

Memorandum 2021-64

**Statutes Made Obsolete by Trial Court Restructuring (Part 9):
Jurisdictional Classification of a Drug Asset Forfeiture Proceeding
(Draft of Tentative Recommendation)**

At the November meeting, the Commission directed the staff to prepare a draft of a tentative recommendation to implement a suggestion from attorney Mark Lomax to “expressly designate the jurisdictional classification of drug asset forfeiture proceedings.”¹ The Commission further directed the staff to:

- Formally solicit input from the Chair of the Committee on Revision of the Penal Code regarding whether the Commission should go forward with this project; and
- Report back to the Commission (orally or in writing) about what position the Committee Chair takes.²

Attached is a draft of a tentative recommendation along the lines requested. **Commissioners and other interested persons should review the draft carefully and consider whether any revisions are in order.**

As directed, the staff will provide the attached draft to the Chair of the Committee on Revision of the Penal Code, and seek his input on whether the Commission should go forward with this project. We will report back to the Commission once we hear from him about this matter.

Respectfully submitted,

Barbara Gaal
Chief Deputy Director

1. See Memorandum 2021-56, Exhibit p. 1 (comments of Mark Lomax); *Draft Minutes* (Nov. 2021), p. 3. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. *Draft Minutes* (Nov. 2021), p. 3.

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Statutes Made Obsolete by Trial Court Restructuring (Part 9): Jurisdictional Classification of a Drug Asset Forfeiture Proceeding

December 2021

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN _____.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
c/o UC Davis School of Law
Davis, CA 95616
<commission@clrc.ca.gov>

SUMMARY OF TENTATIVE RECOMMENDATION

Under specified circumstances, law enforcement officers may seize certain types of property connected with unlawful drug activities. Upon compliance with statutory procedures, the seized property may later be forfeited to the government.

In some but not all situations, the forfeiture process entails a court proceeding. Such a proceeding is a civil case, not a criminal case.

Civil cases are divided into two jurisdictional classifications: limited civil cases (cases historically within the original jurisdiction of the municipal courts) and unlimited civil cases (cases historically within the original jurisdiction of the superior courts). The jurisdictional classification has significant procedural consequences.

The statutes governing a drug asset forfeiture proceeding do not expressly state whether such a proceeding is a limited civil case or an unlimited civil case. The proper classification can be discerned through other means, but that requires some effort and degree of sophistication. In this context, confusion is particularly likely, because the upper limit for a limited civil case (\$25,000) is the same as the upper limit for use of a nonjudicial forfeiture process (also \$25,000).

Consequently, misclassifications and disputes over classification of drug asset forfeiture proceedings sometimes occur. This can waste resources of courts, claimants, prosecutors, and others involved in forfeiture proceedings.

The Law Revision Commission tentatively recommends revising the drug asset forfeiture statutes to expressly state that a forfeiture petition or claim is an unlimited civil case, regardless of the value of the seized property.

This would not be a substantive change, nor would it be an endorsement or condemnation of the existing drug asset forfeiture statutes. It would just be a clarification to prevent jurisdictional mistakes, benefiting all concerned without precluding the Legislature from revisiting other aspects of those statutes as appropriate in the future.

This tentative recommendation was prepared pursuant to Government Code Sections 71674 and 8298 and Resolution Chapter 108 of the Statutes of 2021.

JURISDICTIONAL CLASSIFICATION OF A DRUG ASSET FORFEITURE PROCEEDING

1 Under specified circumstances, law enforcement officers may seize certain types
2 of property connected with unlawful drug activities. Upon compliance with
3 statutory procedures, the seized property may later be forfeited to the government.

4 In some but not all situations, the forfeiture process entails a court proceeding.
5 Such a proceeding is a civil case, not a criminal case.

6 Civil cases are divided into two jurisdictional classifications: limited civil cases
7 (cases historically within the original jurisdiction of the municipal courts) and
8 unlimited civil cases (cases historically within the original jurisdiction of the
9 superior courts).¹ The jurisdictional classification has significant procedural
10 consequences.² In particular, there are differences relating to appeal path, filing
11 fees, types of relief available, and use of economic litigation procedures (special
12 rules governing discovery, pleadings, use of a case questionnaire, witness
13 testimony, and trial procedures).

14 The statutes governing a drug asset forfeiture proceeding do not expressly state
15 whether such a proceeding is a limited civil case or an unlimited civil case. The
16 proper classification can be discerned through other means, but that requires some
17 effort and degree of sophistication.

18 Consequently, misclassifications, confusion, and disputes over classification
19 sometimes occur. This can waste resources of courts, claimants, prosecutors, and
20 others involved in forfeiture proceedings.

21 As explained below, the Law Revision Commission³ tentatively recommends
22 revising the drug asset forfeiture statutes to expressly specify that a forfeiture
23 petition or claim is an unlimited civil case, regardless of the value of the seized
24 property.

25 This would not be a substantive change, nor would it be an endorsement or
26 condemnation of the existing drug asset forfeiture statutes. It would just be a
27 clarification to prevent jurisdictional mistakes, benefiting all concerned without
28 precluding the Legislature from revisiting other, perhaps more fundamental,
29 aspects of those statutes as appropriate in the future.

30 To fully present the reasons for this recommendation, it is first necessary to
31 provide some background information on trial court unification, a turn-of-the-

1. A small claims case is a special type of limited civil case, subject to special procedures. See Code Civ. Proc. § 87.

2. *Yuarte v. Superior Court* (2005) 129 Cal.App.4th 266, 274.

3. Any California Law Revision Commission document referred to in this tentative recommendation can be obtained from the Commission. Most materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

1 century reform in which the municipal and superior courts in each county unified
2 their operations. It is also necessary to provide some background information on
3 drug asset forfeiture proceedings. After addressing those two topics, the
4 Commission explains and solicits input on its tentative conclusions.

5 **Trial Court Unification**

6 California's trial court system underwent a dramatic restructuring as the last
7 century drew to a close. One of the key reforms was unification of two different
8 types of trial courts: municipal courts and superior courts.

