

JULY 12, 2024

# Overview of State Asset Forfeiture in California

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PRESENTED TO: Committee on Revision of the Penal Code



LEGISLATIVE ANALYST'S OFFICE

## Overview of Handout

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- Committee staff requested that we present information on state asset forfeiture. The information presented is generally from our January 2020 report—[\*Potential Impacts on Recent State Asset Forfeiture Changes\*](#)—unless otherwise noted.
- That report was required by Chapter 831 of 2016 (SB 443, Mitchell), which directed our office to provide information on the economic impact of the various changes it made to California’s asset forfeiture processes related to drugs. As part of our report, we consulted with various stakeholders and analyzed available federal, state, and local data sources.
- In our 2020 report, we identified a number of challenges with the data—most notably that data reporting was incomplete and limited which impacted the comprehensiveness and accuracy of the information presented in the figures. Similarly, recent data used to update certain figures in the report—which are included in this handout—are incomplete and limited. For example, several large counties did not report asset forfeiture data in 2022 and 2023—which means data in those years may be understated.



# Background

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## What Is Asset Forfeiture?

- Asset forfeiture refers to (1) the seizure of cash, property, or other items that are suspected of being tied to a criminal offense and (2) the transfer of ownership of these items to the government. The proceeds of these seizures are generally used to support various state and local law enforcement activities.
- Federal and state law indicate that one primary purpose of asset forfeiture is to punish, disrupt, and deter criminal activity. However, another primary purpose of asset forfeiture laws is to ensure due process to uphold individuals' rights.

## How Does the Asset Forfeiture Process Work?

- The asset forfeiture process generally involves three steps: (1) seizure, (2) adjudication, and (3) distribution. Federal, state, and local laws and policies dictate the various processes and procedures that must be followed at each step of the process.
- **Seizure**
  - Law enforcement agencies are authorized to conduct seizures for certain types of criminal offenses and under specified circumstances. For example, law enforcement officers must generally have at least probable cause to believe that an eligible drug-related crime has occurred before assets may be seized.
  - Under certain conditions, prosecutorial agencies must also be involved. For example, in California cases, prosecutors are generally required to initiate drug-related asset forfeiture seizures.



# Background

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*(Continued)*

## ■ **Adjudication**

- Federal and state asset forfeiture proceedings are initiated to determine whether assets were seized appropriately and can be kept by the government. Cases pursued federally are typically those that either (1) arise from joint investigations in which federal law enforcement participates or (2) meet federal requirements allowing a state or local case (upon request of the state/local entity) to be “adopted” as a federal case. All other cases are pursued at the state level.
- Proceedings may be conducted administratively or judicially. Administrative proceedings are generally authorized in cases where items fall below a certain value threshold or where no one files a claim contesting seizure. All other cases are heard as judicial proceedings—which can occur through criminal or civil proceedings with different burden of proof requirements. In California, claims contesting forfeiture in both criminal and civil proceedings are generally heard by a jury.

## ■ **Distribution**

- Asset forfeiture proceeds are generally required to be distributed in particular ways and used for particular purposes. Examples of allowable uses include supplementing existing law enforcement equipment and training. State and local laws also often dictate the conditions in which distributions from the federal government may be received.



# **SB 443 Changes to Asset Forfeiture Process**

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Senate Bill 443, which became effective in January 2017, made several changes to the state's asset forfeiture processes related to drugs. These changes impacted California's interaction with federal asset forfeiture processes as well as the state's asset forfeiture processes.

