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August 5, 2015

The Honorable Holly Mitchell  
California State Senate  
State Capitol  
Sacramento, CA 95814

**RE: SB 443 – Oppose**

Dear Senator Mitchell:

On behalf of the California District Attorneys Association (CDAA), I regret to inform you that we remain opposed to your measure, SB 443, as amended on July 16, 2015.

The current version of the bill would essentially deny every law enforcement agency in California direct receipt of any forfeited assets. California's asset forfeiture law will be changed for the worse, and it will cripple the ability of law enforcement to forfeit assets from drug dealers when arrest and incarceration is an incomplete strategy for combatting drug trafficking. Narcotics investigations are costly, and the California asset forfeiture law's dedication of forfeiture proceeds to the seizing law enforcement agencies speaks to the serious resource needs involved when drug traffickers and their ill-gotten gains are pursued.

**Our 58 elected district attorneys remain unanimously opposed to SB 443 for four fundamental reasons.**

First, all federal forfeiture proceeds would be subject to a criminal conviction requirement and mandated distribution by state and local law enforcement agencies to a "State Asset Forfeiture Fund for Law Enforcement Purposes". The bill's prerequisite of a narcotics sales criminal conviction in a state or federal case before federal forfeiture proceeds can even be requested by law enforcement would not only violate federal statutory timelines for equitable sharing requests, but would also delay and/or prevent receipt of a large percentage of federal forfeiture proceeds.

**These requirements would violate federal forfeiture guidelines, and would thus end all federal equitable sharing for over 200 law enforcement agencies and task forces in California.**

We have been informed by both the Department of Justice and the Department of the Treasury that if SB 443 becomes law, all California law enforcement agencies will be decertified from participation in the Federal Equitable Sharing Program. Copies of correspondence from those agencies are attached to this letter.



Less than two months ago, the federal government decertified New Mexico and blocked all of its certified law enforcement agencies from receiving equitable sharing funds due to the state's recent change in its asset forfeiture law to mandate federal equitable sharing money be sent to the state general fund. The effect of such a change on California law enforcement will be devastating and cause a loss of tens of millions of dollars each year in lost federal forfeiture funds from joint investigations. Large joint federal/state task forces like LA IMPACT would be forced to disband based on a lack of resources from the program.

In FY 2014, law enforcement agencies in California received \$89,616,978 in total funds from the Federal Equitable Sharing Program. If all California agencies are suspended from participating in the program as a result of SB 443, that amount would drop to zero. This would have a devastating impact, not just on local law enforcement, but on the General Fund as well. The General Fund currently receives 24% of any money received from the program, which would have amounted to \$21,508,074 in 2014.

Additionally, there was roughly \$28 million in state forfeiture activity in FY 2014, of which the General Fund also received 24%, or \$6,720,000. We conservatively estimate that if SB 443 passes, overall forfeiture activity in California would drop by 33%. Applying that reduction to the FY 2014 numbers, we would see an additional \$2.24 million loss to the General Fund.

**Taken together, those figures represent a \$23,748,074 loss to the General Fund, and a loss of \$75,202,237 to state and local law enforcement agencies and task forces.** Included in that roughly \$75 million loss to state and local agencies is more than \$1.8 million received through the Federal Equitable Sharing Program by the California Department of Corrections and Rehabilitation, Department of Fish and Game, Department of Justice, California Highway Patrol, Medical Board of California, and the San Diego State University Police Department.

For any forfeiture funds that did ultimately become available, SB 443 proposes to implement a new "top down" approach to distribution of those monies, by creating new Special Funds at the state level, to be appropriated by the Legislature. ~~These changes will strip local control of forfeited assets from state and local law enforcement agencies, and force all of these same agencies (along with the courts, public defenders, and prosecutor offices) to seek legislative appropriations from Sacramento to recover the costs of forfeiture.~~

The lack of clarity in remuneration of the costs of forfeiture, and the inevitable additional costs associated with appropriating funds back from the Legislature will result in millions of dollars being diverted from law enforcement, and a likely reduction in the number and size of state forfeitures in California. As noted above, contributions to the General Fund will also likely be reduced by millions of dollars each year.

