

SSB 6017 - H COMM AMD
By Committee on Public Safety

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

3 "**Sec. 1.** RCW 9.68A.120 and 2009 c 479 s 12 are each amended to
4 read as follows:

5 The following are subject to seizure and forfeiture:

6 (1) All visual or printed matter that depicts a minor engaged in
7 sexually explicit conduct.

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

15 (a) No conveyance used by any person as a common carrier in the
16 transaction of business as a common carrier is subject to forfeiture
17 under this section unless it appears that the owner or other person in
18 charge of the conveyance is a consenting party or privy to a violation
19 of this chapter;

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

24 (c) A forfeiture of property encumbered by a bona fide security
25 interest is subject to the interest of the secured party if the secured
26 party neither had knowledge of nor consented to the act or omission;
27 and

28 (d) When the owner of a conveyance has been arrested under this
29 chapter the conveyance may not be subject to forfeiture unless it is

1 seized or process is issued for its seizure within ten days of the
2 owner's arrest.

3 (3) All personal property, moneys, negotiable instruments,
4 securities, or other tangible or intangible property furnished or
5 intended to be furnished by any person in exchange for visual or
6 printed matter depicting a minor engaged in sexually explicit conduct,
7 or constituting proceeds traceable to any violation of this chapter.

8 (4) Property subject to forfeiture under this chapter may be seized
9 by any law enforcement officer of this state upon process issued by any
10 superior court having jurisdiction over the property. Seizure without
11 process may be made if:

12 (a) The seizure is incident to an arrest or a search under a search
13 warrant or an inspection under an administrative inspection warrant;

14 (b) The property subject to seizure has been the subject of a prior
15 judgment in favor of the state in a criminal injunction or forfeiture
16 proceeding based upon this chapter;

17 (c) A law enforcement officer has probable cause to believe that
18 the property is directly or indirectly dangerous to health or safety;
19 or

20 (d) The law enforcement officer has probable cause to believe that
21 the property was used or is intended to be used in violation of this
22 chapter.

23 (5) In the event of seizure under subsection (4) of this section,
24 proceedings for forfeiture shall be deemed commenced by the seizure.
25 The law enforcement agency under whose authority the seizure was made
26 shall cause notice to be served within fifteen days following the
27 seizure on the owner of the property seized and the person in charge
28 thereof and any person having any known right or interest therein, of
29 the seizure and intended forfeiture of the seized property. The notice
30 may be served by any method authorized by law or court rule including
31 but not limited to service by certified mail with return receipt
32 requested. Service by mail shall be deemed complete upon mailing
33 within the fifteen day period following the seizure.

34 (6) If no person notifies the seizing law enforcement agency in
35 writing of the person's claim of ownership or right to possession of
36 seized items within forty-five days of the seizure, the item seized
37 shall be deemed forfeited.

1 (7) If any person notifies the seizing law enforcement agency in
2 writing of the person's claim of ownership or right to possession of
3 seized items within forty-five days of the seizure, the person or
4 persons shall be afforded a reasonable opportunity to be heard as to
5 the claim or right. The hearing shall be before an administrative law
6 judge appointed under chapter 34.12 RCW, except that any person
7 asserting a claim or right may remove the matter to a court of
8 competent jurisdiction if the aggregate value of the article or
9 articles involved is more than five hundred dollars. The hearing
10 before an administrative law judge and any appeal therefrom shall be
11 under Title 34 RCW. In a court hearing between two or more claimants
12 to the article or articles involved, the prevailing party shall be
13 entitled to a judgment for costs and reasonable attorney's fees. The
14 burden of producing evidence shall be upon the person claiming to be
15 the lawful owner or the person claiming to have the lawful right to
16 possession of the seized items. The seizing law enforcement agency
17 shall promptly return the article or articles to the claimant upon a
18 determination by the administrative law judge or court that the
19 claimant is lawfully entitled to possession thereof of the seized
20 items.

21 (8) If property is sought to be forfeited on the ground that it
22 constitutes proceeds traceable to a violation of this chapter, the
23 seizing law enforcement agency must prove by a preponderance of the
24 evidence that the property constitutes proceeds traceable to a
25 violation of this chapter.

