

SENATE BILL REPORT

SB 6266

As of January 29, 2020

Title: An act relating to seizure and forfeiture reporting.

Brief Description: Concerning seizure and forfeiture reporting.

Sponsors: Senators Padden, Hasegawa, Das and Holy.

Brief History:

Committee Activity: Law & Justice: 1/27/20.

Brief Summary of Bill

- 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.
- Establishes requirements for agencies to submit quarterly reports to the state treasurer and to publish records on a public website.
- Requires the seizing agency to report records of expenditures from the sum of the net proceeds of all forfeitures to the state treasurer by March 1st of each year.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

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 being used with the knowledge of the owner for manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance, or which has been acquired in whole or in part with proceeds, is subject to forfeiture. If the forfeited real

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property is encumbered by a security interest, it is subject to the interest of the secured party if the secured party had neither the knowledge nor the consent of 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 inspector or law enforcement officer upon process. Real property may not be transferred or conveyed by the law enforcement agency until 90 days after the seizure, or until a judgment of forfeiture is entered. If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession within 45 days of the seizure in the case of personal property and 90 days in the case of real property, the property is deemed forfeited. If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession within the time period, the person or persons is afforded an opportunity to be heard as to the claim or right.

If property is forfeited, the board or seizing law enforcement agency may (1) retain it for official use; (2) sell that which is not required to be destroyed by law and not harmful to the public; (3) request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition; or (4) forward it to the federal Drug Enforcement Administration for disposition. A report including a copy of the records of forfeited property is filed with the state treasurer each calendar quarter.

By January 31st of each year, each seizing agency remits to the state treasurer an amount equal to 10 percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted is deposited in the state general fund. Forfeited property and net proceeds not required to be paid to the state treasurer are retained by the seizing law enforcement agency exclusively for expanding and improving controlled substances related law enforcement activity.

Summary of Bill: Agencies who seize and forfeiture property in drug cases must keep records about the property seized and forfeited. The records must include:

1. the name of the seizing agency;
2. date of seizure;
3. type of property seized;
4. description of the property including the make, model, year, and serial number;
5. the street address or description of the location where the seizure occurred;
6. if the seizure was adopted by the federal government, part of a joint taskforce, or through other arrangements with the federal government;
7. the crime for which the suspect was charged with;
8. if the suspect was convicted of a crime;
9. if the forfeiture was contested by a suspect, innocent owner claimant, joint-owner, or another property owner;
10. disposition of the property through the forfeiture process, such as being returned to the suspect, a joint owner or third-party owner, sold, destroyed, or retained by law enforcement;
11. date of disposition of the property;
12. basis for disposition of property (as referenced in number 10 above), such as suspect found not guilty, plea agreement, criminal forfeiture or civil forfeiture;

13. value of the property forfeited; and
14. the net proceeds retained by the law enforcement agency that seized the property.

Each calendar quarter when property is forfeited, the seizing agency must file a report, with all records, to the state treasurer. The state treasurer must establish and maintain a searchable public website that includes all of the records. The quarterly report does not need to include a record of forfeited property still being held for use as evidence during an investigation or prosecution of a case or during an appeal from a conviction.

By March 1st each year, the seizing agency must file with the state treasurer a report summarizing the agency's expenditures from the sum of the net proceeds of all seized and forfeited property in each of the following categories:

- abuse, crime, and gang prevention programs;
- witness protection, informant fees, and controlled buys;
- salaries, overtime, and benefits;
- professional outside services including auditing, court reporting, expert witness, outside attorney fees, and membership fees paid to trade associations;
- travel, meals, entertainment, conferences, training and continuing education seminars;
- other operating expenses including office supplies, postage and printing;
- capital expenditures including vehicles, firearms, equipment, computers and furniture;
- other expenditures of forfeiture proceeds; and
- the total value of forfeited property held by the agency at the end of the reporting period.

Appropriation: None.

Fiscal Note: Requested on January 24, 2020.

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: PRO: For a long time in the legislative process we have talked about civil forfeiture prior to a conviction. There is the possibility for abuse. We need to get an idea of where we are and this is a first step. Other states do not allow civil forfeiture without a conviction. We just want to get the data. There needs to be comprehensive reporting requirements. In Washington the aggregate amounts is reported but we need details. Due process rights need to be protected by detailed reporting. An annual statewide report to the Legislature should be required from the state treasurer. There should be an enforcement mechanism for agencies that fail to report. Current laws leave us in the dark as to how forfeited property is used. We do not even know if a person is being charged with a crime after seizure.

CON: The data is there and we have nothing to hide in our use of civil forfeiture. The only difference between this bill and current law is the burden of putting it together. The public has an ability to get this information under the state public records law. Putting this data together and publish it would cost each agency a 1/2 FTE. Some of the information required

to be collected and reported would not be something that a seizing agency might maintain. The seizing agency can't provide information it doesn't have or maintain.

Persons Testifying: PRO: Senator Mike Padden, Prime Sponsor; Angela Erickson, Director of Strategic Research, Pacific Legal Foundation; Jennifer McDonald, Senior Research Analyst, Institute of Justice.

CON: Michele Walker, Prosecuting Attorney, City of Kent; James McMahan, Washington Association Sheriffs and Police Chiefs.

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