Second, SB 443 will severely reduce valuable resources obtained through drug asset forfeiture that fund investigation and prosecution, drug treatment and prevention, training, and community based organizations. **The bill's current language arbitrarily cuts direct receipt of forfeited assets to law enforcement and prosecution offices to either a minimum or nothing at all.** Prosecutor offices across the state will have to necessarily assign more attorney and investigator resources to asset forfeiture cases to the extent those agencies will either have to seek legislative appropriation or otherwise compete with other government and non-government agencies for remuneration of costs associated with the statutory mandate of prosecuting asset forfeiture cases. This impact will cost the taxpayers more money at the county level, and will take away vital prosecutorial resources from other important criminal prosecution areas.



Third, this proposal will dramatically undermine law enforcement's ability to combat large drug trafficking organizations through proven federal, state and local task force efforts. In order to effectively take on the complexity and size of drug trafficking organizations in California, state and local law enforcement agencies require resources and support beyond their budgeted funding. Further, these agencies enter into multi-agency task forces in conjunction with federal and other regional law enforcement agencies and organizations to share information, coordinate complex investigations, and utilize resources that can only be achieved through cooperative efforts. Not only does the state benefit from the combined resources and efforts of these task forces, but the state and local law enforcement agencies also provide essential resources and support in turn to federal law enforcement efforts that benefit the entire country.

Finally, the mandatory court appointment of counsel in a civil case is an unprecedented benefit for those found in possession of proceeds from illegal narcotic trafficking. Introducing appointed civil attorneys into the system will likely result in increased costs related to formal discovery and the increased likelihood of trials. Mandatory appointments will create a conflict for public defenders when their clients who *do not* prevail make forfeited funds available for legislative appropriations back to their budgets.

The vast majority of civil narcotic asset forfeiture cases in California resolve by default or settlement. Providing attorney fees to the party that "substantially prevails" could result in attorney fees being available when the People return 50 percent or more of the seizure in a settlement. This would be an unprecedented one-way benefit for a civil litigant, and a huge additional cost to prosecuting forfeitures. Further, in appropriate cases and under existing civil law, attorney fees are already available to claimants in a forfeiture action.

Forfeited drug monies are ill-gotten gains, and law enforcement agencies and task forces know best how to use these resources to continue combatting drug trafficking organizations. The current California asset forfeiture law has specific requirements for audit and regulation for the use of forfeited money. Asset forfeiture rededicates these ill-gotten gains to the public good.

~~Allowing some of the proceeds to go directly back to the seizing agencies encourages those agencies' efforts in~~ confiscating this money that is the life blood of the drug trafficking organizations that plague our communities. Drugs illegally sent into our communities threaten the public health and welfare, as the money generated by these illegal drug sales feeds corruption, empowers criminal organizations, and creates fear and instability. In its current form, SB 443 will weaken law enforcement's ability to address the scourge of drugs in all of our communities.

I greatly appreciate your consideration of our concerns. If you would like to discuss these issues further, please do not hesitate to contact me.

Very truly yours,

Sean Hoffman  
Director of Legislation

Cc: All Members of the California State Legislature  
Pedro Reyes, Assembly Committee on Appropriations  
Allan Cooper, Republican Consultant

## Sean Hoffman

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**From:** Carter, Lee <lcarter@co.santa-barbara.ca.us>  
**Sent:** Wednesday, July 29, 2015 4:08 PM  
**To:** Sean Hoffman  
**Subject:** FW: Review and Assessment of California SB 443

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**From:** Melissa.Nasrah@treasury.gov [mailto:Melissa.Nasrah@treasury.gov]  
**Sent:** Wednesday, July 29, 2015 12:22 PM  
**To:** Alice.Dery@usdoj.gov; Carter, Lee  
**Cc:** Jennifer.Bickford@usdoj.gov; Carly.F.Diroll-Black@usdoj.gov; Jackle.Jackson@treasury.gov; Brian.Boykin@usdoj.gov  
**Subject:** RE: Review and Assessment of California SB 443

Thanks, Alice, for sharing your response.

