MANAGING THE DRUG FUND

- Municipal Technical Advisory Service

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THE UNIVERSITY of TENNESSEE

MUNICIPAL TECHNICAL ADVISORY SERVICE

Housekeeping

- Registration forms AND sign-in forms
- Breaks
- Cell Phones
- Ask Questions
- Introduce yourself
- Questions now?

Take Away's

- Place holder for info on getting the PPT online
- URL for those who have devices in classroom.

Introduction

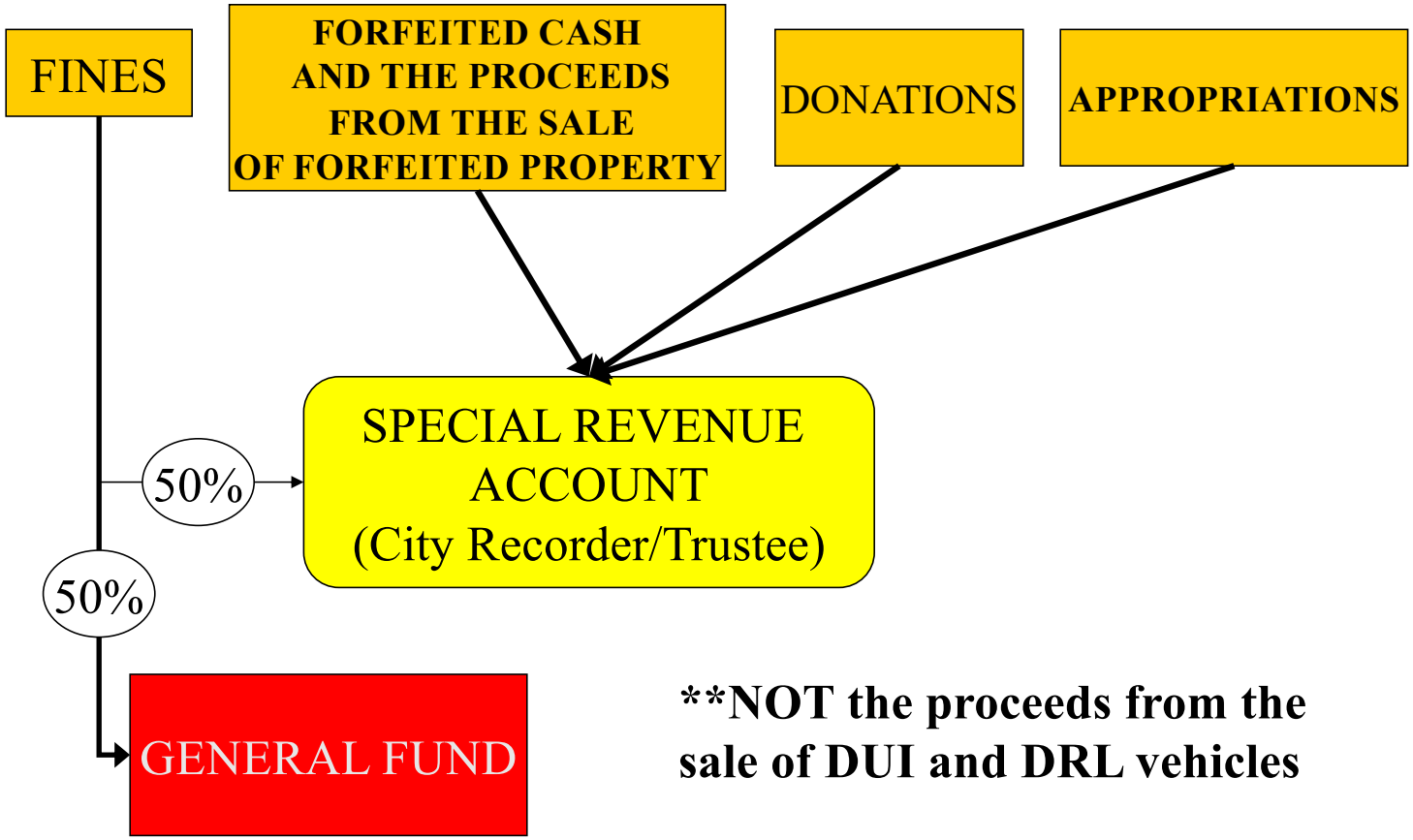
- MTAS
- CTAS
- Why are we here?
- What you should get out of this class

The “Drug Fund”

- The “drug fund” is a special revenue account.
  - Similar to solid waste fund account or street aid fund account.
  - ***It is under the control of the city recorder/trustee !!***
- Confidential expenditures are made from a separate account *(confidential account).*

Sources of Revenue

- Fines from drug offenses
  - 50% of the fine goes to the drug fund (special revenue account).
  - 50% of the fine goes to the General Fund.
- Forfeited cash and the proceeds from the sale of forfeited property.
- Donations.
- Appropriations from governing body.



****NOT the proceeds from the sale of DUI and DRL vehicles**

LEGITIMATE EXPENDITURES

General Categories

- Local Drug Treatment Programs
  - Drug Court treatment programs
- Local Drug Education Programs
- Drug Enforcement
  - Operational expenses
  - Confidential expenses
- Non-recurring *General* Law Enforcement Expenditures
- Automated Fingerprint Machines**

TCA 39-17-420

Drug Education

- DARE
- Drug awareness brochures and booklets

DRUG ENFORCEMENT

- Operational
  - Automobiles for Drug Investigators
  - Maintenance and Operational Expenditures for drug officers automobile
  - Telephone Charges, including monthly cellular charges
  - Office Supplies and Office Equipment for Drug Investigation Officers
  - Drug Identification Kits For Drug Investigators and Patrol officers

DRUG ENFORCEMENT (cont)

- Operational (cont.)
  - Drug Enforcement Training
  - Drug Dogs and Their Maintenance, Including Feed and Veterinary Service
- General Drug Enforcement Expenditures Are Not Confidential
  - Must follow city/county purchasing guidelines

NON-RECURRING GENERAL LAW ENFORCEMENT

- Not Drug Investigation related
- Expenditures:
  - Patrol or administrative vehicles
  - Blue lights, sirens, radios, and radar units
  - Video cameras, including body cameras
  - Handguns, shotguns, rifles, but not ammunition
  - Fax machine or copier

NON-RECURRING GENERAL LAW ENFORCEMENT (cont.)

- Expenditures (cont.)
  - Patrol Dogs (non-drug dogs), but not feed or veterinary services
    - Treat dual trained dogs as drug dogs
  - Computers
  - Original software purchase, but not maintenance or upgrades

NON-RECURRING GENERAL LAW ENFORCEMENT (cont.)

- Body armor
- Tasers, but not refill cartridges
- Cell phones, including smart phones
  - But not the monthly bills

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

Residual Value

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

LEGITIMATE EXPENDITURES

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- Local Drug Treatment Programs
  - Drug Court treatment programs
- Drug Education Programs
- Drug Enforcement
  - Operational expenses
  - Confidential expenses
- Non-recurring *General* Law Enforcement Expenditures
- Automated Fingerprint Machines**

