

# STATE OF CALIFORNIA DEPARTMENT OF JUSTICE



1987

## ASSET SEIZURE AND FORFEITURE MANUAL

Pursuant to Sections 11470 (a)-(g) and other related Sections  
of the Uniform Controlled Substances Act.

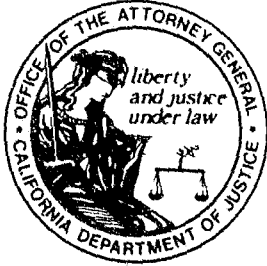
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## DEPARTMENT OF JUSTICE

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## ASSET SEIZURE AND FORFEITURE, 1987

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ASSET SEIZURE AND FORFEITURE MANUAL  
CALIFORNIA DEPARTMENT OF JUSTICE

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ACQUISITIONS

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## INTRODUCTION

On September 23, 1986, Governor George Deukmejian signed into law Assembly Bill 4145 sponsored by Assemblyman Gary Condit, and Senate Bill 1960 sponsored by Senator Seymore. These two bills made significant changes in California's drug forfeiture statutes found in Chapter 8 of Division 10 of the Uniform Controlled Substances Act. The reforms which became operative January 1, 1987, gave the law enforcement community a more powerful tool to divest drug traffickers of the fruits of their illegal enterprise.

The previous provisions required, in all forfeiture actions, conviction of an underlying criminal offense before any asset could be forfeited. The old law also required proof "beyond a reasonable doubt" in the separate civil forfeiture proceeding. Effective January 1, 1987, there can be judicial forfeiture of cash and negotiable instruments of more than \$25,000 without the requirement of a conviction for an underlying or related criminal offense. This new law establishes the burden of proof as "clear and convincing" evidence in such cases.

For the first time the executive branch of government, the Attorney General or the District Attorney, has the authority to order forfeiture of personal property when the value is \$25,000 or less. Personal property may include automobiles, cash, negotiable instruments, cash equivalents or other things of value, but not real property.

The detailed discussion of asset forfeiture in this manual is divided into four parts. These parts represent each of the four major steps in the asset forfeiture process.

The first part is the determination whether the property is subject to forfeiture. This issue is dealt with in Health and Safety Code section 11470. (All of the Health and Safety Code sections mentioned in the analysis are set out in Appendix I.) Unless it is subject to forfeiture under one or more of the subdivisions of section 11470, forfeiture under Division 10 of the Health and Safety Code cannot occur.

The second part is when and how the property subject to forfeiture may be seized. Two sections, Health and Safety Code sections 11471 and 11488(a), deal with the circumstances under which assets subject to forfeiture under section 11470 may be seized. The limitations placed on seizure by these sections relate only to forfeiture, seizures of property under other provisions or for other purposes are not affected.

The third part of the process is that which causes the property to actually be forfeited. This process is dealt with in sections 11488.4 and 11488.5. It is important to emphasize that neither of the first two parts of the process are forfeitures; in other words, taking the first two steps does not constitute forfeiture. There are two general types of forfeiture under this new statutory scheme, judicial and nonjudicial forfeitures.

The fourth part is the distribution of the proceeds resulting from the forfeiture.

These new provisions are subject to a "sunset" clause. Absent some legislative action to extend them, the laws will lapse on January 1, 1989. A short "sunset" clause such as this typically means that the Legislature will watch the use law enforcement makes of these new tools very carefully. In any cases of question, the investigating agency should consult with the prosecuting agency.

Although the reforms gained are significant as a tool to discourage drug abuse associated with trafficking in controlled substances, the interpretation of the new laws is complex. A certain amount of confusion has accompanied the new changes. This manual has been prepared by the California Department of Justice in an effort to clarify how the law works. It was the desire of those involved with the preparation of this manual to provide to law enforcement officers and prosecutors a guide to simplify use of the forfeiture statute.

The Department has developed procedures for maintaining seized assets pending final disposition of any criminal or forfeiture proceeding. Any law enforcement or prosecuting agency seeking assistance in developing management control, tailored to fit their specific needs, are encouraged to contact any of the Bureau of Narcotic Enforcement field offices listed in Appendix II.

The forms attached to this document as appendices are suggestions. If you can think of improvements or find another format which is more effective, please let us know so that your experience can be shared with others.

As you can see, this manual is designed on a "loose leaf" format to permit it to be supplemented when necessary. There have already been a number of questions regarding these changes. If you have questions call:

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PART I: PROPERTY SUBJECT TO FORFEITURE  
[HEALTH & SAFETY CODE SECTION 11470]

Section 11470 includes a listing of the property subject to forfeiture. It also sets out certain other rules which relate to the forfeiture process. If the property does not fit into one of the categories established by subsections (a) through (g) it cannot be subjected to forfeiture under these provisions.

A. Health & Safety Code Section 11470(a)

This subsection defines as subject to forfeiture all controlled substances provided that these substances have been: (1) manufactured, (2) distributed, (3) dispensed, or (4) acquired in violation of Division 10 (§§ 11000 through 11683) of the Health and Safety Code. Therefore, for this subsection to apply to make the property subject to forfeiture, three elements must be present:

First - there must be a controlled substance (see Health & Safety Code sections 11054 through 11058) which;

Second - has been manufactured, distributed, dispensed, or acquired;

Third - in violation of Division 10 of the Health & Safety Code.

B. Health & Safety Code Section 11470(b)

Under this subsection there can be forfeiture of all raw materials, products and equipment of any kind which is used or intended to be used in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of Division 10. For forfeiture to occur, then, there must be four elements present:

First - the item must be a raw material, product or some kind of equipment which;

Second - is used or is intended to be used;

Third - to manufacture, compound, process, deliver, import or export;

Fourth - any controlled substance in violation of Division 10.

NOTE: The language refers to equipment used to "deliver", "import" or "export" the controlled substance. The question which may be raised by this language is whether vehicles, boats or airplanes used to deliver, import or export are subject to forfeiture under this subsection. Subsection (e) appears to address the circumstances under which vehicles, boats and airplanes are subject to forfeiture. The question is whether this was intended to be exclusive. Subsection (e) discusses making vehicles, boats or airplanes subject to forfeiture in the context of facilitating possession for sale or sale offenses. To the extent that a course of conduct can be considered to be facilitating these offenses, subsection (e) is the exclusive basis for making vehicles, boats or airplanes subject to forfeiture. If a situation arose which was clearly outside of subsection (e), but clearly within subsection (b) it is not clear that the Legislature intended use of subsection (b); therefore, caution is recommended before any use of subsection (b) to attempt to make a vehicle, boat or airplane subject to forfeiture.

Typically, property included in this section would be items such as glassware, chemicals, cutting agents, scales, pumps, strobe lights, generators and radio equipment, unregistered ATV (all terrain vehicles), and personal computers used to store or maintain lists, etc.

C. Health & Safety Code Section 11470(c)

This subsection makes subject to forfeiture all property used or intended to be used as a container for property described in subsections (a) and (b). There are, then, three elements which must be present:

First - property of some sort;

Second - used or intended to be used;

Third - as a container for any controlled substances (section 11470(a)) or, raw materials, products and equipment of any kind used or intended to be used in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of Division 10 (section 11470(b)).

Property that may be forfeited under this section consists of almost anything used to hold, wrap, package, store or conceal forfeitable drugs, equipment, products and materials. Examples of containers used for the purpose of concealing items in (a) and (b) above would include condoms, balloons, vials, baggies, bindles, capsules, metal cans, attache cases, luggage and others.

As presently written, the section does not specifically eliminate vehicles, vessels, aircraft or houses from its purview. The general understanding amongst those who were involved in the passage of the laws was that vehicles, vessels, aircraft and real property were not covered by this subsection. The best approach in the Department's opinion is not to attempt to use this section as the basis for classifying vehicles, vessels or real property as subject to forfeiture.

D. Health & Safety Code Section 11470(d)

Pursuant to this subsection, all books, records and research products and materials used or intended to be used in violation of Division 10 may be forfeited. The three necessary elements are:

First - that the property be a book, record, research product or material which is;

Second - used or intended to be used;

Third - in violation of Division 10.

NOTE: Some examples of research products and materials are listed in the statute; formula, microfilm, tapes and data. This listing is not an exclusive listing, it is merely exemplary. Therefore, items which are like those listed items but which are not specifically listed may be forfeited, as an example, computer disks.

E. Health & Safety Code Section 11470(e)

Subsection (e) permits forfeiture of the interest of any registered owner of a boat, airplane or any vehicle other than an implement of husbandry which has been used as an instrument to facilitate certain listed offenses which occur involving certain quantities of drugs. The necessary elements for forfeiture pursuant to this subsection are:

First - that the interest is of a registered owner;

Second - in a boat, airplane or vehicle other than an implement of husbandry;

Third - that this property has been used as an instrument to facilitate;

Fourth - the offense of possession or possession for sale;

Fifth - of the quantity level of the specific drug set forth in the subsection.

In addition to these limitations, no interest in any vehicle which can be driven with a class 3 or 4 license (see Vehicle Code § 12804) can be subject to forfeiture if two conditions exist. These conditions are: (1) that there is a community property interest by a person other than the defendant in the vehicle, and (2) the vehicle is the sole class 3 or 4 vehicle available to defendant's immediate family.

It is also useful to point out that the interest is subject to forfeiture regardless whether the registered owner is the person in possession of the property at the time it is seized. Obviously, a fundamental issue in cases in which the registered owner is not in possession is going to be the question of knowledge of the unlawful use.

The term "facilitate" as found in 11470(e) is very important in terms of seizing conveyances. For the purpose of forfeiture, "facilitate" should be read as having a substantial connection with or having been instrumental in, the sale or possession for sale of specified amounts of controlled substances. Thus, a conveyance, boat, aircraft or vehicle, need not actually transport illicit drugs to be forfeitable. Conveyances used or intended for use to "facilitate" the transportation of illicit drugs are forfeitable also.

For example, suspect "A" negotiates with and agrees to sell an undercover officer 14.25 grams of a substance containing heroin. The negotiation occurs on suspect "A's" boat which is tied at a pier.

Suspect "A" telephones from the boat and directs Suspect "B" to deliver the heroin to the boat for sale to the undercover officer. Suspect "B" picks up the heroin in his vehicle from a "stash pad" where contact is made with Suspect "C".

After some discussion, Suspect "C" agrees to provide security and counter-surveillance in Suspect "C's" vehicle. "B" and "C" arrive at the pier in separate vehicles and surveillance officers see Suspect "B" remove a package from "B's" vehicle. Based upon the facts known by surveillance officers, arrests are made.

Although heroin was transported in only "B's" vehicle, all three conveyances, (the boat, and both vehicles) are subject to forfeiture because they were used to facilitate the possession for sale or sale of heroin.

F. Health & Safety Code Section 11470(f)

This subsection provides three theories which can be used to make property subject to forfeiture:

1. "The Exchange Theory"

This theory permits forfeiture of all money, negotiable instruments, securities, or other things of value furnished or intended to be furnished by a person in exchange for a controlled substance. The elements are:

First - that the item is money, negotiable instruments, securities or other things of value;

Second - that these items are furnished or intended to be furnished by a person;

Third - in exchange for a controlled substance;

Fourth - that the conduct which is the basis of the forfeiture occurred within five years of the seizure of the property.

2. "The Traceable To An Exchange Theory"

This theory permits forfeiture of all proceeds traceable to an exchange of any or all items mentioned in (1) above for controlled substances. Here the elements are:

First - it must be a proceed traceable to an exchange;

Second - of monies, negotiable instruments, securities or other things of value;

Third - furnished by a person;

Fourth - in exchange for a controlled substance;

Fifth - that the conduct which is the basis of the forfeiture occurred within five years of the seizure of the property.

3. "The Facilitation Theory"

This theory allows forfeiture of all money, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of the listed code sections. The elements are:

First - that the item is money, negotiable instruments, securities or other things of value;

Second - used or intended to be used;

Third - to facilitate a violation of the listed code sections;

Fourth - that the conduct which is the basis for the forfeiture occurred within five years of the seizure of the property.

An issue arises as to the meaning of the phrase "other things of value" as used in subsection (f). Prior law clearly included in this phrase such things as vehicles and real property with respect to both the "exchange" and "proceeds traceable to an exchange" theories. Thus, the question is whether the Legislature intended any change in this interpretation when it amended the subsection.

The proper conclusion, in this Department's opinion, is that no change was intended. The Legislature specifically amended Health & Safety Code section 11488.4 as part of the same legislation which amended this subsection. Subsection 11488.4(a) states, in pertinent part:

"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 come within the provisions of subdivision (e), (f) or (g) of section 11470 . . . ." (Emphasis added.)

Section 11470 as previously written did not include any specific mention of real property as property subject to forfeiture. The section as it then existed did mention "other things of value" (see former section 11470(f), Appendix III). Former section 11488.4(a) provided for a petition to be filed seeking forfeiture of any property described in subsection 11470(e) or (f). These subsections included the use of the term "other things of value" but otherwise made no reference to real property. Former section 11488.4(b) provided:

"The prosecuting attorney shall cause to be recorded a lis pendens on any real property alleged to be forfeitable in the petition in the county in which the property is located."

Thus, prior law clearly included real property within the phrase "other things of value". In addition, the stated intention of the legislators involved, as related to the Department, was that there was no desire to make the new law more limited than the old law. It is proper to conclude, therefore, that insofar as the "exchange" and "proceeds traceable to an exchange theory" real property is included and is subject to forfeiture under subsection 11470(f).

There is a more difficult question in the context of the "facilitation" theory. Prior law did not include the phrase "other things of value" in connection with the "facilitation" theory (see former Health and Safety Code section 11470(f)). Thus, it seemed clear that there was no intention to include real property amongst those things subject to forfeiture under a "facilitation" theory. However, the new law adds the phrase "other things of value" to that group of things subject to forfeiture on a "facilitation" theory. This addition would, arguably, make real property subject to forfeiture under section 11470(f) on a "facilitation" theory. The department advises against doing this because of the possibility that this was an error in drafting; in any event, careful thought and consultation should occur before employing the "facilitation" theory to make real property subject to forfeiture.

Prior law did not include a section 11470(g), this was added by the new provisions. By specifically adding subsection (g) to the listing, the Legislature evidenced an intention to include a type of real property not previously included as subject to forfeiture. The question this subsection raises is whether the Legislature intended to make only real property covered by (g) subject to forfeiture. The Department believes the correct answer to this question is no.

First, as noted earlier, the intention of the Legislature was not to diminish the ability to forfeit. Second, the criminal violations covered by subsections (f) and (g) are different. Subsection (g) represents a concern about so-called "rock houses" and seeks to address the unique problems they present by making them subject to forfeiture. Therefore, there is no basis to conclude that there was any legislative intention to limit the types of real property included within the phrase "other things of value" in subsection (f). In situations where both subsections (f) and (g) could apply, subsection (g) should be used.

Obviously, the "facilitation theory" discussed above could, arguably, permit forfeiture of vehicles in situations broader than those set forth in subsection (e) of section 11470. There is a major interpretation problem with subsection (f) facilitation theory cases which involve automobiles. There seems to be no question that any overlapping cases must be brought under subsection (e). The issue arises when there is a case in which the quantity level of subsection (e) is not present but all other factors are present. It is the Department's opinion that subsection (f) should not be used in facilitation theory cases to make vehicles, vessels or airplanes subject to forfeiture.

Since subdivision (f) deals with a number of complex issues, the following examples are offered to distinguish between the exchange, proceeds and facilitation theories.

### 1. Exchange Theory

Example: Police Officer Smith observes Suspect "A" sell 1 lb. of cocaine to Suspect "B" for \$30,000. The \$30,000 is subject to forfeiture because it was furnished in exchange for cocaine.

Example: "A" is a major supplier of heroin. "B" negotiates with "A" to buy 4 oz. of high grade heroin for \$40,000. "A" gives "B" an ounce sample. "B" shows "A" an account pass book with a balance of \$30,000 and gives a check to "A" in the amount of \$10,000. The check, the pass book, and the money in the account are subject to forfeiture because they were furnished or intended to be furnished in exchange for a controlled substance. The check, the pass book and the money in the account were also used or intended to be used to facilitate the sale of heroin.

### 2. Proceeds Traceable Theory

Example: Suspect "A" sells Suspect "B" 1 oz. of cocaine for \$2,000. Suspect "A" spends the \$2,000 and purchases a diamond ring. The diamond ring would become proceeds from the sale which is subject to forfeiture.

Continually changing the proceeds' character will not deter law enforcement from seizing the final proceeds.

Mingling of proceeds with non-proceeds does not destroy law enforcement's right to seize the mingled funds or property and to forfeit that part which is traceable as proceeds. As long as these changes can be reasonably traced and the final proceeds can be identified with reasonable accuracy, they are subject to forfeiture. Both direct and circumstantial evidence can be relied upon to prove that the asset is traceable to an illegal drug exchange.

### 3. Facilitation Theory

As seen earlier, the exchange and proceeds of an exchange theories of 11470(f) are dependent upon drug exchanges. The facilitation theory applies when monies or "other things of value" are used in or to aid in the commission of any of the violations of any of the listed sections even though the property was not the exchange or proceed of the exchange.

Example: Suspect "L" receives an expensive fur coat from Suspect "M" as payment for using "L's" residence to conduct a series of drug transactions over a period of six months.

Effective January 1, 1987, the fur coat, an example of "other things of value", is subject to forfeiture. The residence is, arguably an "other thing of value" which was used to facilitate the drug transactions; however, it would be subject to forfeiture under subsection (g) instead of (f) because of the existence of Health and Safety Code section 11366.5.



G. Health & Safety Code Section 11470(g)

The provisions of this subsection specifically identify certain circumstances in which real property which was not previously subject to forfeiture is now subject to forfeiture. The subsection provides that the real property of any owner who is convicted of violating the named sections is subject to forfeiture. The necessary elements of this subsection are:

First - the item is real property;

Second - the owner of which is convicted;

Third - of one of the sections specifically listed.

The listed sections are all essentially "rock house" or distribution center violations. The ability to forfeit the real property is contingent on the elements listed above and is circumscribed by certain exemptions, these are: (1) when the location is used as a family residence, (2) where the property is used for lawful purposes, or (3) is property owned by two or more persons, one of whom had no knowledge of the unlawful use of the property.

As has been previously suggested, the Department recommends using this subsection when real property is going to be made subject to forfeiture on a "facilitation" theory. In part, this recommendation is made because the penal statutes involved appear to contemplate use of real property to "facilitate" the drug commerce.