9 *Municipal Courts and Superior Courts*

10 In the late 1990's, each county had one superior court and one or more
11 municipal courts.⁴ The municipal courts were courts of limited jurisdiction, which
12 was specified by statute as constitutionally required.⁵ The maximum amount in
13 controversy was \$25,000,⁶ and there were also other limitations on the types of
14 relief that could be awarded in a municipal court case.⁷ An appeal from a judgment
15 in a municipal court case (other than a small claims case) was to the appellate
16 department of the local superior court.⁸ Civil cases in municipal court were
17 generally resolved pursuant to a set of rules known as economic litigation
18 procedures, which restricted the extent of discovery, permitted the use of a case
19 questionnaire, and established special requirements for pleadings, witness
20 testimony, and trial.⁹

21 Each county also had a superior court, which had original jurisdiction in all
22 causes except those given by statute to the municipal courts.¹⁰ There was no
23 maximum amount in controversy in the superior court, nor was the superior court
24 subject to the limitations on types of relief that applied in the municipal courts.
25 Except in a death penalty case, an appeal from a superior court judgment was to
26 the appropriate court of appeal.¹¹ Economic litigation procedures did not apply in

4. See former Cal. Const. art. VI, §§ 4, 5; *Yuarte*, 129 Cal.App.4th at 274. In the early 1990's, California also had justice courts in some counties. Those courts were eliminated statewide through a ballot measure approved by the voters in 1994. See 1994 Cal. Stat. res. ch. 113 (SCA 7 (Dills)) (Prop. 191, approved Nov. 8, 1994).

5. See former Cal. Const. art. VI, § 10.

6. See former Code Civ. Proc. § 86.

7. See Code Civ. Proc. § 580 Comment & authorities cited therein.

8. See former Code Civ. Proc. § 77. A small claims case was, and still is, governed by special procedures, including a special appeal process. See, e.g., Code Civ. Proc. § 116.770.

9. See former Code Civ. Proc. §§ 90-100.

10. Former Cal. Const. art. VI, § 10.

11. Former Cal. Const. art. VI, § 11.

1 the superior courts.¹² Most filing fees were higher in a superior court case than in a
2 municipal court case.¹³

3 *Unification*

4 In 1998, the voters passed a constitutional amendment that permitted the
5 municipal and superior courts in each county to unify their operations in the
6 superior court upon a vote of a majority of the county’s municipal court judges
7 and a majority of the county’s superior court judges.¹⁴ By early 2001, the trial
8 courts in all of California’s 58 counties had unified.¹⁵ Each county now has a
9 unified superior court, which handles all trial court operations in that county.

10 *Limited Civil Cases and Unlimited Civil Cases*

11 Through unification, the original jurisdiction of the superior courts expanded to
12 include both (1) the types of civil cases traditionally brought in municipal court
13 and (2) the types of civil cases traditionally brought in superior court. It was
14 important, however, to preserve the procedural distinctions between those types of
15 cases (particularly while the unification process was ongoing and it was necessary
16 to ensure equitable treatment of a litigant in a county with a unified superior court
17 and a similarly-situated litigant in a county where unification had not yet
18 occurred).¹⁶

19 At the request of the Legislature, this Commission prepared the legislation to
20 implement trial court unification,¹⁷ including the legislation that serves to preserve
21 the procedural distinctions between traditional municipal court cases and
22 traditional superior court cases.¹⁸ In particular, a new provision was added to the
23 codes (Code of Civil Procedure Section 85), which serves to identify the types of
24 civil cases formerly brought in municipal court and calls them “limited civil
25 cases.”¹⁹ The key language is as follows:

12. See former Code Civ. Proc. § 91.

13. See, e.g., former Gov’t Code §§ 26820.4 (\$185 filing fee for first paper in superior court case), 72055 (\$90 filing fee for first paper in municipal court case).

14. See 1996 Cal. Stat. res. ch. 36 (SCA 4 (Lockyer)) (Prop. 220, approved June 2, 1998).

15. See <https://www.courts.ca.gov/documents/unidate.pdf>.

16. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 60, 64-65 (1998) (hereafter, “*TCU: Revision of Codes*”).

17. See 1997 Cal. Stat. res. ch. 102; Gov’t Code § 71674. This work occurred in two phases. First, the codes were revised to accommodate county-by-county unification of the trial courts. See *TCU: Revision of Codes*, *supra* note 16. After the unification process was complete in all counties, the codes were further revised to reflect the statewide elimination of the municipal courts. See *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm’n Reports 1 (2002) (hereafter, “*TCR: Part 1*”).

18. See *TCU: Revision of Codes*, *supra* note 16, at 64-65.

19. See *id.* at 64; *AP-Colton LLC v. Ohaeri* (2015) 240 Cal.App.4th 500, 506; *Housing Authority of Monterey County v. Jones* (2005) 130 Cal.App.4th 1029, 1038; *Ytuarte*, 129 Cal.App.4th at 274.

1 85. An action or special proceeding *shall be treated as a limited civil case if all*
2 *of the following conditions are satisfied, and, notwithstanding any statute that*
3 *classifies an action or special proceeding as a limited civil case, an action or*
4 *special proceeding shall not be treated as a limited civil case unless all of the*
5 *following conditions are satisfied:*

6 (a) The amount in controversy does not exceed twenty-five thousand dollars
7 (\$25,000). As used in this section, “amount in controversy” means the amount of
8 the demand, or the recovery sought, or the value of the property, or the amount of
9 the lien, that is in controversy in the action, exclusive of attorneys’ fees, interest,
10 and costs.

11 (b) The relief sought is a type that may be granted in a limited civil case.

12 (c) The relief sought, whether in the complaint, a cross-complaint, or otherwise,
13 is exclusively of a type described in one or more statutes that classify an action or
14 special proceeding as a limited civil case or that provide that an action or special
15 proceeding is within the original jurisdiction of the municipal court, including, but
16 not limited to, the following provisions:

17 ²⁰

18 In short, a matter is treated as a limited civil case *only* if it satisfies the amount-in-
19 controversy requirement (\$25,000 or less), seeks specified types of relief, *and* the
20 relief sought is *exclusively* of a type described in a statute that either classifies the
21 matter as a limited civil case, or says that the matter is within the original
22 jurisdiction of the municipal court.

23 To assist in applying this provision, another statute was amended to specify the
24 types of relief that could not be awarded in a limited civil case (the same types of
25 relief that could not be awarded in a municipal court case).²¹ In addition, numerous
26 statutes throughout the codes were amended to replace a reference to a municipal
27 court case with a reference to a “limited civil case.”²² Of particular note, the
28 statutes relating to jurisdiction of an appeal from a municipal court judgment,²³
29 economic litigation procedures,²⁴ and municipal court filing fees were amended to
30 apply to limited civil cases.²⁵

31 Thus, a limited civil case is treated essentially the same way as a municipal
32 court case. Similarly, an “unlimited civil case” is a case that would have been

20. Emphasis added.

21. See Code Civ. Proc. § 580(b) & Comment.

22. See, e.g., *TCU: Revision of Codes*, *supra* note 16, at 140-44 (amendment of former Code Civ. Proc. § 86).

23. See *id.* at 209-10 (amendment of former Code Civ. Proc. § 904.2).

24. See *id.* at 146-47 (amendment of former Code Civ. Proc. § 91).

25. See, e.g., *id.* at 377-78 (amendment of former Gov’t Code § 72055).

1 within the jurisdiction of the superior court before trial court unification;²⁶ it is
2 now treated essentially the same way as a traditional superior court case.²⁷

