

AMENDED IN ASSEMBLY SEPTEMBER 1, 2015

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, 11488.7, and 11489.1 to, *Section 11417.2 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 requesting *or receiving* an equitable share from a federal agency of specified seized property if a conviction for the underlying offenses is not 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~~ *convincing* 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 specified funds for specified purposes.~~ *stayed*. 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~~*no*.

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.
25 (d) The action may be brought by the district attorney, county
26 counsel, city attorney, the State Department of Health Care
27 Services, or Attorney General. All expenses recovered pursuant

1 to this section shall be remitted to the law enforcement agency
2 which incurred them.

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

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

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

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

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

27 (3) The expenses were reasonably incurred.

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

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

34 (i) Notwithstanding Section 526 of the Code of Civil Procedure,
35 the plaintiff may be granted a temporary restraining order or a
36 preliminary injunction, pending or during trial, to restrain the
37 defendant from transferring, encumbering, hypothecating, or
38 otherwise disposing of any assets specified by the court, if it
39 appears by the complaint that the plaintiff is entitled to the relief

1 demanded and it appears that the defendant may dispose of those
2 assets to thwart enforcement of the judgment.

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

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

13 (l) No action shall be brought or maintained pursuant to this
14 section against a person who has been acquitted of criminal charges
15 for conduct that is the basis for an action under this section.

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

18 11471.2. (a) State or local law enforcement authorities shall
19 not refer or otherwise transfer property seized under state law
20 authorizing the seizure of property to a federal agency seeking the
21 adoption of the seized property by the federal agency for
22 proceeding with federal forfeiture. Nothing in this section shall be
23 construed to prohibit the federal government, or any of its agencies,
24 from seizing property, seeking forfeiture under federal law, or
25 sharing federally forfeited property with state or local law
26 enforcement agencies when those state or local agencies work with
27 federal agencies in joint investigations arising out of federal law
28 or federal joint task forces comprised of federal and state or local
29 agencies.

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

37 ~~(e)~~

38 (b) A state or local law enforcement agency participating in a
39 joint investigation with a federal agency shall not request an
40 equitable share from the federal agency of all or a portion of the

1 forfeited property or proceeds from the sale of property forfeited
2 pursuant to federal law unless a defendant is convicted in an
3 underlying or related criminal action of an offense for which
4 property is subject to forfeiture as specified in Section 11470 or
5 Section 11488, or an offense under federal law that includes all of
6 the elements of an offense for which property is subject to forfeiture
7 as specified in Sections 11470 and 11488.

8 ~~(d)~~

9 (c) If a conviction in the underlying or related criminal action
10 is not obtained, state *or local* law enforcement authorities shall
11 not ~~request~~ *receive* an equitable share from the federal agency of
12 all or a portion of the forfeited property or proceeds from the sale
13 of property forfeited pursuant to federal law.

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

16 11488.4. (a) (1) Except as provided in subdivision (j), if the
17 Department of Justice or the local governmental entity determines
18 that the factual circumstances do warrant that the moneys,
19 negotiable instruments, securities, or other things of value seized
20 or subject to forfeiture come within the provisions of subdivisions
21 (a) to (g), inclusive, of Section 11470, and are not automatically
22 made forfeitable or subject to court order of forfeiture or
23 destruction by another provision of this chapter, the Attorney
24 General or district attorney shall file a petition of forfeiture with
25 the superior court of the county in which the defendant has been
26 charged with the underlying criminal offense or in which the
27 property subject to forfeiture has been seized or, if no seizure has
28 occurred, in the county in which the property subject to forfeiture
29 is located. If the petition alleges that real property is forfeitable,
30 the prosecuting attorney shall cause a *lis pendens* to be recorded
31 in the office of the county recorder of each county in which the
32 real property is located.

33 (2) A petition of forfeiture under this subdivision shall be filed
34 as soon as practicable, but in any case within one year of the seizure
35 of the property which is subject to forfeiture, or as soon as
36 practicable, but in any case within one year of the filing by the
37 Attorney General or district attorney of a *lis pendens* or other
38 process against the property, whichever is earlier.

39 (b) Physical seizure of assets shall not be necessary in order to
40 have that particular asset alleged to be forfeitable in a petition

1 under this section. The prosecuting attorney may seek protective
2 orders for any asset pursuant to Section 11492.

