

AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL**

**No. 443**

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**Introduced by Senator Mitchell**

February 25, 2015

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An act to amend ~~11471 of~~ *Sections 11470.1, 11488.4, 11489, and 11495 of, and to add Sections 11471.2 and 11488.7 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 make a technical, nonsubstantive change to those provisions.~~

*This bill would require a prosecuting agency to seek or obtain a criminal conviction for the unlawful manufacture or cultivation of any controlled substance or its precursors prior to an entry of judgment for recovery of expenses of seizing, eradicating, destroying, or taking*

*remedial action with respect to any controlled substance. The bill would prohibit maintaining an action for recovery of expenses against a person who has been acquitted of the underlying criminal charges.*

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

*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 convincing standard to beyond a reasonable doubt.*

*The bill would allow recovery of attorney's fees for defendants or claimants in a forfeiture action who substantially prevail. The bill would make specified changes to the distribution of proceeds from forfeiture actions under state law, including reducing distributions to seizing law enforcement agencies and prosecutor's offices, and providing distributions to courts and public defenders in the jurisdiction of the proceedings. 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: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

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

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

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

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

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

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

17    (c) It shall ~~not~~ be necessary to seek or obtain a criminal  
18    conviction *for the unlawful manufacture or cultivation of any*  
19    *controlled substance or its precursors* prior to the entry of  
20    judgment for the recovery of expenses. ~~However, if~~ *If* criminal  
21    charges are pending against the defendant for the unlawful  
22    manufacture or cultivation of any controlled substance or its  
23    precursors, an action brought pursuant to this section shall, upon  
24    a defendant's request, be continued while the criminal charges are  
25    pending.

26    (d) The action may be brought by the district attorney, county  
27    counsel, city attorney, the State Department of Health Services,  
28    or Attorney General. All expenses recovered pursuant to this  
29    section shall be remitted to the law enforcement agency which  
30    incurred them.

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

1 evidence in an action alleging that the defendant is liable for  
2 expenses pursuant to paragraph (2) of subdivision (a). The burden  
3 of proof as to the amount of expenses recoverable shall be on the  
4 plaintiff and shall be by a preponderance of the evidence in any  
5 action brought pursuant to subdivision (a).

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

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

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

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

20 (3) The expenses were reasonably incurred.

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

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

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

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

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

(l) No action shall be brought or maintained pursuant to this section against a person who has been acquitted of criminal charges for conduct which may be the basis for an action under this section if, ~~in the criminal action, there has been a finding of factual innocence by the court pursuant to standards set forth in subdivision (b) of Section 851.8 of the Penal Code.~~ *section.*

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

*11471.2. (a) State or local law enforcement authorities shall not refer or otherwise transfer property seized under state law to a federal agency seeking the adoption by the federal agency of the seized property. Nothing in this section shall be construed to prohibit the federal government, or any of its agencies, from seeking forfeiture under federal law.*

*(b) All property, moneys, negotiable instruments, securities, or other things of value received by any state or local law enforcement agency pursuant to any federal law that authorizes the sharing or transfer of all or a portion of forfeited property or the proceeds of the sale of forfeited property to a state or local law enforcement agency shall be promptly transferred, sold, and deposited as set forth in Section 11489.*

*(c) A state or local law enforcement agency may not receive all or a portion of the forfeited property or proceeds from property forfeited pursuant to federal law unless a defendant is convicted in an underlying or related criminal action of an offense specified in Section 11470 or any offense under federal law that includes all of the elements of an offense specified in Section 11470. If federal law prohibits compliance with Section 11489 or if a conviction in the underlying or related criminal action is not obtained, state law enforcement authorities shall not receive forfeited property or proceeds from the sale of forfeited property shared or transferred pursuant to federal law.*

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

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

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

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

(c) The Attorney General or district attorney shall make service of process regarding this petition upon every individual designated in a receipt issued for the property seized. In addition, the Attorney General or district attorney shall cause a notice of the seizure, if any, and of the intended forfeiture proceeding, as well as a notice stating that any interested party may file a verified claim with the superior court of the county in which the property was seized or if the property was not seized, a notice of the initiation of forfeiture proceedings with respect to any interest in the property seized or subject to forfeiture, to be served by personal delivery or by registered mail upon any person who has an interest in the seized property or property subject to forfeiture other than persons

1 designated in a receipt issued for the property seized. Whenever  
2 a notice is delivered pursuant to this section, it shall be  
3 accompanied by a claim form as described in Section 11488.5 and  
4 directions for the filing and service of a claim.