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

28 (a) Retain it for official use or upon application by any law
29 enforcement agency of this state release the property to that agency
30 for the exclusive use of enforcing this chapter or chapter 9A.88 RCW;

31 (b) Sell that which is not required to be destroyed by law and
32 which is not harmful to the public(~~(. The proceeds and all moneys~~
33 ~~forfeited under this chapter shall be used for payment of all proper~~
34 ~~expenses of the investigation leading to the seizure, including any~~
35 ~~money delivered to the subject of the investigation by the law~~
36 ~~enforcement agency, and of the proceedings for forfeiture and sale,~~
37 ~~including expenses of seizure, maintenance of custody, advertising,~~
38 ~~actual costs of the prosecuting or city attorney, and court costs.~~

1 ~~Fifty percent of the money remaining after payment of these expenses~~
2 ~~shall be deposited in the state general fund and fifty percent shall be~~
3 ~~deposited in the general fund of the state, county, or city of the~~
4 ~~seizing law enforcement agency)); or~~

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

8 (10)(a) By January 31st of each year, each seizing agency shall
9 remit to the state treasurer an amount equal to ten percent of the net
10 proceeds of any property forfeited during the preceding calendar year.
11 Money remitted shall be deposited in the prostitution prevention and
12 intervention account under RCW 43.63A.740.

13 (b) The net proceeds of forfeited property is the value of the
14 forfeitable interest in the property after deducting the cost of
15 satisfying any bona fide security interest to which the property is
16 subject at the time of seizure; and in the case of sold property, after
17 deducting the cost of sale, including reasonable fees or commissions
18 paid to an independent selling agency.

19 (c) The value of sold forfeited property is the sale price. The
20 value of retained forfeited property is the fair market value of the
21 property at the time of seizure determined when possible by reference
22 to an applicable commonly used index. A seizing agency may use, but
23 need not use, an independent qualified appraiser to determine the value
24 of retained property. If an appraiser is used, the value of the
25 property appraised is net of the cost of the appraisal. The value of
26 destroyed property and retained firearms or illegal property is zero.

27 (11) Forfeited property and net proceeds not required to be paid to
28 the state treasurer under this chapter shall be used for payment of all
29 proper expenses of the investigation leading to the seizure, including
30 any money delivered to the subject of the investigation by the law
31 enforcement agency, and of the proceedings for forfeiture and sale,
32 including expenses of seizure, maintenance of custody, advertising,
33 actual costs of the prosecuting or city attorney, and court costs.
34 Money remaining after payment of these expenses shall be retained by
35 the seizing law enforcement agency for the exclusive use of enforcing
36 the provisions of this chapter or chapter 9A.88 RCW.

1 **Sec. 2.** RCW 9A.88.150 and 2012 c 140 s 1 are each amended to read
2 as follows:

3 (1) The following are subject to seizure and forfeiture and no
4 property right exists in them:

5 (a) Any property or other interest acquired or maintained in
6 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of
7 the investment of funds, and any appreciation or income attributable to
8 the investment, from a violation of RCW 9.68A.100, 9.68A.101, or
9 9A.88.070;

10 (b) All conveyances, including aircraft, vehicles, or vessels,
11 which are used, or intended for use, in any manner to facilitate a
12 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, except that:

13 (i) 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 RCW 9.68A.100, 9.68A.101, or 9A.88.070;

18 (ii) 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 (iii) A forfeiture of a conveyance encumbered by a bona fide
22 security interest is subject to the interest of the secured party if
23 the secured party neither had knowledge of nor consented to the act or
24 omission; and

25 (iv) When the owner of a conveyance has been arrested for a
26 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, the conveyance in
27 which the person is arrested may not be subject to forfeiture unless it
28 is seized or process is issued for its seizure within ten days of the
29 owner's arrest;

30 (c) Any property, contractual right, or claim against property used
31 to influence any enterprise that a person has established, operated,
32 controlled, conducted, or participated in the conduct of, in violation
33 of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

34 (d) All proceeds traceable to or derived from an offense defined in
35 RCW 9.68A.100, 9.68A.101, or 9A.88.070 and all moneys, negotiable
36 instruments, securities, and other things of value significantly used
37 or intended to be used significantly to facilitate commission of the
38 offense;

1 (e) All books, records, and research products and materials,
2 including formulas, microfilm, tapes, and data which are used, or
3 intended for use, in violation of RCW 9.68A.100, 9.68A.101, or
4 9A.88.070;

