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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, and 11495 of, and to add Section 11471.2 to, the Health and Safety Code, relating to forfeiture.

LEGISLATIVE COUNSEL'S DIGEST

SB 443, as amended, Mitchell. Forfeiture: assets: 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 an annual 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 further prohibit state or local agencies from receiving an equitable share from a federal agency of specified seized property if a conviction for the underlying offenses is not obtained, except as specified. 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 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, *but not more than \$40,000*, from a clear and convincing standard to beyond a reasonable ~~doubt and would require a criminal conviction for a related offense.~~ *doubt*. The bill would require the Legislative Analyst's Office, on or before December 31, 2019, to submit a report to the Legislature on the economic impact of this change, and the above-described prohibition on receiving an equitable share from a federal agency, on state and local law enforcement budgets. The bill would make other related changes to court forfeiture proceedings. The bill would also require the Attorney General to include additional information on forfeiture actions in the annual report.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: 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
28 to this section shall be remitted to the law enforcement agency
29 which incurred them.

30 (e) (1) The burden of proof as to liability shall be on the plaintiff
31 and shall be by a preponderance of the evidence in an action
32 alleging that the defendant is liable for expenses pursuant to
33 paragraph (1) of subdivision (a). The burden of proof as to liability
34 shall be on the plaintiff and shall be by clear and convincing
35 evidence in an action alleging that the defendant is liable for
36 expenses pursuant to paragraph (2) of subdivision (a). The burden
37 of proof as to the amount of expenses recoverable shall be on the

1 plaintiff and shall be by a preponderance of the evidence in any
2 action brought pursuant to subdivision (a).

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

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

9 (1) The expenses were incurred in seizing, eradicating, or
10 destroying the controlled substance or its precursors or in taking
11 remedial action with respect to a hazardous substance. These
12 expenses may not include any costs incurred in use of the herbicide
13 paraquat.

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

17 (3) The expenses were reasonably incurred.

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

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

24 (i) Notwithstanding Section 526 of the Code of Civil Procedure,
25 the plaintiff may be granted a temporary restraining order or a
26 preliminary injunction, pending or during trial, to restrain the
27 defendant from transferring, encumbering, hypothecating, or
28 otherwise disposing of any assets specified by the court, if it
29 appears by the complaint that the plaintiff is entitled to the relief
30 demanded and it appears that the defendant may dispose of those
31 assets to thwart enforcement of the judgment.

32 (j) The Legislature finds and declares that civil penalties for the
33 recovery of expenses incurred in enforcing the provisions of this
34 division shall not supplant criminal prosecution for violation of
35 those provisions, but shall be a supplemental remedy to criminal
36 enforcement.

37 (k) Any testimony, admission, or any other statement made by
38 the defendant in any proceeding brought pursuant to this section,
39 or any evidence derived from the testimony, admission, or other

1 statement, shall not be admitted or otherwise used in any criminal
2 proceeding arising out of the same conduct.

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

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

8 11471.2. (a) State or local law enforcement authorities shall
9 not refer or otherwise transfer property seized under state law
10 authorizing the seizure of property to a federal agency seeking the
11 adoption of the seized property by the federal agency for
12 proceeding with federal forfeiture under the federal Controlled
13 Substances Act. Nothing in this section shall be construed to
14 prohibit the federal government, or any of its agencies, from seizing
15 property, seeking forfeiture under federal law, or sharing federally
16 forfeited property with state or local law enforcement agencies
17 when those state or local agencies work with federal agencies in
18 joint investigations arising out of federal law or federal joint task
19 forces comprised of federal and state or local agencies. Nothing
20 in this section shall be construed to prohibit state or local law
21 enforcement agencies from participating in a joint law enforcement
22 operation with federal agencies.

23 (b) Except as provided *in this subdivision and* in subdivision
24 (c), a state or local law enforcement agency participating in a joint
25 investigation with a federal agency shall not receive an equitable
26 share from the federal agency of all or a portion of the forfeited
27 property or proceeds from the sale of property forfeited pursuant
28 to the federal Controlled Substances Act unless a defendant is
29 convicted in an underlying or related criminal action of an offense
30 for which property is subject to forfeiture as specified in Section
31 11470 or Section 11488, or an offense under the federal Controlled
32 Substances Act that includes all of the elements of an offense for
33 which property is subject to forfeiture as specified in Sections
34 11470 and 11488. *In any case in which the forfeited property is*
35 *cash or negotiable instruments of a value of not less than forty*
36 *thousand dollars (\$40,000) there shall be no requirement of a*
37 *criminal conviction as a prerequisite to receipt by state or local*
38 *law enforcement agencies of an equitable share from federal*
39 *authorities.*

1 (c) If the defendant has been arrested and charged in an
2 underlying or related criminal action or proceeding for an offense
3 described in subdivision (b) and willfully fails to appear as
4 required, intentionally flees to evade prosecution, or is deceased,
5 there shall be no requirement of a criminal conviction as a
6 prerequisite to receipt by state or local law enforcement agencies
7 of an equitable share from federal authorities.