DONATIONS,
Generally speaking

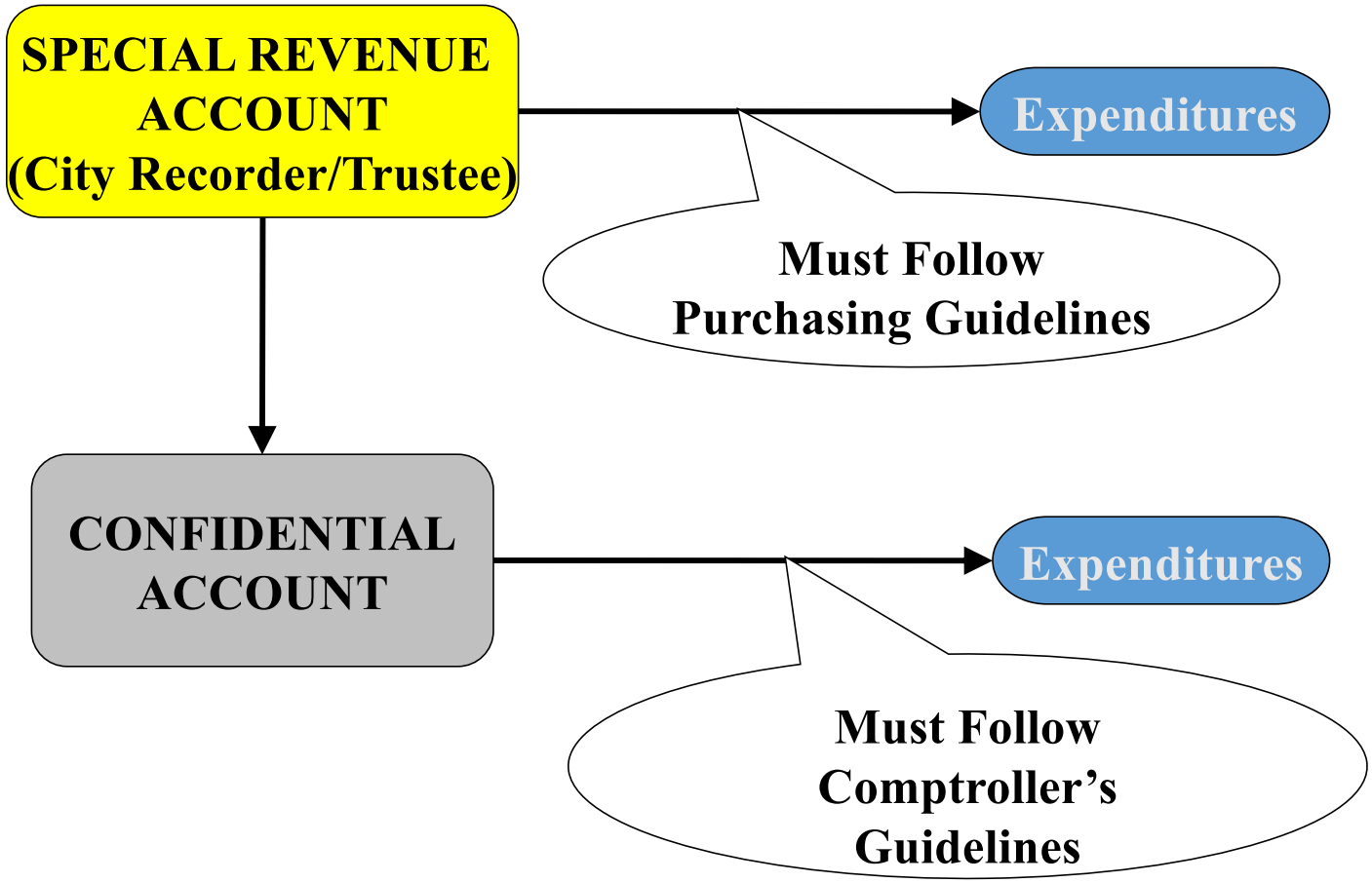
- Must be a 501(c)(4) or (6) organizations
- Must provide financial reports, including audit, to government
- Notice must be published in a newspaper of general circulation, specifying amount and purpose (must be an allowable expenditure from the drug fund)
- <u>Must be approved by governing body.</u>

DONATIONS?

- Any charitable donation must follow state law
- Cities
  - TCA 6-54-111
- Counties
  - TCA 5-9-109

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 yourself, “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

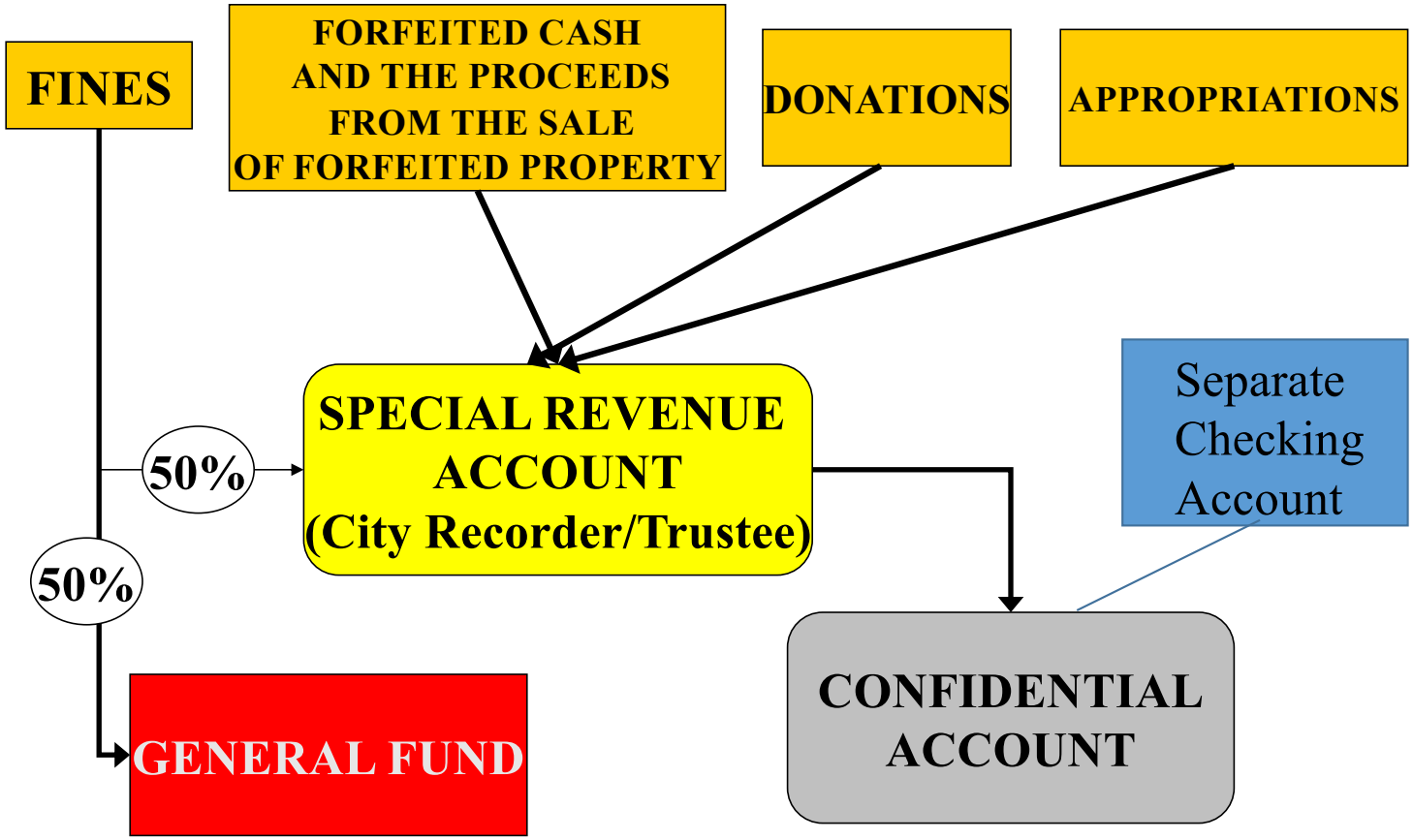
Purchasing Guidelines

- Every city or county is different. Depending on which purchasing law they adopted or any private acts impacting purchasing
- Thresholds:
  - Direct purchase up to $???.00 _____
  - Quotes (documented) up to $????.00 _____
  - Any purchase over the “quote” threshold requires sealed bids.

The “Drug Fund”, by statute, is under the control of the City Recorder or County Trustee.

SPECIAL REVENUE ACCOUNT

- Under the control of the Recorder/Trustee
- Budget for drug fund approved annually
- Except confidential expenditures, MUST follow city/county purchasing guidelines
- Confidential Expenditures MUST follow Comptroller's guidelines


FINES
FORFEITED CASH AND THE PROCEEDS FROM THE SALE OF FORFEITED PROPERTY
DONATIONS
APPROPRIATIONS
SPECIAL REVENUE ACCOUNT (City Recorder/Trustee)
50%
50%
GENERAL FUND
Separate Checking Account
CONFIDENTIAL ACCOUNT

CONFIDENTIAL ACCOUNT

The “Confidential Checking Account”, authorized by the Comptroller in the “*Procedures for Handling Cash Transactions Related to Undercover Investigative Operations of County and Municipal Drug Enforcement Programs*,” is under the control of the Police Chief or Sheriff.

CONFIDENTIAL EXPENDITURES

- Confidential Expenditures
  - Payments made to an informant
  - Payments made to an undercover agent
  - Money spent to actually purchase drugs as part of an investigation
  - Gasoline or maintenance for *undercover* vehicle or informant's vehicle
  - Hotel Rooms
  - Cell phones minutes
- ***Must follow Comptroller's Guidelines***

PROCEDURES FOR HANDLING CASH TRANSACTIONS RELATED TO UNDERCOVER INVESTIGATIVE OPERATIONS OF COUNTY AND MUNICIPAL DRUG ENFORCEMENT PROGRAMS

Revised May 2012

TENNESSEE COMPTROLLER OF THE TREASURY

http://comptroller.tn.gov/

Separate Checking Account

- The Comptroller's rules specify that funds disbursed by the recorder/trustee to the chief/sheriff go into a separate checking account (or daily cash journal)
- The chief will write a check to the agent requesting funds
- There will be a 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 FOR CONFIDENTIAL OPERATIONS

- Should not exceed a 45 day supply

53-11-415. Special revenue fund.