5 (f) All moneys, negotiable instruments, securities, or other
6 tangible or intangible property of value furnished or intended to be
7 furnished by any person in exchange for a violation of RCW 9.68A.100,
8 9.68A.101, or 9A.88.070, all tangible or intangible personal property,
9 proceeds, or assets acquired in whole or in part with proceeds
10 traceable to an exchange or series of exchanges in violation of RCW
11 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable
12 instruments, and securities used or intended to be used to facilitate
13 any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A forfeiture
14 of money, negotiable instruments, securities, or other tangible or
15 intangible property encumbered by a bona fide security interest is
16 subject to the interest of the secured party if, at the time the
17 security interest was created, the secured party neither had knowledge
18 of nor consented to the act or omission. No personal property may be
19 forfeited under this subsection (1)(f), to the extent of the interest
20 of an owner, by reason of any act or omission, which that owner
21 establishes was committed or omitted without the owner's knowledge or
22 consent; and

23 (g) All real property, including any right, title, and interest in
24 the whole of any lot or tract of land, and any appurtenances or
25 improvements which are being used with the knowledge of the owner for
26 a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have
27 been acquired in whole or in part with proceeds traceable to an
28 exchange or series of exchanges in violation of RCW 9.68A.100,
29 9.68A.101, or 9A.88.070, if a substantial nexus exists between the
30 violation and the real property. However:

31 (i) No property may be forfeited pursuant to this subsection
32 (1)(g), to the extent of the interest of an owner, by reason of any act
33 or omission committed or omitted without the owner's knowledge or
34 consent;

35 (ii) A forfeiture of real property encumbered by a bona fide
36 security interest is subject to the interest of the secured party if
37 the secured party, at the time the security interest was created,
38 neither had knowledge of nor consented to the act or omission.

1 (2) Real or personal property subject to forfeiture under this
2 section may be seized by any law enforcement officer of this state upon
3 process issued by any superior court having jurisdiction over the
4 property. Seizure of real property shall include the filing of a lis
5 pendens by the seizing agency. Real property seized under this section
6 shall not be transferred or otherwise conveyed until ninety days after
7 seizure or until a judgment of forfeiture is entered, whichever is
8 later: PROVIDED, That real property seized under this section may be
9 transferred or conveyed to any person or entity who acquires title by
10 foreclosure or deed in lieu of foreclosure of a security interest.
11 Seizure of personal property without process may be made if:

12 (a) The seizure is incident to an arrest or a search under a search
13 warrant;

14 (b) The property subject to seizure has been the subject of a prior
15 judgment in favor of the state in a criminal injunction or forfeiture
16 proceeding; or

17 (c) The law enforcement officer has probable cause to believe that
18 the property was used or is intended to be used in violation of RCW
19 9.68A.100, 9.68A.101, or 9A.88.070.

20 (3) In the event of seizure pursuant to subsection (2) of this
21 section, proceedings for forfeiture shall be deemed commenced by the
22 seizure. The law enforcement agency under whose authority the seizure
23 was made shall cause notice to be served within fifteen days following
24 the seizure on the owner of the property seized and the person in
25 charge thereof and any person having any known right or interest
26 therein, including any community property interest, of the seizure and
27 intended forfeiture of the seized property. Service of notice of
28 seizure of real property shall be made according to the rules of civil
29 procedure. However, the state may not obtain a default judgment with
30 respect to real property against a party who is served by substituted
31 service absent an affidavit stating that a good faith effort has been
32 made to ascertain if the defaulted party is incarcerated within the
33 state, and that there is no present basis to believe that the party is
34 incarcerated within the state. Notice of seizure in the case of
35 property subject to a security interest that has been perfected by
36 filing a financing statement, or a certificate of title, shall be made
37 by service upon the secured party or the secured party's assignee at
38 the address shown on the financing statement or the certificate of

1 title. The notice of seizure in other cases may be served by any
2 method authorized by law or court rule including, but not limited to,
3 service by certified mail with return receipt requested. Service by
4 mail shall be deemed complete upon mailing within the fifteen day
5 period following the seizure.

6 (4) If no person notifies the seizing law enforcement agency in
7 writing of the person's claim of ownership or right to possession of
8 items specified in subsection (1) of this section within forty-five
9 days of the service of notice from the seizing agency in the case of
10 personal property and ninety days in the case of real property, the
11 item seized shall be deemed forfeited. The community property interest
12 in real property of a person whose spouse or domestic partner committed
13 a violation giving rise to seizure of the real property may not be
14 forfeited if the person did not participate in the violation.

