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DEPARTMENT OF
POLICE

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May 26, 1999

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT Vehicle Seizure Ordinance ("Beat Feet")

LOCATION AND COUNCIL DISTRICT City Wide

STAFF RECOMMENDATION

Staff recommends that the Law and Legislation Committee forward the proposed Vehicle Seizure Ordinance to the full City Council, with the recommendation that the ordinance be adopted.

CONTACT PERSON Alan Grimm, Administrative Analyst II - 264-8181

FOR COMMITTEE MEETING OF June 1, 1999

SUMMARY

On January 5, 1999, at the request of Council Member Lauren Hammond, City Council directed staff to prepare and process for possible adoption by the City of Sacramento an ordinance consistent with the "Beat Feet" ordinance adopted by the City of Oakland. That ordinance provides for the seizure and forfeiture of vehicles used to purchase drugs or solicit prostitution. The matter before the Law and Legislation Committee is an ordinance generally consistent with, and based upon, the Oakland ordinance.

BACKGROUND INFORMATION

In 1997, the City of Oakland adopted a local ordinance which provides for the seizure and forfeiture of vehicles used to purchase drugs or solicit prostitution. It did so pursuant to the home rule authority provided by the California Constitution to charter cities. Oakland's ordinance is designed to address the blight created by the widespread use of vehicles to conduct quick drive-by purchases of drugs or solicit acts of prostitution, in areas known for high crime. This activity seriously degraded the quality of life for residents of the affected neighborhoods.

The City of Sacramento is similarly afflicted with the problems associated with drive-by solicitation of drugs and prostitution in certain districts. There are several areas within the City where drugs and prostitution have negatively impacted the quality of life for residents.

The purpose of the proposed ordinance is to target the nuisance and blight created when persons drive into certain neighborhoods and create drive-by markets of illegal activity. The ordinance is narrowly circumscribed to focus on abating the nuisance. The forfeiture provisions are for the purpose of discouraging the conduct that creates the blight, the use of vehicles as a means to conduct quick and convenient illegal transactions. The proposed City of Sacramento ordinance has been based largely on the ordinance in place in the City of Oakland.

Proposed Ordinance

The ordinance declares any vehicle used to solicit an act of prostitution, or to acquire or attempt to acquire any controlled substance, a nuisance. The ordinance permits the abatement of the nuisance by seizure and forfeiture of such vehicle. It is anticipated that the ordinance will be utilized primarily by the Police Department in situations when it is conducting "sting" operations and "reverse buy" operations.

When the operation is executed the vehicle is immediately seized. The driver is provided with a receipt for the vehicle and a notice indicating the legal grounds for seizure. If the driver is not the owner, the owner is notified by mail along with any lienholder. Any party with an interest in the vehicle can oppose the forfeiture. If the forfeiture is opposed, there are judicial procedures identified in the ordinance for the litigation of the claim. If the forfeiture is not opposed, the vehicle is sold and the proceeds are split between the Police department and District Attorney's or City Attorney's office.

The proposed ordinance is consistent with existing vehicle seizure ordinances in Oakland and Detroit. The Oakland ordinance is currently under challenge by the American Civil Liberties Union (ACLU). The ACLU filed an initial facial challenge to the Oakland ordinance, contending that the ordinance was preempted by state law. Specifically, it was claimed that the ordinance was preempted by Vehicle Code § 22659.5 and Health & Safety Code § 11469-95.

California Vehicle Code §22659.5 (Exhibit "A") authorizes local jurisdictions to enact ordinances authorizing the treatment of vehicles used in the commission of prostitution-related offenses as nuisances upon a conviction or a plea of guilty or nolo contendere. Subsection (b) provides for impoundment of the vehicles for up to 48 hours. Health and Safety Code §11469-95 (Exhibit "B") contains the comprehensive state drug asset forfeiture law. The ACLU claims that the Oakland ordinance is in direct conflict with the mandatory provisions of these state laws which delineate when property may be seized by law enforcement and what property is subject to forfeiture.

The trial court ruled in favor of the City of Oakland on the initial challenge, holding that the Oakland ordinance was not preempted. The matter has been appealed by the ACLU, and a decision is expected by early next year. The ACLU has advised that it intends to challenge the Oakland ordinance on constitutional grounds if it survives the preemption challenge, including a claim that the forfeiture violates the Excessive Fines Clause of the Eighth Amendment. The ACLU has advised the City Attorney's Office that they are opposed to the City's consideration of an Oakland-type ordinance on similar grounds. A copy of the ACLU's letter is attached as Exhibit "C".

Representatives from the City Attorney's Office and Council Member Hammond's office recently met with the Oakland City Attorney's Office (OCA) and the Oakland Police Department (OPD) regarding procedural aspects of enforcement of the ordinance. Police Department staff had previously met with Oakland staff in regard to this issue matter. Staff intends to maintain close contact with the OCA and OPD with respect to these issues.

The cooperation and coordination with the District Attorney's office and the court system will be required to facilitate the process. Staff has scheduled meetings with the District Attorney and representatives of the court system to discuss the details of the proposed ordinance. Staff will work closely with the DA and the court to clarify any issues or concerns to ensure the ordinance is sound and enforceable prior to its adoption by the City Council.

FINANCIAL CONSIDERATIONS

Staff does not anticipate any significant revenue will be generated from this program. Additionally, there may be increased overtime costs to develop and implement operations to target and abate problems areas. However, staff is not requesting a budget augmentation as these costs will be absorbed in the Police Department operating budgets.

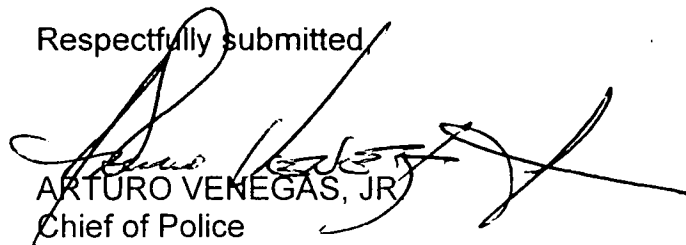
POLICY CONSIDERATIONS

The proposed ordinance is consistent with City Council's goal to enhance the quality of life in neighborhoods. However, a policy consideration for the Law and Legislation Committee and the City Council may be that an "Innocent Owner" clause is not included in the proposed ordinance. This clause would apply to those owners who had provided use of a vehicle without prior knowledge that the driver had planned to engage in illegal activity.

ESBD

Not applicable.

Respectfully submitted,



ARTURO VENEGAS, JR.
Chief of Police

RECOMMENDATION APPROVED:



ROBERT P. THOMAS
City Manager

- Attachments:
- Proposed Ordinance
 - Exhibit A - Vehicle Code §22695.5
 - Exhibit B - Health & Safety Code §11469-95
 - Exhibit C - American Civil Liberties Union letter (Feb 9 99)

DRAFT

ORDINANCE NO.

DRAFT

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE ADDING CHAPTER 61.19¹ TO TITLE 61 OF THE SACRAMENTO CITY CODE, ESTABLISHING THAT ANY VEHICLE USED TO SOLICIT AN ACT OF PROSTITUTION OR TO ACQUIRE OR ATTEMPT TO ACQUIRE A CONTROLLED SUBSTANCE IS A NUISANCE SUBJECT TO SEIZURE AND FORFEITURE.

