck ...

Special Revenue Account
(City Recorder/Trustee)

Expenditures

Must Follow Purchasing Guidelines

Confidential Account

Expenditures

Must Follow Comptroller’s Guidelines
Purchasing Guidelines

Every city or county is different and depends on which purchasing law they adopted or any private acts impacting purchasing.
Special Revenue Account

Under the control of the Recorder/Trustee → Budget approved annually → MUST follow city/county purchasing guidelines*

* Confidential expenditures MUST follow Comptroller’s guidelines
Confidential Account

Under the control of the Police Chief or Sheriff

Authorized by the Comptroller

Must follow Comptroller’s guidelines

Source:
Procedures for Handling Cash Transactions Related to Undercover Investigative Operations of County and Municipal Drug Enforcement Programs
Confidential Expenditures

• Payments made to an informant
• Payments made to an undercover agent
• Money spent to purchase drugs as part of an investigation
• Gasoline or maintenance for *undercover* vehicle or informant’s vehicle
• Hotel Rooms
• Cell phones minutes
Separate Checking Account

Per Comptroller’s rules, funds disbursed by the recorder/trustee to the chief/sheriff go into a separate checking account *(or daily cash journal)*

Chief will write a check to the agent requesting funds

Canceled check for each disbursement
Disbursement of Confidential Funds

Disbursements of confidential funds must be made by official prenumbered checks.

All checks shall be signed by the chief law enforcement official or his designated employee and shall be made payable to the person receiving the funds, either the chief law enforcement official or an employee.

All employees handling cash transactions in any capacity shall have a fidelity bond to protect the law enforcement agency.
Request for Funds – Confidential Operations

Should not exceed a 45-day supply
53-11-415. Special revenue fund.

(a) Except as provided in subsection (b), the county or municipality shall account for those funds received under title 39, chapter 17, part 4 in a special revenue fund. Upon demand of the chief executive of the arresting law enforcement agency, the county or municipality shall pay to that agency the funds demanded for use in cash transactions related to undercover investigative drug enforcement operations. The amount of the funds demanded and the requirement to pay the funds are subject to the availability of funds and budgetary appropriations for that purpose.
Documentation

Documentation for every exchange of funds

Custodian
- Exchanges from/to Recorder/Trustee (R-1)
- Exchanges to/from agents (A-2)

Agents
- Every exchange of funds, (A-4) and
- Receipt from informant (A-5), witnessed
Audit Logs
(Balance Ledger)

- **Custodian**
  - “Custodian’s Activity Log for Confidential Transactions” Balance sheet (A-1)

- **Agent**
  - “Agent’s Activity Log for all Confidential Funds” Balance Sheet (A-3)
  - “Summary Informant Log”, for each informant (A-6)
Internal Audits

• We recommend cooperative “spot audits”

• Spot audits catch the “uh oh’s” before they become “oh, crap’s”

• Look for the required documentation for each transaction

• Check to see that agents have ALL cash not documented as having been spent

• Regular and scheduled
Managing Informants?

Best Practices
Managing Informants

• Criminal history for all informants? Update?
• Command approval?
• Documentation of informant activity history?
• Correlate informant activity to arrests and convictions?
Informant Information

• Remember, an auditor can demand to see the informant file to verify that an informant does exist.

• Unlikely to happen in an annual audit, but more likely during an investigative audit.
Proper Disposal of Property and Evidence
State law authorizes the comptroller’s office to promulgate rules for municipal and county processes.

Maintain the public’s confidence.

The law requires counties and municipalities to meet compliance standards.

Not restricted to financial matters, *includes processes*.
Property and Evidence

Secure property and evidence storage facility

Procedures for property and evidence: Institutional Control
- Evidence that you follow the procedures
- Officers store stuff in personal locker?

