

# Using Parallel Financial Investigations to Support Predicate Crime Cases

## Introduction

This guideline is intended to be used by investigators and prosecutors involved in criminal investigations in Lao PDR. This includes but is not limited to the following agencies:

- 1) People's Supreme Prosecutors Office
- 2) People's Supreme Court
- 3) Ministry of Public Security, Economic Police Department
- 4) Ministry of Public Security, Police Drug Control Department
- 5) Ministry of Public Security, Investigation Department
- 6) Ministry of Agriculture and Forestry, Forestry Inspection Department
- 7) Lao Securities Commission
- 8) Lao Anti-Corruption Agencies
- 9) Anti-Money Laundering Intelligence Office (AMLIO) Bank of Lao PDR

## Section 1: Why Conduct a Financial Investigation

### 1.1 What does 'following the money' mean?

Money is the lifeblood of organised crime. In the last few decades, crime has become more sophisticated and international in nature, and criminals are constantly finding new ways to conceal their proceeds of crime. In other words, their illegal profits. In response, law enforcement and justice agencies are increasingly adopting a 'follow the money' approach to combat serious and organised criminal activity. This involves **focusing on the financial aspects of a crime**.



The key objective of a financial investigation is to identify and record the movement of money during criminal activity. The link between the origins of the money, beneficiaries, when the money is received and where it is stored, deposited and used, can provide information about and evidence of criminal activity.

Three key tools employed in a ‘follow the money’ approach are financial investigation, the use of anti-money laundering techniques and asset recovery tools. As far as money laundering and asset recovery is concerned, they are closely related in that they both concern the proceeds of crime, but they have different objectives. Money laundering is the criminal *offence* of dealing with the proceeds of crime to conceal the identity, source, ownership or destination of illegally gained money. Asset recovery is a *process* for investigating, restraining and forfeiting the proceeds of all crime types.

Many individual criminals and organized criminal networks use a range of money laundering techniques to conceal the illicit source of their profits and enable the successful flow of their business. As a result, there are numerous benefits to incorporating a ‘follow the money’ approach into criminal investigations, including:

- Tracing the financial flows associated with organized crime can help investigators to **identify additional members and victims of a criminal network** and **collect evidence** that can aid prosecutions.
  - *This can help to identify the **key players** in and beneficiaries of an illegal network, who profit from, but distance themselves from the crime.*
- Money laundering offences can provide **another avenue for prosecution** where the money launderer is not involved in the predicate crime that generated the proceeds.
- Confiscation of profits can have a **deterrence** effect, discouraging offenders who may be prepared to risk serving time in jail if they are confident that the profits from their criminal activities will be available to them upon release.
- Effective confiscation of criminal proceeds **prevents the profits from being reinvested into criminal activity** and can enable proceeds to be applied to enhancing anti-money laundering initiatives including training of law enforcement as well as providing assistance and support to victims.

## 1.2 A new way of thinking about criminal investigations

Efforts to combat serious and organised crime have traditionally focused on pursuing the predicate crime and not on the proceeds derived from and invested in the crime. Strengthening our focus on the financial aspects of the offenders’ conduct presents a range of opportunities, but also challenges. A key issue of this guideline will be to expand our understanding of what constitutes success in a predicate crime enquiry so that it includes recognition of the contribution that asset confiscation and the use money laundering as an alternative prosecution avenue can make to combating crime.

Another issue is that law enforcement agencies investigating predicate crimes often work in isolation from colleagues investigating money laundering cases. Law enforcement agencies are often unaware of or ill-equipped to handle financial activity related to predicate crimes and financial investigators may lack detailed knowledge of the predicate crime, its business models, markets and preferences for moving illicit funds. Bringing these perspectives together yields

tremendous potential to advance our efforts to combat all serious and organized crime but it will require a strong commitment from senior management to break down organizational siloes.

Improving the use of anti-money laundering techniques will also require close co-operation between countries, to enable the exchange of financial case-related information. Most if not all investigations into predicate crimes could benefit from leveraging networks for international cooperation on money-laundering issues, such as information exchanges between financial intelligence units. The Law Enforcement community will also need to work in partnership with the private sector, as a key stakeholder in moving the profits associated with crime from one location to another.

