

SENATE BILL REPORT

SB 5044

As of January 18, 2017

Title: An act relating to the burden of proof in civil asset forfeiture hearings.

Brief Description: Changing the burden of proof in certain civil asset forfeiture hearings.

Sponsors: Senators Hasegawa and Chase.

Brief History:

Committee Activity: Law & Justice:

Brief Summary of Bill

- Changes the standard of proof in civil forfeiture for drug cases from the "preponderance of the evidence" to "clear, cogent and convincing evidence."

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: The civil forfeiture provisions in drug cases provide that no property right exists in the controlled substances themselves, in the equipment or materials used to manufacture the substances, or in the money and property intended to be used as payment or proceeds traceable to the sale or exchange of controlled substances. Conveyances used or intended for use to facilitate the sale, delivery, or receipt of controlled substances are subject to forfeiture, unless used without the knowledge or consent of the true owner.

Real property that is being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which has been acquired in whole or in part with proceeds, is subject to forfeiture. If the forfeited real property is encumbered by a security interest, it is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the prohibited act. The community property interest in real property may not be forfeited if the person did not participate in the violation.

Real or personal property subject to forfeiture may be seized by any State Board of Pharmacy

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inspector or law enforcement officer upon process. If any person notifies the seizing agency in writing of the person's claim of ownership or right to possession of the property, a hearing is held before the chief officer of the seizing agency unless the person removes the matter to a court of competent jurisdiction. The burden of proof in court is on the seizing agency by a preponderance of the evidence.

Summary of Bill: For cases that are removed to the court, the seizing agency has the burden of proof by "clear, cogent and convincing evidence" instead of by a "preponderance of the evidence."

Appropriation: None.

Fiscal Note: Not requested.

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

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

Staff Summary of Public Testimony on Draft Bill: PRO: This is an important improvement, but it does not go far enough. A conviction for a drug offense should be required before a civil proceeding for civil forfeiture is allowed. Washington is the only state on the west coast that does not require a prior conviction. Oregon and California both require convictions before civil forfeiture.

CON: Crime should not pay. This bill would make it more difficult to take away criminal proceeds. There is no evidence of abuses or improper forfeitures in Washington.

Persons Testifying: PRO: Wesley Hottot, Attorney, Institute for Justice.

CON: James McMahan, Policy Director, Washington Association of Sheriffs and Police Chiefs; Tom McBride, Washington Association of Prosecuting Attorneys; Candice Bock, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: No one.