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

10 11488.4. (a) (1) Except as provided in subdivision (j), if the
11 Department of Justice or the local governmental entity determines
12 that the factual circumstances do warrant that the moneys,
13 negotiable instruments, securities, or other things of value seized
14 or subject to forfeiture come within the provisions of subdivisions
15 (a) to (g), inclusive, of Section 11470, and are not automatically
16 made forfeitable or subject to court order of forfeiture or
17 destruction by another provision of this chapter, the Attorney
18 General or district attorney shall file a petition of forfeiture with
19 the superior court of the county in which the defendant has been
20 charged with the underlying criminal offense or in which the
21 property subject to forfeiture has been seized or, if no seizure has
22 occurred, in the county in which the property subject to forfeiture
23 is located. If the petition alleges that real property is forfeitable,
24 the prosecuting attorney shall cause a lis pendens to be recorded
25 in the office of the county recorder of each county in which the
26 real property is located.

27 (2) A petition of forfeiture under this subdivision shall be filed
28 as soon as practicable, but in any case within one year of the seizure
29 of the property which is subject to forfeiture, or as soon as
30 practicable, but in any case within one year of the filing by the
31 Attorney General or district attorney of a lis pendens or other
32 process against the property, whichever is earlier.

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

37 (c) The Attorney General or district attorney shall make service
38 of process regarding this petition upon every individual designated
39 in a receipt issued for the property seized. In addition, the Attorney
40 General or district attorney shall cause a notice of the seizure, if

1 any, and of the intended forfeiture proceeding, as well as a notice
2 stating that any interested party may file a verified claim with the
3 superior court of the county in which the property was seized or
4 if the property was not seized, a notice of the initiation of forfeiture
5 proceedings with respect to any interest in the property seized or
6 subject to forfeiture, to be served by personal delivery or by
7 registered mail upon any person who has an interest in the seized
8 property or property subject to forfeiture other than persons
9 designated in a receipt issued for the property seized. Whenever
10 a notice is delivered pursuant to this section, it shall be
11 accompanied by a claim form as described in Section 11488.5 and
12 directions for the filing and service of a claim.

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

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

28 (f) All notices shall set forth the time within which a claim of
29 interest in the property seized or subject to forfeiture is required
30 to be filed pursuant to Section 11488.5. The notices shall explain,
31 in plain language, what an interested party must do and the time
32 in which the person must act to contest the forfeiture in a hearing.
33 The notices shall state what rights the interested party has at a
34 hearing. The notices shall also state the legal consequences for
35 failing to respond to the forfeiture notice.

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

1 (h) (1) If there is an underlying or related criminal action, a
2 defendant may move for the return of the property on the grounds
3 that there is not probable cause to believe that the property is
4 forfeitable pursuant to subdivisions (a) to (g), inclusive, of Section
5 11470 and is not automatically made forfeitable or subject to court
6 order of forfeiture or destruction by another provision of this
7 chapter. The motion may be made prior to, during, or subsequent
8 to the preliminary examination. If made subsequent to the
9 preliminary examination, the Attorney General or district attorney
10 may submit the record of the preliminary hearing as evidence that
11 probable cause exists to believe that the underlying or related
12 criminal violations have occurred.

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

16 (i) (1) With respect to property described in subdivisions (e)
17 and (g) of Section 11470 for which forfeiture is sought and as to
18 which forfeiture is contested, the state or local governmental entity
19 shall have the burden of proving beyond a reasonable doubt that
20 the property for which forfeiture is sought was used, or intended
21 to be used, to facilitate a violation of one of the offenses
22 enumerated in subdivision (f) or (g) of Section 11470.

23 (2) In the case of property described in subdivision (f) of Section
24 11470, *except cash, negotiable instruments, or other cash*
25 *equivalents of a value of not less than forty thousand dollars*
26 *(\$40,000),* for which forfeiture is sought and as to which forfeiture
27 is contested, the state or local governmental entity shall have the
28 burden of proving beyond a reasonable doubt that the property for
29 which forfeiture is sought meets the criteria for forfeiture described
30 in subdivision (f) of Section 11470.

31 (3) In the case of property described in paragraphs (1) and (2),
32 where forfeiture is contested, a judgment of forfeiture requires as
33 a condition precedent thereto, that a defendant be convicted in an
34 underlying or related criminal action of an offense specified in
35 subdivision (f) or (g) of Section 11470 which offense occurred
36 within five years of the seizure of the property subject to forfeiture
37 or within five years of the notification of intention to seek
38 forfeiture. If the defendant is found guilty of the underlying or
39 related criminal offense, the issue of forfeiture shall be tried before
40 the same jury, if the trial was by jury, or tried before the same

1 court, if trial was by court, unless waived by all parties. The issue
2 of forfeiture shall be bifurcated from the criminal trial and tried
3 after conviction unless waived by all the parties.

