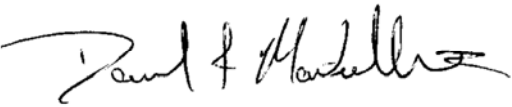
	Corrections and Community Supervision DIRECTIVE		TITLE Asset Forfeiture	NO. 2790
				DATE
SUPERSEDES DOP P&P Manual Item 9204.10	DISTRIBUTION A	PAGES PAGE 1 OF 6	DATE LAST REVISED	
REFERENCES (Include but are not limited to) Directive #9404; CPL 690.55(1)(A); 21 USC Section 881 (E)(1)(A); 18 USC Section 981(E)(2); 18 USC Section 982; 19 USC Section 1616(A); US Office of Attorney General Order #3946-2017; NYS CPLR Article 13-A; PL Sections 410-420, 480.			APPROVING AUTHORITY 	

- I. **PURPOSE:** To provide Department of Corrections and Community Supervision (DOCCS) staff with guidelines for the seizure of assets subject to forfeiture under the Federal Asset Forfeiture and Equitable Sharing Program.
- II. **POLICY:** DOCCS is authorized to participate in the Federal, State, and Local Forfeiture and Equitable Sharing Program, in order to promote public safety by depriving individuals of the profits and proceeds derived from illegal activities, and to weaken criminal enterprises by confiscating the proceeds of criminal activity. Additionally, DOCCS shall participate in asset forfeiture activities at the state and local level in accordance with New York State Civil Practice Law and Rules Article 13-A, and New York State Penal Law Sections 410-420 and 480, and in conjunction with state and local prosecutors. The equitable distribution of seized and forfeited assets will be applied to enhance activities of DOCCS. DOCCS staff shall follow the procedures provided herein when seizing assets, accounting for and handling such assets, and initiating the formal process for an adoption of the seizure.
- III. **DEFINITIONS**
 - A. Agency Asset Forfeiture Coordinator (AFC): The Office of Special Investigations (OSI) shall serve as the departments coordinator for all asset forfeiture activities within DOCCS. The AFC shall review all documentation related to the seizure or potential seizure of funds or property. The AFC shall consult with DOCCS Office of Counsel, when appropriate, to ensure compliance with relevant laws. The AFC shall also approve all forfeitures. The AFC shall not extend below the rank of Deputy Chief.
 - B. Local Asset Forfeiture Specialist: The Bureau Chief/DOCCS Unit Head shall be responsible for communicating with the adopting agency, and ensuring the required documentation is submitted to the AFC.
 - C. Seized Instrument: All legal currency or tangible property that may be appropriate for forfeiture. This may include, but is not limited to: vehicles, boats, jewelry, and real estate.
 - D. Memorandum of Understanding (MOU): A written agreement between State or Federal agencies and/or local governmental entities entered into for the purpose of carrying out a governmental function that is of mutual benefit to all parties to such an agreement.
 - E. Department: New York State Department of Corrections and Community Supervision.
 - F. DOCCS Employee: For the purpose of this policy, shall mean any DOCCS Peace Officer.

- G. Unit Head: A managerial position responsible for staff assigned to field operations (OSI, Community Supervision Operation Center, etc.) other than supervision of parolees.
- H. Adoption of a Federal, State, or Local Seizure: A federal adoption occurs when a state or local law enforcement agency seizes property and requests one of the federal seizing agencies to adopt the seizure and proceed with Federal forfeiture. The Federal agency may adopt such seized property for forfeiture where the conduct giving rise to the seizure is in violation of federal law, and where federal law provides for forfeiture. The NYS Attorney General's Office, or a local District Attorney, may also choose to initiate forfeiture proceedings pursuant to their statutory authority. In all these instances, DOCCS may elect to seek equitable sharing of a seized instrument depending on the involvement of DOCCS staff.
- I. Asset Forfeiture Information Statement: Document with attachments describing how and why an asset was seized.
- J. DAG-71: A Federal form used to request the transfer of seized assets to the Department. This form must be submitted with [Form #AF101](#), "Asset Forfeiture Information Statement."
- K. Holding Account: An individual bank account established at a financial institution and maintained by DOCCS' Central Office Budget and Finance Unit to serve solely as a temporary account for Department employees to deposit any seized monetary assets. Any monetary asset deposited into this account will be held until such time when the Agency's Asset Forfeiture Specialist notifies the Director of Budget and Finance of the final determination regarding the status of the seized monetary asset.

