

2-B

City of Sacramento
State Legislature

B I L L R E F E R R A L

DATE: 5/14/93 COMMITTEE ACTION: _____

TO: CLAUDIA EVANS DATE: _____

FROM: KENNETH EMANUELS, LEGISLATIVE ADVOCATE

REPLY NO LATER THAN: _____

A.B. 114, As Amended 4/29/93 * Author BURTON

S.B. _____, As Amended _____ * Author _____

* Date of introduction or latest amendment

Please review the attached measure to determine its effect upon the City of Sacramento and complete the following questions as appropriate. During your analysis of this measure, if questions arise, please feel free to contact Ken Emanuels at 444-6789, FAX 444-0303, (1400 K Street, Suite 306, Sacramento, CA 95814.) This questionnaire should be returned to the City Attorney's Office for presentation to the Council Committee on Law and Legislation. **PLEASE LEAVE THE BILL ATTACHED TO THIS FORM.**

NO RECOMMENDATION. If you think no Committee action on this bill should be taken, either because the bill is not of sufficient importance to the City or for any other reason, please mark here, do not fill out the rest of the form, and return this form to the City Attorney's Office. _____.

PLEASE TYPE YOUR RESPONSE

1. Briefly describe the provisions of the bill (attach additional sheets if necessary.)

A.B. 114 would repeal the January 1, 1994 sunset clause for the asset forfeiture laws. However, it changes the current law significantly. Some of the more significant changes are:

1. Eliminates the authority to forfeit property intended to be used in drug offenses and money intended to be used to purchase drugs. The bill requires actual use.
2. Eliminates the authority to forfeit vehicles, boats or airplanes which are used to transport drugs or are used to sell drugs, regardless of

quantity. Also eliminates computers from the list of property that can be seized.

3. Requires proof of knowledge of the precise offense in order to forfeit drug profits.
4. Prohibits law enforcement from putting forfeited equipment and vehicles into official use.
5. Changes the burden of proof from a preponderance of the evidence that the property is subject to forfeiture to clear and convincing evidence. This is the same burden of proof required to terminate parental rights.
6. Prohibits the seizure and forfeiture of assets which would impair the ability of the party to the forfeiture to pay legal fees for representation in the forfeiture action or any related criminal action.
7. Requires that monies seized and proceeds from the disposition of seized property be turned over to the State of California's Asset Seizure Fund for distribution.

2. This measure should be: (Please circle desired position)

Supported

Opposed

Supported if Amended

Placed on Watch List

Other (explain)

3. Please explain your reasons for the above determination, include how this measure effects your Department and the fiscal impact of this measure on the City. Please make your comments in a format that can be used in a letter to state officials. (Continue on next page or attach additional sheets if necessary.)

Asset forfeiture has been extremely effective in law enforcement's efforts to impact the amount of drug trafficking that occurs in our community. It is a powerful deterrent to drug dealers who are faced with the possibility of losing the property used to further their illegal activities. The funds also allow law enforcement agencies to fund personnel and purchase equipment to meet the increasing workload that drug dealing perpetrates.

Unfortunately, A.B. 114 dramatically alters the current asset seizure law and makes it extremely difficult for law enforcement to seize the property of drug dealers. For example, by requiring actual use before property or money can be seized, forfeitures would not be allowed when a person offers money for drugs or if a fully equipped clandestine lab is intercepted prior to the start of actual manufacturing.

By requiring that the prosecution to prove that a person claiming interest is seized property had actual knowledge of and willfully consented to the unlawful use of the property, the bill provides drug dealers with a loophole to hide the proceeds of their illegal activity by transferring it to friends or relatives. These individuals can then claim the property and contend that they did not willfully consent to the unlawful use of the property.

In addition, the bill makes substantial changes in the property that can be seized. Vehicles used to transport or otherwise facilitate the sell of narcotics would no longer be subject to seizure. Drug dealers would be allowed to keep expensive cars and other property because those items were not actually used in the drug offense.

A.B. 114 will have a dramatic effect on the amount of asset forfeiture funds that revert to the City for law enforcement use. For the fiscal year ending June 30, 1992, the amount of funds that accrued to the asset seizure fund was \$798,000. Fiscal year to date, we have deposited \$716,163 in the asset seizure fund. These funds support our narcotic enforcement activities as well as prevention activities such as Partners in Prevention, Magnet School Program and the City's Anti-drug and Gang Coordinator. A decrease in funding would have a detrimental impact on those programs.

We are also concerned about the funds being sent to the State of California prior to distribution to the local agencies. With the budget problems facing the state, it is not outside the realm of possibility that the state would take those funds to offset their deficits.