4 (4) *In the case of property described in subdivision (f) of Section*
5 *11470 that is cash or negotiable instruments of a value of not less*
6 *than forty thousand dollars (\$40,000), the state or local*
7 *governmental entity shall have the burden of proving by clear and*
8 *convincing evidence that the property for which forfeiture is sought*
9 *is such as is described in subdivision (f) of Section 11470. There*
10 *is no requirement for forfeiture thereof that a criminal conviction*
11 *be obtained in an underlying or related criminal offense.*

12 ~~(4)~~

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

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

29 (1) A description of the property.

30 (2) The appraised value of the property.

31 (3) The date and place of seizure or location of any property
32 not seized but subject to forfeiture.

33 (4) The violation of law alleged with respect to forfeiture of the
34 property.

35 (5) (A) The instructions for filing and serving a claim with the
36 Attorney General or the district attorney pursuant to Section
37 11488.5 and time limits for filing a claim and claim form.

38 (B) If no claims are timely filed, the Attorney General or the
39 district attorney shall prepare a written declaration of forfeiture of
40 the subject property to the state and dispose of the property in

1 accordance with Section 11489. A written declaration of forfeiture
2 signed by the Attorney General or district attorney under this
3 subdivision shall be deemed to provide good and sufficient title
4 to the forfeited property. The prosecuting agency ordering forfeiture
5 pursuant to this subdivision shall provide a copy of the declaration
6 of forfeiture to any person listed in the receipt given at the time of
7 seizure and to any person personally served notice of the forfeiture
8 proceedings.

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

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

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

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

1 located, a claim, verified in accordance with Section 446 of the
2 Code of Civil Procedure, stating his or her interest in the property.
3 An endorsed copy of the claim shall be served by the claimant on
4 the Attorney General or district attorney, as appropriate, within
5 30 days of the filing of the claim. The Judicial Council shall
6 develop and approve official forms for the verified claim that is
7 to be filed pursuant to this section. The official forms shall be
8 drafted in nontechnical language, in English and in Spanish, and
9 shall be made available through the office of the clerk of the
10 appropriate court.

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

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

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

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

1 *no requirement for forfeiture thereof that a criminal conviction be*
2 *obtained in an underlying or related criminal offense.*

3 (2) The court shall order the money forfeited or the proceeds
4 of the sale of property to be distributed as set forth in Section
5 11489.

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

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

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

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

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

39 (e) The forfeiture hearing shall be continued upon motion of
40 the prosecution or the defendant until after a verdict of guilty on

1 any criminal charges specified in this chapter and pending against
2 the defendant have been decided. The forfeiture hearing shall be
3 conducted in accordance with Sections 190 to 222.5, inclusive,
4 Sections 224 to 234, inclusive, Section 237, and Sections 607 to
5 630, inclusive, of the Code of Civil Procedure if a trial by jury,
6 and by Sections 631 to 636, inclusive, of the Code of Civil
7 Procedure if by the court. Unless the court or jury finds that the
8 seized property was used for a purpose for which forfeiture is
9 permitted, the court shall order the seized property released to the
10 person it determines is entitled thereto.

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

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

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

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

30 11495. (a) The funds received by the law enforcement agencies
31 under Section 11489 shall be deposited into an account maintained
32 by the Controller, county auditor, or city treasurer. These funds
33 shall be distributed to the law enforcement agencies at their request.
34 The Controller, auditor, or treasurer shall maintain a record of
35 these disbursements which records shall be open to public
36 inspection, subject to the privileges contained in Sections 1040,
37 1041, and 1042 of the Evidence Code.

38 (b) Upon request of the governing body of the jurisdiction in
39 which the distributions are made, the Controller, auditor, or

1 treasurer shall conduct an audit of these funds and their use. In the
2 case of the state, the governing body shall be the Legislature.

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

6 (1) The number of forfeiture actions initiated and administered
7 by state or local agencies under California law, the number of cases
8 adopted by the federal government, and the number of cases
9 initiated by a joint federal-state action that were prosecuted under
10 federal law.

11 (2) The number of cases and the administrative number or court
12 docket number of each case for which forfeiture was ordered or
13 declared.

14 (3) The number of suspects charged with a controlled substance
15 violation.

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

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

20 (6) The value of the assets forfeited.

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

23 (d) The Attorney General shall develop administrative guidelines
24 for the collection and publication of the information required in
25 subdivision (c).

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

29 SEC. 6. (a) The Legislative Analyst's Office (LAO) shall
30 provide a report to the Legislature containing data about the
31 economic impact on state and local law enforcement budgets of
32 subdivision (b) of Section 11471.2 of the Health and Safety Code
33 and the changes to the burden of proof and conviction requirement
34 in forfeiture proceedings in Section 3 of this act. The LAO shall
35 report the findings on or before December 31, 2019.

36 (b) A report to be submitted pursuant to this section shall be
37 submitted in compliance with Section 9795 of the Government
38 Code.

1 (c) Pursuant to Section 10231.5 of the Government Code, this
2 section is repealed on January 1, 2021.

O