

ASSEMBLY BILL

No. 1145

Introduced by Assembly Member Huff

February 23, 2007

An act to add Section 594.9 to the Penal Code, relating to graffiti.

LEGISLATIVE COUNSEL'S DIGEST

AB 1145, as introduced, Huff. Graffiti: forfeiture of vehicle.

Existing law establishes the offense of vandalism, which generally includes placing graffiti in or on public or private property, as well as other defacing or damaging acts.

This bill would provide for the seizure and forfeiture of a vehicle when the owner of the vehicle uses the vehicle in connection with commission of a violation of the vandalism provisions described above.

By imposing additional procedures on local prosecutorial entities, this bill would impose a state-mandated local program.

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 594.9 is added to the Penal Code, to read:

1 594.9. (a) As used in this section, the following terms have
2 the following meanings:

3 (1) "Owner" means any person who to whom the subject vehicle
4 is registered.

5 (2) "Vehicle" means any transportation device that requires the
6 driver to have in his or her immediate possession a valid driver's
7 license for the appropriate class of vehicle being driven.

8 (b) Any vehicle used by the owner of the vehicle to engage in
9 a violation of Section 594 where the violation results in damage
10 of four hundred dollars (\$400) or more, is declared a nuisance and
11 the vehicle shall be enjoined and abated as provided in this section.

12 (c) All right, title, and interest in any vehicle described in
13 subdivision (b) shall vest in the agency arresting the owner for the
14 violation of Section 594, upon commission of the act giving rise
15 to the nuisance under this section.

16 (d) A peace officer may seize a vehicle subject to forfeiture
17 under this section upon the issuance of an order by a court having
18 jurisdiction of the vehicle. Seizure without court order may be
19 made in any of the following circumstances:

20 (1) The seizure is incident to an arrest or search under a search
21 warrant.

22 (2) There is probable cause to believe the vehicle was used in
23 violation of this section.

24 (e) A peace officer seizing a vehicle under this section shall
25 complete a receipt in accordance with Section 1412 and deliver it
26 to the person from whose possession the vehicle was seized.

27 (f) An immediate investigation shall be made by the public
28 agency making the seizure as to any potential claimant to a vehicle
29 whose right, title, interest, or lien is of record in the Department
30 of Motor Vehicles of this or any other state or appropriate federal
31 agency. If the public agency finds that any person, other than the
32 registered owner, is the legal owner, and the ownership did not
33 arise subsequent to the date and time of arrest or seizure of the
34 vehicle or notification of the forfeiture proceedings, it shall within
35 two business days of the vehicle's seizure, send a notice of seizure
36 to the legal owner at his or her address appearing on the records
37 of the Department of Motor Vehicles of this or any other state or
38 any appropriate federal agency.

39 (g) The public agency seizing the vehicle shall provide any
40 potential claimants discovered as a result of the investigation set

1 out in subdivision (f) with the opportunity for a postseizure hearing
2 to determine the validity of the seizure. The postseizure hearing
3 shall be conducted within two business days of the request. The
4 public agency may authorize its own officer or employee to conduct
5 the hearing if the hearing officer is not the same person who
6 directed the seizure of the vehicle. Failure of either the registered
7 or legal owner, or his or her agent, to request or attend a scheduled
8 hearing within the appropriate timeframe shall satisfy the
9 postseizure requirement.

10 (h) The notice of seizure shall include the following:

11 (1) The name, address, and telephone number of the agency
12 providing the notice.

13 (2) The authority and reason for the seizure.

14 (3) A statement that in order to receive their postseizure hearing,
15 the owners, or their agents, shall request the hearing in person, in
16 writing, or by telephone within 10 calendar days of the date of the
17 notice.

18 (4) The time in which a claim of interest in the vehicle seized
19 or subject to forfeiture is required to be filed.

20 (i) A vehicle seized pursuant to this section, where appropriate,
21 may be held as evidence in any proceeding brought by the district
22 attorney.

23 (j) (1) The district attorney may, pursuant to this section, order
24 the forfeiture of vehicles seized under this section.

25 (2) If the district attorney determines that the factual
26 circumstances warrant forfeiture of the vehicle, the district attorney
27 shall serve a notice of intended forfeiture upon any person who
28 has an interest in the seized vehicle. The notice shall be served as
29 soon as practicable, but in any event within 30 calendar days of
30 the seizure of the vehicle subject to forfeiture.

31 (3) The notice of intended forfeiture shall be served as follows:

32 (A) The notice of intended forfeiture shall be served by personal
33 delivery or certified mail, return receipt requested, upon any person
34 who has an interest in the seized vehicle.

35 (B) In the event that the person entitled to service refuses to
36 accept certified return receipt mail or cannot be personally served,
37 service may be made by substituted service. Substituted service
38 may be accomplished by any one of the following methods:

39 (i) By leaving a copy during usual business hours at the
40 recipient's business with the person who is apparently in charge,

1 and by thereafter mailing by first class mail a copy to the recipient
2 where the copy was left.

