

# COUNTY of HIDALGO

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EDINBURG, TEXAS 78539

November 19, 2012

The Honorable Rene Guerra  
Hidalgo County Criminal District Attorney  
Hidalgo County Courthouse  
100 N. Closner, 3<sup>rd</sup> Floor  
Edinburg, Texas 78539

Re: Audit of the Chapter 59 Asset Forfeiture Audit Report by Attorney Representing the State  
For the Fiscal Year Ended August 31, 2012  
Audit No. 2012-36

Dear Mr. Guerra:

We have completed an audit of the "Chapter 59 Asset Forfeiture Audit Report by Attorney Representing the State" (Asset Forfeiture Report) for the fiscal year ended August 31, 2012 pursuant to Code of Criminal Procedure § 59.06 (g)(1), Local Government Code § 115.001 and § 115.0035, and our annual audit plan. The objective of the audit was to determine whether Chapter 59 seizures, forfeitures, receipts, and expenditures were properly accounted and reported.

### **Background:**

Code of Criminal Procedure (CCP) Chapter 59 "Forfeiture of Contraband" provides for the forfeiture of contraband seized by peace officers employed by law enforcement agencies of the state and its political subdivisions. Chapter 59 defines "contraband" as property of any nature (including real, personal, tangible, or intangible property) that is used or intended for use in the commission of certain enumerated felonies, Class A and Class B misdemeanors, or property that is gained, acquired, and/or used to facilitate the commission of certain enumerated felonies and misdemeanors.

For the fiscal year ended August 31, 2012, the District Attorney's Office had Chapter 59 seizures as follows: cash totaling \$ 960.00, 15 vehicles, and 64 other miscellaneous items. In addition, the following was awarded (forfeited) to the District Attorney's Office: cash totaling \$ 146,516.13, 22 vehicles, and 63 other miscellaneous items.

Pursuant to CCP § 59.03 (c), a peace officer having custody of property must provide to the District Attorney a sworn statement that contains a schedule of the property seized, an acknowledgment that the officer has seized the property, and a list of the officer's reasons for the seizure. In addition, "not later than 72 hours after the seizure, the peace officer shall: (1) place the property under seal; (2) remove the property to a place ordered by the court; or (3) require a law enforcement agency of the state or a political subdivision to take custody of the property and move it to a proper location."

Pursuant to CCP § 59.04 (a) & (b), the District Attorney must commence forfeiture proceedings by filing a notice of the seizure and intended forfeiture (petition) with the District Clerk's Office not later than the 30th day after the date of the seizure.

Pursuant to CCP § 59.05 (b), forfeiture proceedings are conducted in accordance with rules and principles governing civil cases. If the court finds that the state has proven by a preponderance of the evidence that all or part of the seized property is subject to forfeiture, the judge shall forfeit the property to the state. Pursuant to CCP § 59.06 (f), a final judgment of forfeiture perfects the state's title to the forfeited property.

Pursuant to CCP § 59.05 (f), the District Clerk is entitled to court costs in forfeitures to the state of an amount greater than \$2,500 as in other civil proceedings.

### **HIDALGO COUNTY DISTRICT JUDGES**

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JUDGE, 92<sup>nd</sup> D.C.

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J. R. "BOBBY" FLORES  
JUDGE, 139<sup>th</sup> D.C.

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JUDGE, 275<sup>th</sup> D.C.

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JUDGE, 430<sup>th</sup> D.C.

JESSE CONTRERAS  
JUDGE, 449<sup>th</sup> D.C.

Pursuant to CCP § 59.06 (a), all forfeited property is administered by the District Attorney, acting as the agent of the state, in accordance with accepted accounting practices and with the provisions of any local agreement entered into between the District Attorney and law enforcement agencies (LEAs). If a local agreement has not been executed, the property shall be sold on the 75<sup>th</sup> day after the date of the final judgment of forfeiture at public auction under the direction of the county sheriff. Proceeds of the sale must be distributed in accordance with CCP § 59.06.

Pursuant to CCP § 59.06 (b), if a local agreement exists between the District Attorney and the LEA, the District Attorney may transfer the property to the LEA. Furthermore, CCP § 59.06 (c) states, if a local agreement exists between the District Attorney and LEAs, all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items shall be deposited, after the deduction of court costs which the District Clerk is entitled, into one or more of the following funds: (1) a special fund in the county treasury for the benefit of the District Attorney's Office, to be used by the District Attorney solely for the official purposes of his office; or (2) a special fund in the county treasury if distributed to a county LEA, to be used solely for law enforcement purposes, such as salaries and overtime pay for officers, officer training, specialized investigative equipment and supplies, and items used by officers in direct law enforcement duties.

Pursuant to CCP § 59.06 (b), the District Attorney's office entered into local agreements with the following LEAs: Cities of Alamo, Alton, Donna, Edinburg, Elsa, Hidalgo, La Joya, McAllen, Mercedes, Palmview, Penitas, Pharr, San Juan, Sullivan City, Weslaco, Mission, Edcouch, and Palmhurst; Constable Precinct 1; Constable Precinct 2; Constable Precinct 4; Hidalgo County Sheriff's Office, Texas Department of Public Safety (DPS), and HIDTA. In addition, the Hidalgo County District Attorney's Office entered into a special agreement with the Harris County Attorney and the Hidalgo County Sheriff's Office.

Pursuant to the local agreements, personal property not used for law enforcement purposes is to be sold and proceeds from the sale shall be paid 50% to the LEA and 50% to the District Attorney's Office, with the exception of HIDTA, which is paid 100% of the proceeds; and DPS, which is paid 70% of the proceeds and 30% is paid to the District Attorney. In addition, pursuant to the local agreements, the LEAs are responsible for paying all court costs, attorney ad-litem fees, depositions, title searches, title policies, confidential informants, and all costs related to forfeitures of real estate and personal property. Furthermore, money and forfeiture judgments shall be considered forfeited to the State once a forfeiture judgment has become final and no motion for new trial or notice of appeal has been taken. Texas Rule of Appellate Procedure No. 26.1 states that a notice of appeal must be filed within 30 days after the judgment is signed, with a few enumerated exceptions.

