



General Assembly

Amendment

January Session, 2017

LCO No. 7422



Offered by:

REP. LESSER, 100th Dist.
REP. SIMANSKI, 62nd Dist.
SEN. WINFIELD, 10th Dist.
SEN. MARTIN, 31st Dist.

To: Subst. House Bill No. 7146

File No. 192

Cal. No. 161

"AN ACT REQUIRING A CRIMINAL CONVICTION FOR CERTAIN OFFENSES BEFORE ASSETS SEIZED IN A LAWFUL ARREST OF LAWFUL SEARCH MAY BE FORFEITED IN A CIVIL PROCEEDING."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 54-33g of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2017*):

5 (a) When any property believed to be possessed, controlled,
6 designed or intended for use or which is or has been used or which
7 may be used as a means of committing any criminal offense, or which
8 constitutes the proceeds of the commission of any criminal offense,
9 except a violation of section 21a-267, 21a-277, 21a-278 or 21a-279, has
10 been seized as a result of a lawful arrest or a lawful search that results
11 in an arrest, which the state claims to be a nuisance and desires to have

12 destroyed or disposed of in accordance with the provisions of this
13 section, the Chief State's Attorney or a deputy chief state's attorney,
14 state's attorney or assistant or deputy assistant state's attorney may
15 petition the court not later than ninety days after the seizure, in the
16 nature of a proceeding in rem, to order forfeiture of such property.
17 Such proceeding shall be deemed a civil suit in equity, in which the
18 state shall have the burden of proving all material facts by clear and
19 convincing evidence. The court shall identify the owner of such
20 property and any other person as appears to have an interest in such
21 property, and order the state to give notice to such owner and any
22 interested person by certified or registered mail. [The court shall
23 promptly, but not less than two weeks after such notice, hold a hearing
24 on the petition.]

25 (b) The court shall hold a hearing on the petition filed pursuant to
26 subsection (a) of this section not more than two weeks after the
27 criminal proceeding that occurred as a result of the arrest has been
28 nolled, dismissed or otherwise disposed of. The court shall deny the
29 petition and return the property to the owner if the criminal
30 proceeding does not result in (1) a plea of guilty or nolo contendere to
31 any offense charged in the same criminal information, (2) a guilty
32 verdict after trial to a forfeiture-eligible offense for which the property
33 was possessed, controlled, designed or intended for use, or which was
34 or had been used as a means of committing such offense, or which
35 constitutes the proceeds of the commission of such offense, or (3) a
36 dismissal resulting from the completion of a pretrial diversionary
37 program.

38 [(b)] (c) If the court finds the allegations made in such petition to be
39 true and that the property has been possessed, controlled or designed
40 for use, or is or has been or is intended to be used, with intent to
41 violate or in violation of any of the criminal laws of this state, or
42 constitutes the proceeds of a violation of any of the criminal laws of
43 this state, except a violation of section 21a-267, 21a-277, 21a-278 or 21a-
44 279, and that a plea of guilty or nolo contendere to such offense or

45 another charge in the same criminal information, or a guilty verdict
46 after trial for such forfeiture-eligible offense, or a dismissal resulting
47 from the completion of a pretrial diversionary program has been
48 entered, the court shall render judgment that such property is a
49 nuisance and order the property to be destroyed or disposed of to a
50 charitable or educational institution or to a governmental agency or
51 institution, except that if any such property is subject to a bona fide
52 mortgage, assignment of lease or rent, lien or security interest, such
53 property shall not be so destroyed or disposed of in violation of the
54 rights of the holder of such mortgage, assignment of lease or rent, lien
55 or security interest.