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Chapter 61.19 is hereby added to Title 61-- Nuisance Code of the Sacramento City Code, to read as follows:

61.19.1901 Findings and Purpose

The Sacramento City Council hereby finds and declares:

- (a) The citizens of Sacramento have complained about the nuisance created in their neighborhoods by persons driving vehicles into their neighborhoods in order to acquire or attempt to acquire controlled substances or to solicit acts of prostitution; and
- (b) Persons who operate vehicles and use them to acquire or attempt to acquire controlled substances or to solicit acts of prostitution bring crime and decay into the neighborhoods; and
- (c) The seizure and forfeiture of vehicles used by persons to acquire or attempt to acquire controlled substances or to solicit acts of prostitution will serve to

¹The City Clerk must approve the chapter designation of this proposed ordinance.

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ORDINANCE NO. _____

DATE ADOPTED: _____

abate the nuisance caused by such activity, in that these persons will be deterred from using a vehicle as an instrumentality of their illegal activity.

61.19.1902 Definitions.

- (a) Controlled substance - a drug, substance, or immediate precursor which is listed in any schedule in California Health & Safety Code Section 11054, 11055, 11056, 11057, or 11058.
- (b) Driver - the person who drives or is in actual physical control of a vehicle.
- (c) Prostitution - engaging in lewd or sexual conduct for money, or other consideration.
- (d) Vehicle - any transportation device which requires the driver to have in his or her immediate possession a valid driver's license for the appropriate class of vehicle being driven.

61.19.1903 Nuisance Subject To Abatement By Seizure and Forfeiture of Vehicle.

- (a) Any vehicle used to solicit an act of prostitution, or to acquire or attempt to acquire any controlled substance, is declared a nuisance and the vehicle shall be enjoined and abated by seizure and forfeiture, as provided for in this Chapter.
- (b) Any person or his or her servant, agent, or employee who owns leases, conducts or maintains any vehicle used for any of the purposes or acts set forth in this section is guilty of creating a public nuisance.

61.19.1904 Seizure of Vehicle

- (a) A peace officer may seize a vehicle subject to forfeiture under this Chapter upon the issuance of an order by a court having jurisdiction over the vehicle. Seizure without court order may be made if any of the following situations exist:
 - (i) There is probable cause to believe that the vehicle was used in violation of this chapter; or
 - (ii) The seizure is incident to an arrest or a search under a search warrant.

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- (b) Receipts for vehicles seized pursuant to this chapter shall be delivered to any person from whose possession such vehicle was seized, in accordance with section 1412 of the Penal Code.
- (c) An immediate investigation shall be made by the Sacramento Police Department as to any claimant to a vehicle whose right, title, interest, or lien is of record in the Department of Motor Vehicles or other state or federal agency. If the Sacramento Police Department finds that any person, other than the person from whom the vehicle was seized, is the legal owner thereof, and such ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, it shall within 48 hours of the vehicle's seizure, send a Notice of Seizure to the legal owner at his or her address appearing on the records of the Department of Motor Vehicles or other state or federal agency.
- (d) The Notice of Seizure sent pursuant to the requirements of subsection (c) shall set forth the time in which a claim of interest in the vehicle seized or subject to forfeiture is required to be filed.

69.19.1905 Forfeiture and Notice of Intended Forfeiture of Vehicle

- (a) The District Attorney or City Attorney may, pursuant to this section, order the forfeiture of vehicles seized under this Chapter.
- (b) If the District Attorney or City Attorney determines that the factual circumstances warrant the forfeiture of a vehicle described in section 61.19.1903, the District Attorney or City Attorney shall serve a Notice of Intended Forfeiture upon any person who has an interest in the seized vehicle. Such notice shall be served as soon as practicable, but in any event within 90 days of the seizure of the vehicle subject to forfeiture.
- (c) The Notice of Intended Forfeiture shall be served by personal delivery or certified mail, return receipt requested, upon any person who has an interest in the seized vehicle as determined pursuant to 69.19.1904(c).
- (d) A Notice of Intended Forfeiture shall include:
 - (i) A description of the vehicle.
 - (ii) The date and place of the vehicle's seizure.

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- (iii) The violation of law alleged with respect to the intended forfeiture of the vehicle.
- (iv) A claim form as described in section 69.19.1906.
- (v) Instructions for filing and serving a claim, and the time limits for filing such a claim.

61.19.1906 Claims and Court Proceedings

- (a) Any person claiming an interest in a vehicle seized pursuant to this Chapter must, not later than **10 days** from the date of the Notice of Intended Forfeiture, file a claim with the Superior Court of Sacramento, verified in accordance with section 446 of the Code of Civil Procedure, stating his or her interest in the vehicle. An endorsed copy of the claim shall be served by the claimant on the District Attorney or City Attorney within 10 days of the filing of the claim.
- (b) If a verified claim is timely filed, the District Attorney or City Attorney shall institute a forfeiture proceeding by filing a petition for forfeiture with the Superior Court of Sacramento County within 30 days of the receipt of the claim, and by setting the matter for a hearing on a day not less than 30 days therefrom.
- (c) The hearing shall be before the Superior Court of Sacramento County.
- (d) The provisions of the Code of Civil Procedure shall apply to proceedings under this Ordinance unless otherwise inconsistent with the provisions or procedures set forth in this Chapter. However, in proceedings 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 the questions related to this Chapter.
- (e) With respect to vehicles described in Section 61.19.1903 for which forfeiture is sought and as to which forfeiture is contested, the City of Sacramento shall have the burden of proving by a preponderance of the evidence that the vehicle was used as set forth in Section 61.19.1903. Trial shall be before the Court. The presiding judge of the Superior Court shall assign the action brought pursuant to this Chapter for trial.

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- (f) Upon proof that the vehicle was used for any of the purposes set forth in section 61.19.1903, the Court shall declare the vehicle a nuisance and order the vehicle sold and the proceeds distributed as set forth in section 61.19.1907.
- (g) If no claims are timely filed in response to the notice issued pursuant to subsection (b), the District Attorney or the City Attorney shall prepare a written declaration of forfeiture of the vehicle to the City and dispose of the property in accordance with Section 61.19.1907. A written declaration of forfeiture signed by the District Attorney or City Attorney under this section shall be deemed to provide good and sufficient title to the forfeited property. The District Attorney or City Attorney ordering forfeiture pursuant to this subsection shall provide a copy of the declaration of forfeiture to any person who received notice of the intended forfeiture proceedings.

61.19.1907 Distribution of Proceeds

In all cases where a vehicle seized pursuant to this Chapter is forfeited to the City, the vehicle shall be sold and the proceeds of sale shall be distributed as follows:

- (a) To the bonafide or innocent purchaser, conditional sales vendor, mortgagee or lien holder of the property, if any, up to the amount of his or her interest in the property, when the Court, District Attorney or City Attorney declaring the forfeiture orders a distribution to that person.
- (b) To the District Attorney or City Attorney for all expenditures made or incurred by it in connection with the publication of the notices set forth in Section 61.19.1905, and the sale of the vehicle, including expenditures for any necessary repairs, storage, or transportation of any vehicle seized under this Chapter.
- (c) The remaining funds shall be distributed as follows:
 - (i) Fifty percent to the local law enforcement entities that participated in the seizure distributed so as to reflect the proportionate contribution of each agency.
 - (ii) Fifty percent to the District Attorney or City Attorney.