4. Specify the City's legislative policy guideline(s) applicable to this measure (if any).

N/A

5. If this measure could be amended to either improve its favorable aspects or to minimize its adverse aspects, which amendments would you propose?

N/A

6. List known support or opposition to this measure by groups with which you are familiar and include addresses and phone numbers, if known.

League of California Cities position: No position

Opposition: California Peace Officers Association, California Police Chiefs Association, California State Sheriff's Association

Support: California Restaurant Association, American Civil Liberties Union, California Attorneys for Criminal Justice, California Drug Policy Reform Coalition

7. Does this bill involve a State-mandated local program? If so, does the bill contain a State-mandated waiver, or an appropriation for allocation and disbursement to local agencies pursuant to Revenue and Taxation code Section 2231?

The bill does involve a state-mandated local program and provides for the allocation and disbursement of funds via the Asset Forfeiture Distribution Fund.

8. Using a rating scale of 1 to 10 (with 10 as the most important), how important do you think this bill is to the City of Sacramento? 8

FORM COMPLETED BY: Claudia Evans ^{ce} DATE: 5/14/93

APPROVED:  DATE: 5/20/93
DAVID MARTINEZ, DEPUTY CITY MANAGER

Amended

AMENDED IN ASSEMBLY APRIL 29, 1993

AMENDED IN ASSEMBLY APRIL 1, 1993

ASSEMBLY BILL

No. 114

=====

Introduced by Assembly Member Burton

January 11, 1993

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An act to amend Section 11489 of, to add Sections 11495 and 11496 to, to repeal and amend Sections 11470, 11473, 11488, 11488.4, 11488.5, and 11488.6 of, and to repeal Sections 11473.2 and 11473.3 of, the Health and Safety Code, and to repeal Section 16 of Chapter 1492 of the Statutes of 1988, relating to asset forfeiture, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 114, as amended, Burton. Controlled substance offenses: asset forfeiture.

Under existing law, there are generally 2 sets of provisions relating to the forfeiture and seizure of property involved in, or purchased with the proceeds from, a controlled substance offense, with one set of provisions scheduled to be repealed on January 1, 1994, and the other set of provisions scheduled to become operative January 1, 1994.

This bill would delete the repeal date of, and amend, certain of the former set of provisions and repeal similar terms of the latter set of provisions.

This bill would make the following changes with regard to the application of these provisions to specified property:

- (1) Delete application to computers.

(2) Delete application to the interest of any registered owner of a boat, airplane, or any vehicle which has been used in any manner to facilitate the possession for sale or sale of specified controlled substances.

(3) Modify an exemption to the property subject to forfeiture in (2) above to delete the requirement that the person be a registered owner of a vehicle which is a community property asset of that person.

(4) Provide that the exemption in (3) above shall not apply to a person who the trier of fact finds ~~aided and abetted~~ ~~had actual knowledge of, and willfully consented to,~~ rather than knew or should have known of, the unlawful use of the property.

(5) Limit application to specified items which are actually used in designated prohibited activities, by deleting application to the specified items where they are intended for use in the designated prohibited activities.

(6) Modify these provisions as they apply to all moneys, negotiable instruments, securities, or other things of value, and provide that ~~none of this property shall be subjected to forfeiture unless the owner of the property either committed the offense, or knew, or should have known, of the commission of the offense and of the fact that the property in question was acquired with proceeds traceable to the offense~~

(7) Modify these provisions as they apply to real property.

This bill, in addition, would provide that no right, title, or interest in any property not described in these provisions shall vest in the state under the forfeiture provisions.

Existing law requires the entity that makes a seizure under these provisions to notify the legal owner, as specified.

This bill would extend this notification requirement to the community property owner, as specified, thereby imposing a state-mandated local program.

Existing law provides that, under these forfeiture provisions, seizures of specified property, upon declaration, or judgment of forfeiture, may be placed in the name of the law enforcement agency for use in its law enforcement program.

This bill would repeal these provisions.

Existing law, except as specified, requires the people to prove by a preponderance of the evidence that the property is subject to these forfeiture provisions.

This bill, instead, would require the people to prove ~~beyond a reasonable doubt~~ by clear and convincing evidence that the property is subject to these forfeiture provisions.

Under existing law, physical seizure is not necessary in order to forfeit property under these forfeiture provisions and the prosecuting attorney is authorized to seek protective orders for any asset, as specified.

This bill would ~~prohibit the seizure of~~ *provide that if* property is seized during the pendency of forfeiture proceedings ~~if the seizure would place an undue burden on any owner of an interest in the property unless~~ the court makes a finding that it cannot otherwise ~~shall~~ fashion appropriate orders to protect the potential interests of the parties, of which all interested parties shall receive adequate notice, including, but not limited to, an injunction to restrain and enjoin all interested parties from transferring, encumbering, hypothecating, or otherwise disposing of that property, and the appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that those assets and properties may be maintained and preserved. The bill would provide, however, that no injunction or other court order issued shall impair the ability of a party to the forfeiture action to pay actual legal fees, or a retainer fee, for his or her legal representation in the forfeiture action or any related criminal action.