3 The constitutional provision on appellate jurisdiction (Article VI, Section 11, of
4 the California Constitution) further ensures that courts treat a traditional superior
5 court case the same way that they did before unification. As amended by the 1998
6 unification measure, it says that except in death penalty cases, “courts of appeal
7 have appellate jurisdiction when superior courts have original jurisdiction *in*
8 *causes of a type within the appellate jurisdiction of the courts of appeal on June*
9 *30, 1995, and in other causes prescribed by statute.”²⁸ In other words, if a type of
10 case was appealable to the court of appeal on June 30, 1995, the California
11 Constitution guarantees that such a case is still appealable to the court of appeal.*

12 *Statutory References to “Superior Court”*

13 In preparing legislation to revise the codes as discussed above, the Commission
14 had to examine every statutory reference to municipal court, to determine whether
15 to replace it with a reference to a limited civil case. The Commission did not,
16 however, have to examine every statutory reference to superior court.

17 Because the jurisdiction of the municipal courts had to be constitutionally
18 specified by statute, the traditional municipal court civil cases (the newly-named
19 limited civil cases) could be readily identified by searching the codes for
20 “municipal court.” Then traditional superior court civil cases could be defined as
21 everything else, without having to enumerate them.²⁹

22 That was important, because the codes contain thousands of references to the
23 superior courts. Having to review each of them would have greatly slowed the
24 process of making the codes workable in a unified court system.

25 After the Commission completed its initial, urgent work on updating the codes
26 to reflect county-by-county unification³⁰ and the subsequent elimination of the
27 municipal courts,³¹ it began to turn to other trial court restructuring matters that for
28 one reason or another required more time to address.³² That work continues to this

26. *AP-Colton LLC*, 240 Cal.App.4th at 506; *Ytuarte*, 129 Cal.App.4th at 274.

27. See *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm’n Reports 305, 325 (2006). The statutes governing expedited jury trials (Code Civ. Proc. §§ 630.01-630.29) were enacted after trial court unification. They treat limited civil cases differently than unlimited civil cases.

28. Emphasis added.

29. See Code Civ. Proc. § 88.

30. See *TCU: Revision of Codes*, *supra* note 16.

31. See *TCR: Part 1*, *supra* note 17.

32. See *TCR: Part 1*, *supra* note 17, at 5 (“In addition to the numerous revisions proposed, many other statutes require amendment or repeal, but are not included in this recommendation because (1) stakeholders have not yet reached agreement on key issues, (2) further research is required due to the complexity of the law, or (3) additional time is required to prepare appropriate revisions due to the volume of statutory material involved.”).

1 day; it has covered many different topics and resulted in numerous
2 recommendations, almost all of which have been enacted.³³

3 One such follow-up project on the Commission’s list was to review all statutory
4 references to “superior court,” to assess whether it might be helpful to add
5 statutory language regarding the proper jurisdictional classification. The
6 Commission recently considered that project and decided that it would be
7 prohibitively time-consuming and burdensome to systematically review every
8 statutory reference to “superior court.”³⁴

9 In reaching that conclusion, the Commission took into account that when a
10 statute says that a type of case “shall be filed in superior court” (or something
11 similar), trial court unification did not render that statement incorrect. Rather, the
12 statement just provides less information than it did before unification. More
13 specifically,

- 14 • Before trial court unification, a statutory requirement to file a type of case
15 “in superior court” was by itself sufficient to plainly indicate that the case
16 type was subject to the appeal path and other procedures then being used in
17 superior court (the procedures now applicable to an unlimited civil case),
18 regardless of the value at stake.
- 19 • After trial court unification, the superior court has jurisdiction of all types of
20 cases, so a statutory requirement to file a case “in superior court” does not,
21 by itself, convey which set of procedures applies: the ones traditionally used
22 in superior court (now applicable to an unlimited civil case), or the ones
23 traditionally used in municipal court (now applicable to a limited civil case).

24 Although the statutory language, by itself, no longer provides as much
25 information as in the past, it is still possible to determine the correct jurisdictional
26 classification for the type of case in question. Reaching that conclusion just
27 requires a reader to examine the text of the section *and* do at least one of the
28 following:

33. For information about the Commission’s prior work on trial court restructuring, see 2021 Cal. Stat. ch. 117 (implementing two recent Commission recommendations); *Statutes Made Obsolete by Trial Court Restructuring (Part 6): Court Facilities*, 46 Cal. L. Revision Comm’n Reports 25, 34-36 (2019) (describing Commission’s role and listing recommendations and enactments) (hereafter, “TCR #6”); CLRC Staff Memorandum 2020-52, pp. 11-12 & Exhibit pp. 43-44 (summarizing work done and work remaining as of late 2020); CLRC Staff Memorandum 2018-5 (summarizing status of work in 2018); First Supplement to CLRC Staff Memorandum 2014-53 (describing numerous projects in detail, many of which are now complete). See also the materials collected at the following urls:

<http://www.clrc.ca.gov/J1405.html>
<http://www.clrc.ca.gov/J1406.html>
<http://www.clrc.ca.gov/J1407.html>
<http://www.clrc.ca.gov/J1408.html>

34. See CLRC Staff Memorandum 2021-22; CLRC Minutes (June 2021), pp. 4-5. The codes currently contain over 14,000 references to “superior court.”

- 1 • Check whether the type of case in question meets the requirements for a
2 limited civil case that are specified in Code of Civil Procedure Section 85. If
3 not, it is an unlimited civil case and traditional superior court procedures
4 apply.
- 5 • Check when the section was enacted. If a section says that a type a case
6 must be filed in superior court and that language predates unification, those
7 facts in combination establish that the case is an unlimited civil case and
8 traditional superior court procedures apply.
- 9 • Consider whether the surrounding statutory context sheds any light on the
10 situation, such as specifying the appeal path for the type of case (thus
11 implicitly indicating whether it is a limited civil case or an unlimited civil
12 case).
- 13 • Check whether a judgment in the type of case was appealable to the court of
14 appeal before June 30, 1995. If so, it is constitutionally required to remain
15 appealable to the court of appeal and hence must be an unlimited civil case.

16 Alternatively, a reader could in some instances determine the jurisdictional
17 classification by relying on a treatise or other source that is based on such
18 research.