5 (d) An investigation shall be made by the law enforcement  
6 agency as to any claimant to a vehicle, boat, or airplane whose  
7 right, title, interest, or lien is of record in the Department of Motor  
8 Vehicles or appropriate federal agency. If the law enforcement  
9 agency finds that any person, other than the registered owner, is  
10 the legal owner thereof, and ~~such~~ *that* ownership did not arise  
11 subsequent to the date and time of arrest or notification of the  
12 forfeiture proceedings or seizure of the vehicle, boat, or airplane,  
13 it shall forthwith send a notice to the legal owner at his or her  
14 address appearing on the records of the Department of Motor  
15 Vehicles or appropriate federal agency.

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

20 (f) All notices shall set forth the time within which a claim of  
21 interest in the property seized or subject to forfeiture is required  
22 to be filed pursuant to Section 11488.5. *The notices shall explain,*  
23 *in plain language, what an interested party must do and the time*  
24 *in which the person must act to contest the forfeiture in a hearing.*  
25 *The notices shall state what rights the interested party has at a*  
26 *hearing. The notices shall also state the legal consequences for*  
27 *failing to respond to the forfeiture notice.*

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

33 (h) (1) If there is an underlying or related criminal action, a  
34 defendant may move for the return of the property on the grounds  
35 that there is not probable cause to believe that the property is  
36 forfeitable pursuant to subdivisions (a) to (g), inclusive, of Section  
37 11470 and is not automatically made forfeitable or subject to court  
38 order of forfeiture or destruction by another provision of this  
39 chapter. The motion may be made prior to, during, or subsequent  
40 to the preliminary examination. If made subsequent to the

1 preliminary examination, the Attorney General or district attorney  
2 may submit the record of the preliminary hearing ~~to establish as~~  
3 *evidence* that probable cause exists to believe that the underlying  
4 or related criminal violations have occurred.

5 ~~Within~~

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

9 (i) (1) With respect to property described in subdivisions (e)  
10 and (g) of Section 11470 for which forfeiture is sought and as to  
11 which forfeiture is contested, the state or local governmental entity  
12 shall have the burden of proving beyond a reasonable doubt that  
13 the property for which forfeiture is sought was used, or intended  
14 to be used, to facilitate a violation of one of the offenses  
15 enumerated in subdivision (f) or (g) of Section 11470.

16 (2) In the case of property described in subdivision (f) of Section  
17 11470, ~~except cash, negotiable instruments, or other cash~~  
18 ~~equivalents of a value of not less than twenty-five thousand dollars~~  
19 ~~(\$25,000);~~ for which forfeiture is sought and as to which forfeiture  
20 is contested, the state or local governmental entity shall have the  
21 burden of proving beyond a reasonable doubt that the property for  
22 which forfeiture is sought meets the criteria for forfeiture described  
23 in subdivision (f) of Section 11470.

24 (3) In the case of property described in paragraphs (1) and (2),  
25 a judgment of forfeiture requires as a condition precedent thereto,  
26 that a defendant be convicted in an underlying or related criminal  
27 action of an offense specified in subdivision (f) or (g) of Section  
28 11470 which offense occurred within five years of the seizure of  
29 the property subject to forfeiture or within five years of the  
30 notification of intention to seek forfeiture. If the defendant is found  
31 guilty of the underlying or related criminal offense, the issue of  
32 forfeiture shall be tried before the same jury, if the trial was by  
33 jury, or tried before the same court, if trial was by court, unless  
34 waived by all parties. The issue of forfeiture shall be bifurcated  
35 from the criminal trial and tried after conviction unless waived by  
36 all the parties. *If the defendant in the related criminal matter is*  
37 *represented by court-appointed counsel, the trial court shall*  
38 *appoint counsel for the defendant in the forfeiture proceeding.*

39 ~~(4) In the case of property described in subdivision (f) of Section~~  
40 ~~11470 that is cash or negotiable instruments of a value of not less~~



1 ~~than twenty-five thousand dollars (\$25,000), the state or local~~  
2 ~~governmental entity shall have the burden of proving by clear and~~  
3 ~~convincing evidence that the property for which forfeiture is sought~~  
4 ~~is such as is described in subdivision (f) of Section 11470. There~~  
5 ~~is no requirement for forfeiture thereof that a criminal conviction~~  
6 ~~be obtained in an underlying or related criminal offense.~~

7 ~~(5)~~

8 (4) If there is an underlying or related criminal action, and a  
9 criminal conviction is required before a judgment of forfeiture  
10 may be entered, the issue of forfeiture shall be tried in conjunction  
11 therewith. Trial shall be by jury unless waived by all parties. If  
12 there is no underlying or related criminal action, the presiding  
13 judge of the superior court shall assign the action brought pursuant  
14 to this chapter for trial.

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

22 (1) A description of the property.

23 (2) The appraised value of the property.

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

26 (4) The violation of law alleged with respect to forfeiture of the  
27 property.

