

Senate Bill 443

Civil Asset Forfeiture Reforms

Senator Holly J. Mitchell

Principal Coauthors: Assm Hadley, Assm Cristina Garcia, and Senator Leno
Coauthors: Senator Jackson & Senator Anderson

SB 443 will rein in forfeiture abuses by requiring that before a person's cash or property can be permanently forfeited and dispersed, conviction of a related crime is necessary

BACKGROUND

At the height of the drug war of the 1980s, legislatures across the country took action to allow state and federal law enforcement officers to take property and cash from citizens without having to prove the person guilty of a crime. Since that time, billions of dollars in cash, cars, and homes have been taken by law enforcement officials through the 'civil asset forfeiture' process, revealing a pattern of abuses. There is a national bipartisan call for serious reform—even abolition—of this practice.

About 15 years ago, in an effort to cut down on civil forfeiture abuses, CA passed laws to require that seized assets be returned to the owner unless convicted of a crime.

Since that time the number of civil asset forfeiture cases initiated by or involving California law enforcement agencies, but transferred to federal control has tripled, while state cases have remained flat. This is evidence of local state law enforcement taking advantage of a gaping federal loophole that allows the forfeiture of property without a conviction.

ISSUE

1) Fundamental fairness and protection of property rights

Problem: California asset forfeiture laws provide superior property rights protections, evidentiary standards, and protection of guiltless spouses and family members, as compared with federal law, which does not require that a person be convicted or even charged with a crime prior to asset forfeiture. However, through equitable sharing, state and local law enforcement agencies are permitted to circumvent California laws, thus depriving Californians of the rights afforded to them by the State's Constitution and laws.

Solution: This bill will keep more cases in state courts,

and will require that in order for local and state law enforcement agencies to receive forfeiture funds through joint investigations and task forces there must be a conviction in an underlying criminal action. Further, this bill would strengthen California's asset forfeiture laws by requiring a conviction as a precondition to forfeitures of cash and property; and by enhancing reporting requirements.

2) Diversion of funds from the state General Fund and local justice programs to the federal government.

Problem: Under federal adoption, the federal government takes 20% of the value of the seized assets and rewards the transferring state or local law enforcement agency with 80%.

Solution: This bill will reduce the number of "adoptions" by federal authorities, keeping the cases in the state courts. This bill will require that any forfeiture proceeds from forfeitures under state law be distributed under CA state law to the sole benefit of CA.

NATIONAL BIPARTISAN CALL FOR REFORM

A national bipartisan consensus has emerged for an end to so-called "equitable sharing" between federal and local law enforcement agencies. On January 9, 2015, the Republican chairs of US Senate and House Judiciary Committees wrote US Attorney General Eric Holder, asking that the US Department of Justice (DOJ) end the practice. They wrote that, "[w]e are concerned that these seizures might circumvent state forfeiture restrictions, create improper incentives on the part of state and local law enforcement, and unnecessarily burden our federal authorities."

A Washington Post investigation, "Stop & Seize," found that since 2001, police have made cash seizures worth more than \$2.5 billion from motorists and others without first obtaining search warrants or indictments. The Post further discovered that in 80% of such cases owners were never even charged with a crime, let alone convicted of one!

A recent editorial by Reagan era US DOJ officials noted:

“As two people who were heavily involved in the creation of the asset forfeiture initiative at the Justice Department in the 1980s, we find it particularly painful to watch as the heavy hand of government goes amok. The program began with good intentions, but now, having failed in both purpose and execution, it should be abolished.”

Many groups who support reform efforts note that low-income, minority and immigrant populations are often targeted for this abuse. They are often unfairly profiled by police and lack the resources to fight back.

Recently the *Black Lives Matter* movement identified eliminating “Policing for Profit” as a pillar in the effort to establish a more equitable justice system.

CONCLUSION

California law enforcement should be funded adequately and appropriately- which should not include forfeiting property from innocent people.

SB 443 will reduce abuse of the asset forfeiture process by first requiring a conviction before the permanent taking of property. Further, it will protect guiltless spouses and family members from loss of property.

