

SHB 2952 - H AMD 1284

By Representative Goodman

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.88 RCW
4 to read as follows:

5 (1)(a) Except as provided in (b) through (e) of this subsection,
6 the following are subject to seizure and forfeiture and no property
7 right exists in them: All conveyances, including aircraft, vehicles,
8 or vessels, that are used in any manner, within an area designated
9 under subsection (11) of this section, to facilitate conduct that
10 results in a conviction of commercial sexual abuse of a minor,
11 promoting sexual abuse of a minor, or promoting travel for commercial
12 sexual abuse of a minor.

13 (b) No conveyance used by any person as a common carrier in the
14 transaction of business as a common carrier is subject to forfeiture
15 under this section unless it appears that the owner or other person in
16 charge of the conveyance is a consenting party or privy to a violation
17 of an offense listed in (a) of this subsection.

18 (c) No conveyance is subject to forfeiture under this section by
19 reason of any act or omission established by the owner thereof to have
20 been committed or omitted without the owner's knowledge or consent.

21 (d) A forfeiture of a conveyance encumbered by a bona fide security
22 interest is subject to the interest of the secured party if the secured
23 party neither had knowledge of nor consented to the act or omission.

24 (e) A conveyance is not subject to forfeiture under this section
25 unless it is seized or process is issued for its seizure within ten
26 days after a conviction of an offense listed in (a) of this subsection.

27 (2) A conveyance subject to forfeiture under this section may be
28 seized only after a conviction of an offense listed in subsection
29 (1)(a) of this section. The conveyance may be seized by any law

1 enforcement officer of this state upon process issued by any superior
2 court having jurisdiction over the conveyance. Seizure of the
3 conveyance without process may be made if:

4 (a) The conveyance subject to seizure has been the subject of a
5 prior judgment in favor of the state in a criminal injunction or
6 forfeiture proceeding based upon this section; or

7 (b) A law enforcement officer has probable cause to believe that
8 the conveyance is subject to forfeiture under this section.

9 (3) In the event of seizure pursuant to subsection (2) of this
10 section, proceedings for forfeiture shall be deemed commenced by the
11 seizure. The law enforcement agency under whose authority the seizure
12 was made shall cause notice to be served within fifteen days following
13 seizure on the owner of the conveyance seized and the person in charge
14 thereof and any person having any known right of interest therein,
15 including any community property interest, of the seizure and intended
16 forfeiture of the seized conveyance. Notice of seizure in the case of
17 a conveyance subject to a security interest that has been perfected by
18 filing a financing statement in accordance with chapter 62A.9A RCW, or
19 a certificate of title, shall be made by service upon the secured party
20 or the secured party's assignee at the address shown on the financing
21 statement or certificate of title. The notice of seizure in other
22 cases may be served by any method authorized by law or court rule
23 including but not limited to service by certified mail with return
24 receipt requested. Service by mail shall be deemed complete upon
25 mailing within the fifteen-day period following the seizure.

26 (4) If no person notifies the seizing law enforcement agency in
27 writing of the person's claim of ownership or right to possession of
28 a seized conveyance within forty-five days of the seizure, the item
29 seized shall be deemed forfeited.

30 (5) If any person notifies the law enforcement agency in writing of
31 the person's claim of ownership or right to possession of a seized
32 conveyance within forty-five days of the seizure, the person or persons
33 shall be afforded a reasonable opportunity to be heard as to the claim
34 or right. The hearing shall be before the chief law enforcement
35 officer of the seizing agency or the chief law enforcement officer's
36 designee, except where the seizing agency is a state agency as defined
37 in RCW 34.12.020(4), the hearing shall be before the chief law
38 enforcement officer of the seizing agency or an administrative law

1 judge appointed under chapter 34.12 RCW, except that any person
2 asserting a claim or right may remove the matter to a court of
3 competent jurisdiction. Removal of any matter under this section may
4 only be accomplished according to the rules of civil procedure. The
5 person seeking removal of the matter must serve process against the
6 state, county, political subdivision, or municipality that operates the
7 seizing agency, and any other party of interest, in accordance with RCW
8 4.28.080 or 4.92.020, within forty-five days after the person seeking
9 removal has notified the seizing law enforcement agency of the person's
10 claim of ownership or right to possession. The court to which the
11 matter is to be removed shall be the district court when the value of
12 the conveyance is within the jurisdictional limit set forth in RCW
13 3.66.020. A hearing before the seizing agency and any appeal therefrom
14 shall be under Title 34 RCW. In all cases, the burden of proof is upon
15 the law enforcement agency to establish, by a preponderance of the
16 evidence, that the conveyance is subject to forfeiture.

17 The seizing law enforcement agency shall promptly return the
18 conveyance to the claimant upon a determination by the administrative
19 law judge or court that the claimant is the present lawful owner or is
20 lawfully entitled to possession thereof.

21 (6) In any proceeding to forfeit a conveyance under this section,
22 where the claimant substantially prevails, the claimant is entitled to
23 reasonable attorneys' fees reasonably incurred by the claimant. In
24 addition, in a court hearing between two or more claimants to the
25 conveyance involved, the prevailing party is entitled to a judgment for
26 costs and reasonable attorneys' fees.