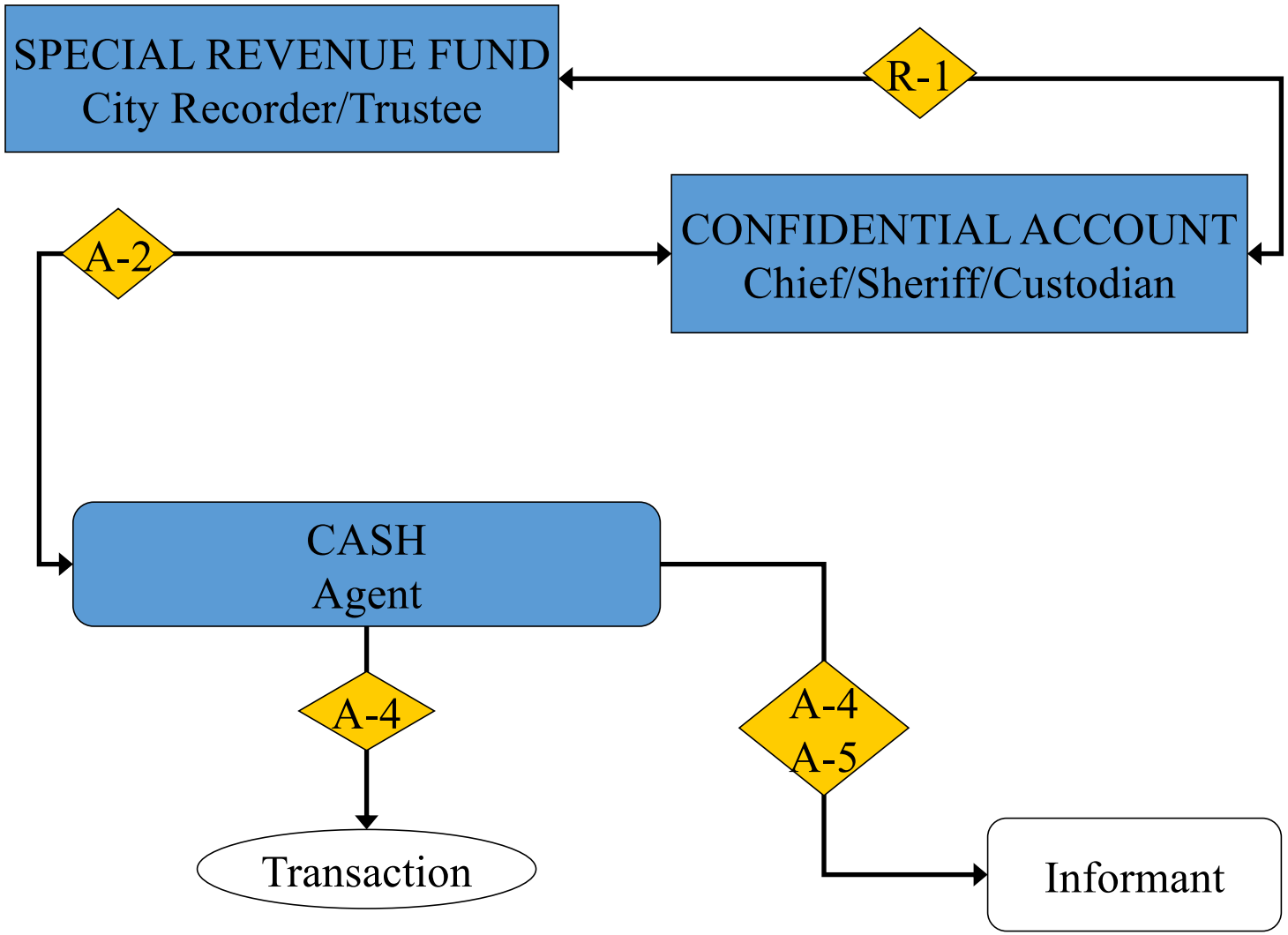
(a) Except as provided in subsection (b), the county or municipality shall account for those funds received under title 39, chapter 17, part 4 in a special revenue fund. **Upon demand of the chief executive of the arresting law enforcement agency, the county or municipality shall pay to that agency the 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 or to Recorder/Trustee (R-1)
  - Exchanges to or 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)


SPECIAL REVENUE FUND
City Recorder/Trustee
R-1
CONFIDENTIAL ACCOUNT
Chief/Sheriff/Custodian
A-2
CASH
Agent
A-4
A-4
A-5
Transaction
Informant

Form A-4
Page ___ of ___

ACCOUNTABILITY OF CONFIDENTIAL FUNDS - FUNDS EXPENDED

Transaction # _____

Case File # _____ Date Opened _____

EVIDENCE
Type and Quantity _____
Date _____ Amount Spent _____

UNDERCOVER MOTOR VEHICLE
Gasoline and Oil:
Date _____ Amount Spent _____
Station _____
Date _____ Amount Spent _____
Station _____
Date _____ Amount Spent _____
Station _____

INFORMANT EXPENSES
Code Name _____
CI# _____
Date _____ Receipt Yes__ No__ Amount _____

MISCELLANEOUS
Explanation _____
_____
_____
Date _____ Amount Spent _____
Explanation _____
_____
_____
Date _____ Amount Spent _____
Explanation _____
_____
_____
Date _____ Amount Spent _____

Total Spent on Page _____

I certify that the above expenditures are true and correct.

_____ _____
Agent's Signature Date

Original Filed with Fund Custodian
Copy Retained by Agent

Form A-5

RECEIPT FOR PAYMENT TO INFORMANT

A. Case or Reference # _____ Date _____

I hereby acknowledge receipt of $_____ (words: _____)
paid to me by _____ for consideratin of [_] information and/or
[__] services as follows: _____
_____
_____

B. Section B is to be filled out when funds are advanced to informant for future purchases.

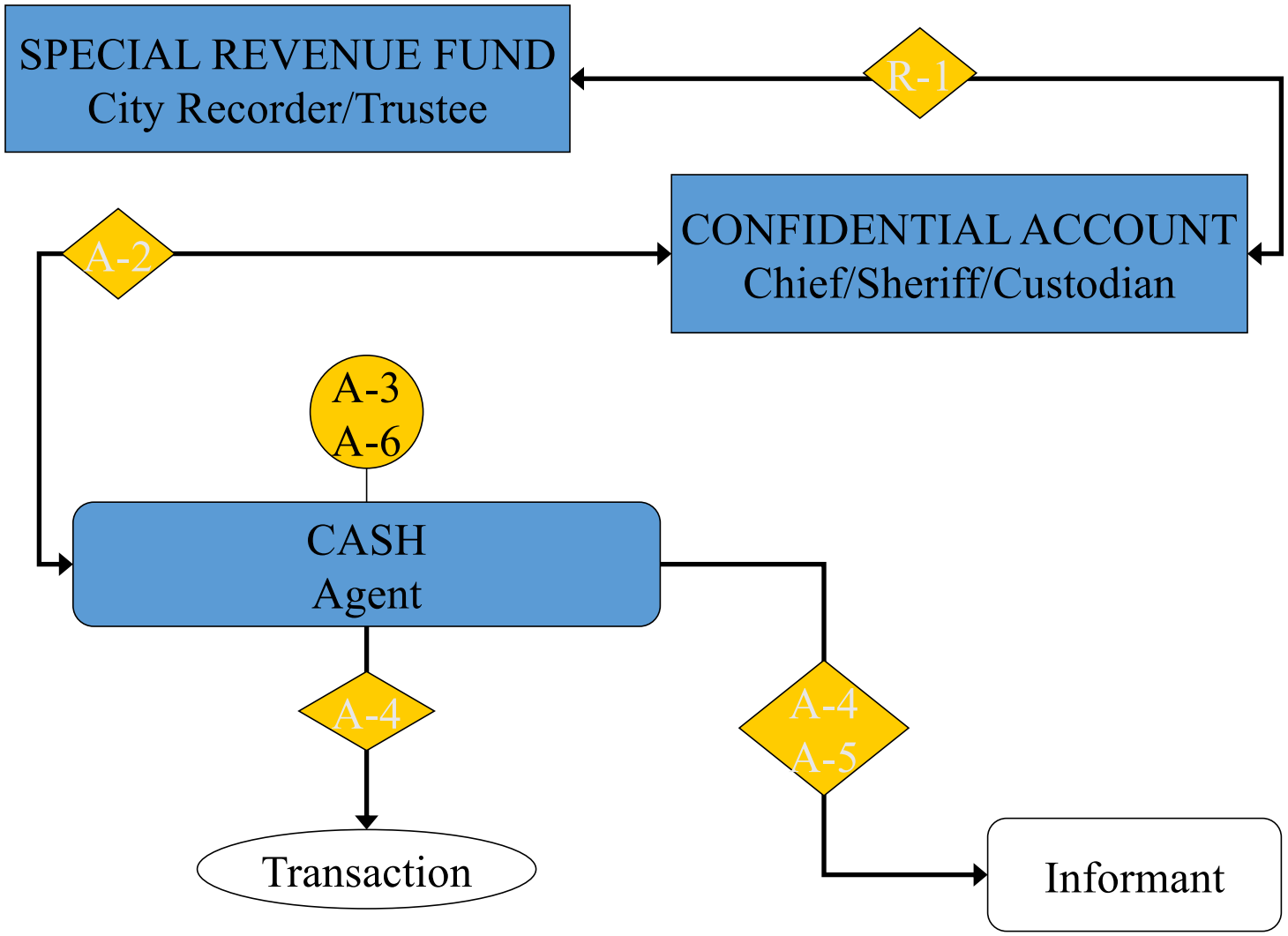
It is understood that this money is to be expended by me only for the purchase, as evidence, of controlled substances. If no such purchase is made, or if such a purchase is made for less than the total sum furnished to me, before (date:_____) (time: _____), I will forthwith refund the sum so furnished or the balance thereof, as the case may be, to the above-named officer of the (agency name:_____) at any time, I will forthwith refund to him or her the total amount of any sum thus furnished to me that has not yet been expended by me for the purchase, as evidence, of controlled substances. Furthermore, it is understood that this money is the property of (city/county _____) and that misuse or conversion of the same to my personal use will render me liable to prosecution.