15 (5) If any person notifies the seizing law enforcement agency in
16 writing of the person's claim of ownership or right to possession of
17 items specified in subsection (1) of this section within forty-five
18 days of the service of notice from the seizing agency in the case of
19 personal property and ninety days in the case of real property, the
20 person or persons shall be afforded a reasonable opportunity to be
21 heard as to the claim or right. The notice of claim may be served by
22 any method authorized by law or court rule including, but not limited
23 to, service by first-class mail. Service by mail shall be deemed
24 complete upon mailing within the forty-five day period following
25 service of the notice of seizure in the case of personal property and
26 within the ninety day period following service of the notice of seizure
27 in the case of real property. The hearing shall be before the chief
28 law enforcement officer of the seizing agency or the chief law
29 enforcement officer's designee, except where the seizing agency is a
30 state agency as defined in RCW 34.12.020(4), the hearing shall be
31 before the chief law enforcement officer of the seizing agency or an
32 administrative law judge appointed under chapter 34.12 RCW, except that
33 any person asserting a claim or right may remove the matter to a court
34 of competent jurisdiction. Removal of any matter involving personal
35 property may only be accomplished according to the rules of civil
36 procedure. The person seeking removal of the matter must serve process
37 against the state, county, political subdivision, or municipality that
38 operates the seizing agency, and any other party of interest, in

1 accordance with RCW 4.28.080 or 4.92.020, within forty-five days after
2 the person seeking removal has notified the seizing law enforcement
3 agency of the person's claim of ownership or right to possession. The
4 court to which the matter is to be removed shall be the district court
5 when the aggregate value of personal property is within the
6 jurisdictional limit set forth in RCW 3.66.020. A hearing before the
7 seizing agency and any appeal therefrom shall be under Title 34 RCW.
8 In all cases, the burden of proof is upon the law enforcement agency to
9 establish, by a preponderance of the evidence, that the property is
10 subject to forfeiture.

11 The seizing law enforcement agency shall promptly return the
12 article or articles to the claimant upon a determination by the
13 administrative law judge or court that the claimant is the present
14 lawful owner or is lawfully entitled to possession thereof of items
15 specified in subsection (1) of this section.

16 (6) In any proceeding to forfeit property under this title, where
17 the claimant substantially prevails, the claimant is entitled to
18 reasonable attorneys' fees reasonably incurred by the claimant. In
19 addition, in a court hearing between two or more claimants to the
20 article or articles involved, the prevailing party is entitled to a
21 judgment for costs and reasonable attorneys' fees.

22 (7) When property is forfeited under this chapter, the seizing law
23 enforcement agency (~~shall sell the property that is not required to be~~
24 ~~destroyed by law and that is not harmful to the public~~) may:

25 (a) Retain it for official use or upon application by any law
26 enforcement agency of this state release the property to that agency
27 for the exclusive use of enforcing this chapter or chapter 9.68A RCW;

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

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

33 (8)(a) When property is forfeited, the seizing agency shall keep a
34 record indicating the identity of the prior owner, if known, a
35 description of the property, the disposition of the property, the value
36 of the property at the time of seizure, and the amount of proceeds
37 realized from disposition of the property.

1 (b) Each seizing agency shall retain records of forfeited property
2 for at least seven years.

3 (c) Each seizing agency shall file a report including a copy of the
4 records of forfeited property with the state treasurer each calendar
5 quarter.

6 (d) The quarterly report need not include a record of forfeited
7 property that is still being held for use as evidence during the
8 investigation or prosecution of a case or during the appeal from a
9 conviction.

10 (9)(a) By January 31st of each year, each seizing agency shall
11 remit to the state treasurer an amount equal to ten percent of the net
12 proceeds of any property forfeited during the preceding calendar year.
13 Money remitted shall be deposited in the prostitution prevention and
14 intervention account under RCW 43.63A.740.

15 (b) The net proceeds of forfeited property is the value of the
16 forfeitable interest in the property after deducting the cost of
17 satisfying any bona fide security interest to which the property is
18 subject at the time of seizure; and in the case of sold property, after
19 deducting the cost of sale, including reasonable fees or commissions
20 paid to independent selling agents, and the cost of any valid
21 landlord's claim for damages under subsection (~~((11))~~) (12) of this
22 section.