27 (7) When a conveyance is forfeited under this section, the seizing
28 law enforcement agency may:

29 (a) Retain it for official use or upon application by any law
30 enforcement agency of this state release the conveyance to such agency
31 for the exclusive use of enforcing the provisions of this chapter;

32 (b) Sell that which is not required to be destroyed by law and
33 which is not harmful to the public; or

34 (c) Request the appropriate sheriff or director of public safety to
35 take custody of the conveyance and remove it for disposition in
36 accordance with law.

37 (8)(a) When a conveyance is forfeited, the seizing agency shall
38 keep a record indicating the identity of the prior owner, if known, a

1 description of the conveyance, the disposition of the conveyance, the
2 value of the conveyance at the time of the seizure, and the amount of
3 proceeds realized from disposition of the conveyance.

4 (b) Each seizing agency shall retain records of forfeited
5 conveyances for at least seven years.

6 (c) Each seizing agency shall file a report including a copy of the
7 records of forfeited conveyances with the state treasurer each calendar
8 quarter.

9 (d) The quarterly report need not include a record of forfeited
10 conveyances that are still being held during the appeal from a
11 conviction.

12 (9)(a) By January 31st of each year, each seizing agency shall
13 remit to the state treasurer an amount equal to the greater of ten
14 percent of the net proceeds of any conveyances forfeited during the
15 preceding calendar year or the net proceeds of any conveyances
16 forfeited during the year minus the administrative costs of the
17 forfeiture. Money remitted shall be deposited in the prostitution
18 prevention and intervention account established under RCW 43.63A.740.

19 (b) The net proceeds of a forfeited conveyance is the value of the
20 forfeitable interest in the conveyance after deducting the cost of
21 satisfying any bona fide security interest to which the conveyance is
22 subject at the time of the seizure; and in the case of a sold
23 conveyance, after deducting the cost of sale, including reasonable fees
24 or commissions paid to independent selling agents.

25 (c) The value of a sold forfeited conveyance is the sale price.
26 The value of a retained forfeited conveyance is the fair market value
27 of the conveyance at the time of seizure, determined by reference to
28 any applicable commonly used index. A seizing agency may use, but need
29 not use, an independent qualified appraiser to determine the value of
30 retained conveyances. If an appraiser is used, the value of the
31 conveyance appraised is net of the cost of the appraisal. The value of
32 a destroyed conveyance is zero.

33 (d) The administrative costs of the forfeiture include, but are not
34 limited to, the costs of impoundment, towing, hearings, and employee
35 time.

36 (10) Forfeited conveyances and net proceeds not required to be paid
37 to the state treasurer shall be retained by the seizing law enforcement

1 agency exclusively for the expansion and improvement of
2 prostitution-related law enforcement activity. Money retained under
3 this section may not be used to supplant preexisting funding sources.

4 (11) A local governing authority may designate areas within which
5 conveyances are subject to forfeiture under this section. The
6 designation must be based on evidence indicating that the area has a
7 disproportionate number of arrests for the offenses listed in
8 subsection (1)(a) of this section as compared to other areas. The
9 local governing authority shall post signs that indicate that the area
10 has been designated under this subsection.

11 **Sec. 2.** RCW 9A.88.140 and 2007 c 368 s 8 are each amended to read
12 as follows:

13 (1) Upon an arrest for a suspected violation of patronizing a
14 prostitute, prostitution, promoting prostitution in the first degree,
15 promoting prostitution in the second degree, promoting travel for
16 prostitution, or commercial sexual abuse of a minor, the arresting law
17 enforcement officer may impound the person's vehicle if (a) the motor
18 vehicle was used in the commission of the crime; and (b) the person
19 arrested is the owner of the vehicle(~~(; and (c) the person arrested has~~
20 ~~previously been convicted of patronizing a prostitute, under RCW~~
21 ~~9A.88.110, or commercial sexual abuse of a minor, under RCW~~
22 ~~9.68A.100)).~~

23 (2) Impoundments performed under this section shall be in
24 accordance with chapter 46.55 RCW."

25 Correct the title.

EFFECT: Removes the ability of law enforcement to seize, for
purposes of civil forfeiture, conveyances used in the following
offenses: prostitution, promoting prostitution in the first degree,
promoting prostitution in the second degree, promoting travel for
prostitution, and patronizing a prostitute (offenses relating to
juvenile prostitution are not removed). Allows civil forfeiture only
in cases where a person has been convicted of an offense relating to
juvenile prostitution. Prohibits forfeiture of property if it has not
been seized within 10 days of a conviction. Clarifies that only
conveyances (as opposed to other types of personal property) are
subject to civil forfeiture. Allows for impoundment of vehicles used

for the following offenses: prostitution, promoting prostitution in the first degree, promoting prostitution in the second degree, and promoting travel for prostitution (impoundment is authorized under the current law for patronizing a prostitute and commercial sexual abuse of a minor). Removes the requirement that a person have a prior offense before his or her vehicle may be impounded.

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