56 [(c)] (d) (1) When the condemned property is money (A) on and
57 after October 1, 2014, and prior to July 1, 2016, the court shall order
58 that such money be distributed as follows: (i) Seventy per cent shall be
59 allocated to the law enforcement agency, including the Department of
60 Emergency Services and Public Protection and local police
61 departments, responsible for investigating the criminal violation and
62 seizing the money, and such local police departments shall use such
63 money for the detection, investigation, apprehension and prosecution
64 of persons for the violation of criminal laws, and any money allocated
65 to the Department of Emergency Services and Public Protection shall
66 be deposited in the General Fund; (ii) twenty per cent shall be
67 deposited in the Criminal Injuries Compensation Fund established in
68 section 54-215; and (iii) ten per cent shall be allocated to the Division of
69 Criminal Justice and deposited in the General Fund; and (B) on and
70 after July 1, 2016, such money shall be deposited in the General Fund.

71 (2) When the condemned property is a valuable prize, which is
72 subject to a bona fide mortgage, assignment of lease or rent, lien or
73 security interest, such property shall remain subject to such mortgage,
74 assignment of lease or rent, lien or security interest.

75 [(d)] (e) When any property or valuable prize has been declared a
76 nuisance and condemned under this section, the court may also order
77 that such property be sold in accordance with procedures approved by

78 the Commissioner of Administrative Services. Proceeds of such sale
79 shall first be allocated toward the balance of any mortgage, assignment
80 of lease or rent, lien or security interest, and the remaining proceeds of
81 such sale, if any, shall be allocated in accordance with subparagraphs
82 (A) to (C), inclusive, of subdivision (1) of subsection [(c)] (d) of this
83 section. In any criminal prosecution, secondary evidence of property
84 condemned and destroyed pursuant to this section shall be admissible
85 against the defendant to the same extent as such evidence would have
86 been admissible had the property not been condemned and destroyed.

87 [(e)] (f) If the court finds the allegations not to be true, irrespective
88 of the findings in the criminal proceeding, or that the property has not
89 been kept with intent to violate or in violation of the criminal laws of
90 this state, or that the property does not constitute the proceeds of a
91 violation of the criminal laws of this state, or that the property is the
92 property of a person who is not a defendant, the court shall order the
93 property returned to the owner forthwith and the party in possession
94 of such property pending such determination shall be responsible and
95 personally liable for such property from the time of seizure and shall
96 immediately comply with such order.

97 [(f)] (g) Failure of the state to proceed against such property in
98 accordance with the provisions of this section shall not prevent the use
99 of such property as evidence in any criminal trial.

100 Sec. 2. Section 54-36h of the general statutes is repealed and the
101 following is substituted in lieu thereof (*Effective October 1, 2017*):

102 (a) The following property shall be subject to forfeiture to the state
103 pursuant to subsection (b) of this section:

104 (1) All moneys used, or intended for use, in the procurement,
105 manufacture, compounding, processing, delivery or distribution of any
106 controlled substance, as defined in subdivision (9) of section 21a-240;

107 (2) All property constituting the proceeds obtained, directly or
108 indirectly, from any sale or exchange of any such controlled substance

109 in violation of section 21a-277 or 21a-278;

110 (3) All property derived from the proceeds obtained, directly or
111 indirectly, from any sale or exchange for pecuniary gain of any such
112 controlled substance in violation of section 21a-277 or 21a-278;

113 (4) All property used or intended for use, in any manner or part, to
114 commit or facilitate the commission of a violation for pecuniary gain of
115 section 21a-277 or 21a-278;

116 (5) All property constituting, or derived from, the proceeds
117 obtained, directly or indirectly, by a corporation as a result of a
118 violation of section 53a-276, 53a-277 or 53a-278.