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DATE ADOPTED: _____

DATE PASSED FOR PUBLICATION:
DATE ENACTED:
DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

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(c) When any vehicle is found upon the property and report has previously been made that the vehicle has been stolen or complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When the person or persons in charge of a vehicle upon the property are by reason of physical injuries or illness incapacitated to that extent as to be unable to provide for its custody or removal.

The person causing removal of the vehicle shall comply with the requirements of Sections 22852 and 22853 relating to notice.

22659.5. (a) Notwithstanding any other provision of law, any city, any county, or any city and county, may adopt an ordinance establishing a five-year pilot program that implements procedures for declaring any motor vehicle a public nuisance when the vehicle is used in the commission of an act in violation of Section 266h or 266i of the Penal Code or subdivision (b) of Section 647 of that code, and there is a conviction of Section 266h or 266i of the Penal Code or subdivision (b) of Section 647 of that code, or a provision involving any lesser included offense to which the defendant enters a plea of guilty or nolo contendere as part of a plea agreement subsequent to the defendant having been charged with a violation of Section 266h or 266i of the Penal Code or subdivision (b) of Section 647 of that code.

(b) In addition to the authority provided by subdivision (h) of Section 22651, the ordinance may also include procedures to enjoin and abate the declared nuisance by ordering the defendant not to use the vehicle again for purposes of violating Section 266h or 266i of the Penal Code or subdivision (b) of Section 647 of that code and authorizing the temporary impoundment of the vehicle that the court has declared a nuisance if the defendant violates the order. The impoundment shall not exceed 48 hours.

(c) The only action that may be taken to enjoin and abate the declared nuisance are those actions specified in subdivision (b).

(d) Any procedures implemented pursuant to this section shall ensure that no vehicle is declared a nuisance if the vehicle is stolen, unless it is not possible to reasonably ascertain the identity of any owner of the vehicle.

22660. Notwithstanding any other provision of law, a city, county, or city and county may adopt an ordinance establishing procedures for the abatement and removal, as public nuisances, of abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof from private or public property, and for the recovery, pursuant to Section 25845 or 38773.5 of the Government Code, or assumption by the local authority, of costs of administration and the removal.

22661. Any ordinance establishing procedures for the removal of abandoned vehicles shall contain all of the following provisions:

(a) The requirement that notice be given to the Department of Motor Vehicles within five days after the date of removal, identifying the vehicle or part thereof and any evidence of registration available, including, but not limited to, the registration card, certificates of ownership, or license plates.

(b) Making the ordinance inapplicable to (1) a vehicle or part thereof that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property or (2) a vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the

HEALTH AND SAFETY CODE

SECTION 11469-11495

11469. In order to ensure the proper utilization of the laws permitting the seizure and forfeiture of property under this chapter, the Legislature hereby establishes the following guidelines:

(a) Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens.

(b) No prosecutor's or sworn law enforcement officer's employment or salary shall be made to depend upon the level of seizures or forfeitures he or she achieves.

(c) Whenever appropriate, prosecutors should seek criminal sanctions as to the underlying criminal acts which give rise to the forfeiture action.

(d) Seizing agencies shall have a manual detailing the statutory grounds for forfeiture and all applicable policies and procedures. The manual shall include procedures for prompt notice to interestholders, the expeditious release of seized property, where appropriate, and the prompt resolution of claims of innocent ownership.

(e) Seizing agencies shall implement training for officers assigned to forfeiture programs, which training should be ongoing.

(f) Seizing agencies shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.

(g) Seizing agencies shall not put any seized or forfeited property into service.

(h) Unless otherwise provided by law, forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.

(i) Seizing agencies shall ensure that seized property is protected and its value preserved.

(j) Although civil forfeiture is intended to be remedial by removing the tools and profits from those engaged in the illicit drug trade, it can have harsh effects on property owners in some circumstances. Therefore, law enforcement shall seek to protect the interests of innocent property owners, guarantee adequate notice and due process to property owners, and ensure that forfeiture serves the remedial purpose of the law.

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, or intended for use, 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, or intended for use, as a container for property described in subdivision (a) or (b).

(d) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this division.

(e) The interest of any registered owner of a boat, airplane, or any vehicle other than an implement of husbandry, as defined in

Section 36000 of the Vehicle Code, which has been used as an instrument to facilitate the manufacture of, or possession for sale or sale of 14.25 grams or more of heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or a substance containing 14.25 grams or more of heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or 14.25 grams or more of a substance containing heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or 28.5 grams or more of Schedule I controlled substances except marijuana, peyote, or psilocybin; 10 pounds dry weight or more of marijuana, peyote, or psilocybin; or 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or a substance containing 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or 57 grams or more of a substance containing cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or 28.5 grams or more of Schedule II controlled substances. No interest in a vehicle which may be lawfully driven on the highway with a class C, class M1, or class M2 license, as prescribed in Section 12804 of the Vehicle Code, may be forfeited under this subdivision if there is a community property interest in the vehicle by a person other than the defendant and the vehicle is the sole class C, class M1, or class M2 vehicle available to the defendant's immediate family.

(f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this 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 petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first.

(g) The real property of any property owner who is convicted of violating Section 11366, 11366.5, or 11366.6 with respect to that property. However, property which is used as a family residence or for other lawful purposes, or which is owned by two or more persons, one of whom had no knowledge of its unlawful use, shall not be subject to forfeiture.

(h) Subject to the requirements of Section 11488.5 and except as further limited by this subdivision to protect innocent parties who claim a property interest acquired from a defendant, all right, title, and interest in any personal property described in this section shall vest in the state upon commission of the act giving rise to forfeiture under this chapter, if the state or local governmental entity proves a violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves the manufacture, sale, possession for sale, offer for sale, offer to manufacture, or conspiracy to commit at least one of those offenses, in accordance with the burden of proof set forth in paragraph (1) of subdivision (i) of Section 11488.4 or, in the case of cash or negotiable instruments in excess of twenty-five thousand dollars (\$25,000), paragraph (4) of subdivision (i) of Section 11488.4.

The operation of the special vesting rule established by this subdivision shall be limited to 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, 11488.6, or 11489, claims an interest in the property seized, notwithstanding that the interest in the property being claimed was acquired from a defendant whose property interest would otherwise have been subject to divestment pursuant to this subdivision.

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

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

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

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

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

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

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

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

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

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

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

(3) The expenses were reasonably incurred.

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

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

or to the property of another entity.

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

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

11470.2. (a) In lieu of a civil action for the recovery of expenses as provided in Section 11470.1, the prosecuting attorney in a criminal proceeding may, upon conviction of the underlying offense, seek the recovery of all expenses recoverable under Section 11470.1 from:

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

(2) Any person who aids and abets or who knowingly profits in any manner from the manufacture or cultivation of a controlled substance or its precursors on property owned, leased, or possessed by the defendant, in violation of this division. The trier of fact shall make an award of expenses, if proven, which shall be enforceable as any civil judgment. If probation is granted, the court may order payment of the expenses as a condition of probation. All expenses recovered pursuant to this section shall be remitted to the law enforcement agency which incurred them.