H. Health & Safety Code Section 11470(h)

This section establishes a "special vesting rule" as to personal property only. Under this subsection, right, title and interest to any personal property listed in section 11470 is deemed to vest in the state at the time of commission of the act which permits forfeiture.

This rule is important for the reason that it provides law enforcement with a strong basis for arguing against the release of money, for example, which is subject to forfeiture and has been seized. The argument is that because the property no longer legally belongs to the individual once he has committed the act or acts which make it subject to forfeiture, he only has mere possession. Once the property is seized, the person from whom it was seized has no legal right to use the property or to seek to regain its possession except as provided by the related statutory provisions. These related statutory provisions are section 11488.5(a)(1), filing a claim, or section 11488.4(g), using 1538.5 to make a motion for return of the property.

The "special vesting rule" does not apply in situations in which: (1) the state or local governmental entity fails to prove any of the violations specifically set out in the section. (Note that this does not mean that a criminal conviction is required in all cases. The burden of proof in judicial forfeiture proceedings is set out, as to personal property, in subsection 11488.4(i)(1), (2), (3) and (4); or (2) if the vesting rule would defeat the claim of any person who claims an interest in the property regardless that the property was acquired from a defendant whose interest would be subject to forfeiture.

NOTE: The current version of the Code refers to section 11488(j) which is non-existent, clean up legislation to correct this error is being prepared.

#### I. Health & Safety Code Section 11470(i)

This subsection is written so as to apply only to the Los Angeles Sheriff's Office and the Los Angeles Police Department. It provides that, upon seizure, the assets are under the jurisdiction of the superior court of either the county in which the underlying or related criminal case is pending or the county in which the seizure occurred. Such assets must then be handled as provided in subsection 11488(b).

This particular rule does not apply if:

1. the value of the property exceeds \$50,000; or
2. the seizure was made in a case in which federal law enforcement agents participated; or
3. the underlying or related criminal case is brought in federal court; or
4. the assets are not money, negotiable instruments or other cash equivalents.

#### PART II: SEIZURE OF PROPERTY SUBJECT TO FORFEITURE

Section 11470 identifies the types of property that are subject to forfeiture. However, other sections of the Health and Safety Code must be relied upon to provide authority to seize those properties described in 11470. The bases for seizure of property subject to forfeiture are found in sections 11471 and 11488(a) of the Health and Safety Code.

A. Judicial Authorization to Seize -  
[Health & Safety Code Section 11471]

Section 11471 of the Health and Safety Code provides that property subject to forfeiture under this division may be seized by any peace officer using process issued by any court having jurisdiction over the property.

This provision envisions the use of "court process" to make a seizure. Because the terms of the statute are not limited to search or seizure warrants, it would appear that other forms of judicial process are appropriate vehicles for permitting property seizure.

This provision would appear to be particularly useful and necessary to implement Health & Safety Code section 11488.4(b) which permits proceeding through judicial forfeiture without seizure of the forfeitable assets. In essence, it would permit resort to court process for seizure at any point deemed necessary to preserve the property. Specific facts will dictate the circumstance and type of process.

B. Nonjudicial Authorization To Seize -  
[Health & Safety Code Sections 11471 & 11488(a)]

1. Health & Safety Code Section 11471

In addition to the judicial authorization, this section provides that seizure without process may be made if:

- (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.

There is an important observation to be made about this provision. The proper interpretation of the language of (a) is that any item which is subject to forfeiture may be seized when an officer is lawfully in a location to view that item regardless

whether there is a nexus between the items subject to forfeiture and the items designated for seizure by the warrant, whether there is a nexus between the arrest and the item subject to forfeiture or whether there is a nexus between the peace officer's reason for lawfully being where he is when he sees the property.

The key factor is that the peace officer must be able to articulate probable cause for believing the property is subject to forfeiture as provided by section 11470(a) through (g).

## 2. Health & Safety Code Section 11488(a)

This subsection also authorizes seizure of property forfeitable under Health & Safety Code subsections 11470(e) or (f) in situations where a peace officer has made or attempts to make an arrest for one of the listed offenses and has probable cause to believe the property is forfeitable. The subsection uses the phrase "other things of value" which has been discussed in connection with section 11470 relating to forfeitable property.

### C. Steps Required At Seizure

The seizure process leading to forfeiture is the same regardless the type of property involved and regardless whether the forfeiture procedure is judicial or non-judicial. If a seizure is made by either the Los Angeles Police Department or the Los Angeles Sheriff's Office there are additional steps required.

It is important to emphasize that seizure is not a necessary prerequisite to judicial forfeiture. Health and Safety Code section 11488.4(b) provides that: "physical seizure of assets shall not be necessary in order to have that particular asset alleged to be forfeitable in a petition . . . ." The special vesting rule of section 11470(h) applies regardless whether the property is or is not seized. However, the presumption of ownership provided by section 11488(d) does not apply unless there is a seizure. There are several practical problems associated with electing not to seize items subject to forfeiture, this issue should be thoroughly discussed with the prosecuting agency. This issue is particularly important in those areas, such as real property, where seizure involves a major cost of maintenance potential. In real property situations seizure is probably far less important than effective use of lis pendens filings. Further, as presently written, the nonjudicial forfeiture provisions (section 11488.4(j)) appear to apply only where there is a seizure.

1. Universal Requirement: Receipt  
[Health & Safety Code Section 11488(c)]

Regardless which law enforcement agency makes a seizure and regardless whether the authorization for the seizure was Health and Safety Code section 11471 or 11488(a), a receipt which complies with the requirements of Penal Code section 1412 should be provided. If at all possible, a receipt should be given to any person from whom the property was taken. In the event that the property was not taken from anyone's possession, a receipt shall be given to the individual in possession of the premises at which the seizure occurred.

The statute is silent on what is required if no person is present on the premises at the time property is seized. Appropriate practice in such cases would be to post a receipt in a conspicuous place.

A suggested receipt form is included as Appendix IV to this manual.

2. Los Angeles Police Department/Los Angeles Sheriff's  
Office Requirements [Health & Safety Code Section  
11488(b)]

If the seizing peace officer is from either the L.A.P.D. or L.A.S.O. and the seized item is money, negotiable instruments or other things of value then the following additional steps are required:

1. The property must be turned over to the superior court, district attorney or Attorney General. It is deemed to be held for the court, and
2. If there is cause to believe property's value is more than \$5,000, a notice must be given to the Franchise Tax Board.

These special rules do not apply if:

1. The property's value exceeds \$50,000, or
2. The seizure was made in a case in which federal law enforcement agents participated, or
3. In any case in which the underlying or related criminal action is filed in federal court.

Insofar as this section requires that the property seized be turned over to the court or prosecuting agency, it is the case that this is analogous to a search warrant situation and it would be appropriate to have actual custody remain with the police agency. Any question may be avoided simply by obtaining a direction from the statutorily designated custodian to retain the property and/or to have the court include such direction in any order directing seizure of property.

### PART III: FORFEITURE ACTIONS

Section 11470(a) provides that all controlled substances are subject to forfeiture. Pursuant to sections 11475, 11476, 11479 and 11479.1, most of these controlled substances are deemed to be forfeited by operation of law and are subject to summary destruction without court order. Except as provided in section 11473.3, certain items made subject to forfeiture by 11470 may be destroyed by court order after conviction (section 11473) or trial not resulting in conviction (section 11473.5) or a situation where large quantities are involved (section 11479.2). This amended asset forfeiture law does not alter the rules governing these actions.

#### A. Judicial Forfeiture Actions

After assets subject to forfeiture have been identified and either seized or not seized, forfeiture can be pursued by one of two methods, judicial or nonjudicial forfeiture. In general terms, judicial forfeiture is required as to all real property and any personal property which exceeds \$25,000 in value. The discussion which follows is a step-by-step breakdown of the judicial forfeiture procedure. Appropriate suggested forms are attached as Appendix V.

Step 1: A peace officer ascertains that the property is forfeitable property as described in Health & Safety Code section 11470, subsections e-g.

NOTE: As presently written, the statute limits its operation to those things which come within the provisions of subdivisions (e), (f) and (g) of section 11470. We believe that the intention was to permit a petition to be filed as to any property mentioned in section 11470, subsections (a)-(g) which is not summarily forfeited by operation of law. Clarifying legislation will be sought. In the interim, law enforcement agencies should work with the prosecuting agencies to determine how to handle particular situations which arise.

Step 2: The peace officer makes a seizure of the property under the authority of either Health & Safety Code section 11471 or 11488(a).

NOTE: Actual seizure is not required to permit judicial forfeiture pursuant to Health & Safety Code section 11488.4 (see section 11488.4(b)). In the event that no seizure is made, the next step is not necessary.

Step 3: In the event property is seized, the seizing officer should provide the required receipt.

NOTE: If a seizure is made by either L.A.P.D. or L.A.S.O. and the seizure otherwise qualifies, then the officer must comply with section 11488(b).

Further, Health & Safety Code section 11488(d) provides that there is a rebuttable presumption that the property seized is owned by the person to whom the receipt is given. This presumption can be overcome in the context of a hearing under section 11488.4.

Step 4: The officer seeking forfeiture should immediately notify the prosecuting agency of either the seizure or the desire to petition for forfeiture of property which was not seized but is believed to be subject to forfeiture.

Step 5: The seizing or requesting officer should prepare a package of forfeiture information for the prosecuting agency. This package should include:

- (a) the police reports;
- (b) any search warrants, seizure warrants and affidavits in support of such warrants;
- (c) a report stating the facts on which the agent determined there was probable cause for the seizure of the property or, in cases where there is no seizure, the facts on which the agent relies for the conclusion the property is forfeitable;
- (d) a report identifying all participating agencies and the extent of each agency's contribution to the activities resulting in the seizure or investigation leading to the discovery of the property believed to be subject to forfeiture;
- (e) a description of the property;
- (f) where necessary, a statement of the appraised value of the property, which states the manner in which this value was established;

- (g) the date and place of the seizure or location of the property, if not already included in (a), (b) or (c) above;
- (h) the violation(s) of law upon which the seizure was based or the forfeiture should be sought, if not already included in (a), (b) or (c) above;
- (i) a report on the investigation of ownership of any vehicles, boats or airplanes through DMV or federal sources (section 11488.4(d));
- (j) a report on the names of any persons interested in the property seized or the property believed to be subject to forfeiture; and
- (k) a copy of the receipt.

Step 6: The prosecuting officer shall determine whether the property is forfeitable property within subsection (e), (f) or (g) of Health & Safety Code section 11470. If the conclusion reached is that the property is included, then the prosecuting officer should prepare and file a petition of forfeiture in the superior court of the county in which the underlying charges are filed or the property has been seized.

NOTE: At the time of filing the petition, the prosecuting agency can and, where appropriate, should seek protective orders as provided in Health & Safety Code section 11492. If the property involved is real property, then Health & Safety Code section 11488.4(a) mandates that the prosecuting agency shall file a lis pendens with the county recorder of each county in which the real property is located.

This subsection, as currently drafted, fails to deal with the situation in which the property is not seized but is made subject to forfeiture by filing a petition. Legislation correcting this oversight will be introduced. In the interim, seizure can be accomplished by court process in those situations in which there has been no seizure (see section 11471).

There is an issue whether real property can be seized. The answer is that the section contemplates seizure of real property. Section 11488.4(a), as presently written, refers to items which are seized and "come within the provisions of subdivision (e), (f) or (g) of Section 11470"; as we have seen, subdivisions (f) and (g) relate to real property. In addition, the same provision, section 11488.4(a), directs that when a petition alleges real property to be subject to forfeiture the prosecuting agency must file a lis pendens. Given that a petition can, under the current terms of the section, be filed as to property seized and, further, that



it is contemplated that real property be subject to forfeiture, the appropriate conclusion is that real property can be seized.

In situations where the real property is subject to forfeiture pursuant to section 11470(g), caution must be exercised to insure that the two exceptions do not apply. If either exception does apply, the real property is not subject to forfeiture and cannot be seized under the authority of either section 11471 or 11488(a).

Step 7: The Attorney General or district attorney must provide notice. This notice, by statute, must be some or all of the following, depending on the facts of the case:

- (a) a service of process on every person designated in the receipt issued at the time of the seizure (section 11488.4(c));
- (b) a service of process, either personally or by registered mail, on every person who is known to have an interest in the seized property other than those persons designated in the receipt (section 11488.4(c));
- (c) notice to a legal owner of any vehicle, boat or airplane if that person is other than the registered owner and the ownership interest did not arise after the seizure. This notice shall go to the person at the address shown on the records of the ownership (section 11488.4(d));

The provision is somewhat related to the "special vesting rule" (section 11470(h). In essence, it constitutes an exception to this rule because it assumes that an interest may be passed at any time up to seizure (see also, section 11488.5(a)(2)) provided the person receiving the property had no knowledge of the use which makes the property subject to forfeiture (see sections 11488.5(d)(2) and (e)).

- (d) notice in a newspaper of general circulation in the county in which the seizure occurred for three successive weeks (section 11488.4(e)).

The notice which is required in each of these four instances must include:

- (a) a description of the property;
- (b) the appraised value of the property;

NOTE: The "appraisal" need not involve a professional in all cases. For example, automobiles may be appraised by use of a Kelly Blue Book. Some items such as jewelry and real property are probably better evaluated by professionals. The key factor is making a good faith effort to evaluate the property.

- (c) the date and place of seizure;
- (d) the violation of law which is the basis for the forfeiture;
- (e) notice that any person claiming an interest must file a verified claim with the superior court within 30 days of the first published notice or within 10 days after receipt of actual notice; and
- (f) instructions regarding how to file a claim.

Step 8: The claimant of an interest in the property seized must file pursuant to section 11488.5(a)(1) within 10 or 30 days depending on the nature of the notice received. The time runs from date of first publication when there is no personal service (30 calendar days) or date of receipt of notice by personal service (10 calendar days).

NOTE: At the present time, the section provides that the verified claim must be filed with the superior court of the county in which the defendant has been charged with the underlying criminal offense. Because certain forfeitures do not require a criminal conviction and because the property may not be located in the same jurisdiction, this section will be clarified by clean up legislation. Clearly claims filed in counties in which a forfeiture action is pending should be accepted regardless whether a criminal action is pending.

A claim must be verified. The original must be served on the superior court and a copy must be served on the prosecuting agency.

NOTE: While the Health & Safety Code permits a defendant to move for return of property pursuant to 1538.5, this cannot occur until, at the earliest, the time of the preliminary hearing. Note further that when there has been no seizure there can be no motion to return.

If a defendant is successful in his 1538.5 motion, the prosecuting agency has fifteen days from the granting of the motion to seek mandate.

In the event that this motion is made after completion of the preliminary hearing, the prosecution may use the record of the preliminary to establish probable cause to believe the underlying or related criminal violations have occurred.

Section 11488.4(h) limits this return of property motion to subdivision (e), (f) and (g) as presently written.

Step 9: Any person claiming that the property was assigned to him or her prior to its seizure shall file a claim pursuant to Health & Safety Code section 11488.5 declaring his or her interest. Such claims are adjudicated as part of a forfeiture hearing.

NOTE: The property is to remain in the control of the prosecuting agency or law enforcement agency until final adjudication of the forfeiture question. Once again, this all relates to the "special vesting rule" which puts title in issue. An attorney acting on behalf of one whose property has been seized cannot successfully demand return of funds to a client for purposes of making payments of fees.

Step 10: If at the end of the time period set forth in section 11488.5(a)(1) there is no claim of interest or assignment on file, the prosecuting agency may move for forfeiture to the state. The court, upon such a motion, shall declare that the (e), (f) or (g) property is forfeited to the state.

NOTE: As it is presently written, even though it relates to a default by failure to file a claim, this section requires the prosecuting agency to meet the appropriate burden of proof set forth in 11488(i). These burdens are:

(1) 11470(e) property - beyond a reasonable doubt on the issue of use to or intention to use to facilitate a subdivision (f) offense.

(2) 11470(f) property - except cash, negotiable instruments or cash equivalents of more than \$25,000 beyond a reasonable doubt that it meets 11470(f) criteria.

(3) 11470(e) or (f) property - involving cases of exchange, the violation or other conduct which is the basis for forfeiture must be in connection with an underlying 11470(f) offense for which there is conviction and which occurred within five years of the arrest leading to conviction. Trial is by the same court or jury unless waived after being found guilty of underlying or related offense.

(4) 11470(f) property - if the property is cash or negotiable instruments or other cash equivalents of \$25,000 or more then the burden is clear and convincing evidence to prove property is subject to forfeiture under section 11470(f). No conviction is required in such cases.

NOTE: An issue arises if there are cash, negotiable instruments or other case equivalents which have a value of less than \$25,000 but are not subject to nonjudicial forfeiture. The issue is what burden of proof applies.

The Department's opinion is that the Legislature intended that the proper burden is clear and convincing evidence. However, some courts may take the present language and construe subsection (2) to imply that the burden is beyond a reasonable doubt that it meets the 11470(f) criteria. Statutory clarification of this issue will be sought.

In cases of default by failure to answer after the court has granted the motion for default, the Clerk of the Court shall dispose of the property as prescribed by Health & Safety Code section 11489.

Step 11: If at the end of the time period set forth in section 11488.5(d), a claim has been filed, a forfeiture hearing shall be scheduled for not less than thirty days therefrom. Such cases shall have priority over "other civil cases".

NOTE: No claim under 11488.4(j) or 11488.5(c)(1) shall be available as evidence in the criminal cases.

Trial of forfeiture is by jury. Under 11488.4(i)(3) and (5) where there is a related criminal action and conviction requirement the same jury or court shall try the forfeiture as decided the criminal matter.

Where there is no related criminal action, trial is by assignment from the superior court presiding judge.

Step 12: At trial, the prosecuting agency must meet the appropriate burdens as set forth in 11488.4(i)(1-4). In the event the claim involves third parties the prosecution must prove beyond a reasonable doubt that the owner of any interest consented to the use with knowledge that it would be or was actually used for a purpose for which forfeiture is permitted.

NOTE: After proof of applicability of 11470 in accordance with proper 11488.4(i) burden the court shall order forfeiture.

Continuance shall be granted to either plaintiff or defendant upon motion until after verdict in the pending criminal charges.

When the finding is that property was not used for a forfeitable purpose, the property must be ordered released to the person entitled thereto. If the property was used for a forfeitable purpose, but the party claiming an interest was found to have had no actual knowledge it would be or was used for forfeitable purpose then the court must order release to claimant.

