



General Assembly

Amendment

January Session, 2017

LCO No. 6552



Offered by:

REP. LESSER, 100th Dist.
REP. SIMANSKI, 62nd Dist.
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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 Section 54-33g of the general statutes is repealed and the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 less than two weeks after (1) the
27 criminal proceeding that occurred as a result of the arrest has been
28 nolled, dismissed or otherwise disposed of, or (2) the defendant in
29 such criminal proceeding is granted admission into a pretrial
30 diversionary program and completes said program. Such petition shall
31 be denied and the property returned to the owner if the criminal
32 proceeding does not result in a conviction of an offense for which the
33 property was possessed, controlled, designed or intended for use, or
34 which was or had been used as a means of committing such offense, or
35 which constitutes the proceeds of the commission of such offense,
36 except a dismissal resulting from the completion of a pretrial
37 diversionary 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 conviction for such violation or a dismissal resulting

45 from the completion of a pretrial diversionary program has been
46 entered, the court shall render judgment that such property is a
47 nuisance and order the property to be destroyed or disposed of to a
48 charitable or educational institution or to a governmental agency or
49 institution, except that if any such property is subject to a bona fide
50 mortgage, assignment of lease or rent, lien or security interest, such
51 property shall not be so destroyed or disposed of in violation of the
52 rights of the holder of such mortgage, assignment of lease or rent, lien
53 or security interest.

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

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

73 [(d)] (e) When any property or valuable prize has been declared a
74 nuisance and condemned under this section, the court may also order
75 that such property be sold in accordance with procedures approved by
76 the Commissioner of Administrative Services. Proceeds of such sale
77 shall first be allocated toward the balance of any mortgage, assignment

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

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

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

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

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

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

105 (2) All property constituting the proceeds obtained, directly or
106 indirectly, from any sale or exchange of any such controlled substance
107 in violation of section 21a-277 or 21a-278;

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

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

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

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

141 (c) The court shall hold a hearing on the petition filed pursuant to
142 subsection (a) of this section not less than two weeks after (1) the
143 criminal proceeding that occurred as a result of the arrest has been
144 nolled, dismissed or otherwise disposed of, or (2) the defendant in
145 such criminal proceeding is granted admission into a pretrial
146 diversionary program and completes said program. Such petition shall
147 be denied and the property returned to the owner if the criminal
148 proceeding does not result in a conviction for a violation of any offense
149 described in subsection (a) of this section, except a dismissal resulting
150 from the completion of a pretrial diversionary program.

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

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

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

165 [(f)] (g) The proceeds from any sale of property under subsection
166 [(e)] (f) of this section and any moneys forfeited under this section shall
167 be applied: (1) To payment of the balance due on any lien preserved by
168 the court in the forfeiture proceedings; (2) to payment of any costs
169 incurred for the storage, maintenance, security and forfeiture of such
170 property; and (3) to payment of court costs. The balance, if any, shall
171 be deposited in the drug assets forfeiture revolving account
172 established under section 54-36i.

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

175 (a) All property constituting, or derived from, the proceeds
176 obtained, directly or indirectly, by a person as a result of a violation of
177 section 53a-129a of the general statutes, revision of 1958, revised to
178 January 1, 2003, or section 53a-127g, 53a-129b, 53a-129c, 53a-129d, 53a-
179 129e, 53a-130, 21-120 or 21-121 shall be subject to forfeiture to the state
180 pursuant to subsection (b) of this section.

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

204 (c) The court shall hold a hearing on the petition filed pursuant to
205 subsection (a) of this section not less than two weeks after (1) the

206 criminal proceeding that occurred as a result of the arrest has been
207 nolled, dismissed or otherwise disposed of, or (2) the defendant in
208 such criminal proceeding is granted admission into a pretrial
209 diversionary program and completes said program. Such petition shall
210 be denied and the property returned to the owner if the criminal
211 proceeding does not result in a conviction for a violation of any offense
212 described in subsection (a) of this section, except a dismissal resulting
213 from the completion of a pretrial diversionary program.