(b) The prosecuting attorney may, in conjunction with the criminal proceeding, file a petition for recovery of expenses with the superior court of the county in which the defendant has been charged with the underlying offense. The petition shall allege that the defendant had manufactured or cultivated a controlled substance in violation of Division 10 (commencing with Section 11000) of the Health and Safety Code and that expenses were incurred in seizing, eradicating, or destroying the controlled substance or its precursors. The petition shall also state the amount to be assessed.

The prosecuting attorney shall make service of process of a notice of that petition to the defendant.

(c) The defendant may admit to or deny the petition for recovery of expenses. If the defendant admits the allegations of the petition, the court shall rule for the prosecuting attorney and enter a judgment for recovery of the expenses incurred.

(d) If the defendant denies the petition or declines to admit to it, the petition shall be heard in the superior court in which the underlying criminal offense will be tried and shall be promptly heard following the defendant's conviction on the underlying offense. The hearing shall be held either before the same jury or before a new jury in the discretion of the court, unless waived by the consent of

all parties.

(e) At the hearing, the burden of proof as to the amount of expenses recoverable shall be on the prosecuting attorney and shall be by a preponderance of the evidence.

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

11470.3. (a) Section 11470 shall be applicable to property owned by, or in the possession of, minors.

(b) The procedures for the forfeiture of property that comes within Section 11470 shall be applicable to minors.

(c) Notwithstanding the provisions of this chapter, if a petition has been filed alleging that the minor is a person described in Section 602 of the Welfare and Institutions Code because of a violation which is the basis for the seizure and forfeiture of property under this chapter, any related forfeiture hearing shall be continued until the adjudication of the petition. The forfeiture hearing shall not be conducted in juvenile court.

11470.4. The provisions of this chapter apply to any minor who has been found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of Section 11351, 11351.5, 11352, 11355, 11366, 11366.5, 11366.6, 11378.5, 11379, 11379.5, 11379.6, or 11382.

11471. Property subject to forfeiture under this division may be seized by any peace officer upon process issued by any court having jurisdiction over the property. Seizure without process may be made if any of the following situations exist:

(a) The seizure is incident to an arrest or a search under a search warrant.

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

(c) There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.

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

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

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

11471.5. A peace officer making a seizure pursuant to Section 11471

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

11472. Controlled substances and any device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance, which are possessed in violation of this division, may be seized by any peace officer and in the aid of such seizure a search warrant may be issued as prescribed by law.

11473. (a) 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 subdivision (f) of Section 11470, shall, upon conviction of the owner or defendant, be ordered destroyed by the court in which conviction was had.

(b) Law enforcement may request of the court that certain uncontaminated science equipment be relinquished to a school or school district for science classroom education in lieu of destruction.

11473.5. (a) All seizures of controlled substances, instruments, or paraphernalia used for unlawfully using or administering a controlled substance which are in possession of any city, county, or state official as found property, or as the result of a case in which no trial was had or which has been disposed of by way of dismissal or otherwise than by way of conviction, shall be destroyed by order of the court, unless the court finds that the controlled substances, instruments, or paraphernalia were lawfully possessed by the defendant.

(b) If the court finds that the property was not lawfully possessed by the defendant, law enforcement may request of the court that certain uncontaminated instruments or paraphernalia be relinquished to a school or school district for science classroom education in lieu of destruction.

11474. A court order for the destruction of controlled substances, instruments, or paraphernalia pursuant to the provisions of Section 11473 or 11473.5 may be carried out by a police or sheriff's department, the Department of Justice, or the Department of the California Highway Patrol. The court order shall specify the agency responsible for the destruction. Controlled substances, instruments, or paraphernalia not in the possession of the designated agency at the time the order of the court is issued shall be delivered to the designated agency for destruction in compliance with the order.

11475. Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this division are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

11476. Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this division, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

11477. The failure, upon demand by a peace officer of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

11478. Marijuana may be provided by the Attorney General to the heads of research projects which have been registered by the Attorney General, and which have been approved by the research advisory panel pursuant to Section 11480.

The head of the approved research project shall personally receipt for such quantities of marijuana and shall make a record of their disposition. The receipt and record shall be retained by the Attorney General. The head of the approved research project shall also, at intervals and in the manner required by the research advisory panel, report the progress or conclusions of the research project.

11479. Notwithstanding Sections 11473.5 and 11474, at any time after seizure by a law enforcement agency of a suspected controlled substance, that amount in excess of 10 pounds in gross weight may be destroyed without a court order by the chief of the law enforcement agency or a designated subordinate. Destruction shall not take place pursuant to this section until all of the following requirements are satisfied:

(a) At least five random and representative samples have been taken, for evidentiary purposes, from the total amount of suspected controlled substances to be destroyed. These samples shall be in addition to the 10 pounds required above. When the suspected controlled substance consists of growing or harvested marijuana plants, at least one 10 pound sample (which may include stalks, branches, or leaves) and five representative samples consisting of leaves or buds shall be retained for evidentiary purposes from the total amount of suspected controlled substances to be destroyed.

(b) Photographs have been taken which reasonably demonstrate the total amount of the suspected controlled substance to be destroyed.

(c) The gross weight of the suspected controlled substance has been determined, either by actually weighing the suspected controlled substance or by estimating that weight after dimensional measurement of the total suspected controlled substance.

(d) The chief of the law enforcement agency has determined that it is not reasonably possible to preserve the suspected controlled substance in place, or to remove the suspected controlled substance to another location. In making this determination, the difficulty of transporting and storing the suspected controlled substance to another site and the storage facilities may be taken into consideration.

Subsequent to any destruction of a suspected controlled substance pursuant to this section, an affidavit shall be filed within 30 days in the court which has jurisdiction over any pending criminal proceedings pertaining to that suspected controlled substance, reciting the applicable information required by subdivisions (a),

(b), (c), and (d) together with information establishing the location of the suspected controlled substance, and specifying the date and time of the destruction. In the event that there are no criminal proceedings pending which pertain to that suspected controlled substance, the affidavit may be filed in any court within the county which would have jurisdiction over a person against whom those criminal charges might be filed.

11479.1. (a) Notwithstanding the provisions of Sections 11474, 11474.5, and 11479, at any time after seizure by a law enforcement agency and identification by a forensic chemist or criminalist of phencyclidine, or an analog thereof, that amount in excess of one gram of a crystalline substance containing phencyclidine or its analog, 10 milliliters of a liquid substance containing phencyclidine or its analog, two grams of plant material containing phencyclidine or its analog, or five hand-rolled cigarettes treated with phencyclidine or its analog, may be destroyed without a court order by the chief of the law enforcement agency or a designated subordinate. Destruction shall not take place pursuant to this section until all of the following requirements are satisfied:

(1) At least one gram of a crystalline substance containing phencyclidine or its analog, 10 milliliters of a liquid substance containing phencyclidine or its analog, two grams of plant material containing phencyclidine or its analog, or five hand-rolled cigarettes treated with phencyclidine or its analog have been taken as samples from the phencyclidine or analog to be destroyed.

(2) Photographs have been taken which reasonably demonstrate the total amount of phencyclidine or its analog to be destroyed.

(3) The gross weight of the phencyclidine or its analog has been determined by actually weighing the phencyclidine or analog.