Existing law requires the Attorney General or district attorney to make service of process of the complaint and notice of the initiation of forfeiture proceedings under these provisions upon every individual designated in a receipt issued for the property seized.

This bill would expand this provision to require service of process and notice to all reasonably discoverable owners, thereby imposing a state-mandated local program.

Existing law also requires the Attorney General, district attorney, or law enforcement agency which made the seizure under these forfeiture provisions to make an investigation into any right, title, interest, or

lien of record, as specified, with regard to specified property subject to forfeiture. Existing law further requires the Attorney General or the district attorney to notify the legal owner at his or her address appearing on specified records if certain conditions exist.

This bill, among other things, would extend these investigation and notification provisions to apply to any person who has an ownership interest, or as mentioned above, is the community property owner, thereby imposing a state-mandated local program.

Existing law also sets forth the minimum amount of time that must elapse before a claimant, as specified, may move the court for the return of property subject to forfeiture, as specified.

This bill would modify these provisions regarding a motion for return of property seized under these provisions to, among other things, grant all claimants the right to present evidence to support their claims, as specified, equal to that of the state.

~~Under existing law, a judgment of forfeiture does not require, as a condition precedent thereto, that a defendant be convicted of an offense which made the property subject to forfeiture, except that the facts giving rise to forfeiture must have occurred within 5 years of the notification of intention to seek forfeiture.~~

~~This bill would delete this provision. This bill would provide, instead, that a person's interest in property shall not be forfeited unless the defendant has been convicted of an offense which made the property subject to forfeiture. A conviction would not be required under this provision if the defendant intentionally fled the jurisdiction of this state, as specified, or died. This bill also would provide that a conviction would not be required with regard to the interests of community property holders who aided and abetted the commission of, and an owner of an interest in the property, other than a community property interest, who had actual knowledge of, and willfully consented to, the commission of, an offense which made the property subject to forfeiture.~~

~~The bill, in addition, among other things, would require that in any case in which there is no conviction required no interest in property, real or personal, shall be forfeited unless it is proven beyond a reasonable doubt that the holder of the interest had actual knowledge of, and willfully consented to, the commission of the offense making the property subject to forfeiture, or if the interest holder is a community property holder, it is proven beyond a reasonable doubt that he or she~~

~~aided and abetted in the offense.~~

Existing law authorizes any person claiming an interest in property alleged to be subject to forfeiture to file a claim, as specified, at any time within 30 days from the date of the first publication of the notice of seizure, as to a person not personally served or served by mail, or within 10 days after receipt of actual notice.

This bill would change the days with regard to persons claiming an interest pursuant to the above provision to 60 and 30, respectively.

Existing law requires that the property remain under the control of the law enforcement or prosecutorial agency until the adjudication of the forfeiture hearing.

This bill, instead, would make this provision permissive rather than mandatory. This bill would also authorize the court, on the motion of any party or on its own motion, to fashion other appropriate orders regarding control over the property as may be required by the interests of justice.

Existing law requires the court to order a person's interest in property forfeited if the court or jury finds that the property is subject to forfeiture and finds that a person claiming an interest therein knew or should have known of facts which made the property subject to forfeiture.

This bill, instead, would require the court to order the person's interest in property forfeited if the court or jury finds that the property is subject to forfeiture ~~and the person claiming an interest in the property committed, aided and abetted the commission of, or had actual knowledge of, and willfully consented to, the commission of, an offense making the property subject to forfeiture~~, which finding shall include a finding of the truth of all the necessary elements required to be proven, as specified.

Existing law requires the court to order that a person's interest be returned if the court or jury does not make the above findings with regard to a person claiming an interest in the property.

This bill, also, would require that the people pay the claimant's reasonable costs and reasonable legal fees, under this circumstance, thereby imposing a state-mandated local program.

Existing law provides that a judgment entered under these provisions is not subject to provisions of the Code of Civil Procedure which authorize the court, as specified, to allow a party to amend any pleading or proceeding, as specified.

This bill would delete this provision.

Under existing law, if the court or jury at the forfeiture hearing finds that the property is forfeitable, but also finds that the people have not met its burden of proving that a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract knew or should have known facts which would or did make the property subject to forfeiture, as specified, when the interest was acquired and that the person's interest is less than the appraised value of the property, the person may pay to the court the owner's equity and, upon payment, the court is required to relinquish all claims to property.

