

# SENATE BILL REPORT

## E2SHB 2718

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As of February 23, 2018

**Title:** An act relating to seizure and forfeiture procedures and reporting.

**Brief Description:** Concerning seizure and forfeiture procedures and reporting.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Shea and Goodman).

**Brief History:** Passed House: 2/13/18, 95-3.

**Committee Activity:** Law & Justice: 2/20/18, 2/22/18 [DPA-WM].

Ways & Means: 2/24/18.

### Brief Summary of Amended Bill

- Creates a new chapter governing civil asset forfeiture proceedings and replaces forfeiture provisions in other state laws.
- Requires seizing agencies to keep detailed records about property seized and forfeited under state law and any agreement with any federal agency for each forfeiture.
- Requires submittal of annual reports of seizures and forfeitures to the state treasurer.
- Requires submittal of annual reports of expenditures from the net proceeds of all forfeitures to the state treasurer.
- Requires the state treasurer to make reports available on a public website, and report aggregate information to state entities which may include recommendations.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Angel, Assistant Ranking Member; Darneille, Frockt and Wilson.

**Staff:** Tim Ford (786-7423)

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Travis Sugarman (786-7446)

**Background:** Forfeiture Generally. When authorized by statute, a law enforcement agency may seize possession of property for the purpose of forfeiting a person's right to own or possess that property. Generally, civil asset forfeiture is permitted when the property itself is illegal, was used to facilitate a crime, is an actual proceed of a crime, or was purchased from proceeds traceable to criminal activity.

Civil asset forfeiture is permitted under a variety of statutes, including in the case of drug crimes, crimes committed with a firearm, and human sex trafficking and sexual exploitation crimes. The seizing agency must comply with specific statutory process requirements, which operate separately from a criminal proceeding. With one exception, these statutes do not require the property owner to be convicted of the alleged crime for the property to be forfeited. Many of the statutes' procedures and requirements are similar, but not identical, to those found in the Uniform Controlled Substances Act (UCSA).

UCSA. Property Subject to Forfeiture. Under the UCSA, no property right exists in the controlled substances themselves, anything used to manufacture or pay for them, or proceeds traceable to the sale or exchange of controlled substances. Conveyances, such as vehicles used to facilitate distribution of controlled substances, and other personal property, such as money furnished or intended to be furnished in exchange for a controlled substance or acquired via an exchange in violation of the UCSA, are subject to forfeiture, unless the owner establishes that the act or omission was committed or omitted without his or her knowledge or consent. Real property that is being used with the knowledge of the owner in connection with a crime, or which has been acquired in whole or in part with proceeds of a crime, is subject to forfeiture.

Seizure Process. Upon seizure by a law enforcement agency, the agency must serve notice of seizure and possible forfeiture upon the owner within 15 days. If no person notifies the seizing agency in writing of a claim of ownership or right to possession within 45 days of service of notice in the case of personal property, and 90 days in the case of real property, the property is deemed forfeited by default.

Hearing Process. A person who timely notifies the seizing agency in writing of a claim of ownership or right to possession is entitled to a hearing. The hearing is before the chief law enforcement officer of the seizing agency, or an administrative law judge if the seizure is by a state agency; however, the person asserting a claim or right may remove the matter to a court of competent jurisdiction. The burden of proof is on the law enforcement agency to establish by a preponderance of the evidence that the property is subject to forfeiture. Claimants who prevail are entitled to reasonable attorneys' fees. In addition, in a court hearing between two or more claimants to the property, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees. Language is reinserted allowing costs and reasonable attorneys' fees for a prevailing party between two or more claimants for seized property.

Disposition of Forfeited Property. If property is forfeited, the seizing agency may sell, or retain for official use, anything not required by law to be destroyed. A seizing agency must

remit 10 percent of the net proceeds of any property forfeited during the preceding calendar year to the state treasurer for deposit in the State General Fund. The remaining net proceeds are retained by the seizing agency exclusively for the expansion and improvement of controlled substances-related law enforcement, but must not displace existing funding sources.

Record-Keeping Requirements. When property is forfeited, seizing agencies must keep, and retain for at least seven years, a record indicating:

- the identity of the prior owner;
- a description of the property;
- the disposition of the property;
- the value of the property at the time of seizure; and
- the amount of proceeds realized from disposition.

Quarterly reports detailing the above must be filed by each seizing agency. By January 31 of each year, each seizing agency must remit, for deposit into the State General Fund, an amount equal to 10 percent of any property forfeited during the preceding calendar year.

Washington Service Members' Civil Relief Act (SCRA). The SCRA contains certain rights for service members and their dependents whose financial and legal obligations may be adversely impacted by active military duty. It applies to any judicial or administrative proceeding commenced in any court or agency in the state in which a service member or his or her dependent is a party. The SCRA also contains provisions restricting contract fines and penalties, restructuring interest rates on certain business loans, and suspending statutes of limitations during military service periods.

**Summary of Amended Bill:** Forfeiture Generally. A new chapter is created governing civil asset forfeiture proceedings. The new chapter replaces forfeiture proceedings in other state laws relating to:

- sexual exploitation of children;
- indecent exposure and prostitution;
- money laundering;
- property employed in the commission of a felony;
- theft of metal;
- driving while under the influence;
- explosives act violations;
- fish and wildlife enforcement; and
- uniform controlled substances act.