3 (ii) By leaving a copy at the recipient's dwelling or usual place
4 of abode, in the presence of a competent member of the household
5 and thereafter mailing by first class mail a copy to the recipient at
6 the address where the copy was left.

7 (k) If the person entitled to service lives out of state and will
8 not accept certified return receipt mail, then service may be made
9 by first class mail.

10 (l) If the person entitled to notice cannot be located, or service
11 cannot be effected as set forth in this subdivision, service may be
12 made by publication in a local newspaper of general circulation.
13 Service shall be deemed sufficient when it is accomplished
14 pursuant to Section 6063 of the Government Code.

15 (m) (1) A person claiming an interest in the vehicle seized shall,
16 within 10 calendar days from the date of the notice of intended
17 forfeiture or within 30 calendar days from the date of first
18 publication of the notice of intended forfeiture, file with the
19 superior court of the county in which the vehicle was seized, a
20 Claim Opposing Forfeiture, verified in accordance with Section
21 446 of the Code of Civil Procedure, stating his or her interest in
22 the vehicle. An endorsed copy of the claim shall be served upon
23 the district attorney within 10 calendar days of the filing of the
24 claim.

25 (2) If a verified claim is filed in accordance with this section,
26 the forfeiture proceeding shall be set for hearing within 30 calendar
27 days from the date the claim is filed with the court.

28 (3) The hearing shall be before the superior court of the county.
29 The provisions of the Code of Civil Procedure shall apply to
30 proceedings under this section unless otherwise inconsistent with
31 the provisions or procedures set forth in this section. However, in
32 proceedings under this section, there shall be no joinder of actions,
33 coordination of actions, except for forfeiture proceedings, or
34 cross-complaints, and the issues shall be limited strictly to the
35 questions related to this section. Trial shall be by court or jury.

36 (4) With respect to vehicles for which forfeiture is sought and
37 as to which forfeiture is contested, the district attorney shall have
38 the burden of proving by a preponderance of the evidence that the
39 vehicle was used as described in subdivision (b).

1 (5) Upon proof that the vehicle was used for any of the purposes
2 set forth in subdivision (b), the court shall declare the vehicle a
3 nuisance and order that the vehicle be forfeited, sold, and the
4 proceeds distributed as set forth in subdivision (n). The court may
5 make a different distribution of the proceeds, if the court finds that
6 the claimant did not know that the vehicle was used for a purpose
7 that constitutes a violation of this section.

8 (6) If no claims are timely filed, the district attorney shall
9 prepare a written declaration of forfeiture of the vehicle to the
10 appropriate public entity. A written declaration of forfeiture signed
11 by the district attorney under this section shall be deemed to
12 provide good and sufficient title to the forfeited vehicle. The
13 proceeds from the disposal of the vehicle declared forfeited by the
14 district attorney shall be distributed in accordance with subdivision
15 (n). The district attorney ordering forfeiture pursuant to this section
16 shall provide a copy of the declaration of forfeiture to any person
17 who received notice of the forfeiture proceedings.

18 (n) In all cases where vehicles seized pursuant to this section
19 are forfeited to the local public entity, the vehicles shall be sold,
20 or if cash is paid as settlement in lieu of forfeiture of the vehicle,
21 the proceeds of sale or settlement shall be distributed and
22 appropriated as follows:

23 (1) To pay costs associated with the towing, storage, and release
24 of any vehicle seized under this section.

25 (2) To pay costs associated with the sale of the vehicle.

26 (3) To the lienholder of the vehicle, if any, up to the amount of
27 his, her, or its interest in the vehicle.

28 (4) The remaining funds shall be distributed as follows:

29 (A) To the district attorney for all expenditures other than
30 personnel costs, made or incurred in connection with the
31 enforcement of this section, including, but not limited to, costs for
32 equipment, investigation, supplies, litigation, insurance, and
33 liability resulting from enforcement of this section and costs of
34 publication of the notices.

35 (B) To local law enforcement for all expenditures other than
36 personnel costs, made or incurred in connection with enforcement
37 of this section, including, but not limited to, costs for equipment,
38 investigation, and supplies related to enforcement of this section.

39 (C) To the general fund of the public entity.

1 (o) A vehicle that has been reported stolen, prior to a seizure
2 under this section shall not be subject to forfeiture unless the
3 identity of the registered owner cannot be reasonably ascertained
4 or the registered owner fails to redeem the vehicle within 60 days
5 of the seizure. The registered owner of the vehicle may claim the
6 vehicle upon payment of tow, storage, and release charges,
7 provided the vehicle is not subject to any holds for traffic or
8 parking violations and the vehicle registration is current.
9 SEC. 2. If the Commission on State Mandates determines that
10 this act contains costs mandated by the state, reimbursement to
11 local agencies and school districts for those costs shall be made
12 pursuant to Part 7 (commencing with Section 17500) of Division
13 4 of Title 2 of the Government Code.