

AMENDED IN ASSEMBLY MAY 6, 2008

AMENDED IN ASSEMBLY APRIL 21, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1826

Introduced by Assembly Member Beall

January 18, 2008

An act to amend Section 11488.5 of the Health and Safety Code, ~~and to amend Section 12028.5 of the Penal Code~~, relating to seized property.

LEGISLATIVE COUNSEL'S DIGEST

AB 1826, as amended, Beall. Seized property: fees.

Existing law authorizes the seizure of property in connection with certain controlled substance offenses, and provides a procedure for persons claiming an interest in the seized property to seek return of the property. Existing law provides that no filing fee be charged where the subject property is valued at \$5,000 or less.

This bill would authorize imposition of a \$320 filing fee, as specified, in those claim cases where the subject property is valued at \$5,000 or more.

~~Existing law authorizes the seizure of weapons in certain cases involving domestic violence, as specified. Existing law authorizes law enforcement to petition the court under certain circumstances to determine if firearms seized in those cases should be returned.~~

~~This bill would authorize imposition of a \$320 filing fee under specified circumstances to be paid by a person seeking return of the seized firearm.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 11488.5 of the Health and Safety Code
2 is amended to read:

3 11488.5. (a) (1) Any person claiming an interest in the
4 property seized pursuant to Section 11488 may, unless for good
5 cause shown the court extends the time for filing, at any time within
6 30 days from the date of the first publication of the notice of
7 seizure, if that person was not personally served or served by mail,
8 or within 30 days after receipt of actual notice, file with the
9 superior court of the county in which the defendant has been
10 charged with the underlying or related criminal offense or in which
11 the property was seized or, if there was no seizure, in which the
12 property is located, a claim, verified in accordance with Section
13 446 of the Code of Civil Procedure, stating his or her interest in
14 the property. An endorsed copy of the claim shall be served by the
15 claimant on the Attorney General or district attorney, as
16 appropriate, within 30 days of the filing of the claim. The Judicial
17 Council shall develop and approve official forms for the verified
18 claim that is to be filed pursuant to this section. The official forms
19 shall be drafted in nontechnical language, in English and in
20 Spanish, and shall be made available through the office of the clerk
21 of the appropriate court.

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

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

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

6 (b) (1) If at the end of the time set forth in subdivision (a) there
7 is no claim on file, the court, upon motion, shall declare the
8 property seized or subject to forfeiture pursuant to subdivisions
9 (a) to (g), inclusive, of Section 11470 forfeited to the state. In
10 moving for a default judgment pursuant to this subdivision, the
11 state or local governmental entity shall be required to establish a
12 prima facie case in support of its petition for forfeiture.

13 (2) The court shall order the forfeited property to be distributed
14 as set forth in Section 11489.

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

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

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

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

39 (2) No interest in the seized property shall be affected by a
40 forfeiture decree under this section unless the state or local

1 governmental entity has proven that the owner of that interest
2 consented to the use of the property with knowledge that it would
3 be or was used for the purpose charged. Forfeiture shall be ordered
4 when, at the hearing, the state or local governmental entity has
5 shown that the assets in question are subject to forfeiture pursuant
6 to Section 11470, in accordance with the burden of proof set forth
7 in subdivision (i) of Section 11488.4.

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

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

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

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

37 ~~SEC. 2. Section 12028.5 of the Penal Code is amended to read:~~

38 ~~12028.5. (a) As used in this section, the following definitions~~
39 ~~shall apply:~~