119 (b) Not later than ninety days after the seizure of moneys or
120 property subject to forfeiture pursuant to subsection (a) of this section,
121 in connection with a lawful criminal arrest or a lawful search that
122 results in an arrest, the Chief State's Attorney or a deputy chief state's
123 attorney, state's attorney or assistant or deputy assistant state's
124 attorney may petition the court in the nature of a proceeding in rem to
125 order forfeiture of said moneys or property. Such proceeding shall be
126 deemed a civil suit in equity, in which the state shall have the burden
127 of proving all material facts by clear and convincing evidence. The
128 court shall identify the owner of said moneys or property and any
129 other person as appears to have an interest therein, and order the state
130 to give notice to such owner and any interested person by certified or
131 registered mail. [, and shall promptly, but not less than two weeks
132 after notice, hold a hearing on the petition.] No testimony offered or
133 evidence produced by such owner or interested person at such hearing
134 and no evidence discovered as a result of or otherwise derived from
135 such testimony or evidence, may be used against such owner or
136 interested person in any proceeding, except that no such owner or
137 interested person shall be immune from prosecution for perjury or
138 contempt committed while giving such testimony or producing such
139 evidence. At such hearing the court shall hear evidence and make
140 findings of fact and enter conclusions of law and shall issue a final

141 order, from which the parties shall have such right of appeal as from a
142 decree in equity.

143 (c) The court shall hold a hearing on the petition filed pursuant to
144 subsection (a) of this section not more than two weeks after the
145 criminal proceeding that occurred as a result of the arrest has been
146 nolled, dismissed or otherwise disposed of. The court shall deny the
147 petition and return the property to the owner if the criminal
148 proceeding does not result in (1) a plea of guilty or nolo contendere to
149 any offense charged in the same criminal information, (2) a guilty
150 verdict after trial to a forfeiture-eligible offense for which the property
151 was possessed, controlled, designed or intended for use, or which was
152 or had been used as a means of committing such offense, or which
153 constitutes the proceeds of the commission of such offense, or (3) a
154 dismissal resulting from the completion of a pretrial diversionary
155 program.

156 ~~[(c)]~~ (d) No property shall be forfeited under this section to the
157 extent of the interest of an owner or lienholder by reason of any act or
158 omission committed by another person if such owner or lienholder did
159 not know and could not have reasonably known that such property
160 was being used or was intended to be used in, or was derived from,
161 criminal activity.

162 ~~[(d)]~~ (e) Notwithstanding the provisions of subsection (a) of this
163 section, no moneys or property used or intended to be used by the
164 owner thereof to pay legitimate attorney's fees in connection with his
165 defense in a criminal prosecution shall be subject to forfeiture under
166 this section.

167 ~~[(e)]~~ (f) Any property ordered forfeited pursuant to subsection (b) of
168 this section shall be sold at public auction conducted by the
169 Commissioner of Administrative Services or his designee.

170 ~~[(f)]~~ (g) The proceeds from any sale of property under subsection
171 ~~[(e)]~~ (f) of this section and any moneys forfeited under this section shall

172 be applied: (1) To payment of the balance due on any lien preserved by
173 the court in the forfeiture proceedings; (2) to payment of any costs
174 incurred for the storage, maintenance, security and forfeiture of such
175 property; and (3) to payment of court costs. The balance, if any, shall
176 be deposited in the drug assets forfeiture revolving account
177 established under section 54-36i.

178 Sec. 3. Section 54-360 of the general statutes is repealed and the
179 following is substituted in lieu thereof (*Effective October 1, 2017*):

180 (a) All property constituting, or derived from, the proceeds
181 obtained, directly or indirectly, by a person as a result of a violation of
182 section 53a-129a of the general statutes, revision of 1958, revised to
183 January 1, 2003, or section 53a-127g, 53a-129b, 53a-129c, 53a-129d, 53a-
184 129e, 53a-130, 21-120 or 21-121 shall be subject to forfeiture to the state
185 pursuant to subsection (b) of this section.