(b) Subsequent to any destruction of phencyclidine or its analog, an affidavit shall be filed within 30 days in the court which has jurisdiction over any pending criminal proceedings pertaining to that phencyclidine or its analog, reciting the applicable information required by paragraphs (1), (2), and (3) of subdivision (a), together with information establishing the location of the phencyclidine or analog and specifying the date and time of the destruction. In the event that there are no criminal proceedings pending which pertain to that phencyclidine or analog, the affidavit may be filed in any court within the county which would have jurisdiction over a person against whom such criminal charges might be filed.

11479.2. Notwithstanding the provisions of Sections 11473, 11473.5, 11474, 11479, and 11479.1, at any time after seizure by a law enforcement agency of a suspected controlled substance, except marijuana, any amount, as determined by the court, in excess of 57 grams may, by court order, be destroyed by the chief of a law enforcement agency or a designated subordinate. Destruction shall not take place pursuant to this section until all of the following requirements are satisfied:

(a) At least five random and representative samples have been taken, for evidentiary purposes, from the total amount of suspected controlled substances to be destroyed. Those samples shall be in addition to the 57 grams required above and each sample shall weigh not less than one gram at the time the sample is collected.

(b) Photographs have been taken which reasonably demonstrate the total amount of the suspected controlled substance to be destroyed.

(c) The gross weight of the suspected controlled substance has been determined, either by actually weighing the suspected controlled substance or by estimating such weight after dimensional measurement

of the total suspected controlled substance.

(d) In cases involving controlled substances suspected of containing cocaine or methamphetamine, an analysis has determined the qualitative and quantitative nature of the suspected controlled substance.

(e) The law enforcement agency with custody of the controlled substance sought to be destroyed has filed a written motion for the order of destruction in the court which has jurisdiction over any pending criminal proceeding in which a defendant is charged by accusatory pleading with a crime specifically involving the suspected controlled substance sought to be destroyed. The motion shall, by affidavit of the chief of the law enforcement agency or designated subordinate, recite the applicable information required by subdivisions (a), (b), (c), and (d), together with information establishing the location of the suspected controlled substance and the title of any pending criminal proceeding as defined in this subdivision. The motion shall bear proof of service upon all parties to any pending criminal proceeding. No motion shall be made when a defendant is without counsel until the defendant has entered his or her plea to the charges.

(f) The order for destruction shall issue pursuant to this section upon the motion and affidavit in support of the order, unless within 20 days after application for the order, a defendant has requested, in writing, a hearing on the motion. Within 10 days after the filing of that request, or a longer period of time upon good cause shown by either party, the court shall conduct a hearing on the motion in which each party to the motion for destruction shall be permitted to call and examine witnesses. The hearing shall be recorded. Upon conclusion of the hearing, if the court finds that the defendant would not be prejudiced by the destruction, it shall grant the motion and make an order for destruction. In making the order, the court shall ensure that the representative samples to be retained are of sufficient quantities to allow for qualitative analyses by both the prosecution and the defense. Any order for destruction pursuant to this section shall include the applicable information required by subdivisions (a), (b), (c), (d), and (e) and the name of the agency responsible for the destruction. Unless waived, the order shall provide for a 10-day delay prior to destruction in order to allow expert analysis of the controlled substance by the defense.

Subsequent to any destruction of a suspected controlled substance pursuant to this section, an affidavit shall be filed within 30 days in the court which ordered destruction stating the location of the retained, suspected controlled substance and specifying the date and time of destruction.

This section does not apply to seizures involving hazardous chemicals or controlled substances in mixture or combination with hazardous chemicals.

11479.5. Notwithstanding Sections 11473.5 and 11474, at any time after seizure by a law enforcement agency of a suspected hazardous chemical believed to have been used or intended to have been used in the unlawful manufacture of controlled substances, that amount in excess of one fluid ounce if liquid, or one avoirdupois ounce if solid, of each different type of suspected hazardous chemical and its container, may be disposed of without a court order by the seizing agency. For the purposes of this section, "hazardous chemical" means any material that is believed by the chief of the law enforcement agency to be toxic, carcinogenic, explosive, corrosive, or flammable, and that is believed by the chief of the law enforcement agency to have been used or intended to have been used in the unlawful manufacture of controlled substances.

Destruction pursuant to this section of suspected hazardous chemicals or suspected hazardous chemicals and controlled substances

in combination, shall not take place until all of the following requirements are met:

- (a) At least a one ounce sample is taken from each different type of suspected hazardous chemical to be destroyed.
- (b) At least a one ounce sample has been taken from each container of a mixture of a suspected hazardous chemical with a suspected controlled substance.
- (c) Photographs have been taken which reasonably demonstrate the total amount of suspected controlled substances and suspected hazardous chemicals to be destroyed.
- (d) The gross weight or volume of the suspected hazardous chemical seized has been determined.

Subsequent to any disposal of a suspected hazardous chemical and its container pursuant to this section, the law enforcement agency involved shall maintain records concerning the details of its compliance with, and reciting the applicable information required by subdivisions (a), (b), (c), and (d), together with the information establishing the location of the suspected hazardous chemical and its container, and specifying the date and time of the disposal.

Subsequent to any destruction of a suspected controlled substance in combination with a hazardous chemical pursuant to this section, an affidavit shall be filed within 30 days in the court which has jurisdiction over any pending criminal proceedings pertaining to that suspected controlled substance, reciting the applicable information required by subdivisions (a), (b), (c), and (d).

A law enforcement agency responsible for the disposal of any hazardous chemical shall comply with the provisions of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, as well as all applicable state and federal statutes and regulations.

11480. The Legislature finds that there is a need to encourage further research into the nature and effects of marijuana and hallucinogenic drugs and to coordinate research efforts on such subjects.

There is a Research Advisory Panel which consists of a representative of the State Department of Health Services, a representative of the California State Board of Pharmacy, a representative of the Attorney General, a representative of the University of California who shall be a pharmacologist, a physician, or a person holding a doctorate degree in the health sciences, a representative of a private university in this state who shall be a pharmacologist, a physician, or a person holding a doctorate degree in the health sciences, a representative of a statewide professional medical society in this state who shall be engaged in the private practice of medicine and shall be experienced in treating controlled substance dependency, a representative appointed by and serving at the pleasure of the Governor who shall have experience in drug abuse, cancer, or controlled substance research and who is either a registered nurse, licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, or other health professional. The Governor shall annually designate the private university and the professional medical society represented on the panel. Members of the panel shall be appointed by the heads of the entities to be represented, and they shall serve at the pleasure of the appointing power.

The Research Advisory Panel shall appoint two special members to the Research Advisory Panel, who shall serve at the pleasure of the Research Advisory Panel only during the period Article 6 (commencing with Section 11260) of Chapter 5 remains effective. The additional members shall be physicians and surgeons, and who are board certified in oncology, ophthalmology, or psychiatry.

The panel shall annually select a chairman from among its members.

The panel may hold hearings on, and in other ways study, research projects concerning marijuana or hallucinogenic drugs in this state. Members of the panel shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred in connection with the performance of their duties.

The panel may approve research projects, which have been registered by the Attorney General, into the nature and effects of marijuana or hallucinogenic drugs, and shall inform the Attorney General of the head of the approved research projects which are entitled to receive quantities of marijuana pursuant to Section 11478.

