

AMENDED IN ASSEMBLY JULY 16, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 443

Introduced by Senator Mitchell

(Principal coauthor: Senator Leno)

(Principal coauthors: Assembly Members Cristina Garcia and Hadley)

(Coauthors: Senators Anderson and Jackson)

(Coauthor: Assembly Member Jones-Sawyer)

February 25, 2015

An act to amend Sections 11470.1, 11488.4, ~~11488.5~~, 11489, and 11495 of, and to add Sections ~~11471.2 and 11488.7~~ *11471.2, 11488.7, and 11489.1* to, the Health and Safety Code, relating to forfeiture.

LEGISLATIVE COUNSEL'S DIGEST

SB 443, as amended, Mitchell. Forfeiture: controlled substances.

Existing law subjects certain property to forfeiture, such as controlled substances and equipment used to process controlled substances. Existing law allows peace officers, under specified circumstances, to seize property that is subject to forfeiture. Existing law authorizes specified public agencies to bring an action to recover expenses of seizing, eradicating, destroying, or taking remedial action with respect to any controlled substance. In a forfeiture action with regards to cash or negotiable instruments of a value of not less than \$25,000, existing law requires the state or local agency to prove by clear and convincing evidence that the property is subject to forfeiture. Existing law requires seized property or the proceeds from the sale of that property to be

distributed among specified entities. Existing law requires the Attorney General to publish a yearly report on forfeiture within the state.

This bill would require a prosecuting agency to seek or obtain a criminal conviction for the unlawful manufacture or cultivation of any controlled substance or its precursors prior to an entry of judgment for recovery of expenses of seizing, eradicating, destroying, or taking remedial action with respect to any controlled substance. The bill would prohibit maintaining an action for recovery of expenses against a person who has been acquitted of the underlying criminal charges.

The bill would prohibit state or local law enforcement agencies from transferring seized property to a federal agency seeking adoption by the federal agency of the seized property. The bill would also require that any property seized pursuant to any federal law that authorizes the sharing or transfer of forfeited property be distributed according to state law, thereby imposing a state-mandated local program. The bill would further prohibit state or local agencies from ~~receiving~~ *requesting an equitable share from a federal agency of* specified seized property if a conviction for the underlying offenses is not ~~obtained or if federal law prohibits distributing the proceeds or property received in accordance with state law.~~ *obtained.*

The bill would require notices of a forfeiture action to contain additional details, such as the rights of an interested party at a forfeiture hearing. The bill would require the court to appoint counsel for the defendant in the forfeiture proceeding if a defendant in a related criminal matter is represented by court-appointed counsel, thereby creating a state-mandated local program. The bill would change the burden of proof that a state or local law enforcement agency must meet to succeed in a forfeiture action with regards to cash or negotiable instruments of a value not less than \$25,000, from a clear and convicting standard to beyond a reasonable doubt. *The bill would also make other specified changes to court forfeiture proceedings, including allowing parties to waive the requirement that forfeiture cases be tried in conjunction with related criminal cases when the forfeiture hearing is continued or stayed.*

The bill would allow recovery of attorney's fees for defendants or claimants in a forfeiture action who substantially prevail. The bill would make specified changes to the distribution of proceeds from forfeiture actions under state law, including reducing distributions to seizing law enforcement agencies and prosecutor's offices, and providing distributions ~~to courts, public defenders, and a specified nonprofit~~

~~organization providing training in the use of laws permitting seizure and forfeiture of assets: to specified funds for specified purposes.~~ The bill would also require the Attorney General to include additional information on forfeiture actions in the yearly report.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11470.1 of the Health and Safety Code
2 is amended to read:

3 11470.1. (a) The expenses of seizing, eradicating, destroying,
4 or taking remedial action with respect to, any controlled substance
5 or its precursors shall be recoverable from:

6 (1) Any person who manufactures or cultivates a controlled
7 substance or its precursors in violation of this division.

8 (2) Any person who aids and abets or who knowingly profits
9 in any manner from the manufacture or cultivation of a controlled
10 substance or its precursors on property owned, leased, or possessed
11 by the defendant, in violation of this division.

12 (b) The expenses of taking remedial action with respect to any
13 controlled substance or its precursors shall also be recoverable
14 from any person liable for the costs of that remedial action under
15 Chapter 6.8 (commencing with Section 25300) of Division 20 of
16 the Health and Safety Code.

17 (c) It shall be necessary to seek or obtain a criminal conviction
18 for the unlawful manufacture or cultivation of any controlled
19 substance or its precursors prior to the entry of judgment for the
20 recovery of expenses. If criminal charges are pending against the
21 defendant for the unlawful manufacture or cultivation of any
22 controlled substance or its precursors, an action brought pursuant
23 to this section shall, upon a defendant's request, be continued while
24 the criminal charges are pending.

