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
- National Federation of Independent Business (NFIB)
- Howard Jarvis Taxpayers Association
- California Public Defenders Association
- Immigrant Legal Resource Center
- Americans for Tax Reform

**OPPOSITION**

- 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
- San Diego County Apartment Association

Office of Senator Holly Mitchell • SB 443 Fact Sheet • 5/25/2016
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