## **Section 2: Legal Framework**

### **2.1 International Standards**

The Financial Action Task Force (FATF), a 37-member inter-governmental body established by the 1989 G7 Summit in Paris, has primary responsibility for setting international standards on money laundering, and assessing how countries perform in implementing them. There are also a range of UN conventions that include obligations for States in relation to money-laundering and the proceeds of crime.<sup>1</sup>

The key obligations for States outlined in these standards include the need to enact comprehensive money laundering offences, and to establish an effective regime providing for the freezing, seizing and confiscation of the proceeds of crime.

### **2.2 Comprehensive Money-Laundering Offence**

To comply with international standards, comprehensive money laundering legislation should:

- criminalise all the stages of the money-laundering process
- apply to the widest possible range of predicate offences
- provide capacity to investigate money-laundering as both a standalone offence, and in addition to predicate offending
- apply criminal liability to legal persons (for example, companies)
- apply to any type of property, regardless of its value, that directly or indirectly represents

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<sup>1</sup> These include: the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention), the UN Convention Against Transnational Organized Crime 2000 (UNTOC or Palermo Convention), and the UN Convention against Corruption 2003 (UNCAC)

the proceeds of crime, and;

- extend to conduct that occurred in another country, if that conduct constitutes an offence in the foreign country and would have constituted an offence in the home country

## 2.3 Lao PDR Money-Laundering Offence

Article 130 of the Penal Code states as follows;

Money laundering is the transformation, utilization, displacement, exchange, acquisition, possession, transfer of true ownership of funds or other properties of an natural person, legal person or organization that knows, knew or suspects that the properties are derived from the predicate offences to conceal or disguise their characteristics, origin, and location. This is aimed at legalizing the funds or properties.

Any person committing an offence of money laundering for the value less than 1,000,000,000 Kip shall be punished from three years to seven years in imprisonment and shall be fined not more than 500,000,000 Kip and asset shall be confiscated.

Where such offence is for the value from 1,000,000,000 Kip or more, the offender shall be punished from seven years to ten years in imprisonment and shall be fined not more than 700,000,000 Kip and asset shall be confiscated.

Where such an offence is performed as part of an organized group or as a regular basis, the offender shall be punished from ten years to fifteen years of imprisonment and shall be fined not more than 900,000,000 Kip and asset shall be confiscated.

Any preparation or attempt to commit such an offence shall also be punished.

## 2.4 Effective Asset Confiscation Frameworks

Asset confiscation or asset recovery is the investigation, temporary restraint, forfeiture and management of the proceeds of crime. Confiscation can be **conviction-based** (requiring an offender to be convicted of an offence in criminal proceedings before confiscation can occur) or **non-conviction based**. A comprehensive asset confiscation regime will enable you to investigate, preserve, seize and restrain the proceeds of crime. It will also include measures for consideration of third-party (or innocently held) interests in assets, and measures to allow the forfeiture of assets to Government.

## 2.5 Benefits of Non conviction-based forfeiture

### What assets can be recovered or restrained?

In an operational context it is important for law enforcement agencies to have a clear understanding of what assets can be recovered or restrained. Both assets used in the commission of the crime (instrumentalities) and those gained from the crime (proceeds of crime) may be able to be recovered or restrained. It may also be possible to recover or restrain property the criminal has placed in another person's name but which they have effective control over.

Article 2 of the UN Convention against Transnational Organised Crime (UNTOC), defines **proceeds of crime** as any property derived from or obtained, directly or indirectly, through the commission of an offence. It includes economic gains from the property and property converted or transformed, in full or in part, into other property. For example, a motor vehicle purchased with funds obtained from the proceeds of trafficking may be able to be confiscated because it was purchased using proceeds of crime.

An **instrumentality** (or instrument) of crime is the property used to facilitate a crime. Instrumentalities may include, for example, a car or boat used to transport narcotics, or monies used to fund criminal activity. For example, a vehicle used in trafficking may be an instrumentality. There may be no evidence to indicate the vehicle was the proceeds of crime or that it was acquired with funds derived from earlier criminal offences. However, if it is used in the commission of an offence this means that it may be confiscated as an instrumentality of the trafficking.