Step 13: All property subject to the forfeiture hearing which is not released by the court to a claimant shall, upon motion, be declared by the court to be forfeited. However, there must be proof as required by section 11488.4 before it can be declared forfeited. Except as to property subject to section 11473.2, property declared forfeited shall be disposed of by the Clerk of Court as provided by section 11489.

NOTE: While the statute only refers to section 11473.2, it is clear that when an order pursuant to section 11473.3 is entered, that property is not subject to section 11489 distribution.

Step 14: When a defendant willfully fails to appear, the criminal conviction prerequisite for forfeiture is dropped. Forfeiture shall be ordered against defendant, upon the prosecution's application for default judgment. The application for default must show: notice to defendant's counsel of the default request a showing of due diligence to locate and prima facie case in support of the allegation that the property is subject to forfeiture.

B. Nonjudicial Forfeiture

[Health & Safety Code Section 11488.4(j)]

This section has established nonjudicial forfeiture. The law grants the Attorney General, or the district attorney of the county in which the property subject to forfeiture is seized, the authority to order forfeiture without judicial involvement in certain, limited situations:

First - The property seized must be subject to forfeiture under Health and Safety Code section 11470.

Health and Safety Code section 11470, subsections (a) through (g), describe the various categories of property subject to seizure. (See also, sections 11471 and 11472.)

Second - The property must be personal property.

Subsections (a), (b), (d), and (e) of Health and Safety Code section 11470 describe items of property which are exclusively personal property. Therefore, assuming all other qualifications are met, any property in these categories may be forfeited without judicial process.

Subsections (c) and (f) of Health and Safety Code section 11470 describe items of property which are generally personal property. However, to the extent

that a "container" (subsection (c)) or "other things of value" (subsection (f)) are real property they cannot be forfeited except by judicial process.

Subsection (g) of Health and Safety Code section 11470 relates exclusively to real property. Thus, a seizure subject to subsection (g) must always go through judicial forfeiture.

Third - The value of the property must be \$25,000 or less.

When each of these three conditions described above are met, the property may be eligible for nonjudicial forfeiture.

The total nonjudicial forfeiture process, beginning from the seizure would be as follows 1/ (suggested forms for this process are included in Appendix VI):

Step One - The peace officer (a) makes or attempts an arrest for one of the violations listed in Health and Safety Code section 11488(a) and (b) determines there are forfeitable items, which are then seized. (Section 11488(a).)

Step Two - The seizing officer must provide a receipt to the person from whom the property was taken. If the property was not taken from anyone's possession, then a receipt shall be delivered to the individual in possession of the premises where the property was seized. If no individual is available, then a receipt must be left in a conspicuous place at the location where the asset was seized. (Section 11488(c).)

Step Three - The seizing officer then must decide whether the seizure is within either the criteria which permit non-judicial forfeiture or whether it will be a judicial forfeiture. (Section 11488.4(j) - personal property - value not exceeding \$25,000.)

If it is the officer's conclusion that the seized property will be processed by nonjudicial forfeiture, then he should notify the Attorney General or the district attorney. (Section 11488.4(j).)

If it is the officer's conclusion that the seized property will be processed by judicial forfeiture, he should notify the appropriate prosecuting agency.

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1. Because of Health and Safety Code sections 11470(i) and 11488(b), these steps will not be the same in Los Angeles County when the seizure is made by either the L.A.S.O. or L.A.P.D. (see p. 28, infra).

Step Four - The seizing officer should notify the Franchise Tax Board if the value of the seized property is believed to exceed \$5,000.00. 2/ (Section 11488(b).)

Step Five - The seizing officer, as quickly as possible, should prepare the forfeiture package and submit it to the Attorney General or district attorney.

The forfeiture package should include:

- (a) the police reports;
- (b) any search warrants, seizure warrants and affidavits in support of such warrants;
- (c) a report stating the facts upon which the agent relied for the seizure of the property;
- (d) a report identifying all participating agencies and the extent of each agency's contribution to the activities resulting in the seizure;
- (e) a description of the property seized;
- (f) where necessary, a statement indicating the appraised value of the property and the manner used to establish that value;
- (g) the date and place of the seizure, if not already included in (a), (b) or (c) above;
- (h) the violation(s) of law upon which the seizure was based, if not already included in (a), (b) or (c) above;
- (i) a report on the investigation of ownership of any vehicles, boats or airplanes through DMV or federal sources (section 11488.4(d));
- (j) a report on the names of any persons interested in the property seized; and
- (k) a copy of the receipt.

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2. As presently written, the section imposing this requirement only applies in Los Angeles County to seizures made by L.A.S.O. and L.A.P.D. This step is recommended only, and, absent clean-up legislation, not required.

Step Six - Upon receipt of notice of the seizure and the forfeiture package, the Attorney General's or district attorney's office shall initiate nonjudicial forfeiture proceedings.

NOTE: While the law does not require that the prosecuting agency appoint a specific person to handle forfeitures, we recommend that a single prosecutor or unit be designated to handle all forfeitures.

Step Seven - The Attorney General or district attorney must provide the notice of seizure. This notice, by statute, must be some or all of the following, depending on the facts of the case:

- (a) a service of process on every person designated in the receipt issued at the time of the seizure (section 11488.4(c));
- (b) a service of process, either personally or by registered mail, on every person who has an interest in the seized property other than those listed in the receipt (section 11488.4(c));
- (c) notice to a legal owner of any vehicle, boat or airplane if that person is other than the registered owner and the ownership interest did not arise after the seizure. This notice shall go to the person at the address shown on the records of the ownership (section 11488.4(d));
- (d) notice in a newspaper of general circulation in the county in which the seizure occurred for three successive weeks (section 11488.4(e)).

The notice which is required in each of these four instances must include:

- (a) a description of the property;
- (b) the appraised value of the property;
- (c) the date and place of seizure;
- (d) the violation of law which is the basis for the forfeiture;
- (e) notice that any person claiming an interest must file a verified claim with the superior court within 30 days of the first published notice or within 10 days after receipt of actual notice; and
- (f) instruction how to file a claim.



NOTE: Section 11488.5(a) requires that the claim be filed with the superior court, which will not be aware of the matter in a nonjudicial forfeiture. Accordingly, until appropriate clean-up legislation is passed, our recommendation is that the instructions contain this direction. They should also state that, although notice is filed with the court, a copy shall be sent to the Attorney General or the district attorney. To avoid any confusion, the Attorney General or the district attorney should then notify the court that there is no judicial forfeiture.

Step Eight - Wait for the 30 calendar days period for any claims to be filed.

NOTE: The statute requires that the Attorney General or the district attorney provide a written decision on each claim within 30 days. This provision is without meaning in the context of a nonjudicial forfeiture procedure; the filing of a claim triggers its entry into the judicial process. This requirement thus should be ignored until a cleanup proposal can correct it.

Step Nine - If a claim is timely filed, then the Attorney General or the district attorney should file a petition of forfeiture with the court within 30 days of the date of receipt of the claim.

Step Ten - If no claim is filed within 30 days, the Attorney General or district attorney shall prepare a written declaration of forfeiture to the state.

NOTE: This section does not mention the local governmental entity referred to in section 11489. Therefore, forfeiture actions should be in the name of the state.

Step Eleven - The property, if cash, is transferred according to the formula provided in section 11489. In non-cash situations, the property is subject to liquidation by the Department of General Services or the appropriate local governmental entity, and then its proceeds are distributed as provided in section 11489.

Insofar as the Los Angeles County Sheriff and Los Angeles Police Departments are concerned, the version of section 11488(b) as presently worded, requires additional steps for officers of these departments who make seizures. These requirements are that the officers:

1. immediately turn over all money, negotiable instruments or other cash equivalents to the superior court, or to the Attorney General or appropriate district attorney to hold for the court;

2. must notify the Franchise Tax Board if the value is believed to exceed \$5,000.00.

There are three exceptions to these requirements:

1. when the value exceeds \$50,000.00;
2. when the criminal investigation was one in which federal law enforcement was involved; or
3. when the underlying action is brought in federal court.

The prosecutor handling nonjudicial seizure for either L.A.S.O. or L.A.P.D. must follow the same steps as for all other California procedures with one addition. Because no transfer can occur without court approval, the prosecutor must submit a transfer order for court approval.

#### PART IV: PROPERTY DISTRIBUTION SUBSEQUENT TO FORFEITURE

##### A. Monetary Distributions

The general fine deposit and distribution provisions of Health & Safety Code section 11502 do not apply to forfeitures, either judicial or non-judicial. Section 11473.3 provides for placement of seized items and will be discussed later in this part. Most of the property seized will be liquidated so that a monetary distribution of the asset can be made.

Even though property is forfeited in the name of the state, sale can be carried out by either General Services or the local government entity related to the seizing agency.

The distribution formula is:

1. First, to any bona fide or innocent purchaser, conditional sales vendor or mortgagee up to the amount of the interest held;
2. the balance after satisfaction of the interested parties, the balance is to be accumulated and distributed quarterly as follows:
  - (a) to General Services or the local agency for expenditures incurred in connection with the sale of the property;
  - (b) any remainder to be distributed:

- (1) Sixty-five percent (65%) to the law enforcement agencies that participated in the seizure in proportion to each agency's contribution;
  - (2) ten percent (10%) to the prosecuting agency that processes;
  - (3) twenty percent (20%) to Mental Health for deposit in the Mental Health Primary Prevention Fund;
  - (4) five percent (5%) to eligible non-profit organizations established for the purpose of aiding seizures and forfeitures when it is determined that information they provided resulted in the seizure generating the funds; otherwise this money goes to the Narcotic Assistance and Relinquishment by Criminal Offenders (NARCO) fund.
3. Any funds allocated to the Department of Justice must be deposited into the Department of Justice Special Deposit Fund-State Asset Forfeiture Account and used to support state or local law enforcement efforts.
- Insofar as funds received under the federal program, the Department of Justice may elect to deposit these funds in the NARCO fund or in the Department of Justice Special Deposit Fund - Federal Asset Forfeiture Account.
4. This subsection provides that funds from the state asset forfeiture program shall not supplant funds otherwise available to support law enforcement or prosecutorial agencies.
5. Any agency seeking to assert a claim under this subsection must petition the court which will order distribution of the proceeds.

B. Utilization Of Seized Property

When authorized by a final judgment of forfeiture, any property seized pursuant to Health & Safety Code sections 11470(b), (c) or (d) may be used by the seizing entity in its law enforcement program. Title to this property can be vested in the seizing law enforcement agency by a certified copy of the judgment of forfeiture. (Health & Safety Code section 11473.3)

APPENDICES

APPENDIX I

## APPENDIX I: CONTENTS

1. Health & Safety Code § 11470
2. Health & Safety Code § 11471
3. Health & Safety Code § 11473.2
4. Health & Safety Code § 11473.3
5. Health & Safety Code § 11488
6. Health & Safety Code § 11488.4
7. Health & Safety Code § 11488.5
8. Health & Safety Code § 11489
9. Health & Safety Code § 11492

§ 11470. Property subject to forfeiture; vesting of personal property with state; application and duration of section

Text of section operative until Jan. 1, 1989

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 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 possession for sale or sale of 14.25 grams or more of heroin or cocaine as specified in paragraph (1) of subdivision (f) of Section 11054, or a substance containing 14.25 grams or more of heroin or cocaine as specified in paragraph (1) of subdivision (f) of Section 11054, or 14.25 grams or more of a substance containing heroin or cocaine 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 hydrochloride or methamphetamine; or a substance containing 28.5 grams or more of cocaine hydrochloride or methamphetamine; or 57 grams or more of a substance containing cocaine hydrochloride 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 3 or class 4 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 3 or class 4 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, securities, or other things of value 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, or 11382 of this code, or Section 182 of the Penal Code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property.

(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 Section 1538.5 of the Penal Code and compliance with 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, or 11382 in accordance with the burden of proof set forth in subdivision (j) of Section 11488.

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.

(i) Except as otherwise provided in this subdivision, upon seizure by any peace officer of this state, all moneys, negotiable instruments, or other cash equivalents seized in accordance with Section 11488, shall, immediately upon being seized, come under the jurisdiction of the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or the superior court of the county in which the property subject to forfeiture has been seized. These moneys, negotiable instruments, or other cash equivalents shall be handled in accordance with subdivision (b) of Section 11488.

This subdivision applies only to the Los Angeles Police Department and the Los Angeles Sheriff's Department and does not apply (1) when the property seized exceeds a value of fifty thousand dollars (\$50,000), (2) in any case where the seizure was



made in the course of a criminal investigation in which federal law enforcement agents participated, or (3) in any case in which the underlying or related criminal action or proceeding is brought in federal court.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1989, deletes or extends that date. (Added by Stats. 1972, c. 1407, § 3. Amended by Stats. 1976, c. 1407, § 1; Stats. 1977, c. 771, § 1; Stats. 1982, c. 1280, § 1; Stats. 1982, c. 1289, §1.5; Stats. 1983, c. 948, § 1; Stats. 1985, c. 3, § 13; Stats. 1985, c. 870, § 1; Stats. 1986, c. 534, § 2; Stats. 1986, c. 1032, § 1; Stats. 1986, c. 1044, § 25.5.)

For text of section operative Jan. 1, 1989, see § 11470, post.

§ 11471. Seizure of property subject to forfeiture

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. (Added by Stats. 1972, c. 1407, § 3. Amended by Stats. 1980, c. 1019, § 1.)

§ 11473.2. Placement of seized vehicles in law enforcement programs; forfeiture certificate; title

All seizures under provisions of this chapter of vehicles, boats, or airplanes, excluding vehicles which may be lawfully driven upon the highway with a class 3 or class 4 license, may, upon conviction of the defendant, be placed in the name of the law enforcement agency for use in its law enforcement program. A certified copy of the judgment of forfeiture issued by the court as a result of the proceeding, filed with the Department of Motor Vehicles, appropriate federal agency, or other appropriate registry, shall constitute authority for the government entity to convey clear title in its own name for use in its law enforcement program. (Added by Stats. 1983, c. 948, § 4.)

§ 11473.3. Utilization of seized property by seizing public entity

(a) When authorized by a final judgment of forfeiture, items of property seized pursuant to subdivision (b), (c), or (d) of Section 11470 may be utilized by the seizing public entity in its law enforcement program.

(b) A certified copy of the judgment of forfeiture issued by the court as a result of the forfeiture proceedings shall serve to vest title to any property specified in subdivision (a) in the seizing law enforcement agency.

(c) The same authority with respect to transfer or sale of property as is specified in Section 11473.2 shall apply to property subject to this section.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1989, deletes or extends that date. (Added by Stat. 1986, c. 1032, § 4.)

Repeal

This section is repealed January 1, 1989, according to its terms.

§ 11488. Seizures of things of value; surrender to appropriate court, attorney general, or district attorney; notice; application of section; receipts; presumption of ownership; duration of section

Text of section operative until Jan. 1, 1989.

(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 all moneys, negotiable instruments, securities, boats, vehicles, airplanes, or other things of value which the officer has probable cause to believe are forfeitable pursuant to subdivision (e) or (f) of Section 11470.

(b) Except as provided in this subdivision, the peace officer shall immediately turn over all moneys, negotiable instruments, or other cash equivalents to the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or the superior court of the county in which the property subject to forfeiture has been seized or to the Attorney General or district attorney to hold for that court. These moneys, negotiable instruments, or other cash equivalents shall not be transferred to any other agency, local, state, or federal, except upon court order. 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).

This subdivision applies only to the Los Angeles Police Department and the Los Angeles Sheriff's Department and does not apply (1) when the property seized exceeds a value of fifty thousand dollars (\$50,000), (2) in any case where the seizure was made in the course of a criminal investigation in which federal law enforcement agents participated, or (3) in any case in which the underlying or related criminal action or proceedings is brought in the federal court.

(c) 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.

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

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1989, deletes or extends that date. (Added by Stats. 1982, c. 1289, § 3. Amended by Stats. 1983, c. 948, § 5; Stats. 1985, c. 1098, § 6; Stats. 1986, c. 1032, § 5; Stats. 1986, c. 1044, § 26.5.)

For text of section operative Jan. 1, 1989,  
see § 11488, post.

§ 11488.4. Commencement of forfeiture proceedings; lis pendens; protective orders; service of process; investigations; publication; return of property unlawfully seized; review; trial of issue of forfeiture; burden of proof; nonjudicial forfeiture determinations; duration of section

Text of section operative until Jan. 1, 1989.

(a) 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 come within the provisions of subdivision (e), (f), or (g) of Section 11470, 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. 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.

(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 and of the intended forfeiture proceedings, 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 with respect to any interest in the property seized, to be served by personal delivery or by registered mail upon any person who has an interest in the seized property other than persons designated in a receipt issued for the property seized.

(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 seizure of the vehicle, boat, or airplane, it shall forthwith send a notice of the seizure 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.

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

(g) Nothing contained in this chapter shall preclude a defendant from moving for a return of property pursuant to Section 1538.5 of the Penal Code.

(h) 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 subdivision (e), (f), or (g) of Section 11470. The motion may be made at the preliminary examination or subsequent thereto. If made subsequent to the preliminary examination, the 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 subdivision (e) of Section 11470 for which forfeiture is sought, 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) of Section 11470.

(2) In the case of property described in subdivision (f) of Section 11470, except cash, negotiable instruments, or other cash equivalents, for which forfeiture is sought, 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) or (2), the exchange, violation, or other conduct which is the basis for the forfeiture shall be in connection with an underlying offense specified in subdivision (f) of Section 11470, for which a conviction is obtained and which occurred within five years of the arrest leading to the conviction. If the defendant is found guilty of the underlying 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.



(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 a related or underlying criminal offense.

(5) If there is a 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 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 seizure 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.

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

(5) The instructions for filing of a claim pursuant to Section 11488.5 and time limits for filing a claim.

The Attorney General or the district attorney shall provide the seizing agency and the petitioner with a written decision on each claim within 30 days of the claim, unless the circumstances require additional time. 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.

If the 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.

(k) If in any underlying 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 criminal action, and to make a showing of due diligence to locate the defendant. In moving for a default judgment pursuant to this section, the state or local governmental entity shall be required to establish a prima facie case in support of its petition for forfeiture.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1989, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1989, pursuant to Section 9611 of the Government Code, Section 11488.4 of the Health and Safety Code, as amended by Section 3 of Chapter 534 the Statutes of 1986, shall have the same force and effect as if this temporary provision had not been enacted. (Added by Stats. 1982, c. 1289, § 7. Amended by Stats. 1983, c. 948, § 8; Stats. 1986, c. 534, § 3; Stats. 1986, c. 1032, § 8.)

