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DEPARTMENT OF
POLICE

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CALIFORNIA

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JOHN P. KEARNS
CHIEF OF POLICE

April 18, 1991

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: Request for Support of Senate Bill 139

SUMMARY

Senate Bill 139 would amend Section 11470 of the California Health and Safety Code to extend the property forfeiture provisions of the law to include materials, products and equipment used in cultivating or harvesting of controlled substances. The bill also adds 100 or more plants of marijuana, peyote or psilocybin to the list of specified controlled substances subject to the property forfeiture provisions.

BACKGROUND

Existing law provides that all raw materials, products or equipment which is used in manufacturing, processing or delivering of any controlled substance are subject to property forfeiture. The assets of drug growers/harvesters are currently exempt from the California asset seizure and forfeiture laws.

Senate Bill 139 is designed to close the legal loopholes which exempt the assets of drug growers/harvesters from the asset seizure and forfeiture laws. The bill provides that the assets of those caught cultivating and/or harvesting 100 or more plants of marijuana, peyote, or psilocybin would be subject to seizure and forfeiture as are the assets of persons involved in other drug violations.

FINANCIAL CONSIDERATIONS

None

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POLICY CONSIDERATIONS

Not applicable

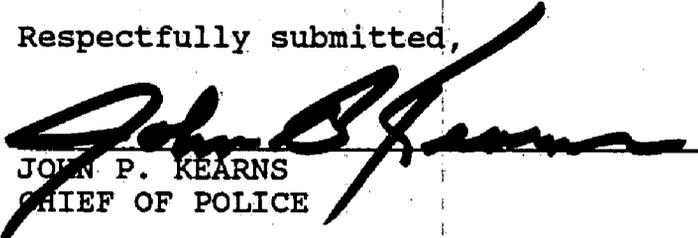
MBE/WBE EFFORTS

Not applicable

RECOMMENDATION

It is recommended that the Law and Legislation support the passage of Senate Bill 139. Drug abuse and the crime associated with it are two major problems facing us today. The passage of Senate Bill 139 would improve the ability of law enforcement to fight the war against drugs.

Respectfully submitted,



JOHN P. KEARNS
CHIEF OF POLICE

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Administrative Services Officer
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April 18, 1991
All Districts

JPK:cs
Ref: 3-11

Introduced by Senator Leonard

January 2, 1991

An act to amend Section 11470 of the Health and Safety Code, and to amend Section 16 of Chapter 1492 of the Statutes of 1988, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 139, as introduced, Leonard. Controlled substance offenses: property forfeiture.

(1) Existing law relating to the regulation of controlled substances provides that all raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of specified controlled substance provisions are subject to forfeiture.

This bill would extend this provision to apply to all raw materials, products, and equipment of any kind which are used, or intended for use, in cultivating or harvesting any controlled substance in violation of those controlled substance provisions.

(2) Existing law provides that the interest of any registered owner of a boat, airplane, or any vehicle, as specified, which has been used to facilitate the possession for sale or sale of specified amounts of specified listed controlled substances, including, among others, 5 pounds dry weight or more of marijuana, peyote, or psilocybin, is subject to forfeiture.

This bill, in addition, would add 100 or more plants of marijuana, peyote, or psilocybin to the list of specified controlled substances subject to this provision.

(3) Existing law provides that all moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a

controlled substance, all proceeds traceable to the exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of specified listed controlled substance offenses are subject to forfeiture.

This bill would also add the offense of planting, cultivating, harvesting, drying, or processing any marijuana or any part thereof, except as otherwise provided by law, to the list of specified controlled substance offenses subject to this provision.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11470 of the Health and Safety
2 Code, as amended by Chapter 1200 of the Statutes of 1990,
3 is amended to read:

4 11470. The following are subject to forfeiture:

5 (a) All controlled substances which have been
6 manufactured, distributed, dispensed, or acquired in
7 violation of this division.