Annual inventory of sensitive items

Short term storage?
On a Budget?
When Budgets Allow
Please Don’t Do This!
Sensitive (Priority) Items

- Cash
- Firearms
- Drugs
- Vehicles
Cash
Cash

• Unless cash required as evidence, *do not keep cash*.

• Check with the local DA to determine the need to maintain cash as evidence (case by case basis)

• Deposit in a bank

• If needed, the city/county can issue a check to return money

• Absolutely, do not keep in drawer or locker
Cash

All funds received by cities and counties must be deposited in the bank within *three (3) business days.*

Cities: TCA 6-56-111(a)
Counties: TCA 5-8-207
Interest Bearing Account?

• Do you deposit the seized money in an interest-bearing account?

• If you lose the forfeiture hearing, you may owe the earned interest to the defendant.

• You may be required to provide an IRS 1099 form.

• Multiple deposits: Interest for which deposit?
Firearms
Firearms

• TCA 39-17-1317 requires firearms that were held as evidence in a case or otherwise used or possessed illegally to be sold, exchanged or retained for LE purposes

• Also applies to abandoned and unclaimed firearms

• Pursuant to court order

• Action must take place between 60 and 180 days after the last legal proceeding involving the weapon
Firearms

** All of this must be PURSUANT TO A COURT ORDER by a judge of a court of record with criminal jurisdiction. **

### Sell
- Contract with a licensed firearms dealer

### Retain

### Exchange
- Ammo, firearms, body armor, or other legitimate equipment

### Destroy
- IF unsafe or inoperable
Sale of Firearms

Public auction within six months of the court order

Affidavit of Return
• Make, model and serial number
• Name of purchaser
• Sale price

Licensed dealer to assist (limited to no more than 20% commission)

Proceeds to the general fund to be used solely for law enforcement purposes

Advertised in local newspaper for at least three editions and not less than 30 days before the sale, or on the city/county website
Retain Firearms

Court order gives the police department “title”

If it is later sold, use the procedure for the Sale of Firearms
Exchange Firearms

• The statute (TCA 39-17-1317) provides that an agency can exchange firearms previously titled to the department.

• First, obtain a court order giving the agency “title” to the firearm

• Obtain a court authorizing the exchange with a qualified law enforcement firearms dealer
  • Other firearms
  • Ammunition
  • Body armor
  • Or equipment suitable for legitimate law enforcement purposes
Inoperable or Unsafe Firearms

- Obtain a court order for destruction or recycling
- Transfer to a museum or historical society
Unsafe Firearms

1. Firearm
2. If Unsafe
3. Obtain Court Order
4. Destroy
5. Affidavit of Return
Retain Firearms

Firearm

To Retain

Petition the Court for Title
Exchange Firearms

Firearm

To Retain

Petition the Court for Title

To Exchange

Petition the Court for Order

Firearms
Ammo
Body Armor
LE Equipment
To Sell Firearms

1. Petition the Court for Order
2. Advertise in local newspaper
   - Public Sale
     - Affidavit of Return
       - Buyer, Firearm Description, Selling Price
     - May use firearms dealer
Firearms

- **Firearm**
  - If Unsafe
    - DESTROY, With court order. Return to court
  - To Retain
    - Petition the Court for *Title*
  - To Sell
    - Petition the Court for *Order*

- Firearms
- Ammo
- Body Armor
- LE Equipment

- Petition the Court for *Order*
- To Exchange
- Advertise, then Sell
- Affidavit of Return
Drugs
DRUGS

• TCA 53-11-451 requires the clerk of the court to inventory and dispose of drugs and paraphernalia at least annually after final adjudication

• If the case is disposed of and the drugs are still in the possession of the police department, the duty rests with the law enforcement agency
Drugs

• Drugs are contraband and are to be destroyed after adjudication

• Never keep more than one year beyond adjudication
What about training our drug dog?

53-14-104. License -- Required -- Application -- Fees.