Pursuant to CCP § 59.06 (c), all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, shall be deposited, after the deduction of court costs to which a district court clerk is entitled, according to the terms of the local agreement, into a special fund in the county treasury for the benefit of the District Attorney's Office, to be used solely for the official purposes of his office.

Pursuant to CCP § 59.06 (c-3) notwithstanding subsection (a), with respect to forfeited property seized in connection with a violation of Chapter 481, Health and Safety Code (Texas Controlled Substances Act), by the Department of Public Safety, in a proceeding under Article 59.05 in which a default judgment is rendered in favor of the state, the District Attorney shall enter into a local agreement with the department that allows the District Attorney either to: (1) transfer forfeited property to the department to maintain, repair, use, and operate for official purposes in the manner provided by subsection (b); or (2) allocate proceeds from the sale of forfeited property described by subsection (c), after the deduction of court costs as described by that subsection, in the following proportions: (A) 40 percent to a special fund in the department to be used solely for law enforcement purposes; (B) 30 percent to a special fund in the county treasury for the benefit of the District Attorney's Office, to be used solely for the official purposes of the District Attorney's Office; and (C) 30 percent to the general revenue fund.

Pursuant to CCP § 59.06 (d) proceeds awarded to a law enforcement agency or District Attorney's Office may be spent after a detailed budget has been submitted to Commissioners Court. The budget may not list details that would endanger the security of an investigation or prosecution. Commissioners Court may not use the existence of an award to offset or decrease total salaries, expenses, and allowances that the District Attorney receives from the Commissioners Court at or after the time the proceeds are awarded.

Pursuant to CCP § 59.06 (d-1) the District Attorney may not use proceeds or property received under this chapter to: (1) contribute to a political campaign; (2) make a donation to any entity, except as provided by Subsection (d-2); (3) pay expenses related to the training or education of any member of the judiciary; (4) pay any travel expenses

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related to attendance at training or education seminars if the expenses violate generally applicable restrictions established by the commissioners court; (5) purchase alcoholic beverages; (6) make any expenditure not approved by the commissioners court, if the District Attorney holds an elective office and: (A) the deadline for filing an application for a place on the ballot as a candidate for reelection to that office in the general primary election has passed and the person did not file an application for a place on that ballot; or (B) during the person's current term of office, the person was a candidate in a primary, general, or runoff election for reelection to that office and was not the prevailing candidate in that election; or (7) increase a salary, expense, or allowance for an employee of the District Attorney's Office who is budgeted by the commissioners court unless the commissioners court first approves the increase.

Transportation Code § 501.022 (a)(2) states "the owner of a motor vehicle registered in this state may not operate or permit the operation of the vehicle on a public highway until the owner obtains: (A) title and registration for the vehicle; or (B) a receipt evidencing title for registration purposes only under Section 501.029. Transportation Code § 501.022 (b) states "a person may not operate a motor vehicle registered in this state on a public highway if the person knows or has reason to believe that the owner has not obtained a title for the vehicle." Transportation Code § 501.022 (c) states "the owner of a motor vehicle that is required to be titled and registered in this state must obtain a title to the vehicle before selling or disposing of the vehicle."

Transportation Code § 501.006 states that "on receipt of a verified request approved by the executive administrator of a law enforcement agency, the department may issue a title in the form requested by the executive administrator for a vehicle in an alias for the law enforcement agency's use in a covert criminal investigation."

#### **District Attorney's Procedures**

The District Attorney's Office requires LEAs to deposit seized currency into a certificate of deposit (CD) at the county depository under the name of the District Attorney's Office pending final disposition of the case. Seized personal property is maintained under the LEAs custody pending final disposition of the case. The LEA must provide the District Attorney's Office with a copy of the CD and receipt, if applicable, a sworn statement containing a schedule of the property seized, an acknowledgment that the officer seized the property, and a list of the officer's reasons for the seizure.

The District Attorney commences proceedings no later than the 30<sup>th</sup> day after the date of the seizure. The petitions are filed with the District Clerk pursuant to CCP § 59.04 (a) & (b). Once a judgment is rendered, the currency and/or personal property are distributed pursuant to the local agreement.

The District Attorney's Office determines whether forfeited personal property will be retained for official purpose of the District Attorney's Office or auctioned. If a vehicle is retained, the District Attorney submits an application for certificate of title, along with a copy of the final judgment, to the Texas Department of Motor Vehicles. Upon receipt, the original certificate of title is retained by the District Attorney's Office and insurance coverage is requested from the Department of Budget and Management's Safety Division. The District Attorney's Office subsequently sends a copy of the certificate of title, final judgment, proof of insurance coverage, and an asset tag request to the Purchasing Department's Fixed Assets Division. If the vehicle is not placed in use, a transfer form is prepared and the vehicle is declared surplus. The vehicle is safeguarded by the County's contracted auctioneer until the vehicle is auctioned.

The Purchasing Department is responsible for disposing of county assets. The Purchasing Department receives the auction proceeds and prepares a "Purchasing Department/ Fixed Asset Division Auction Report" that details the amount of proceeds to be receipted to each fund. The proceeds are then deposited with the Hidalgo County Treasurer to the credit of the applicable funds, including the District Attorney Investigation HB 65 Fund.

#### **Scope and Methodology:**

The scope of our audit was limited to a review of all seized currency and personal property for which a law enforcement agent's affidavit was made available to the County Auditor's Office for review and all forfeited currency and personal property for which a final judgment was rendered for the fiscal year ended August 31, 2012.

Our review was not designed nor intended to be a detailed study of every relevant control system, procedure, or transaction. Accordingly, the opportunities for improvement presented in this report may not be all-inclusive of areas where improvements could be made.