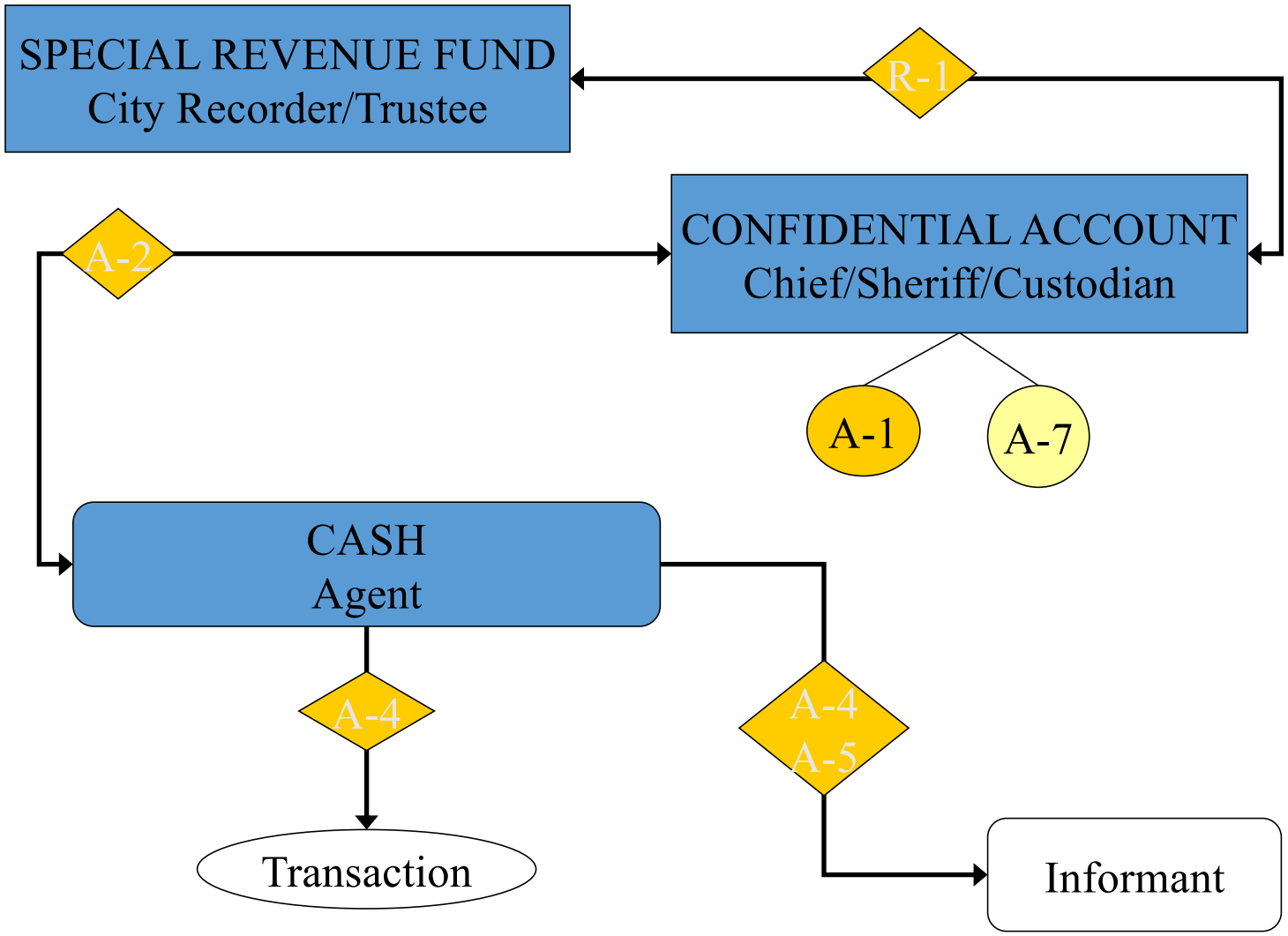
C. Officer's Signature _____ Date _____

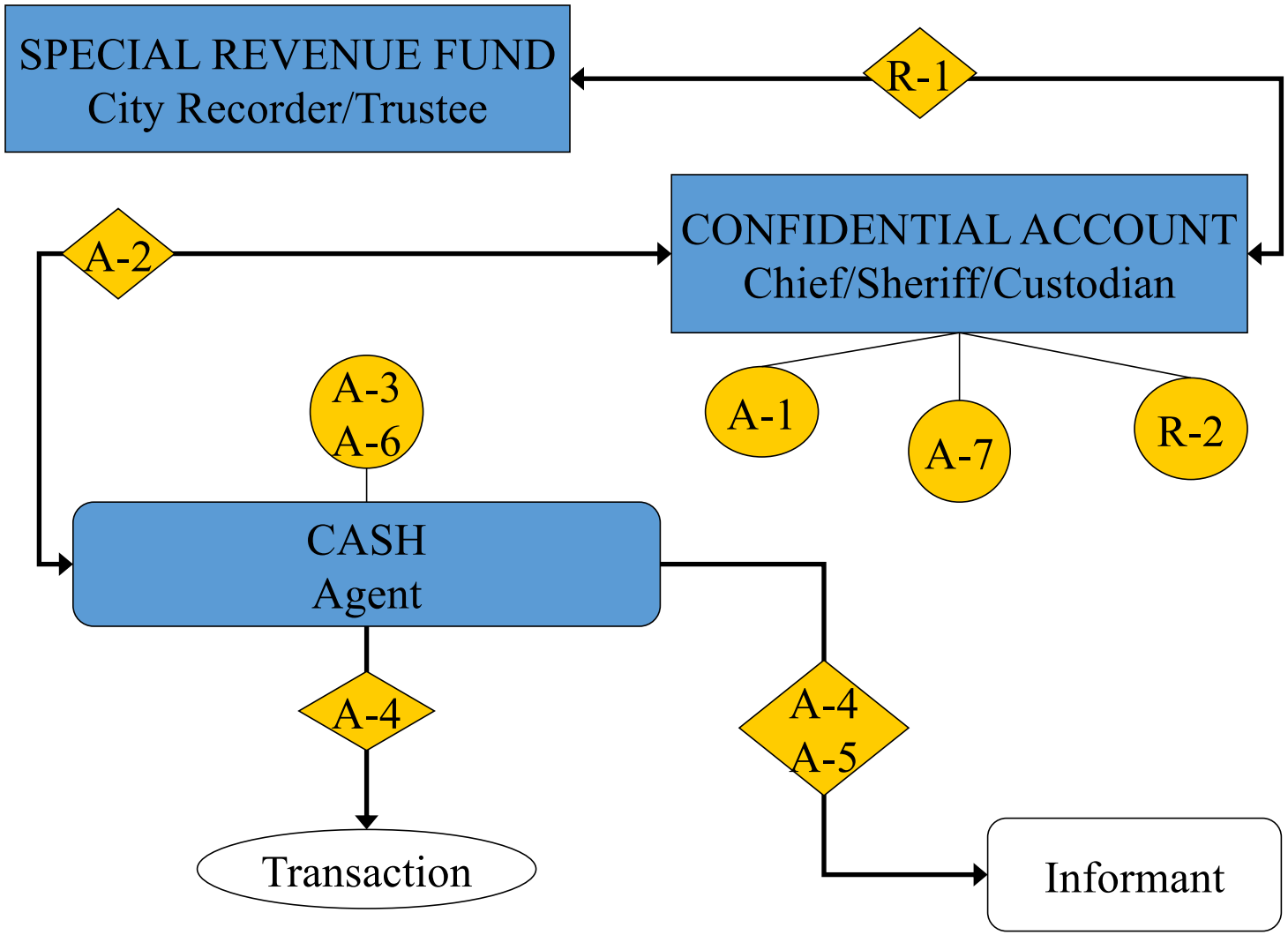
Payee (Code name or number) _____
Date/Time _____

Witness's Signature _____ Date _____

Original Filed with Fund Custodian
Copy Retained by Agent


SPECIAL REVENUE FUND
City Recorder/Trustee
R-1
CONFIDENTIAL ACCOUNT
Chief/Sheriff/Custodian
A-2
A-3
A-6
CASH
Agent
A-4
A-4
A-5
Transaction
Informant


SPECIAL REVENUE FUND
City Recorder/Trustee
R-1
CONFIDENTIAL ACCOUNT
Chief/Sheriff/Custodian
A-2
A-1
A-7
CASH
Agent
A-4
A-4
A-5
Transaction
Informant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A-3
A-6
A-1
A-7
R-2
CASH
Agent
A-4
A-4
A-5
Transaction
Informant

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

Authority

- 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?