186 (b) Not later than ninety days after the seizure of property subject to
187 forfeiture pursuant to subsection (a) of this section, in connection with
188 a lawful arrest or a lawful search that results in an arrest, the Chief
189 State's Attorney or a deputy chief state's attorney, state's attorney or
190 assistant or deputy assistant state's attorney may petition the court in
191 the nature of a proceeding in rem to order forfeiture of said moneys or
192 property. Such proceeding shall be deemed a civil suit in equity, in
193 which the state shall have the burden of proving all material facts by
194 clear and convincing evidence. The court shall identify the owner of
195 such property and any other person as appears to have an interest
196 therein, and order the state to give notice to such owner and any
197 interested person by certified or registered mail, [, and shall promptly,
198 but not less than two weeks after notice, hold a hearing on the
199 petition.] No testimony offered or evidence produced by such owner
200 or interested person at such hearing and no evidence discovered as a
201 result of or otherwise derived from such testimony or evidence, may
202 be used against such owner or interested person in any proceeding,
203 except that no such owner or interested person shall be immune from
204 prosecution for perjury or contempt committed while giving such

205 testimony or producing such evidence. At such hearing the court shall
206 hear evidence and make findings of fact and enter conclusions of law
207 and shall issue a final order, from which the parties shall have such
208 right of appeal as from a decree in equity.

209 (c) The court shall hold a hearing on the petition filed pursuant to
210 subsection (a) of this section not more than two weeks after the
211 criminal proceeding that occurred as a result of the arrest has been
212 nolled, dismissed or otherwise disposed of. The court shall deny the
213 petition and return the property to the owner if the criminal
214 proceeding does not result in (1) a plea of guilty or nolo contendere to
215 any offense charged in the same criminal information, (2) a guilty
216 verdict after trial to a forfeiture-eligible offense for which the property
217 was possessed, controlled, designed or intended for use, or which was
218 or had been used as a means of committing such offense, or which
219 constitutes the proceeds of the commission of such offense, or (3) a
220 dismissal resulting from the completion of a pretrial diversionary
221 program.

222 [(c)] (d) No property shall be forfeited under this section to the
223 extent of the interest of an owner or lienholder by reason of any act or
224 omission committed by another person if such owner or lienholder did
225 not know and could not have reasonably known that such property
226 was being used or was intended to be used in, or was derived from,
227 criminal activity.

228 [(d)] (e) Notwithstanding the provisions of subsection (a) of this
229 section, no property used or intended to be used by the owner thereof
230 to pay legitimate attorney's fees in connection with his defense in a
231 criminal prosecution shall be subject to forfeiture under this section.

232 [(e)] (f) Any property ordered forfeited pursuant to subsection (b) of
233 this section shall be sold at public auction conducted by the
234 Commissioner of Administrative Services.

235 [(f)] (g) The proceeds from any sale of property under subsection

236 [(e)] (f) of this section shall be applied: (1) To payment of the balance
237 due on any lien preserved by the court in the forfeiture proceedings;
238 (2) to payment of any costs incurred for the storage, maintenance,
239 security and forfeiture of such property; and (3) to payment of court
240 costs. The balance, if any, shall be deposited in the privacy protection
241 guaranty and enforcement account established under section 42-472a.

242 Sec. 4. Section 54-36p of the general statutes is repealed and the
243 following is substituted in lieu thereof (*Effective October 1, 2017*):

244 (a) The following property shall be subject to forfeiture to the state
245 pursuant to subsection (b) of this section:

246 (1) All moneys used, or intended for use, in a violation of
247 subdivision (3) of subsection (a) of section 53-21 or section 53a-86, 53a-
248 87, 53a-88, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b,
249 53a-196c or 53a-196i;

250 (2) All property constituting the proceeds obtained, directly or
251 indirectly, from a violation of subdivision (3) of subsection (a) of
252 section 53-21 or section 53a-86, 53a-87, 53a-88, 53a-90a, 53a-189a, 53a-
253 189b, 53a-192a, 53a-196a, 53a-196b, 53a-196c or 53a-196i;

254 (3) All property derived from the proceeds obtained, directly or
255 indirectly, from a violation of subdivision (3) of subsection (a) of
256 section 53-21 or section 53a-86, 53a-87, 53a-88, 53a-90a, 53a-189a, 53a-
257 189b, 53a-192a, 53a-196a, 53a-196b, 53a-196c or 53a-196i;

258 (4) All property used or intended for use, in any manner or part, to
259 commit or facilitate the commission of a violation of subdivision (3) of
260 subsection (a) of section 53-21 or section 53a-83, 53a-83a, 53a-86, 53a-
261 87, 53a-88, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b,
262 53a-196c or 53a-196i.