## **Changes to California's Interaction With Federal Asset Forfeiture Processes**

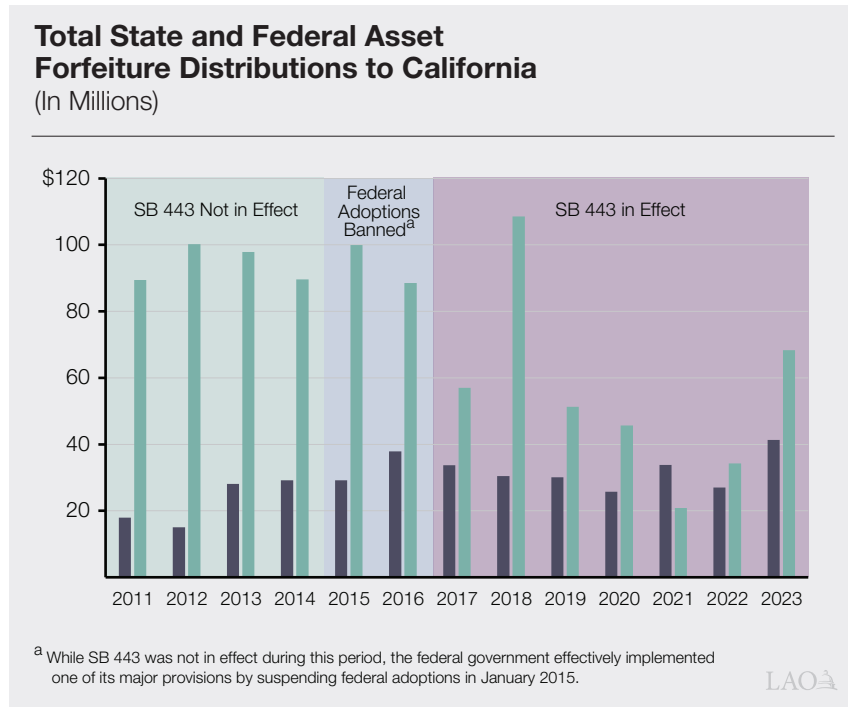
- Prohibited state and local law enforcement agencies from requesting the federal government to adopt cases in which federal law enforcement was not involved (effectively implemented two years before SB 443 due to a temporary federal suspension of adoptions).
- Made no changes to ability to participate in federal joint investigations. However, prohibited state and local law enforcement from receiving forfeiture proceeds from seizures under \$40,000 tied to federal joint investigations unless there is a conviction in federal court for a criminal offense for which the property may be seized under state law.

## **Changes to California's Asset Forfeiture Processes**

- Increased the burden of proof required for the forfeiture of cash and negotiable instruments between \$25,000 to \$40,000 from clear and convincing evidence to beyond a reasonable doubt (this already was required for cash or negotiable instruments up to \$25,000). The lower standard continued to apply to cash and negotiable instruments above \$40,000.
- Required a criminal conviction in civil judicial proceedings for seizures of cash and negotiable instruments between \$25,000 and \$40,000. Conviction must be for an offense for which forfeiture is allowable under state law and generally must have occurred within five years of the initiation of the asset forfeiture process.



