

HOUSE BILL REPORT

HB 2519

As Reported By House Committee On:

Law & Justice

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.

Brief History:

Committee Activity:

Law & Justice: 1/23/98, 2/5/98 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Lambert; Lantz; Mulliken; Robertson and Sherstad.

Minority Report: Do not pass. Signed by 5 members: Representatives Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody and Kenney.

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

The seizing law enforcement agency must distribute proceeds from a forfeiture in the following amounts and in the following order: (a) deduct reasonable costs of the seizure and forfeiture incurred by the agency; (b) remit an amount equal to 10 percent of the remaining value of the net proceeds to the state treasurer for the public safety and education account; (c) remit the remaining amount to the court to satisfy any legal financial obligations. The court must first satisfy court-ordered restitution before applying the amount to any other court costs. The court must return any remaining amount to the agency.

The statute is clarified to provide that the general forfeiture statute does not apply to property subject to any existing specific forfeiture statute.

Substitute Bill Compared to Original Bill: The original bill required the seizing agency to remit to the victim 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 was less. Under the original bill, the agency could retain 50 percent of the net proceeds, but was still required to remit 10 percent to the state at the beginning of each year.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Sheriffs and county clerks fully support this bill, but would like to make sure that the money is paid into the court registry to ensure accountability. If the law enforcement agency can't recover its costs of the forfeiture, it could be forced to subsidize forfeitures.

Testimony Against: Satisfying the victim's restitution should take priority. Although money can't repair the emotional and physical damage done, any financial assistance would help the victim.

Testified: Debbie Wilke, Washington Association of County Officials (pro); and Jenny Wieland, Washington Coalition of Crime Victim Advocates (con).