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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 443                      **Hearing Date:** July 14, 2015  
**Author:** Alejo  
**Version:** May 4, 2015  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** JM

**Subject:** *Forfeiture*

### HISTORY

**Source:** Attorney General of California

**Prior Legislation:** AB 2466 (Blumenfield) – Ch. 512, Stats. 2012  
AB 364 (Bonilla) – Ch. 182, Stats. 2011  
AB 1293 (Blumenfield) – Ch. 371 Stats. 2011  
AB 17 (Swanson) – Ch. 211, Stats. 2010  
AB 1199 (Richardson) – Ch. 408, Stats. 2007  
SB 968 (Bowen) – Ch. 125, Stats. 2003  
AB 215 (Leslie) – 2003; failed passage in Assembly Public Safety  
AB 1990 (Liu) – Ch. 991, Stats. 2002  
AB 662 (Wesson) – 1999 Legislative Session; vetoed

**Support:** Alameda County District Attorney; California District Attorneys Association; California Police Chiefs Association; California Statewide Law Enforcement Association; Gonzalez Police Department; Law Center to Prevent Gun Violence; Monterey County District Attorney; Peace Officers Research Association of California; Santa Clara County District Attorney; Soledad Police Department

**Opposition:** American Civil Liberties Union; California Attorneys for Criminal Justice; California Public Defenders Association; Gun Owners of California

**Assembly Floor Vote:** 71 - 5

### PURPOSE

*The purpose of this bill is to: 1) authorize a prosecutor in a criminal profiteering (organized crime) matter to file a petition for forfeiture of illicitly derived assets and profits from persons associated with transnational criminal organizations up to 60 days prior to the filing of criminal charges; 2) require the prosecutor to provide notice to any party that may have an interest in property subject to forfeiture; 3) authorize a person claiming an interest in seized property to move the court “for return” of the property on the grounds that there is no probable cause that the property is forfeitable; and 4) provide that the court may issue the order if it finds the following: there is a substantial probability that criminal charges will be filed or a grand jury indictment sought, there is a substantial probability that the prosecuting agency will prevail on the issue of forfeiture, and that failure to enter the order will result in the property being destroyed, removed from the court's jurisdiction, or otherwise kept from forfeiture.*

*Existing law:*

- 1) Defines "criminal profiteering activity" as any act made for financial gain or advantage if the act may be charged as one of the following crimes: arson, bribery, child pornography, assault, embezzlement, extortion, forgery, gambling, kidnapping, mayhem, murder, pimping and pandering, receiving stolen property, robbery, criminal solicitation, grand theft, drug trafficking, making a fraudulent claim, money laundering, conspiracy, active participation in a criminal street gang, any felony committed for the benefit of a gang, beverage recycling fraud, human trafficking, causing a minor through force, coercion or deceit to engage in commercial sexual conduct, abduction or procurement by fraud for prostitution, auto theft, or identity theft (Pen. Code § 186.2, subd. (a).)
- 2) Defines "pattern of criminal profiteering activity" as engaging in at least two incidents of criminal profiteering that meet the following requirements:
  - Have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics;
  - Are not isolated events; and
  - Were committed as a criminal activity of organized crime. (Pen. Code § 186.2, subd. (b).)
- 3) Provides that after conviction of the qualifying offense, a person may be subject to asset forfeiture if the prior act occurred within 10 years, excluding any period of imprisonment, of the commission of the underlying offense. (Pen. Code § 186.2, subd. (b).)
- 4) Provides that upon proof of specified provisions, the following assets shall be subject to forfeiture:
  - A property interest acquired through a pattern of criminal profiteering activity; and
  - All proceeds of a pattern of criminal profiteering activity, including all things of value . . . received in exchange for the proceeds . . . derived from the pattern of criminal profiteering activity. (Pen. Code § 186.3.)
- 5) Provides that the prosecutor shall file the forfeiture petition in conjunction with the criminal proceeding and provide notice to persons who may have an interest in the property that is alleged to be subject to forfeiture. (Pen. Code § 186.4.)
- 6) Provides that when or after charges and a forfeiture petition are filed in a criminal profiteering forfeiture case, the prosecutor may move the court for orders preserving the defendant's assets that may be subject to forfeiture, as follows:
  - An injunction to restrain all interested parties from transferring, encumbering or otherwise disposing of property subject to forfeiture.
  - Appoint a receiver to manage the property.
  - Require a surety bond if necessary to preserved the interests of interested parties. (Pen. Code § 186.6.)