1 (d) The action may be brought by the district attorney, county
2 counsel, city attorney, the State Department of Health Care
3 Services, or Attorney General. All expenses recovered pursuant
4 to this section shall be remitted to the law enforcement agency
5 which incurred them.

6 (e) (1) The burden of proof as to liability shall be on the plaintiff
7 and shall be by a preponderance of the evidence in an action
8 alleging that the defendant is liable for expenses pursuant to
9 paragraph (1) of subdivision (a). The burden of proof as to liability
10 shall be on the plaintiff and shall be by clear and convincing
11 evidence in an action alleging that the defendant is liable for
12 expenses pursuant to paragraph (2) of subdivision (a). The burden
13 of proof as to the amount of expenses recoverable shall be on the
14 plaintiff and shall be by a preponderance of the evidence in any
15 action brought pursuant to subdivision (a).

16 (2) Notwithstanding paragraph (1), for any person convicted of
17 a criminal charge of the manufacture or cultivation of a controlled
18 substance or its precursors there shall be a presumption affecting
19 the burden of proof that the person is liable.

20 (f) Only expenses which meet the following requirements shall
21 be recoverable under this section:

22 (1) The expenses were incurred in seizing, eradicating, or
23 destroying the controlled substance or its precursors or in taking
24 remedial action with respect to a hazardous substance. These
25 expenses may not include any costs incurred in use of the herbicide
26 paraquat.

27 (2) The expenses were incurred as a proximate result of the
28 defendant's manufacture or cultivation of a controlled substance
29 in violation of this division.

30 (3) The expenses were reasonably incurred.

31 (g) For purposes of this section, "remedial action" shall have
32 the meaning set forth in Section 25322.

33 (h) For the purpose of discharge in bankruptcy, a judgment for
34 recovery of expenses under this section shall be deemed to be a
35 debt for willful and malicious injury by the defendant to another
36 entity or to the property of another entity.

37 (i) Notwithstanding Section 526 of the Code of Civil Procedure,
38 the plaintiff may be granted a temporary restraining order or a
39 preliminary injunction, pending or during trial, to restrain the
40 defendant from transferring, encumbering, hypothecating, or

1 otherwise disposing of any assets specified by the court, if it
2 appears by the complaint that the plaintiff is entitled to the relief
3 demanded and it appears that the defendant may dispose of those
4 assets to thwart enforcement of the judgment.

5 (j) The Legislature finds and declares that civil penalties for the
6 recovery of expenses incurred in enforcing the provisions of this
7 division shall not supplant criminal prosecution for violation of
8 those provisions, but shall be a supplemental remedy to criminal
9 enforcement.

10 (k) Any testimony, admission, or any other statement made by
11 the defendant in any proceeding brought pursuant to this section,
12 or any evidence derived from the testimony, admission, or other
13 statement, shall not be admitted or otherwise used in any criminal
14 proceeding arising out of the same conduct.

15 (l) No action shall be brought or maintained pursuant to this
16 section against a person who has been acquitted of criminal charges
17 for conduct ~~which may be~~ *that is* the basis for an action under this
18 section.

19 SEC. 2. Section 11471.2 is added to the Health and Safety
20 Code, to read:

21 11471.2. (a) State or local law enforcement authorities shall
22 not refer or otherwise transfer property seized under state law
23 *authorizing the seizure of property* to a federal agency seeking the
24 *adoption of the seized property* by the federal agency ~~of the seized~~
25 ~~property~~ *for proceeding with federal forfeiture*. Nothing in this
26 section shall be construed to prohibit the federal government, or
27 any of its agencies, from *seizing property*, seeking forfeiture under
28 ~~federal law~~ *law, or sharing federally forfeited property with state*
29 *or local law enforcement agencies when those state or local*
30 *agencies work with federal agencies in joint investigations arising*
31 *out of federal law or federal joint task forces comprised of federal*
32 *and state or local agencies*.

33 (b) All property, moneys, negotiable instruments, securities, or
34 other things of value received by any state or local law enforcement
35 agency pursuant to any federal law that authorizes the sharing or
36 transfer *by federal agencies* of all or a portion of forfeited property
37 or the proceeds ~~of~~ *from* the sale of forfeited property to a state or
38 local law enforcement agency shall be promptly transferred, sold,
39 and ~~deposited~~ *distributed* as set forth in ~~Section 11489~~ *subdivision*
40 *(a) of Section 11489.1*.