The panel may withdraw approval of a research project at any time, and when approval is withdrawn shall notify the head of the research project to return any quantities of marijuana to the Attorney General.

The panel shall report annually to the Legislature and the Governor those research projects approved by the panel, the nature of each research project, and, where available, the conclusions of the research project.

11481. The Research Advisory Panel may hold hearings on, and in other ways study, research projects concerning the treatment of abuse of controlled substances.

The panel may approve research projects, which have been registered by the Attorney General, concerning the treatment of abuse of controlled substances and shall inform the chief of such approval. The panel may withdraw approval of a research project at any time and when approval is withdrawn shall so notify the chief.

The panel shall, annually and in the manner determined by the panel, report to the Legislature and the Governor those research projects approved by the panel, the nature of each research project, and where available, the conclusions of the research project.

11483. No provision of this division shall be construed to prohibit the establishment and effective operation of a narcotic treatment program licensed pursuant to Article 4 (commencing with Section 11885) of Chapter 1 of Part 3 of Division 10.5.

11485. Any peace officer of this state who, incident to a search under a search warrant issued for a violation of Section 11358 with respect to which no prosecution of a defendant results, seizes personal property suspected of being used in the planting, cultivation, harvesting, drying, processing, or transporting of marijuana, shall, if the seized personal property is not being held for evidence or destroyed as contraband, and if the owner of the property is unknown or has not claimed the property, provide notice regarding the seizure and manner of reclamation of the property to any owner or tenant of real property on which the property was seized. In addition, this notice shall be posted at the location of seizure and shall be published at least once in a newspaper of general circulation in the county in which the property was seized. If, after 90 days following the first publication of the notice, no owner appears and proves his or her ownership, the seized personal property shall be deemed to be abandoned and may be disposed of by sale to the public at public auction as set forth in Article 1 (commencing with Section 2080) of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code, or may be disposed of by transfer to a government agency or community service organization. Any profit from

the sale or transfer of the property shall be expended for investigative services with respect to crimes involving marijuana.

11488. (a) Any peace officer of this state, 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, or 11382 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 subdivisions (a) to (f), inclusive, of Section 11470. The peace officer shall also 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).

(b) Receipts for property seized pursuant to this section shall be delivered to any person out of whose possession such 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.

(c) 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.

11488.1. Property seized pursuant to Section 11488 may, where appropriate, be held for evidence. The Attorney General or the district attorney for the jurisdiction involved shall institute and maintain the proceedings.

11488.2. Within 15 days after the seizure, if the peace officer does not hold the property seized pursuant to Section 11488 for evidence or if the law enforcement agency for which the peace officer is employed does not refer the matter in writing for the institution of forfeiture proceedings by the Attorney General or the district attorney pursuant to Section 11488.1, the officer shall comply with any notice to withhold issued with respect to the property by the Franchise Tax Board. If no notice to withhold has been issued with respect to the property by the Franchise Tax Board, the officer shall return the property to the individual designated in the receipt therefor or if the property is a vehicle, boat, or airplane, it shall be returned to the registered owner.

11488.4. (a) 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.

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

(d) An investigation shall be made by the law enforcement agency as to any claimant to a vehicle, boat, or airplane whose right, title, interest, or lien is of record in the Department of Motor Vehicles or appropriate federal agency. If the law enforcement agency finds that any person, other than the registered owner, is the legal owner thereof, and such 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, it shall forthwith send a notice to the legal owner at his or her address appearing on the records of the Department of Motor Vehicles or appropriate federal agency.

(e) When a forfeiture action is filed, the notices 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) Nothing contained in this chapter shall preclude a person, other than a defendant, claiming an interest in property actually seized from moving for a return of property if that person can show standing by proving an interest in the property not assigned subsequent to the seizure or filing of the forfeiture petition.

(h) If there is an underlying or related criminal action, a defendant may move for the return of the property on the grounds that there is not probable cause to believe that the property is forfeitable pursuant to 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 this chapter. The motion may be made prior to, during, or subsequent to the preliminary examination. 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 underlying or related criminal violations have occurred.

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

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

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

(3) In the case of property described in paragraphs (1) and (2), a judgment of forfeiture requires as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of Section 11470 which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties.

(4) In the case of property described in subdivision (f) of Section 11470 that is cash or negotiable instruments of a value of not less than twenty-five thousand dollars (\$25,000), the state or local governmental entity shall have the burden of proving by clear and convincing evidence that the property for which forfeiture is sought is such as is described in subdivision (f) of Section 11470. There is no requirement for forfeiture thereof that a criminal conviction be obtained in an underlying or related criminal offense.

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

(j) 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 twenty-five thousand dollars (\$25,000) in value. The Attorney General or district attorney shall provide notice of proceedings under this subdivision pursuant to subdivisions (c), (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 and serving a claim with the Attorney General or the district attorney pursuant to Section 11488.5 and time limits for filing a claim and claim form.

If no claims are timely filed, the Attorney General or the district attorney shall prepare a written declaration of forfeiture

of the subject property to the state and dispose of the property in accordance with Section 11489. 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, then the Attorney General or district attorney shall file a petition of forfeiture pursuant to this section within 30 days of the receipt of the claim. The petition of 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.

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

11488.5. (a) (1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 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 of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in which the property is located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating 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 30 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, in English and in Spanish, and shall be made available through the office of the clerk of the appropriate court.

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

(3) The clerk of the court shall not charge or collect a fee for the filing of a claim in any case in which the value of the respondent property as specified in the notice is five thousand dollars (\$5,000) or less.

(4) The claim of a law enforcement agency to property seized pursuant to Section 11488 or 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.

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

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

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

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

(3) 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 proceedings 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 the questions related to this chapter.

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

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

(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237, and Sections 607 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 seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto.

If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall

order the seized property released to the claimant.

(f) All seized property which was the subject of a contested 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, provided the burden of proof required pursuant to subdivision (i) of Section 11488.4 has been met. The court shall order the forfeited property to be distributed as set forth in Section 11489.

(g) All seized 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.

11488.6. (a) If the court or jury at the forfeiture hearing finds that the property is forfeitable pursuant to Section 11470, but does not find that a person having a valid ownership interest, which includes, but is not limited to, a valid lien, mortgage, security interest, or interest under a conditional sales contract acquired such interest with actual knowledge that the property was to be used for a purpose for which forfeiture is permitted, and the amount due such person is less than the appraised value of the property, such person may pay to the state or the local governmental entity which initiated the forfeiture proceeding the amount of the 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 such payment, the state or local governmental entity shall relinquish all claims to the property. If the holder of the interest elects not to make such payment to the state or local governmental entity, the property shall be deemed forfeited to the state or local governmental entity and the ownership certificate shall be forwarded. The appraised value shall be determined as of the date judgment is entered on a wholesale basis either by agreement between the legal owner and the governmental entity involved, or if they cannot agree, then by the inheritance tax appraiser for the county in which the action is brought. A person having a valid ownership interest, which includes, but is not limited to, 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.

(b) If the amount due to a person having a valid ownership interest, which includes, but is not limited to, a valid lien, mortgage, security interest, or interest under a conditional sales contract is less than the value of the property and the person elects not to make payment to the governmental entity, the property shall be sold at public auction by the Department of General Services or by the local governmental entity which shall provide notice of such sale by one publication in a newspaper published and circulated in the city, community, or locality where the sale is to take place.