The responsibility for establishing and maintaining a sound internal control system rests with management. The objectives of an internal control system are to provide management with reasonable, but not absolute, assurance that

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assets are safeguarded against loss from unauthorized use or theft, and that transactions are executed in accordance with management's authorization and recorded properly.

In planning and performing our review, we conducted interviews with staff, sent confirmation letters to participating law enforcement agencies and financial institutions, reviewed applicable statutes, policies and procedures, and local agreements. The following procedures were performed:

1. Verified whether all Chapter 59 revenues recorded in *alio*, the County's financial accounting system, and required to be reported (i.e., cash forfeitures and interest) were included on the Asset Forfeiture Report.
2. Verified whether all Chapter 59 expenditures recorded in *alio* were included on the Asset Forfeiture Report and made solely for official purposes of the District Attorney's Office.
3. Reviewed the salary schedule adopted by Commissioners Court and compared it to District Attorney's Chapter 59 Forfeiture Fund "2012 Hourly Rate" report for the calendar year 2012 to verify whether the actual salary paid to employees did not exceed the budgeted salary amounts.
4. Compared schedules of forfeited assets prepared by the District Attorney's Office for the fiscal year ended August 31, 2012 to the "Cases disposed" reports generated from *AbleTerm* and *Odyssey*, the County's justice information systems, for the same period to determine if all forfeitures were reported on the Asset Forfeiture Report.
5. Compared schedules of seized assets prepared by the District Attorney's Office for the fiscal year ended August 31, 2012 to the "Cases filed" reports generated from *AbleTerm* and *Odyssey* for the same period to determine if all seizures were reported on the Asset Forfeiture Report.
6. Compared the list of CDs held by the county depository on behalf of the District Attorney's Office to the District Attorney's HB 65 financial statements as of August 31, 2012 to determine if all CD were properly accounted by the District Attorney's Office.
7. Reviewed confirmation letter responses received from LEAs that participated with the District Attorney's Office in Chapter 59 seizures to determine whether the seized and forfeited items and currency reported by the LEAs agreed to those reported by District Attorney's Office on the Asset Forfeiture Report.
8. Reviewed the procedures in place for the accounting of auction proceeds resulting from the sale of forfeited personal property by LEAs. In addition, we reviewed *alio* revenue reports and confirmation letters received from LEAs regarding forfeited vehicles sold through auction to determine if the District Attorney's portion of the auction proceeds were sent to the County Treasurer's Office within 30 days of the auction.
9. Reviewed the District Attorney's schedules of forfeited assets, *alio* revenue reports, and the Purchasing Department's "Auction Report" to determine if auction proceeds generated from the sale of forfeited vehicles were apportioned to the District Attorney Investigation HB 65 Fund by the Hidalgo County's Purchasing Department within 30 days of the auction.
10. Selected all 14 vehicles forfeited to the District Attorney that were not auctioned for physical identification and to determine whether the vehicles were assigned an asset tag number and insurance coverage was obtained.
11. Requested copies of the certificates of title from the Purchasing Department's Fixed Assets Division to determine if the 14 forfeited vehicles were titled to Hidalgo County.
12. Reviewed the affidavits prepared by the seizing officers and the CD receipts to determine if the CDs for the seized cash were opened in the amount noted on the affidavits within 72 hours of the seizure. In addition, we verified whether the seized amounts noted on the petitions filed by the District Attorney's Office agreed to the CD amounts and the seizing officers' affidavits.
13. Reviewed the CDs listed on the District Attorney's HB 65 financial statements as of August 31, 2012 and applicable case disposition information to determine if any funds were pending to be distributed to the proper parties.
14. Reviewed the "Due to others" accounts on the District Attorney's HB 65 financial statements as of August 31, 2012 to determine if a subsidiary ledger detailing to whom the funds were owed was maintained and if the funds were disbursed in a timely manner.

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15. Reviewed schedules of filed cases generated from *AbleTerm* and *Odyssey* to determine if petitions were filed by the District Attorney's Office no later than the 30<sup>th</sup> day after the date of the seizure pursuant to CCP § 59.04 (a) & (b).
16. Reviewed cases, judgments, and checks issued by the District Attorney's Office to determine if forfeited funds were disbursed after the forfeited judgment became final (30 days after the judgment was signed) pursuant to the Texas Rule of Appellate Procedure No. 26.1.
17. Reviewed judgments, checks issued, "District Attorney Accounting Control Sheet," and county depository bank statements for the period under review to determine if forfeited funds were disbursed pursuant to the judgment and applicable local agreement.

**Conclusion:**

Based on the results of our audit, we have determined that generally Chapter 59 seizures, forfeitures, receipts, and expenditures were properly accounted and reported. More specifically, the following was noted:

- All Chapter 59 revenues recorded in *alio* and required to be reported were included on the Asset Forfeiture Report.
- All Chapter 59 expenditures recorded in *alio* were included on the Asset Forfeiture Report and made solely for official purposes of the District Attorney's Office.
- Employees actual salaries paid from the District Attorney Investigation HB65 Fund complied with the salary schedule approved by Commissioners Court.
- All forfeited assets listed on the schedules prepared by the District Attorney's Office and the "Cases disposed" reports generated from *AbleTerm* and *Odyssey* were included on the Asset Forfeiture Report.
- All seized assets listed on the schedules prepared by the District Attorney's Office and the "Cases filed" reports generated from *AbleTerm* and *Odyssey* were included on the Asset Forfeiture Report.
- There were 99 CDs totaling \$4,288,887.79 held as of August 31, 2012 at the county depository. All 99 CDs were properly accounted by the District Attorney's Office.
- Confirmation letters were sent to the 16 LEAs that were identified as having Chapter 59 seizures to determine whether the seized and forfeited items and currency reported by the LEAs agreed to those reported by the District Attorney's Office on the Asset Forfeiture Report. Of the 8 LEAs that responded to the confirmation request:
  - 7 reported the same seized and forfeited items and currency that were reported by the District Attorney's Office on the Asset Forfeiture Report.
  - 1 reported no activity during the reporting period; however, according to records maintained by the District Attorney's Office, the LEA did seize currency and personal property during the reporting period. The currency and personal property seized by the LEA was reported by the District Attorney's Office on the Asset Forfeiture Report.

