

HOUSE BILL ANALYSIS

HB 2519

Title: An act relating to dividing the net proceeds of property forfeited under chapter 10.105 RCW.

Brief Description: Giving crime victims a share of forfeited property.

Sponsors: Representatives McDonald, Sterk, Sheahan, Thompson, Bush, Sullivan and Benson.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Trudes Hutcheson (786-7384).

Background: There are several statutes throughout the Revised Code of Washington authorizing law enforcement agencies to seize and forfeit property used in or obtained through the commission of specific crimes. For example, the forfeiture statute in the Uniform Controlled Substances Act authorizes the forfeiture of real and personal property that has been used in the commission of a drug law violation or that has been acquired with the proceeds of illegal drug activity. There are other forfeiture statutes applicable to specific crimes, such as, gambling and money laundering.

In addition to the forfeiture statutes applicable to specific crimes, there is a general forfeiture statute that applies to personal property used in, acquired through, or given as a result of or for compensation of, the commission of any felony. Property may not be forfeited under this statute until after there has been a superior court conviction of the owner of the property.

Under the general forfeiture statute, the agency may seize property without process if: (a) the seizure is incident to arrest or incident to a search under a search warrant; (b) the property has been the subject of a prior judgment or forfeiture; (c) there is probable cause to believe that the property is directly dangerous to health or safety; or (d) there is probable cause to believe that the property was used or is intended to be used in the commission of a felony.

Proceedings for forfeiture are commenced by the seizure. Within 15 days of the seizure, the agency must give notice to the owner of the property and any person having a known right or interest in the property.

Any person responding to the notice in writing within 45 days is entitled to a hearing either before the chief law enforcement officer of the seizing agency or an

administrative law judge. The person asserting a claim to the property may remove the case to a court of competent jurisdiction. The burden of proof is on the person claiming a right of ownership or possession in the property. Where two or more claimants to the property are involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees. If nobody notifies the agency within 45 days of the seizure, the property is considered forfeited.

A forfeiture of property with a security interest is subject to the interest of a secured party if, at the time the interest was created, the party neither knew of nor consented to the commission of the felony.

When property is forfeited under the statute, the seizing agency may, after satisfying any court-ordered victim restitution, either retain the property for official use or sell the property if it is not required to be destroyed or is not harmful to the public.

By the end of January of each year, the seizing law enforcement agency must remit 10 percent of the net proceeds of forfeited property to the state public safety and education account. The net proceeds of the property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest. The net proceeds of sold property is the value of the forfeitable interest after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents. The value of sold forfeited property is the sale price, and the value of retained forfeited property is the fair market value of the property at the time of the seizure. The value of destroyed property and retained firearms or illegal property is zero.

Retained property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency for the expansion and improvement of law enforcement activities. Money retained may not be used to supplant preexisting funding sources.

Summary of Bill: Changes are made to the general forfeiture statute as to the distribution of proceeds from forfeited property.

The seizing law enforcement agency is required to remit to the victim or victims identified in the judgment and sentence as entitled to receive restitution either an amount equal to 50 percent of the net proceeds of the forfeited property or the full amount of the court-ordered victim restitution, whichever amount is less. When there is more than one victim and 50 percent of the net proceeds is insufficient to satisfy all of the victims' court-ordered restitution, the agency must distribute the amount proportionately according to each victim's loss as determined by the court orders. The agency must continue to remit 10 percent of the net proceeds of forfeited property to the state public safety and education account.

The general forfeiture statute does not apply to property that has been forfeited under an existing, more specific forfeiture statute.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research