
HOUSE BILL 1362

State of Washington

61st Legislature

2009 Regular Session

By Representatives Goodman, Rodne, Sullivan, Williams, Orwall,
O'Brien, Kirby, Chase, and Conway

Read first time 01/19/09. Referred to Committee on Judiciary.

1 AN ACT Relating to conveyances used in prostitution-related
2 offenses; and amending RCW 9.68A.120, 9.68A.101, 9.68A.102, and
3 9A.88.140.

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

5 **Sec. 1.** RCW 9.68A.120 and 1999 c 143 s 8 are each amended to read
6 as follows:

7 (1) The following are subject to seizure and forfeiture:

8 ~~((1))~~ (a) All visual or printed matter that depicts a minor
9 engaged in sexually explicit conduct.

10 ~~((2))~~ (b) Except as provided in subsection (2) of this section:

11 (i) All raw materials, equipment, and other tangible personal
12 property of any kind used or intended to be used to manufacture or
13 process any visual or printed matter that depicts a minor engaged in
14 sexually explicit conduct, and all conveyances, including aircraft,
15 vehicles, or vessels that are used or intended for use to transport, or
16 in any manner to facilitate the transportation of, visual or printed
17 matter in violation of RCW 9.68A.050 or 9.68A.060(~~, but:~~

18 ~~(a) No conveyance used by any person as a common carrier in the~~
19 ~~transaction of business as a common carrier is subject to forfeiture~~

1 ~~under this section unless it appears that the owner or other person in~~
2 ~~charge of the conveyance is a consenting party or privy to a violation~~
3 ~~of this chapter;~~

4 ~~(b) No property is subject to forfeiture under this section by~~
5 ~~reason of any act or omission established by the owner of the property~~
6 ~~to have been committed or omitted without the owner's knowledge or~~
7 ~~consent;~~

8 ~~(c) A forfeiture of property encumbered by a bona fide security~~
9 ~~interest is subject to the interest of the secured party if the secured~~
10 ~~party neither had knowledge of nor consented to the act or omission;~~
11 ~~and~~

12 ~~(d) When the owner of a conveyance has been arrested under this~~
13 ~~chapter the conveyance may not be subject to forfeiture unless it is~~
14 ~~seized or process is issued for its seizure within ten days of the~~
15 ~~owner's arrest.~~

16 ~~(3))~~; and

17 (ii) All conveyances, including aircraft, vehicles, or vessels,
18 which are used in any manner, within an area that has been designated
19 by a local governing authority under subsection (11) of this section,
20 to facilitate conduct that results in a conviction for violation of RCW
21 9.68A.100, 9.68A.101, or 9.68A.102.

22 (c) All personal property, moneys, negotiable instruments,
23 securities, or other tangible or intangible property furnished or
24 intended to be furnished by any person in exchange for visual or
25 printed matter depicting a minor engaged in sexually explicit conduct,
26 or constituting proceeds traceable to any violation of this chapter.

27 ((+4)) (2)(a) No conveyance used by any person as a common carrier
28 in the transaction of business as a common carrier is subject to
29 forfeiture under this section unless it appears that the owner or other
30 person in charge of the conveyance is a consenting party or privy to a
31 violation of this chapter;

32 (b) No property is subject to forfeiture under this section by
33 reason of any act or omission established by the owner thereof to have
34 been committed or omitted without the owner's knowledge or consent;

35 (c) A forfeiture of a conveyance encumbered by a bona fide security
36 interest is subject to the interest of the secured party if the secured
37 party neither had knowledge of nor consented to the act or omission;
38 and

1 (d) When the owner of a conveyance has been arrested for a
2 violation under this chapter, the conveyance may not be subject to
3 forfeiture unless it is seized or process is issued for its seizure
4 within ten days of the owner's arrest, except that a conveyance used to
5 commit a violation of RCW 9.68A.100, 9.68A.101, or 9.68A.102 is not
6 subject to forfeiture under this section unless it is seized or process
7 is issued for its seizure within ten days after a conviction of an
8 offense listed in subsection (1)(b)(ii) of this section.

9 (3)(a) With the exception of conveyances seized under subsection
10 (1)(b)(ii) of this section, property subject to forfeiture under this
11 chapter may be seized by any law enforcement officer of this state upon
12 process issued by any superior court having jurisdiction over the
13 property. Seizure without process may be made if:

14 ~~((+a))~~ (i) The seizure is incident to an arrest or a search under
15 a search warrant or an inspection under an administrative inspection
16 warrant;

17 ~~((+b))~~ (ii) The property subject to seizure has been the subject
18 of a prior judgment in favor of the state in a criminal injunction or
19 forfeiture proceeding based upon this chapter;

20 ~~((+c))~~ (iii) A law enforcement officer has probable cause to
21 believe that the property is directly or indirectly dangerous to health
22 or safety; or

23 ~~((+d) The)~~ (iv) A law enforcement officer has probable cause to
24 believe that the property was used or is intended to be used in
25 violation of this chapter.