8 (b) All raw materials, products, and equipment of any
9 kind which are used, or intended for use, in
10 manufacturing, compounding, processing, *cultivating*,
11 *harvesting*, delivering, importing, or exporting any
12 controlled substance in violation of this division.

13 (c) All property except real property or a boat,
14 airplane, or any vehicle which is used, or intended for use,
15 as a container for property described in subdivision (a)
16 or (b).

17 (d) (1) All books, computers, records, and research
18 products and materials, including formulas, microfilm,
19 tapes, data, computer programs, and software which are
20 used, or intended for use, in violation of this division.

21 (2) Any firearm or other weapon, device, or
22 ammunition subject to Title 2 (commencing with Section
23 12000) of Part 4 of the Penal Code which is used in any
24 manner to facilitate or which is possessed or used in the
25 commission of a violation of this division.

26 (e) (1) The interest of any registered owner of a boat,

1 airplane, or any vehicle, which has been used in
2 manner to facilitate the possession for sale or sale of;
3 a violation of Section 11379.6 or 11383 involving, 7.125
4 grams or more of a substance containing either heroin or
5 cocaine base, as specified in paragraph (1) of subdivision
6 (f) of Section 11054, 14.25 grams or more of a substance
7 containing a Schedule I controlled substance except
8 marijuana, peyote, or psilocybin, five pounds dry weight
9 or more or 100 plants or more of marijuana, peyote, or
10 psilocybin, 14.25 grams or more of a substance containing
11 cocaine, as specified in paragraph (6) of subdivision (b)
12 of Section 11055, or methamphetamine, or 14.25 grams or
13 more of a substance containing a Schedule II controlled
14 substance. However, an interest not to exceed ten
15 thousand dollars (\$10,000) in a vehicle which may be
16 lawfully driven on the highway with a class 3 or 4 license,
17 as prescribed in Section 12804 of the Vehicle Code, which
18 is a community property asset of a person who is a
19 registered owner of the vehicle other than the person
20 whose conduct renders the vehicle subject to forfeiture,
21 and which is the sole class 3 or 4 vehicle available to that
22 registered owner's immediate family, shall not be subject
23 to forfeiture. The exemption from forfeiture provided by
24 this subdivision shall not apply if pursuant to subdivision
25 (e) of Section 11488.5 the trier of fact finds the person
26 claiming the exemption knew or should have known of
27 the unlawful use of the property.

28 (2) The interest of any person in a license described in
29 Section 23393, 23394, or 23396 of the Business and
30 Professions Code when the licensed premises were used
31 or intended to be used, with the actual knowledge and
32 willful consent of the licensee, to facilitate any violation
33 of Sections 11351, 11351.5, 11355, 11359, 11360, 11378,
34 11378.5, 11379, 11379.5, 11379.6, and 11382 of this code, or
35 Section 182 of the Penal Code, insofar as the offense
36 involves the manufacture, sale, possession for sale, offer
37 for sale, or offer to manufacture, a controlled substance,
38 or conspiracy to commit at least one of those offenses.

39 (f) All moneys, negotiable instruments, securities, or
40 other things of value furnished or intended to be

1 furnished by any person in exchange for a controlled
2 substance, all proceeds traceable to ~~such as~~ *the* exchange,
3 and all moneys, negotiable instruments, or securities,
4 which were used or intended to be used to facilitate any
5 violation of Section 11351, 11351.5, 11352, 11355, 11358,
6 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, or
7 11382 of this code, or Section 182 of the Penal Code,
8 insofar as the offense involves manufacture, sale,
9 possession for sale, offer for sale, or offer to manufacture,
10 or conspiracy to commit at least one of those offenses, if
11 the exchange, violation, or other conduct which is the
12 basis for the forfeiture occurred within five years of the
13 seizure of the property, or the filing of a complaint under
14 this chapter, or the issuance of an order of forfeiture of
15 the property, whichever comes first.