(c) The proceeds of sale pursuant to subdivision (b) shall be first distributed in accordance with the provisions of Section 11489.

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, or mortgagee of the property, 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 accumulate, and to be distributed and transferred quarterly in the following manner:

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

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

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

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

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

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

(B) Ten percent to the prosecutorial agency which processes the forfeiture action.

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

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

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

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

pursuant to Section 11493.

Funds which are not deposited pursuant to the above paragraph shall be deposited into the Department of Justice Special Deposit Fund-Federal Asset Forfeiture Account.

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

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

For the purposes of this section, "local governmental entity" means any city, county, or city and county in this state.

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

11490. The provisions of this division relative to forfeiture of vehicles, boats, or airplanes shall not apply to a common carrier, or to an employee acting within the scope of his employment in the enforcement of this division.

11491. Nothing in this chapter shall be construed to extend or change decisional law as it relates to the topic of search and seizure.

11492. (a) Concurrent with, or subsequent to, the filing of the petition, the prosecuting agency may move the superior court for the following pendente lite orders to preserve the status quo or value of the property alleged in the petition for forfeiture.

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

(2) Appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that the property may be maintained and preserved.

(3) Order an interlocutory sale of the property named in the petition when the property is liable to perish, to waste, or to be significantly reduced in value, or when the expenses of maintaining the property are disproportionate to the value thereof, and the proceeds thereof shall be deposited with the court or as directed by the court pending determination of the forfeiture proceeding.

(b) No preliminary injunction may be granted, receiver appointed, or interlocutory sale ordered without notice to the interested parties and a hearing to determine that the order is necessary to preserve the property named in the petition, pending the outcome of the proceedings, and that there is probable cause to believe that the property is subject to forfeiture under Section 11470. However, a temporary restraining order may issue pending that hearing pursuant to the provisions of Section 527 of the Code of Civil Procedure.

(c) Notwithstanding any other provision of law, the court in granting these motions may order a surety bond or undertaking to preserve the property interests of the interested parties.

11493. There is hereby created in the General Fund the Narcotics Assistance and Relinquishment by Criminal Offender Fund. The fund shall be administered by an advisory committee which shall be appointed by the Attorney General and which shall be comprised of three police chiefs, three sheriffs, two district attorneys, one

private citizen, and the Director of the Division of Law Enforcement of the Department of Justice who shall serve as the executive officer.

The money in the fund shall be available, upon appropriation by the Legislature, for distribution by the advisory committee to local and state law enforcement agencies in support of general narcotic law enforcement efforts.

11494. In the case of any property seized or forfeiture proceeding initiated before January 1, 1994, the proceeding to forfeit the property and the distribution of any forfeited property shall be subject to the provisions of this chapter in effect on December 31, 1993, as if those sections had not been repealed, replaced, or amended.

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

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

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

(1) The number of forfeiture actions initiated.

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

(3) The value of the assets forfeited.

(4) The recipients of the forfeited assets, the amounts received, and the date of the disbursement.

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

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



EXHIBIT C

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
NORTHERN CALIFORNIA

February 9, 1999

Patricia D. Scotlan
Deputy City Attorney
980 Ninth Street, Tenth Floor
Sacramento, CA 95814-2736

Re: Vehicle Forfeiture Ordinance

Dear Ms. Scotlan:

I am responding to your letter of January 29, 1999. You asked for the ACLU's comments with respect to the proposed vehicle forfeiture ordinance that your office is drafting. As that Ordinance is virtually identical to the Oakland ordinance which we are presently challenging in court (Horton v. City of Oakland), it will come as no surprise to you that the ACLU opposes the adoption of this ordinance.

I submit for your consideration the following comments:

1. In the Horton case, we challenged the Oakland ordinance on its face on the grounds that it was preempted by state law. Our claims were denied in Alameda Superior Court, and the case is now before the Court of Appeal. I am enclosing copies of our briefs in the trial court. Without repeating the arguments in the briefs, it is our position that the state laws which provide for prostitution and drug-related vehicle seizures occupy the field and preempt any conflicting local laws. The legislative history behind the state statutes demonstrates that the Legislature recognized that there was a potential for abuse and abridgement of individual rights in the use of asset forfeiture as a law enforcement tool, and that they struck a balance between the needs of law enforcement and the protection of due process and property rights. To preserve that balance, the Legislature imposed important safeguards, such as requiring a conviction of a crime, insuring the right to a jury trial and a conviction under the "beyond the reasonable doubt" standard, and a defense for innocent vehicle owners who had no knowledge that their vehicles were being used for illegal purposes. Sacramento's proposed ordinance ignores all these safeguards and therefore opens the door for the abuses and denials of rights that the Legislature feared.

Dick Criswell, *Chairperson* • Quinn Delaney, Margaret Russell, Eileen P. Schulman, Michelle Welsh, *Vice Chairpersons* • Nancy Pamerton, *Treasurer*
Ann Brock, Edward M. Chen, John M. Crow, Margaret C. Crosby, Kelli M. Evans, *Staff Counsel* • Alan L. Schlosser, *Managing Attorney*
Clara Bryant, *Development Director* • Elaine Elton, *Public Information Director* • Francisco Lopez, *Legislative Director*
Dorothy M. Ehrlich, *Executive Director* • Stephen V. House, *General Counsel*

1000 MISSION STREET, SUITE 400 • SAN FRANCISCO • CA 94103 • TELEPHONE: (415) 621-2493

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Patricia D. Scotlan
February 9, 1999
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2. As a matter of public policy, the ACLU believes that there is an inherent unfairness in such vehicle forfeiture laws. They provide law enforcement with a powerful and punitive tool to punish and deter wrongdoers, but provide none of the protections of the criminal law which are designed to protect the innocent and insure fairness to all who are accused. Thus, they reverse the presumption of innocence by authorizing immediate seizures of property and impose the burden on individuals to establish that they were not involved in any wrongdoing. They ignore fundamental notions of due process by punishing people regardless of fault, so that owners of vehicles who were entirely innocent of wrongdoing have no defense. Furthermore, this is all done in a setting where persons must hire attorneys to defend their rights, and have no access to a public defender if they are indigent. This creates an odd anomaly: if a drug dealer involved in a major drug sale has a vehicle seized, he will get the benefit of all the procedural protections under state law; however, a person who purchases a small amount of marijuana or who solicits a prostitute just one time would have none of these protections if his vehicle was seized under your Ordinance.

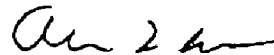
3. The unfairness and potential for abuse inherent in these laws is compounded by the fact that this Draconian remedy generates revenue that goes directly into the budgets of local law enforcement agencies. Coupled with the lack of procedural protections, this creates a dangerous incentive for law enforcement to focus their efforts on aggressively seizing vehicles (especially expensive ones) without having to adhere to the procedures associated with criminal arrests. The California Legislature, as well as numerous commentators, have recognized that this can lead to a climate where the constitutional and property rights of individuals are at risk.