26 ~~((+5))~~ (b) A conveyance subject to forfeiture under subsection
27 (1)(b)(ii) of this section may be seized only after a conviction of an
28 offense listed in subsection (1)(b)(ii) of this section. The
29 conveyance may be seized by any law enforcement officer of this state
30 upon process issued by any superior court having jurisdiction over the
31 property. Seizure without process may be made if:

32 (i) The conveyance subject to seizure has been the subject of a
33 prior judgment in favor of the state in a criminal injunction or
34 forfeiture proceeding based upon this section; or

35 (ii) A law enforcement officer has probable cause to believe that
36 the conveyance is subject to forfeiture under this section.

37 (4) In the event of seizure under subsection ((+4)) (3)(a) or (b)
38 of this section, proceedings for forfeiture shall be deemed commenced

1 by the seizure. The law enforcement agency under whose authority the
2 seizure was made shall cause notice to be served within fifteen days
3 following the seizure on the owner of the property seized and the
4 person in charge thereof and any person having any known right or
5 interest therein, including any community property interest, of the
6 seizure and intended forfeiture of the seized property. Notice of
7 seizure in the case of a conveyance subject to a security interest that
8 has been perfected by filing a financing statement in accordance with
9 chapter 62A.9A RCW, or a certificate of title, shall be made by service
10 upon the secured party or the secured party's assignee at the address
11 shown on the financing statement or certificate of title. The notice
12 of seizure in other cases may be served by any method authorized by law
13 or court rule including but not limited to service by certified mail
14 with return receipt requested. Service by mail shall be deemed
15 complete upon mailing within the fifteen day period following the
16 seizure.

17 ((+6)) (5) If no person notifies the seizing law enforcement
18 agency in writing of the person's claim of ownership or right to
19 possession of seized items within forty-five days of the seizure, the
20 item seized shall be deemed forfeited.

21 ((+7)) (6)(a) If any person notifies the seizing law enforcement
22 agency in writing of the person's claim of ownership or right to
23 possession of seized items within forty-five days of the seizure, the
24 person or persons shall be afforded a reasonable opportunity to be
25 heard as to the claim or right((-)) as follows:

26 (i) The hearing shall be before an administrative law judge
27 appointed under chapter 34.12 RCW, except that any person asserting a
28 claim or right may remove the matter to a court of competent
29 jurisdiction if the aggregate value of the ((article)) item or
30 ((articles)) items involved is more than five hundred dollars.

31 (ii) Removal of any matter under this section may only be
32 accomplished according to the rules of civil procedure. The person
33 seeking removal of the matter must serve process against the state,
34 county, political subdivision, or municipality that operates the
35 seizing agency, and any other party of interest, in accordance with RCW
36 4.28.080 or 4.92.020, within forty-five days after the person seeking
37 removal has notified the seizing law enforcement agency of the person's
38 claim of ownership or right to possession. The court to which the

1 matter is to be removed shall be the district court when the value of
2 the conveyance is within the jurisdictional limit set forth in RCW
3 3.66.020.

4 (iii) The hearing before an administrative law judge and any appeal
5 therefrom shall be under Title 34 RCW. ((In a court hearing between
6 two or more claimants to the article or articles involved, the
7 prevailing party shall be entitled to a judgment for costs and
8 reasonable attorney's fees.))

9 (iv) Except as provided in (a)(v) of this subsection, the burden of
10 producing evidence shall be upon the person claiming to be the lawful
11 owner or the person claiming to have the lawful right to possession of
12 the seized items.

13 (v) In cases of seizure under subsection (1)(b)(ii) of this
14 section, the burden of proof is upon the law enforcement agency to
15 establish, by a preponderance of the evidence, that the conveyance is
16 subject to forfeiture.

17 (b) The seizing law enforcement agency shall promptly return the
18 ((article)) item or ((articles)) items to the claimant upon a
19 determination by the administrative law judge or court that the
20 claimant is lawfully entitled to possession thereof of the seized
21 items.

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

28 (8) If property is sought to be forfeited on the ground that it
29 constitutes proceeds traceable to a violation of this chapter, the
30 seizing law enforcement agency must prove by a preponderance of the
31 evidence that the property constitutes proceeds traceable to a
32 violation of this chapter.