- 7) Provides that where the prosecutor seeks an order preserving property for purposes of forfeiture, notice must be given to interested parties and a hearing held to determine that an order is necessary to preserve the property pending disposition of the criminal case, there is probable cause that the property is truly subject to forfeiture. Neither an injunction may be granted nor a receiver appointed without a hearing. The court may issue a temporary restraining order pending a hearing. (Pen. Code § 186.6.)
- 8) Provides that the forfeiture proceedings shall be set for hearing in the superior court in which the underlying criminal offense will be tried. If the defendant is found guilty of the underlying offense, the issue of forfeiture shall be promptly tried, before the same jury or a new jury in the discretion of the court, unless waived by all parties. (Pen. Code § 186, subs. (c)-(d) .)
- 9) Requires that before assets are forfeited, the prosecuting agency shall have the burden of establishing beyond a reasonable doubt that the defendant was engaged in a pattern of criminal profiteering activity. (Pen. Code § 186.5.)
- 10) Provides that where a defendant is convicted of two or more related felonies involving fraud or embezzlement, and the pattern of conduct involves the taking or loss of more than \$100,000, the defendant shall be punished by an “aggravated white collar crime [prison term] enhancement.” (Pen. Code § 186.11.)
- 11) Provides, with respect to white collar enhancement and large-scale fraud cases, that to “prevent dissipation or secreting of assets or property, the [prosecutor] may, at the same time as or subsequent to the filing of [the applicable charges] seek a temporary restraining order ... or any other protective relief necessary to preserve the property or assets.” (Pen. Code §§ 186.11, subd. (e).)
- 12) Authorizes the court to place a white collar crime defendant on probation for up to 10 years to ensure payment of restitution. The provisions for protection of assets seized from defendants shall remain in effect through sentencing in order to satisfy fines and restitution orders. (Pen. Code § 186.11, subs. (d).)
- 13) Sets out detailed procedures that apply to a petition for preserving property in a white collar crime cases. These include, but are not limited to, the following:
  - The orders (preliminary injunction and temporary restraining order) must be issued solely to preserve property so that restitution and fines will be paid;
  - The prosecutor shall file a lis pendens (notice of a lawsuit affecting real property) as to all real property subject to the orders;
  - The prosecutor may obtain an order that any financial institution to disclose specified information about relevant accounts;
  - The court may issue a temporary restraining order (TRO) supported by an affidavit by a peace officer with personal knowledge about the case. The TRO may be issued without notice to the defendant upon a showing of good cause;
  - A person who claims an interest in the protected property may file a claim concerning his or her interest in seized property, as specified;
  - The defendant or a person who has filed a verified property claim may seek modification of any orders, including relief from a lis pendens;

- The court may appoint a receiver to manage property. The defendant may be ordered to post a bond;
- The court may order sale of a property that is liable to perish or substantially drop in value; and
- The court shall weigh the relative certainty of the outcome of the prosecution and the consequences to interested parties if property preservation orders are issued.

The court shall give significant weight to the following factors:

- The public interest in preserving the property;
- The difficult of preserving the assets;
- The purpose for the preservation orders;
- The likelihood that the charged crime caused substantial public harm;
- The court shall seek to protect the interests of innocent parties, including an innocent spouse;
- The court may consider a defendant's request to release property to pay bail, legal fees, and living expenses, but must consider the public interest, the nature of the crime and the purpose for the preservation orders; and
- The court may issue orders to preserve the continuing viability of any lawful business. (Pen. Code §§ 186.11, subs. (d)-(f).)

- 14) Provides that where the jury finds the defendant not guilty of the underlying fraud crime, or it finds the white-collar enhancement allegation untrue, any preliminary injunction or TRO shall be dissolved. (Pen. Code § 186.11.)
- 15) Authorizes prosecuting agencies, at the same time as the filing of a complaint or indictment charging human trafficking, to file a petition for protective relief necessary to preserve property or assets that could be used to pay for remedies relating to human trafficking, including, but not limited to, restitution and fines. (Pen. Code § 236.6, subd. (a).)
- 16) Specifies the process by which a preliminary injunction, temporary restraining order, or sale of property or assets may be ordered. The process is essentially the same as the process set out in Penal Code Section 186.11 – preservation of assets in white collar crime cases, and 186.12 – preservation of assets in large-scale elder and dependent abuse financial cases. (Pen. Code § 236.6, subs. (b)-(j).)

*This bill:*

- 1) Provides that to prevent dissipation or secreting of assets or property in criminal asset forfeiture matter involving a transnational criminal organization, as defined, the prosecuting agency may file a petition for forfeiture prior to commencement of criminal proceedings upon the following showing:
- The value of the assets to be seized exceeds \$100,000.
  - There is a substantial probability that the prosecuting agency will file a criminal complaint or seek a grand jury indictment against the defendant.
  - There is a substantial probability that the prosecuting agency will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture.