PACKAGES
Locker
delete
online predators
www.deletepredators.com
U.S.MAIL

When Budgets Allow.

Please Don’t Do This!

What Are Sensitive (Priority) Items

- Cash
- Firearms
- Drugs
- Vehicles

CASH

Cash

- Unless cash is 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 3 business days
  - TCA 6-56-111(a) cities
  - TCA 5-8-207 counties

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

- Sell
  - Should contract with a licensed firearms dealer
- Retain
- You can exchange for ammo, firearms or body armor, or other legitimate law enforcement equipment after a court order giving you title (retain)
- Destroy, **IF** unsafe or inoperable
- All of this must be PURSUANT TO A COURT ORDER
  - Judge of a court of record with criminal jurisdiction

Sale of Firearms

- Public Auction within six months of the court order
- Advertised in local newspaper for at least three editions and not less than 30 days before the sale, or on the city/county website
- 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

Retain Firearms

- Court order gives the police department “title”
- If it is later sold, use the procedure for the Sale of Firearms

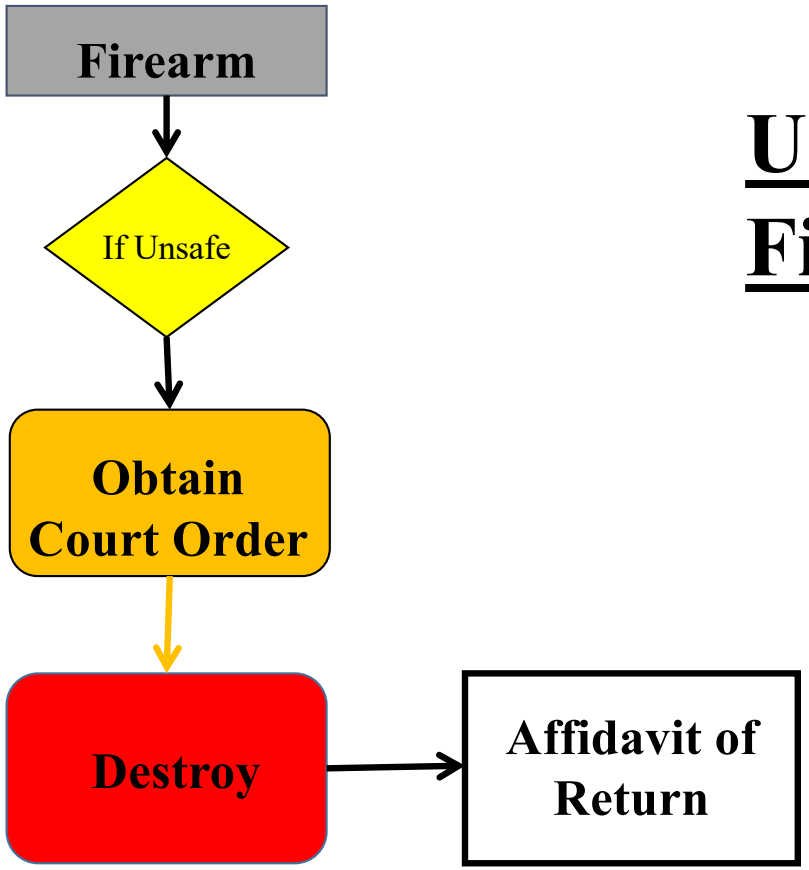
Exchange Firearms

- 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

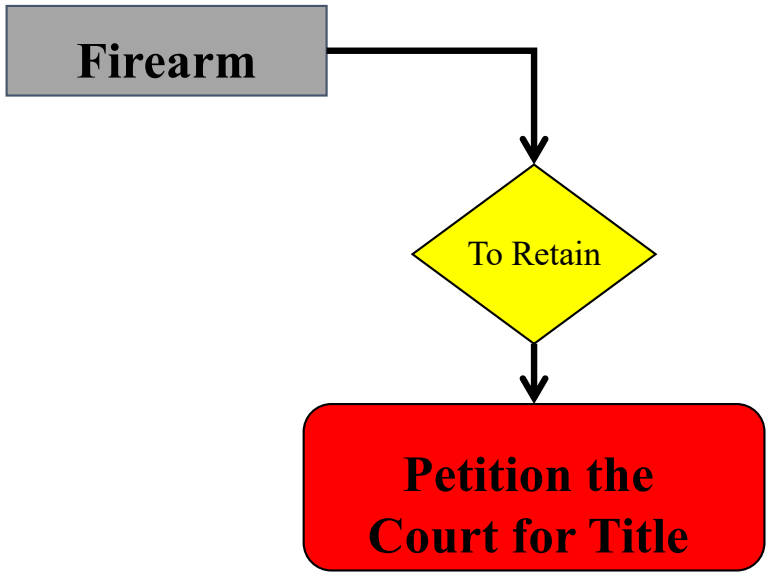
- Obtain a court order for destruction or recycling
- Or, transfer to a museum or historical society