For text of section operative Jan. 1, 1989, see  
§ 11488.4, post.

§ 11488.5. Claim of interest procedure; orders of release or forfeiture; disposition of property; duration of section

Text of section operative until Jan. 1, 1989

(a)(1) Any person claiming an interest in the property seized pursuant to Section 11488 may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 10 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying criminal offense a verified claim stating his or her interest in the property seized. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, as appropriate.

(2) Any person who claims that the property was assigned to him or to her prior to the seizure of the property under this chapter shall file a claim with the court pursuant to Section 11488.5 declaring an interest in that property and such 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.

(3) The claim of a law enforcement agency to property seized pursuant to Section 11488 shall have priority over a claim to the seized 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 pursuant to subdivision (e), (f), or (g) of Section 11470 forfeited to the state upon satisfaction of the requirements set forth in subdivision (i) of Section 11488.4.

(2) The clerk of the court shall dispose of the forfeited property 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.

(d)(1) At the hearing, the state or local governmental entity shall have the burden of establishing beyond a reasonable doubt 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 such 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 600 to 630, inclusive, of the Code of Civil Procedure if a trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure if by the court. Unless the court or jury finds that the 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, the court shall order the seized property released to the claimant.

(f) All seized property which was the subject of the forfeiture hearing and which was not released by the court to a claimant shall, upon motion, be declared by the court forfeited proof by the state or local governmental entity 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. Except as provided in Section 11473.2, the clerk of the court shall dispose of the forfeited property 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.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1989, deletes or extends that date. If that date is not deleted or extended, then on and after January 1, 1989, pursuant to Section 9611 of the Government Code, Section 11488.5 of the Health and Safety Code, as amended by Section 4 of Chapter 534 of the Statutes of 1986, shall have the same force and effect as if this temporary provision had not been enacted. (Added by Stats. 1982, c. 1289, § 8. Amended by Stats. 1983, c. 948, § 9; Stats. 1986, c. 534, § 4; Stats. 1986, c. 1032, § 9.)

For text of section operative Jan. 1, 1989, see  
§ 11488.5, post.

§ 11489. Distribution of funds from forfeitures and seizures

Notwithstanding Section 11502 and except as otherwise provided in Sections 11473 and 11473.2, 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 Department of General Services 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 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.

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

(C) Twenty percent to the State Department of Mental Health for deposit in the Mental Health Primary Prevention Fund for primary prevention programs in accordance with Chapter 1083 of the Statutes of 1981. There is hereby created in the State Treasury the Mental Health Primary Prevention Fund. Notwithstanding Section 13340 of the Government Code, the moneys in the Mental Health Primary Prevention Fund are hereby continuously appropriated to the State Department of Mental Health to expend for primary prevention programs in accordance with Chapter 6 (commencing with Section 5475) of Part 1 of Division 5 of the Welfare and Institutions Code. Expenditures may include administrative costs incurred by the department. These administrative costs are not to exceed 5 percent of the fund. Notwithstanding the provisions of Section 16305.7 of the Government Code, any interest earned or other increment derived from investments made from moneys in the fund shall be deposited in the Mental Health Primary Prevention Fund.

(D) Five percent to eligible nonprofit organizations established for the purposes of aiding those seizures and forfeitures. Moneys shall be used to fund the operations of those organizations where it has been determined that information provided by the organization resulted in the seizure of these funds. In all other instances these moneys shall be deposited into the Narcotics Assistance and Relinquishment by Criminal Offenders Fund. The eligibility criteria and amount of funds to be allocated under this subparagraph shall be determined by each county pursuant to county ordinance.

(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) 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) 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.

Each governmental agency seeking a claim under this subdivision shall petition the court and the court shall order the forfeiture proceeds distributed to the state, local, or state and local governmental entity.

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

All property seized and all proceeds from the sale of property seized pursuant to this chapter prior to October 2, 1985, shall be distributed in accordance with the provisions of this section. (Added by Stats. 1983, c. 948, § 11. Amended by Stats. 1985, c. 1551, § 1; Stats. 1985, c. 1595, § 1; Stats. 1985, c. 1595, § 1.5; Stats. 1986, c. 1032, § 10; Stats. 1986, c. 1472, § 1.)

§ 11492. Pendente lite orders to preserve status quo; preliminary injunctions; surety bonds or undertakings

(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 of the property alleged in the petition of 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 such property may be maintained and preserved.

(b) No preliminary injunction may be granted or receiver appointed without notice to the interested parties and a hearing to determine that such an order is necessary to preserve the property, pending the outcome of the criminal proceedings, and that there is probable cause to believe that the property alleged in the forfeiture proceedings are proceeds and property interests forfeitable under subdivision (e) or (f) of 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.  
(Added by Stats. 1983, c. 948, § 22.)



APPENDIX II

DEPARTMENT OF JUSTICE

Bureau of Narcotic Enforcement Field Offices:

	<u>ATSS No.</u>	<u>Public No.</u>
Sacramento Field Office: P.O. Box 13397 Sacramento, CA 95813	497-5220	739-5220
San Francisco Field Office: 2720 Taylor Street San Francisco, CA 94133	597-2955	557-2955
Fresno Field Office: 2550 Mariposa Street, Rm. 3011 Fresno, CA 93721	421-5451	445-5451
Los Angeles Field Office: 107 So. Broadway, Rm. 3123 Los Angeles, CA 90012	640-3190	620-3190
Orange Field Office: 874 Town & County Rd., Suite 100 Orange, CA 92668	657-4183	558-4183
San Jose Field Office: 2025 Gateway Place, Suite 474 San Jose, CA 95110	522-1891	277-1891
San Diego Field Office: 1301 State Street San Diego, CA 92101	631-7361	237-7361

APPENDIX III

FORMER HEALTH & SAFETY CODE SECTION 11470(f)

(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 in violation of Section 11351, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 of this code, or Section 182 of the Penal Code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of Section 11351, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 of this code, or Section 182 of the Penal Code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, provided that the individual is arrested and convicted, for any of the offenses enumerated in this subdivision, and provided further that, the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the arrest leading to the conviction of any of the offenses enumerated in this subdivision. (Added by Stats. 1972, c. 1407, § 3. Amended by Stats. 1976, c. 1407, § 1; Stats. 1977, c. 771, § 1; Stats. 1982, c. 1280, § 1; Stats. 1982, c. 1289, § 1.5; Stats. 1983, c. 948, § 1; Stats. 1985, c. 3, § 13; Stats. 1985, c. 870, § 1.)

APPENDIX IV



Page \_\_\_\_\_ of \_\_\_\_\_  
Case # \_\_\_\_\_  
Date \_\_\_\_\_

Name(s) of Person(s) given copies of receipt:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

APPENDIX V



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REQUEST TO INITIATE JUDICIAL FORFEITURE

TO: (Prosecuting Agency)  
FROM: (Investigating Agency)  
RE: Judicial Forfeiture

On (date) , officers of the agency (seized or identified) the following listed property:

- 1.
- 2.
- 3.
- 4.
- 5.

[Paragraph to be used when there is a seizure]

This seizure occurred at (address) . Copies of the receipts provided for the property are attached.

[Paragraph to be used when there is no seizure]

The property identified as being subject to forfeiture is located at (address) . When identified it was in the possession of (name of person) or the person holding title to the property is (name) .

As set forth in the reports attached to this request, this agency has probable cause to believe the property listed is subject to forfeiture; therefore, you are requested to initiate proceedings.

(Requesting Officer)

Name of Prosecuting Agency  
 Address  
 Telephone Number

Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF \_\_\_\_\_

STATE OF CALIFORNIA,	)	Civil Number _____
	)	
Petitioner,	)	PETITION FOR FORFEITURE
	)	OF PROPERTY
v.	)	
	)	[Health & Safety Code
(Property Description),	)	Section 11488(a)]
	)	
(Name of persons having an	)	
interest),	)	
	)	
Real Party In Interest.	)	
_____	)	

Petitioner, acting on behalf of the State of  
 California, alleges:

I

Petitioner is the (title) .

II

[For Use When Criminal Conviction Is Required]

Real Party In Interest has been charged with the  
 crime(s) of (statement of offenses) in violation of (Health &  
 Safety Code violations). These charges are now pending in (list  
 court) in criminal case number (case number). These charges are  
 the (underlying/related) charges on which this Petition For  
 Forfeiture is based.

II  
[For Use When No Criminal Conviction is Required]

Real party in interest had in (his/her) possession certain (money, negotiable instruments or other cash equivalents) which petitioner has probable cause to believe are subject to forfeiture under the terms of Health and Safety Code (section).

III

This action for forfeiture is based on the theory that property described in this petition (was used/was intended to be used) for (state general facts bringing it within Health & Safety Code § 11470(e), (f) or (g)) by (name of person charged).

IV

This court has original jurisdiction over this forfeiture action pursuant to Health and Safety Code section 11488.4(a).

WHEREFORE, petitioner prays that this Court conduct a hearing and, upon proper finding that the property should be declared subject to forfeiture, order said property forfeited to the State of California and direct the Clerk of Court to distribute that property according to Health and Safety Code section 11489.

Dated: \_\_\_\_\_.

(Head of Prosecuting Agency)

\_\_\_\_\_  
By \_\_\_\_\_

Attorneys for Petitioner

Name of Prosecuting Agency  
 Address  
 Telephone Number

Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF \_\_\_\_\_

PEOPLE OF THE STATE OF	)	Civil Number <u>(same as petition)</u>
CALIFORNIA,	)	
	)	
Petitioner,	)	NOTICE OF PENDING ACTION
	)	FORFEIT REAL PROPERTY/
v.	)	LIS PENDENS
	)	
(Property Description),	)	[Health & Safety Code
	)	Section 11488.4]
(Name of Interested Party),	)	
	)	
Real Party In Interest.	)	
_____	)	

Notice is hereby given that the above-entitled action concerning and affecting the real property described herein was commenced on (date) , against (real party in interest) . This action is now pending in the above named Court.

The action affects the title and right to possession and use of real property situated in \_\_\_\_\_ County, California; which property is legally described as:

(Legal description, including street address)

Real Party In Interest has been notified of the pendency of this action.

Date\_\_\_\_\_.

(Name of Agency Head)

By\_\_\_\_\_

Attorneys for Petitioner

Recorded on (date) in (location of recording), by  
the County Recorder for the County of \_\_\_\_\_.

(Stamp of recordation)

Name of Recorder

By\_\_\_\_\_

## PROSECUTING AGENCY LETTERHEAD

(Date)

## PERSONAL LETTER OF NOTICE: JUDICIAL FORFEITURE

Dear Interested Parties

On (date), at (location), officers of (name of agency) seized property for forfeiture in connection with controlled substance violation(s), to wit, Section(s) (violation) of the California Health and Safety Code (uniform controlled substances). The estimated/appraised value of the property is \$ (amount). The seized property is described as follows:

(property description)

Pursuant to Section 11488.4(a) of the California Health and Safety Code, judicial procedures to forfeit this property are under way.

If you claim an interest to this property, you must, within 10 days of actual receipt of this notice, file a verified claim stating your interest in the seized property with the Clerk of the Superior Court, (address). You also must provide the Office of the (prosecuting agency) with a verified copy of the claim directed to the address listed in the letterhead above.

Civil No. (number) has been assigned to this case. Use this number to identify the property in any correspondence with the court or Office of the (prosecuting agency).

If your claim is not timely filed, the (prosecuting agency) will seek to have the court declare the property described in this letter to be forfeited to the state by default and it will be disposed of as provided in Health and Safety Code section 11489.

Very truly yours,

(Prosecuting Agency Head)

By (name)  
(title)  
(telephone number)

(Caption)

JF-5

Attorneys for the State

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF \_\_\_\_\_

PEOPLE OF THE STATE OF CALIFORNIA	)	CIVIL NO.
	)	
v.	)	PROOF OF PERSONAL
	)	SERVICE ON INTERESTED
(property description),	)	PARTIES
	)	
(name of interested party),	)	
	)	
Real Party In Interest.	)	
_____	)	

// // //

// // //

// // //



PROOF OF SERVICE BY REGISTERED MAIL OF  
PERSONAL LETTER OF NOTICE: JUDICIAL FORFEITURE

I, (name) , declare as follows:

That I am over the age of 18 years and am not a party to this action. I am employed by (name of prosecuting agency), (address of the agency).

That on (date) , I caused to be placed in the United States mail, by certified mail, return receipt requested, a PERSONAL LETTER OF NOTICE: JUDICIAL FORFEITURE to (name of party).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this (date) day of (month) , (year), at (city where executed), California.

\_\_\_\_\_  
(signature)  
(name)

PUBLISHED NOTICE OF SEIZURE AND JUDICIAL FORFEITURE

On (date) , (year), at (location) , officers of (investigating agency) seized property for forfeiture in connection with controlled substance violation(s), to wit, Section(s) (code sections) of the California Health and Safety Code. (uniform controlled substances). The estimated/appraised value of the property is \$(value). The seized property is described as follows:

(property description)

Pursuant to Section 11488.4(a) of the California Health and Safety Code, procedures to forfeit this property in judicial proceedings are under way.

If you claim an interest in this property, you must, within 30 days of the first publication of this Notice of Seizure and Administrative Forfeiture, file a verified claim in the Superior Court Clerk's Office located at (address) . You must also provide a verified copy of the claim to the Office of the (prosecuting agency), (address) , to the attention of (person) .

Civil case No. (number) has been assigned to this case. Use this number to identify the property in any correspondence with the Office of the (prosecuting agency).

If your claim is not timely filed, the (prosecuting agency) will seek to have the court declare the property described in this notice to be forfeited to the state and it will be disposed of as provided in Health and Safety Code section 11489.

MEMORANDUM

TO: (Investigating Agency)  
FROM: (Prosecuting Agency)  
SUBJECT: PEOPLE v. (case name), (civil case number)  
DATE:

The above-captioned case is currently pending in your jurisdiction. During the investigation of the case, certain assets were seized by your agency. The (prosecuting agency) has commenced a judicial forfeiture proceeding against those assets under Civil case No. (number) .

Enclosed please find the following: (a) Personal Letter of Notice: Judicial Forfeiture; (b) Instructions for Service of Process; and, (c) Proof of Service Form.

Please serve (name, address) with a Personal Letter of Notice: Judicial Forfeiture at the earliest possible date. It is suggested that service of process be performed in court if this is the earliest possible date, on the record, in the manner as described in the enclosed Instructions for Service of Process Form. This will provide additional evidence, should it be needed, of the nature of the service given to the defense.

If any questions arise with respect to defense motions to return the property for which forfeiture is being sought, or for any other matter connected with forfeiture, please contact (name of prosecutor) . The (prosecuting agency) is prepared to handle such motions, and, if necessary, will come to court and handle the matter.

If you have any questions, do not hesitate to ask.

Enclosures

## INSTRUCTIONS FOR SERVICE OF PROCESS

Court Service

1. Serve each person in open court on the record.
2. Serve the papers directly on each person.
3. Let the record reflect that you are serving each person with one document: a Personal Letter of Notice--Administrative Forfeiture with the Civil case No. (number) .
4. Complete the Proof of Service Form and return to (prosecuting agency, address).

Custody Service

Consult with the (prosecuting agency) on whether and how to serve persons in custody.

DECLARATION OF PERSONAL SERVICE

STATE OF CALIFORNIA       )  
                                  ) ss  
COUNTY OF                    )

I, the undersigned, hereby declare under penalty of perjury, that the following is true and correct:

I am over the age of eighteen years of age and am not a party to the forfeiture proceeding.

On           (date)           , I served the PERSONAL LETTER OF NOTICE: JUDICIAL FORFEITURE in said action, by personally hand delivering copies of the aforementioned documents to (name) .

Executed on   (date)           , at   (city)           , California.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print or type name)

\_\_\_\_\_  
(title)

Name of Prosecuting Agency  
 Address  
 Telephone Number

Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF \_\_\_\_\_

THE PEOPLE OF THE STATE OF	)	Civil Number <u>(same as petition)</u>
CALIFORNIA,	)	
	)	
Petitioner,	)	MOTION FOR JUDGMENT OF
	)	FORFEITURE BASED ON DEFAULT
v.	)	BY THE INTERESTED PARTY
	)	
(Property Description),	)	[Health & Safety Code
	)	Section 11488.5(b)(1)]
(Name of Interested Party),	)	
	)	
Real Party In Interest.	)	
_____	)	

Petitioner, acting as Attorney for petitioner, does hereby declare:

That on (date of personal service/date of first publication), a notice of the pending forfeiture action was (personally served on [name]/published for the first time in [name of publication]). A total of (ten/thirty) days have passed since (service/publication). As of this date no claim has been filed and no notice of any filing of claim has been received by petitioner.

Petitioner hereby submits the attached documents (attach appropriate affidavits and/or police reports) as

uncontroverted proof (state burden) that said property is subject to forfeiture.

THEREFORE, proper proof having been made, petitioner respectfully requests that this Court declare that (property description) is hereby forfeited to the State and direct the Clerk of Court to dispose of the property as provided in Health and Safety Code section 11489.

Date\_\_\_\_\_.

(Name of Agency Head)

By\_\_\_\_\_

Attorneys for Petitioner

Name of Prosecuting Agency  
 Address  
 Telephone Number

Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF \_\_\_\_\_

THE PEOPLE OF THE STATE OF	)	Civil Number <u>(same as petition)</u>
CALIFORNIA,	)	
	)	
Petitioner,	)	
	)	
v.	)	ORDER OF DEFAULT
	)	
(Property Description),	)	[Health & Safety Code
	)	Section 11488.5(b)(1)]
(Name of Interested Party),	)	
	)	
Real Party In Interest.	)	
_____	)	

Good cause appearing and appropriate proof having been made by the Attorneys for Petitioner that (name of interested party) has been given notice by (personal service/publication) as to the pending forfeiture of (property description) and that no verified claim has been filed with this Court or with the Attorney for Petitioner within the time period provided for filing claims.

I hereby find that Attorneys for Petitioner have demonstrated (insert appropriate burden of proof from Health & Safety Code § 11488.4(i)) that said property and the interest of (name of interested party) is subject to forfeiture because



(state appropriate theory under Health & Safety Code § 11470(e),  
(f) or (g)).