However, improvements could be made to the system of internal controls for the accounting and reporting of Chapter 59 seizures, forfeitures, receipts, and expenditures. More specifically, the following was noted:

1. The District Attorney's Office does not have any procedures in place to ensure that auction proceeds from the sale of personal property by LEAs are forwarded to the County Treasurer pursuant to the local agreements. For example, of 16 confirmation letters sent to LEAs, 3 (City of McAllen, City of Edinburg, City of Mission) were received confirming that proceeds totaling \$192,575.00 (\$128,875.00, \$7,750.00 and \$55,950.00) had been received from the auction of forfeited personal property during the period of review. However, as of the date of this report, the portion belonging to the District Attorney totaling \$96,287.50 (\$64,437.50, \$3,875.00 and \$27,975.00) has not been forwarded to the County Treasurer. According to the local agreements, the auction proceeds should have been forwarded within 30 days of the sale.
2. The County conducted auctions on February 18, 2012 and April 28, 2012 that generated Chapter 59 proceeds for the District Attorney's Office in the amount of \$87,296.00 and \$81,752.00, respectively. The proceeds from the February 18, 2012 auction were not apportioned to the District Attorney's Investigation HB 65 Fund within the 30 days of the sale as required by the local agreement. The funds were apportioned 223 days after the auction. The proceeds generated from the April 28, 2012 auction had not been apportioned to the District Attorney Investigation HB 65 Fund as of the date of this report.

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**HIDALGO COUNTY DISTRICT JUDGES**

3. Of the 14 forfeited vehicles retained by the District Attorney's Office:
  - 13 were physically located.
    - 1 was assigned an asset tag and insurance coverage was obtained; however, the asset tag was not affixed to the vehicle. According to the District Attorney's Human Resource Coordinator, the asset tag was affixed to the vehicle after our inquiry.
    - 12 did not have an asset tag and insurance coverage was not obtained. According to the Human Resource Coordinator, the vehicles will be sold through auction. Furthermore, 1 of the 12 assets was a 2002 Great Dane Trailer, which was being stored at the premises of the auctioneer previously contracted by the County.
  - 1 was not physically located (1999 Freightliner Tractor). The vehicle had not been assigned an asset tag and insurance coverage had not been obtained. We located a Freightliner Tractor at the currently contracted auctioneer's place of business; however, we could not confirm whether it was the missing Freightliner Tractor since the VIN (vehicle identification number) did not agree to the VIN on the judgment. According to the Human Resource Coordinator, the VIN for the 1999 Freightliner Tractor listed on the judgment was incorrect.
4. The 14 forfeited vehicles were not titled to Hidalgo County pursuant to Transportation Code § 501.022 and § 501.006. According to the Human Resource Coordinator, the vehicle title is not transferred to Hidalgo County until the vehicle is sold or retained for law enforcement purposes. However, 1 (2008 Chevy Malibu) of 14 vehicles was placed in use by the District Attorney's Office.
5. 51 cash seizures were made by LEAs and the District Attorney's Office during the period of review. Of the 51 cash seizures:
  - 19 CDs were opened within 72 hours of seizure.
  - 32 CDs were not opened within 72 hours of seizure. The CDs were opened 4 to 39 days after the date of seizure.
  - 50 CDs were opened for the seized amount noted on the affidavit.
  - 1 CD was opened by the Sheriff's Office's Accountant for \$10.05 more than the amount noted on the affidavit (\$3,255,189.45 instead of \$3,255,179.40.) According to the Sheriff's Office Accountant, an error was made on the affidavit.
  - The seized amount noted on 2 petitions (\$32,200.00 & \$35,377.00) filed by the District Attorney's Office did not agree to the CD amount and the seizing officer's affidavit (\$31,200.00 & \$35,317.00, respectively). According to the District Attorney's Office Accountant, an error was made on the petitions and a correction would be made at the time the judgment was rendered.
6. There were 26 CDs totaling \$97,447.01 (see Exhibit A) held by the District Attorney's Office in which an order for non-suit or final judgment had been rendered as of August 31, 2012; however, the funds remained to be distributed pursuant to the local agreement and the judgment. The orders for non-suit or final judgments were rendered as early as 2001.

In addition, there were 34 CDs totaling \$141,876.69 for which we could not determine if a non-suit or final judgment had been rendered (see Exhibit B) since sufficient information to identify the case for which the CD was opened was not provided by the District Attorney's Office. The CDs were opened as early as 2001.
7. As of August 31, 2012, the "Due to Others" account on the District Attorney's HB 65 financial statements had a balance of \$31,031.48; however, a subsidiary ledger detailing to whom the funds were owed was not maintained. This balance has been carried forward since at least December 2003.
8. There were 211 petitions filed by the District Attorney's Office during the period of review. Of the 211 petitions, 13 petitions (disposition pending on 5 cases; default judgment rendered on 7 cases; modified judgment rendered on 1 case) were not filed within 30 days after the date of seizure as required by CCP § 59.04 (a) & (b). The petitions were filed from 1 to 50 days late.
9. Of 48 cases in which forfeited funds were distributed during the period of review, forfeited funds for 3 cases, in which a final judgment was rendered, were disbursed prior to the 30 days allowed to file a motion for new trial or notice of appeal.
10. Forfeited funds were not disbursed pursuant to the judgment and applicable local agreement as follows:

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- Of 178 judgments, forfeited funds for 1 judgment were disbursed without making payment of court costs to the District Clerk. The final judgment amount was greater than \$2,500.00.
- Court costs for 7 cases were paid to the District Clerk, although the final judgment amount was less than \$2,500.00.
- The District Attorney's Office did not distribute to DPS 70% of the auction proceeds from the sale of personal property, after the deduction of applicable forfeiture costs, as required by the local agreement. Total auction proceeds from the sale of personal property that needed to be shared with DPS during the period of review totaled \$55,000.00.