# Majority of Asset Forfeiture Distributions Came From Federal Cases

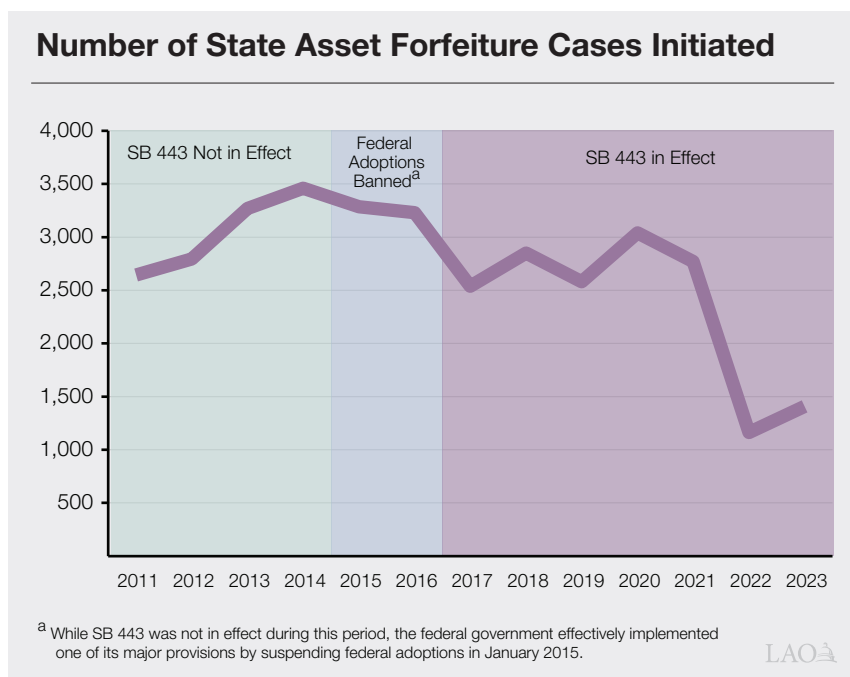


- Between 2011 and 2018, California generally received more than \$100 million annually in total asset forfeiture distributions. This amount decreased between 2019 and 2022 generally to the high tens of millions of dollars—before returning to over \$100 million in 2023.
- As shown in the above figure (updated from our 2020 report), in most years, state asset forfeiture distributions represent less than 40 percent of total asset forfeiture proceeds.
- More than 500 prosecutorial and law enforcement agencies in California have received at least one distribution from state asset forfeiture dollars since 2011.



## Number of State Cases Initiated Since 2014 Appears to Be Declining

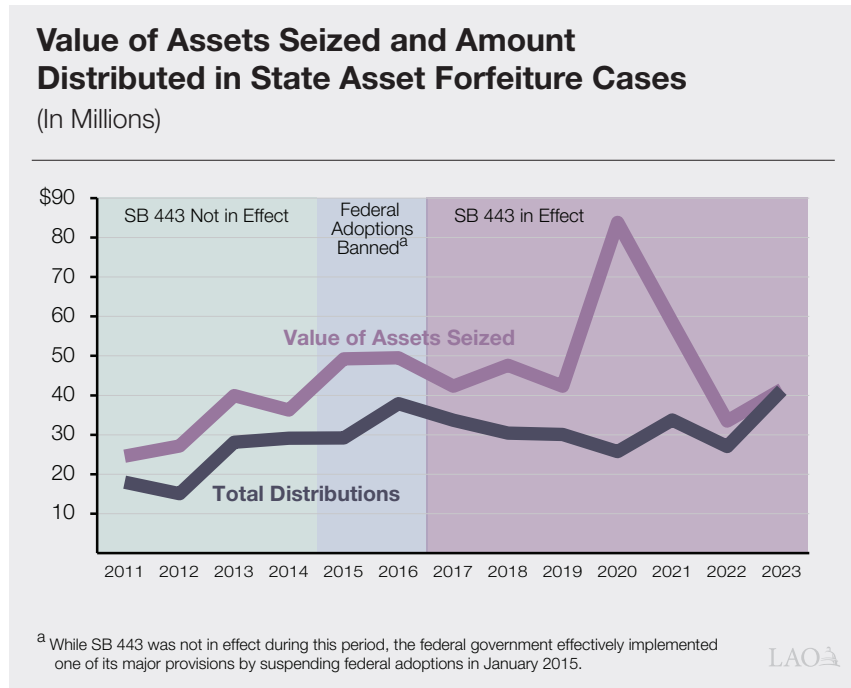
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- As shown in the above figure (updated from our 2020 report), the reported number of state asset forfeiture cases initiated has declined from 3,460 cases in 2014 to 1,409 cases in 2023—a decline of 60 percent.