When identifying assets that can be recovered or restrained the key question that proceeds of crime laws must address is 'who controls the property?' If a criminal has effective control over the asset, then it should be able to be recovered or restrained. The United Nations Office on Drugs and Crime (UNODC) defines effective control as 'the exercise of practical control over the property whether or not that control is supported by any property interest or other legally enforceable power'.

## Section 3: Money Laundering Methods

### 3.1 How is money laundered?

Money Laundering usually involves three distinct steps or actions. These are known as **Placement** (getting the criminal money into the economy, for example, using a cash business like a restaurant) **Layering** (moving the money further and further away from its criminal origins, for example using lawyers, real estate, casinos, high value dealers, financial institutions and/or moving the proceeds across international borders and finally) and finally **Integration** (where the criminal proceeds come back to the criminal in such a way as to create the impression the proceeds are legitimate).



**Step one – Placement:** The first stage of money laundering involves bringing the illegal funds or assets into the financial system. Illegal funds are placed into the financial system by money launderers using a variety of techniques including depositing cash into bank accounts, using false identities or third parties to deposit money into accounts, using cash to purchase assets and gambling with the funds or using cash businesses such as restaurants or hotels where the dirty money is co-mingled with the clean money from the business.

**Step two - Layering:** To conceal the illegal origin of the placed funds, the funds must be moved, dispersed and disguised. The aim of moving, dispersing and disguising the placed funds is to distance the funds from their illegal origins. This is known as layering. Different layering techniques include using multiple banks and accounts, having professionals act as middlemen or intermediaries (such as lawyers or accountants), and creating complex company and trust structures to transfer money. Funds may be moved through a web of many accounts, companies and countries in order to disguise their origins.

**Step three – Integration:** Once the funds are layered and distanced from their origins, they can be made available to criminals to use and control as apparently legitimate funds. This process is called integration. Examples include disguising the money as a fictitious mortgage, consultancy fees or overvalued invoices. Once integrated the illegal money appears to be legitimate and it is easier for criminals to use the proceeds of crime without being detected by law enforcement agencies. The apparently ‘clean money’ is made available for activities such as investment in further criminal activity or legitimate businesses (such as shares in companies), or the purchase of high value assets (such as property) and luxury goods (such as expensive cars)

### 3.2 Common Money Laundering Techniques

Money laundering methods (or ‘typologies’) in any given location are heavily influenced by the economy, financial markets, and anti-money laundering regimes. Criminals can also be very creative in developing methods to launder money. Consequently, methods vary from place to place and over time. Common money laundering methods set out below.

#### **Cash Smuggling**

Smuggling illicit cash across land borders or through international airports and seaports using various methods of concealment. Always accompanied by a failure to declare currency above the legal threshold or failing to declare accurately at the Customs point.

#### **Financial Institutions**

Money launderers often move illicit funds through domestic bank accounts or "offshore accounts" often in jurisdictions that have bank secrecy laws

#### **Alternative/ informal remittance transfers**

Some countries in Asia have well-established, legal alternative banking systems that allow for undocumented deposits, withdrawals and transfers. These are trust-based systems, often with ancient roots, that leave no paper trail and operate outside of government control. This includes the *hawala* system in Pakistan, Hundi system in India and the *fie chen* system in China.

#### **Shell companies**

These are fake companies that exist for no other reason than to launder money. They take in dirty money as "payment" for supposed goods or services but provide no goods or services; they simply create the appearance of legitimate transactions through fake invoices and balance sheets.

#### **Structuring or ‘smurfing’**

This method involves breaking up large amounts of criminal money into smaller, less-suspicious amounts. Most countries have a threshold amount at which financial institutions must report a transaction to the government. This threshold limit is usually set at \$10,000 USD or equivalent currency. The money is then deposited into one or more bank accounts either by multiple people (Smurfs) or by a single person over an extended period of time.

#### **Investing in legitimate companies or Real Estate**

Launderers sometimes place dirty money in otherwise legitimate businesses to clean it. They may use large businesses like brokerage firms or casinos that deal in so much money it's easy for the dirty money to blend in, or they may use small, cash-intensive businesses like bars, car washes, strip clubs or check-cashing stores. These businesses may be "front companies" that do provide a good or service but whose real purpose is to clean the launderer's money.