IV. PROCEDURE

A. Department Participation

1. Seizures Through Joint Investigations or Operations

- a) The Department can participate in the Asset Forfeiture and Equitable Sharing Program through a joint investigation in which a Federal, State, or local law enforcement agency works directly with the Department to enforce Federal or State laws.
- b) Whenever a seizure is made through a joint investigation or operation, the DOCCS Local Asset Forfeiture Coordinator should document the number of hours staff expended on the investigation or operation as well as the level of their contribution to the investigation or operation. In addition, the Local Asset Forfeiture Coordinator should attempt to reach consensus with the other participating law enforcement entities as to the percentage share of the equitable distribution. Within five days of the seizure, this information and the related documentation should be provided to the Agency AFC in the Office of Special Investigations, NY. Department of Corrections and Community Supervision, 1220 Washington Avenue, Albany, NY 12226. This information may also be provided via email to the AFC.
- c) The Department's AFC will work with the appropriate Federal, State, or local agency to ascertain the appropriate share of any equitable distribution to be paid to the Department from an asset that has been seized and deemed forfeited following a Federal judicial proceeding.

2. Federal Adoption of Seizures Made by Department Staff Only

- a. The Department can also participate in the Asset Forfeiture and Equitable Sharing Program when it independently seizes an asset. In these cases, the Department must request that the appropriate agency adopt the Department's seizure within 30 calendar days from the date that the asset was seized.

- b. It is the policy of the Department that:

- (1) Only approved assets are to be seized by DOCCS staff when effecting seizures independently based on approval from the AFC;
- (2) When DOCCS participates in joint operations or investigations with other State or Federal agencies, those other agencies, while acting as the lead agency, may seize other types of property as allowed by law.

NOTE: In such instances, DOCCS staff shall proceed in accordance with Section IV-A-1 above.

- (3) The sharing percentage of the equitable distribution to which DOCCS is entitled is based on the net proceeds of the forfeiture, and reflect the degree of direct participation by the Department, as determined by comparing the number of hours expended by Department staff to that of the other agencies involved. The U.S. Department of Justice is generally allocated 20% of the net proceeds, regardless of its degree of participation in the seizure. State and local seizures are shared based upon NYS statute at the discretion of the prosecutor.

3. Seizure of Assets

- a. When DOCCS staff observe any asset, which they reasonably believe are the proceeds of illegal activity, they shall secure the property and immediately notify the immediate supervisor that an asset has been secured for possible seizure.
- b. The Senior Parole Officer/OSI Supervisor shall immediately notify the Bureau Chief, OSI Deputy Chief, or Unit Head, regardless of the time of day or the day of the week.
- c. The Senior Parole Officer/OSI Supervisor shall proceed to the location of seizure or provide verbal direction to the responding staff regarding how to proceed. This supervisory review shall be for the purpose of determining whether there is probable cause (see [Form #2790A](#), "Probable Cause Checklist") to believe the asset represents the proceeds of illegal activity.
- d. DOCCS Staff shall interview all persons present at the seizure location and attempt to locate and secure:
 - (1) An admission of ownership from the parolee or other person present at the location of the seizure – this admission must be reduced to a written memorandum that is signed and dated by the individual claiming ownership as well as the witnessing DOCCS staff (a standard deposition form can be used for this purpose). Any refusal to sign the statement must be witnessed by two DOCCS staff members;
 - (2) Controlled Substances;