- The need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.
  - There is a substantial probability that the assets subject to forfeiture represent direct or indirect proceeds of criminal activity committed for the benefit of, at the direction of, or in association with, a transnational criminal organization, as defined.
- 2) Defines, for purposes of criminal profiteering forfeiture, a “transnational criminal organization” as “any ongoing organization, association, or group, having leaders, associates, operations, or activities in more than one country, with one of its primary activities being the commission of one or more” specified criminal profiteering related acts.
  - 3) States that if a forfeiture petition is filed prior to the filing of the complaint in a criminal action, the petition and any injunctive order shall be dismissed by operation of law unless a criminal complaint or grand jury indictment is filed within 60 days of the grant of the motion.
  - 4) Provides that if a forfeiture petition is dismissed because criminal charges were not filed within 60 days, the motion shall not be refiled, except upon the filing of a criminal complaint.
  - 5) Provides that if a forfeiture petition is filed prior to the filing of criminal charges, a person claiming an interest in the property may move for the return of the property on the grounds that there is not probable cause to believe the property is forfeitable and is not otherwise subject to court order of forfeiture or destruction by another specified statute.
  - 6) Provides that a motion for return of property may be made prior to, during, or subsequent to the filing of criminal charges or a grand jury indictment. If the prosecuting agency does not establish a substantial probability that the property is subject to forfeiture, the court shall order the seized property released to the person it determines is entitled to the property.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”( Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Bill

According to the author:

AB 443 - sponsored by Attorney General Kamala Harris - will allow a prosecuting agency to file a petition of forfeiture for good cause prior to the commencement of a criminal proceeding in cases of criminal profiteering. The bill is focused at freezing and preserving the assets of transnational criminal organizations. Gang violence and crime continue to be serious problems across the state, and we must take steps to diminish the grip they have on many of our most disadvantaged communities. By freezing the assets of criminal organizations, we hit them where it hurts most, and we can put a halt to their operations.

According to a report released by Attorney General Harris - "Gangs Beyond Borders: California and the Fight Against Transnational Organized Crime," “[t]ransnational Criminal Organizations are self-perpetuating associations operating across national borders that use violence, corruption, and fraud to protect and disguise their illicit, and profit-driven activities.”

This bill comes directly from a recommendation in the stating “[t]he Legislature should amend California law to enable prosecutors to temporarily freeze the

assets of transnational criminal organizations and their gang associates before the filing of an indictment.” A void in current law essentially gives transnational criminal organizations notice prior to the freezing of assets, allowing the organization to move funds beyond the prosecutor’s reach. This perpetuating system that gives criminals a leg up over law enforcement must end. AB 443 shifts the advantage and allows law enforcement to effectively address transnational crime in our state.

## **2. Background on Criminal Asset Forfeiture**

In 1982, the California Legislature passed the California Control of Profits of Organized Crime Act. The express purpose of the Act was to punish the activities of organized crime through the forfeiture of profits acquired and accumulated as a result of engaging in a pattern of criminal profiteering activity. All property gained through that activity is subject to forfeiture. (Penal Code §§ 186 and 186.1.)

Criminal profiteering asset forfeiture is a criminal proceeding held in conjunction with the trial of the underlying criminal offense. Often, the same jury that heard the criminal charges determines whether the defendant's assets were the ill-gotten gains of criminal profiteering. As a practical matter, the prosecution must assemble its evidence for the forfeiture matter simultaneously with the evidence of the crime.

Under existing law the forfeited proceeds of criminal profiteering are placed in the county general fund with no directions for use. There are limited exceptions. For example, forfeiture in child pornography cases is deposited in the county or State Children's Trust Fund for child abuse and neglect prevention and intervention. (Pen. Code § 186.8; Welf. Inst. Code §§ 18966 and 18969.)

In contrast to criminal asset forfeiture, drug asset forfeiture is a separate civil action. With limited exceptions, a conviction for an underlying drug offense is required. However, the prosecution in drug asset forfeiture can conduct substantial civil discovery to find the defendant's assets. Law enforcement receives 65% of drug forfeiture proceeds. Federal forfeiture law authorizes a federal agency to “adopt” a state seizure and return as much as 80% of the proceeds to the state or local agency. The United States Attorney General has recently limited adoption of state forfeitures.<sup>1</sup>

## **3. History of Seize and Freeze Statutes; This Bill**

In 1995, SB 950 (Killea) created a special sentencing scheme for defendants convicted of relatively egregious forms of white collar crime. The law provided for sentence enhancements and high fines. The law included a procedure for the preservation of the assets of persons alleged to be subject to this punishment enhancement. The law authorized the court to levy upon the assets upon the defendant’s conviction, in order to pay restitution and fines.