This bill, instead, would provide that this provision applies under these circumstances if the court or jury finds that the people have not met its burden of proving that the person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract ~~committed or~~ had actual knowledge of, and willfully consented to, the commission of an offense.

Existing law provides for the distribution of money from the Asset Forfeiture Fund, first, to the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, as specified, then to the state agency or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, as specified, and the remainder, as specified.

This bill would recast this provision to (1) expand the class under the first distribution to include any other owner of an interest in the property not subject to forfeiture and (2) distribute the remainder of the money after distribution to the first class to the ~~State General Fund to be distributed to the Restitution Fund, county mental health programs, and local law enforcement and prosecution agencies~~ Asset Forfeiture Distribution Fund, to be maintained, administered, and distributed by the Department of Justice, as specified. ~~This bill would make an appropriation by continuously appropriating the Asset Forfeiture Distribution Fund.~~

~~Existing law provides that the proceeds of the Restitution Fund~~

~~are continuously appropriated, as specified.~~

~~This bill would make an appropriation by increasing the moneys in the Restitution Fund which are subject to appropriation.~~

This bill, also, among other things, would provide that the county of jurisdiction in an asset forfeiture under these provisions be the county where the property has been seized or is located, the county where the criminal act giving rise to the forfeiture proceeding occurred, or the county of residence of any claimant and this bill would specify that the choice of a county of jurisdiction shall not place a reasonably avoidable burden on any claimant.

This bill would express legislative findings and would require the court entering a judgment of forfeiture under these provisions to evaluate the proportionality of the state's interest in the subject property, in comparison with the magnitude of the underlying offense with the objective of providing a uniform and proportionate forfeiture law and ensuring against the taking of property in unreasonable proportion to the offense.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Section 11470 of the Health and Safety Code, as amended by Chapter 924 of the Statutes of 1987, is repealed.

SEC. 2. Section 11470 of the Health and Safety Code, as amended by Chapter 1200 of the Statutes of 1990, is amended to read:

11470. The following are subject to forfeiture:

(a) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this division.

(b) All raw materials, products, and equipment of any kind which are used in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this division.

(c) All property except real property or a boat, airplane, or any vehicle which is used as a container for property described in subdivision (a) or (b).

(d) (1) All books, records, and research products and materials, including formulas, microfilm, tapes, data, computer programs, and software which are used in violation of this division.

(2) Any firearm or other weapon, device, or ammunition subject to Title 2 (commencing with Section 12000) of Part 4 of the Penal Code which is possessed or used in the commission of a violation of this division.

(e) (1) The interest of any registered owner of a boat, airplane, or any vehicle which has been used to violate Section 11379.6 or 11383 involving 7.125 grams or more of a substance containing either heroin or cocaine base, as specified in paragraph (1) of subdivision (f) of Section 11054, 14.25 grams or more of a substance containing a Schedule I controlled substance except marijuana, peyote, or psilocybin, five pounds dry weight or more of marijuana, peyote, or psilocybin, 14.25 grams or more of a substance containing cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine, or 14.25 grams or more of a substance containing a Schedule II controlled substance. However, an interest not to exceed ten thousand dollars (\$10,000) in a vehicle which may be lawfully driven on the highway with a class 3 or 4 license, as prescribed in Section 12804 of the Vehicle Code, which is a community property asset of a person other than the person whose conduct renders the vehicle subject to forfeiture, and which is the sole class 3 or 4 vehicle available to that community property holder's immediate family, shall not be subject to forfeiture. The exemption from forfeiture provided by this subdivision shall not apply if, pursuant to subdivision (e) of Section 11488.5, the trier of fact finds the person claiming the exemption ~~aided and abetted~~ had actual knowledge of, and willfully consented to, the unlawful use of the property.

(2) The interest of any person in a license described in Section 23393, 23394, or 23396 of the Business and Professions Code when the licensed premises were used or intended to be used, with the actual knowledge and willful consent of the licensee, to facilitate any violation of Sections 11351, 11351.5, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, and 11382 of this code, or Section 182 of the Penal Code, insofar as the offense involves the manufacture of, sale of, possession for sale of, offer for sale of, or offer to manufacture, a controlled substance, or conspiracy to commit at least one of those offenses.

(f) ~~(1)~~ All moneys, negotiable instruments, securities, or other things of value furnished by any person in exchange for a controlled substance or used by any person in an attempt to exchange for a controlled substance within the meaning of Section 21a of the Penal Code, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities, which were used to violate Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 of this code, or Section 182 of the Penal Code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a complaint under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first.

