

SENATE BILL REPORT

SB 5733

As of February 4, 2022

Title: An act relating to civil asset forfeiture.

Brief Description: Concerning civil asset forfeiture.

Sponsors: Senators Padden and Hasegawa.

Brief History:

Committee Activity: Law & Justice: 1/24/22, 1/27/22 [DPS-WM].

Ways & Means: 2/04/22.

Brief Summary of First Substitute 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.
- Requires the seizing agency to report detailed records of expenditures from the sum of the net proceeds of all forfeitures to the attorney general by March 1st of each year.
- Establishes requirements for agencies to submit quarterly and annual reports to the attorney general of the detailed records.
- Requires the Department of Commerce to establish and maintain a searchable public website of the detailed records.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5733 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; McCune, Assistant Ranking Member; Honeyford, Kuderer, Pedersen, Salomon and

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

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Staff: Tim Ford (786-7423)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Corban Nemeth (786-7736)

Background: The Uniform Controlled Substances Act allows forfeiture of real and personal property used in drug-related offenses. When property is seized under the authority of the Uniform Controlled Substances Act, the seizing enforcement agency must serve notice of the seizure on the owner of the property and on any person having any known right or interest in the property. This notice must be served within 15 days of the seizure of the property.

A person asserting a claim of ownership or right to possession of the seized property must notify the seizing law enforcement agency of their claim within the time period prescribed by statute. If no person notifies the seizing law enforcement agency of the person's claim of ownership or right to possession within 45 days of the seizure of personal property, or 90 days of the seizure of real property, the property seized is deemed forfeited.

Once property is deemed forfeited, the enforcement agency may retain the property for official use, sell the property, dispose of the property, or forward it to the Drug Enforcement Administration. Ten percent of the net proceeds of any property forfeited during the preceding calendar year must be remitted to the state treasurer for deposit to the general fund.

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

- the name of the seizing agency;
- date of seizure;
- type of property seized;
- description of the property including the make, model, year, and serial number;
- the street address or description of the location where the seizure occurred;
- if the seizure was adopted by the federal government, part of a joint taskforce, or through other arrangements with the federal government;
- the crime the suspect was charged with;
- if the suspect was convicted of a crime;
- if the forfeiture was contested by a suspect, innocent owner claimant, joint-owner, or another property owner;
- 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;
- date of disposition of the property;

- basis for disposition of property, such as an agreed disposition or agreed resolution, if available at the time of reporting;
- value of the property forfeited; and
- 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 Department of Commerce (Commerce). Commerce 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 Commerce 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:

- professional outside services including auditing, court reporting, expert witness, outside attorney fees, and membership fees paid to trade associations;
- travel, meals, conferences, training and continuing education seminars;
- capital expenditures including vehicles, firearms, equipment, computers, and furniture; and
- the total value of forfeited property held by the agency at the end of the reporting period.

In all cases, 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.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Makes required information on charges and convictions to be reported if available.
- Makes the required information to be filed with Commerce.
- Makes Commerce responsible for establishing and maintaining a searchable public website.
- Removes information required to be reported related to an agency's expenditures.
- Retains the standard of a preponderance of evidence for appeals of forfeitures.

Appropriation: None.

Fiscal Note: Requested on January 21, 2022.

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 Original Bill (Law & Justice): *The committee*

recommended a different version of the bill than what was heard. PRO: This issue has been around for a while going back to 2017. I am a strong friend of law enforcement. I am concerned with property being seized when there is no conviction and there should be extra safeguards. We should know what is happening out there and maybe we should add a proviso in the budget for local government to maintain these records. If property is being seized it should not be easy and the burden of proof should be higher. Other states require a conviction but this bill doesn't go that far.

CON: Some of the reporting requirements in the bill such as the crime of which the suspect was charged and whether the suspect was convicted. The filing decisions in criminal cases are not made for months if not years after the property is seized. There is a backlog of filing decisions. Seizing agencies would be waiting for years to get that information from the prosecutors office. Other reporting requirements such as office supplies, postage, and printing is a bit of overkill. Oftentimes those costs don't come out of seizure funds, and keeping track of every post-it note is not necessary and over-burdensome. The specificity and minute reporting detail is unreasonable.

Information about forfeiture is already available through information requests or through the Department of Commerce. It makes more sense to continue to work through the Department of Commerce. It is an unfunded mandate.

OTHER: There was an effort in 2016 to reform the civil forfeiture laws. Many states including Oregon and California require criminal convictions for any civil forfeiture. Many other states are getting rid of civil forfeiture and going to criminal forfeiture. This is a baby step in the right direction. It requires law enforcement to keep detailed records of seizure and forfeiture so we know what is going on.

Persons Testifying (Law & Justice): PRO: Senator Mike Padden, Prime Sponsor.

CON: John Worthington, AAMC; Anne Anderson, Washington State Narcotics Investigators Association; Michele Walker, City of Kent.

OTHER: Wesley Hottot, Institute for Justice.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): OTHER: I had the opportunity to testify in front of the Law & Justice Committee about the original version of the bill. I provided input to the sponsor and the changes made in the substitute address my concerns with the reporting requirements. I am officially neutral on the bill.

Persons Testifying (Ways & Means):

OTHER: Michele Walker, City of Kent.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.