19 Given those circumstances, the Commission decided to adopt a “no review and
20 very limited treatment” approach to the thousands of statutory references to
21 “superior court.” In other words, instead of systematically reviewing each of those
22 references, the Commission decided to examine such a reference only upon
23 learning that it is presenting an actual (not hypothetical) problem relating to
24 jurisdictional classification.³⁵

25 Since reaching that decision, the Commission has learned that it may be
26 particularly helpful to make the proper jurisdictional classification more explicit in
27 the drug asset forfeiture statutes.³⁶ That point is explained below.

28 **Drug Asset Forfeiture Proceedings**

29 Under Health and Safety Code Sections 11469 to 11495, in some circumstances
30 a law enforcement officer is permitted to seize certain property connected with an
31 unlawful drug activity (such as equipment used in manufacturing an unlawful
32 drug, a vehicle used in transporting an unlawful drug, or the unlawful drug itself).
33 The seized property may thereafter be subject to forfeiture to the state or local
34 government.³⁷ Proceeds from forfeited property are typically used to support state

35. CLRC Minutes (June 2021), p. 5.
36. See CLRC Staff Memorandum 2021-56, Exhibit pp. 1-3 (comments of attorney Mark W. Lomax).
37. Ramirez v. Tulare County Dist. Atty’s Office (2017) 9 Cal.App.5th 911, 917.

1 and local law enforcement.³⁸ These laws are “intended to be remedial by removing
2 the tools and profits from those engaged in the illicit drug trade”³⁹

3 Before turning to the jurisdictional aspects of drug asset forfeiture proceedings,
4 it may be helpful to provide some information on such proceedings generally.

5 ***Forfeiture Proceedings Generally***

6 Although a drug asset forfeiture proceeding is linked to alleged criminal activity,
7 it is a civil in rem proceeding in which the seized property is named as the
8 defendant or respondent, based on the fiction that the property itself is the guilty
9 party.⁴⁰ The forfeiture proceeding is considered an action for return of property,
10 not a suit for money damages.⁴¹

11 A drug asset forfeiture proceeding cannot be initiated by a law enforcement
12 officer; it can only be initiated by the Attorney General or a district attorney.⁴² The
13 Code of Civil Procedure governs a drug asset forfeiture proceeding “unless
14 otherwise inconsistent with the provisions or procedures” set forth in Health and
15 Safety Code Sections 11469 to 11495.⁴³

16 There are two types of drug asset forfeiture proceedings, nonjudicial and
17 judicial. A nonjudicial forfeiture proceeding is permitted only for personal
18 property less than \$25,000 in value. If the Attorney General or local district
19 attorney provides notice of the proceeding as statutorily required and does not
20 receive a timely claim in response, the prosecutor may order forfeiture of such
21 property without going to court.⁴⁴ Providing a “streamlined process” for a
22 nonjudicial forfeiture spares the government the time and expense of conducting a
23 judicial proceeding where the property at stake is of small value and no one
24 objects.⁴⁵

25 However, a judicial forfeiture proceeding (requiring a court filing) is necessary
26 if someone timely files a claim in a nonjudicial forfeiture proceeding.⁴⁶ A judicial
27 forfeiture proceeding is also required if a prosecutor seeks to forfeit real property

38. See Health & Safety Code § 11489.

39. Health & Safety Code § 11469(j).

40. *People v. Superior Court (Plascencia)* (2002) 103 Cal.App.4th 409, 418; *Juaregi v. Superior Court* (1999) 72 Cal.App.4th 931, 937-38.

41. *People v. Superior Court (Rishwain)* (1989) 215 Cal.App.3d 1411, 1414.

42. See Health & Safety Code § 11488.1; see also Health & Safety Code §§ 11488.4(a)(1), 11488.4(j); *Cuevas v. Superior Court* (2013) 221 Cal.App.4th 1312, 1331.

43. See Health & Safety Code § 11488.5(c)(3).

44. Health & Safety Code § 11488.4(j).

45. See, e.g., *Ramirez*, 9 Cal.App.5th at 927.

46. See Health & Safety Code § 11488.4(j)(5)(C); *Ramirez*, 9 Cal.App.5th at 927.

1 of any value or cash or personal property exceeding \$25,000 in value.⁴⁷ A claimant
2 in a judicial forfeiture proceeding is entitled to a jury trial.⁴⁸

3 As the Legislature has noted, drug asset forfeiture proceedings, “can have harsh
4 effects on property owners in some circumstances.”⁴⁹ Thus, it is “well settled” that
5 statutes imposing forfeitures are disfavored and must be strictly construed in favor
6 of persons contesting such action.⁵⁰

7 California’s statutes governing drug asset forfeiture proceedings have undergone
8 numerous revisions since they were enacted in 1972.⁵¹ Most recently, a 2016 bill
9 made a number of significant changes to those statutes.⁵² The same bill required
10 the Legislative Analyst’s Office (“LAO”) to prepare a report on the economic
11 impact of the bill on law enforcement budgets.⁵³ The LAO submitted the report in
12 January 2020,⁵⁴ but the results were not definitive and “stakeholders indicated that
13 they were still in the process of adapting” to the bill’s requirements, as well as to
14 various recent changes in the federal asset forfeiture process.⁵⁵

15 *Jurisdictional Classification of Forfeiture Proceedings*

16 Health and Safety Code Sections 11469 to 11495 do not expressly say whether a
17 drug asset forfeiture proceeding is a limited civil case or an unlimited civil case.
18 However, paragraph (a)(1) of Health and Safety Code Section 11488.4 directs the
19 Attorney General or a district attorney to “file a petition of forfeiture with the
20 superior court” Similarly, paragraph (a)(1) of Health and Safety Code Section
21 11488.5 directs a person claiming seized property to file a claim “with the superior
22 court.”⁵⁶

23 Those statutory references predate the unification of the municipal and superior
24 courts, which commenced in 1998 and was completed by early 2001.⁵⁷

47. See Health & Safety Code § 11488.4(a)(1).

48. *Cuevas*, 221 Cal.App.4th at 1320; *Plascencia*, 103 Cal.App.4th at 427.

49. Health & Safety Code § 11469(j).

50. See, e.g., *Ramirez*, 9 Cal.App.5th at 928; *Cuevas*, 221 Cal.App.4th at 1320.

51. *Plascencia*, 103 Cal.App.4th at 418. A major 1994 reform is particularly noteworthy. See Karis Ann-Yu Chi, *Follow the Money: Getting to the Root of the Problem with Civil Asset Forfeiture in California*, 90 Cal. L. Rev. 1635, 1648-58 (2002).

52. See SB 443 (Mitchell), 2016 Cal. Stat. ch. 831.

53. See 2016 Cal. Stat. ch. 831, § 6.

54. See Legislative Analyst’s Office, *Potential Impacts of Recent State Asset Forfeiture Changes* (Jan. 2020), p. 16.

55. *Id.* at 16.