1 (c) A state or local law enforcement agency ~~may not receive~~
2 *participating in a joint investigation with a federal agency shall*
3 *not request an equitable share from the federal agency of all or a*
4 *portion of the forfeited property or proceeds from the sale of*
5 *property forfeited pursuant to federal law unless a defendant is*
6 *convicted in an underlying or related criminal action of an offense*
7 *for which property is subject to forfeiture as specified in Section*
8 *11470 or Section 11488, or any an offense under federal law that*
9 *includes all of the elements of an offense for which property is*
10 *subject to forfeiture as specified in Section 11470. If federal law*
11 *prohibits compliance with Section 11489 or if Sections 11470 and*
12 *11488.*

13 (d) *If a conviction in the underlying or related criminal action*
14 *is not obtained, state law enforcement authorities shall not receive*
15 *request an equitable share from the federal agency of all or a*
16 *portion of the forfeited property or proceeds from the sale of*
17 ~~forfeited property shared or transferred~~ *property forfeited pursuant*
18 *to federal law.*

19 SEC. 3. Section 11488.4 of the Health and Safety Code is
20 amended to read:

21 11488.4. (a) (1) Except as provided in subdivision (j), if the
22 Department of Justice or the local governmental entity determines
23 that the factual circumstances do warrant that the moneys,
24 negotiable instruments, securities, or other things of value seized
25 or subject to forfeiture come within the provisions of subdivisions
26 (a) to (g), inclusive, of Section 11470, and are not automatically
27 made forfeitable or subject to court order of forfeiture or
28 destruction by another provision of this chapter, the Attorney
29 General or district attorney shall file a petition of forfeiture with
30 the superior court of the county in which the defendant has been
31 charged with the underlying criminal offense or in which the
32 property subject to forfeiture has been seized or, if no seizure has
33 occurred, in the county in which the property subject to forfeiture
34 is located. If the petition alleges that real property is forfeitable,
35 the prosecuting attorney shall cause a lis pendens to be recorded
36 in the office of the county recorder of each county in which the
37 real property is located.

38 (2) A petition of forfeiture under this subdivision shall be filed
39 as soon as practicable, but in any case within one year of the seizure
40 of the property which is subject to forfeiture, or as soon as

1 practicable, but in any case within one year of the filing by the
2 Attorney General or district attorney of a lis pendens or other
3 process against the property, whichever is earlier.

4 (b) Physical seizure of assets shall not be necessary in order to
5 have that particular asset alleged to be forfeitable in a petition
6 under this section. The prosecuting attorney may seek protective
7 orders for any asset pursuant to Section 11492.

8 (c) The Attorney General or district attorney shall make service
9 of process regarding this petition upon every individual designated
10 in a receipt issued for the property seized. In addition, the Attorney
11 General or district attorney shall cause a notice of the seizure, if
12 any, and of the intended forfeiture proceeding, as well as a notice
13 stating that any interested party may file a verified claim with the
14 superior court of the county in which the property was seized or
15 if the property was not seized, a notice of the initiation of forfeiture
16 proceedings with respect to any interest in the property seized or
17 subject to forfeiture, to be served by personal delivery or by
18 registered mail upon any person who has an interest in the seized
19 property or property subject to forfeiture other than persons
20 designated in a receipt issued for the property seized. Whenever
21 a notice is delivered pursuant to this section, it shall be
22 accompanied by a claim form as described in Section 11488.5 and
23 directions for the filing and service of a claim.

24 (d) An investigation shall be made by the law enforcement
25 agency as to any claimant to a vehicle, boat, or airplane whose
26 right, title, interest, or lien is of record in the Department of Motor
27 Vehicles or appropriate federal agency. If the law enforcement
28 agency finds that any person, other than the registered owner, is
29 the legal owner thereof, and that ownership did not arise subsequent
30 to the date and time of arrest or notification of the forfeiture
31 proceedings or seizure of the vehicle, boat, or airplane, it shall
32 forthwith send a notice to the legal owner at his or her address
33 appearing on the records of the Department of Motor Vehicles or
34 appropriate federal agency.

35 (e) When a forfeiture action is filed, the notices shall be
36 published once a week for three successive weeks in a newspaper
37 of general circulation in the county where the seizure was made
38 or where the property subject to forfeiture is located.

39 (f) All notices shall set forth the time within which a claim of
40 interest in the property seized or subject to forfeiture is required

1 to be filed pursuant to Section 11488.5. The notices shall explain,
2 in plain language, what an interested party must do and the time
3 in which the person must act to contest the forfeiture in a hearing.
4 The notices shall state what rights the interested party has at a
5 hearing. The notices shall also state the legal consequences for
6 failing to respond to the forfeiture notice.

7 (g) Nothing contained in this chapter shall preclude a person,
8 other than a defendant, claiming an interest in property actually
9 seized from moving for a return of property if that person can show
10 standing by proving an interest in the property not assigned
11 subsequent to the seizure or filing of the forfeiture petition.