FIREARMS



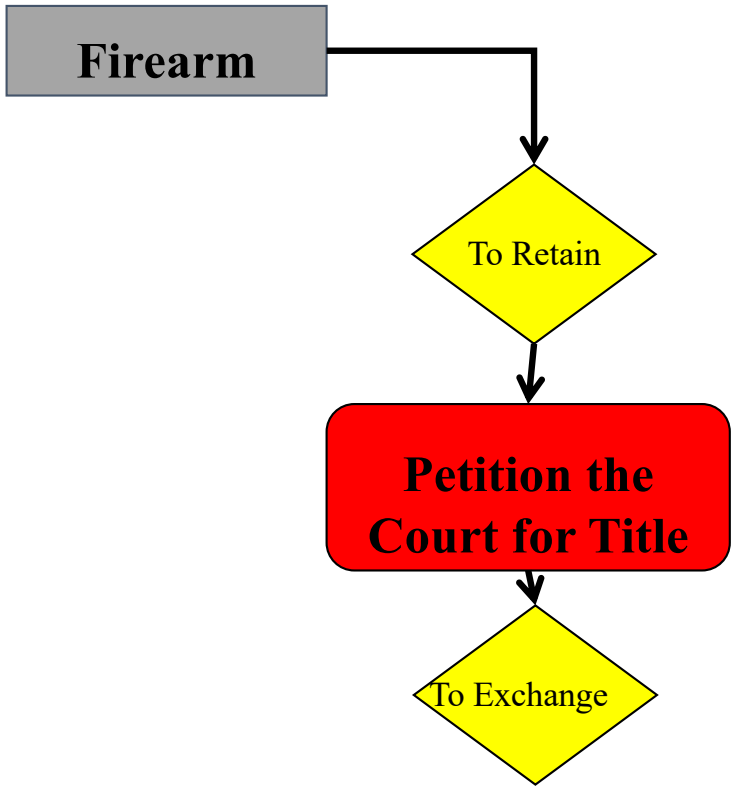
Unsafe Firearms

FIREARMS



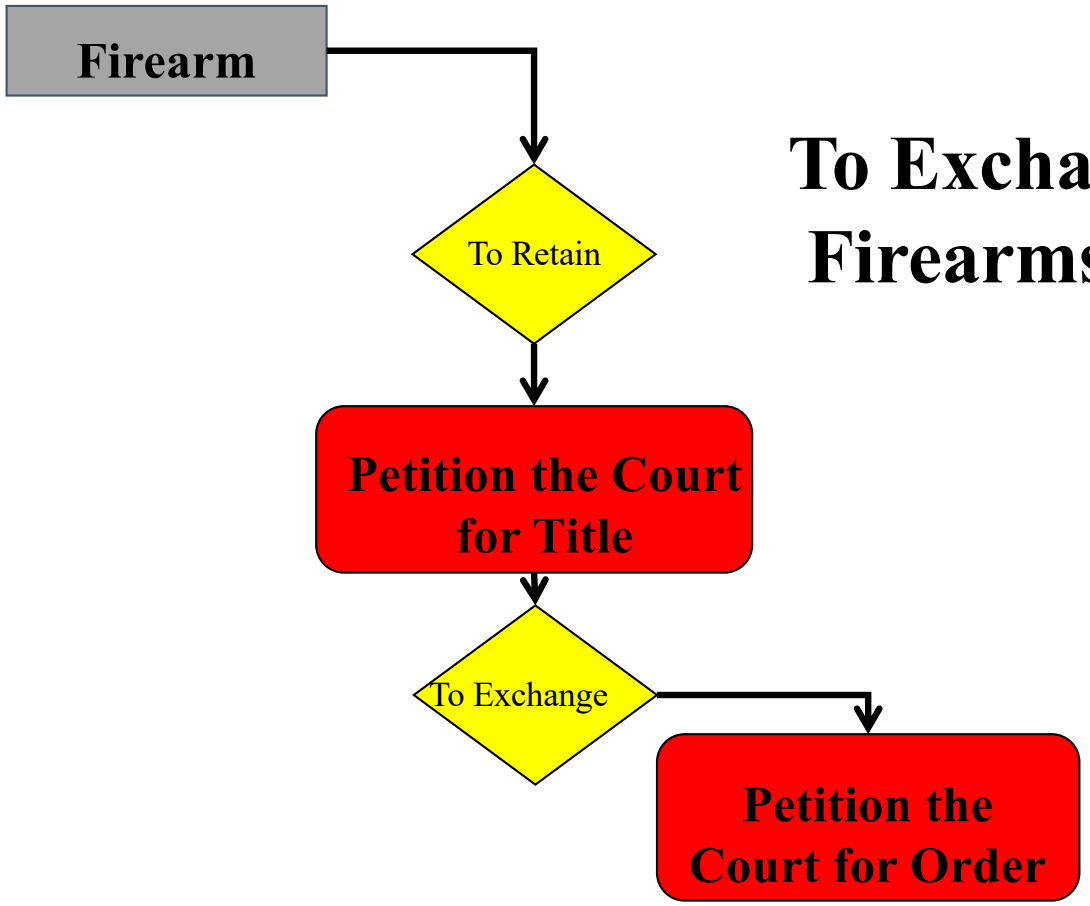
To Retain Firearms

FIREARMS



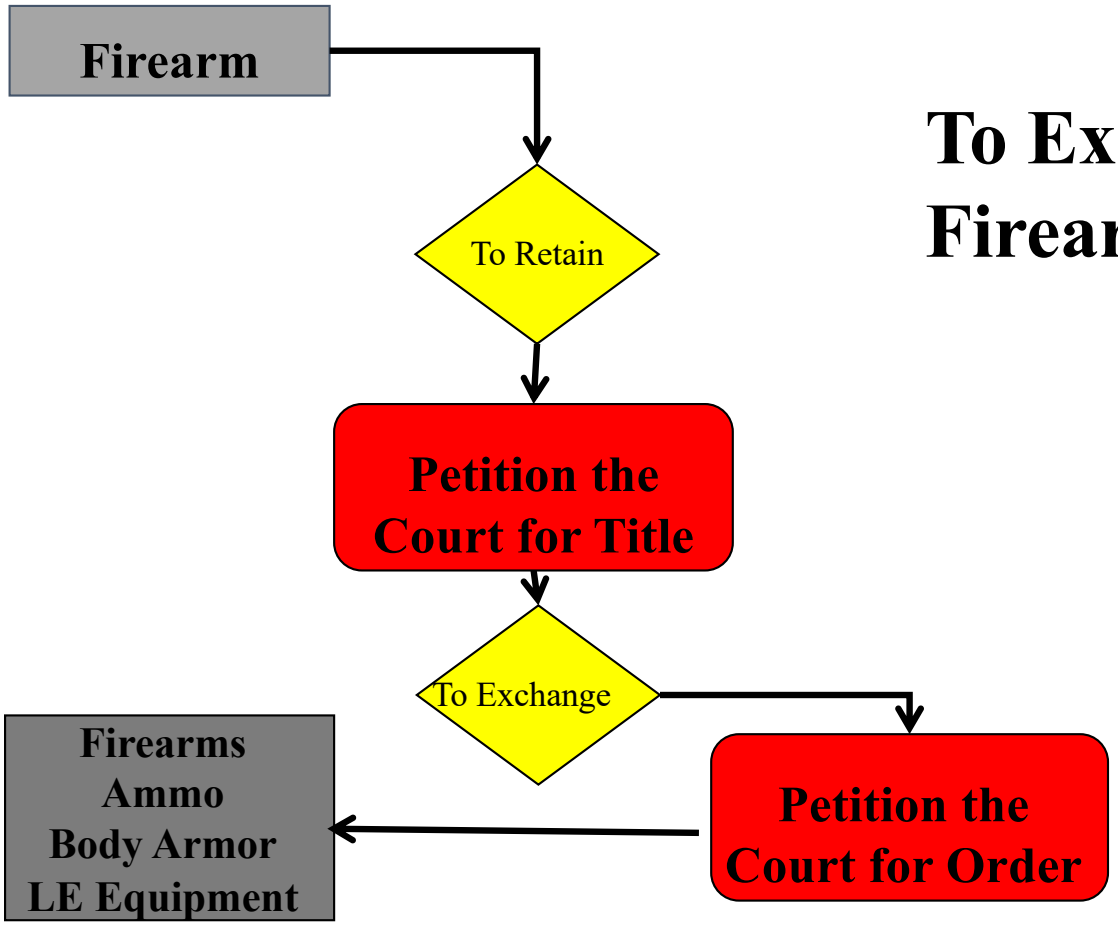
To Exchange Firearms

FIREARMS



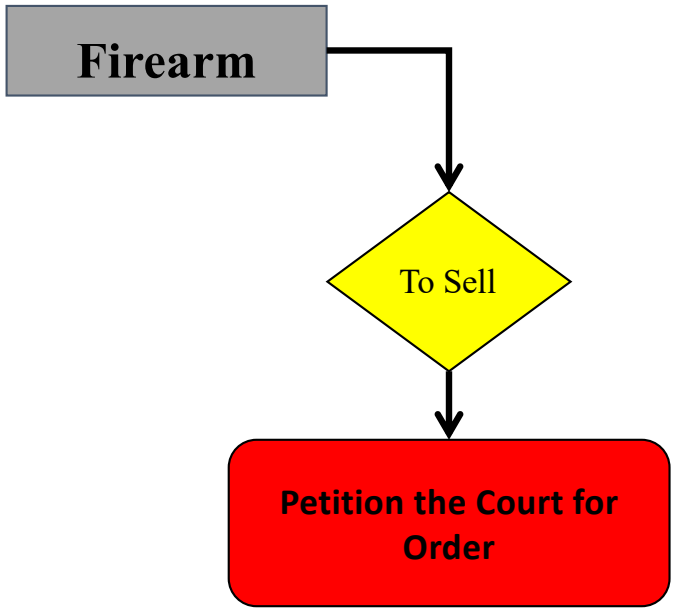
To Exchange Firearms

FIREARMS



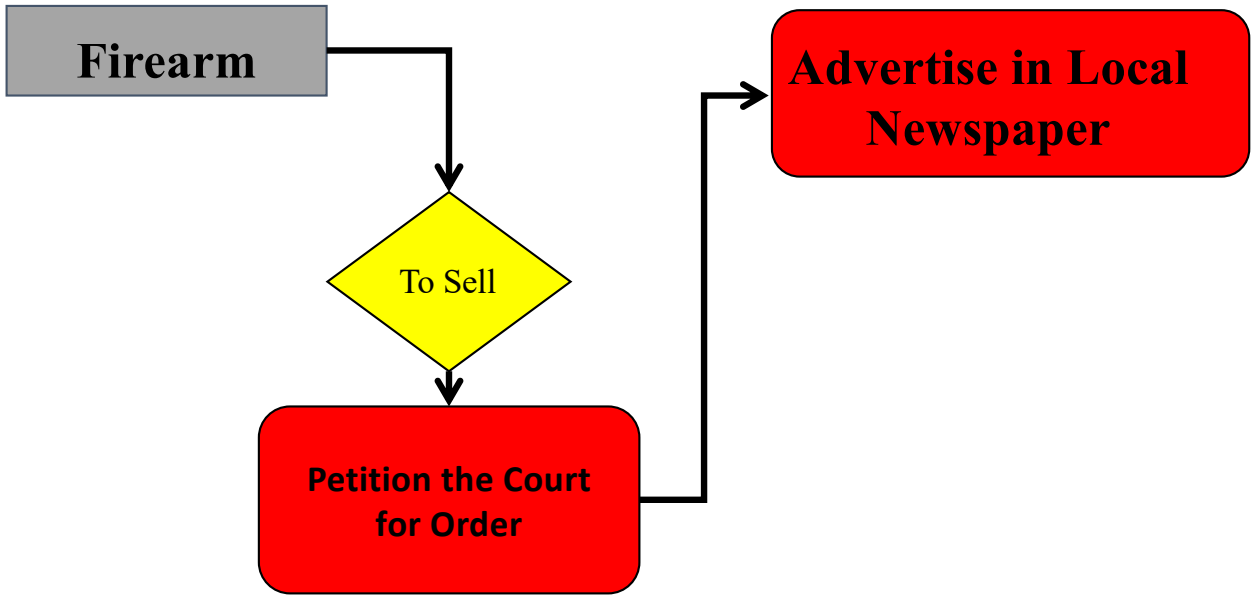
To Exchange Firearms

FIREARMS

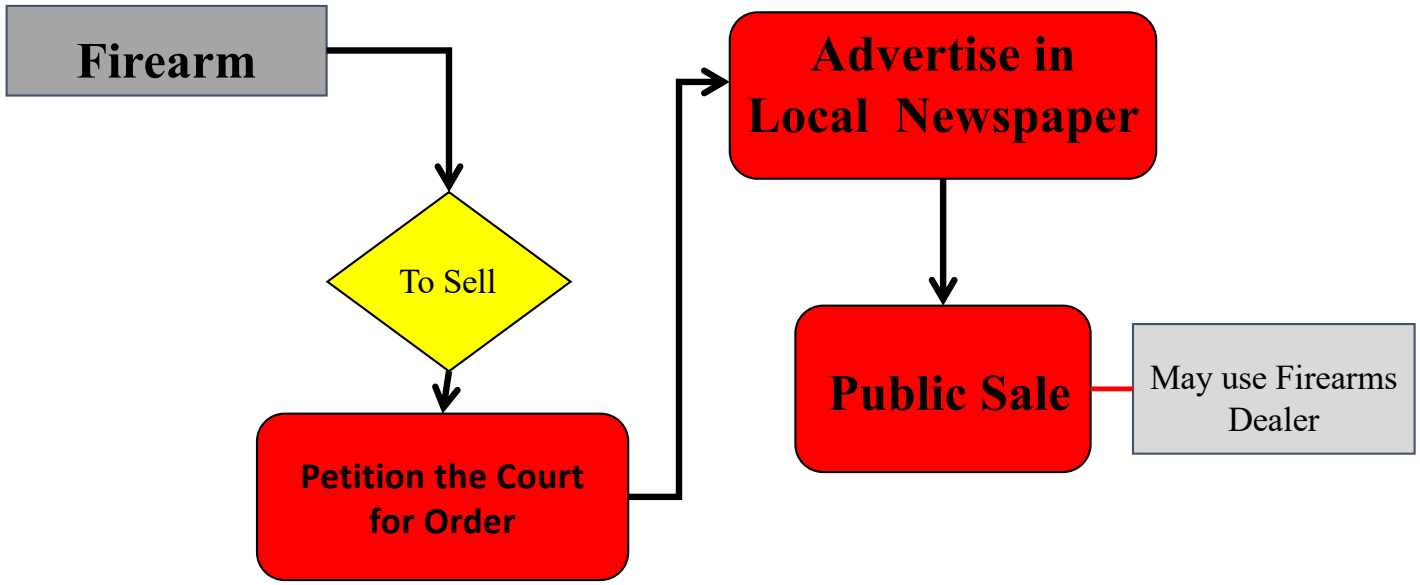


To Sell Firearms

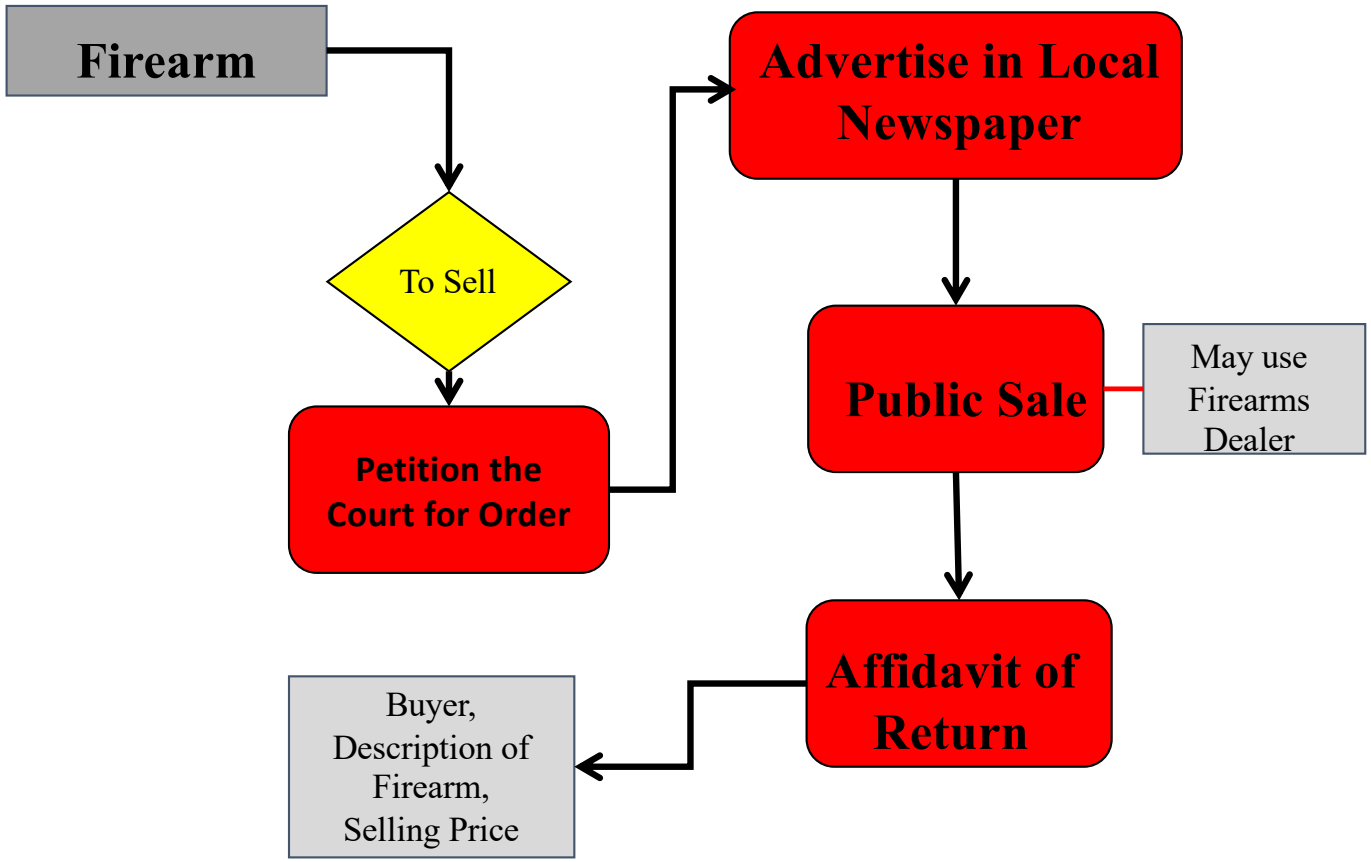
FIREARMS


Firearm
To Sell
Petition the Court for Order
Advertise in Local Newspaper

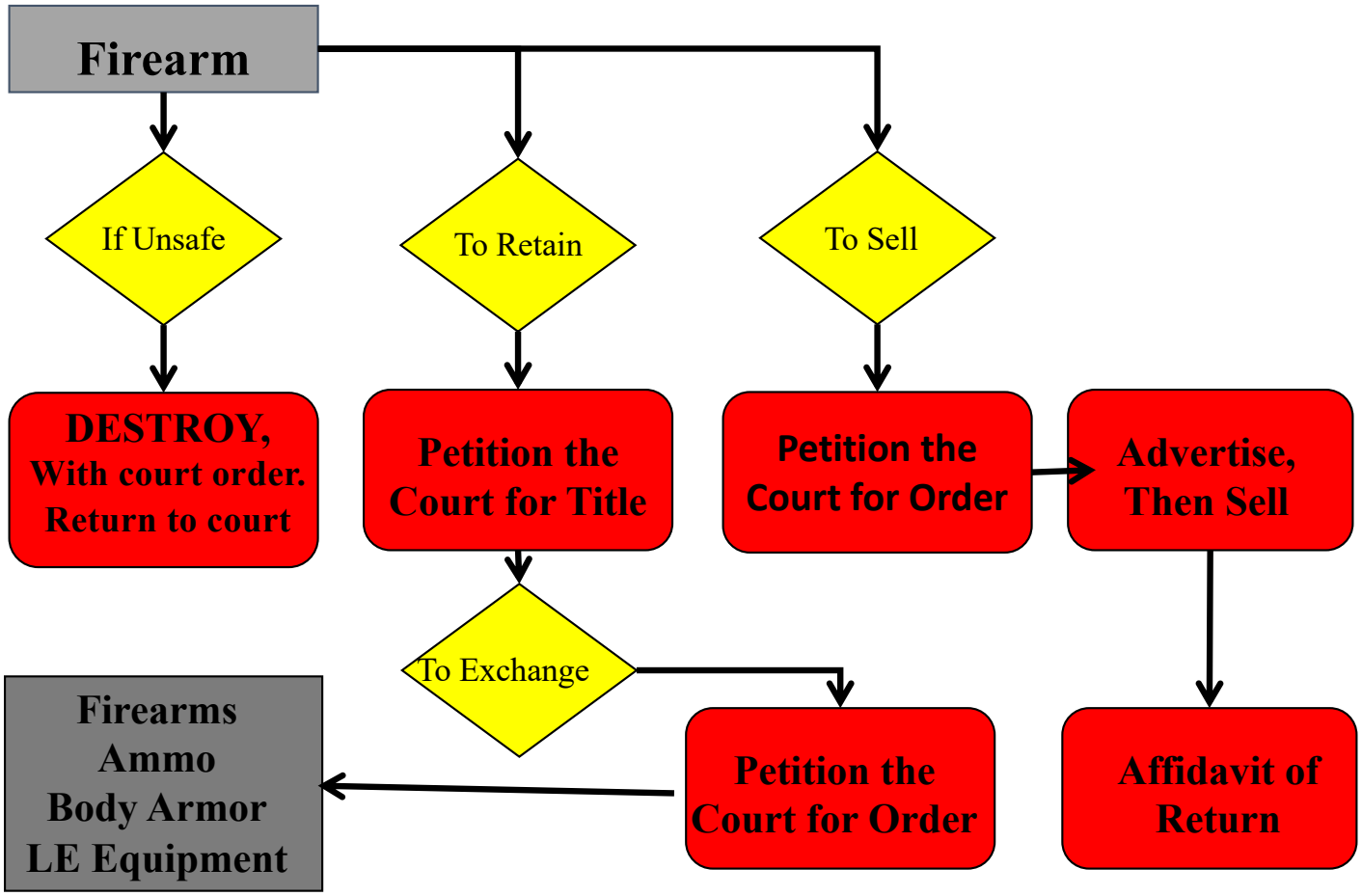
FIREARMS


Firearm
To Sell
Petition the Court for Order
Advertise in Local Newspaper
Public Sale
May use Firearms Dealer

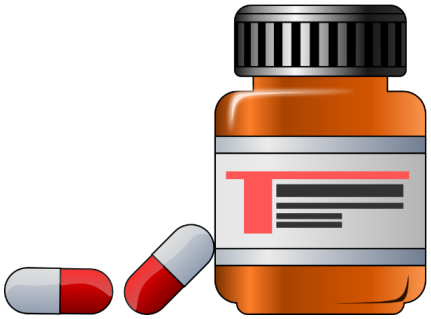
FIREARMS


Firearm
To Sell
Petition the Court for Order
Advertise in Local Newspaper
Public Sale
May use Firearms Dealer