In addition, we noted that the District Attorney's Office distributed forfeited funds to the City of Harlingen's Police Department pursuant to a judgment. The forfeited funds had been seized by the Department of Public Safety. We found no evidence that a formal agreement was made with the Department of Public Safety to award the forfeited funds to the City of Harlingen's Police Department. According to the Assistant District Attorney, a verbal agreement was made between the prosecutors to award the forfeited funds to the City of Harlingen's Police Department.

### **Recommendations:**

In our opinion, the issues identified during our review could be addressed by developing and implementing formal policies and procedures for the proper accounting and reporting of Chapter 59 seizures, forfeitures, receipts, and expenditures. At a minimum, procedures should require the District Attorney's Office to:

1. Coordinate with the LEAs to ensure that auction proceeds from the sale of forfeited property are distributed to the District Attorney's Office within 30 days of the auction. In addition, a formal request should be made that the District Attorney's portion of any auction proceeds currently being held by the LEAs be forwarded to the District Attorney's Office immediately. In the alternative, the requirement should be revised or removed from the local agreements.
2. Coordinate with Purchasing Department to ensure that auction proceeds from the sale of forfeited property are apportioned to the District Attorney Investigation HB 65 Fund within 30 days of the auction.
3. Coordinate with the auctioneer and the LEA that conducted the seizure to locate the vehicle not physically located. In addition, the District Attorney's Office should assign an employee responsibility for the accounting of forfeited vehicles. The employee should maintain a log that contains the following: vehicle forfeiture date, vehicle location, vehicle identification number, the name of the agency/auctioneer in possession of the vehicle, signature of the agency's representative/auctioneer acknowledging receipt of the vehicle, the agency the vehicle was seized by and the date the vehicle was declared surplus, and if applicable, the date the vehicle was sold through auction and the amount of auction proceeds received. Furthermore, forfeited property should be safeguarded on County property or at the premises of the auctioneer currently contracted by the County.
4. Ensure that a certificate of title is obtained pursuant to Transportation Code § 501.022 for forfeited vehicles whether the vehicle is retained for the official purpose of the District Attorney's Office or declared surplus. Management should ensure that the certificate of title is obtained for the vehicle (2008 Chevy Malibu) in use.
5. Require LEAs to open CDs within 72 hours of seizure. In addition, the District Attorney's Office should ensure that the CD receipt agrees to the seizing officer's affidavit and the petition prior to filing a petition with the court.
6. Ensure that CDs are distributed to the proper parties in a timely manner (30 days after the final judgment is signed). In addition, CDs should contain sufficient information to properly identify the case for which a CD was opened (e.g., cause number, law enforcement agency, seizure date, petition file date, etc).
7. Conduct research to identify the individual and/or organizations to which the "Due to Others" funds are owed and distribute the funds to the applicable parties in a timely manner. If the individuals are not identified, the funds should be escheated to the State Comptroller and/or County Treasurer, as appropriate. If the District Attorney's Office determines that funds consist of interest proceeds belonging to the District Attorney, the funds should be submitted to the County Treasurer's Office for deposit into the District Attorney Investigation HB65 Fund.

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#### **HIDALGO COUNTY DISTRICT JUDGES**

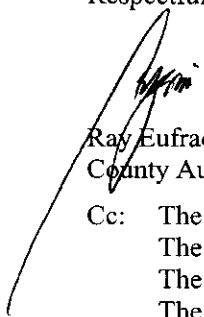
8. Ensure that petitions are filed on or before the 30th day after the date of the seizure as required by CCP § 59.04 (a) & (b).
9. Ensure that forfeited funds are only disbursed after the judgment becomes final (the judgment becomes final 30 days after it's signed and no motion for new trial or notice of appeal has been filed).
10. Ensure that forfeited funds are disbursed pursuant to the judgment and applicable local agreement. More specifically, court costs for forfeited amounts greater than \$2,500.00 should be paid to the District Clerk prior to disbursing the funds to the corresponding LEA. Court costs for forfeited amounts less than \$2,500.00 should not be paid. In addition, the District Attorney should ensure that 70% of the auction proceeds for personal property, after the deduction of applicable forfeiture costs, are distributed to DPS pursuant to the local agreement.

Furthermore, the District Attorney's Office should ensure that forfeited funds are distributed in accordance with the local agreement. If the judgment requires distribution of forfeited funds to an LEA for which a local agreement has not been executed, the District Attorney's Office should ensure that a local agreement with the LEA is formalized prior to the distribution of funds.

Please provide management responses to findings 1 through 10 noted in the conclusion section of the report by December 7, 2012.

If you have any questions or would like to schedule a meeting to discuss the above noted recommendations, please call Alex Martinez, Internal Auditor I, at 318-2511 ext. 4653, Letty Chavez, Compliance Audit Supervisor, at ext.4651, Arcy B. Duran, CPA, Director of Audit, at ext. 4644, or me at ext. 4604.

Respectfully,



Ray Eufrazio, CPA  
County Auditor

Cc: The Honorable Ramon Garcia, County Judge  
The Honorable Joel Quintanilla, Commissioner Precinct 1  
The Honorable Hector Palacios, Commissioner Precinct 2  
The Honorable Jose M. Flores, Commissioner Precinct 3  
The Honorable Joseph Palacios, Commissioner Precinct 4  
The Honorable Laura Hinojosa, District Clerk  
Mr. Kent Richardson, Assistant Attorney General

Attachments: Exhibits A through B  
Copy of the Chapter 59 Asset Forfeiture Report by Attorney Representing the State

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**HIDALGO COUNTY DISTRICT JUDGES**

RICARDO P. RODRIGUEZ, JR.  
JUDGE, 92<sup>ND</sup> D.C.