12 (h) (1) If there is an underlying or related criminal action, a
13 defendant may move for the return of the property on the grounds
14 that there is not probable cause to believe that the property is
15 forfeitable pursuant to subdivisions (a) to (g), inclusive, of Section
16 11470 and is not automatically made forfeitable or subject to court
17 order of forfeiture or destruction by another provision of this
18 chapter. The motion may be made prior to, during, or subsequent
19 to the preliminary examination. If made subsequent to the
20 preliminary examination, the Attorney General or district attorney
21 may submit the record of the preliminary hearing as evidence that
22 probable cause exists to believe that the underlying or related
23 criminal violations have occurred.

24 (2) Within 15 days after a defendant's motion is granted, the
25 people may file a petition for a writ of mandate or prohibition
26 seeking appellate review of the ruling.

27 (i) (1) With respect to property described in subdivisions (e)
28 and (g) of Section 11470 for which forfeiture is sought and as to
29 which forfeiture is contested, the state or local governmental entity
30 shall have the burden of proving beyond a reasonable doubt that
31 the property for which forfeiture is sought was used, or intended
32 to be used, to facilitate a violation of one of the offenses
33 enumerated in subdivision (f) or (g) of Section 11470.

34 (2) In the case of property described in subdivision (f) of Section
35 11470, for which forfeiture is sought and as to which forfeiture is
36 contested, the state or local governmental entity shall have the
37 burden of proving beyond a reasonable doubt that the property for
38 which forfeiture is sought meets the criteria for forfeiture described
39 in subdivision (f) of Section 11470.

1 (3) In the case of property described in paragraphs (1) and (2),
2 *where forfeiture is contested*, a judgment of forfeiture requires as
3 a condition precedent thereto, that a defendant be convicted in an
4 underlying or related criminal action of an offense specified in
5 subdivision (f) or (g) of Section 11470 which offense occurred
6 within five years of the seizure of the property subject to forfeiture
7 or within five years of the notification of intention to seek
8 forfeiture. If the defendant is found guilty of the underlying or
9 related criminal offense, the issue of forfeiture shall be tried before
10 the same jury, if the trial was by jury, or tried before the same
11 court, if trial was by court, unless waived by all parties. The issue
12 of forfeiture shall be bifurcated from the criminal trial and tried
13 after conviction unless waived by all the parties. If the defendant
14 in the related criminal matter is represented by court-appointed
15 counsel, the trial court shall appoint counsel for the defendant in
16 the forfeiture proceeding.

17 (4) If there is an underlying or related criminal action, and a
18 criminal conviction is required before a judgment of forfeiture
19 may be entered, the issue of forfeiture shall be tried in conjunction
20 therewith. *In such a case, the issue of forfeiture shall be bifurcated*
21 *from the criminal trial and tried after conviction unless waived by*
22 *the parties*. Trial shall be by jury unless waived by all parties. If
23 there is no underlying or related criminal action, the presiding
24 judge of the superior court shall assign the action brought pursuant
25 to this chapter for trial.

26 (j) The Attorney General or the district attorney of the county
27 in which property is subject to forfeiture under Section 11470 may,
28 pursuant to this subdivision, order forfeiture of personal property
29 not exceeding twenty-five thousand dollars (\$25,000) in value.
30 The Attorney General or district attorney shall provide notice of
31 proceedings under this subdivision pursuant to subdivisions (c),
32 (d), (e), and (f), including:

- 33 (1) A description of the property.
- 34 (2) The appraised value of the property.
- 35 (3) The date and place of seizure or location of any property
36 not seized but subject to forfeiture.
- 37 (4) The violation of law alleged with respect to forfeiture of the
38 property.

1 (5) (A) The instructions for filing and serving a claim with the
2 Attorney General or the district attorney pursuant to Section
3 11488.5 and time limits for filing a claim and claim form.

4 (B) If no claims are timely filed, the Attorney General or the
5 district attorney shall prepare a written declaration of forfeiture of
6 the subject property to the state and dispose of the property in
7 accordance with ~~Section 11489~~. *subdivision (b) of Section 11489.1*.
8 A written declaration of forfeiture signed by the Attorney General
9 or district attorney under this subdivision shall be deemed to
10 provide good and sufficient title to the forfeited property. The
11 prosecuting agency ordering forfeiture pursuant to this subdivision
12 shall provide a copy of the declaration of forfeiture to any person
13 listed in the receipt given at the time of seizure and to any person
14 personally served notice of the forfeiture proceedings.

15 (C) If a claim is timely filed, then the Attorney General or
16 district attorney shall file a petition of forfeiture pursuant to this
17 section within 30 days of the receipt of the claim. The petition of
18 forfeiture shall then proceed pursuant to other provisions of this
19 chapter, except that no additional notice need be given and no
20 additional claim need be filed.