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<sup>1</sup> SB 443 (Mitchell), which passed this Committee (5-2) and is scheduled to be heard on July 14, 2015 in the Assembly Public Safety Committee, would prohibit state or local law enforcement agencies from transferring seized property to a federal agency for adoption, require that property seized pursuant to federal law be distributed to state and local law enforcement agencies according to state law formulas, and that convictions be obtained before the agencies could share in federal forfeiture proceeds.

In 2011, the white collar crime asset preservation law was extended to any case involving white collar financial fraud over \$100,000. (AB 364 (Bonilla) Ch. 182, Stats. 2011.) Also in 2011, the asset preservation provisions were adapted to cases of large-scale elder and dependent abuse. (AB 1293 (Blumenfeld) Ch. 371 Stats. 2011.) The process in each kind of case is essentially the same.

Human trafficking laws include a seize and freeze asset preservation process. The process is largely equivalent to the white collar crime and elder abuse asset preservation statutes.

This bill would allow prosecutors to seize assets up to 60 days prior to filing a criminal action in an organized crime - criminal profiteering matter. To obtain the order, the prosecutor must show the following:

- The value of the assets to be seized exceeds \$100,000.
- There is a substantial probability that the prosecuting agency will file a criminal complaint or seek a grand jury indictment against the defendant.
- There is a substantial probability that the prosecuting agency will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture.
- The need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.
- There is a substantial probability that the assets subject to forfeiture represent direct or indirect proceeds of criminal activity committed for the benefit of, at the direction of, or in association with, a transnational criminal organization, as defined.

#### 4. Constitutional Issues

Constitutional due process generally requires that a person's property may not be confiscated by the state without "some kind of notice and opportunity to be heard." (*Fuentes v. Shevin* (1972) 407 U.S. 67, 79-80.) "We start with the basic proposition that in every case involving a deprivation of property within the purview of the due process clause, the Constitution requires some form of notice and a hearing." *Beaudreau v. Superior Court* (1975) 14 Cal.3d. 448, 458; See also, *Horn v. County Of Ventura* (1979) 24 Cal. 3d 605; 612.)

This bill does not expressly state that the initial hearing on a petition for forfeiture is an ex parte hearing - a hearing where only one party addresses the court, and would not eliminate the requirement in existing law that the prosecutor provide notice to persons or entities affected by the seizure. However, it is not entirely clear when the notice must be given. Under the bill, a person whose property has been seized would appear to be limited to disputing the prosecutor's factual allegations and legal argument through a motion for *return* of property *after* it has been seized.

The United States Supreme Court has explained the very limited exceptions to the requirement of notice and the opportunity to be heard before a person is deprived of property:

We tolerate some exceptions to the general rule requiring pre-deprivation notice and hearing, but only in extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. ...The three-part inquiry set forth in *Mathews v. Eldridge* (1976) 424 U.S. 319, provides guidance in this regard. The *Mathews* analysis requires us

*to consider the private interest affected by the official action; the risk of an erroneous deprivation of that interest through the procedures used, as well as the probable value of additional safeguards; and the Government's interest, including the administrative burden that additional procedural requirements would impose. (Id., at 335.)*

...[In] *Calero-Toledo* ... the Government's interest in immediate seizure of a yacht subject to civil forfeiture justified dispensing with the usual requirement of prior notice and hearing. Two essential considerations informed our ruling in that case: First, immediate seizure was necessary to establish the court's jurisdiction over the property, 416 U.S. at 679, and second, the yacht might have disappeared had the Government given advance warning of the forfeiture action, *ibid.* See also *United States v. Von Neumann*, 474 U.S. 242, 251, 88 L. Ed. 2d 587, 106 S. Ct. 610 (1986) (no pre-seizure hearing is required when customs officials seize an automobile at the border). Neither of these factors is present when the target of forfeiture is real property. Because real property cannot abscond, the court's jurisdiction can be preserved without prior seizure. *United States v. Good* (1993) 510 U.S. 43, 53, 57, italics added.)

The sponsor - the Attorney General - argues that an ex parte proceeding is necessary to prevent the property owner from hiding or moving assets. Members may wish to consider whether a specific determination, based on the facts of each case, would be necessary to conclude that an ex-parte proceeding is justified, and whether United States Supreme Court decisions require the court hearing the ex-parte seizure motion to use the balancing test in *Matthews v. Eldridge* noted above.