RODOLFO DELGADO  
JUDGE, 93<sup>RD</sup> D.C.

J. R. "BOBBY" FLORES  
JUDGE, 139<sup>TH</sup> D.C.

ROSE GUERRA REYNA  
JUDGE, 206<sup>TH</sup> D.C.

JUAN R. PARTIDA  
JUDGE, 275<sup>TH</sup> D.C.

MARIO E. RAMIREZ, JR.  
JUDGE, 332<sup>ND</sup> D.C.

NOE GONZALEZ  
JUDGE, 370<sup>TH</sup> D.C.  
OVERSEER

LETICIA LOPEZ  
JUDGE, 389<sup>TH</sup> D.C.

AIDA SALINAS FLORES  
JUDGE, 398<sup>TH</sup> D.C.

ISRAEL RAMON, JR.  
JUDGE, 430<sup>TH</sup> D.C.

JESSE CONTRERAS  
JUDGE, 448<sup>TH</sup> D.C.

# EXHIBIT A

## Schedule of Funds Pending to be Distributed

CD Number	Case Number	Disposition Type	Disposition Date	Current Balance as of 8/31/2012	
1	15029875	C-2082-00-C	Final Judgment	2/13/2003	19,943.01
2	15047105	C-1064-00-G	Dismissed by Plaintiff	3/5/2001	1,934.73
3	15047156	C-194-00-E	Dismissed by Plaintiff	11/6/2001	2,980.24
4	15047407	?	Case Declined	N/A	2,335.70
5	15048586	C-1475-04-H/C-1433-04-B	NonSuit	10/5/2004	8,062.91
6	15049493	C-1975-04-D	Dismissed by Plaintiff	10/26/2004	1,978.15
7	15056988	C-2575-05-H	Order for NonSuit	4/19/2006	1,008.34
8	15065782	C-2896-06-F	Order for NonSuit	3/14/2007	2,156.35
9	15065998	C-2963-06-D	Order for NonSuit	3/16/2007	1,617.37
10	15070573	C-2170-07-I	NonSuit	6/4/2008	1,973.46
11	15070778	C-2572-07-C	NonSuit	12/3/2007	1,190.21
12	15070840	C-2448-07-H	NonSuit	5/1/2008	3,313.30
13	15073734	?	Case Declined	N/A	956.73
14	15075109	C-2159-08-E	NonSuit	10/23/2008	2,042.19
15	15075621	C-2971-08-F	Dismissed by Plaintiff	3/17/2009	1,444.86
16	15078663	C-1991-09-J	Order for NonSuit	11/19/2009	617.07
17	15081710	C-3508-10-A	Final Judgment	9/20/2012	20,478.99
18	15081753	C-3374-10-H	NonSuit	3/31/2011	2,513.08
19	15082229	C-255-11-I	Dismissed by Plaintiff	6/8/2011	2,008.31
20	15082644	?	Case Declined	N/A	5,277.98
21	15082970	?	Case Declined		804.64
22	15083578	C-2673-11-J	NonSuit	N/A	328.94
23	15083691	C-2295-11-D	NonSuit	11/2/2011	1,014.06
24	15083926	C-652-12-C	Default Judgement	6/20/2012	5,956.68
25	15084094	C-1346-12-C	Agreed Judgement	8/3/2012	960.55
26	15084388	C-3673-11-A	Default Judgement	8/9/2012	4,549.16
				TOTAL	\$ 97,447.01

## EXHIBIT B

### Schedule of CD's Lacking Information

	CD Number	Open Date	Current Balance as of 8/31/2012
1	15028445	9/28/2001	853.25
2	15028461	9/28/2001	978.17
3	15028488	9/28/2001	796.39
4	15046249	2/11/2004	3,759.17
5	15047113	4/15/2004	1,944.45
6	15047121	4/15/2004	3,640.25
7	15047148	4/15/2004	6,680.52
8	15047164	4/15/2004	1,634.25
9	15049752	9/21/2004	568.06
10	15053067	3/25/2005	4,218.83
11	15060659	1/17/2006	12,643.01
12	15061716	3/28/2006	1,496.45
13	15061732	4/4/2006	7,889.41
14	15065667	9/12/2006	1,841.52
15	15066392	12/12/2006	1,931.45
16	15069311	7/27/2007	412.50
17	15071154	1/15/2008	364.48
18	15071995	1/15/2008	341.39
19	15072002	1/15/2008	425.45
20	15072010	1/15/2008	793.15
21	15074315	6/19/2008	152.06
22	15078671	9/14/2009	1,719.68
23	15079465	11/9/2009	6,123.78
24	15079473	11/9/2009	1,077.34
25	15079481	11/9/2009	1,300.23
26	15079503	11/9/2009	991.51
27	15079511	11/9/2009	1,698.30
28	15079538	11/9/2009	511.91
29	15079546	11/9/2009	2,778.67
30	15079554	11/9/2009	2,327.34
31	15079562	11/9/2009	334.20
32	15081958	9/23/2010	60,559.55
33	15083721	8/29/2011	3,454.64
34	15085295	5/25/2012	5,635.33
	TOTAL		<u>141,876.69</u>

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**FY 2012 Chapter 59 Asset Forfeiture Report  
by Attorney Representing the State**

Agency Name: Criminal District Attorney's Office Reporting Period: 09/01/11 - 08/31/12  
(example: 9/1/11- 08/31/12)

Name of Attorney Representing the State (Printed): Rene Guerra

Agency Mailing Address: 100 N. Closner Blvd.  
County CourtHouse, 3rd. Floor  
Edinburg, Texas 78539

Phone Number: 956-318-2300

County: Hidalgo

Email Address: Rene.Guerra@da.co.hidalgo.tx.us This should be a permanent agency email address