56. See also Health & Safety Code Section 11488.4(c), requiring a notice stating that any interested party “may file a verified claim with the superior court.”

57. See 1994 Cal. Stat. ch. 314, § 13 (version of Health & Safety Code § 11488.4(a) in effect just before trial court unification, which stated that “the Attorney General or district attorney shall file a petition of forfeiture with the superior court”) (emphasis added); 1997 Cal. Stat. ch. 241, § 2 (version of Health &

1 Accordingly, before unification all drug asset forfeiture proceedings, other than
2 nonjudicial forfeiture proceedings, had to be commenced by filing a petition in
3 *superior* court. That was true even if the value of the seized property did not
4 exceed \$25,000, the jurisdictional limit of the municipal court. Further, any claim
5 to seized property in a judicial or nonjudicial drug asset forfeiture proceeding also
6 had to be filed in *superior* court.

7 It follows that when a drug asset forfeiture petition or claim is filed in court
8 today, the matter must be treated as an *unlimited* civil case and the procedures for
9 an *unlimited* civil case apply (unless the drug asset forfeiture statutes specifically
10 direct otherwise). That is true even if the value of the seized property does not
11 exceed \$25,000, the amount-in-controversy cutoff for a limited civil case.⁵⁸

12 Because the drug asset forfeiture statutes do not directly state as much, court
13 proceedings under them are sometimes misclassified and disputes over the proper
14 classification sometimes arise. Such confusion appears to be unusually common in
15 this context, due to the overlap between the upper limit for a limited civil case
16 (\$25,000) and the upper limit for a nonjudicial forfeiture (also \$25,000).⁵⁹

17 Confusion over the proper classification, resultant misclassifications, and related
18 disputes can consume judicial resources, while also imposing financial burdens
19 and stress on others involved in drug asset forfeiture proceedings. This is both
20 wasteful and preventable.

21 **Recommended Revisions**

22 For the foregoing reasons, the Commission tentatively recommends revising
23 Health and Safety Code Section 11488.4 to expressly state that “[a] petition under
24 this section is an unlimited civil case, regardless of the value of the seized
25 property.”⁶⁰ Similarly, the Commission tentatively recommends revising Health
26 and Safety Code Section 11488.5 to expressly state that “[a] claim under this
27 section is an unlimited civil case, regardless of the value of the seized property.”⁶¹

28 As explained above, these revisions would not be a substantive change. The
29 governing statutes already require the proceedings in question to be treated as
30 unlimited civil cases, they just do not do so expressly. Making the point express
31 would prevent confusion and needless expenditures of time, effort, and financial
32 resources, for the benefit of all concerned.

Safety Code § 11488.5(a)(1) in effect just before trial court unification, which permitted any person claiming an interest in seized property to file a claim for the property “with the superior court”).

58. See, e.g., *Ytuarte*, 129 Cal.App.4th at 274 (“Now civil cases formerly within the jurisdiction of the municipal courts are classified as ‘limited’ civil cases, while matters formerly within the jurisdiction of the superior courts are classified as unlimited’ civil actions.”).

59. See CLRC Staff Memorandum 2021-56, Exhibit pp. 2-3 (comments of attorney Mark W. Lomax).

60. See proposed amendment of Health & Safety Code § 11488.4 & Comment *infra*.

61. See proposed amendment of Health & Safety Code § 11488.5 & Comment *infra*.

1 To further prevent confusion, the Commission also recommends revising a
2 paragraph in Health and Safety Code Section 11488.5 that says (1) there is no fee
3 for filing a claim under the section if the seized property is valued at \$5,000 or
4 less, and (2) the fee for filing the first paper in an unlimited civil case (specified in
5 Government Code Section 70611) applies to such a claim if the value of the seized
6 property exceeds \$5,000.⁶² Specifically, the Commission recommends making
7 explicit that these rules regarding fees apply “[n]otwithstanding any other law.”⁶³

8 Again, this clarification would not be a substantive change in the law.⁶⁴ It would
9 just make obvious that Section 11488.5’s specific language regarding fees for a
10 claim in a drug asset forfeiture proceeding prevails over any statute addressing
11 filing fees more generally (such as the fees specified in the Small Claims Act⁶⁵ or
12 in the Uniform Civil Fees and Standard Fee Schedule Act⁶⁶). That guidance should
13 be helpful in determining the proper fees.

14 In proposing the revisions described above, the Commission has not evaluated
15 the merits of California’s existing approach to drug asset seizures and forfeitures.
16 This tentative recommendation does not take any position on that matter. The
17 Commission is merely suggesting nonsubstantive clarifications that could help
18 prevent costly, needless confusion and mistakes until such time (if any) as the
19 Legislature decides to revisit other, perhaps more fundamental, aspects of the drug
20 asset forfeiture statutes. That is the purpose of the proposed revisions and
21 enactment of them should not be viewed as an expression of approval or
22 disapproval of California’s current approach to this area.

23 **Request for Comments**

24 The Commission seeks public comment on its tentative recommendation.
25 **Comments can be in any format and can be emailed to bgaal@clrc.ca.gov.**
26 Comments supporting the proposed revisions are just as important as comments
27 suggesting changes or expressing other views.

28 The Commission also welcomes comments on other statutes that require
29 revisions to reflect trial court restructuring, regardless of whether they relate to the
30 topics discussed in this tentative recommendation.

62. See Health & Safety Code § 11488.5(a)(3).

63. See proposed amendment of Health & Safety Code § 11488.5 & Comment *infra*. In addition to the revisions described above, the Commission proposes to correct some obsolete cross-references in Section 11488.5(a)(4) and make other technical revisions pursuant to Government Code Section 8298. See proposed amendments of Health & Safety Code §§ 11488.4, 11488.5 & Comments *infra*.

64. See, e.g., <https://www.courts.ca.gov/documents/StatewideCivilFeeSchedule-062713.pdf> (statewide uniform fee schedule showing that there is no fee for filing “claim opposing forfeiture of seized property, if value of property is \$5,000 or less”).

65. See, e.g., Code Civ. Proc. § 116.230.

66. Gov’t Code §§ 70600-70678.

1 Comments from knowledgeable persons are invaluable in the Commission's
2 study process. The Commission sincerely thanks everyone who takes the time to
3 review the tentative recommendation and express their views.