16 (g) Real property related to a violation, whether
17 charged or not, of Section 11366, 11366.5, 11366.6, or
18 11379.6. However, an interest not to exceed one hundred
19 thousand dollars (\$100,000) in real property which is used
20 as a family residence and which is owned by two or more
21 persons shall not be subject to forfeiture. The exemption
22 from forfeiture provided by this subdivision shall not
23 apply if pursuant to subdivision (e) of Section 11488.5 the
24 trier of fact finds the person claiming the exemption
25 knew or should have known of the unlawful use of the
26 property.

27 (h) All right, title, and interest in any property
28 described in this section shall vest in the state upon
29 commission of the act giving rise to forfeiture under this
30 chapter.

31 The operation of the special vesting rule established by
32 this subdivision shall be limited to circumstances where
33 its application will not defeat the claim of any person,
34 including a bona fide purchaser or encumbrancer who,
35 pursuant to Section 11488.5 or 11488.6, establishes an
36 interest in the property seized, which interest arose prior
37 to the seizure or the filing of the complaint for forfeiture
38 pursuant to this chapter, whichever occurs first,
39 notwithstanding that the interest in the property being
40 claimed was acquired from a person whose property

1 interest would otherwise have been subject to
2 divestment pursuant to this subdivision.

3 This section shall remain in effect only until January 1,
4 1994, and as of that date is repealed.

5 SEC. 2. Section 11470 of the Health and Safety Code,
6 as amended by Chapter 924 of the Statutes of 1987, is
7 amended to read:

8 11470. The following are subject to forfeiture:

9 (a) All controlled substances which have been
10 manufactured, distributed, dispensed, or acquired in
11 violation of this division.

12 (b) All raw materials, products and equipment of any
13 kind which are used, or intended for use, in
14 manufacturing, compounding, processing, *cultivating*,
15 *harvesting*, delivering, importing, or exporting any
16 controlled substance in violation of this division.

17 (c) All property except real property or a boat,
18 airplane, or any vehicle which is used, or intended for use,
19 as a container for property described in subdivision (a)
20 or (b).

21 (d) All books, records, and research products and
22 materials, including formulas, microfilm, tapes, and d
23 which are used, or intended for use, in violation of t
24 division.

25 (e) The interest of any registered owner of a boat,
26 airplane, or any vehicle other than an implement of
27 husbandry, as defined in Section 36000 of the Vehicle
28 Code, which has been used as an instrument to facilitate
29 the possession for sale or sale of 14.25 grams or more of
30 heroin or cocaine base as specified in paragraph (1) of
31 subdivision (f) of Section 11054, or a substance containing
32 14.25 grams or more of heroin or cocaine base as specified
33 in paragraph (1) of subdivision (f) of Section 11054, or
34 14.25 grams or more of a substance containing heroin or
35 cocaine base as specified in paragraph (1) of subdivision
36 (f) of Section 11054, or 28.5 grams or more of Schedule I
37 controlled substances except marijuana, peyote, or
38 psilocybin; 10 pounds dry weight or more *or 100 plants or*
39 *more* of marijuana, peyote, or psilocybin; or 28.5 grams or
40 more of cocaine, as specified in paragraph (6) of

1 subdivision (b) of Section 11055, or methamphetamine;
2 or a substance containing 28.5 grams or more of cocaine,
3 as specified in paragraph (6) of subdivision (b) of Section
4 11055, or methamphetamine; or 57 grams or more of a
5 substance containing cocaine, as specified in paragraph
6 (6) of subdivision (b) of Section 11055, or
7 methamphetamine; or 28.5 grams or more of Schedule II
8 controlled substances. No interest in a vehicle which may
9 be lawfully driven on the highway with a class 3 or class
10 4 license, as prescribed in Section 12804 of the Vehicle
11 Code, may be forfeited under this subdivision if there is
12 a community property interest in the vehicle by a person
13 other than the defendant and the vehicle is the sole class
14 3 or class 4 vehicle available to the defendant's immediate
15 family.