Commencement of Forfeiture Proceedings. Generally, forfeiture proceedings are deemed commenced upon seizure. A seizing agency must serve notice possible forfeiture upon the owner within 15 days. The property is deemed forfeited unless a person notifies the seizing agency in writing of a claim of ownership or right to possession within:

- 60 days of service of notice in the case of personal property, and
- 120 days in the case of real property.

Hearing Process. Persons who timely file a claim of ownership are entitled to a hearing. The hearing is before a hearing officer who is not in the direct chain of command of the chief law

enforcement officer of the seizing agency, or an administrative law judge if the seizure is by a state agency. The burden of proof is on the law enforcement agency to establish by a preponderance that the seized property is subject to forfeiture. No personal or real property may be forfeited by reason of any act committed or omitted without the owner's knowledge or consent. On a decision by a court or hearing officer that the claimant is the lawful owner or is lawfully entitled to possession, the seizing agency must promptly return the seized property in the same or substantially similar condition as when they were seized. Claimants who prevail are entitled to reasonable attorneys' fees.

Disposition of Forfeited Property and Proceeds. The seizing agency must first satisfy any court-ordered victim restitution before retaining, using, selling, or taking other action with forfeited property. The victim of the crime of metal theft receives 50 percent of the proceeds of the forfeited property. After satisfaction of victim restitution, if required, the seizing agency may sell, retain for official use, request another entity to take custody of, or forward to an appropriate entity, anything not required by law to be destroyed. Seizing agencies must annually remit to the State Treasurer 10 percent of the proceeds of any property forfeited during the previous calendar year. These monies are to be deposited into the State General Fund. Forfeited property and net proceeds not required to be paid to the treasurer shall be retained by the seizing agency exclusively for the expansion and improvement of related enforcement activities. They may not be used to supplant preexisting funding sources.

SCRA. The SCRA is applicable to civil asset forfeiture proceedings. Service members deployed on active duty are entitled to certain defined protections in the SCRA.

Record Keeping and Reporting Requirements. General reporting requirements are included in the new chapter and made applicable to all seizures by seizing agencies, regardless of whether the seizure was made pursuant to the new chapter, other state statutes, or was conducted in collaboration with a federal agency under federal law. Seizing agencies must keep records about property seized and forfeited, including information regarding multiple specific data points such as date of seizure, type of property, crime for which the suspect was charged, and whether there was a conviction. Seizing agencies must also keep records on the expenditures by the agency from forfeiture net proceeds. The records must include total amounts expended and detailed amounts in designated categories.

Annually, seizing agencies must file a report that includes these records with the treasurer. The treasurer must annually submit a report summarizing forfeiture activity to the Speaker of the House of Representatives, the President of the Senate, the attorney general, and the Governor. In the report, the treasurer may include recommendations to improve statutes, rules, and policies to facilitate seizure, forfeiture, and expenditure processes and reporting. The treasurer must establish and maintain a searchable public website that includes these records. The data and reports are public information under the Public Records Act.

Seizing agencies that fail to comply with reporting requirements are subject to a civil penalty of \$500 or one-quarter of the forfeiture proceeds received during the reporting period, whichever is greater.

Application. The act applies to seizures occurring on or after January 1, 2019.

## **EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):**

- Removes authority of the Treasurer to charge seizing agencies a fee for required reporting.
- Reinserts language allowing costs and reasonable attorneys' fees for a prevailing party between two or more claimants for seized property.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 15, 2018.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on January 1, 2019, except for section 6, which takes effect July 1, 2018.

**Staff Summary of Public Testimony on Engrossed Second Substitute House Bill (Law & Justice):** *The committee recommended a different version of the bill than what was heard.*  
PRO: The civil forfeiture process carries a propensity for abuse. This bill is to ensure integrity in the process will help to establish citizen confidence in government's respect for personal property and due process. I have a little concern about some language in the bill related to an inspection under an administrative warrant.

This is an improvement over the existing civil forfeiture process. The standard of evidence to forfeit property should be clear and convincing instead of a preponderance. There are sweeping reforms of asset forfeiture laws across the country mainly because of federal abuses, although there have been state abuses as well. This law has very good improvements in transparency. It also removes asset forfeitures used to target people who cannot pay to defend themselves. Government should pay to cover legal fees of persons who prevail in asset forfeiture cases. We should get rid of civil forfeiture and only allow forfeiture where there is a criminal conviction. We are the only state on the west coast that does not require a criminal conviction. This bill is a step in the right direction.

CON: The civil forfeiture process exists to remove the profit motive in crime. The list of crimes where civil forfeiture exists is long and applies to child pornography, commercial sexual abuse, money laundering, drug manufacturing and trafficking, and others. There is nothing in this bill that helps law enforcement in reducing that profit motive and further victimization of those offenses. This bill makes it more expensive, complicated, time consuming, and burdensome for law enforcement to remove the profit motive from those crimes.

OTHER: Seizing agencies should not have to pay a fee to the state for the required reporting. There is a lot of time and thoroughness that goes into police investigations and prosecutions. I have yet to hear about any abuses in Washington State.

**Persons Testifying (Law & Justice):** PRO: Cindy Alia, Citizens Alliance for Property Rights; Glen Morgan, Citizens Alliance for Property Rights; Wesley Hottot, Institute for Justice.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs.

OTHER: Michele Walker, City of Kent Prosecutor.

**Persons Signed In To Testify But Not Testifying (Law & Justice):** OTHER: Doug Levy, City of Kent, Renton, Puyallup.