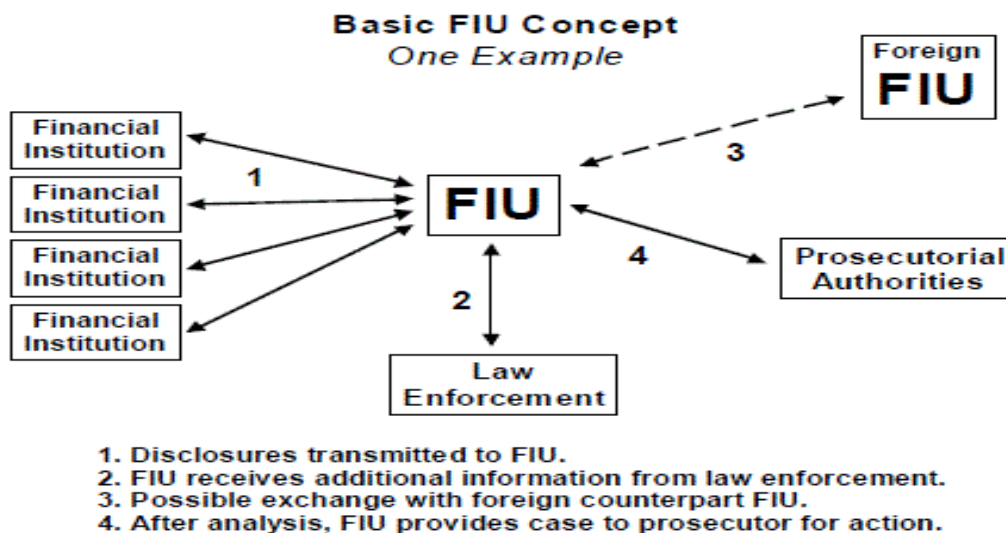


## Section 4: Financial Intelligence Units (FIUs)

### How does the Government identify Money Laundering Activity?

#### 4.1 The role of the FIU

Financial Intelligence Units (FIUs) play a key role in facilitating an effective ‘follow the money’ approach. To find out that a person or entity is laundering money, the government needs information from financial institutions and other non-financial institutions and professionals, such as casinos, real estate businesses, company service providers, high value dealers, lawyers and accountants. Anti-money laundering standards set out which entities must report transactions that appear suspicious, and these are called **reporting entities**. The government, through its **FIU**, then gets information from reporting entities through reports called suspicious transaction or matter reports. The FIU analyses this information, and provides to other law enforcement agencies



Different States have different types of FIUs, dependent on what best suits their context and requirements. The core difference that influences how they will be able to support an investigation or prosecution is that some FIUs have an investigative function, and others do not. In some countries, the FIU is part of the National Police, such as Myanmar, and therefore a law enforcement FIU with investigative powers. Others might be part of the Central Bank, such as Cambodia with no investigative powers and therefore an administrative FIU. Finally, there are hybrid FIUs which are neither part of law enforcement nor a central bank but have been set up as stand-alone units with investigative powers. The Thai Anti-Money Laundering Office (AMLO) is a good example of such a unit.



Regardless of the model, all FIUs have three key responsibilities which are to receive financial intelligence, analyse the intelligence and finally disseminate the intelligence to law enforcement. Most FIUs also perform an Anti-Money Laundering awareness raising function for the private and public sector.

#### **4.2 How can an FIU support an investigation**

FIUs can support investigations by providing financial information relating to suspicious transaction reports, cash transaction reports, cash cross border reports and other relevant information. They also create intelligence products containing information, references and recommendation base on analysis of reports (operational and strategic analysis) and other information including information from foreign counterparts through an FIU to FIU network that facilitates the rapid exchange of information across jurisdictions by using a short process that is usually faster than more formal techniques such as mutual legal assistance or diplomatic channels.

Close cooperation between all relevant agencies, including law enforcement and FIUs, both within and between jurisdictions, including joint investigations, is the key to the successful fight against most if not all crime.

FIUs can assist criminal investigations by providing rapid financial information to law enforcement agencies for the purpose of criminal investigation to identify a criminal network. The relevant information that FIUs share rapidly to domestic agencies is not only effective in combating predicate crime but also effective in international cooperation. Moreover, the financial intelligence reports generated by an FIU can be the starting point for the investigators to establish connections between individuals and entities that were suspected to be involved in money laundering and criminal activities and to build a financial investigation that can support predicate crime investigations.