PROPOSED LEGISLATION

1 **Health & Safety Code § 11488.4 (amended). Petition of forfeiture**

2 SEC. _____. Section 11488.4 of the Health and Safety Code is amended to read:

3 11488.4. (a)(1) Except as provided in subdivision (j), if the Department of
4 Justice or the local governmental entity determines that the factual circumstances
5 do warrant that the moneys, negotiable instruments, securities, or other things of
6 value seized or subject to forfeiture come within the provisions of subdivisions (a)
7 to (g), inclusive, of Section 11470, and are not automatically made forfeitable or
8 subject to court order of forfeiture or destruction by another provision of this
9 chapter, the Attorney General or district attorney shall file a petition of forfeiture
10 with the superior court of the county in which the defendant has been charged with
11 the underlying criminal offense or in which the property subject to forfeiture has
12 been seized or, if no seizure has occurred, in the county in which the property
13 subject to forfeiture is located. A petition under this section is an unlimited civil
14 case, regardless of the value of the seized property. If the petition alleges that real
15 property is forfeitable, the prosecuting attorney shall cause a lis pendens to be
16 recorded in the office of the county recorder of each county in which the real
17 property is located.

18 (2) A petition of forfeiture under this subdivision shall be filed as soon as
19 practicable, but in any case within one year of the seizure of the property ~~which~~
20 that is subject to forfeiture, or as soon as practicable, but in any case within one
21 year of the filing by the Attorney General or district attorney of a lis pendens or
22 other process against the property, whichever is earlier.

23 (b) Physical seizure of assets shall not be necessary in order to have that
24 particular asset alleged to be forfeitable in a petition under this section. The
25 prosecuting attorney may seek protective orders for any asset pursuant to Section
26 11492.

27 (c) The Attorney General or district attorney shall make service of process
28 regarding this petition upon every individual designated in a receipt issued for the
29 property seized. In addition, the Attorney General or district attorney shall cause a
30 notice of the seizure, if any, and of the intended forfeiture proceeding, as well as a
31 notice stating that any interested party may file a verified claim with the superior
32 court of the county in which the property was seized or if the property was not
33 seized, a notice of the initiation of forfeiture proceedings with respect to any
34 interest in the property seized or subject to forfeiture, to be served by personal
35 delivery or by registered mail upon any person who has an interest in the seized
36 property or property subject to forfeiture other than persons designated in a receipt
37 issued for the property seized. Whenever a notice is delivered pursuant to this
38 section, it shall be accompanied by a claim form as described in Section 11488.5
39 and directions for the filing and service of a claim.

1 (d) An investigation shall be made by the law enforcement agency as to any
2 claimant to a vehicle, boat, or airplane whose right, title, interest, or lien is of
3 record in the Department of Motor Vehicles or appropriate federal agency. If the
4 law enforcement agency finds that any person, other than the registered owner, is
5 the legal owner thereof, and that ownership did not arise subsequent to the date
6 and time of arrest or notification of the forfeiture proceedings or seizure of the
7 vehicle, boat, or airplane, it shall forthwith send a notice to the legal owner at ~~his~~
8 ~~or her~~ the owner's address appearing on the records of the Department of Motor
9 Vehicles or appropriate federal agency.

10 (e) When a forfeiture action is filed, the notices shall be published once a week
11 for three successive weeks in a newspaper of general circulation in the county
12 where the seizure was made or where the property subject to forfeiture is located.

13 (f) All notices shall set forth the time within which a claim of interest in the
14 property seized or subject to forfeiture is required to be filed pursuant to Section
15 11488.5. The notices shall explain, in plain language, what an interested party
16 must do and the time in which the person must act to contest the forfeiture in a
17 hearing. The notices shall state what rights the interested party has at a hearing.
18 The notices shall also state the legal consequences for failing to respond to the
19 forfeiture notice.

20 (g) Nothing contained in this chapter shall preclude a person, other than a
21 defendant, claiming an interest in property actually seized from moving for a
22 return of property if that person can show standing by proving an interest in the
23 property not assigned subsequent to the seizure or filing of the forfeiture petition.

24 (h)(1) If there is an underlying or related criminal action, a defendant may move
25 for the return of the property on the grounds that there is not probable cause to
26 believe that the property is forfeitable pursuant to subdivisions (a) to (g), inclusive,
27 of Section 11470 and is not automatically made forfeitable or subject to court
28 order of forfeiture or destruction by another provision of this chapter. The motion
29 may be made prior to, during, or subsequent to the preliminary examination. If
30 made subsequent to the preliminary examination, the Attorney General or district
31 attorney may submit the record of the preliminary hearing as evidence that
32 probable cause exists to believe that the underlying or related criminal violations
33 have occurred.

34 (2) Within 15 days after a defendant's motion is granted, the people may file a
35 petition for a writ of mandate or prohibition seeking appellate review of the ruling.

36 (i)(1) With respect to property described in subdivisions (e) and (g) of Section
37 11470 for which forfeiture is sought and as to which forfeiture is contested, the
38 state or local governmental entity shall have the burden of proving beyond a
39 reasonable doubt that the property for which forfeiture is sought was used, or
40 intended to be used, to facilitate a violation of one of the offenses enumerated in
41 subdivision (f) or (g) of Section 11470.

42 (2) In the case of property described in subdivision (f) of Section 11470, except
43 cash, negotiable instruments, or other cash equivalents of a value of not less than

1 forty thousand dollars (\$40,000), for which forfeiture is sought and as to which
2 forfeiture is contested, the state or local governmental entity shall have the burden
3 of proving beyond a reasonable doubt that the property for which forfeiture is
4 sought meets the criteria for forfeiture described in subdivision (f) of Section
5 11470.

6 (3) In the case of property described in paragraphs (1) and (2), where forfeiture
7 is contested, a judgment of forfeiture requires as a condition precedent thereto, that
8 a defendant be convicted in an underlying or related criminal action of an offense
9 specified in subdivision (f) or (g) of Section 11470 which offense occurred within
10 five years of the seizure of the property subject to forfeiture or within five years of
11 the notification of intention to seek forfeiture. If the defendant is found guilty of
12 the underlying or related criminal offense, the issue of forfeiture shall be tried
13 before the same jury, if the trial was by jury, or tried before the same court, if trial
14 was by court, unless waived by all parties. The issue of forfeiture shall be
15 bifurcated from the criminal trial and tried after conviction unless waived by all
16 the parties.

17 (4) In the case of property described in subdivision (f) of Section 11470 that is
18 cash or negotiable instruments of a value of not less than forty thousand dollars
19 (\$40,000), the state or local governmental entity shall have the burden of proving
20 by clear and convincing evidence that the property for which forfeiture is sought is
21 such as is described in subdivision (f) of Section 11470. There is no requirement
22 for forfeiture thereof that a criminal conviction be obtained in an underlying or
23 related criminal offense.