21 (k) If in any underlying or related criminal action or proceeding,
22 in which a petition for forfeiture has been filed pursuant to this
23 section, and a criminal conviction is required before a judgment
24 of forfeiture may be entered, the defendant willfully fails to appear
25 as required, *there shall be no requirement of a criminal conviction*
26 *as a prerequisite to the forfeiture. In these cases*, forfeiture shall
27 be ordered as against the defendant and judgment entered upon
28 default, upon application of the state or local governmental entity.
29 In its application for default, the state or local governmental entity
30 shall be required to give notice to the defendant’s attorney of
31 record, if any, in the underlying or related criminal action, and to
32 make a showing of due diligence to locate the defendant. In moving
33 for a default judgment pursuant to this subdivision, the state or
34 local governmental entity shall be required to establish a prima
35 facie case in support of its petition for forfeiture.

36 *SEC. 4. Section 11488.5 of the Health and Safety Code is*
37 *amended to read:*

38 11488.5. (a) (1) Any person claiming an interest in the
39 property seized pursuant to Section 11488 may, unless for good
40 cause shown the court extends the time for filing, at any time within

1 30 days from the date of the ~~first~~ *last* publication of the notice of
2 seizure, if that person was not personally served or served by mail,
3 or within 30 days after receipt of actual notice, file with the
4 superior court of the county in which the defendant has been
5 charged with the underlying or related criminal offense or in which
6 the property was seized or, if there was no seizure, in which the
7 property is located, a claim, verified in accordance with Section
8 446 of the Code of Civil Procedure, stating his or her interest in
9 the property. An endorsed copy of the claim shall be served by the
10 claimant on the Attorney General or district attorney, as
11 appropriate, within 30 days of the filing of the claim. The Judicial
12 Council shall develop and approve official forms for the verified
13 claim that is to be filed pursuant to this section. The official forms
14 shall be drafted in nontechnical language, in English and in
15 Spanish, and shall be made available through the office of the clerk
16 of the appropriate court.

17 (2) Any person who claims that the property was assigned to
18 him or to her prior to the seizure or notification of pending
19 forfeiture of the property under this chapter, whichever occurs
20 ~~first~~, *last*, shall file a claim with the court and prosecuting agency
21 pursuant to Section 11488.5 declaring an interest in that property
22 and that interest shall be adjudicated at the forfeiture hearing. The
23 property shall remain under control of the law enforcement or
24 prosecutorial agency until the adjudication of the forfeiture hearing.
25 Seized property shall be protected and its value shall be preserved
26 pending the outcome of the forfeiture proceedings.

27 (3) The clerk of the court shall not charge or collect a fee for
28 the filing of a claim in any case in which the value of the
29 respondent property as specified in the notice is five thousand
30 dollars (\$5,000) or less. If the value of the property, as specified
31 in the notice, is more than five thousand dollars (\$5,000), the clerk
32 of the court shall charge the filing fee specified in Section 70611
33 of the Government Code.

34 (4) The claim of a law enforcement agency to property seized
35 pursuant to Section 11488 or subject to forfeiture shall have priority
36 over a claim to the seized or forfeitable property made by the
37 Franchise Tax Board in a notice to withhold issued pursuant to
38 Section 18817 or 26132 of the Revenue and Taxation Code.

39 (b) (1) If at the end of the time set forth in subdivision (a) there
40 is no claim on file, the court, upon motion, shall declare the

1 property seized or subject to forfeiture pursuant to subdivisions
2 (a) to (g), inclusive, of Section 11470 forfeited to the state. In
3 moving for a default judgment pursuant to this subdivision, the
4 state or local governmental entity shall be required to establish a
5 prima facie case in support of its petition for forfeiture.

6 (2) The court shall order the ~~forfeited~~ *money forfeited or the*
7 *proceeds of the sale of property* to be distributed as set forth in
8 ~~Section 11489: subdivision (b) of Section 11489.1.~~

9 (c) (1) If a verified claim is filed, the forfeiture proceeding shall
10 be set for hearing on a day not less than 30 days therefrom, and
11 the proceeding shall have priority over other civil cases. Notice of
12 the hearing shall be given in the same manner as provided in
13 Section 11488.4. Such a verified claim or a claim filed pursuant
14 to subdivision (j) of Section 11488.4 shall not be admissible in the
15 proceedings regarding the underlying or related criminal offense
16 set forth in subdivision (a) of Section 11488.

17 (2) The hearing shall be by jury, unless waived by consent of
18 all parties.

19 (3) The provisions of the Code of Civil Procedure shall apply
20 to proceedings under this chapter unless otherwise inconsistent
21 with the provisions or procedures set forth in this chapter. However,
22 in proceedings under this chapter, there shall be no joinder of
23 actions, coordination of actions, except for forfeiture proceedings,
24 or cross-complaints, and the issues shall be limited strictly to the
25 questions related to this chapter.