A key element in FIUs' functions is their ability to cooperate with foreign counterparts for information sharing through Memorandums of Understanding (MOUs) or membership of the Egmont Group. However, it should be noted that while information exchange between FIU to FIU can facilitate provision of more rapid financial intelligence, it cannot be used as evidence in criminal proceeding without pursuing an MLA request to convert the intelligence into evidence. Other informal networks include the Asset Recover Inter-Agency Network for Asia Pacific (ARIN-AP) the overseas law enforcement network of foreign police and legal attaché's based in Embassies, INTERPOL and EUROPOL

## **Section 5: Investigation and Evidence Gathering**

### **5.1 What is a financial investigation?**

Financial Investigation is an investigative technique used by law enforcement agencies, prosecutors and the intelligence community to gather information, intelligence and evidence from a wide range of sources concerning the financial history and activity of a suspect or witness

in criminal proceedings. It can also be used for the identification, freezing and confiscation of the proceeds of crime and provide an audit trail for stolen or laundered funds. It will often also identify other criminals and their associates in the criminal organisation. The extent to which this investigative tool can be used is almost limitless and the sources of information extremely varied.

Generally, sources of information will include Banks and other financial sector entities including credit card companies, insurance companies and other loan and credit providers. Additionally, information from credit reference agencies, lawyers, accountants, casinos, real estate agents, high value dealers such as jewellers and luxury car dealers, restaurants, travel companies and retail outlets as well as social security and tax revenue agencies can bring tremendous benefits to an investigation. The type and source of financial information being sought will simply depend on the nature and extent of the criminal investigation.

## **5.2 Key steps in financial investigations**

It is good practice to establish parallel financial investigations as part of the overall predicate crime investigation. Not only will this bring added value to the TIP criminal investigation itself, but it will also help your country meet international standards on anti-money laundering. The inter-governmental Financial Action Task Force (FATF) sets the international standards for combating money laundering and terrorist financing and FATF Recommendation 30 specifically addresses the need for countries to carry out parallel financial investigations alongside those of the predicate crime. Coordination between investigators, the financial intelligence unit (FIU) and prosecutors is key to success. The use of informal networks for the exchange of information involving cross border investigations is crucial and is to be encouraged long before the consideration of mutual legal assistance. These informal mechanisms can include the Asset Recovery Networks such as CARIN, ARINSA and ARIN-AP (Asset Recovery Inter-Agency Network for Asia Pacific) Police to Police (Overseas Police Liaison posts such as the Australian Federal Police (AFP), US Federal Bureau of Investigation (FBI), Royal Canadian Mounted Police (RCMP) and UK National Crime Agency (NCA) and the FIU to FIU mechanisms.

In the main the information being sought tends to be historic, sometimes going back over months and even years but when required, the detail of financial activity being obtained can be current or in real time. This can be useful for example when searching for a suspect or vulnerable individual as the use of their credit or debit card can and often leads to their location or whereabouts being identified.

Information can be either obtained from open source or closed sources such as the internet and company or land registry records (**open**) and financial institutions or tax records (**closed**). In all cases however, when accessing the information, the financial investigator should always operate within his or her domestic legal framework and act proportionally.

Before examining the type of information available to prosecutors and law enforcement agencies it will be useful to remind ourselves of the legal requirements investigators will have to operate within certainly as far as obtaining the information is concerned.

Within financial institutions and legal and accountancy professions, strong client confidentiality rules exist. Individuals have a right to privacy so in essence there are four ways financial institutions and others will breach client confidentiality.

### **Obtaining the material**

- 1) With the consent of the account holder.
- 2) With the consent of the financial institution where the interest of the bank will be served (such as where the bank is a victim of fraud)
- 3) In the public interest
- 4) By court order or other legal gateway such as the order of a Judge in criminal proceedings, Prosecutor or Senior Police Officer's authority

When making a court or judicial application for access to financial records or using some other legal gateway such as the authority of a Prosecutor or Senior Police Officer, most jurisdictions expect their investigators to demonstrate that it is in the public interest to obtain the information, that other means of obtaining the information have been tried and have failed (or were bound to fail due to certain circumstances) and that the material being sought will be of significant value to the investigation. Proportionality, legality, accountability and necessity (PLAN) are all points to demonstrate given that the intrusive powers available to investigators affords them the ability to overcome client confidentiality and breach a person's fundamental right to privacy. Therefore, strict controls and access conditions should always be maintained.