THEREFORE, (property description) is hereby declared to  
be forfeited to the State of California and the interest of (name  
of interested party) in said property is declared to be forfeited  
by default, proper notice and opportunity to defend his/her  
interest having been provided.

Date\_\_\_\_\_.

---

JUDGE OF THE SUPERIOR COURT

Name of Prosecuting Agency  
Address  
Telephone Number

Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF \_\_\_\_\_

THE PEOPLE OF THE STATE OF	)	Civil Number <u>(same as petition)</u>
CALIFORNIA,	)	
	)	
Petitioner,	)	MOTION FOR JUDGMENT OF
	)	FORFEITURE BASED ON FAILURE
v.	)	TO APPEAR BY THE INTERESTED
	)	PARTY
(Property Description),	)	
	)	[Health & Safety Code
(Name of Interested Party),	)	Section 11488.4(k)]
	)	
Real Party In Interest.	)	
_____	)	

Petitioner, by and through its Attorney, does hereby  
declare:

That (name of interested party) is a defendant in the  
case of (case name, criminal number). The criminal charges  
alleged in this case are the (underlying/related) charges upon  
which this forfeiture action is based. On (date of failure to  
appear) (name of interested party) failed to appear as required.  
Counsel for (name of interested party), (name of counsel), has  
been notified of the failure to appear and the fact that this  
motion would be made at this time.

Attorneys for Petitioner hereby state that the affida-  
vit attached as Exhibit I reflects that due diligence has been

used to locate the interested party. Further, the affidavit and/or police reports attached as Exhibit II provide proof of a prima facie case supporting forfeiture of the (property description).

THEREFORE, petitioner respectfully requests that this Court declare that (property description) is hereby forfeited to the State and Direct the Clerk of Court to dispose of the property as provided in Health and Safety Code section 11489.

Date\_\_\_\_\_.

(Name of Agency Head)

By\_\_\_\_\_

Attorneys for Petitioner

Name of Prosecuting Agency  
 Address  
 Telephone Number

Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF \_\_\_\_\_

THE PEOPLE OF THE STATE OF	)	Civil Number <u>(same as petition)</u>
CALIFORNIA,	)	
	)	
Petitioner,	)	
	)	
v.	)	ORDER OF DEFAULT
	)	
(Property Description),	)	[Health & Safety Code
	)	Section 11488.4(k)]
(Name of Interested Party),	)	
	)	
Real Party In Interest.	)	
_____	)	

Good cause appearing and appropriate proof having been made by the Attorneys for Petitioner that (name of interested party) has been given notice by (personal service/publication) as to the pending forfeiture of (property description) and that on (date) he/she failed to appear in connection with (criminal case number). Further, that Attorneys for Petitioner have demonstrated due diligence in their attempts to locate (interested party).

I hereby find that Attorneys for Petitioner have demonstrated by a prima facie case that (description of property) is subject to forfeiture because (state appropriate theory under Health & Safety Code § 11470(e), (f) or (g)).

THEREFORE, (property description) is hereby declared to be forfeited to the State of California and the interest of (name of interested party) in said property is declared to be forfeited by default, proper notice and opportunity to defend his/her interest having been provided.

Date\_\_\_\_\_.

---

JUDGE OF THE SUPERIOR COURT

Name of Prosecuting Agency  
 Address  
 Telephone Number

Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF \_\_\_\_\_

THE PEOPLE OF THE STATE OF	)	Civil Number <u>(same as petition)</u>
CALIFORNIA,	)	
	)	
Petitioner,	)	
	)	
v.	)	DECLARATION OF FORFEITURE
	)	
(Property Description),	)	[Health & Safety Code
	)	Sections 11488.5, 11488.4]
(Name of Interested Party),	)	
	)	
Real Party In Interest.	)	
_____	)	

On (date) Attorney For Petitioner appeared before me and proved that (name of real party in interest) had (not filed a claim/failed to appear). Attorney for Petitioner further proved (insert appropriate burden of proof/by a prima facie case) that the property hereinafter described (state theory of forfeiture) that was subject to forfeiture.

Based on the proofs described, I hereby find and declare that the interest of (name of interested party) in (description of property) is hereby forfeited to the State of California. I further direct that said property shall be disposed of as provided by Health and Safety Code section 11489.

Date \_\_\_\_\_.

\_\_\_\_\_  
 JUDGE OF THE SUPERIOR COURT

Name of Prosecuting Agency  
 Address  
 Telephone Number

Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF \_\_\_\_\_

THE PEOPLE OF THE STATE OF	)	Civil Number <u>(same as petition)</u>
CALIFORNIA,	)	
	)	
Petitioner,	)	
	)	
v.	)	DECLARATION OF FORFEITURE
	)	
(Property Description),	)	[Health & Safety Code
	)	Sections 11488.5, 11488.4]
(Name of Interested Party),	)	
	)	
Real Party In Interest.	)	
_____	)	

On (date) (the jury found/this Court found) that  
 (description of property) (state theory of forfeiture) (state  
 burden of proof).

Based on the proofs described and the finding made, I  
 hereby find and declare that the interest of (name of interested  
 party) in (description of property) is hereby forfeited to the  
 State of California. I further direct that said property shall  
 be disposed of as provided by Health and Safety Code section  
 11489.

Date \_\_\_\_\_.

\_\_\_\_\_  
 JUDGE OF THE SUPERIOR COURT

Name of Prosecuting Agency  
 Address  
 Telephone Number

Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF \_\_\_\_\_

THE PEOPLE OF THE STATE OF	)	Civil Number <u>(same as petition)</u>
CALIFORNIA,	)	
	)	
Petitioner,	)	
	)	ORDER TO CLERK TO DISPOSE
v.	)	OF FORFEITED PROPERTY
	)	
(Property Description),	)	[Health & Safety Code
	)	Sections 11488.5(b)(2),
(Name of Interested Party),	)	11488.5(f)]
	)	
Real Party In Interest.	)	
_____	)	

Attached hereto is the Declaration Of Forfeiture as to this property. You are directed to notify (prosecuting agency) to notify (agency holding property) to transfer possession to (disposing agency/agency issuing checks) for (sale and distribution/distribution) as provided in Health and Safety Code section 11489.

Date \_\_\_\_\_.

\_\_\_\_\_  
 JUDGE OF THE SUPERIOR COURT



Prosecuting Agency Letterhead

(Date)

(Custodial Agency)

ATTENTION: ASSET FORFEITURE COORDINATOR

Dear (name) :

Re: (Case name)  
Control No. (number)  
Crime Report No.

A written declaration of forfeiture has been issued by the court in the above-captioned case as provided for by Section (appropriate section) of the Health and Safety Code (see enclosed Declaration of Forfeiture).

In order to distribute the seized property, it is necessary that custody of the seized property, to wit, (property) , be transferred to the (appropriate agency). Once this transfer is made, the actual distribution of the seized property can be completed as provided by Section 11489 of the Health and Safety Code. Therefore, it is requested that your department effect this transfer on or before (date) .

The (prosecuting agency's) authority for both the forfeiture and the disposition of the seized property is contained in orders of the court attached to this letter.

Your attention to this matter is greatly appreciated. Should you have any questions, do not hesitate to call the undersigned at (number) .

Very truly yours,

(Prosecuting Agency head)

By (name)  
(title)

Enclosure

MEMORANDUM

TO: (Budget/Disbursements Office)

FROM: (Name & title)  
(Address)

SUBJECT: RECEIVING AND DISTRIBUTION OF FORFEITED PROPERTY

DATE:

Pursuant to Section 11488.5 of the Health and Safety Code, this Office has successfully concluded a judicial forfeiture proceeding.

On (date) , the court issued a declaration of forfeiture under Civil case No. (number), a copy of which is attached.

You are instructed to receive from the (seizing agency) the subject property, to wit, (property description) , plus interest, if any, for disposition. In the event that property must be sold to generate funds for disbursement, you should proceed to arrange for sale.

You are further instructed to prepare checks payable as follows:

1.                dollars and                cents (\$                ) or 65% of the proceeds after costs of sale, to the (seizing agency).
2.                dollars and                cents (\$                ) or 10% of the proceeds after costs of sale to the (prosecuting agency processing the forfeiture).
3.                dollars and                cents (\$                ) or 20% of the proceeds after costs of sale to the State Department of Mental Health.
4.                dollars and                cents (\$                ) or 5% of the proceeds after costs of sale to the (non-profit organization or NARCO).

Any interest received is to be payable pro rata to the above payees.

Upon completion of the preparation of the above checks, they are to be forwarded to (name of prosecuting agency designee) for further distribution.

Attachment

Prosecuting Agency Letterhead

(Date)

(Seizing Agency Address)

ATTENTION: Forfeiture Coordinator

Dear :

In re FORFEITURE OF MONEY

Our Office recently successfully completed a forfeiture action entitled People v. (name of case). Pursuant to Section 11489 of the Health and Safety Code, your agency is entitled to 65% of the property forfeited pursuant to Section 11488.4(j) of the Health and Safety Code.

Please find enclosed a check in the amount of \$ . It represents the 65%.

If I can be of further assistance to you, please feel free to contact me.

Very truly yours,

(Prosecuting Agency head)

By (name)  
(title)

Enclosure

Prosecuting Agency Letterhead

(Date)

Dr. Michael O'Connor, Director  
California State Department of Mental Health  
1600 Ninth Street, Room 150  
Sacramento, California 95814

Dear Dr. O'Connor:

In re FORFEITURE OF MONEY

Our Office recently successfully completed a forfeiture action entitled People v. (name of case). Pursuant to state law, the Department of Mental Health is entitled to a portion of the forfeited funds.

Please find enclosed a check in the amount of \$ . It represents that portion of the forfeited funds allocated to the Department of Mental Health pursuant to the distribution scheme contained in Health and Safety Code section 11489.

If I can be of further assistance to you, please feel free to contact me.

Very truly yours,

(Prosecuting Agency head)

By (name)  
(title)

Enclosure

Prosecuting Agency Letterhead

(Date)

Gerald Clemons, Director  
Department of Justice  
Division of Law Enforcement  
4949 Broadway  
Post Office Box 13281  
Sacramento, California 95813

Dear Mr. Clemons:

In re FORFEITURE OF MONEY

Our Office recently successfully completed a forfeiture action entitled People v. (name of case). Pursuant to state law, a portion of the forfeited funds is to be deposited into the Narcotic Assistance and Relinquishment by Criminal Offender (NARCO) Fund.

Please find enclosed a check in the amount of \$ . It represents that portion of the forfeited funds allocated to the NARCO Fund pursuant to the distribution scheme contained in Health and Safety Code section 11489.

If I can be of further assistance to you, please feel free to contact me.

Very truly yours,

(Prosecuting Agency head)

By (name)  
(title)

Enclosure

APPENDIX VI

BILL OF SALE

\_\_\_\_\_  
Vehicle License No. or Vessel CF No.

\_\_\_\_\_  
Make of Vehicle or Name of Vessel Builder

\_\_\_\_\_  
Vehicle or Hull Identification No.

\_\_\_\_\_  
Engine No. - Motorcycles Only

For the sum of (amount) dollars (\$ ), the receipt of which is hereby acknowledged, the State of California does hereby sell, transfer and deliver to (name and address of buyer) on this (day) of (month), (year), the full title and interest in said vehicle/vessel.

Title to said vehicle/vessel was vested in the State of California as the result of judicial forfeiture proceedings. (Health & Safety Code section 11489.) A certified copy of the Declaration of Forfeiture is attached to this form.

I, (name) , (title) , do hereby certify under penalty of perjury that I am authorized by the (name of entity selling property) to sell this vehicle/vessel and remit the proceeds of the sale to (name of prosecuting agency) for distribution in accordance with Health and Safety Code section 11489.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Work Address

BILL OF SALE

Property Description:

\_\_\_\_\_  
Identification Number:  
\_\_\_\_\_

For the sum of (amount) dollars (\$ ), the receipt of which is hereby acknowledged, the State of California does hereby sell, transfer and deliver to (name and address of buyer) on this (day) of (month), (year), the full title and interest in said property.

Title to said property was vested in the State of California as the result of judicial forfeiture proceedings. (Health & Safety Code section 11488.) A certified copy of the Declaration of Forfeiture is attached to this form.

I, (name) , (title) , do hereby certify under penalty of perjury that I am authorized by the (name of entity selling property) to sell this property and remit the proceeds of the sale to (name of prosecuting agency) for distribution in accordance with Health and Safety Code section 11489.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Work Address



APPENDIX VII

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NONJUDICIAL FORFEITURE FORMS

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## PROSECUTING AGENCY LETTERHEAD

(Date)

## PERSONAL LETTER OF NOTICE: NONJUDICIAL FORFEITURE

Dear Interested Parties

On (date), at (location), officers of (name of agency) seized property for forfeiture in connection with controlled substance violation(s), to wit, Section(s) (violation) of the California Health and Safety Code (uniform controlled substances). The estimated/appraised value of the property is \$ (amount). The seized property is described as follows:

(property description)

Pursuant to Section 11488.4(j) of the California Health and Safety Code, procedures to forfeit this property without judicial proceedings are under way.

If you claim an interest to this property, you must, within 10 days of actual receipt of this notice, file a verified claim stating your interest in the seized property with the Clerk of the Superior Court, (address). You also must provide the Office of the (prosecuting agency) with a verified copy of the claim directed to the address listed in the letterhead above.

Control No. (number) has been assigned to this case. Use this number to identify the property in any correspondence with the Office of the (prosecuting agency).

If your claim is not timely filed, the (prosecuting agency) will declare the property described in this letter to be forfeited to the state. Then it will be disposed of as provided in Health and Safety Code section 11489.

Very truly yours,

(Prosecuting Agency Head)

By (name)  
(title)  
(telephone number)

(Caption)

NJF-2

Attorneys for the State

IN THE MATTER OF SEIZED PROPERTY

PEOPLE OF THE STATE OF CALIFORNIA	)	CONTROL NO.
	)	
v.	)	PROOF OF PERSONAL
	)	SERVICE ON INTERESTED
(property description)	)	PARTIES
	)	
	)	

---

/ / / /

/ / / /

/ / / /

PROOF OF SERVICE BY REGISTERED MAIL OF  
PERSONAL LETTER OF NOTICE: NONJUDICIAL FORFEITURE

I, (name) , declare as follows:

That I am over the age of 18 years and am not a party to this action. I am employed by (name of prosecuting agency), (address of the agency).

That on (date) , I caused to be placed in the United States mail, by certified mail, return receipt requested, a PERSONAL LETTER OF NOTICE: NONJUDICIAL FORFEITURE to (name of party).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this (date) day of (month) , (year), at (city where executed), California.

\_\_\_\_\_  
(signature)  
(name)

PUBLISHED NOTICE OF SEIZURE AND NONJUDICIAL FORFEITURE

On (date) , (year), at (location) , officers of (investigating agency) seized property for forfeiture in connection with controlled substance violation(s), to wit, Section(s) (code sections) of the California Health and Safety Code. (uniform controlled substances). The estimated/appraised value of the property is \$(value). The seized property is described as follows:

(property description)

Pursuant to Section 11488.4(j) of the California Health and Safety Code, procedures to forfeit this property without judicial proceedings are under way.

If you claim an interest in this property, you must, within 30 days of the first publication of this Notice of Seizure and Administrative Forfeiture, file a verified claim in the Superior Court Clerk's Office located at (address) . You must also provide a verified copy of the claim to the Office of the (prosecuting agency), (address) , to the attention of (person) .

Control No. (number) has been assigned to this case. Use this number to identify the property in any correspondence with the Office of the (prosecuting agency).

If your claim is not timely filed, the (prosecuting agency) will declare the property described in this notice to be forfeited to the state and it will be disposed of as provided in Health and Safety Code section 11489.

MEMORANDUM

TO: (Investigating Agency)  
FROM: (Prosecuting Agency)  
SUBJECT: PEOPLE v. (case name), (control number)  
DATE:

The above-captioned case is currently pending in your jurisdiction. During the investigation of the case, certain assets were seized by your agency. The (prosecuting agency) has commenced a nonjudicial forfeiture proceeding against those assets under Control No. (number) .

Enclosed please find the following: (a) Personal Letter of Notice: Nonjudicial Forfeiture; (b) Instructions for Service of Process; and, (c) Proof of Service Form.

Please serve (name, address) with a Personal Letter of Notice: Nonjudicial Forfeiture at the earliest possible date. It is suggested that service of process be performed in court if this is the earliest possible date, on the record, in the manner as described in the enclosed Instructions for Service of Process Form. This will provide additional evidence, should it be needed, of the nature of the service given to the defense.

If any questions arise with respect to defense motions to return the property for which forfeiture is being sought, or for any other matter connected with forfeiture, please contact (name of prosecutor) . The (prosecuting agency) is prepared to handle such motions, and, if necessary, will come to court and handle the matter.

If you have any questions, do not hesitate to ask.

Enclosures

# INSTRUCTIONS FOR SERVICE OF PROCESS

## Court Service

1. Serve each person in open court on the record.
2. Serve the papers directly on each person.
3. Let the record reflect that you are serving each person with one document: a Personal Letter of Notice--Administrative Forfeiture with the Control No. (number) .
4. Complete the Proof of Service Form and return to (prosecuting agency, address).

## Custody Service

Consult with the (prosecuting agency) on whether and how to serve persons in custody.



DECLARATION OF PERSONAL SERVICE

STATE OF CALIFORNIA       )  
                              ) ss  
COUNTY OF                 )

I, the undersigned, hereby declare under penalty of perjury, that the following is true and correct:

I am over the age of eighteen years of age and am not a party to the forfeiture proceeding.

On           (date)           , I served the PERSONAL LETTER OF NOTICE: NONJUDICIAL FORFEITURE in said action, by personally hand delivering copies of the aforementioned documents to (name) .

Executed on   (date)           , at   (city)           , California.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print or type name)

\_\_\_\_\_  
(title)

## Prosecuting Agency Letterhead

(date)

DECLARATION OF FORFEITURE

Control Number \_\_\_\_\_

On (date) , the property described below was seized by (agency) for forfeiture at (location) , pursuant to Section 11470 et sec., of the Health and Safety Code. Notice of the seizure was served on all known parties who may have a legal or possessory interest in the property. On (date) , notice of the seizure was published in the (name of publication) in accordance with 11488.4(j) of the California Health and Safety Code.