Affidavit of Return
Buyer, Description of Firearm, Selling Price

FIREARMS


Firearm
If Unsafe
To Retain
To Sell
DESTROY,
With court order.
Return to court
Petition the
Court for Title
Petition the
Court for Order
Advertise,
Then Sell
To Exchange
Firearms
Ammo
Body Armor
LE Equipment
Petition the
Court for Order
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**.

- https://www.deadiversion.usdoj.gov/drugreg/reg_apps/225/225_instruct.htm

- https://www.tn.gov/content/dam/tn/health/documents/Doghandler.01-2017.pdf

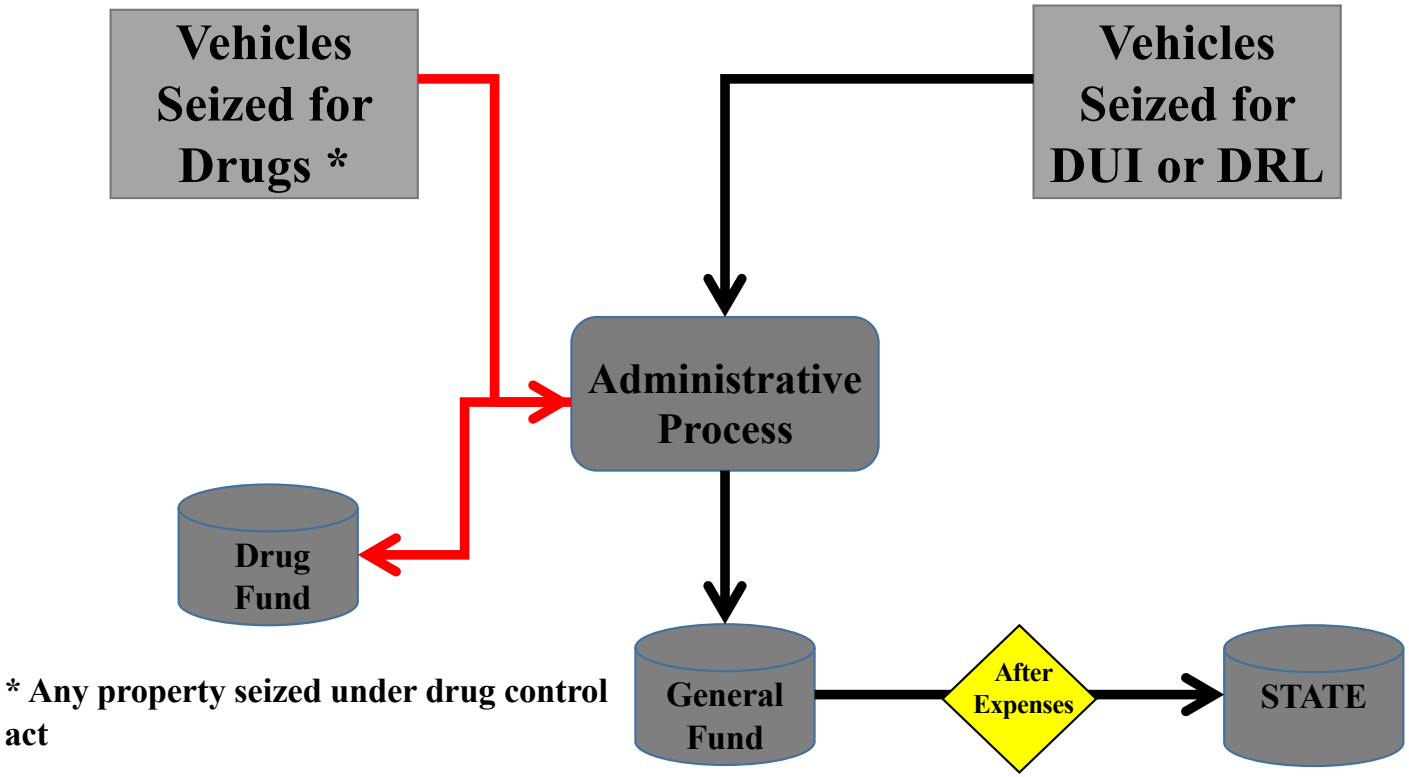
VEHICLES

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

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.
- You will need to register the cash online at the Unclaimed Property Division of the state treasurers office
- The law is silent on other unclaimed or abandoned property. MTAS recommends treating it as surplus property.
  - The governing body should declare the items to be surplus.
  - Sell at auction (including online auctions).

BEER AND WHISKEY

Beer and Whiskey

- Unopened beer and whiskey to be turned over to the state Alcohol Beverage Commission 57-9-115
- The state is to return a percentage of the proceeds from the public auction of the beverages to the 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?

RESOURCES

County Technical Assistance Service

www.ctas.tennessee.edu

John Rose (423) 956-1200
john.rose@tennessee.edu

RESOURCES

Municipal Technical Advisory Service

www.mtas.tennessee.edu

Rex Barton **(423) 506-0402**
rex.barton@tennessee.edu

David Moore **(731) 425-4781**

(731) 514-2715
david.moore@tennessee.edu

RESOURCES

Division of Audit	**http://comptroller.tn.gov/**

RESOURCES

Forms

https://www.mtas.tennessee.edu/reference/confidential-fund-accounting-and-forms