

# FINAL BILL REPORT

## ESHB 1995

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### PARTIAL VETO

#### **C 168 L 01**

Synopsis as Enacted

**Brief Description:** Revising provisions relating to civil forfeitures of property and convening a workgroup to evaluate civil forfeiture laws.

**Sponsors:** By House Committee on Judiciary (originally sponsored by Representatives Dickerson, Cairnes, Grant, Dunn, Campbell, Kagi, Pearson and Wood).

### **House Committee on Judiciary**

#### **Background:**

There are various statutes authorizing the government to seize and forfeit property because of the property's connection with specific offenses. In particular, law enforcement agencies may seize and forfeit certain property under Washington's drug forfeiture statute.

#### **A. Real and personal property subject to seizure and forfeiture.**

The drug forfeiture statute allows law enforcement agencies to seize the following property:

- **illegal drugs**, materials used for making illegal drugs, containers for illegal drugs, and illegal drug paraphernalia;
- **conveyances** (e.g., aircraft, automobiles, and boats) used in any manner to facilitate the sale, delivery, or receipt of illegal drugs;
- **money** intended to be used in exchange for illegal drugs;
- **personal property, proceeds, or assets** acquired in whole or in part with proceeds traceable to an illegal drug transaction; and
- **real property** (e.g., land and homes) used with the knowledge of the owner to manufacture illegal drugs, if the act giving rise to the forfeiture constitutes at least a class C felony and there is a substantial nexus between the real property and the commercial production or sale of illegal drugs.

There are some exceptions. For example, conveyances are not subject to forfeiture if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor. In addition, conveyances may not be forfeited if the owner did not know or consent to the illegal activity.

Possession of marijuana may not result in the forfeiture of real property unless the possession was for commercial purposes, the amount possessed was five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession and the real property. The unlawful sale of marijuana or a legend drug may not result in the forfeiture of real property unless the sale was 40 grams or more and a substantial nexus exists between the unlawful sale and the real property.

### **B. Procedural requirements and burden of proof.**

Real property may only be seized upon process issued by a superior court. Forfeiture proceedings for real property are always judicial, as opposed to administrative.

Prior judicial action is not always necessary for the seizure of personal property. For example, law enforcement may seize personal property if:

- the seizure is incident to arrest or under a search warrant;
- the officer has probable cause to believe the property is directly or indirectly dangerous to public health or safety; or
- the officer has probable cause to believe the property was used or intended to be used in violation of the drug laws.

Once the seizure of property occurs, the forfeiture proceeding is considered commenced. The law enforcement agency must give notice to the owner or anyone who has a known interest in the property within 15 days of the seizure. If, after a certain period of time, no person notifies the law enforcement agency of an interest in the property, the property is deemed forfeited.

If a person claims an interest in the seized property within the prescribed time period, the person will be afforded a reasonable opportunity to be heard. A hearing will be held before the chief law enforcement officer of the seizing agency or an administrative law judge unless the person claiming an interest removes the case to a court of competent jurisdiction.

In cases of personal property, the seizing agency has the initial burden of showing probable cause exists to believe the property is subject to forfeiture. The burden shifts to the claimant to establish, by a preponderance of the evidence, that the property is not subject to forfeiture.

For real property, the burden of proof to show that the real property is subject to forfeiture remains on the seizing law enforcement agency.

### **C. Distribution of forfeited property.**

When property is forfeited, the seizing law enforcement agency may:

- retain the forfeited property for official use by the agency;
- sell the forfeited property;
- forward the forfeited property to the drug enforcement administration; or
- request the sheriff or director of public safety to take custody of the forfeited property.

Seizing law enforcement agencies are required to remit 10 percent of the net proceeds from forfeited property annually to the State Treasurer to be deposited in the drug enforcement and education account. Net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject, or deducting the cost of sale in the case of sold property.

The seizing law enforcement agency is required to keep records regarding forfeited property. Specifically, the agency must keep a record of the identity of the owner, description and disposition of the forfeited property, value of the property at the time of seizure, and amount of proceeds realized from the sale of any forfeited property. These records must be maintained for at least seven years and must be submitted annually to the State Treasurer.

**Summary:**

The civil forfeiture statute applicable to drug law violations is amended. In cases involving personal property, the burden of proof is upon the law enforcement agency to establish by a preponderance of the evidence that the property is subject to forfeiture.

If a claimant substantially prevails in a forfeiture proceeding, the claimant is entitled to reasonable attorney fees that were reasonably incurred.

A 16-member workgroup is created to evaluate the civil forfeiture laws and practices. The workgroup must, among other things, study whether a requirement for a criminal conviction before forfeiture raises constitutional issues and review every civil forfeiture case that took place under state law during the year 2000.

The workgroup consists of:

- four members from the Senate, two from each caucus;
- four members from the House, two from each caucus;
- two representatives from the American Civil Liberties Union;
- two representatives from the Washington Association of Sheriffs and Police Chiefs;
- two representatives from the Washington Association of Prosecuting Attorneys; and
- two representatives from the Washington Association of Criminal Defense Lawyers.

The workgroup must submit its findings and recommendations to the Senate and House

Judiciary Committees by December 1, 2001. The workgroup terminates on December 15, 2001.

**Votes on Final Passage:**

House 96 0

Senate 42 4

**Effective:** July 22, 2001

**Partial Veto Summary:** The Governor vetoed the section establishing the 16-member workgroup.