~~(2) No property shall be subjected to forfeiture pursuant to this subdivision unless the owner of the property either (A) committed the offense, or (B) knew, or should have known, of the commission of the offense and of the fact that the property in question was acquired with proceeds traceable to the offense.~~

(g) Real property used to violate Section 11366, 11366.5, 11366.6, or 11379.6. However, no interest in real property shall be subjected to forfeiture pursuant to this subdivision unless the person owning that interest either committed the offense or had actual knowledge of, and willfully consented to, the commission of the offense.

(h) All right, title, and interest in any property described in this section shall not be held to have vested in the state upon commission of the act giving rise to forfeiture under this chapter until after a judgment of forfeiture has been entered by a court of competent jurisdiction. No right, title, or interest in any property not described

in this section shall vest in the state pursuant to this chapter.

No right, title, or interest in any property shall vest in the state pursuant to this chapter except under circumstances where its application will not defeat the claim of any person, including a bona fide purchaser or encumbrancer who, pursuant to Section 11488.5 or 11488.6, establishes an interest in the property seized, which interest arose prior to the seizure or the filing of the complaint for forfeiture pursuant to this chapter, whichever occurs first, notwithstanding that the interest in the property being claimed was acquired from a person whose property interest would otherwise have been subject to divestment pursuant to this subdivision.

SEC. 3. Section 11473 of the Health and Safety Code, as amended by Section 1.5 of Chapter 1195 of the Statutes of 1989, is amended to read:

11473. All seizures under provisions of this chapter, except seizures of vehicles, boats, or airplanes, as specified in subdivision (e) of Section 11470, or seizures of moneys, negotiable instruments, securities, or other things of value as specified in subdivisions (c), (d), and (f) of Section 11470, shall, upon conviction of the owner or defendant, be ordered destroyed by the court in which conviction was had.

SEC. 4. Section 11473 of the Health and Safety Code, as amended by Section 2 of Chapter 948 of the Statutes of 1983, is repealed.

SEC. 5. Section 11473.2 of the Health and Safety Code, as amended by Section 5 of Chapter 1492 of the Statutes of 1988, is repealed.

SEC. 6. Section 11473.2 of the Health and Safety Code, as added by Section 4 of Chapter 948 of the Statutes of 1983, is repealed.

SEC. 7. Section 11473.3 of the Health and Safety Code, as amended by Section 6 of Chapter 1492 of the Statutes of 1988, is repealed.

SEC. 8. Section 11473.3 of the Health and Safety Code, as amended by Section 2 of Chapter 924 of the Statutes of 1987, is repealed.

SEC. 9. Section 11488 of the Health and Safety Code, as amended by Section 2 of Chapter 1195 of the Statutes of 1989, is amended to read:

11488. (a) Any peace officer of this state, incident or subsequent to making or attempting to make an arrest for a violation of Section

11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11382, or 11383 of this code, or Section 182 of the Penal Code insofar as the offense involves manufacture, sale, purchase for the purpose of sale, possession for sale, or offer to manufacture or sell, or conspiracy to commit one of those offenses, may seize any item subject to forfeiture under Section 11470.

(b) The peace officer shall notify the Franchise Tax Board of a seizure where there is reasonable cause to believe that the value of the seized property exceeds five thousand dollars (\$5,000).

(c) Receipts for property seized pursuant to this section shall be delivered to any person out of whose possession the property was seized, in accordance with Section 1412 of the Penal Code. In the event property seized was not seized out of anyone's possession, receipt for the property shall be delivered to the individual in possession of the premises at which the property was seized or, if the individual is not present on the premises, the receipt shall be left in a prominent place at the premises.

(d) There shall be a presumption affecting the burden of proof that the person to whom a receipt for property was issued is the owner thereof. This presumption may, however, be rebutted at the forfeiture hearing specified in Section 11488.5.

SEC. 10. Section 11488 of the Health and Safety Code, as amended by Section 3 of Chapter 924 of the Statutes of 1987, is repealed.

SEC. 11. Section 11488.4 of the Health and Safety Code, as amended by Chapter 924 of the Statutes of 1987, is repealed.

SEC. 12. Section 11488.4 of the Health and Safety Code, as amended by Chapter 1200 of the Statutes of 1990, is amended to read:

11488.4. (a) Except as provided in subdivision (j), if the Attorney General or the district attorney determines that the factual circumstances do warrant that the property seized or subject to forfeiture comes within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and is not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of law, the Attorney General or district attorney shall file a complaint for forfeiture with the superior court of the county in which the property subject to forfeiture has been seized or in the county in which the property subject to forfeiture is located. If the complaint

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.