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

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

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

34 (f) All notices shall set forth the time within which a claim of
35 interest in the property seized or subject to forfeiture is required
36 to be filed pursuant to Section 11488.5. The notices shall explain,
37 in plain language, what an interested party must do and the time
38 in which the person must act to contest the forfeiture in a hearing.
39 The notices shall state what rights the interested party has at a

1 hearing. The notices shall also state the legal consequences for
2 failing to respond to the forfeiture notice.

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

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

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

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

30 (2) In the case of property described in subdivision (f) of Section
31 11470, for which forfeiture is sought and as to which forfeiture is
32 contested, the state or local governmental entity shall have the
33 burden of proving beyond a reasonable doubt that the property for
34 which forfeiture is sought meets the criteria for forfeiture described
35 in subdivision (f) of Section 11470.

36 (3) In the case of property described in paragraphs (1) and (2),
37 where forfeiture is contested, a judgment of forfeiture requires as
38 a condition precedent thereto, that a defendant be convicted in an
39 underlying or related criminal action of an offense specified in
40 subdivision (f) or (g) of Section 11470 which offense occurred

1 within five years of the seizure of the property subject to forfeiture
2 or within five years of the notification of intention to seek
3 forfeiture. If the defendant is found guilty of the underlying or
4 related criminal offense, the issue of forfeiture shall be tried before
5 the same jury, if the trial was by jury, or tried before the same
6 court, if trial was by court, unless waived by all parties. The issue
7 of forfeiture shall be bifurcated from the criminal trial and tried
8 after conviction unless waived by all the parties. ~~If the defendant
9 in the related criminal matter is represented by court-appointed
10 counsel, the trial court shall appoint counsel for the defendant in
11 the forfeiture proceeding.~~

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

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

- 28 (1) A description of the property.
- 29 (2) The appraised value of the property.
- 30 (3) The date and place of seizure or location of any property
31 not seized but subject to forfeiture.
- 32 (4) The violation of law alleged with respect to forfeiture of the
33 property.
- 34 (5) (A) The instructions for filing and serving a claim with the
35 Attorney General or the district attorney pursuant to Section
36 11488.5 and time limits for filing a claim and claim form.
37 (B) If no claims are timely filed, the Attorney General or the
38 district attorney shall prepare a written declaration of forfeiture of
39 the subject property to the state and dispose of the property in
40 accordance with ~~subdivision (b) of Section 11489.1. Section 11489.~~

1 A written declaration of forfeiture signed by the Attorney General
2 or district attorney under this subdivision shall be deemed to
3 provide good and sufficient title to the forfeited property. The
4 prosecuting agency ordering forfeiture pursuant to this subdivision
5 shall provide a copy of the declaration of forfeiture to any person
6 listed in the receipt given at the time of seizure and to any person
7 personally served notice of the forfeiture proceedings.

8 (C) If a claim is timely filed, then the Attorney General or
9 district attorney shall file a petition of forfeiture pursuant to this
10 section within 30 days of the receipt of the claim. The petition of
11 forfeiture shall then proceed pursuant to other provisions of this
12 chapter, except that no additional notice need be given and no
13 additional claim need be filed.

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

29 SEC. 4. Section 11488.5 of the Health and Safety Code is
30 amended to read:

31 11488.5. (a) (1) Any person claiming an interest in the
32 property seized pursuant to Section 11488 may, unless for good
33 cause shown the court extends the time for filing, at any time within
34 30 days from the date of the last publication of the notice of seizure,
35 if that person was not personally served or served by mail, or within
36 30 days after receipt of actual notice, file with the superior court
37 of the county in which the defendant has been charged with the
38 underlying or related criminal offense or in which the property
39 was seized or, if there was no seizure, in which the property is
40 located, a claim, verified in accordance with Section 446 of the

1 Code of Civil Procedure, stating his or her interest in the property.
2 An endorsed copy of the claim shall be served by the claimant on
3 the Attorney General or district attorney, as appropriate, within
4 30 days of the filing of the claim. The Judicial Council shall
5 develop and approve official forms for the verified claim that is
6 to be filed pursuant to this section. The official forms shall be
7 drafted in nontechnical language, in English and in Spanish, and
8 shall be made available through the office of the clerk of the
9 appropriate court.