- (3) Drug records and/or drug paraphernalia;
 - (4) Statements of non-ownership by those present at the location of the seizure – these statements must be reduced to a written memorandum that is signed and dated by the individual not claiming ownership ([Form #2790B](#), “Statement of Non-Ownership for Seized Asset/Property”) as well as the witnessing Parole Officer. Any refusal to sign the statement must be witnessed by two DOCCS staff members; and
 - (5) Evidence of other illegal activities (Gambling, Weapons Trafficking, Prostitution/Human Trafficking, etc.).
- e. If the Senior Parole Officer/OSI Supervisor determines that there is NO probable cause to support a seizure, the asset shall not be seized.
- f. If the Senior Parole Officer/OSI Supervisor determines that there is probable cause to support the seizure of the asset, Department staff will proceed as follows:
 - (1) Ensure that all evidence is properly secured including but not limited to money, drugs/narcotics, weapons, etc.;
 - (2) Notify law enforcement if arrest is deemed warranted;
 - (3) Determine if evidence will remain in DOCCS or Law Enforcement custody. If another Law Enforcement Agency will be retaining custody, DOCCS staff shall obtain a copy of any evidence receipts; and
 - (4) The seized asset shall be vouchered by completing the Department’s [Form #CS4096](#), “Property Receipt,” indicating the seizure. The items shall be placed in an evidence bag or envelope. At the time of the sealing of the evidence bag or envelope, the officer sealing the bag or envelope as well as one additional DOCCS witness should sign and print their name and date the bag or envelope. The owner/possessor should also be asked to sign, print their name, and date the bag or envelope. If the owner/possessor refuses to sign, the seizing officers should indicate “Refused to sign” on the envelope.
- g. This property receipt must be signed by DOCCS Staff and a copy provided to the parolee or individual claiming ownership of the asset or the subject from whom the asset was seized. The original must also be retained by the Parole Officer/DOCCS staff member preparing this document and placed within the case file.
- h. For all seizures, the parolee or individual claiming ownership must be provided with [Form #AF102](#), “Statement of Innocent Ownership for a Seized Asset,” which allows such individual to provide proof that the asset was obtained legally. Such proof must be submitted to DOCCS within ten calendar days from the date of seizure.
- i. Any currency not immediately deposited in the Department’s holding account shall be placed in an office safe, without delay, once leaving the location of the seizure. On the day of the seizure, but no later than the next business day, a minimum of two officers shall proceed to a financial institution, as designated

by DOCCS' Budget and Finance Office, and in the presence of a bank employee, unseal the evidence bag or envelope and electronically count the seized currency. The total of the seized currency will be recorded and included on [Form #AF101](#). The seized currency should then be deposited into the Department's Holding Account. The original copy of the deposit slip shall be forwarded to the DOCCS Director of Budget and Finance. Copies of the deposit slip shall be retained with the Asset Forfeiture documentation or OSI investigative file. Copies of the completed file shall be maintained by the Community Supervision Regional Office and the DOCCS AFC. The deposit slips for this account can be obtained by contacting the DOCCS Budget and Finance Office, 1220 Washington Avenue, Albany, NY 12226.

- j. All controlled substances, weapons, or other evidence seized must be handled in accordance with Department policies.
- k. DOCCS staff, with the assistance of a supervisor, must complete [Form #AF101](#) and the accompanying checklist.
 - (1) All completed documents must be reviewed and approved by a DOCCS Supervisor; and
 - (2) Received by the AFC at the Office of Special Investigations, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue, Albany, NY 12226, within five calendar days of the seizure. It is the responsibility of the Bureau Chief/OSI Supervisor to make certain this document is received by the AFC within the established time frame. All written statements and a copy of the deposit slip must accompany this form. If [Form #AF101](#) and the accompanying documents are faxed to the AFC, the original must be mailed to the above-noted address. This information may also be transmitted via email.
- l. The Agency AFC shall review all documents and determine whether to file a Request for Adoption with the appropriate Federal agency. The Agency AFC shall prepare and submit all documents and applications necessary for review to the appropriate Federal agency. The Request for Adoption shall be submitted to the Federal agency within 30 calendar days from the date the property was seized. The AFC shall then be the liaison between the Federal agency and the Department. If the seizure is being processed by a State or local prosecutor, the AFC shall coordinate with that entity to ensure that DOCCS' interests in that seizure are maintained.
- m. If a Federal agency adopts the seizure, it will assume all further responsibilities associated with the subsequent civil forfeiture proceeding. Upon adoption, the Director of Budget and Finance or designee, at the request of the Agency AFC, shall issue a check to the Federal agency from the above referenced Holding Account in the exact amount of currency seized.
- n. If a seizure is not adopted by a Federal agency or by a State or local prosecutor, all seized instruments shall be returned to the parolee or other appropriate party. If currency was seized, the Director of Budget and Finance, at the request of the Agency AFC, shall issue a check on the above account in

the exact amount seized that is payable to the person from whom it was seized. A signed receipt accounting for all property returned shall be secured by the AFC.