24 (5) If there is an underlying or related criminal action, and a criminal conviction
25 is required before a judgment of forfeiture may be entered, the issue of forfeiture
26 shall be tried in conjunction therewith. In such a case, the issue of forfeiture shall
27 be bifurcated from the criminal trial and tried after conviction unless waived by
28 the parties. Trial shall be by jury unless waived by all parties. If there is no
29 underlying or related criminal action, the presiding judge of the superior court
30 shall assign the action brought pursuant to this chapter for trial.

31 (j) The Attorney General or the district attorney of the county in which property
32 is subject to forfeiture under Section 11470 may, pursuant to this subdivision,
33 order forfeiture of personal property not exceeding twenty-five thousand dollars
34 (\$25,000) in value. The Attorney General or district attorney shall provide notice
35 of proceedings under this subdivision pursuant to subdivisions (c), (d), (e), and (f),
36 including:

37 (1) A description of the property.

38 (2) The appraised value of the property.

39 (3) The date and place of seizure or location of any property not seized but
40 subject to forfeiture.

41 (4) The violation of law alleged with respect to forfeiture of the property.

1 (5)(A) The instructions for filing and serving a claim with the Attorney General
2 or the district attorney pursuant to Section 11488.5 and time limits for filing a
3 claim and claim form.

4 (B) If no claims are timely filed, the Attorney General or the district attorney
5 shall prepare a written declaration of forfeiture of the subject property to the state
6 and dispose of the property in accordance with Section 11489. A written
7 declaration of forfeiture signed by the Attorney General or district attorney under
8 this subdivision shall be deemed to provide good and sufficient title to the
9 forfeited property. The prosecuting agency ordering forfeiture pursuant to this
10 subdivision shall provide a copy of the declaration of forfeiture to any person
11 listed in the receipt given at the time of seizure and to any person personally
12 served notice of the forfeiture proceedings.

13 (C) If a claim is timely filed, then the Attorney General or district attorney shall
14 file a petition of forfeiture pursuant to this section within 30 days of the receipt of
15 the claim. The petition of forfeiture shall then proceed pursuant to other provisions
16 of this chapter, except that no additional notice need be given and no additional
17 claim need be filed.

18 (k) If in any underlying or related criminal action or proceeding, in which a
19 petition for forfeiture has been filed pursuant to this section, and a criminal
20 conviction is required before a judgment of forfeiture may be entered, the
21 defendant willfully fails to appear as required, there shall be no requirement of a
22 criminal conviction as a prerequisite to the forfeiture. In these cases, forfeiture
23 shall be ordered as against the defendant and judgment entered upon default, upon
24 application of the state or local governmental entity. In its application for default,
25 the state or local governmental entity shall be required to give notice to the
26 defendant's attorney of record, if any, in the underlying or related criminal action,
27 and to make a showing of due diligence to locate the defendant. In moving for a
28 default judgment pursuant to this subdivision, the state or local governmental
29 entity shall be required to establish a prima facie case in support of its petition for
30 forfeiture.

31 **Comment.** Subdivision (a) of Section 11488.4 is amended to make explicit that a drug asset
32 forfeiture petition is an unlimited civil case, regardless of the value of the seized property. This is
33 not a substantive change. See, e.g., *AP-Colton LLC v. Ohaeri* (2015) 240 Cal.App.4th 500, 506
34 (after trial court unification, civil cases formerly within jurisdiction of municipal courts are
35 classified as limited civil cases, while matters formerly within the jurisdiction of the superior
36 courts are classified as unlimited civil cases); *Yuarte v. Superior Court* (2005) 129 Cal.App.4th
37 266, 274 (same). See also 1994 Cal. Stat. ch. 314, § 13 (version of Health & Safety Code §
38 11488.4(a) in effect just before trial court unification, which stated that “the Attorney General or
39 district attorney shall file a petition of forfeiture *with the superior court ...*”) (emphasis added);
40 1997 Cal. Stat. ch. 241, § 2 (version of Health & Safety Code § 11488.5(a)(1) in effect just before
41 trial court unification, which permitted any person claiming an interest in seized property to file a
42 claim for the property “with the superior court”).

43 The purpose of this amendment is to provide useful information where it is particularly needed
44 due to a high potential for confusion (the monetary cutoff for a limited civil case under Code of
45 Civil Procedure Section 85 is \$25,000, the same as the monetary cutoff for a nonjudicial

1 forfeiture under Section 11488.4). No inferences should be drawn from the lack of similar
2 statutory language elsewhere in the codes.

3 The section is also amended to eliminate gendered pronouns and make a grammatical
4 correction.

5 **Health & Safety Code § 11488.5 (amended). Submission and adjudication of claim to seized**
6 **property**

7 SEC. _____. Section 11488.5 of the Health and Safety Code is amended to read:

8 11488.5. (a)(1) Any person claiming an interest in the property seized pursuant
9 to Section 11488 may, unless for good cause shown the court extends the time for
10 filing, at any time within 30 days from the date of the last publication of the notice
11 of seizure, if that person was not personally served or served by mail, or within 30
12 days after receipt of actual notice, file with the superior court of the county in
13 which the defendant has been charged with the underlying or related criminal
14 offense or in which the property was seized or, if there was no seizure, in which
15 the property is located, a claim, verified in accordance with Section 446 of the
16 Code of Civil Procedure, stating ~~his or her~~ the claimant's interest in the property.
17 An endorsed copy of the claim shall be served by the claimant on the Attorney
18 General or district attorney, as appropriate, within 30 days of the filing of the
19 claim. The Judicial Council shall develop and approve official forms for the
20 verified claim that is to be filed pursuant to this section. The official forms shall be
21 drafted in nontechnical language, in English and in Spanish, and shall be made
22 available through the office of the clerk of the appropriate court. A claim under
23 this section is an unlimited civil case, regardless of the value of the seized
24 property.

25 (2) Any person who claims that the property was assigned to ~~him or to her~~ that
26 person prior to the seizure or notification of pending forfeiture of the property
27 under this chapter, whichever occurs last, shall file a claim with the court and
28 prosecuting agency pursuant to Section 11488.5 declaring an interest in that
29 property and that interest shall be adjudicated at the forfeiture hearing. The
30 property shall remain under control of the law enforcement or prosecutorial
31 agency until the adjudication of the forfeiture hearing. Seized property shall be
32 protected and its value shall be preserved pending the outcome of the forfeiture
33 proceedings.

34 (3) ~~The~~ Notwithstanding any other law, the clerk of the court shall not charge or
35 collect a fee for the filing of a claim in any case in which the value of the
36 respondent property as specified in the notice is five thousand dollars (\$5,000) or
37 less. If the value of the property, as specified in the notice, is more than five
38 thousand dollars (\$5,000), the clerk of the court shall charge the filing fee
39 specified in Section 70611 of the Government Code.