33 (9) When property is forfeited under this chapter the seizing law
34 enforcement agency may:

35 (a) Retain it for official use or upon application by any law
36 enforcement agency of this state release the property to that agency
37 for the exclusive use of enforcing this chapter;

1 (b) Sell that which is not required to be destroyed by law and
2 which is not harmful to the public. Proceeds of conveyances forfeited
3 under subsection (1)(b)(ii) of this section shall be distributed in
4 accordance with subsection (10) of this section. In all other cases,
5 the proceeds and all moneys forfeited under this chapter shall be used
6 for payment of all proper expenses of the investigation leading to the
7 seizure, including any money delivered to the subject of the
8 investigation by the law enforcement agency, and of the proceedings for
9 forfeiture and sale, including expenses of seizure, maintenance of
10 custody, advertising, actual costs of the prosecuting or city attorney,
11 and court costs. Fifty percent of the money remaining after payment of
12 these expenses shall be deposited in the public safety and education
13 account established under RCW 43.08.250 and fifty percent shall be
14 deposited in the general fund of the state, county, or city of the
15 seizing law enforcement agency; or

16 (c) Request the appropriate sheriff or director of public safety to
17 take custody of the property and remove it for disposition in
18 accordance with law.

19 (10)(a) When a conveyance is forfeited under subsection (1)(b)(ii)
20 of this section, the seizing agency must:

21 (i) Keep a record indicating the identity of the prior owner, if
22 known, a description of the conveyance, the disposition of the
23 conveyance, the value of the conveyance at the time of the seizure, and
24 the amount of proceeds realized from disposition of the conveyance;

25 (ii) Retain records of forfeited conveyances for at least seven
26 years;

27 (iii) File a report including a copy of the records of forfeited
28 conveyances with the state treasurer each calendar quarter. The
29 quarterly report need not include a record of forfeited conveyances
30 that are still being held during the appeal from a conviction; and

31 (iv) By January 31st of each year, remit to the state treasurer an
32 amount equal to:

33 (A) The greater of ten percent of the net proceeds of any
34 conveyances forfeited during the preceding calendar year; or

35 (B) The net proceeds of any conveyances forfeited during the year
36 minus the administrative costs of the forfeiture.

37 (b) Money remitted under (a)(iv) of this subsection shall be

1 deposited into the prostitution prevention and intervention account
2 established under RCW 43.63A.740.

3 (c) Forfeited conveyances and net proceeds not required to be paid
4 to the state treasurer shall be retained by the seizing law enforcement
5 agency exclusively for the expansion and improvement of prostitution-
6 related law enforcement activity. Money retained under this section
7 may not be used to supplant preexisting funding sources.

8 (d) For the purposes of this subsection:

9 (i) The net proceeds of a forfeited conveyance is the value of the
10 forfeitable interest in the conveyance after deducting the cost of
11 satisfying any bona fide security interest to which the conveyance is
12 subject at the time of the seizure; and in the case of a sold
13 conveyance, after deducting the cost of sale, including reasonable fees
14 or commissions paid to independent selling agents;

15 (ii) The value of a sold forfeited conveyance is the sale price.
16 The value of a retained forfeited conveyance is the fair market value
17 of the conveyance at the time of seizure, determined by reference to
18 any applicable commonly used index. A seizing agency may use, but need
19 not use, an independent qualified appraiser to determine the value of
20 retained conveyances. If an appraiser is used, the value of the
21 conveyance appraised is net of the cost of the appraisal. The value of
22 a destroyed conveyance is zero; and

23 (iii) The administrative costs of the forfeiture include, but are
24 not limited to, the costs of impoundment, towing, hearings, and
25 employee time.

26 (11) A local governing authority may designate areas within which
27 conveyances are subject to forfeiture under subsection (1)(b)(ii) of
28 this section.

29 (a) The designation must be based on evidence indicating that the
30 area has a disproportionate number of arrests for the offenses listed
31 in subsection (1)(b)(ii) of this section as compared to other areas
32 within the same jurisdiction.

33 (b) The local governing authority shall post signs at the
34 boundaries of the designated area to indicate that the area has been
35 designated under subsection (1)(b)(ii) of this section.

36 **Sec. 2.** RCW 9.68A.101 and 2007 c 368 s 4 are each amended to read
37 as follows:

1 (1) A person is guilty of promoting commercial sexual abuse of a
2 minor if he or she knowingly advances commercial sexual abuse of a
3 minor or profits from a minor engaged in sexual conduct.

4 (2) Promoting commercial sexual abuse of a minor is a class B
5 felony.

6 (3) In addition to any other penalty provided under chapter 9A.20
7 RCW, a person guilty of promoting commercial sexual abuse of a minor is
8 subject to the provisions under RCW 9A.88.140.