- o. Any unclaimed instrument shall be deemed forfeited to the State of New York in accordance with applicable statute.

V. EQUITABLE SHARING

- A. At the conclusion of any forfeiture process, any funds obtained via Federal equitable sharing or State/local forfeiture shall be deposited into the Department's Asset Forfeiture Account.

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Probable Cause Checklist

- _____ Controlled Substances found in excess of personal use
- _____ Observation by LEA (Buys, Surveillance, etc.)
- _____ Admission by violator
- _____ Cutting, packaging materials or paraphernalia
- _____ Co-mingled with OAF
- _____ Conflicting statements
- _____ Criminal history drug offenses
- _____ Denominations and packaging
- _____ CI information
- _____ No legitimate income
- _____ Ownership Disclaimer
- _____ Dangerous pet/Animal Alert
- _____ Currency in excess of \$10,000
- _____ Vehicle with hidden compartments
- _____ Drug records
- _____ Associates with known drug associates
- _____ Attempts to mask odor
- _____ Attempts to conceal
- _____ Courier characteristics

Name

Date

Supervisor

Date

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

STATEMENT OF NON-OWNERSHIP
FOR A SEIZED ASSET/PROPERTY

(Must be submitted within 10 days of seizure)

TO: New York State Department of
Corrections and Community Supervision
Office of Counsel
1220 Washington Avenue Bldg. 9
Albany, NY 12206

From: _____

Re: _____
(Name) (NYSID #, if applicable)

I, _____, hereby declare that the property seized:

(_____) by staff of the N.Y.S.
(Description of the Property Seized)

Department of Corrections and Community Supervision, at the following location:

(Address)

, is not my property and that I have no ownership interest of any kind in such property.

I declare under the penalty of perjury that my statement of non-ownership in the above-identified property is true.

Print Name: _____
(Signature) (Date)

Witnessed by: _____
(Print Name) (Signature) (Date)

Distribution: Original – OSI Agency Forfeiture Coordinator
Copy – OSI Case File, Community Supervision Case File
Copy – DOCCS Budget & Finance
Copy – Bureau Chief (Community Supervision)

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

ASSET FORFEITURE INFORMATION STATEMENT

Instructions:

The Area Office/Unit responsible for a seizure is to complete this form and submit it to the Office of Counsel. **This form must be received by Office of Counsel within five days of the seizure with** the completed Federal Asset Forfeiture "DAG-71" form and all supporting documentation identified on the annexed Federal Asset Forfeiture checklist.

1) Name of Parolee/Parolee from whom assets were seized:

2) NYSID number of Parolee/Parolee from whom assets were seized:

3) Address of Parolee/Parolee from whom assets were seized:

4) Date of seizure:

5) Please provide a detailed description of the property seized:

(Please note, if cash is seized, keep a record of the monetary denominations. For example, the number \$100 bills, \$50 bills, \$20 bills, \$10 bills, \$5 bills, \$1 bills, etc., that were seized)

6) From where was the property seized:

Parolee/Parolee's Residence () Parolee/Parolee's Person ()

Parolee/Parolee's Vehicle () Other ()

Explain:

Distribution: Original – OSI Agency Forfeiture Coordinator
Copy – OSI Case File, Community Supervision Case File
Copy – DOCCS Budget & Finance
Copy – Bureau Chief (Community Supervision)

7) Were any other individuals present when property/assets were seized?

Yes () No ()

If, "Yes", you must provide the name and address of all those present (please state whether such persons have been arrested, and if so, where incarcerated):

(annex an additional sheet if necessary)

8) Were the assets seized pursuant to a search warrant?

Yes () No ()

If "Yes", explain circumstances:

(annex an additional sheet if necessary)

Also, if "Yes", has an Ex Parte Motion for Turnover Order been obtained?

Yes () No ()

(Please note that an Ex Parte Motion for Turnover Order must be obtained for every forfeiture made pursuant to a search warrant)

9) Has a parole violation warrant been executed against the parolee/parolee?

Yes () No ()

Warrant No. _____ (**attach a copy of the warrant**)

If "Yes", where is the parolee/parolee currently incarcerated, include address:

10) Were any other police departments or law enforcement agencies involved in the seizure?