40 (1) ~~“Abuse” means any of the following:~~

- 1 ~~(A) Intentionally or recklessly to cause or attempt to cause~~
2 ~~bodily injury.~~
- 3 ~~(B) Sexual assault.~~
- 4 ~~(C) To place a person in reasonable apprehension of imminent~~
5 ~~serious bodily injury to that person or to another.~~
- 6 ~~(D) To molest, attack, strike, stalk, destroy personal property,~~
7 ~~or violate the terms of a domestic violence protective order issued~~
8 ~~pursuant to Part 4 (commencing with Section 6300) of Division~~
9 ~~10 of the Family Code.~~
- 10 ~~(2) “Domestic violence” means abuse perpetrated against any~~
11 ~~of the following persons:~~
- 12 ~~(A) A spouse or former spouse.~~
- 13 ~~(B) A cohabitant or former cohabitant, as defined in Section~~
14 ~~6209 of the Family Code.~~
- 15 ~~(C) A person with whom the respondent is having or has had a~~
16 ~~dating or engagement relationship.~~
- 17 ~~(D) A person with whom the respondent has had a child, where~~
18 ~~the presumption applies that the male parent is the father of the~~
19 ~~child of the female parent under the Uniform Parentage Act (Part~~
20 ~~3 (commencing with Section 7600) of Division 12 of the Family~~
21 ~~Code).~~
- 22 ~~(E) A child of a party or a child who is the subject of an action~~
23 ~~under the Uniform Parentage Act, where the presumption applies~~
24 ~~that the male parent is the father of the child to be protected.~~
- 25 ~~(F) Any other person related by consanguinity or affinity within~~
26 ~~the second degree.~~
- 27 ~~(3) “Deadly weapon” means any weapon, the possession or~~
28 ~~concealed carrying of which is prohibited by Section 12020.~~
- 29 ~~(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy~~
30 ~~marshal, or police officer of a city, as defined in subdivision (a)~~
31 ~~of Section 830.1, a peace officer of the Department of the~~
32 ~~California Highway Patrol, as defined in subdivision (a) of Section~~
33 ~~830.2, a member of the University of California Police Department,~~
34 ~~as defined in subdivision (b) of Section 830.2, an officer listed in~~
35 ~~Section 830.6 while acting in the course and scope of his or her~~
36 ~~employment as a peace officer, a member of a California State~~
37 ~~University Police Department, as defined in subdivision (c) of~~
38 ~~Section 830.2, a peace officer of the Department of Parks and~~
39 ~~Recreation, as defined in subdivision (f) of Section 830.2, a peace~~
40 ~~officer, as defined in subdivision (d) of Section 830.31, a peace~~

1 officer, as defined in subdivisions (a) and (b) of Section 830.32,
2 and a peace officer, as defined in Section 830.5, who is at the scene
3 of a domestic violence incident involving a threat to human life
4 or a physical assault, shall take temporary custody of any firearm
5 or other deadly weapon in plain sight or discovered pursuant to a
6 consensual or other lawful search as necessary for the protection
7 of the peace officer or other persons present. Upon taking custody
8 of a firearm or other deadly weapon, the officer shall give the
9 owner or person who possessed the firearm a receipt. The receipt
10 shall describe the firearm or other deadly weapon and list any
11 identification or serial number on the firearm. The receipt shall
12 indicate where the firearm or other deadly weapon can be
13 recovered, the time limit for recovery as required by this section,
14 and the date after which the owner or possessor can recover the
15 firearm or other deadly weapon. No firearm or other deadly weapon
16 shall be held less than 48 hours. Except as provided in subdivision
17 (f), if a firearm or other deadly weapon is not retained for use as
18 evidence related to criminal charges brought as a result of the
19 domestic violence incident or is not retained because it was illegally
20 possessed, the firearm or other deadly weapon shall be made
21 available to the owner or person who was in lawful possession 48
22 hours after the seizure or as soon thereafter as possible, but no
23 later than five business days after the owner or person who was in
24 lawful possession demonstrates compliance with Section 12021.3.
25 In any civil action or proceeding for the return of firearms or
26 ammunition or other deadly weapon seized by any state or local
27 law enforcement agency and not returned within five business days
28 following the initial seizure, except as provided in subdivision (d),
29 the court shall allow reasonable attorney's fees to the prevailing
30 party.

31 (e) Any peace officer, as defined in subdivisions (a) and (b) of
32 Section 830.32, who takes custody of a firearm or deadly weapon
33 pursuant to this section shall deliver the firearm within 24 hours
34 to the city police department or county sheriff's office in the
35 jurisdiction where the college or school is located.

36 (d) Any firearm or other deadly weapon that has been taken into
37 custody that has been stolen shall be restored to the lawful owner,
38 as soon as its use for evidence has been served, upon his or her
39 identification of the firearm or other deadly weapon and proof of

1 ownership, and after the law enforcement agency has complied
2 with Section 12021.3.