The property is: (description of property)

No claim was filed for the property within 30 days (or within 10 days of actual notice served upon interested parties) from the date of first publication of the advertisement as required. It is hereby declared that the property has been forfeited to the State of California pursuant to Section 11488.4(j) of the California Health and Safety Code.

This Declaration of Forfeiture is deemed to provide good and sufficient title as provided by section 11488.4(j) of the California Health and Safety Code.

So declared on this (day) of (month), (year) by the person whose name appears below, who was duly authorized to declare such a forfeiture.

(Prosecuting agency head)

By (name)  
(title)

## Prosecuting Agency Letterhead

(Date)

(Custodial Agency)

ATTENTION: ASSET FORFEITURE COORDINATOR

Dear (name) :

Re: (Case name)  
Control No. (number)  
Crime Report No.

A written declaration of forfeiture has been issued by the (prosecuting agency) in the above-captioned case as provided for by Section 11488.4(j) of the Health and Safety Code (see enclosed copy of forfeiture).

In order to distribute the seized property, it is necessary that custody of the seized property, to wit, (property) , be transferred to the (prosecuting agency). Once this transfer is made, the actual distribution of the seized property can be completed as provided by Section 11489 of the Health and Safety Code. Therefore, it is requested that your department effect this transfer on or before (date) .

The (prosecuting agency's) authority for both the forfeiture and the disposition of the seized property is contained in Section 11488.4(j) of the Health and Safety Code.

Your attention to this matter is greatly appreciated. Should you have any questions, do not hesitate to call the undersigned at (number) .

Very truly yours,

(Prosecuting Agency head)

By (name)  
(title)

Enclosure

MEMORANDUM

TO: (Budget/Disbursements Office)

FROM: (Name & title)  
(Address)

SUBJECT: RECEIVING AND DISTRIBUTION OF FORFEITED PROPERTY

DATE:

Pursuant to Section 11488.4(j) of the Health and Safety Code, this Office has successfully concluded an uncontested administrative forfeiture proceeding. This section authorizes the (prosecuting agency) to prepare a written declaration of forfeiture of the subject property and dispose of the property (in accordance with Section 11489 of the Health and Safety Code) when no timely claims are filed.

No timely claim has been filed in this proceeding.

On (date) , the Office of the (prosecuting agency) issued a declaration of forfeiture under Control No. (number), a copy of which is attached.

You are instructed to receive from the (seizing agency) the subject property, to wit, (property description) , plus interest, if any, for disposition.

You are further instructed to prepare checks payable as follows:

1.               dollars and               cents (\$           ) to the  
                 (seizing agency). [65%]
2.               dollars and               cents (\$           ) to the  
                 (prosecuting agency processing the forfeiture). [10%]
3.               dollars and               cents (\$           ) to the State  
                 Department of Mental Health. [20%]
4.               dollars and               cents (\$           ) to the  
                 (non-profit organization or NARCO). [5%]

Any interest received is to be payable pro rata to the above payees.

Upon completion of the preparation of the above checks, they are to be forwarded to (name of prosecuting agency designee) for further distribution.

Attachment

Prosecuting Agency Letterhead

(Date)

Dr. Michael O'Connor, Director  
California State Department of Mental Health  
1600 Ninth Street, Room 150  
Sacramento, California 95814

Dear Dr. O'Connor:

In re FORFEITURE OF MONEY

Our Office recently successfully completed a forfeiture action entitled People v. (name of case). Pursuant to state law, the Department of Mental Health is entitled to a portion of the forfeited funds.

Please find enclosed a check in the amount of \$ . It represents that portion of the forfeited funds allocated to the Department of Mental Health pursuant to the distribution scheme contained in Health and Safety Code section 11489.

If I can be of further assistance to you, please feel free to contact me.

Very truly yours,

(Prosecuting Agency head)

By (name)  
(title)

Enclosure

Prosecuting Agency Letterhead

(Date)

(Seizing Agency Address)

ATTENTION: Forfeiture Coordinator

Dear :

In re FORFEITURE OF MONEY

Our Office recently successfully completed a forfeiture action entitled People v. (name of case). Pursuant to Section 11489 of the Health and Safety Code, your agency is entitled to 65% of the property forfeited pursuant to Section 11488.4(j) of the Health and Safety Code.

Please find enclosed a check in the amount of \$ . It represents the 65%.

If I can be of further assistance to you, please feel free to contact me.

Very truly yours,

(Prosecuting Agency head)

By (name)  
(title)

Enclosure

Prosecuting Agency Letterhead

(Date)

Gerald Clemons, Director  
Department of Justice  
Division of Law Enforcement  
4949 Broadway  
Post Office Box 13281  
Sacramento, California 95813

Dear Mr. Clemons:

In re FORFEITURE OF MONEY

Our Office recently successfully completed a forfeiture action entitled People v. (name of case). Pursuant to state law, a portion of the forfeited funds is to be deposited into the Narcotic Assistance and Relinquishment by Criminal Offender (NARCO) Fund.

Please find enclosed a check in the amount of \$ . It represents that portion of the forfeited funds allocated to the NARCO Fund pursuant to the distribution scheme contained in Health and Safety Code section 11489.

If I can be of further assistance to you, please feel free to contact me.

Very truly yours,

(Prosecuting Agency head)

By (name)  
(title)

Enclosure

PROSECUTING AGENCY LETTERHEAD

(Date)

(Name and Address)

NOTICE OF ACTION ON CLAIM

Dear (claimant) :

Re: (case)

Pursuant to Section 11488.4(j) of the Health and Safety Code and in response to the above-captioned claim, the District Attorney shall file a petition of forfeiture with the Superior Court pursuant to Section 11488.4 of the Health and Safety Code.

Very truly yours,

District Attorney

By (name)  
Deputy District Attorney

Enclosure



PROOF OF SERVICE BY REGISTERED MAIL OF  
NOTICE OF ACTION ON CLAIM

I, (name) , declare as follows:

That I am over the age of 18 years and am not a party to this action. I am employed by (prosecuting agency and address).

That on (date) , I caused to be placed in the United States mail, by certified mail, return receipt requested, a NOTICE OF ACTION ON CLAIM to (name of claimant) .

I declare under penalty of perjury that the foregoing is true and correct.

Executed this day of , 19\_\_, at  
(city) , California.

\_\_\_\_\_  
signature

APPENDIX VIII

BILL OF SALE

\_\_\_\_\_  
Vehicle License No. or Vessel CF No.

\_\_\_\_\_  
Make of Vehicle or Name of Vessel Builder

\_\_\_\_\_  
Vehicle or Hull Identification No.

\_\_\_\_\_  
Engine No. - Motorcycles Only

For the sum of (amount) dollars (\$ ), the receipt of which is hereby acknowledged, the State of California does hereby sell, transfer and deliver to (name and address of buyer) on this (day) of (month), (year), the full title and interest in said vehicle/vessel.

Title to said vehicle/vessel was vested in the State of California as the result of nonjudicial forfeiture proceedings. (Health & Safety Code section 11488(j).) A certified copy of the Declaration of Forfeiture is attached to this form.

I, (name) , (title) , do hereby certify under penalty of perjury that I am authorized by the (name of entity selling property) to sell this vehicle/vessel and remit the proceeds of the sale to (name of prosecuting agency) for distribution in accordance with Health and Safety Code section 11489.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Work Address

DEPARTMENT OF JUSTICE  
ASSET FORFEITURE UPDATE



Prepared by Gary W. Schons  
Deputy Attorney General  
Special Prosecutions Unit  
(619) 237-7499

Bureau of Narcotic Enforcement  
Financial Investigation Program Coordinator  
Michael A. Barnes  
Special Agent Supervisor  
(916) 739-2858

No. 1

May 5, 1987

APPLICATION OF CHANGES IN §§ 11470, et seq. MADE BY AB 4145 TO PENDING FORFEITURES AND PRE-1/1/87 SEIZURES (§ 11470)

Question: Are the procedural changes in §§ 11470, et seq., made by AB 4145 applicable to pending forfeiture actions and property seized before the effective date of the law, January 1, 1987?

Answer: As to procedural changes in the law, i.e., how forfeitures are accomplished, as opposed to substantive changes, i.e., what is subject to forfeiture, there is no constitutional, ex post facto prohibition against applying these changes to actions which arose prior to the effective date of the law. Indeed, the Ninth Circuit ruled that procedural changes in the federal forfeiture law made by the 1984 Comprehensive Crime Control Act could be applied to the forfeiture of property seized before the 1984 Comprehensive Crime Control Act became effective. (United States v. Crozier (9th Cir. 1985) 777 F.2d 1376, 1382-1383.)

Further, it is well established that statutes affecting matters of procedure are applicable to actions which are pending when the statute becomes effective. (Romero v. Hern (1969) 276 Cal.App.2d 787, 791-792.) Moreover, such procedural changes do not even raise the issue of "retroactivity". (Olson v. Hickman (1972) 25 Cal.App.3d 920, 922.) A statute is said to have "retroactive effect" only "when it is construed so as to relate back to a previous transaction and give the transaction a legal effect different from that which prevailed under the law when it occurred." (Industrial Indem. Co. v. Teachers Retirement Board (1978) 86 Cal.App.3d 92, 97.) The procedural changes affected by AB 4145 took effect on January 1, 1987, and prescribe how any then pending forfeiture is to be conducted. These changes did not give the pre-January 1, 1987 transaction, i.e., the criminal use of the property, a different legal effect, i.e., subjecting the property to forfeiture. Therefore, these procedural changes may be applied to pending forfeiture actions and property seized prior to January 1, 1987. (See People v. Sobiek (1973) 30 Cal.App.3d 458, 472-473.)

The result reached in Franchise Tax Board v. Superior Court (1985) 168 Cal.App.3d 970, does not alter this conclusion. In Franchise Tax Board, the Court held that a change in the definition of forfeitable property which occurred during the pendency of a forfeiture proceeding would not be applied "retroactively" to the proceedings. It is clear that this particular change in the law was substantive, i.e., it changed what was subject to forfeiture, and therefore, could not be applied "retroactively".

## APPLICATION OF MIRANDA TO ASSET FORFEITURE RELATED INVESTIGATIONS (§ 11470)

Question: Do the admonishment requirements of Miranda apply to questioning conducted solely for the purpose of gaining information related to a prospective or existing forfeiture action?

Answer: Strictly speaking, Miranda does not apply. However, good practice suggests the Miranda admonishments be given and invocations honored in forfeiture-related investigations.

Forfeiture proceedings, although civil actions, are considered to be quasi-criminal. Therefore, Fourth Amendment protections, including the Exclusionary Rule apply. Moreover, courts will uphold the assertion of the Fifth Amendment privilege in forfeiture proceedings. (One 1958 Plymouth Sedan v. Pennsylvania (1965) 360 U.S. 393, 396 (4th Amendment); United States v. U.S. Currency (6th Cir. 1980) 626 F.2d 11, 16 (5th Amendment).)

On the other hand, no court has held that there is a right to appointed counsel in an in rem, civil forfeiture proceeding and no case could be located in which un-Mirandized statements were excluded in forfeiture proceedings.

However, considering that custody is a necessary predicate to the Miranda admonishment, it is highly probable that any situation which might call for a Miranda admonishment would involve a suggested criminal offender. Accordingly, any violation of Miranda might have an adverse impact on a related criminal prosecution. Accordingly, the better practice would be to abide by Miranda even if the inquiry is solely for forfeiture purposes.

## FILING FEES FOR FORFEITURE COMPLAINTS (§ 11488.4(a))

Question: Are the District Attorney and Attorney General required to pay court filing fees when filing a forfeiture petition (a civil action)?

Answer: No. Government Code § 6103 provides that the state and its political subdivisions shall not be required to pay a fee for the filing of any document in any court.

## STATUTE OF LIMITATIONS FOR FILING A FORFEITURE COMPLAINT (§ 11488.4(a))

Question: What is the time limit within which a petition for forfeiture must be filed?

Answer: A petition for forfeiture must be filed within one (1) year "after the cause of action shall have accrued" (Code Civ. Proc. §§ 312, 340(2)).

Arguably an action for forfeiture accrues when the violation of law is committed and one court has so indicated. (People v. One 1956 Chevrolet (1958) 157 Cal.App.2d 301.) However, it is obvious that such a rule, if strictly applied, would work an injustice in many cases. The courts could probably be persuaded that the cause of action for forfeiture does not "accrue" until the property is seized or there is some action, i.e., the filing of a lis pendens, to restrain the possession or transfer of the property. At worst, the action should not be held to accrue until the authorities have knowledge that the property is subject to forfeiture.

There has been some suggestion that § 11488.2 requires that a petition be filed within fifteen (15) days of seizure. This is a misreading of the statute. Section 11488.2 under certain prescribed circumstances directs the seizing law enforcement agency (not the prosecutor) to return seized property within fifteen (15) days of seizure unless (1) the property is held as evidence, (2) the Franchise Tax Board has issued a notice to withhold, or (3) the law enforcement agency (not the prosecutor) has "initiated forfeiture proceedings". A law enforcement agency (as opposed to a prosecutor) may "initiate forfeiture proceedings" by seizing property for forfeiture pursuant to § 11471 and/or providing a receipt pursuant to § 11488(c).

#### HEARING FOR RETURN OF PROPERTY (§ 11488.4(h))

Question: What is the interplay between the motion for return of property pursuant to § 11488.4(h) and a motion for return or suppression pursuant to Penal Code section 1538.5?

Answer: § 11488.4(h) authorizes a defendant to make a motion for return of property at the preliminary hearing or subsequent thereto on the grounds that there is not probable cause to believe the property is subject to forfeiture. As the court pointed out in People v. Ford (1985) 163 Cal.App.3d 736, 742, a determination under this section does not constitute a ruling that the property, as evidence, must be suppressed. The ultimate issue at the two hearings is not the same. The purpose of the § 11488.4(h) hearing is to determine if there is probable cause to believe the property is subject to forfeiture while the § 1538.5 hearing is designed to test the constitutional reasonableness of the seizure and underlying search.

Indeed, property may have been illegally seized, but still be subject to forfeiture if there is other untainted evidence to support forfeiture. (United States v. One 1978 Mercedes Benz (5th Cir. 1983) 711 F.2d 1297, 1303; United States v. One Harley Davidson Motorcycle (9th Cir. 1974) 508 F.2d 351, 352.)

However, there is the possibility of overlap. The Fourth Amendment and the Exclusionary Rule apply in forfeiture proceedings. (One 1958 Plymouth Sedan v. Pennsylvania, supra, (1965) 360 U.S. 393, 396.) Therefore, in an effort to show that there is not probable cause for forfeiture, a defendant may raise a traditional (§ 1538.5-type) Fourth Amendment attack on evidence which would be offered in support of such a probable cause showing by the prosecution. In such a case "§ 1538.5 issues" may be litigated in the context of a § 11488.4(h) hearing, and vice versa, probably with collateral estoppel effects. Further, such overlap may permit a defendant to put on two full evidentiary hearings on search and seizure issues despite the recent change to subsection (1) of § 1538.5.

It should be asserted at a § 11488.4(h) hearing that the defendant is barred from presenting evidence in an effort to show the asset was lawfully acquired, i.e., an affirmative defense. According to the statute, the only issue at such a hearing is whether there is evidence to support probable cause to believe the asset is subject to forfeiture.

Finally, although the statute is somewhat ambiguous on this point, it should be argued that the granting of a motion to suppress and for return of property pursuant to Penal Code § 1538.5, which motion is specifically reserved to the defendant by § 11488.4(g), does not overcome the People's right to retain custody of property and to maintain a forfeiture action for such property. Penal Code § 1538.5(e) specifically provides that upon granting a motion to suppress or return the property shall be returned unless the property is otherwise subject to lawful detention, i.e., pursuant to § 11470, et seq.

#### BURDEN OF PROOF FOR JUDICIAL FORFEITURE OF CASH OF LESS THAN \$25,000 ( § 11488.4(1)(2),(4) )

Question: What is the burden of proof for judicial forfeitures of less than \$25,000?

Answer: The statute is ambiguous. Subsection (1)(3) of section 1488.4, makes all § 11470(f) assets, except cash, subject to the beyond a reasonable doubt standard (and a conviction is a prerequisite). Subsection (1)(4) makes cash of a value not less than \$25,000 subject to the clear and convincing standard (and no criminal conviction is required). There is an obvious ambiguity or gap in the statute. The Legislature in enacting AB 4145 intended that judicial forfeitures of cash of a value less than \$25,000 should be subject to the beyond a reasonable doubt standard (and after conviction) on the basis that such smaller amounts of money are not clearly indicative of major narcotics violations. The AB 4145 clean-up legislation, AB 1076, addresses this problem.

#### REQUIREMENTS FOR ADMINISTRATIVE FORFEITURE (§ 11488.4(j))

Question: Do the prerequisites to judicial forfeiture in § 11488.4(i), such as a conviction, apply to forfeitures conducted pursuant to the administrative forfeiture provisions?

Answer: No. It is our position that the means of forfeiture set out in subdivision (j) (administrative) have equal "dignity" with and are independent of the means of forfeiture set out in subdivision (i) (judicial). Accordingly, the only requirements for administrative forfeiture are those specifically set out in subsection (j).

#### DISPOSITION OF ADMINISTRATIVELY FORFEITED PROPERTY (§ 11488.4(j)(5), 11489)

Question: Who is responsible for the disposition and distribution of property forfeited pursuant to the administrative forfeiture provisions?

Answer: § 11488.4(j)(5) provides that the prosecutor shall prepare a written declaration of forfeiture ". . . and dispose of the property in accordance with Section 11489." The passage directs the District Attorney to dispose of the property and there is nothing to the contrary in section 11489.

However, the Department of Justice Asset Forfeiture Manual suggests that actual sale (if required) and distribution be handled by the appropriate County administrative office (See Appendix VII, NJF-10). This is a matter which should be worked out between the District Attorney and County Administrative Office.

#### COSTS AND ATTORNEY FEES TO THE PREVAILING PARTY IN A FORFEITURE ACTION (§ 11488.5(c))

Question: Are claimants who prevail in a forfeiture action entitled to costs and attorneys fees?

Answer: As a general matter, the "prevailing party" in any civil action is entitled to recover "costs" (defined in Code Civ. Proc. § 1033.5). Code of Civil Procedure section 1032 provides:

"When any party recovers other than monetary relief and in situations other than as specified [elsewhere in the section - It is our view that forfeiture actions are "situations other than as specified"], the `prevailing party` shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not. . . ."