Yes ()

No ()

If "Yes", list all other agencies involved and their contact persons:

(annex an additional sheet if necessary)

Also, if "Yes", which agency has agreed to act as the lead agency:

11) Have any other agencies expressed an interest in sharing the proceeds resulting from this seizure?

Yes ()

No ()

If "Yes", list those agencies and the percentage of proceeds that each agency is requesting:

12) Are criminal charges currently pending against the parolee/releasee from whom assets were seized?

Yes ()

No ()

If "Yes", has the State or local prosecutor declined to proceed with forfeiture under State law?

Yes ()

No ()

Provide the name and phone number of the State or local prosecutor and declination date:

State/Local Prosecutor

Date

Distribution: Original – OSI Agency Forfeiture Coordinator
 Copy – OSI Case File, Community Supervision Case File
 Copy – DOCCS Budget & Finance
 Copy – Bureau Chief (Community Supervision)

13) Has a declination letter been obtained from such prosecutor:

Yes ()

No ()

(Please note that a declination letter must be received from the local District Attorney's office for every seizure made, whether or not there are criminal charges pending)

14) Has any federal agency been contacted with respect to this seizure?

Yes ()

No ()

If "Yes", list all federal agencies that have been contacted and when:

15) Has any federal agency declined to proceed with a forfeiture of this seizure under federal law?

Yes ()

No ()

If "Yes", list all federal agencies that have declined and provide date of declination:

16) Provide a detailed, typewritten statement of why this property was seized and the probable cause that formed the basis of this seizure; attach additional pages if necessary.

Distribution: Original – OSI Agency Forfeiture Coordinator
Copy – OSI Case File, Community Supervision Case File
Copy – DOCCS Budget & Finance
Copy – Bureau Chief (Community Supervision)

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

Date

Title (please print)

Page 5 of 6

FEDERAL ASSET FORFEITURE CHECKLIST

Request Form for Adoption of State and Local Seizure

- _____ Copies of all police reports concerning the seizure; ***these must be attached***
- _____ Copies of Search Warrants and Affidavits, if applicable; ***these must be attached***
- _____ Copies of consent to search forms, if applicable; ***these must be attached***
- _____ Laboratory Analysis Report; ***copy must be attached***
- _____ Copies of all signed property receipts; ***these must be attached***
- _____ Copies of all signed disclaimer forms; ***these must be attached***
- _____ Copies of all signed statements; ***these must be attached***

Quick Reference to Federal Asset Forfeiture

<https://www.justice.gov/criminal-mlars/equitable-sharing-program>

Distribution: Original – OSI Agency Forfeiture Coordinator
Copy – OSI Case File, Community Supervision Case File
Copy – DOCCS Budget & Finance
Copy – Bureau Chief (Community Supervision)

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

STATEMENT OF INNOCENT OWNERSHIP
FOR A SEIZED ASSET

(Must be submitted within 10 days of seizure)

TO: New York State DOCCS
Office of Counsel
1220 Washington Avenue Bldg. 9
Albany, N.Y. 12206

From: _____

Re: _____
(Name) (NYSID #, If Applicable)

I, _____, claim that the property seized by staff of the NYS Department of Corrections and Community Supervision on _____, at the following location: _____, is my property and is not the proceeds of illegal activity. Below is my statement as to the manner by which the seized property came into my lawful possession and is regarded as being my personal property. (To support your claim of ownership, you must submit with this memorandum any documentation that supports ownership; for example, bank receipts, pay stubs, tax refund receipts, etc.)

I declare under the penalty of perjury that the information provided by me in support of my claim of ownership is correct.

Dated: _____ (Signature)

Distribution: Original – OSI Agency Forfeiture Coordinator
Copy – OSI Case File, Community Supervision Case File
Copy – DOCCS Budget & Finance
Copy – Bureau Chief (Community Supervision)

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

PROPERTY RECEIPT

The below listed items were removed from the person, residence, or other location as a result of a search conducted on _____ at _____ in the presence of _____ No. _____ or in _____
(parolee's/releasee's name) (NYSID)

the presence of the person who granted permission to search, _____.
(Signature of/or identity of person)

Property items are listed:

Description

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

Parole Officer

Date

Witnessed:

Signature of Accompanying Officer

Date

cc: Original to parolee / releasee or person permitting search
Copy to file