28 (5) (A) The instructions for filing and serving a claim with the  
29 Attorney General or the district attorney pursuant to Section  
30 11488.5 and time limits for filing a claim and claim form.

31 If

32 (B) If no claims are timely filed, the Attorney General or the  
33 district attorney shall prepare a written declaration of forfeiture of  
34 the subject property to the state and dispose of the property in  
35 accordance with Section 11489. A written declaration of forfeiture  
36 signed by the Attorney General or district attorney under this  
37 subdivision shall be deemed to provide good and sufficient title  
38 to the forfeited property. The prosecuting agency ordering forfeiture  
39 pursuant to this subdivision shall provide a copy of the declaration  
40 of forfeiture to any person listed in the receipt given at the time of

1 seizure and to any person personally served notice of the forfeiture  
2 proceedings.

3 If

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

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

25 SEC. 4. Section 11488.7 is added to the Health and Safety  
26 Code, to read:

27 11488.7. In any forfeiture proceeding under this chapter in  
28 which the defendant or claimant substantially prevails, the  
29 defendant or claimant shall be entitled to recover reasonable  
30 attorneys' fees and other litigation costs reasonably incurred by  
31 the defendant or claimant. Any final award of fees and costs shall  
32 be paid directly to the defendant's or claimant's attorney.

33 SEC. 5. Section 11489 of the Health and Safety Code is  
34 amended to read:

35 11489. Notwithstanding Section 11502 and except as otherwise  
36 provided in Section 11473, in all cases where the property is seized  
37 pursuant to this chapter and forfeited to the state or local  
38 governmental entity and, where necessary, sold by the Department  
39 of General Services or local governmental entity, the money

1 forfeited or the proceeds of sale shall be distributed by the state  
2 or local governmental entity as follows:

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

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

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

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

15 (A) ~~Sixty-five~~ *Sixty* percent to the state, local, or state and local  
16 law enforcement entities that participated in the seizure distributed  
17 so as to reflect the proportionate contribution of each agency.

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

30 It is the intent of the Legislature to cause the development and  
31 continuation of positive intervention programs for high-risk  
32 elementary and secondary schoolage students. Local law  
33 enforcement should work in partnership with state and local  
34 agencies and the private sector in administering these programs.

35 (ii) The actual distribution of funds set aside pursuant to clause  
36 (i) ~~is to~~ *shall* be determined by a panel consisting of the sheriff of  
37 the county, a police chief selected by the other chiefs in the county,  
38 and the district attorney and the chief probation officer of the  
39 county.

1 (B) ~~Ten~~ Five percent to the prosecutorial agency ~~which that~~  
2 processes the forfeiture action.

3 (C) Ten percent to the court in the jurisdiction where the  
4 forfeiture proceedings are initiated.

5 (D) Five percent to the public defender's office or provider of  
6 court-appointed counsel in the jurisdiction where the forfeiture  
7 proceedings were initiated.

8 ~~(C) Twenty-four~~

9 (E) Twenty percent to the General Fund. Notwithstanding  
10 Section 13340 of the Government Code, the moneys are hereby  
11 continuously appropriated to the General Fund. Commencing  
12 January 1, ~~1995~~, 2016, all moneys deposited in the General Fund  
13 pursuant to this subparagraph, in an amount not to exceed ten  
14 million dollars (\$10,000,000), shall be made available for school  
15 safety and security, upon appropriation by the Legislature, and  
16 shall be disbursed pursuant to Senate Bill 1255 of the 1993–94  
17 Regular Session, as enacted.

18 ~~(D) One percent to a private nonprofit organization composed~~  
19 ~~of local prosecutors which shall use these funds for the exclusive~~  
20 ~~purpose of providing a statewide program of education and training~~  
21 ~~for prosecutors and law enforcement officers in ethics and the~~  
22 ~~proper use of laws permitting the seizure and forfeiture of assets~~  
23 ~~under this chapter.~~

24 (c) Notwithstanding Item 0820-101-469 of the Budget Act of  
25 1985 (Chapter 111 of the Statutes of 1985), all funds allocated to  
26 the Department of Justice pursuant to subparagraph (A) of  
27 paragraph (2) of subdivision (b) shall be deposited into the  
28 Department of Justice Special Deposit Fund–State Asset Forfeiture  
29 Account and used for the law enforcement efforts of the state or  
30 for state or local law enforcement efforts pursuant to Section  
31 11493.

32 All funds allocated to the Department of Justice by the federal  
33 government under its Federal Asset Forfeiture program authorized  
34 by the Comprehensive Crime Control Act of 1984 may be  
35 deposited directly into the Narcotics Assistance and  
36 Relinquishment by Criminal Offender Fund and used for state and  
37 local law enforcement efforts pursuant to Section 11493.