26 (d) (1) At the hearing, the state or local governmental entity
27 shall have the burden of establishing, pursuant to subdivision (i)
28 of Section 11488.4, that the owner of any interest in the seized
29 property consented to the use of the property with knowledge that
30 it would be or was used for a purpose for which forfeiture is
31 permitted, in accordance with the burden of proof set forth in
32 subdivision (i) of Section 11488.4.

33 (2) No interest in the seized property shall be affected by a
34 forfeiture decree under this section unless the state or local
35 governmental entity has proven that the owner of that interest
36 consented to the use of the property with knowledge that it would
37 be or was used for the purpose charged. Forfeiture shall be ordered
38 when, at the hearing, the state or local governmental entity has
39 shown that the assets in question are subject to forfeiture pursuant

1 to Section 11470, in accordance with the burden of proof set forth
2 in subdivision (i) of Section 11488.4.

3 (e) The forfeiture hearing shall be continued upon motion of
4 the prosecution or the defendant until after a verdict of guilty on
5 any criminal charges specified in this chapter and pending against
6 the defendant have been decided. *In cases in which the forfeiture*
7 *hearing, or any related civil discovery, is continued or stayed, the*
8 *requirement that the forfeiture case be tried in conjunction with*
9 *the related criminal case or to the same jury as in the related*
10 *criminal case may be waived by the parties.* The forfeiture hearing
11 shall be conducted in accordance with Sections 190 to 222.5,
12 inclusive, Sections 224 to 234, inclusive, Section 237, and Sections
13 607 to 630, inclusive, of the Code of Civil Procedure if a trial by
14 jury, and by Sections 631 to 636, inclusive, of the Code of Civil
15 Procedure if by the court. Unless the court or jury finds that the
16 seized property was used for a purpose for which forfeiture is
17 permitted, the court shall order the seized property released to the
18 person it determines is entitled thereto.

19 If the court or jury finds that the seized property was used for a
20 purpose for which forfeiture is permitted, but does not find that a
21 person claiming an interest therein, to which the court has
22 determined he or she is entitled, had actual knowledge that the
23 seized property would be or was used for a purpose for which
24 forfeiture is permitted and consented to that use, the court shall
25 order the seized property released to the claimant.

26 (f) All seized property which was the subject of a contested
27 forfeiture hearing and which was not released by the court to a
28 claimant shall be declared by the court to be forfeited to the state,
29 provided the burden of proof required pursuant to subdivision (i)
30 of Section 11488.4 has been met. The court shall order the forfeited
31 property to be distributed as set forth in Section 11489.

32 (g) All seized property which was the subject of the forfeiture
33 hearing and which was not forfeited shall remain subject to any
34 order to withhold issued with respect to the property by the
35 Franchise Tax Board.

36 ~~SEC. 4.~~

37 *SEC. 5.* Section 11488.7 is added to the Health and Safety
38 Code, to read:

39 11488.7. In any forfeiture proceeding under this chapter in
40 which the defendant or claimant substantially prevails, the

1 defendant or claimant shall be entitled to recover reasonable
2 attorneys’ fees and other litigation costs reasonably incurred by
3 the defendant or claimant. Any final award of fees and costs shall
4 be paid directly to the defendant’s or claimant’s attorney.

5 ~~SEC. 5.~~

6 SEC. 6. Section 11489 of the Health and Safety Code is
7 amended to read:

8 11489. Notwithstanding Section 11502 and except as otherwise
9 provided in Section 11473, in all cases where the property is seized
10 pursuant to this chapter and forfeited to the state or local
11 governmental entity and, where necessary, sold by the Department
12 of General Services or local governmental entity, the money
13 forfeited or the proceeds of sale shall be distributed by the state
14 or local governmental entity as follows:

15 (a) To the bona fide or innocent purchaser, conditional sales
16 vendor, or mortgagee of the property, if any, up to the amount of
17 his or her interest in the property, when the court declaring the
18 forfeiture orders a distribution to that person.

19 (b) The balance, if any, to accumulate, and to be distributed and
20 transferred quarterly in the following manner:

21 (1) To the state agency or local governmental entity for all
22 expenditures made or incurred by it in connection with the sale of
23 the property, including expenditures for any necessary costs of
24 notice required by Section 11488.4, and for any necessary repairs,
25 storage, or transportation of any property seized under this chapter.

26 (2) The remaining funds shall be distributed as follows:

27 (A) ~~Fifty-four~~Forty percent to the state, local, or state and local
28 law enforcement entities that participated in the seizure distributed
29 so as to reflect the proportionate contribution of each ~~agency~~.