23 (c) The value of sold forfeited property is the sale price. The
24 value of destroyed property and retained firearms or illegal property
25 is zero.

26 (10) Net proceeds not required to be paid to the state treasurer
27 shall be used for payment of all proper expenses of the investigation
28 leading to the seizure, including any money delivered to the subject of
29 the investigation by the law enforcement agency, and of the proceedings
30 for forfeiture and sale, including expenses of seizure, maintenance of
31 custody, advertising, actual costs of the prosecuting or city attorney,
32 and court costs. Money remaining after payment of these expenses shall
33 be retained by the seizing law enforcement agency for the exclusive use
34 of enforcing the provisions of this chapter or chapter 9.68A RCW.

35 (11) Upon the entry of an order of forfeiture of real property, the
36 court shall forward a copy of the order to the assessor of the county
37 in which the property is located. Orders for the forfeiture of real
38 property shall be entered by the superior court, subject to court

1 rules. Such an order shall be filed by the seizing agency in the
2 county auditor's records in the county in which the real property is
3 located.

4 ~~((+11+))~~ (12) A landlord may assert a claim against proceeds from
5 the sale of assets seized and forfeited under subsection (9) of this
6 section, only if:

7 (a) A law enforcement officer, while acting in his or her official
8 capacity, directly caused damage to the complaining landlord's property
9 while executing a search of a tenant's residence;

10 (b) The landlord has applied any funds remaining in the tenant's
11 deposit, to which the landlord has a right under chapter 59.18 RCW, to
12 cover the damage directly caused by a law enforcement officer prior to
13 asserting a claim under the provisions of this section:

14 (i) Only if the funds applied under (b) of this subsection are
15 insufficient to satisfy the damage directly caused by a law enforcement
16 officer, may the landlord seek compensation for the damage by filing a
17 claim against the governmental entity under whose authority the law
18 enforcement agency operates within thirty days after the search;

19 (ii) Only if the governmental entity denies or fails to respond to
20 the landlord's claim within sixty days of the date of filing, may the
21 landlord collect damages under this subsection by filing within thirty
22 days of denial or the expiration of the sixty day period, whichever
23 occurs first, a claim with the seizing law enforcement agency. The
24 seizing law enforcement agency must notify the landlord of the status
25 of the claim by the end of the thirty day period. Nothing in this
26 section requires the claim to be paid by the end of the sixty day or
27 thirty day period; and

28 (c) For any claim filed under (b) of this subsection, the law
29 enforcement agency shall pay the claim unless the agency provides
30 substantial proof that the landlord either:

31 (i) Knew or consented to actions of the tenant in violation of RCW
32 9.68A.100, 9.68A.101, or 9A.88.070; or

33 (ii) Failed to respond to a notification of the illegal activity,
34 provided by a law enforcement agency under RCW 59.18.075, within seven
35 days of receipt of notification of the illegal activity.

36 ~~((+12+))~~ (13) The landlord's claim for damages under subsection
37 ~~((+11+))~~ (12) of this section may not include a claim for loss of
38 business and is limited to:

1 (a) Damage to tangible property and clean-up costs;
2 (b) The lesser of the cost of repair or fair market value of the
3 damage directly caused by a law enforcement officer;
4 (c) The proceeds from the sale of the specific tenant's property
5 seized and forfeited under subsection (9) of this section; and
6 (d) The proceeds available after the seizing law enforcement agency
7 satisfies any bona fide security interest in the tenant's property and
8 costs related to sale of the tenant's property as provided by
9 subsection ~~((+11+))~~ (12) of this section.
10 ~~((+13+))~~ (14) Subsections ~~((+11+))~~ (12) and ~~((+12+))~~ (13) of this
11 section do not limit any other rights a landlord may have against a
12 tenant to collect for damages. However, if a law enforcement agency
13 satisfies a landlord's claim under subsection ~~((+11+))~~ (12) of this
14 section, the rights the landlord has against the tenant for damages
15 directly caused by a law enforcement officer under the terms of the
16 landlord and tenant's contract are subrogated to the law enforcement
17 agency."

18 Correct the title.

EFFECT: Provides that the state portion of any proceeds from forfeiture of property connected to child pornography be deposited in the Prostitution Prevention and Intervention Account, rather than the State General Fund.

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