Accordingly, either the petitioner or the claimant, whoever prevails, may be entitled to costs as forfeiture actions are clearly civil cases. It seems that in the case of forfeiture actions the award of costs is discretionary with the court (this is contrary to the general rule). Thus, the district attorney who does not prevail might successfully argue against having to pay costs, e.g., a good faith or close case and the claimant is a financial institution.

To be sure, the state and counties are, generally speaking, liable for "costs" (Code Civ. Proc. § 1028, 1029) and there is precedent for an award of costs to a claimant in a forfeiture action (see People v. One 1957 Ford 2-Door Sedan (1958) 160 Cal.App.2d 797, 803.)

Claimants are not entitled to attorneys' fees which are awarded only in extraordinary circumstances or where provided for by statute or agreement (Code Civ. Proc. § 1021.5).

California  
Department of Justice  
DIVISION OF  
LAW ENFORCEMENT  
G. W. Clemons, Director



# INFORMATION BULLETIN

**Subject:**

1987 DOJ Asset Forfeiture Manual, Update #2

**No.**

CJ-87-9-IEB

**Date:**

6/18/87

**For further information contact:**

Michael A. Barnes at  
(916) 739-2858

TO: DISTRICT ATTORNEYS, CHIEFS AND SHERIFFS

The Department of Justice has completed the research for an "Asset Forfeiture Update", No. 2, which is attached as part of this bulletin.

Update No. 1 has been distributed in conjunction with the 1987 DOJ Asset Forfeiture Manual. If you need additional copies of the manual or update No. 1, please contact the local field office of the Bureau of Narcotic Enforcement.

Please contact our Asset Forfeiture Coordinator Special Agent Supervisor Michael A. Barnes at (916) 739-2858 if you have any questions, suggestions or recommendations regarding asset forfeiture.

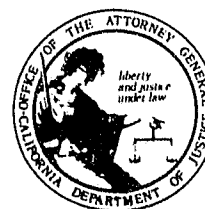
Very truly yours,

JOHN VAN DE KAMP  
Attorney General

CHARLES E. CASEY, Assistant Director  
Investigation and Enforcement Branch

Attachment

DEPARTMENT OF JUSTICE  
ASSET FORFEITURE UPDATE



Prepared by Gary W. Schons  
Deputy Attorney General  
Special Prosecutions Unit  
(619) 237-7499

Bureau of Narcotic Enforcement  
Financial Investigation Program Coordinator  
Michael A. Barnes  
Special Agent Supervisor  
(916) 739-2858

No. 2

June 11, 1987

CLEAN-UP LEGISLATION FOR AB 4145 PROVISIONS (SECTION 11470)

Assembly Bill 1076 (Condit), which has passed its major hurdle, the Assembly Committee on Public Safety, contains numerous "clean-up" provisions to correct and improve the asset forfeiture provisions accomplished last year in AB 4145. The bill is an "urgency measure" and will take effect as soon as it is signed by the Governor.

The major provisions of AB 1076 include:

- clarifies that "containers" under Section 11470(c) do not include real property or conveyances
- removes "things of value" used to facilitate an offense in Section 11470(f)
- amends numerous provisions to accommodate nonseizure cases (i.e., real property) and forfeiture pursuant to Section 11488.4(j) (nonjudicial)
- adds a one year statute of limitations for filing judicial forfeitures
- adds a "standing" requirement for non-defendants seeking return of property
- eliminates the "trial" burdens of proof in default actions

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ATTORNEY FEE CLAIMS AGAINST PROPERTY SUBJECT TO FORFEITURE  
(SECTION 11470)

Question: Does the post-seizure assignment of property to an attorney purportedly for payment of fees authorize a court to order return of the property to the attorney?

Answer: No. In Franchise Tax Board v. Superior Court (McKean) (1985) 168 Cal.App.3d 970, the Court of Appeal held that a post-seizure assignment of property to an attorney purportedly for fees is "presumptively fraudulent". Cases often cited by the defense in support of a claim for return of seized money (People v. Holland (1978) 23 Cal.3d 77; People v. Vermouth (1974) 42 Cal.App.3d 353; and Buker v. Superior Court (1972) 25 Cal.App.3d 1085) are inapposite because they do not consider or arise in the context of forfeiture. More on point is People v. Freeny (1974) 37 Cal.App.3d 20, wherein the Court of Appeal distinguished Buker and upheld the denial of a motion to return cash to a defendant which had been confiscated by the Franchise Tax Board pursuant to a jeopardy assessment. (See also, United States v. Brodson (7th Cir. 1957) 241 F.2d 107.)

Furthermore, the recent decision of the Fourth Circuit Court of Appeal in United States v. Harvey (4th Cir. 1987) \_\_\_\_ F.2d \_\_\_\_, which upheld a Sixth Amendment right to counsel of choice claim against criminal forfeiture under the federal RICO and CCE provisions is distinguishable. That case considered the effect of in personam, criminal forfeiture which could potentially effect a defendant's entire estate, including previously paid bona fide attorney's fees. In rem forfeiture, such as pursuant to Section 11470, like tax liens, does not pose the same constitutional dilemma. (See United States v. Long (3d Cir. 1981) 654 F.2d 911.)

At the very minimum, a defendant seeking return of forfeitable property in order to pay attorney's fees should be required to show that (1) the defendant does not have other resources to retain counsel (Harvey, Holland) and (2) that the proposed transfer to counsel is not a sham transaction (Harvey, Franchise Tax Board v. Superior Court (McKean)). Courts may inquire into these matters. (See United States v. One Parcel of Land (N.D.Ill. 1985) 614 F.Supp. 183; Roa v. Lodi Medical Group, Inc. (1985) 37 Cal.3d 920.)

DISPOSITION OF PROPERTY SUBJECT TO FORFEITURE SEIZED PURSUANT  
OR INCIDENT TO A SEARCH WARRANT (SECTION 11471)

Question: Does a magistrate who issues a search warrant have continuing jurisdiction over property seized exclusively for forfeiture either pursuant or incident to the execution of the warrant?

Answer: Section 11471 explicitly authorizes the seizure of property exclusively for purposes of forfeiture (i.e., property with no evidentiary value) incident to the execution of a search warrant. It is conceivable that an executing officer might seize property not mentioned in the warrant exclusively for purposes of forfeiture, not list the property in the search warrant inventory and return, but leave a (separate) receipt pursuant to Section 11488(c) and thereby "avoid" bringing the property within the jurisdiction of the magistrate who issued the search warrant.

However, we suggest that the better practice dictates that when property is seized even if exclusively for forfeiture reasons, either pursuant (if the property is named in the warrant) or incident (i.e., the property is seized while executing a warrant) to the execution of a search warrant, the property should be listed in the search warrant inventory and return. If forfeiture is contemplated, a separate receipt pursuant to Section 11488(c) should also be left. Thereafter, any actual disposition of the property contrary to the issuing magistrate's continuing custody, i.e., surrender to federal authorities for forfeiture pursuant to 21 United States Code, Section 881 or disposition pursuant to Section 11470, et seq., should be preceded by an ex parte release order from the magistrate because of the magistrate's continuing jurisdiction over the property (see Penal Code, Section 1536; People v. Icenogle (1985) 164 Cal.App.3d 620.)

Note, although federal authorities may be able to assert the supremacy of federal law, vis-a-vis the magistrate's jurisdiction under Penal Code section 1536 (Icenogle, supra), the state officer who made the return and allowed or fostered the "federal seizure" may be faced with a contempt citation by the magistrate.

#### SEIZURE OF "PROCEEDS" PLACED IN ACCOUNTS OF FINANCIAL INSTITUTIONS (SECTIONS 11471, 11488(a))

Question: Are cash "proceeds" as defined in Section 11470(f) placed in an account at a financial institution subject to seizure, and, if so, how can the seizure be affected?

Answer: Cash "proceeds" wherever located are clearly subject to forfeiture and seizure. This includes "proceeds" which have been converted to a "credit balance" in the account of a financial institution. (United States v. Banco Cafetero Panama (2d Cir. 1986) 797 F.2d 1154.) The question which necessarily arises is how to seize an inchoate "credit balance". The most direct, although most burdensome and disruptive, approach would be to seize all documents and records evidencing the "credit balance" thus, "capturing" the "credit" by taking from the institution any record of the credit balance. From a law

enforcement standpoint, the preferable approach is to obtain from the financial institution a draft (check) against the target account which is then negotiated and made a "credit" in a law enforcement controlled trust account.

Some financial institutions, however, object to the draft approach, arguing that there is really nothing to seize in the first place (no money) except for the "credit" and that they cannot, and ought not, be compelled to draw a draft against a customer's account. In response to the first argument, the financial institution should be reminded that if the "credit balance" is all that exists, then law enforcement is authorized to seize that "credit balance", i.e., all records, electronic or otherwise, related to that balance. In response to the second argument, the financial institution should be reminded that the Second Circuit in the Panama case, supra, noted that even the "bank's money" could be subject to forfeiture in addition to the "credit balance".

In many instances, law enforcement has sought to obtain account proceeds through a search warrant, commonly through a direction in the search warrant explicitly requiring the financial institution to draw a draft against the account. Strictly speaking, by the terms of Penal Code section 1524, a search warrant cannot command a financial institution to create a draft against an account in order to place the "credit balance" or "proceeds" (the money) in the custody of law enforcement.

As an alternative, it is suggested that law enforcement seek a seizure order based on a probable cause affidavit under authority of Section 11471 which provides: "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." (Emphasis added.) A suggested model seizure order and affidavit is attached to this update.

#### PROCEEDING AGAINST MULTIPLE ASSETS SEIZED IN CONNECTION WITH THE SAME OFFENSE (SECTION 11488.4(a))

Question: Can numerous items of property seized in connection with the same offense(s) be proceeded against in a single action?

Answer: Forfeiture pursuant to section 11470 is essentially an in rem action, i.e., People, as plaintiff, versus an item of property, as defendant. Multiple defendants may be joined in the same action when the cause of action against each defendant arises out of the same transaction (Code of Civil Procedure, Section 379). Accordingly, if the basis for forfeiture is

common (i.e., the same underlying criminal offense), multiple items of property may be joined in the same action.

DETERMINING VALUE OF MULTIPLE ITEMS OF PROPERTY (SECTION 11488.4(i) and (j))

Question: What is the proper manner of determining the value of multiple items of property for purposes of the value ceilings and floors of section 11488.4(i)(4) [cash in excess of \$25,000] and section 11488.4(j) [administrative forfeiture of property worth less than \$25,000]?

Answer: Although there is no clear statutory guide on fixing value for purposes of the value ceilings and floors of section 11488.4, the federal approach appears to offer an equitable and justifiable basis for determining value. Under the federal rule as adopted to section 11470, when multiple items of property are seized from an individual and are subject to forfeiture under the same subdivision of section 11470 on the same factual basis and legal theory, then the value should be cumulated to determine the applicability of the various value-related provisions.

Accordingly, if the proceeds in two separate bank accounts are each under \$25,000, but cumulatively over \$25,000, and both are subject to forfeiture under section 11470(f) as proceeds predicated on the same offense, then they could be cumulated in the same action and moved against pursuant to subdivision (i)(4) of section 11488.4.

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\_\_\_\_\_ COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT

IN RE PROPERTY SUBJECT TO )  
FORFEITURE PURSUANT TO HEALTH )  
AND SAFETY CODE SECTION 11470: )  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)

NO. \_\_\_\_\_  
  
AFFIDAVIT IN SUPPORT OF  
ORDER FOR SEIZURE (HEALTH  
AND SAFETY CODE, § 11471)

The undersigned being first duly sworn deposes and  
says:

Your affiant is a peace officer of the State of  
California, employed by \_\_\_\_\_ for  
\_\_\_\_\_ years.

The property described as and in the custody of:  
  
is subject to forfeiture pursuant to Health and Safety Code  
section 11470, in that said property is/was:

[Specify appropriate subdivision of § 11470  
and specific bases of forfeiture, e.g., used



1 to facilitate, and offense involved, e.g.,  
2 violation of Health and Safety Code section  
3 11351.]

4 Attached hereto and incorporated by reference herein is  
5 a Statement of Probable Cause setting forth the facts upon which  
6 your affiant believes the above-described property is subject to  
7 seizure and forfeiture pursuant to Health and Safety Code sections  
8 11470, et seq.

9

10

\_\_\_\_\_  
Affiant

11

12 Subscribed and sworn to before

13 me this \_\_\_\_ day of \_\_\_\_\_,

14 198\_\_.

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\_\_\_\_\_  
Judge of the \_\_\_\_\_ Court

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\_\_\_\_\_ COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT

IN RE PROPERTY SUBJECT TO  
FORFEITURE PURSUANT TO HEALTH  
AND SAFETY CODE SECTION 11470:

NO. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ORDER FOR SEIZURE OF  
PROPERTY SUBJECT TO  
FORFEITURE (HEALTH AND  
SAFETY CODE, § 11471)

Affidavit of \_\_\_\_\_, a peace  
officer of the State of California, employed by \_\_\_\_\_  
\_\_\_\_\_, having been made before me that he/she  
has reason to believe that property described as and in the  
custody of:

is subject to seizure and forfeiture pursuant to Health and Safety  
Code sections 11470, et seq., in that said property is/was:

And as I am satisfied that there is probable cause to believe that  
said property is subject to seizure and forfeiture pursuant to

1 Health and Safety Code section 11471,

2 IT IS HEREBY ORDERED:

3 1. Affiant, or any peace officer of the State of  
4 California, is directed to seize the within described property,  
5 leaving a copy of this order and a receipt for the property taken  
6 pursuant to Health and Safety Code section 11488(c), and to hold  
7 such property pending forfeiture pursuant to the provisions of  
8 sections 11470, et seq. or until further order of a court of  
9 competent jurisdiction;

10 2. Affiant, or any peace officer of the State of  
11 California, is directed to enter upon the premises of \_\_\_\_\_  
12 \_\_\_\_\_, as further described in the  
13 Affidavit in Support hereof, in the daytime (at any time in the  
14 day or night, good cause having been shown therefor) within ten  
15 (10) days of today's date in order to seize said property, good  
16 cause having been shown therefor;

17 3. The custodian of the within described property,  
18 \_\_\_\_\_, is directed to  
19 assist the peace officer executing this order to accomplish the  
20 seizure of the property by: \_\_\_\_\_  
21 \_\_\_\_\_  
22 \_\_\_\_\_

23  
24 \_\_\_\_\_ Judge of the \_\_\_\_\_ Court

25 Issued this \_\_\_\_\_ day of

26 \_\_\_\_\_, 198\_\_\_\_, at

27 \_\_\_\_\_ .M.

Name of Affiant: \_\_\_\_\_

California  
Department of Justice  
DIVISION OF  
LAW ENFORCEMENT  
G. W. Clemons, Director



# INFORMATION BULLETIN

**Subject:**

1987 DOJ Asset Forfeiture Manual, Update #3

**No.**

A-87-17-DLE

**Date:**

December 18, 1987

**For further information contact:**

Michael A. Barnes at  
(916) 739-2665

TO: DISTRICT ATTORNEYS, CHIEFS OF POLICE AND SHERIFFS


The Department of Justice has completed the research for an "Asset Forfeiture Update", No. 3, which is attached as part of this bulletin.

Updates No. 1 and 2 have been previously distributed. If you need additional copies of the 1987 DOJ Asset Forfeiture Manual or previous updates, contact the local field office of the Bureau of Narcotic Enforcement.

Please contact our Asset Forfeiture Coordinator, Special Agent In Charge Michael A. Barnes, at (916) 739-2665 if you have any questions, suggestions or recommendations regarding asset forfeiture.

Very truly yours,

JOHN K. VAN DE KAMP  
Attorney General

  
CHARLES E. CASEY, Assistant Director  
Investigation and Enforcement Branch

tw  
Attachment

DEPARTMENT OF JUSTICE  
ASSET FORFEITURE UPDATE



Prepared by Gary W. Schons  
Deputy Attorney General  
Special Prosecutions Unit  
(619) 237-7499

Bureau of Narcotic Enforcement  
Financial Investigation Program Coordinator  
Michael A. Barnes  
Special Agent in Charge  
(916) 739-2665

No. 3

December 1987

NEW CLEAN-UP LEGISLATION

An Analysis of Changes Made by AB 1076  
Stats. 1987, Ch. 924, Effective Sept. 23, 1987

Note: This bill was an urgency measure effective when signed by the Governor on September 23, 1987. Its provisions, all of which are effectively technical and certainly procedural, can be applied to cases which arose before but are pending as of September 23, 1987. (See Asset Forfeiture Update, No. 1, May 5, 1987, pg. 1.)

- Section 11470(c) is amended to preclude forfeiture of real property, boats, airplanes or vehicles on the basis that such property constitutes a "container". CLARIFICATION
- Section 11470(e) is amended to conform to schedule differences between cocaine base and cocaine. TECHNICAL
- Section 11470(f) is amended to eliminate "other things of value" as being subject to forfeiture on the grounds that it is used to facilitate a violation; "other things of value" may be forfeited on the "exchange" or "proceeds" theories. CLARIFICATION
- Section 11470(f) is amended to allow the actual seizure or the filing of a petition to be used as the measuring point for the "within five years" of the offense requirement. TECHNICAL EXPLANATION: This and similar amendments appear in numerous sections of the forfeiture provisions as amended by AB 1076. These amendments are designed to address those situations in which the property is not actually seized although it is filed against. Actual seizure might not occur either by design, as in the case of real property where a lis pendens is filed, or unintentionally, as in the case of a car or other conveyance which is at large and cannot be located.
- Section 11470(h) is amended to conform operation of the "special vesting rule" to the different burden of proof standards/conviction requirements of section 11488.4(i). TECHNICAL

- Section 11471.5 is added to the Health and Safety Code and requires notice to the Franchise Tax Board upon a seizure in excess of \$5,000 made pursuant to section 11471. TECHNICAL EXPLANATION: Conforms the seizure/notice provisions of section 11471 to those of section 11488.
- Section 11473.3 is amended to authorize the vesting of title in and use of certain forfeited assets by a law enforcement agency when forfeiture is accomplished through non-judicial means (section 11488.4(j)). CLARIFICATION
- Section 11488(a) is amended to authorize seizure of an asset subject to forfeiture under subdivisions (a)-(f) of section 11470. CLARIFICATION
- Section 11488(a) is amended to require notice to the FTB upon a seizure in excess of \$5,000. TECHNICAL
- Section 11488(b) is amended to exempt from the Los Angeles Police Department/Los Angeles Sheriff's Office Superior Court jurisdiction requirement assets which will be forfeited by way of non-judicial forfeiture (section 11488.4(j)). TECHNICAL
- Section 11488.4(a) is amended to exclude from the requirement of filing a petition those cases in which forfeiture will be pursued by non-judicial means (section 11488.4(j)). CLARIFICATION
- Section 11488.4(a) is amended to authorize the filing of a petition for any asset mentioned in section 11470, except those subject to "automatic" forfeiture, e.g., contraband. CLARIFICATION
- Section 11488.4(a) is amended to require that a petition for forfeiture be filed within one (1) year of a seizure or the filing of a lis pendens. CLARIFICATION
- Section 11488.4(g) is amended to permit a person, other than a defendant, to move for return of property pursuant to Penal Code sections 1538.5, 1539 or 1540, if the person can demonstrate standing based upon a pre-seizure assignment or interest. TECHNICAL
- Section 11488.4(h) is amended to require that a defendant's motion for return of property for lack of probable cause to believe the property is subject to forfeiture (a "Ford" hearing) be brought pursuant to Penal Code section 1538.5. TECHNICAL EXPLANATION: This amendment eliminates the ability of a defendant to bring two "suppression/return" motions, one under section 11488.4(h) - a "Ford" hearing, and a separate 1538.5. Now the hearings are unified under the section 1538.5 procedures.