NOTE: PLEASE ROUND ALL DOLLAR AMOUNTS TO THE NEAREST WHOLE DOLLAR

**I. SEIZED FUNDS (Funds that have been seized, but not yet been awarded to your agency by the judicial system)**

A) Beginning Balance: Instructions: Include total amount of seized funds on hand (in your agency's possession) at the beginning of the reporting period including interest. Include funds that may have been forfeited but have not been transferred to your agency's forfeiture account. Do not include funds that are in an account held by another agency, e.g. a police department's account.	\$ 585,778.00
B) Ending Balance: Instructions: Include total amount of seized funds on hand (in your agency's possession) at the end of reporting period including interest. Do not include funds that are in an account held by another agency, e.g. a law enforcement account.	\$ 4,288,971.00

**II. FORFEITED FUNDS (Funds awarded to your agency by the judicial system)**

A) Beginning Balance: Instructions: Include total amount of forfeited funds that have been forfeited to your agency and are on hand (in your agency's account or in your agency's possession) at the beginning of the reporting period including interest. Do not include funds that have been forfeited but have not yet been received by your agency.	\$ 3,114,044.00
B) Ending Balance: Instructions: Total amount of forfeited funds that have been forfeited to your agency and are on hand (in your agency's account or in your agency's possession) at the end of the reporting period including interest. Do not include funds that have been forfeited but have not yet been received by your agency.	\$ 2,941,741.00

**III. SEIZURES DURING REPORTING PERIOD**

A) Amount Seized By Employees of Your Agency: Instructions: Include only those seizures which occurred during the reporting period and where the seizure affidavit required by Article 59.03 is sworn to by a peace officer employed by your agency.	\$ 960.00
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B) Forfeiture Petitions Filed For All Agencies You Represent:  
**Instructions:** Enter the total amount of seized funds for which forfeiture petitions were filed during the reporting period. (This should be a currency amount, for example \$1,000). \$ 4,008,625.00

C) Property:  
**Instructions:** List the number of items seized for the following categories:

Please Note: these should be a number, not a currency amount. For example: 4 pending, 3 seized, 12 new petitions, etc....	MOTOR VEHICLES (Include cars, motorcycles, tractor trailers, etc.)	REAL PROPERTY (Count each parcel seized as one item)	COMPUTERS (Include computer and attached system components, such as printers and monitors as one item)	FIREARMS (Include only firearms seized for forfeiture under Chpt. 59. Do not include weapons disposed of under Chpt. 18)	OTHER (Include description)
Seized by your agency during reporting period:	15	-0-	-0-	-0-	64
New petitions filed for all agencies during reporting period:	263	5	6	7	850
Forfeited to your agency during reporting period:	22	-0-	-0-	-0-	63

**IV. FORFEITED FUNDS RECEIVED DURING REPORTING PERIOD**

Amount Forfeited to and Received by Reporting Agency (Including Interest) During Reporting Period:  
**Instructions:** Do not include amounts forfeited but not yet received by your agency; interest refers to the amount earned prior to forfeiture and distributed as part of the judgment of forfeiture. \$ 199,298.00

**V. LACK OF LOCAL AGREEMENT:**

Amount deposited to State Treasury to the Credit of the General Revenue Fund Due to Lack of Local Agreement (Art. 59.06 (a)):  
\$ -0-

**VI. FORFEITED PROPERTY RECEIVED FROM ANOTHER AGENCY**

**Instructions:** Enter the total number of items transferred to your agency where the forfeiture judgment awarded ownership of the property to another agency prior to the transfer.

A) Motor Vehicles (the number of vehicles, not a currency amount):	-0-
B) Real Property (the number of separate parcels of property, not a currency amount):	-0-
C) Computers (the number of computers, not a currency amount):	-0-
D) Firearms (the number of firearms, not a currency amount):	-0-
E) Other (the number of items, not a currency amount):	-0-

**VII. FORFEITED PROPERTY TRANSFERRED OR LOANED TO ANOTHER AGENCY**

**Instructions:** Enter the total number of items transferred or loaned from your agency where the forfeiture judgment awarded ownership of the property to your agency prior to the transfer.

A) Motor Vehicles (the number of vehicles, not a currency amount):	-0-
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B) Real Property (the number of separate parcels of property, not a currency amount):	-0-
C) Computers (the number of computers, not a currency amount):	-0-
D) Firearms ( the number of firearms, not a currency amount):	-0-
E) Other (the number of items, not a currency amount):	-0-

VIII

**EXPENDITURES**

Instructions: This category is for Chapter 59 expenditures SOLELY for law enforcement purposes or for the official purpose of your office - not for expenditures made pursuant to your general budget. List the total amount expended for each of the following categories. If proceeds are expended for a category not listed, state the amount and nature of the expenditure under the Other category.

<b>A) SALARIES</b>		
1. Increase of Salary, Expense, or Allowance for Employees (Salary Supplements):	\$	414,763.00
2. Salary Budgeted Solely From Forfeited Funds:	\$	
3. Number of Employees Paid Using Forfeiture Funds:		63
<b>TOTAL SALARIES PAID OUT OF CHAPTER 59 FUNDS:</b>		\$ 414,763.00
<b>B) OVERTIME</b>		
1. For Employees Budgeted by Governing Body:	\$	-0-
2. For Employees Budgeted Solely out of Forfeiture Funds:	\$	-0-
3. Number of Employees Paid Using Forfeiture Funds:		-0-
<b>TOTAL OVERTIME PAID OUT OF CHAPTER 59 FUNDS:</b>		\$ -0-
<b>C) EQUIPMENT</b>		
1. Vehicles:	\$	-0-
2. Computers:	\$	1,768.00
3. Firearms, Vests, Personal Equipment:	\$	-0-
4. Furniture:	\$	-0-
5. Software:	\$	100.00
6. Maintenance Costs:	\$	-0-
7. Uniforms:	\$	-0-
8. K9 Related Costs:	\$	-0-
9. Other (Provide Detail on Additional Sheet):	\$	-0-
<b>TOTAL EQUIPMENT PURCHASED WITH CHAPTER 59 FUNDS:</b>		\$ 1,868.00