A complaint for forfeiture under this subdivision shall be filed within one year of the seizure of the property which is subject to forfeiture, or 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) (1) Physical seizure shall not be necessary in order to forfeit property under this chapter. The prosecuting attorney may seek protective orders for any asset pursuant to Section 11492. No property shall be

(2) (A) If property is seized during the pendency of forfeiture proceedings if the seizure would place an undue burden on any owner of an interest in the property unless the court makes a finding that it cannot otherwise, the court shall fashion appropriate orders to protect the potential interests of the parties, of which all interested parties shall receive adequate notice, including, but not limited to, the following:

(i) An injunction to restrain and enjoin all interested parties from transferring, encumbering, hypothecating, or otherwise disposing of that property.

(ii) The appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that those assets and properties may be maintained and preserved.

(B) No injunction or other court order issued pursuant to this subdivision shall impair the ability of a party to the forfeiture action to pay actual legal fees, or a retainer fee, for his or her legal representation in the forfeiture action or any related criminal action

(c) The Attorney General or district attorney shall make service of process of the complaint and notice of the initiation of forfeiture proceedings upon every individual designated in a receipt issued for the property seized and all reasonably discoverable owners. In addition, the Attorney General or district attorney shall cause a notice of the seizure, if any, and of the intended forfeiture proceeding, stating that any interested party may file a verified claim with the superior court,

as directed by the notice, to be served by personal delivery or by certified mail upon any person who has an interest in the seized property or property subject to forfeiture other than persons designated in a receipt issued for the property seized.

(d) The Attorney General, district attorney, or law enforcement agency which made the seizure shall make an investigation into any right, title, interest, or lien of record with the Department of Motor Vehicles or appropriate federal agency as to a vehicle, boat, or airplane. If the investigation discloses that any person, other than the registered owner, has an ownership interest, or is a community property owner thereof, and the ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, boat, or airplane, the Attorney General or district attorney shall forthwith send a notice to any and all owners, or community property owners at the address or addresses appearing on the records of the Department of Motor Vehicles or appropriate federal agency.

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

(f) All notices shall set forth the time within which a claim of interest in the property seized or subject to forfeiture is required to be filed pursuant to Section 11488.5.

(g) (1) No sooner than 30 days after a complaint is filed pursuant to this section, a claimant, who alleges standing based on an interest in the property which arose prior to the seizure or filing of the complaint for forfeiture, whichever occurs first, may move the court for the return of the property named in the claim on the grounds that there is not probable cause to believe that the property is subject to forfeiture pursuant to Section 11470, or is not automatically forfeitable or subject to court order of forfeiture or otherwise subject to destruction by another provision of law. The showing of probable cause may be supported or opposed by evidence, prior judicial testimony, deposition, affidavit, or declaration. All claimants shall have the right to present evidence equal to that of the state. If the court determines that there is not probable cause to believe that the property is subject to forfeiture, it shall order the property returned to the owner thereof unless the property is otherwise lawfully held.

(2) If a complaint is filed pursuant to this section and there is an underlying or related criminal action and the defendant has not pled guilty or nolo contendere, a defendant who is a claimant alleging an interest in the property in the related forfeiture proceeding may move, exclusively pursuant to Section 1538.5 of the Penal Code, for the return of the property on the grounds that there is not probable cause to believe that the property is forfeitable pursuant to Section 11470, or is not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter.

The motion may be made at the preliminary examination or subsequent thereto. If made subsequent to the preliminary examination, the Attorney General or district attorney may submit the record of the preliminary hearing to establish that probable cause exists to believe that the property is subject to forfeiture. The claimant may submit any relevant evidence in opposition to the motion ~~rebuttal to the argument in support of the existence of probable cause.~~ If the court determines that there is not probable cause to believe that the property is subject to forfeiture it shall order the property returned to the owner thereof unless the property is otherwise lawfully held.

(h) Within 30 days after a motion for return of property is granted pursuant to subdivision (g), the people may file a petition for writ of mandate or prohibition seeking appellate review of the order.

(i) (1) Except as provided in subdivision (l) of this section and subdivision (d) of Section 11488.5, the people shall have the burden of proving ~~beyond a reasonable doubt by clear and convincing evidence~~ that the property is subject to forfeiture as described in Section 11470.

The

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

~~(j) A person's interest in property shall not be forfeited unless the defendant has been convicted of an offense which made the property subject to forfeiture, except as follows:~~

~~A criminal conviction shall not be required for the purposes of this subdivision if any of the following circumstances exist:—~~

~~(1) The defendant has intentionally fled the jurisdiction of this state for the express purpose of avoiding prosecution and the state cannot, by reasonable effort, secure personal jurisdiction.~~

~~(2) The defendant has died.~~

~~(3) A community property interest holder in the subject property willfully aided and abetted the commission of the offense which made the property subject to forfeiture, within the meaning of Section 31 of the Penal Code, and the defendant has either been convicted, or the requirement of conviction has been waived pursuant to paragraphs (1) or (2).~~