## **5.3 Financial information and evidence gathering**

### **Sources of information**

Whilst some countries remain largely cash based economies, increasingly people are making use of electronic banking systems, wire transfers, bank cards and internet banking all of which leave a trace. However, even in a cash-based economy, transactions can still leave a record such as an invoice, contract or receipt. The nature of these transactions, electronic or otherwise and their associated records, provides the investigator with an almost endless source of information or evidence.

In the main, money can move in the following ways;

- Cash courier

- Financial Institutions (domestic and international banking transactions)
- Pre-paid cards
- Informal or Alternative Remittance Systems (Hawala or Hundi for example)
- Trade Based Money Laundering
- Art and antiques
- Internet Banking
- Virtual currency

The source of the information, intelligence or evidence concerning these money movements will vary depending upon the nature of the investigation. However, in most investigations, there are several common sources that will be used regularly. They include but are not limited to:

- The suspect (pocket litter)
- Transport / Shipping Carrier
- Mobile phones
- Financial Institutions
- Utilities
- Insurance Companies
- Vehicle Registration Departments
- Credit Agencies
- Land Registry
- Pension Providers
- Tax authorities/Social Security
- Loyalty cards such as airline frequent flier and hotel membership cards

The nature of information provided by the sources listed above will be self-evident, but it may be useful to highlight three particular sources.

### **Financial Institutions**

Information obtained from financial institutions can include the account opening records (useful for stated identification, employment and declared income) together with the full history of the

account. Copy bank statements showing credits, debits and balances together with cheques, credit vouchers and other transaction documentation will be available as will any written notes Bank officials may have made over the course of the business of the account. In relation to credit or debit card use, this information can also be useful in charting the movements of an individual, the restaurants they dine in, the commodities they purchase, places they frequent and the clubs and social outlets they visit. This can lead to the existence of other accounts, establish or disprove alibi, calculate expenditure and lifestyle and identify other criminal associates. When accessed in real time, the information can also be used to locating the whereabouts of individuals.

### **Utility bills**

In addition to corroborating resident status, enquiries with utility companies may often reveal previously unknown accounts, financial dealings or the existence of other associates who may be paying for the services. In a similar way, the case of internet and telephone providers can also lead to the identification of other people of interest and other criminal associates.

### **Hotel or Airline Loyalty Cards**

An airline frequent flyer membership card such as One World, Star Alliance or Sky Team or a hotel chain loyalty card from Hilton, Starwood or Marriott Hotels can provide a wealth of information. This includes the customer profile such as his or her name, address, email and mobile telephone numbers and the details of bank/credit card accounts used to pay for services. Details of flights flown, and hotels visited and who accompanied the traveller during these times will also be available.

### **Case management**

The effective use of a case management system no matter how rudimentary is essential. Often the volume of information being obtained will be considerable and so a clear record of what is obtained and from where will eliminate any difficulties later in the investigation or at trial. Having a policy or decision record will also help when being asked to account sometime later why certain intrusive actions were taken. This goes back to the proportionality test in PLAN. The operational test should be 'Are the actions of the investigator proportionate given the information known at the time, were they legal, could he/she justify them (account for them) and finally, were they necessary?

## **Section 6: Conclusion**

Financial investigation techniques are useful in most if not all criminal investigations. For many years it has been usefully employed to prove motive, identify evidence of a particular crime such as money laundering, reveal illegitimate income, locate offenders and vulnerable individuals, dispel bogus alibi, corroborate evidence, support and aid surveillance and provide information

useful in forfeiture or confiscation hearings. It is also extremely cost effective in terms of resources as one trained financial investigator can often investigate multiple suspects at the same time.

As previously indicated, the sources of information a financial investigator will use are not limited and will vary from case to case. A good investigator will use his or her imagination to ensure all sources of potential information relevant to a suspect or investigation have been considered. It must be stressed however, that financial investigators possess unique and extremely intrusive powers. Consequently, they must always act proportionally and legally and be able to demonstrate by the use of case management systems and record keeping, that they have done so. If used appropriately and in a timely manner, financial investigation will be a major asset to law enforcement.