30 (i) ~~Fifteen~~ agency. Fifteen percent of the funds distributed
31 pursuant to this subparagraph shall be deposited in a special fund
32 maintained by the county, city, or city and county of any agency
33 making the seizure or seeking an order for forfeiture. This fund
34 shall be used for the sole purpose of funding programs designed
35 to combat drug abuse and divert gang activity, and shall wherever
36 possible involve educators, parents, community-based
37 organizations and local businesses, and uniformed law enforcement
38 officers. Those programs that have been evaluated as successful
39 shall be given priority. These funds shall not be used to supplant

1 any state or local funds that would, in the absence of this clause,
2 otherwise be made available to the programs.

3 It is the intent of the Legislature to cause the development and
4 continuation of positive intervention programs for high-risk
5 elementary and secondary schoolage students. ~~Local law~~
6 ~~enforcement should work in partnership with state and local~~
7 ~~agencies and the private sector in administering these programs.~~

8 ~~(ii) The actual distribution of funds set aside pursuant to clause~~
9 ~~(i) shall be determined by a panel consisting of the sheriff of the~~
10 ~~county, a police chief selected by the other chiefs in the county,~~
11 ~~and the district attorney and the chief probation officer of the~~
12 ~~county.~~

13 ~~(B) Five percent to the prosecutorial agency that processes the~~
14 ~~forfeiture action.~~

15 ~~(C) Ten percent to the court in the jurisdiction where the~~
16 ~~forfeiture proceedings are initiated.~~

17 ~~(D) Five percent to the public defender's office or provider of~~
18 ~~court-appointed counsel in the jurisdiction where the forfeiture~~
19 ~~proceedings were initiated.~~

20 ~~(E)~~

21 (B) Twenty-four percent to the General Fund. Notwithstanding
22 Section 13340 of the Government Code, the moneys are hereby
23 continuously appropriated to the General Fund. Commencing
24 January 1, 2016, all moneys deposited in the General Fund pursuant
25 to this subparagraph, in an amount not to exceed ten million dollars
26 (\$10,000,000), shall be made available for school safety and
27 security, upon appropriation by the Legislature, and shall be
28 disbursed pursuant to Senate Bill 1255 of the 1993–94 Regular
29 Session, as enacted.

30 (C) *Thirty-four percent to the State Asset Forfeiture Fund for*
31 *Courts and Criminal Justice Purposes, available upon*
32 *appropriation by the Legislature for the purposes described in*
33 *subdivision (b) of Section 11489.1.*

34 ~~(F)~~

35 (D) One percent to a private nonprofit organization composed
36 of local prosecutors, which shall use these funds for the exclusive
37 purpose of providing a statewide program of education and training
38 for prosecutors and law enforcement officers in ethics and the
39 proper use of laws permitting the seizure and forfeiture of assets
40 under this chapter.

1 ~~(G)~~

2 (E) One percent to a private nonprofit organization composed
3 of local criminal defense attorneys, which shall use these funds
4 for the exclusive purpose of providing a statewide program of
5 education and training in the use of laws permitting the seizure
6 and forfeiture of assets under this chapter.

7 (c) Notwithstanding Item 0820-101-469 of the Budget Act of
8 1985 (Chapter 111, Statutes of 1985), all funds allocated to the
9 Department of Justice pursuant to subparagraph (A) of paragraph
10 (2) of subdivision (b) shall be deposited into the Department of
11 Justice Special Deposit Fund—State Asset Forfeiture Account and
12 used for the law enforcement efforts of the state or for state or
13 local law enforcement efforts pursuant to Section 11493.

14 All funds allocated to the Department of Justice by the federal
15 government under its Federal Asset Forfeiture program authorized
16 by the Comprehensive Crime Control Act of 1984 (Public Law
17 98-473) may be deposited directly into the Narcotics Assistance
18 and Relinquishment by Criminal Offender Fund and used for state
19 and local law enforcement efforts pursuant to Section 11493.

20 Funds that are not deposited pursuant to the above paragraph
21 shall be deposited into the Department of Justice Special Deposit
22 Fund—Federal Asset Forfeiture Account.

23 ~~(d) All funds distributed to the courts pursuant to subparagraph~~
24 ~~(C) of paragraph (2) of subdivision (b) shall be deposited into the~~
25 ~~Judicial Asset Forfeiture Fund, which is hereby created in the State~~
26 ~~Treasury. The moneys in the Judicial Asset Forfeiture Fund, upon~~
27 ~~appropriation by the Legislature, shall be expended for the purpose~~
28 ~~of administering the courts in the jurisdiction where the forfeiture~~
29 ~~proceeding occurred.~~

30 ~~(e)~~

31 (d) All the funds distributed to the state or local governmental
32 entity pursuant to ~~subparagraphs~~ *subparagraph* (A) ~~and (B)~~ of
33 paragraph (2) of subdivision (b) shall not supplant any state or
34 local funds that would, in the absence of this subdivision, be made
35 available to support the law enforcement and prosecutorial efforts
36 of these agencies.