38 Funds ~~which that~~ are not deposited pursuant to the above  
39 paragraph shall be deposited into the Department of Justice Special  
40 Deposit Fund–Federal Asset Forfeiture Account.

1     (d) All funds distributed to the courts pursuant to subparagraph  
2     (C) of paragraph (2) of subdivision (b) shall be deposited into the  
3     Judicial Asset Forfeiture Fund, which is hereby created in the  
4     State Treasury. The moneys in the Judicial Asset Forfeiture Fund,  
5     upon appropriation by the Legislature, shall be expended for the  
6     purpose of administering the courts in the jurisdiction where the  
7     forfeiture proceeding occurred.

8     ~~(d)~~

9     (e) All the funds distributed to the state or local governmental  
10    entity pursuant to subparagraphs (A) and (B) of paragraph (2) of  
11    subdivision (b) shall not supplant any state or local funds that  
12    would, in the absence of this subdivision, be made available to  
13    support the law enforcement and prosecutorial efforts of these  
14    agencies.

15    The court shall order the forfeiture proceeds distributed to the  
16    state, local, or state and local governmental entities as provided in  
17    this section.

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

20    ~~(e) This section shall become operative on January 1, 1994.~~

21    SEC. 6. Section 11495 of the Health and Safety Code is  
22    amended to read:

23    11495. (a) The funds received by the law enforcement agencies  
24    under Section 11489 shall be deposited into an account maintained  
25    by the Controller, county auditor, or city treasurer. These funds  
26    shall be distributed to the law enforcement agencies at their request.  
27    The Controller, auditor, or treasurer shall maintain a record of  
28    these disbursements which records shall be open to public  
29    inspection, subject to the privileges contained in Sections 1040,  
30    1041, and 1042 of the Evidence Code.

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

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

38    (1) The number of forfeiture actions ~~initiated~~, initiated and  
39    administered by state or local agencies under California law, the  
40    number of cases adopted by the federal government, and the

1 *number of cases initiated by a joint federal-state action that were*  
2 *prosecuted under federal law.*

3 (2) The number of cases and the administrative number or court  
4 docket number of each case for which forfeiture was ordered or  
5 declared.

6 (3) *The number of suspects charged with a controlled substance*  
7 *violation.*

8 (4) *The number of alleged criminal offenses that were under*  
9 *federal or state law.*

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

12 ~~(3)~~

13 (6) The value of the assets forfeited.

14 ~~(4)~~

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

17 (d) The Attorney General shall develop administrative guidelines  
18 for the collection and publication of the information required in  
19 subdivision (c).

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

23 *SEC. 7. If the Commission on State Mandates determines that*  
24 *this act contains costs mandated by the state, reimbursement to*  
25 *local agencies and school districts for those costs shall be made*  
26 *pursuant to Part 7 (commencing with Section 17500) of Division*  
27 *4 of Title 2 of the Government Code.*

28 ~~SECTION 1. Section 11471 of the Health and Safety Code is~~  
29 ~~amended to read:~~

30 ~~11471. (a) Property that is subject to forfeiture under this~~  
31 ~~division may be seized by any peace officer upon process issued~~  
32 ~~by any court having jurisdiction over the property. Seizure without~~  
33 ~~process may be made if any of the following situations exist:~~

34 ~~(1) The seizure is incident to an arrest or a search under a search~~  
35 ~~warrant.~~

36 ~~(2) The property subject to seizure has been the subject of a~~  
37 ~~prior judgment in favor of the state in a criminal injunction or~~  
38 ~~forfeiture proceeding based upon this division.~~

39 ~~(3) There is probable cause to believe that the property is directly~~  
40 ~~or indirectly dangerous to health or safety.~~

1     ~~(4) There is probable cause to believe that the property was used~~  
2     ~~or is intended to be used in violation of this division.~~

3     ~~(5) Real property subject to forfeiture may not be seized, absent~~  
4     ~~exigent circumstances, without notice to the interested parties and~~  
5     ~~a hearing to determine that seizure is necessary to preserve the~~  
6     ~~property pending the outcome of the proceedings. At the hearing,~~  
7     ~~the prosecution shall bear the burden of establishing that probable~~  
8     ~~cause exists for the forfeiture of the property and that seizure is~~  
9     ~~necessary to preserve the property pending the outcome of the~~  
10    ~~forfeiture proceedings. The court may issue seizure orders pursuant~~  
11    ~~to this section if it finds that seizure is warranted or pendente lite~~  
12    ~~orders pursuant to Section 11492 if it finds that the status quo or~~  
13    ~~value of the property can be preserved without seizure.~~

14    ~~(6) Where business records are seized in conjunction with the~~  
15    ~~seizure of property subject to forfeiture, the seizing agency shall,~~  
16    ~~upon request, provide copies of the records to the person, persons,~~  
17    ~~or business entity from whom the records were seized.~~