9 (4) For the purposes of this section:

10 (a) A person "advances commercial sexual abuse of a minor" if,
11 acting other than as a minor receiving compensation for personally
12 rendered sexual conduct or as a person engaged in commercial sexual
13 abuse of a minor, he or she causes or aids a person to commit or engage
14 in commercial sexual abuse of a minor, procures or solicits customers
15 for commercial sexual abuse of a minor, provides persons or premises
16 for the purposes of engaging in commercial sexual abuse of a minor,
17 operates or assists in the operation of a house or enterprise for the
18 purposes of engaging in commercial sexual abuse of a minor, or engages
19 in any other conduct designed to institute, aid, cause, assist, or
20 facilitate an act or enterprise of commercial sexual abuse of a minor.

21 (b) A person "profits from commercial sexual abuse of a minor" if,
22 acting other than as a minor receiving compensation for personally
23 rendered sexual conduct, he or she accepts or receives money or other
24 property pursuant to an agreement or understanding with any person
25 whereby he or she participates or will participate in the proceeds of
26 commercial sexual abuse of a minor.

27 ((+4)) (5) For purposes of this section, "sexual conduct" means
28 sexual intercourse or sexual contact, both as defined in chapter 9A.44
29 RCW.

30 **Sec. 3.** RCW 9.68A.102 and 2007 c 368 s 5 are each amended to read
31 as follows:

32 (1) A person commits the offense of promoting travel for commercial
33 sexual abuse of a minor if he or she knowingly sells or offers to sell
34 travel services that include or facilitate travel for the purpose of
35 engaging in what would be commercial sexual abuse of a minor or
36 promoting commercial sexual abuse of a minor, if occurring in this
37 state.

1 (2) Promoting travel for commercial sexual abuse of a minor is a
2 class C felony.

3 (3) In addition to any other penalty provided under chapter 9A.20
4 RCW, a person guilty of promoting commercial sexual abuse of a minor is
5 subject to the provisions under RCW 9A.88.140.

6 (4) For purposes of this section, "travel services" has the same
7 meaning as defined in RCW 19.138.021.

8 **Sec. 4.** RCW 9A.88.140 and 2007 c 368 s 8 are each amended to read
9 as follows:

10 (1)(a) Except as provided in (b) of this subsection, upon an arrest
11 for a suspected violation of patronizing a prostitute ((~~a~~)),
12 prostitution, promoting prostitution in the first degree, promoting
13 prostitution in the second degree, promoting travel for prostitution,
14 commercial sexual abuse of a minor, promoting commercial sexual abuse
15 of a minor, or promoting travel for commercial sexual abuse of a minor,
16 the arresting law enforcement officer may impound the person's vehicle
17 if ((~~a~~)) (i) the motor vehicle was used in the commission of the
18 crime; ((~~b~~)) (ii) the person arrested is the owner of the vehicle;
19 and ((~~c~~)) (iii) either (A) the person arrested has previously been
20 convicted of ((~~patronizing a prostitute, under RCW 9A.88.110, or~~
21 commercial sexual abuse of a minor, under RCW 9.68A.100)) one of the
22 offenses listed in this subsection or (B) the offense was committed
23 within an area designated under (b) of this subsection.

24 (b) A local governing authority may designate areas within which
25 vehicles are subject to impoundment under this section regardless of
26 whether the person arrested has previously been convicted of any of the
27 offenses listed in (a) of this subsection.

28 (i) The designation must be based on evidence indicating that the
29 area has a disproportionate number of arrests for the offenses listed
30 in (a) of this subsection as compared to other areas within the same
31 jurisdiction.

32 (ii) The local governing authority shall post signs at the
33 boundaries of the designated area to indicate that the area has been
34 designated under this subsection.

35 (2) Impoundments performed under this section shall be in
36 accordance with chapter 46.55 RCW.

1 (3) In addition to all applicable impoundment, towing, and storage
2 fees under chapter 46.55 RCW, an administrative fee of five hundred
3 dollars must be paid by the owner of the conveyance seized to be
4 deposited in the prostitution prevention and intervention account
5 established under RCW 43.63A.740. The administrative fee must be paid
6 prior to redeeming the seized conveyance.

7 (4) In any proceeding to impound a conveyance seized under this
8 section where the claimant substantially prevails, the claimant is
9 entitled to a full refund of the impoundment, towing, and storage fees
10 paid under chapter 46.55 RCW and the five hundred dollar administrative
11 fee paid under subsection (3) of this section. The claimant shall
12 provide proof of payment prior to receiving any refund under this
13 section.

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