37 The court shall order the forfeiture proceeds distributed to the
38 state, local, or state and local governmental entities as provided in
39 this section.

1 For the purposes of this section, “local governmental entity”
2 means any city, county, or city and county in this state.

3 *SEC. 7. Section 11489.1 is added to the Health and Safety*
4 *Code, to read:*

5 *11489.1. (a) All property, moneys, negotiable instruments,*
6 *securities, or other things of value received by any state or local*
7 *law enforcement agency pursuant to any federal law that authorizes*
8 *the sharing or transfer of all or a portion of forfeited property or*
9 *the proceeds from the sale of forfeited property to a state or local*
10 *law enforcement agency shall be deposited into the State Asset*
11 *Forfeiture Fund for Law Enforcement Purposes, which is hereby*
12 *created in the State Treasury. Upon appropriation by the*
13 *Legislature, the moneys in the State Asset Forfeiture Fund for Law*
14 *Enforcement Purposes shall be allocated to law enforcement*
15 *agencies statewide, based on the population of the jurisdiction*
16 *served.*

17 *(b) All property, moneys, negotiable instruments, securities, or*
18 *other things of value forfeited pursuant to subdivision (j) of Section*
19 *11488.4 and subparagraph (2) of subdivision (b) of Section*
20 *11488.5 shall be distributed as follows:*

21 *(1) To the state agency or local governmental entity for all*
22 *expenditures made or incurred by it in connection with the sale of*
23 *the property, including expenditures for any necessary costs for*
24 *public notice, hearings, or for any necessary repairs, storage, or*
25 *transportation of any property lawfully forfeited.*

26 *(2) The remaining funds shall be distributed as follows:*

27 *(A) Twenty-four percent to the General Fund.*

28 *(B) Seventy-six percent to the State Asset Forfeiture Fund for*
29 *Courts and Criminal Justice Purposes, which is hereby created in*
30 *the State Treasury. Upon appropriation by the Legislature, the*
31 *moneys in the State Asset Forfeiture Fund for Courts and Criminal*
32 *Justice Purposes shall be made available for the purpose of*
33 *criminal and civil court functions, prosecution, public defense and*
34 *indigent defense, law enforcement, crime prevention including*
35 *after school programs for adolescents and drug treatment for*
36 *adolescents and adults, and victim services.*

37 ~~SEC. 6.~~

38 *SEC. 8. Section 11495 of the Health and Safety Code is*
39 *amended to read:*

1 11495. (a) The funds received by the law enforcement agencies
2 under Section 11489 shall be deposited into an account maintained
3 by the Controller, county auditor, or city treasurer. These funds
4 shall be distributed to the law enforcement agencies at their request.
5 The Controller, auditor, or treasurer shall maintain a record of
6 these disbursements which records shall be open to public
7 inspection, subject to the privileges contained in Sections 1040,
8 1041, and 1042 of the Evidence Code.

9 (b) Upon request of the governing body of the jurisdiction in
10 which the distributions are made, the Controller, auditor, or
11 treasurer shall conduct an audit of these funds and their use. In the
12 case of the state, the governing body shall be the Legislature.

13 (c) Each year, the Attorney General shall publish a report which
14 sets forth the following information for the state, each county, each
15 city, and each city and county:

16 (1) The number of forfeiture actions initiated and administered
17 by state or local agencies under California law, the number of cases
18 adopted by the federal government, and the number of cases
19 initiated by a joint federal-state action that were prosecuted under
20 federal law.

21 (2) The number of cases and the administrative number or court
22 docket number of each case for which forfeiture was ordered or
23 declared.

24 (3) The number of suspects charged with a controlled substance
25 violation.

26 (4) The number of alleged criminal offenses that were under
27 federal or state law.

28 (5) The disposition of cases, including no charge, dropped
29 charges, acquittal, plea agreement, jury conviction, or other.

30 (6) The value of the assets forfeited.

31 (7) The recipients of the forfeited assets, the amounts received,
32 and the date of the disbursement.

33 (d) The Attorney General shall develop administrative guidelines
34 for the collection and publication of the information required in
35 subdivision (c).

36 (e) The Attorney General's report shall cover the calendar year
37 and shall be made no later than March 1 of each year beginning
38 with the year after the enactment of this law.

1 ~~SEC. 7.~~

2 *SEC. 9.* If the Commission on State Mandates determines that
3 this act contains costs mandated by the state, reimbursement to
4 local agencies and school districts for those costs shall be made
5 pursuant to Part 7 (commencing with Section 17500) of Division
6 4 of Title 2 of the Government Code.

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