Hi Lee,

The Treasury forfeiture program has reviewed SB 443 as well, and we have come to the exact same conclusions as AFMLS, for the exact same reasons. Passage of this bill as written would render all the state and local law enforcement agencies ineligible to participate in the Treasury equitable sharing program. Our equitable sharing legal authorities, particularly those contained in our enabling legislation, 31 USC 9705, require that a sharing payment be made directly to the state and local agency that participated in the investigation resulting in the forfeiture, and further require that the payment be proportionate to such participation. It would be contrary to our legal authorities and program policy to share with state and locals in California should this proposal be enacted as it would require the sharing payments to be made to the State treasury to be distributed to law enforcement agencies statewide based on population in each district, regardless of whether they participated in the investigation. We also share the same reporting and accountability concerns as our colleagues at the Department of Justice. ~~Should this legislation pass, the Treasury program would issue a notification~~ (likely a joint one with DOJ) that the CA state and local law enforcement agencies are no longer eligible to participate in its sharing program.

Our website contains annual reports that show the sharing amounts provided to California going back several years. You can find those reports here: <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Pages/annual-reports.aspx> In each report, go to Section V, "Other Accompanying Information" and you will see a list of sharing (dollars and tangible property) broken down by each state for that fiscal year. The link to the most recent (FY14) report is: <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Documents/TFF%20FY%202014%20Final%20Accountability%20Reports%20508.pdf>

Thank you for the opportunity to review and discuss this matter with you. Please let us know if you need further information.

Melissa

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**From:** Dery, Alice [<mailto:Alice.Dery@usdoj.gov>]  
**Sent:** Friday, July 24, 2015 5:54 PM  
**To:** [lcarter@co.santa-barbara.ca.us](mailto:lcarter@co.santa-barbara.ca.us)  
**Cc:** Nasrah, Melissa; Bickford, Jennifer; Diroll-Black, Carly; Jackson, Jackie; Boykin, Brian  
**Subject:** Review and Assessment of California SB 443

Lee –

Thanks so much for contacting us and providing us with the updates to California SB 443. The Asset Forfeiture and Money Laundering Section (AFMLS) Policy and Training Unit reviewed the amendments and determined that all California state and local law enforcement agencies would be ineligible to participate in the Department of Justice (DOJ) Equitable Sharing Program if this bill goes into effect as written.

The federal statutes that authorize DOJ to equitably share forfeited funds direct us to transfer shared funds directly to a participating state/local law enforcement agency. The recipient agency must then maintain and spend the shared funds in accordance with DOJ program rules. A transfer to a state-controlled fund would not be a permissible use of funds, especially when that central fund would re-distribute money to all law enforcement agencies in the state, regardless of their eligibility or participation in our program.

Furthermore, all participating agencies must report their expenditures to DOJ at the end of their fiscal year. As you are aware, there are many law enforcement items that cannot be purchased with equitably shared funds, and some are fully prohibited both by policy and executive order. If a participating agency turns its federally shared funds over to the State of California under these proposed amendments, DOJ can no longer provide appropriate oversight over final expenditures.

DOJ would designate all CA participating state and local law enforcement agencies ineligible for equitable sharing (much like the New Mexico agencies) should this bill pass as written. Participating tribal law enforcement agencies would not be affected.

Please keep us apprised of any new developments and let us know if you have any questions. The most current FY 2014 equitable sharing figures for California may be found here: <http://www.justice.gov/afp/reports-congress/fy2014-california>

Thanks again for all your hard work in support of the Asset Forfeiture Program.

AD

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