263 (b) Not later than ninety days after the seizure of moneys or
264 property subject to forfeiture pursuant to subsection (a) of this section,
265 in connection with a lawful criminal arrest or a lawful search that

266 results in an arrest, the Chief State's Attorney or a deputy chief state's
267 attorney, state's attorney or assistant or deputy assistant state's
268 attorney may petition the court in the nature of a proceeding in rem to
269 order forfeiture of such moneys or property. Such proceeding shall be
270 deemed a civil suit in equity in which the state shall have the burden
271 of proving all material facts by clear and convincing evidence. The
272 court shall identify the owner of such moneys or property and any
273 other person as appears to have an interest therein, and order the state
274 to give notice to such owner and any interested person, including any
275 victim of the crime with respect to which such moneys or property
276 were seized, by certified or registered mail. [The court shall promptly,
277 but not less than two weeks after such notice, hold a hearing on the
278 petition.] No testimony offered or evidence produced by such owner
279 or interested person at such hearing and no evidence discovered as a
280 result of or otherwise derived from such testimony or evidence may be
281 used against such owner or interested person in any proceeding,
282 except that no such owner or interested person shall be immune from
283 prosecution for perjury or contempt committed while giving such
284 testimony or producing such evidence. At such hearing, the court shall
285 hear evidence and make findings of fact and enter conclusions of law
286 and shall issue a final order from which the parties shall have such
287 right of appeal as from a decree in equity.

288 (c) The court shall hold a hearing on the petition filed pursuant to
289 subsection (a) of this section not more than two weeks after the
290 criminal proceeding that occurred as a result of the arrest has been
291 nolled, dismissed or otherwise disposed of. The court shall deny the
292 petition and return the property to the owner if the criminal
293 proceeding does not result in (1) a plea of guilty or nolo contendere to
294 any offense charged in the same criminal information, (2) a guilty
295 verdict after trial to a forfeiture-eligible offense for which the property
296 was possessed, controlled, designed or intended for use, or which was
297 or had been used as a means of committing such offense, or which
298 constitutes the proceeds of the commission of such offense, or (3) a
299 dismissal resulting from the completion of a pretrial diversionary

300 program.

301 ~~[(c)]~~ (d) No moneys or property shall be forfeited under this section
 302 to the extent of the interest of an owner or lienholder by reason of any
 303 act or omission committed by another person if such owner or
 304 lienholder did not know and could not have reasonably known that
 305 such moneys or property was being used or was intended to be used
 306 in, or was derived from, criminal activity.

307 ~~[(d)]~~ (e) Notwithstanding the provisions of subsection (a) of this
 308 section, no moneys or property used or intended to be used by the
 309 owner thereof to pay legitimate attorney's fees in connection with his
 310 or her defense in a criminal prosecution shall be subject to forfeiture
 311 under this section.

312 ~~[(e)]~~ (f) Any property ordered forfeited pursuant to subsection (b) of
 313 this section shall be sold at public auction conducted by the
 314 Commissioner of Administrative Services or the commissioner's
 315 designee.

316 ~~[(f)]~~ (g) The proceeds from any sale of property under subsection
 317 ~~[(e)]~~ (f) of this section and any moneys forfeited under this section shall
 318 be applied: (1) To payment of the balance due on any lien preserved by
 319 the court in the forfeiture proceedings; (2) to payment of any costs
 320 incurred for the storage, maintenance, security and forfeiture of any
 321 such property; and (3) to payment of court costs. The balance, if any,
 322 shall be deposited in the Criminal Injuries Compensation Fund
 323 established in section 54-215."

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2017	54-33g
Sec. 2	October 1, 2017	54-36h
Sec. 3	October 1, 2017	54-36o
Sec. 4	October 1, 2017	54-36p