## Value of Assets Seized and Amount Distributed in State Asset Forfeiture Cases Has Fluctuated

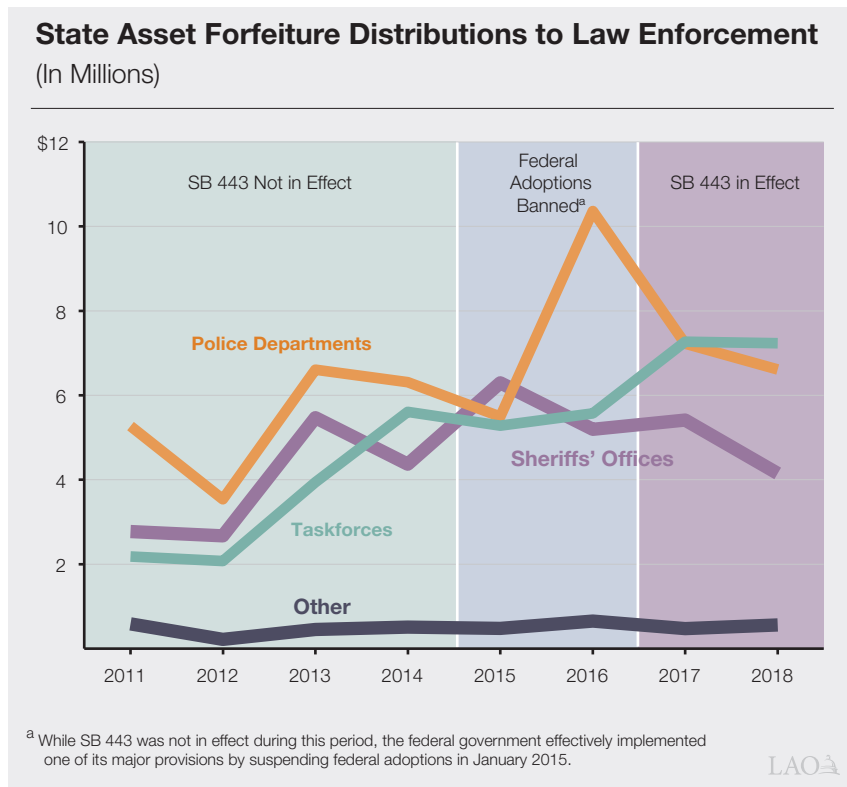


- As shown in the above figure (updated from our 2020 report), both the value of assets seized and the amount distributed generally follows similar trends. Both generally increased until 2016.
- The value of assets seized has fluctuated since 2016. The \$83.9 million seized in 2020 is 69 percent higher than the amount seized in 2016. However, the \$41.5 million seized in 2023 is 16 percent lower than the amount seized in 2016.
- The amount distributed generally declined from \$37.9 million in 2016 to \$25.7 million in 2020 (32 percent). The amount fluctuated after 2020 and reached \$41.3 million in 2023—a 9 percent increase from 2016.





# State Asset Forfeiture Distributions to Law Enforcement Declined, Except for Taskforces, After SB 443 Changes Were In Effect



- As shown in the above figure, between 2011 and 2018, police departments have typically received the greatest share of state asset forfeiture distributions.
- While distributions declined to sheriffs' offices (beginning in 2015) and police departments (beginning in 2016), the amount distributed to taskforces steadily increased between 2016 and 2018, with taskforces receiving the most in distributions beginning in 2017.
- In 2018, total asset forfeiture distributions (both federal and state) made up less than 1 percent of the budget for 89 percent of California law enforcement and prosecutorial agencies receiving distributions in the year. (We would note, however, that asset forfeiture dollars can represent a sizeable portion of the budget of taskforces, though data on taskforce budgets are not readily available.)



# General Fund Deposits Pursuant to Health and Safety Code 11489 Less Than \$12 Million Annually

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## Asset Forfeiture Proceeds Deposited Into the State General Fund Pursuant to Health and Safety Code 11489

Fiscal Year	Amount (in Millions)
2011-12	\$6.6
2012-13	6.1
2013-14	8.0
2014-15	6.6
2015-16	8.0
2016-17	9.2
2017-18	8.6
2018-19	7.9
2019-20	7.4
2020-21	8.0
2021-22	10.4
2022-23	11.9

- Health and Safety Code 11489 requires state drug-related asset forfeiture proceeds be distributed as follows:
  - 65 percent to law enforcement entities that participated in the seizure generally based on their proportionate contribution or percentages in signed task force agreements (about \$19.6 million in 2018). 15 percent of this amount is to be set aside for funding programs to combat drug abuse and divert gang activity.
  - 24 percent to the state General Fund (about \$7.3 million in 2018).
  - 10 percent to the prosecutorial agency that processed the forfeiture (about \$3.3 million in 2018).
  - 1 percent of net proceeds to a nonprofit organization of local prosecutors for training on asset forfeiture (\$303,000 in 2018). As of 2021, these monies are now used for environmental enforcement and training activities.
- The amount deposited into the state General Fund annually increased between 2011-12 and 2016-17—before declining through 2019-20. After 2019-20, there has been an increase in the annual deposits. The \$11.9 million deposited in 2022-23 is a 29 percent increase over the amount deposited in 2016-17.