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

20 (3) The clerk of the court shall not charge or collect a fee for
21 the filing of a claim in any case in which the value of the
22 respondent property as specified in the notice is five thousand
23 dollars (\$5,000) or less. If the value of the property, as specified
24 in the notice, is more than five thousand dollars (\$5,000), the clerk
25 of the court shall charge the filing fee specified in Section 70611
26 of the Government Code.

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

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

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

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

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

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

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

28 (2) No interest in the seized property shall be affected by a
29 forfeiture decree under this section unless the state or local
30 governmental entity has proven that the owner of that interest
31 consented to the use of the property with knowledge that it would
32 be or was used for the purpose charged. Forfeiture shall be ordered
33 when, at the hearing, the state or local governmental entity has
34 shown that the assets in question are subject to forfeiture pursuant
35 to Section 11470, in accordance with the burden of proof set forth
36 in subdivision (i) of Section 11488.4.

37 (e) The forfeiture hearing shall be continued upon motion of
38 the prosecution or the defendant until after a verdict of guilty on
39 any criminal charges specified in this chapter and pending against
40 the defendant have been decided. In cases in which the forfeiture

1 hearing, or any related civil discovery, is continued or stayed, the
2 requirement that the forfeiture case be tried in conjunction with
3 the related criminal case or to the same jury as in the related
4 criminal case may be waived by the parties. The forfeiture hearing
5 shall be conducted in accordance with Sections 190 to 222.5,
6 inclusive, Sections 224 to 234, inclusive, Section 237, and Sections
7 607 to 630, inclusive, of the Code of Civil Procedure if a trial by
8 jury, and by Sections 631 to 636, inclusive, of the Code of Civil
9 Procedure if by the court. Unless the court or jury finds that the
10 seized property was used for a purpose for which forfeiture is
11 permitted, the court shall order the seized property released to the
12 person it determines is entitled thereto.

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

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

26 (g) All seized property which was the subject of the forfeiture
27 hearing and which was not forfeited shall remain subject to any
28 order to withhold issued with respect to the property by the
29 Franchise Tax Board.

30 ~~SEC. 5. Section 11488.7 is added to the Health and Safety~~
31 ~~Code, to read:~~

32 ~~11488.7. In any forfeiture proceeding under this chapter in~~
33 ~~which the defendant or claimant substantially prevails, the~~
34 ~~defendant or claimant shall be entitled to recover reasonable~~
35 ~~attorneys' fees and other litigation costs reasonably incurred by~~
36 ~~the defendant or claimant. Any final award of fees and costs shall~~
37 ~~be paid directly to the defendant's or claimant's attorney.~~

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

1 11489. Notwithstanding Section 11502 and except as otherwise
2 provided in Section 11473, in all cases where the property is seized
3 pursuant to this chapter and forfeited to the state or local
4 governmental entity and, where necessary, sold by the Department
5 of General Services or local governmental entity, the money
6 forfeited or the proceeds of sale shall be distributed by the state
7 or local governmental entity as follows:

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

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

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

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

20 (A) Forty percent to the state, local, or state and local law
21 enforcement entities that participated in the seizure distributed so
22 as to reflect the proportionate contribution of each agency. Fifteen
23 percent of the funds distributed pursuant to this subparagraph shall
24 be deposited in a special fund maintained by the county, city, or
25 city and county of any agency making the seizure or seeking an
26 order for forfeiture. This fund shall be used for the sole purpose
27 of funding programs designed to combat drug abuse and divert
28 gang activity, and shall wherever possible involve educators,
29 parents, community-based organizations and local businesses, and
30 uniformed law enforcement officers. Those programs that have
31 been evaluated as successful shall be given priority. These funds
32 shall not be used to supplant any state or local funds that would,
33 in the absence of this clause, otherwise be made available to the
34 programs.

35 It is the intent of the Legislature to cause the development and
36 continuation of positive intervention programs for high-risk
37 elementary and secondary schoolage students.

38 (B) Twenty-four percent to the General Fund. Notwithstanding
39 Section 13340 of the Government Code, the moneys are hereby
40 continuously appropriated to the General Fund. Commencing

1 January 1, 2016, all moneys deposited in the General Fund pursuant
2 to this subparagraph, in an amount not to exceed ten million dollars
3 (\$10,000,000), shall be made available for school safety and
4 security, upon appropriation by the Legislature, and shall be
5 disbursed pursuant to Senate Bill 1255 of the 1993-94 Regular
6 Session, as enacted.