SUPPORT

- American Civil Liberties Union (co-sponsor)
- Drug Policy Alliance (co-sponsor)
- Institute for Justice (co-sponsor)
- Ella Baker Center for Human Rights (co-sponsor)
- Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) (co-sponsor)
- Service Employees International Union (SEIU)
- United Farm Workers (UFW)
- Western Center on Law and Poverty
- California State Conference of the NAACP
- California Public Defenders Association
- Immigrant Legal Resource Center
- Americans for Tax Reform
- CA Assoc of Black Lawyers
- Law Enforcement Against Prohibition (LEAP)
- San Diego La Raza Lawyers Assoc

- A New PATH
- Alpha Project
- Americans for Safe Access
- Amity Foundation
- Asian American Drug Abuse Program
- Asian Americans Advancing Justice
- Broken No More
- California Association of Alcohol and Drug Program Executives, Inc.
- California Partnership
- California Prison Focus
- Californians United for a Responsible Budget
- Courage Campaign
- Dignity and Power Now
- FACTS Education Fund
- Friends Committee on Legislation California
- Further The Work
- Inland Empire Immigrant Youth Coalition
- Justice Fellowship
- Justice Not Jails
- Lawyers Committee for Civil Rights
- Legal Services for Prisoners with Children
- Los Angeles Regional Reentry Partnership
- National Organization for the Reform of Marijuana Laws (NORML)
- San Diego Organizing Project
- Tarzana Treatment Centers, Inc.
- Westward Liberty
- William C. Velásquez Institute
- San Diego Criminal Defense Bar
- ACT for Women and Girls
- The San Diego LGBT Center
- Center for Living and Learning
- Partnership for the Advancement of New Americans

OPPOSITION

- CA District Attorneys Assoc
- CA Police Chiefs Assoc
- CA Sheriffs Assoc
- CA State Lodge Fraternal Order of Police
- LA County Professional Peace Officers Assoc
- Long Beach Police Officers Assoc
- Sacramento County Deputy Sheriffs' Assoc
- San Bernardino Sheriff John McMahon
- Ventura County District Attorney
- Los Angeles County District Attorney
- San Diego County District Attorney

- Alameda County District Attorney
- Alpine County District Attorney
- Amador County District Attorney
- Butte County District Attorney
- Calaveras County District Attorney
- Colusa County District Attorney
- Contra Costa County District Attorney
- Del Norte County District Attorney
- El Dorado County District Attorney
- Fresno County District Attorney
- Glenn County District Attorney
- Humboldt County District Attorney
- Imperial County District Attorney
- Inyo County District Attorney
- Kern County District Attorney
- Kings County District Attorney
- Lake County District Attorney
- Lassen County District Attorney
- Madera County District Attorney
- Marin County District Attorney
- Mariposa County District Attorney
- Mendocino County District Attorney
- Merced County District Attorney
- Mono County District Attorney
- Monterey County District Attorney
- Napa County District Attorney
- Nevada County District Attorney
- Orange County District Attorney
- Placer County District Attorney
- Plumas County District Attorney
- Riverside County District Attorney
- Sacramento County District Attorney
- San Benito County District Attorney
- San Bernardino County District Attorney
- San Joaquin County District Attorney
- San Luis Obispo County District Attorney
- San Mateo County District Attorney
- Santa Barbara County District Attorney
- Santa Clara County District Attorney
- Santa Cruz County District Attorney
- Shasta County District Attorney
- Sierra County District Attorney
- Siskiyou County District Attorney
- Solano County District Attorney
- Sonoma County District Attorney
- Stanislaus County District Attorney
- Sutter County District Attorney
- Tehama County District Attorney
- Trinity County District Attorney

- Tulare County District Attorney
- Tuolumne County District Attorney
- Yolo County District Attorney
- Yuba County District Attorney

FOR MORE INFORMATION

Contact: Elise Flynn Gyore at (916) 651-4030
elise.gyore@sen.ca.gov