(a) No person shall manufacture, obtain, possess, administer or dispense a legend drug, controlled substance or controlled substance analogue for the purpose of scientific research, chemical analysis, instruction or training of detection animals without having first secured a license to do so from the director.
License for Training Drug Detection Dogs

• The department should obtain a license from the state pharmacy board and from the Drug Enforcement Administration (DEA).
License for Training Detection Dogs

• *Here are the links to get you started in the licensing process, we will also have them posted again at the end of the presentation along with any other references.*

• Federal (DEA):
  – [https://www.deadiversion.usdoj.gov/online_forms_apps.html](https://www.deadiversion.usdoj.gov/online_forms_apps.html)
    • Online process Form #225 – Annual Fee $296
    • [Old 225 Form](https://www.deadiversion.usdoj.gov/online_forms_apps.html) – no longer used

• State: (must be approved before federal registration. $110 fee + $10 regulatory fee)
Vehicles
Vehicles

- Treat the same as any other evidence
- Annual inventory of vehicles
- Keep secure
  - In-house security
  - Vendor lot
- Maintain adequate inventory records
- Ensure that proceeds go where they are supposed to
- Do you have a daily storage fee for your lot?
DUI/DRL VEHICLES

• Second or subsequent offense of DUI

• Driving on Revoked Drivers License when license was revoked for DUI

• ALL proceeds from sale go to state department of mental health, except for direct expenses associated with seizing, towing, storing, etc.
* Any property seized under drug control act
Conveyance Seizures

**Judicial Process (40-33-101)**
- Sexual offenses
- Robbery
- Felony Theft
- Burglary

- Must be included in the indictment
- Requires Conviction
- Judge orders forfeiture

*Title 40, Chapter 33, Part 1*

**Administrative Process**
- Drugs
  - Proceeds to Drug Fund
- Sexual Exploitation of Children (TCA 39-17-1008)
- DUI/DRL
- Arson
- “Trademark Licensing” laws
- Bootleg Whiskey
  - Proceeds split with ABC
- Untaxed tobacco

*Title 40, Chapter, 33, Part 2*
Can You Use the Cars?

• Vehicles seized for drug violations **OR** for DUI/DRL and forfeited to the city/county may be used for **DRUG ENFORCEMENT** purposes.

• Must be sold after five years.

• Vehicles forfeited under a judicial process can be used for any law enforcement purpose.
Lost or Abandoned Property
Lost or Abandoned Property

Different for Police departments than Sheriff’s departments

Sheriff’s departments follow TCA 8-8-501

Police Departments are subject to Uniform Disposition of Unclaimed Property Act for cash
TCA 8-8-501 (Sheriffs)

Dispose of all abandoned, stolen and/or recovered or worthless property which remain unclaimed

By confiscation, abandonment or by being stolen and recovered

Due diligence to return to rightful owner

Wait 90 days from date of acquisition.
Uniform Disposition of Unclaimed Property Act

All lost or abandoned property (cash) technically belongs to the state of Tennessee.

Register the cash online at the Unclaimed Property Division of the state treasurer's office.

The law is silent on other unclaimed or abandoned property. MTAS recommends treating it as surplus property.

• Governing body should declare the items to be surplus.
• Sell at auction (including online auctions).
Beer and Alcohol
Beer and Alcohol

- Unopened beer/alcohol to be turned over to the state Alcohol Beverage Commission
- 57-9-115
- State returns a percentage of proceeds from the public auction of beverages to local government
- After adjudication, dispose of open containers
- Class C misdemeanor
In closing...
Evidence

- Rules of Evidence, Rule 901
  - Chain of custody maintained and documented

- Aside from general rules of evidence we expect as police officers
  - TCA 9-2-102 requires cities and counties to follow rules of the Comptroller’s office
  - Internal Control and Compliance Manual

- Governmental Accounting, Auditing, and Financial Reporting

- Code of State Regulations (Secretary of State, effective rules)
Are we having fun yet?
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