7 (C) Thirty-four percent to the State Asset Forfeiture Fund for
8 Courts and Criminal Justice Purposes, available upon appropriation
9 by the Legislature for the purposes described in subdivision (b) of
10 Section 11489.1.

11 (D) One percent to a private nonprofit organization composed
12 of local prosecutors, which shall use these funds for the exclusive
13 purpose of providing a statewide program of education and training
14 for prosecutors and law enforcement officers in ethics and the
15 proper use of laws permitting the seizure and forfeiture of assets
16 under this chapter.

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

22 (e) Notwithstanding Item 0820-101-469 of the Budget Act of
23 1985 (Chapter 111, Statutes of 1985), all funds allocated to the
24 Department of Justice pursuant to subparagraph (A) of paragraph
25 (2) of subdivision (b) shall be deposited into the Department of
26 Justice Special Deposit Fund—State Asset Forfeiture Account and
27 used for the law enforcement efforts of the state or for state or
28 local law enforcement efforts pursuant to Section 11493.

29 All funds allocated to the Department of Justice by the federal
30 government under its Federal Asset Forfeiture program authorized
31 by the Comprehensive Crime Control Act of 1984 (Public Law
32 98-473) may be deposited directly into the Narcotics Assistance
33 and Relinquishment by Criminal Offender Fund and used for state
34 and local law enforcement efforts pursuant to Section 11493.

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

38 (d) All the funds distributed to the state or local governmental
39 entity pursuant to subparagraph (A) of paragraph (2) of subdivision
40 (b) shall not supplant any state or local funds that would, in the

1 absence of this subdivision, be made available to support the law
2 enforcement and prosecutorial efforts of these agencies.

3 The court shall order the forfeiture proceeds distributed to the
4 state, local, or state and local governmental entities as provided in
5 this section.

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

8 SEC. 7. Section 11489.1 is added to the Health and Safety
9 Code, to read:

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

22 (b) All property, moneys, negotiable instruments, securities, or
23 other things of value forfeited pursuant to subdivision (j) of Section
24 11488.4 and subparagraph (2) of subdivision (b) of Section 11488.5
25 shall be distributed as follows:

26 (1) To the state agency or local governmental entity for all
27 expenditures made or incurred by it in connection with the sale of
28 the property, including expenditures for any necessary costs for
29 public notice, hearings, or for any necessary repairs, storage, or
30 transportation of any property lawfully forfeited.

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

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

33 (B) Seventy-six percent to the State Asset Forfeiture Fund for
34 Courts and Criminal Justice Purposes, which is hereby created in
35 the State Treasury. Upon appropriation by the Legislature, the
36 moneys in the State Asset Forfeiture Fund for Courts and Criminal
37 Justice Purposes shall be made available for the purpose of criminal
38 and civil court functions, prosecution, public defense and indigent
39 defense, law enforcement, crime prevention including after school

1 ~~programs for adolescents and drug treatment for adolescents and~~
2 ~~adults, and victim services.~~

3 ~~SEC. 8.~~

4 *SEC. 5.* Section 11495 of the Health and Safety Code is
5 amended to read:

6 11495. (a) The funds received by the law enforcement agencies
7 under Section 11489 shall be deposited into an account maintained
8 by the Controller, county auditor, or city treasurer. These funds
9 shall be distributed to the law enforcement agencies at their request.
10 The Controller, auditor, or treasurer shall maintain a record of
11 these disbursements which records shall be open to public
12 inspection, subject to the privileges contained in Sections 1040,
13 1041, and 1042 of the Evidence Code.

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

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

21 (1) The number of forfeiture actions initiated and administered
22 by state or local agencies under California law, the number of cases
23 adopted by the federal government, and the number of cases
24 initiated by a joint federal-state action that were prosecuted under
25 federal law.

26 (2) The number of cases and the administrative number or court
27 docket number of each case for which forfeiture was ordered or
28 declared.

29 (3) The number of suspects charged with a controlled substance
30 violation.

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

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

35 (6) The value of the assets forfeited.

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

38 (d) The Attorney General shall develop administrative guidelines
39 for the collection and publication of the information required in
40 subdivision (c).

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

4 ~~SEC. 9. If the Commission on State Mandates determines that~~
5 ~~this act contains costs mandated by the state, reimbursement to~~
6 ~~local agencies and school districts for those costs shall be made~~
7 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
8 ~~4 of Title 2 of the Government Code.~~