<b>D) SUPPLIES</b>	
1. Office Supplies:	\$ 13,378.00
2. Cellular Air Time:	\$ -0-
3. Internet:	\$ -0-
4. Other (Provide Detail on Additional Sheet):	\$ -0-
<b>TOTAL SUPPLIES PURCHASED WITH CHAPTER 59 FUNDS:</b>	
	\$ 13,378.00

<b>E) TRAVEL</b>	
<b>1. In State Travel</b>	
a) Transportation:	\$ 1,610.00
b) Meals & Lodging:	\$ -0-
c) Mileage:	\$ -0-
d) Incidental Expenses (Any other travel expense not included on a, b, or c above):	\$ -0-
<b>Total In State Travel</b>	\$ 1,610.00
<b>2. Out of State Travel</b>	
a) Transportation:	\$ -0-
b) Meals & Lodging:	\$ -0-
c) Mileage:	\$ -0-
d) Incidental Expenses (Any other travel expense not included on a, b, or c above):	\$ -0-
<b>Total Out of State Travel</b>	\$ -0-
<b>TOTAL TRAVEL PAID OUT OF CHAPTER 59 FUNDS:</b>	
	\$ 1,610.00

<b>F) TRAINING</b>	
1. Fees (Conferences, Seminars):	\$ 2,751.00
2. Materials (Books, CDs, Videos, etc.):	\$ -0-
3. Other (Provide Detail on Additional Sheet):	\$ -0-
<b>TOTAL TRAINING PAID OUT OF CHAPTER 59 FUNDS</b>	
	\$ 2,751.00

<b>G) INVESTIGATIVE COSTS</b>	
1. Informant Costs:	\$ -0-
2. Buy Money:	\$ -0-
3. Lab Expenses:	\$ -0-
4. Other (Provide Detail on Additional Sheet):	\$ -0-

TOTAL INVESTIGATIVE COSTS PAID OUT OF CHAPTER 59 FUNDS: \$ -0-

<b>H) TOTAL PREVENTION/TREATMENT PROGRAMS/FINANCIAL ASSISTANCE</b>	
1. Total Prevention/Treatment Programs (pursuant to 59.06 (b), (l), (j)):	\$ 774.00
2. Total Financial Assistance (pursuant to Articles 59.06 (n) and (o)):	\$ -0-
<b>TOTAL PREVENTION/TREATMENT PROGRAMS/FINANCIAL ASSISTANCE (pursuant to Articles 59.06 (b), (l), (j), (n), (o)):</b>	<b>\$ 774.00</b>

<b>I) FACILITY COSTS</b>	
1. Building Purchase:	\$ -0-
2. Lease Payments:	\$ -0-
3. Remodeling:	\$ -0-
4. Maintenance Costs:	\$ -0-
5. Utilities:	\$ -0-
6. Other (Provide Detail on Additional Sheet):	\$ -0-
<b>TOTAL FACILITY COSTS PAID OUT OF CHAPTER 59 FUNDS:</b>	<b>\$ -0-</b>

<b>J) MISCELLANEOUS FEES</b>	
1. Court Costs:	\$ 9,472.00
2. Filing Fees:	\$ -0-
3. Insurance:	\$ -0-
4. Witness Fees:	\$ -0-
5. Audit Costs and Fees:	\$ -0-
6. Other (Provide Detail on Additional Sheet):	\$ -0-
<b>TOTAL MISCELLANEOUS FEES PAID OUT OF CHAPTER 59 FUNDS:</b>	<b>\$ 9,472.00</b>

**K) PAID TO OR SHARED WITH COOPERATING AGENCY:** \$ -0-

**L) TOTAL OTHER PAID OUT OF CHAPTER 59 FUNDS (provide detailed descriptions on additional sheet(s) and attach to this report):** \$ 2,148.00

**M) TOTAL EXPENDITURES:** \$ 446,764.00

**BOTH THE COMMISSIONERS COURT AND ATTORNEY REPRESENTING THE STATE  
CERTIFICATIONS MUST BE COMPLETED**

**NOTE: ART. 59.06(g)(1) requires the Commissioners Court to perform the audit.**

**CERTIFICATION**

I swear or affirm that the Commissioners Court has conducted the audit required by Article 59.06 of the Code of Criminal Procedure, unless after due inquiry, it has been determined that no accounts, funds or other property pursuant to Chapter 59 of the Code of Criminal Procedure are being held or have been transacted in the relevant fiscal year by the agency for which this report is being completed, and that upon diligent inspection of all relevant documents and supporting materials, I believe that this asset forfeiture report is true and correct and contains all of the required information.

COUNTY JUDGE (Printed Name):

Ramon Garcia

SIGNATURE:

COUNTY:

Hidalgo

DATE:

**CERTIFICATION**

I swear or affirm, under penalty of perjury, that I have accounted for the seizure, forfeiture, receipt, and specific expenditure of all proceeds and property subject to Chapter 59 of the Code of Criminal Procedure, and that upon diligent inspection of all relevant documents and supporting materials, I believe that this asset forfeiture report is true and correct and contains all information required under Article 59.06 of the Code of Criminal Procedure. I further swear or affirm that all expenditures reported herein were lawful and proper, and were made in accordance with Texas law.

ATTORNEY REPRESENTING THE  
STATE (Elected Official) (Printed  
Name):

Rene Guerra

SIGNATURE:

DATE:

October 25, 2012

**RETURN COMPLETED FORM TO:**

Office of the Attorney General  
Criminal Prosecutions Division  
P.O. Box 12548  
Austin, TX 78711-2548  
Attn: Kent Richardson  
(512)936-1348

**WE CANNOT ACCEPT FAXED OR EMAILED COPIES. PLEASE MAIL  
THE SIGNED, ORIGINAL DOCUMENT TO OUR OFFICE AT THE  
ADDRESS ABOVE.**