~~(4) An owner of an interest in the property, other than a community property interest, had actual knowledge of, and willfully consented to, the commission of an offense which made the property subject to forfeiture and the person who committed the offense has either been convicted, or the requirement of conviction has been waived pursuant to paragraphs (1) or (2).~~

~~(k) In any case in which there is no conviction required pursuant to subdivision (j), no interest in property, real or personal, shall be forfeited unless it is proven beyond a reasonable doubt that the holder of the interest had actual knowledge of, and willfully consented to, the commission of the offense making the property subject to forfeiture, or if the interest holder is a community property holder, proven beyond a reasonable doubt that he or she aided and abetted in the offense. If~~

(3) A judgment of forfeiture does not require, as a condition precedent thereto, that any defendant be convicted of an offense which made the property subject to forfeiture, provided that the facts giving rise to the forfeiture occurred within five years of the seizure of the property or within five years of the notification of intention to seek forfeiture.

(4) If there is a related criminal action, the issue of forfeiture may be tried in conjunction therewith by agreement of all parties. Trial shall be by jury unless waived by all parties. If there is no related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial.

(1) The Attorney General or the district attorney of the county in which property is subject to forfeiture under Section 11470 may, pursuant to this subdivision, order forfeiture of personal property not exceeding one hundred thousand dollars (\$100,000) in value. The Attorney General or district attorney shall provide notice of proceedings under this subdivision pursuant to subdivisions (c), excluding the provision relating to service of the complaint, (d), (e), and (f), including:

(1) A description of the property.

(2) The appraised value of the property.

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

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

(5) The instructions for filing a claim with the superior court pursuant to Section 11488.5 and time limits for filing a claim. If no claims are timely filed, the Attorney General or the district attorney shall prepare a written declaration of forfeiture, under penalty of perjury, of the subject property to the state and dispose of the property in accordance with Section 11489, including a statement of facts supporting the forfeiture. A written declaration of forfeiture signed by the Attorney General or district attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited property.

The prosecuting agency ordering forfeiture pursuant to this subdivision shall provide a copy of the declaration of forfeiture to any person listed in the receipt given at the time of seizure and to any person personally served notice of the forfeiture proceedings.

If a claim is timely filed and served, then the Attorney General or district attorney shall file a complaint for forfeiture pursuant to this section within 30 days of the receipt of the claim. The complaint for forfeiture shall then proceed pursuant to other provisions of this chapter, except that no additional notice need be given and no additional claim need be filed.

SEC. 13. Section 11488.5 of the Health and Safety Code, as amended by Chapter 924 of the Statutes of 1987, is repealed.

SEC. 14. Section 11488.5 of the Health and Safety Code, as amended by Chapter 1200 of the Statutes of 1990, is amended to read:

11488.5. (a) (1) Any person claiming an interest in the property alleged to be subject to forfeiture may, at any time within 60 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or within 30 days after receipt of actual notice, file with the superior court, as directed by the notice, a verified claim stating the nature of his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 10 days of the filing of the claim. The Judicial Council shall develop and approve official forms for the verified claim that is to be filed pursuant to this section. The official forms shall be drafted in nontechnical language and shall be made available through the office of the clerk of the appropriate court.

(2) Within 30 days of the service of the complaint for forfeiture, a claimant shall file an answer thereto unless, for good cause shown, the court extends the time for the filing of the answer.

(b) The property may remain under control of the law enforcement or prosecutorial agency until the adjudication of the forfeiture hearing, or the court may, on the motion of any party or on its own motion, fashion other appropriate orders regarding control over the property as may be required by the interests of justice.

(c) The claim of the state or a local agency to property subject to forfeiture shall have priority over a claim to the seized or forfeitable property made by the Franchise Tax Board in a notice to withhold issued pursuant to Section 18817 or 26132 of the Revenue and Taxation Code.

(d) If, at the end of the time set forth in paragraph (1) of subdivision (a), there is no claim on file, the court, upon motion, shall declare the property seized or subject to forfeiture pursuant to Section 11470 forfeited to the state. In moving for a default judgment pursuant to this subdivision, the people shall be required to establish a prima facie case in support of its complaint for forfeiture.

(e) (1) If a verified claim and answer are timely filed, the forfeiture proceeding shall be set for hearing pursuant to the rules of the court, but the proceeding shall have priority over other civil cases. A claim and answer shall not be admissible in the proceeding regarding the offense.

(2) The hearing shall be by jury, unless waived by the parties.

(f) Forfeiture shall be ordered when, at the hearing, the people have shown that the property is subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4.

(g) The forfeiture hearing shall be continued upon motion of a claimant who is concurrently a defendant in a related criminal proceeding until the charge in that proceeding has been resolved in the trial court or that defendant fails to appear. The forfeiture hearing shall be conducted in accordance with Sections 600 to 630, inclusive, of the Code of Civil Procedure if a trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure if by the court. Unless the court or jury finds that the property is subject to forfeiture pursuant to Section 11470, the court shall order the property released to the person it determines is entitled thereto.