4. Even if our facial challenge to the Oakland ordinance is not successful, there are certainly further legal challenges that will be made to these ordinances as applied. For example, the highest court in the District of Columbia recently upheld an Eighth Amendment challenge to a local vehicle forfeiture ordinance that was also directed towards abating the public nuisance caused by vehicles used in soliciting prostitution. The Court held that in view of the maximum criminal fine that could be imposed on the defendant (\$300), the forfeiture of a vehicle worth \$15,500 was a disproportionate penalty in violation of the Excessive Fines Clause of the Eighth Amendment. Your ordinance would be subject to similar challenges. I am enclosing a copy of the D.C. decision.

Patricia D. Scotlan
February 9, 1999
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The ACLU recognizes that there are serious problems associated with prostitution and drug dealing in urban neighborhoods. However, we believe that your forfeiture ordinance is an overbroad and unnecessary response that goes far beyond state forfeiture law and jeopardizes constitutional rights. Accordingly, we hope that Sacramento will not give in to the temptation (both political and financial) to circumvent time-honored principles of due process and individual rights by adopting its own expansive forfeiture law.

Very truly yours,



Alan L. Schlosser
Managing Attorney

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AB 373

CALIFORNIA LEGISLATURE—1999—2000 REGULAR SESSION

ASSEMBLY BILL

No. 373

Introduced by Assembly Member Baugh

February 11, 1999

An act to amend Section 1520.5 of, and to add Section 1517 to, the Health and Safety Code, relating to community care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 373, as introduced, Baugh. Community care facilities: location.

Existing law, the California Community Care Facilities Act, provides for the licensure and regulation of community care facilities, including residential care facilities, by the State Department of Social Services.

Existing law prohibits the Director of Social Services from denying an application for a new residential care facility license if the director determines that the location is in a proximity to an existing residential care facility that would result in overconcentration. Existing law defines "overconcentration" to mean that if a new license is issued, there will be residential care facilities that are separated by a distance of 300 feet or less.

This bill would prohibit a community care facility from being located within 1,000 feet of another community care facility in residential areas. The bill would also change from 300 to 1,000 feet the distance between residential care facilities for purposes of the definition of "overconcentration."

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 1517 is added to the Health and
2 Safety Code, to read:

3 1517. No community care facility shall be located
4 within 1,000 feet of another community care facility in
5 residential areas.

6 SEC. 2. Section 1520.5 of the Health and Safety Code
7 is amended to read:

8 1520.5. (a) The Legislature hereby declares it to be
9 the policy of the state to prevent overconcentrations of
10 residential care facilities which impair the integrity of
11 residential neighborhoods. Therefore, the director shall
12 deny an application for a new residential care facility
13 license if the director determines that the location is in a
14 proximity to an existing residential care facility that
15 would result in overconcentration.

16 (b) As used in this section, "overconcentration" means
17 that if a new license is issued, there will be residential care
18 facilities ~~which~~ that are separated by a distance of ~~300~~
19 1,000 feet or less, as measured from any point upon the
20 outside walls of the structures housing those facilities.
21 Based on special local needs and conditions, the director
22 may approve a separation distance of less than ~~300-1,000~~
23 feet with the approval of the city or county in which the
24 proposed facility will be located.

25 (c) At least 45 days prior to approving any application
26 for a new residential care facility, the director, or county
27 licensing agency, shall notify, in writing, the city or
28 county planning authority in which the facility will be
29 located, of the proposed location of the facility.

30 (d) Any city or county may request denial of the
31 license applied for on the basis of overconcentration of
32 residential care facilities.

33 (e) Nothing in this section authorizes the director, on
34 the basis of overconcentration, to refuse to grant a license
35 upon a change of ownership of an existing residential care

1 facility where there is no change in the location of the
2 facility.

3 (f) Foster family homes and residential care facilities
4 for the elderly shall not be considered in determining
5 overconcentration of residential care facilities, and
6 license applications for those facilities shall not be denied
7 upon the basis of overconcentration.

8 (g) Any transitional shelter care facility as defined in
9 paragraph (11) of subdivision (a) of Section 1502 shall not
10 be considered in determining overconcentration of
11 residential care facilities, and license applications for
12 those facilities shall not be denied upon the basis of
13 overconcentration.

AMENDED IN SENATE APRIL 28, 1999

AMENDED IN SENATE APRIL 19, 1999

SENATE BILL

No. 987

Introduced by Senators Karnette, Johnston, and Ortiz
(Coauthors: Assembly Members Havice and Lowenthal)

February 26, 1999

An act to add Section 1520.4 to the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 987, as amended, Karnette. Community care and substance abuse facilities.

Existing law, the California Community Care Facilities Act, provides for the licensure and regulation of community care and residential facilities by the State Department of Social Services. Under existing law, a violation of any of these provisions is punishable as a misdemeanor.

This bill would require the State Department of Social Services, on and after July 1, 2000, to publish on its Internet website a directory of information regarding the community care referral agencies, state departments, or local government entities that assist local government agencies with respect to the location of specified residential facilities.

The bill would authorize any local government entity, as part of its general plan, to conduct an assessment of the existing and unmet needs for residential services in community care facilities and alcoholism and drug abuse treatment and recovery facilities within its jurisdiction, using

information available from specified state departments, and would ~~require~~ *authorize* the local government agency to produce a local siting plan for residential care facilities based on specified information.

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 1520.4 is added to the Health and
2 Safety Code, to read:

3 1520.4. (a) On and after July 1, 2000, the State
4 Department of Social Services shall publish on its
5 Internet website a directory of information regarding the
6 community care referral agencies, state departments, or
7 local government entities that assist local government
8 agencies with respect to the location of residential
9 facilities regulated pursuant to this chapter, Chapter 3.01
10 (commencing with Section 1568.01), Chapter 3.2
11 (commencing with Section 1569), and Chapter 3.3
12 (commencing with Section 1570). Actual addresses of
13 facilities shall not be placed on the Internet. This
14 information shall be accessible to the general public for
15 the purpose of helping people with community care
16 needs locate service entities that may address their
17 community care needs. In addition, the State
18 Department of Alcohol and Drug Programs, the
19 Department of Corrections, and the State Department of
20 Mental Health shall work with the State Department of
21 Social Services to establish links to the department's
22 homepage, in order to enable local government planning
23 staff to have access to similar data related to the
24 residential care facilities operated, licensed, or regulated
25 by those departments.

26 (b) Any local government entity, as part of its general
27 plan, may conduct an assessment of the existing and
28 unmet needs for residential services in community care
29 facilities and alcoholism and drug abuse treatment and
30 recovery facilities within its jurisdiction, using
31 information available from the departments listed in



1 subdivision (a), county departments, and from any
2 sources deemed necessary, to compile an accurate
3 assessment of local needs for these residential care
4 facilities. The local government entity ~~shall~~ *may* take the
5 information developed through the needs assessment,
6 combined with the information on the siting of existing
7 residential care facilities, obtained pursuant to
8 subdivision (a), and produce a local siting plan for
9 residential care facilities designed to meet local needs.
10 *The local siting plan shall be used only to prevent*
11 *discrimination against the aged, disabled, and others and*
12 *to help ensure that residential care facilities remain an*
13 *option for persons referred by social services, mental*
14 *health, and other agencies. For residential care facilities*
15 *servicing six or fewer residents, the plan shall be advisory*
16 *and the local government entity may offer various*
17 *incentives to encourage new residential care facilities to*
18 *locate in compliance with the plan.*