3 (e) Any firearm or other deadly weapon taken into custody and
4 held by a police, university police, or sheriff's department or by
5 a marshal's office, by a peace officer of the Department of the
6 California Highway Patrol, as defined in subdivision (a) of Section
7 830.2, by a peace officer of the Department of Parks and
8 Recreation, as defined in subdivision (f) of Section 830.2, by a
9 peace officer, as defined in subdivision (d) of Section 830.31, or
10 by a peace officer, as defined in Section 830.5, for longer than 12
11 months and not recovered by the owner or person who has lawful
12 possession at the time it was taken into custody, shall be considered
13 a nuisance and sold or destroyed as provided in subdivision (e) of
14 Section 12028. Firearms or other deadly weapons not recovered
15 within 12 months due to an extended hearing process as provided
16 in subdivision (j), are not subject to destruction until the court
17 issues a decision, and then only if the court does not order the
18 return of the firearm or other deadly weapon to the owner.

19 (f) In those cases in which a law enforcement agency has
20 reasonable cause to believe that the return of a firearm or other
21 deadly weapon would be likely to result in endangering the victim
22 or the person reporting the assault or threat, the agency shall advise
23 the owner of the firearm or other deadly weapon, and within 60
24 days of the date of seizure, initiate a petition in superior court to
25 determine if the firearm or other deadly weapon should be returned.
26 The law enforcement agency may make an ex parte application
27 stating good cause for an order extending the time to file a petition.
28 Including any extension of time granted in response to an ex parte
29 request, a petition must be filed within 90 days of the date of
30 seizure of the firearm or other deadly weapon.

31 (g) The law enforcement agency shall inform the owner or
32 person who had lawful possession of the firearm or other deadly
33 weapon, at that person's last known address by registered mail,
34 return receipt requested, that he or she has 30 days from the date
35 of receipt of the notice to respond to the court clerk to confirm his
36 or her desire for a hearing, and that the failure to respond shall
37 result in a default order forfeiting the confiscated firearm or other
38 deadly weapon. For the purposes of this subdivision, the person's
39 last known address shall be presumed to be the address provided
40 to the law enforcement officer by that person at the time of the

1 family violence incident. In the event the person whose firearm or
2 other deadly weapon was seized does not reside at the last address
3 provided to the agency, the agency shall make a diligent, good
4 faith effort to learn the whereabouts of the person and to comply
5 with these notification requirements.

6 ~~(h) If the person requests a hearing, the court clerk shall set a
7 hearing no later than 30 days from receipt of that request. If the
8 request for a hearing is the first responsive paper as described in
9 Section 70612 of the Government Code, the clerk shall charge the
10 fee prescribed in that section. The court clerk shall notify the
11 person, the law enforcement agency involved, and the district
12 attorney of the date, time, and place of the hearing. Unless it is
13 shown by a preponderance of the evidence that the return of the
14 firearm or other deadly weapon would result in endangering the
15 victim or the person reporting the assault or threat, the court shall
16 order the return of the firearm or other deadly weapon and shall
17 award reasonable attorney's fees to the prevailing party.~~

18 ~~(i) If the person does not request a hearing or does not otherwise
19 respond within 30 days of the receipt of the notice, the law
20 enforcement agency may file a petition for an order of default and
21 may dispose of the firearm or other deadly weapon as provided in
22 Section 12028.~~

23 ~~(j) If, at the hearing, the court does not order the return of the
24 firearm or other deadly weapon to the owner or person who had
25 lawful possession, that person may petition the court for a second
26 hearing within 12 months from the date of the initial hearing. If
27 there is a petition for a second hearing, unless it is shown by clear
28 and convincing evidence that the return of the firearm or other
29 deadly weapon would result in endangering the victim or the person
30 reporting the assault or threat, the court shall order the return of
31 the firearm or other deadly weapon and shall award reasonable
32 attorney's fees to the prevailing party. If the owner or person who
33 had lawful possession does not petition the court within this
34 12-month period for a second hearing or is unsuccessful at the
35 second hearing in gaining return of the firearm or other deadly
36 weapon, the firearm or other deadly weapon may be disposed of
37 as provided in Section 12028.~~

1 ~~(k) The law enforcement agency, or the individual law~~
2 ~~enforcement officer, shall not be liable for any act in the good faith~~
3 ~~exercise of this section.~~

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