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

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

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

227 [(f)] (g) The proceeds from any sale of property under subsection
228 [(e)] (f) of this section shall be applied: (1) To payment of the balance
229 due on any lien preserved by the court in the forfeiture proceedings;
230 (2) to payment of any costs incurred for the storage, maintenance,
231 security and forfeiture of such property; and (3) to payment of court
232 costs. The balance, if any, shall be deposited in the privacy protection
233 guaranty and enforcement account established under section 42-472a.

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

236 (a) The following property shall be subject to forfeiture to the state

237 pursuant to subsection (b) of this section:

238 (1) All moneys used, or intended for use, in a violation of
239 subdivision (3) of subsection (a) of section 53-21 or section 53a-86, 53a-
240 87, 53a-88, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b,
241 53a-196c or 53a-196i;

242 (2) All property constituting the proceeds obtained, directly or
243 indirectly, from a violation of subdivision (3) of subsection (a) of
244 section 53-21 or section 53a-86, 53a-87, 53a-88, 53a-90a, 53a-189a, 53a-
245 189b, 53a-192a, 53a-196a, 53a-196b, 53a-196c or 53a-196i;

246 (3) All property derived from the proceeds obtained, directly or
247 indirectly, from a violation of subdivision (3) of subsection (a) of
248 section 53-21 or section 53a-86, 53a-87, 53a-88, 53a-90a, 53a-189a, 53a-
249 189b, 53a-192a, 53a-196a, 53a-196b, 53a-196c or 53a-196i;

250 (4) All property used or intended for use, in any manner or part, to
251 commit or facilitate the commission of a violation of subdivision (3) of
252 subsection (a) of section 53-21 or section 53a-83, 53a-83a, 53a-86, 53a-
253 87, 53a-88, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b,
254 53a-196c or 53a-196i.

255 (b) Not later than ninety days after the seizure of moneys or
256 property subject to forfeiture pursuant to subsection (a) of this section,
257 in connection with a lawful criminal arrest or a lawful search that
258 results in an arrest, the Chief State's Attorney or a deputy chief state's
259 attorney, state's attorney or assistant or deputy assistant state's
260 attorney may petition the court in the nature of a proceeding in rem to
261 order forfeiture of such moneys or property. Such proceeding shall be
262 deemed a civil suit in equity in which the state shall have the burden
263 of proving all material facts by clear and convincing evidence. The
264 court shall identify the owner of such moneys or property and any
265 other person as appears to have an interest therein, and order the state
266 to give notice to such owner and any interested person, including any
267 victim of the crime with respect to which such moneys or property

268 were seized, by certified or registered mail. [The court shall promptly,
269 but not less than two weeks after such notice, hold a hearing on the
270 petition.] No testimony offered or evidence produced by such owner
271 or interested person at such hearing and no evidence discovered as a
272 result of or otherwise derived from such testimony or evidence may be
273 used against such owner or interested person in any proceeding,
274 except that no such owner or interested person shall be immune from
275 prosecution for perjury or contempt committed while giving such
276 testimony or producing such evidence. At such hearing, the court shall
277 hear evidence and make findings of fact and enter conclusions of law
278 and shall issue a final order from which the parties shall have such
279 right of appeal as from a decree in equity.

280 (c) The court shall hold a hearing on the petition filed pursuant to
281 subsection (a) of this section not less than two weeks after (1) the
282 criminal proceeding that occurred as a result of the arrest has been
283 nolled, dismissed or otherwise disposed of, or (2) the defendant in
284 such criminal proceeding is granted admission into a pretrial
285 diversionary program and completes said program. Such petition shall
286 be denied and the property returned to the owner if the criminal
287 proceeding does not result in a conviction for a violation of any offense
288 described in subsection (a) of this section, except a dismissal resulting
289 from the completion of a pretrial diversionary program.

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

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

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

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

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