40 (4) The claim of a law enforcement agency to property seized pursuant to
41 Section 11488 or subject to forfeiture shall have priority over a claim to the seized
42 or forfeitable property made by the Franchise Tax Board in a notice to withhold

1 issued pursuant to Section ~~18817 or 26132~~ 18669 or 18670 of the Revenue and
2 Taxation Code.

3 (b)(1) If at the end of the time set forth in subdivision (a) there is no claim on
4 file, the court, upon motion, shall declare the property seized or subject to
5 forfeiture pursuant to subdivisions (a) to (g), inclusive, of Section 11470 forfeited
6 to the state. In moving for a default judgment pursuant to this subdivision, the state
7 or local governmental entity shall be required to establish a prima facie case in
8 support of its petition for forfeiture. There is no requirement for forfeiture thereof
9 that a criminal conviction be obtained in an underlying or related criminal offense.

10 (2) The court shall order the money forfeited or the proceeds of the sale of
11 property to be distributed as set forth in Section 11489.

12 (c)(1) If a verified claim is filed, the forfeiture proceeding shall be set for
13 hearing on a day not less than 30 days therefrom, and the proceeding shall have
14 priority over other civil cases. Notice of the hearing shall be given in the same
15 manner as provided in Section 11488.4. Such a verified claim or a claim filed
16 pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the
17 proceedings regarding the underlying or related criminal offense set forth in
18 subdivision (a) of Section 11488.

19 (2) The hearing shall be by jury, unless waived by consent of all parties.

20 (3) The provisions of the Code of Civil Procedure shall apply to proceedings
21 under this chapter unless otherwise inconsistent with the provisions or procedures
22 set forth in this chapter. However, in proceedings under this chapter, there shall be
23 no joinder of actions, coordination of actions, except for forfeiture proceedings, or
24 cross-complaints, and the issues shall be limited strictly to the questions related to
25 this chapter.

26 (d)(1) At the hearing, the state or local governmental entity shall have the
27 burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the
28 owner of any interest in the seized property consented to the use of the property
29 with knowledge that it would be or was used for a purpose for which forfeiture is
30 permitted, in accordance with the burden of proof set forth in subdivision (i) of
31 Section 11488.4.

32 (2) No interest in the seized property shall be affected by a forfeiture decree
33 under this section unless the state or local governmental entity has proven that the
34 owner of that interest consented to the use of the property with knowledge that it
35 would be or was used for the purpose charged. Forfeiture shall be ordered when, at
36 the hearing, the state or local governmental entity has shown that the assets in
37 question are subject to forfeiture pursuant to Section 11470, in accordance with
38 the burden of proof set forth in subdivision (i) of Section 11488.4.

39 (e) The forfeiture hearing shall be continued upon motion of the prosecution or
40 the defendant until after a verdict of guilty on any criminal charges specified in
41 this chapter and pending against the defendant have been decided. The forfeiture
42 hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive,
43 Sections 224 to 234, inclusive, Section 237, and Sections 607 to 630, inclusive, of

1 the Code of Civil Procedure if a trial by jury, and by Sections 631 to 636,
2 inclusive, of the Code of Civil Procedure if by the court. Unless the court or jury
3 finds that the seized property was used for a purpose for which forfeiture is
4 permitted, the court shall order the seized property released to the person it
5 determines is entitled thereto.

6 If the court or jury finds that the seized property was used for a purpose for
7 which forfeiture is permitted, but does not find that a person claiming an interest
8 therein, to which the court has determined ~~he or she~~ the claimant is entitled, had
9 actual knowledge that the seized property would be or was used for a purpose for
10 which forfeiture is permitted and consented to that use, the court shall order the
11 seized property released to the claimant.

12 (f) All seized property ~~which~~ that was the subject of a contested forfeiture
13 hearing and ~~which~~ was not released by the court to a claimant shall be declared by
14 the court to be forfeited to the state, provided the burden of proof required
15 pursuant to subdivision (i) of Section 11488.4 has been met. The court shall order
16 the forfeited property to be distributed as set forth in Section 11489.

17 (g) All seized property ~~which~~ that was the subject of the forfeiture hearing and
18 ~~which~~ was not forfeited shall remain subject to any order to withhold issued with
19 respect to the property by the Franchise Tax Board.

20 **Comment.** The first paragraph of Section 11488.5 is amended to make explicit that a claim
21 filed pursuant to this section is an unlimited civil case, regardless of the value of the seized
22 property. This is not a substantive change. See, e.g., *AP-Colton LLC v. Ohaeri* (2015) 240
23 Cal.App.4th 500, 506 (after trial court unification, civil cases formerly within jurisdiction of
24 municipal courts are classified as limited civil cases, while matters formerly within the
25 jurisdiction of the superior courts are classified as unlimited civil cases); *Ytuarte v. Superior*
26 *Court* (2005) 129 Cal.App.4th 266, 274 (same). See also 1994 Cal. Stat. ch. 314, § 13 (version of
27 Health & Safety Code § 11488.4(a) in effect just before trial court unification, which stated that
28 “the Attorney General or district attorney shall file a petition of forfeiture *with the superior court*
29 *...*”) (emphasis added); 1997 Cal. Stat. ch. 241, § 2 (version of Health & Safety Code §
30 11488.5(a)(1) in effect just before trial court unification, which permitted any person claiming an
31 interest in seized property to file a claim for the property “with the superior court”).

32 The purpose of this amendment is to provide useful information where it is particularly needed
33 due to a high potential for confusion (the monetary cutoff for a limited civil case under Code of
34 Civil Procedure Section 85 is \$25,000, the same as the monetary cutoff for a nonjudicial
35 forfeiture under Section 11488.4). No inferences should be drawn from the lack of similar
36 statutory language elsewhere in the codes.

37 Paragraph (a)(3) is amended to make explicit how it interrelates with other provisions of law. It
38 governs the filing fees for a claim under this section, not any other provision of law (such as Code
39 Civ. Proc. § 116.230 (filing fees for small claims case) or Gov’t Code §§ 70611, 70612 (filing
40 fees for first papers in unlimited civil case)). This is not a substantive change.

41 Paragraph (a)(4) is amended to update the cross-references to two code sections that have been
42 repealed. See 1993 Cal. Stat. ch. 31, §§ 20 (repealing chapter that contained former Rev. & Tax.
43 Code § 18817 (1992 Cal. Stat. ch. 662, § 2)), 26 (enacting part that contains Rev. & Tax. Code §§
44 18669 & 18670, which are similar to former Rev. & Tax. Code §§ 18817 & 26132), 60 (repealing
45 chapter that contained former Rev. & Tax. Code § 26132 (1992 Cal. Stat. ch. 662, § 4)).

46 The section is also amended to eliminate gendered pronouns and make grammatical
47 corrections.