The ACLU, which opposes this bill, argues that this bill “permits the government to seize property without sufficient evidence to bring charges. It also appears to permit the government to seize property without an adequate opportunity to be heard. Both issues raise significant Due Process concerns.” The bill does provide for an opportunity for a person claiming interest in the property to make a motion for *return* of the property during the 60 day period prior to the filing of criminal charges. While this does not provide for a hearing *prior* to the seizure of the property, it does provide a remedy which allows an interest holder in the seized property to move for return of the property on the basis of the prosecution not meeting their burden in the ex parte proceeding.

#### WOULD THE BLANKET EX PARTE PROCEEDING PROPOSED BY THIS BILL SATISFY CONSTITUTIONAL DUE PROCESS REQUIREMENTS?

The bill also provides that the prosecution must allege to a magistrate that there is a "substantial probability" that the agency will file a criminal complaint or seek a criminal grand jury indictment. Additionally, the prosecutor must allege that there is a "substantial probability" that the prosecuting agency will prevail on the issue of forfeiture.

According to the sponsor, the standard of substantial probability is intended to be at least as demanding as probable cause. California courts have found the term to be synonymous with “strong probability” or “strong likelihood.” (*Walbrook Ins. Co. v. Liberty Mut. Ins. Co.* (1992) 5 Cal.App.4th 1445, 1460-1461.) In the search warrant context, the term is also synonymous with “probable cause.” (See *Fenwick & W. v. Superior Court* (1996) 43 Cal.App.4th 1272, 1278-1279. “Substantial probability” also appears several times in the U.S. Code, including in the

asset forfeiture context (21 U.S.C. § 853(e)(1)(B)(i)). Courts addressing the use of the term in federal statutes have uniformly held that substantial probability actually affords defendants greater protection than the probable cause standard. (See *United States v. Gotti* (2d Cir. 1986) 794 F.2d 773, 777.)

## 5. Potential Loss of Value if Property is Returned to the Owner

The bill would allow for seizing property for up to 60 days prior to the filing of criminal proceedings against the property owner or asset holder. The bill does provide however that the property may not be forfeited if the agency fails to file criminal charges within the prescribed 60-day window. However, the bill does not address compensation to the property owner for the interim value of the property. For instance, if a business owner must shut down his or her business, there is no provision for that owner to receive remuneration for their economic losses during that period.

## 6. Background; 2014 DOJ Report

As noted by the author, in March of 2014 the California Department of Justice released a report entitled, *Gangs Beyond Borders California and the Fight Against Transnational Organized Crime*. That report states in part:

California is a global leader on a number of fronts and, unfortunately, transnational criminal activity is one of them . . . . In 2012 alone, 305 drug-related transnational criminal organizations were found operating in the state, including Mexico-based drug cartels in at least 22 cities from Northern California to the southern border. Based in part on its population and network of interstate highways connecting the western U.S., California is a major portal through which drugs flow to other U.S. states and cities, as well as Canada. California is also the top state in the U.S. for human trafficking, due in part to its proximity to the U.S. southwest border, robust economy, and large immigrant population. Finally, with a gross domestic product of \$2 trillion and substantial international trade activity, California's economic and financial infrastructure is often targeted for transnational criminal money laundering schemes.

. . .

The seizure of laundered money is essential to disrupting and dismantling transnational criminal operations. Currently, two provisions in California law enable state authorities to seize laundered money:

- **Criminal Asset Forfeiture Provision:** Money, monetary instruments, and property derived from criminal profiteering are subject to forfeiture under the California Control of Profits of Organized Crime Act. (Penal Code, §§ 186–186.8.)
- **Civil Narcotics-Related Asset Forfeiture Provision:** Money or other things of value (including real property) used to procure controlled substances or to facilitate specified narcotics offenses are subject to civil asset forfeiture. (Health & Safety Code, § 11470.)

Significantly, both of these provisions permit the seizure of criminal proceeds and assets only after the commencement of formal legal proceedings, such as the filing of a criminal complaint or indictment. *This loophole allows transnational criminal organizations to safely remove assets that have been discovered by law enforcement, so long as formal legal proceedings have not yet begun. . . . (T)his loophole must be closed. New legislation should amend California law to permit law enforcement to temporarily freeze an organization's illicit proceeds or property even if no formal prosecution has commenced yet.*<sup>2</sup>

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<sup>2</sup> <http://oag.ca.gov/transnational-organized-crime/ch2>.