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**SUBSTITUTE HOUSE BILL 1640**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Johanson, Ballasiotes, Wineberry, Padden, Schmidt, Ludwig, Mastin, Riley, Thibaudeau, Campbell, Long, Forner, H. Myers, Brough, Vance, Jones, Foreman, Fuhrman, Schoesler, Miller, Casada, Jacobsen, Stevens, Rayburn, Kremen, Silver, Quall, Talcott, Tate, Orr, Van Loven and Anderson)

Read first time 03/03/93.

1 AN ACT Relating to crime victims; and adding new sections to  
2 chapter 7.68 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds compelling state  
5 interests in compensating the victims of crime and in preventing  
6 criminals from profiting from their crimes. Sections 2 through 5 of  
7 this act are intended to advance both of these interests.

8 NEW SECTION. **Sec. 2.** The following are subject to seizure and  
9 forfeiture and no property right exists in them:

10 (1) All tangible or intangible property, including any right or  
11 interest in such property, acquired by a person convicted of a crime  
12 for which there is a victim within the meaning of RCW 7.68.020(3) and  
13 to the extent the acquisition is the direct or indirect result of the  
14 convicted person having committed the crime. Such property includes  
15 but is not limited to the convicted person's remuneration for, or  
16 contract interest in, any reenactment or depiction or account of the  
17 crime in a movie, book, magazine, newspaper or other publication, audio  
18 recording, radio or television presentation, live entertainment of any

1 kind, or any expression of the convicted person's thoughts, feelings,  
2 opinions, or emotions regarding the crime.

3 (2) Any property acquired through the traceable proceeds of  
4 property described in subsection (1) of this section.

5 NEW SECTION. **Sec. 3.** (1) Any property subject to seizure and  
6 forfeiture under section 2 of this act may be seized by the prosecuting  
7 attorney of the county in which the convicted person was convicted upon  
8 process issued by any superior court having jurisdiction over the  
9 property.

10 (2) Proceedings for forfeiture are commenced by a seizure. Seizure  
11 of real property shall include the filing of a lis pendens by the  
12 seizing agency. Real property seized under this section shall not be  
13 transferred or otherwise conveyed until ninety days after seizure or  
14 until a judgment of forfeiture is entered, whichever is later, except  
15 that such real property seized may be transferred or conveyed to any  
16 person or entity who acquires title by foreclosure or deed in lieu of  
17 foreclosure of a security interest.

18 (3) The prosecuting attorney who seized the property shall cause  
19 notice to be served within fifteen days following the seizure on the  
20 owner of the property seized and the person in charge thereof and any  
21 person having any known right or interest therein, including any  
22 community property interest, of the seizure and intended forfeiture of  
23 the seized property. Service of notice of seizure of real property  
24 shall be made according to the rules of civil procedure. However, the  
25 state may not obtain a default judgment with respect to real property  
26 against a party who is served by substituted service absent an  
27 affidavit stating that a good faith effort has been made to ascertain  
28 if the defaulted party is incarcerated within the state, and that there  
29 is no present basis to believe that the party is incarcerated within  
30 the state. The notice of seizure in other cases may be served by any  
31 method authorized by law or court rule including but not limited to  
32 service by certified mail with return receipt requested. Service by  
33 mail shall be deemed complete upon mailing within the fifteen-day  
34 period following the seizure.

35 (4) If no person notifies the seizing prosecuting attorney in  
36 writing of the person's claim of ownership or right to possession of  
37 the property within forty-five days of the seizure in the case of  
38 personal property and ninety days in the case of real property, the

1 property seized shall be deemed forfeited. The community property  
2 interest in real property of a person whose spouse committed a crime  
3 giving rise to seizure of the real property may not be forfeited if the  
4 person did not participate in the crime.

5 (5) If any person notifies the seizing prosecuting attorney in  
6 writing of the person's claim of ownership or right to possession of  
7 the property within forty-five days of the seizure in the case of  
8 personal property and ninety days in the case of real property, the  
9 person or persons shall be afforded a reasonable opportunity to be  
10 heard as to the claim or right. The hearing shall be before the  
11 prosecuting attorney or his or her designee, except that any person  
12 asserting a claim or right may remove the matter to a court of  
13 competent jurisdiction if the aggregate value of the property involved  
14 is more than five hundred dollars. The court to which the matter is to  
15 be removed shall be the district court when the aggregate value of  
16 personal property is within the jurisdictional limit set forth in RCW  
17 3.66.020. A hearing before the prosecuting attorney and any appeal  
18 therefrom shall be under Title 34 RCW. In a court hearing between two  
19 or more claimants to the article or articles involved, the prevailing  
20 party shall be entitled to a judgment for costs and reasonable  
21 attorneys' fees. In cases involving personal property, the burden of  
22 producing evidence shall be upon the person claiming to be the lawful  
23 owner or the person claiming to have the lawful right to possession of  
24 the property. In cases involving real property, the burden of  
25 producing evidence shall be upon the prosecuting attorney. The burden  
26 of proof that the seized real property is subject to forfeiture shall  
27 be upon the prosecuting attorney. The seizing prosecuting attorney  
28 shall promptly return the property to the claimant upon a determination  
29 by the prosecuting attorney or court that the claimant is the present  
30 lawful owner or is lawfully entitled to possession of the property.

31 (6) Upon the entry of an order of forfeiture of real property, the  
32 court shall forward a copy of the order to the assessor of the county  
33 in which the property is located. Orders for the forfeiture of real  
34 property shall be entered by the superior court, subject to court  
35 rules. Such an order shall be filed by the prosecuting attorney in the  
36 county auditor's records in the county in which the real property is  
37 located.

38 (7) A forfeiture action under this section may be brought at any  
39 time from the date of conviction until the expiration of the statutory

1 maximum period of incarceration that could have been imposed for the  
2 crime involved.

3 (8) A forfeiture of property encumbered by a bona fide security  
4 interest is subject to the interest of the secured party if at the time  
5 the security interest was created, the secured party did not know that  
6 the property was subject to seizure and forfeiture.

7 NEW SECTION. **Sec. 4.** (1) The proceeds of any forfeiture action  
8 brought under section 3 of this act shall be distributed as follows:

9 (a) First, to the victim or to the plaintiff in a wrongful death  
10 action brought as a result of the victim's death, to satisfy any money  
11 judgment against the convicted person, or to satisfy any restitution  
12 ordered as part of the convicted person's sentence;

13 (b) Second, to the reasonable legal expenses of bringing the  
14 action;

15 (c) Third, to the crime victims' compensation fund under RCW  
16 7.68.090.

17 (2) A court may establish such escrow accounts or other  
18 arrangements as it deems necessary and appropriate in order to  
19 distribute proceeds in accordance with this section.

20 NEW SECTION. **Sec. 5.** (1) Any action taken by or on behalf of a  
21 convicted person including but not limited to executing a power of  
22 attorney or creating a corporation for the purpose of defeating the  
23 provisions of sections 1 through 4 of this act is null and void as  
24 against the public policy of this state.

25 (2) Sections 1 through 4 of this act are supplemental and do not  
26 limit rights or remedies otherwise available to the victims of crimes  
27 and do not limit actions otherwise available against persons convicted  
28 of crimes.

29 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act are each  
30 added to chapter 7.68 RCW.

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