- Section 11488.4(i)(1) is amended to include section 11470(g) assets (real property used to facilitate) within the scope of the subsection. CLARIFICATION
- Section 11488.4(i)(1) is amended to make it clear that the "beyond a reasonable doubt" standard applies only if the claim is contested. CLARIFICATION Note: Same provision is added to (i)(2).
- Section 11488.4(i)(2) is amended to specifically exclude from its provisions (i.e., proof beyond a reasonable doubt) cash, negotiable instruments and other equivalents of \$25,000 and more. CLARIFICATION NOTE: This amendment addressed a gross ambiguity in the law concerning the burden of proof for cash under \$25,000 (which is subject to proof beyond a reasonable doubt).
- Section 11488.4(i)(3) is amended to make it clear that the "criminal conviction requirement" is merely a condition precedent to a judgment of forfeiture and that there is no requirement that the asset(s) subject to forfeiture be linked to the crime for which a conviction is obtained. TECHNICAL (See United States v. \$4,255,000 (11th Cir. 1985) 762 F.2d 895)
- Section 11488.4(j) is amended to eliminate the requirement that the prosecutor provide a written decision within thirty (30) days of a claim to the seizing agency and the claimant. Instead the prosecutor is required to provide the declaration of forfeiture to any person who is provided a receipt at time of seizure or personally served with notice of the proceedings. TECHNICAL
- Section 11488.4(j) is amended to provide that if a claim is filed against a non-judicial forfeiture, it will serve as a claim in the subsequent judicial proceeding and there is no need for additional notice in the judicial proceedings. TECHNICAL NOTE: Because the claim in the non-judicial proceeding becomes the claim in the judicial proceeding, the directions for filing a claim which the prosecutor is required to provide in the notice should include a requirement that the claim be verified. It is also suggested that prosecutors direct non-judicial claims be served only on the prosecutor and not filed with the court clerk because there will be no case on file at that point. After a claim is lodged with the prosecutor, the prosecutor can file it with the court clerk at the same time the judicial petition is filed.

- Section 11488.5(a) is amended to clarify that the thirty-days-after-first-publication-of-notice time limit within which to file a claim does not apply to a person served by mail with actual notice. Further, the subsection is amended to provide that the claim shall be "served" on the prosecutor, not simply "given" to the prosecutor.  
CLARIFICATION.
- Section 11488.5(b)(1) is amended to eliminate the requirement that the prosecution satisfy the proof standards and conviction condition of section 11488.4(i) in order to obtain judicial forfeiture when no claim is filed. Instead, the prosecution is required only to establish a prima facie case in support of the petition. TECHNICAL NOTE: This amendment eliminates both the burden of proof and criminal conviction conditions when the judicial petition is unopposed.
- Section 11488.5(d)(1) is amended to provide that the burden of proof as to an "innocent owner" is the same as that for ultimate forfeiture as established in section 11488.4(i)(1), (2) [beyond a reasonable doubt] and (i)(4) [clear and convincing evidence]. TECHNICAL
- Section 11488.5(f) is amended to include full law enforcement title and use pursuant to section 11473.3 as an exception to the distribution formula of section 11489.  
TECHNICAL
- Section 11489(d) is amended to eliminate the requirement that law enforcement agencies shall file a claim with the Superior Court when seeking a share of a forfeiture distribution. TECHNICAL

6TH DCA UPHOLDS CITY OF SAN JOSE -  
DEA SEIZURE-ADOPTION OF ASSETS  
OBTAINED BY SEARCH WARRANT

City of San Jose narcotics detectives had, in a number of cases, obtained state search warrants, seized assets and turned the assets over to DEA for forfeiture (adoption) without obtaining a release of the assets from magistrates who issued the warrants (PC section 1536). Defense attorneys sought return of the assets to pay fees. When advised the assets were not available because in DEA hands, the Superior Court ordered the City to tender like sums to the court.

On writ to the Court of Appeal held: Icenogle (164 Cal.App.3d 620) controls. Court has no jurisdiction over assets not in the court's custody and cannot fashion a "civil" remedy. (The fungibility of money does not matter.) However, court might have contempt power to punish willful and illegal violation of Penal Code section 1536, but Court of Appeal suggests the "adoption" may not be illegal.



Opinion ordered published October 19, 1987, 87 D.A.R. 7986.

SAN FRANCISCO DISTRICT ATTORNEY AND  
ATTORNEY GENERAL OBTAIN ALTERNATIVE WRIT FROM  
COURT OF APPEAL ON ATTORNEY FEE CLAIMS

In four separate cases, the San Francisco District Attorney filed narcotics charges and sought judicial forfeiture of cash assets ranging from \$1,500 to \$90,000. Each defendant assigned the seized funds to counsel as fees. Counsel and defendants successfully sought return of the money from the Municipal Court prior to preliminary hearing. On consolidated writ, the Superior Court upheld these orders as affecting the right to employ counsel of choice.

The District Attorney and Attorney General have filed a petition for writ of mandate with the First District Court of Appeal seeking to reverse the Superior Court. The petition is backed by a 50+ page brief. The Court of Appeal has issued an alternative writ and ordered a return from the defendants. A copy of the brief is available upon request. (Gary Schons, Deputy Attorney General [619] 237-7499.)

DEPARTMENT OF JUSTICE  
ASSET FORFEITURE UPDATE



Prepared by Gary W. Schons  
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Financial Investigation Program Coordinator  
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No. 1

May 5, 1987

APPLICATION OF CHANGES IN §§ 11470, et seq. MADE BY AB 4145 TO PENDING  
FORFEITURES AND PRE-1/1/87 SEIZURES (§ 11470)

Question: Are the procedural changes in §§ 11470, et seq., made by AB 4145 applicable to pending forfeiture actions and property seized before the effective date of the law, January 1, 1987?

Answer: As to procedural changes in the law, i.e., how forfeitures are accomplished, as opposed to substantive changes, i.e., what is subject to forfeiture, there is no constitutional, ex post facto prohibition against applying these changes to actions which arose prior to the effective date of the law. Indeed, the Ninth Circuit ruled that procedural changes in the federal forfeiture law made by the 1984 Comprehensive Crime Control Act could be applied to the forfeiture of property seized before the 1984 Comprehensive Crime Control Act became effective. (United States v. Crozier (9th Cir. 1985) 777 F.2d 1376, 1382-1383.)

Further, it is well established that statutes affecting matters of procedure are applicable to actions which are pending when the statute becomes effective. (Romero v. Hern (1969) 276 Cal.App.2d 787, 791-792.) Moreover, such procedural changes do not even raise the issue of "retroactivity". (Olson v. Hickman (1972) 25 Cal.App.3d 920, 922.) A statute is said to have "retroactive effect" only "when it is construed so as to relate back to a previous transaction and give the transaction a legal effect different from that which prevailed under the law when it occurred." (Industrial Indem. Co. v. Teachers Retirement Board (1978) 86 Cal.App.3d 92, 97.) The procedural changes affected by AB 4145 took effect on January 1, 1987, and prescribe how any then pending forfeiture is to be conducted. These changes did not give the pre-January 1, 1987 transaction, i.e., the criminal use of the property, a different legal effect, i.e., subjecting the property to forfeiture. Therefore, these procedural changes may be applied to pending forfeiture actions and property seized prior to January 1, 1987. (See People v. Sobiek (1973) 30 Cal.App.3d 458, 472-473.)

The result reached in Franchise Tax Board v. Superior Court (1985) 168 Cal.App.3d 970, does not alter this conclusion. In Franchise Tax Board, the Court held that a change in the definition of forfeitable property which occurred during the pendency of a forfeiture proceeding would not be applied "retroactively" to the proceedings. It is clear that this particular change in the law was substantive, i.e., it changed what was subject to forfeiture, and therefore, could not be applied "retroactively".

## APPLICATION OF MIRANDA TO ASSET FORFEITURE RELATED INVESTIGATIONS (§ 11470)

Question: Do the admonishment requirements of Miranda apply to questioning conducted solely for the purpose of gaining information related to a prospective or existing forfeiture action?

Answer: Strictly speaking, Miranda does not apply. However, good practice suggests the Miranda admonishments be given and invocations honored in forfeiture-related investigations.

Forfeiture proceedings, although civil actions, are considered to be quasi-criminal. Therefore, Fourth Amendment protections, including the Exclusionary Rule apply. Moreover, courts will uphold the assertion of the Fifth Amendment privilege in forfeiture proceedings. (One 1958 Plymouth Sedan v. Pennsylvania (1965) 360 U.S. 393, 396 (4th Amendment); United States v. U.S. Currency (6th Cir. 1980) 626 F.2d 11, 16 (5th Amendment).)

On the other hand, no court has held that there is a right to appointed counsel in an in rem, civil forfeiture proceeding and no case could be located in which un-Mirandized statements were excluded in forfeiture proceedings.

However, considering that custody is a necessary predicate to the Miranda admonishment, it is highly probable that any situation which might call for a Miranda admonishment would involve a suggested criminal offender. Accordingly, any violation of Miranda might have an adverse impact on a related criminal prosecution. Accordingly, the better practice would be to abide by Miranda even if the inquiry is solely for forfeiture purposes.

## FILING FEES FOR FORFEITURE COMPLAINTS (§ 11488.4(a))

Question: Are the District Attorney and Attorney General required to pay court filing fees when filing a forfeiture petition (a civil action)?

Answer: No. Government Code § 6103 provides that the state and its political subdivisions shall not be required to pay a fee for the filing of any document in any court.

## STATUTE OF LIMITATIONS FOR FILING A FORFEITURE COMPLAINT (§ 11489.4(a))

Question: What is the time limit within which a petition for forfeiture must be filed?

Answer: A petition for forfeiture must be filed within one (1) year "after the cause of action shall have accrued" (Code Civ. Proc. §§ 312, 340(2)).

Arguably an action for forfeiture accrues when the violation of law is committed and one court has so indicated. (People v. One 1956 Chevrolet (1958) 157 Cal.App.2d 301.) However, it is obvious that such a rule, if strictly applied, would work an injustice in many cases. The courts could probably be persuaded that the cause of action for forfeiture does not "accrue" until the property is seized or there is some action, i.e., the filing of a lis pendens, to restrain the possession or transfer of the property. At worst, the action should not be held to accrue until the authorities have knowledge that the property is subject to forfeiture.

There has been some suggestion that § 11488.2 requires that a petition be filed within fifteen (15) days of seizure. This is a misreading of the statute. Section 11488.2 under certain prescribed circumstances directs the seizing law enforcement agency (not the prosecutor) to return seized property within fifteen (15) days of seizure unless (1) the property is held as evidence, (2) the Franchise Tax Board has issued a notice to withhold, or (3) the law enforcement agency (not the prosecutor) has "initiated forfeiture proceedings". A law enforcement agency (as opposed to a prosecutor) may "initiate forfeiture proceedings" by seizing property for forfeiture pursuant to § 11471 and/or providing a receipt pursuant to § 11488(c).

#### HEARING FOR RETURN OF PROPERTY (§ 11488.4(h))

Question: What is the interplay between the motion for return of property pursuant to § 11488.4(h) and a motion for return or suppression pursuant to Penal Code section 1538.5?

Answer: § 11488.4(h) authorizes a defendant to make a motion for return of property at the preliminary hearing or subsequent thereto on the grounds that there is not probable cause to believe the property is subject to forfeiture. As the court pointed out in People v. Ford (1985) 163 Cal.App.3d 736, 742, a determination under this section does not constitute a ruling that the property, as evidence, must be suppressed. The ultimate issue at the two hearings is not the same. The purpose of the § 11488.4(h) hearing is to determine if there is probable cause to believe the property is subject to forfeiture while the § 1538.5 hearing is designed to test the constitutional reasonableness of the seizure and underlying search.

Indeed, property may have been illegally seized, but still be subject to forfeiture if there is other untainted evidence to support forfeiture. (United States v. One 1978 Mercedes Benz (5th Cir. 1983) 711 F.2d 1297, 1303; United States v. One Harley Davidson Motorcycle (9th Cir. 1974) 508 F.2d 351, 352.)

However, there is the possibility of overlap. The Fourth Amendment and the Exclusionary Rule apply in forfeiture proceedings. (One 1958 Plymouth Sedan v. Pennsylvania, supra, (1965) 360 U.S. 393, 396.) Therefore, in an effort to show that there is not probable cause for forfeiture, a defendant may raise a traditional (§ 1538.5-type) Fourth Amendment attack on evidence which would be offered in support of such a probable cause showing by the prosecution. In such a case "§ 1538.5 issues" may be litigated in the context of a § 11488.4(h) hearing, and vice versa, probably with collateral estoppel effects. Further, such overlap may permit a defendant to put on two full evidentiary hearings on search and seizure issues despite the recent change to subsection (i) of § 1538.5.

It should be asserted at a § 11488.4(h) hearing that the defendant is barred from presenting evidence in an effort to show the asset was lawfully acquired, i.e., an affirmative defense. According to the statute, the only issue at such a hearing is whether there is evidence to support probable cause to believe the asset is subject to forfeiture.

Finally, although the statute is somewhat ambiguous on this point, it should be argued that the granting of a motion to suppress and for return of property pursuant to Penal Code § 1538.5, which motion is specifically reserved to the defendant by § 11488.4(g), does not overcome the People's right to retain custody of property and to maintain a forfeiture action for such property. Penal Code § 1538.5(e) specifically provides that upon granting a motion to suppress or return the property shall be returned unless the property is otherwise subject to lawful detention, i.e., pursuant to § 11470, et seq.

#### BURDEN OF PROOF FOR JUDICIAL FORFEITURE OF CASH OF LESS THAN \$25,000 ( § 11488.4(i)(2),(4) )

Question: What is the burden of proof for judicial forfeitures of less than \$25,000?

Answer: The statute is ambiguous. Subsection (i)(3) of section 1488.4, makes all § 11470(f) assets, except cash, subject to the beyond a reasonable doubt standard (and a conviction is a prerequisite). Subsection (i)(4) makes cash of a value not less than \$25,000 subject to the clear and convincing standard (and no criminal conviction is required). There is an obvious ambiguity or gap in the statute. The Legislature in enacting AB 4145 intended that judicial forfeitures of cash of a value less than \$25,000 should be subject to the beyond a reasonable doubt standard (and after conviction) on the basis that such smaller amounts of money are not clearly indicative of major narcotics violations. The AB 4145 clean-up legislation, AB 1076, addresses this problem.

## REQUIREMENTS FOR ADMINISTRATIVE FORFEITURE (§ 11488.4(j))

Question: Do the prerequisites to judicial forfeiture in § 11488.4(i), such as a conviction, apply to forfeitures conducted pursuant to the administrative forfeiture provisions?

Answer: No. It is our position that the means of forfeiture set out in subdivision (j) (administrative) have equal "dignity" with and are independent of the means of forfeiture set out in subdivision (i) (judicial). Accordingly, the only requirements for administrative forfeiture are those specifically set out in subsection (j).

## DISPOSITION OF ADMINISTRATIVELY FORFEITED PROPERTY (§ 11488.4(j)(5), 11489)

Question: Who is responsible for the disposition and distribution of property forfeited pursuant to the administrative forfeiture provisions?

Answer: § 11488.4(j)(5) provides that the prosecutor shall prepare a written declaration of forfeiture ". . . and dispose of the property in accordance with Section 11489." The passage directs the District Attorney to dispose of the property and there is nothing to the contrary in section 11489.

However, the Department of Justice Asset Forfeiture Manual suggests that actual sale (if required) and distribution be handled by the appropriate County administrative office (See Appendix VII, NJF-10). This is a matter which should be worked out between the District Attorney and County Administrative Office.

## COSTS AND ATTORNEY FEES TO THE PREVAILING PARTY IN A FORFEITURE ACTION (§ 11488.5(c))

Question: Are claimants who prevail in a forfeiture action entitled to costs and attorneys fees?

Answer: As a general matter, the "prevailing party" in any civil action is entitled to recover "costs" (defined in Code Civ. Proc. § 1033.5). Code of Civil Procedure section 1032 provides:

"When any party recovers other than monetary relief and in situations other than as specified [elsewhere in the section - It is our view that forfeiture actions are "situations other than as specified"], the prevailing party shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not. . . ."

Accordingly, either the petitioner or the claimant, whoever prevails, may be entitled to costs as forfeiture actions are clearly civil cases. It seems that in the case of forfeiture actions the award of costs is discretionary with the court (this is contrary to the general rule). Thus, the district attorney who does not prevail might successfully argue against having to pay costs, e.g., a good faith or close case and the claimant is a financial institution.

To be sure, the state and counties are, generally speaking, liable for "costs" (Code Civ. Proc. § 1028, 1029) and there is precedent for an award of costs to a claimant in a forfeiture action (see People v. One 1957 Ford 2-Door Sedan (1958) 160 Cal.App.2d 797, 803.)

Claimants are not entitled to attorneys' fees which are awarded only in extraordinary circumstances or where provided for by statute or agreement (Code Civ. Proc. § 1021.5).