16 (f) All moneys, negotiable instruments, securities, or
17 other things of value furnished or intended to be
18 furnished by any person in exchange for a controlled
19 substance, all proceeds traceable to ~~such an~~ the exchange,
20 and all moneys, negotiable instruments, or securities used
21 or intended to be used to facilitate any violation of
22 Section 11351, 11351.5, 11352, 11355, 11358, 11359, 11360,
23 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 of this
24 code, or Section 182 of the Penal Code, insofar as the
25 offense involves manufacture, sale, possession for sale,
26 offer for sale, or offer to manufacture, or conspiracy to
27 commit at least one of those offenses, if the exchange,
28 violation, or other conduct which is the basis for the
29 forfeiture occurred within five years of the seizure of the
30 property, or the filing of a petition under this chapter, or
31 the issuance of an order of forfeiture of the property,
32 whichever comes first.

33 (g) The real property of any property owner who is
34 convicted of violating Section 11366, 11366.5, or 11366.6
35 with respect to that property. However, property which
36 is used as a family residence or for other lawful purposes
37 or which is owned by two or more persons, one of whom
38 had no knowledge of its unlawful use, shall not be subject
39 to forfeiture.

40 (h) Subject to Section 1538.5 of the Penal Code an

1 compliance with the requirements of Section 11488.5 and
2 except as further limited by this subdivision to protect
3 innocent parties who claim a property interest acquired
4 from a defendant, all right, title, and interest in any
5 personal property described in this section shall vest in
6 the state upon commission of the act giving rise to
7 forfeiture under this chapter, if the state or local
8 governmental entity proves a violation of Section 11351,
9 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379,
10 11379.5, 11379.6, or 11382 in accordance with the burden
11 of proof set forth in paragraph (1) of subdivision (i) of
12 Section 11488.4 or, in the case of cash or negotiable
13 instruments in excess of twenty-five thousand dollars
14 (\$25,000), paragraph (4) of subdivision (i) of Section
15 11488.4.

16 The operation of the special vesting rule established by
17 this subdivision shall be limited to circumstances where
18 its application will not defeat the claim of any person,
19 including a bona fide purchaser or encumbrancer who,
20 pursuant to Section 11488.5, 11488.6, or 11489, claims an
21 interest in the property seized, notwithstanding that the
22 interest in the property being claimed was acquired from
23 a defendant whose property interest would otherwise
24 have been subject to divestment pursuant to this
25 subdivision.

26 (i) Except as otherwise provided in this subdivision, or
27 in cases which proceed under subdivision (j) of Section
28 11488.4, upon seizure by any peace officer of this state, all
29 moneys, negotiable instruments, or other cash
30 equivalents seized in accordance with Section 11488,
31 shall, immediately upon being seized, come under the
32 jurisdiction of the superior court of the county in which
33 the defendant has been charged with the underlying or
34 related criminal offense or the superior court of the
35 county in which the property subject to forfeiture has
36 been seized. These moneys, negotiable instruments, or
37 other cash equivalents shall be handled in accordance
38 with subdivision (b) of Section 11488.

39 This subdivision applies only to the Los Angeles Police
40 Department and the Los Angeles Sheriff's Department

1 and does not apply (1) when the property seized exceeds
2 a value of fifty thousand dollars (\$50,000), (2) in any case
3 where the seizure was made in the course of a criminal
4 investigation in which federal law enforcement agents
5 participated, or (3) in any case in which the underlying
6 or related criminal action or proceeding is brought in
7 federal court.

8 This section shall remain in effect only until January 1,
9 1989, and as of that date is repealed, unless a later enacted
10 statute, which is enacted before January 1, 1989, deletes
11 or extends that date become operative on January 1, 1994.

12 SEC. 3. Section 16 of Chapter 1492 of the Statutes of
13 1988 is amended to read:

14 Sec. 16. The provisions of the Health and Safety Code
15 amended by this act, with the exception of Section 11470,
16 shall remain in effect only until January 1, 1994, at which
17 time those sections as they read on December 31, 1988,
18 shall have the same force and effect as if they had not
19 been amended.

O