(h) If the court or jury finds that the property is subject to forfeiture, ~~including the finding that a person claiming an interest in the property committed, aided and abetted the commission of, or had actual knowledge of, and willfully consented to, the commission of an offense making the property subject to forfeiture pursuant to~~ which finding shall include a finding of the truth of all the necessary elements required to be proven pursuant to Section 11470, the court shall order that the person's interest in the property be forfeited. If the court or jury does not make these findings, the court shall order that the person's interest in the property be returned and that the people pay the claimant's reasonable costs and reasonable legal fees. The people shall have the burden of proof in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4.

(i) All property which was the subject of a forfeiture hearing and which was not released by the court to a claimant shall be declared by the court to be forfeited to the state. Except as provided in Sections 11473.2 and 11473.3, the clerk of the court shall provide for disposition of the forfeited property as set forth in Section 11489.

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

SEC. 15. Section 11488.6 of the Health and Safety Code, as amended by Chapter 534 of the Statutes of 1986, is repealed.

SEC. 16. Section 11488.6 of the Health and Safety Code, as amended by Chapter 1200 of the Statutes of 1990, is amended to read:

11488.6. If the court or jury at the forfeiture hearing finds that the property is forfeitable pursuant to Section 11470, and further finds that the people have not met its burden of proving that a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract ~~committed~~ or had actual knowledge of, and willfully consented to, the commission of an offense which would or did make the property subject to forfeiture pursuant to Section 11470 when the interest was acquired, and that person's interest is less than the appraised value of the property, that person may pay to the court the owner's equity, which shall be deemed to be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon payment, the people shall relinquish all claims to the property and the court shall enter judgment pursuant to Section 11488.5 against the owner's equity. If the holder of the interest elects not to make payment, the property shall be adjudged forfeited to the state, and the ownership certificate shall be surrendered. The appraised value shall be determined as of the date judgment is entered on a wholesale basis either by agreement between the interest holder and the people, or if they cannot agree, then by the inheritance tax appraiser for the county in which the action is brought. A person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest in accordance with the provisions of Section 11489.

SEC. 17. Section 11489 of the Health and Safety Code, as amended by Section 7 of Chapter 722 of the Statutes of 1992, is amended to read:

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

(a) To the bona fide or innocent purchaser, conditional sales vendor, mortgagee of the property, or any other owner of an interest in the property not subject to forfeiture, if any, up to the amount of his or her interest in the property, when the court declaring the forfeiture orders a distribution to that person.

(b) The balance, if any, to be transferred to the State General Fund to accumulate, and to be distributed and transferred quarterly, upon appropriation by the Legislature, in the following manner: Asset Forfeiture Distribution Fund, which is hereby created. Notwithstanding Section 13340 of the Government Code, the Asset Forfeiture Distribution Fund is hereby continuously appropriated without regard to fiscal years, and shall be maintained, administered, and distributed by the Department of Justice in the following manner:

(1) Up to 5 percent, but in no event less than two million five hundred thousand dollars (\$2,500,000), to the Restitution Fund.

(2) Up to 5 percent, but in no event less than two million five hundred thousand dollars (\$2,500,000), to county mental health programs.

(3) The remainder, a minimum of 10 percent of which shall be used for drug abuse prevention and education programs, to be distributed to local law enforcement and prosecution agencies.

SEC. 18. Section 11495 is added to the Health and Safety Code, to read:

11495. (a) The county of jurisdiction in an asset forfeiture under this chapter may be any of the following:

(1) The county where the property has been seized or is located.

(2) The county where the criminal act giving rise to the forfeiture proceeding occurred.

(3) The county of residence of any claimant.

(b) Notwithstanding subdivision (a), the choice of a county of jurisdiction shall not place a reasonably avoidable burden on any claimant.

SEC. 19. Section 11496 is added to the Health and Safety Code, to read:

11496. (a) The Legislature finds that even though forfeiture law is civil in nature, it does penalize persons for their criminal behavior, and therefore equal protection and due process must be observed in all phases of the proceedings.

(b) The court entering a judgment of forfeiture shall evaluate the proportionality of the state's interest in the subject property, in comparison with the magnitude of the underlying offense. The objective of this evaluation shall be to provide a uniform and proportionate forfeiture law, and to ensure against the taking of property in unreasonably proportion to the offense.

SEC. 20. Section 16 of Chapter 1492 of the Statutes of 1988, as amended by Section 14 of Chapter 641 of the Statutes of 1991, is repealed.

SEC. 21. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.