
Judiciary Committee

HB 2413

Title: An act relating to property used to facilitate a criminal street gang-related offense.

Brief Description: Concerning property used to facilitate a criminal street gang-related offense.

Sponsors: Representatives Johnson, O'Brien, Ross, Finn, Haler, Klippert, Taylor, Crouse, Angel, Kristiansen, Roach, Hinkle, Rodne, Smith, Walsh, Warnick, Nealey, Seaquist, Hope, Short, Chandler, Ericks, Campbell, Morrell, Kelley, Conway, Bailey and Hurst.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Permits civil forfeiture of property used to facilitate a criminal street gang-related offense.

Hearing Date: 1/14/10

Staff: Courtney Barnes (786-7194).

Background:

There are many forfeiture statutes covering a wide variety of topics. For example, the Uniform Controlled Substances Act provides for the forfeiture of materials and products used to manufacture and distribute illegal drugs. Other forfeiture provisions cover topics such as child pornography, money laundering, and property used in the commission of a felony.

Civil forfeiture statutes generally allow for notice and the opportunity to be heard prior to the forfeiture of property. The standard of proof in civil forfeiture proceedings may be different from the underlying crime. Unlike criminal forfeiture statutes, civil forfeiture statutes do not always require a criminal conviction prior to the seizure and forfeiture of property.

Summary of Bill:

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.

Real or personal property is subject to seizure and forfeiture if used, or intended for use, in any manner to facilitate a criminal street gang-related offense. The provisions created by the bill are similar to those found in the Uniform Controlled Substances Act.

"Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

- to gain admission, prestige, or promotion within the gang;
- to increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;
- to exact revenge or retribution for the gang or any member of the gang;
- to obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;
- to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or
- to provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance; arson; trafficking in stolen property; promoting prostitution; human trafficking; or promoting pornography.

Exceptions to Forfeiture

No real or personal property may be forfeited to the extent of the interest of an owner by reason of any act or omission which the owner establishes was committed or omitted without the owner's actual or constructive knowledge or consent.

Real property that is used for a criminal street gang-related offense with the actual or constructive knowledge of the owner may not be forfeited unless the offense is at least a Class C Felony and a substantial nexus exists between the offense and the property.

The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

Other exceptions to forfeiture are created to address property encumbered by a bona fide security interest and conveyances used as common carriers in the transaction of business.

Forfeiture Proceedings

Property may be seized by any law enforcement officer upon process issued by any superior court having jurisdiction over the property. Proceedings for forfeiture are commenced by the seizure of property.

Personal property may be seized without process if:

- the seizure is incident to an arrest, a search under a warrant, or an inspection under an administrative inspection warrant;
- the property has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding;

- a law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- a law enforcement officer has probable cause to believe that the property was used, or is intended to be used, for a criminal street gang-related activity.

Notice of Seizure

Once forfeiture proceedings have been initiated, the seizing law enforcement agency must provide notice of the seizure to the owner and other persons having an interest in the property, including any community property interest. Other provisions are created to address how service of notice must be made depending on the type of property involved and whether there are any security interests.

Claim of Ownership

A person asserting a claim of ownership or right to possession of personal property seized by a law enforcement agency must notify the seizing agency in writing of his or her ownership interest within 45 days of the service of notice from the seizing agency. In the case of a seizure of real property, the person asserting an ownership interest must notify the seizing law enforcement agency of his or her ownership interest within 90 days of the service of notice from the seizing agency.

If the seizing law enforcement agency does not receive any notice of claim of ownership or right to possession within the 45-day period or 90-day period following the notice of seizure, the property seized is deemed forfeited.

Opportunity for Hearing

If a person notifies the seizing agency of a claim of ownership or right to possession, the person must be given a reasonable opportunity to be heard. The hearing must be before the chief law enforcement officer of the seizing agency or the officer's designee. If the seizing agency is a state agency, the hearing must be before the chief law enforcement officer or an administrative law judge. Any person asserting a claim or right to the seized property may remove the proceeding to a court of competent jurisdiction. Removal of any matter involving personal property must be according to the rules of civil procedure.

The seizing law enforcement agency has the burden to prove by a preponderance of the evidence that the property is subject to forfeiture. If the person asserting the claim or right to the property is determined to be the present lawful owner or is entitled to possession of the property, the seizing law enforcement agency must promptly return the property. In a case where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees.

Disposition of Forfeited Property

When property is forfeited, the seizing law enforcement agency may:

- retain it for official use;
- sell that which is not required to be destroyed by law and which is not harmful to the public; or

- request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with the law.

The seizing law enforcement agency must keep a record of all forfeited property. The seizing agency must maintain the record for seven years and must submit quarterly reports to the state treasurer. By January 31 of each year, the seizing agency must remit an amount equal to 10 percent of the net proceeds of any property forfeited during the preceding calendar year. The money must be remitted to the state treasurer for deposit in the state general fund.

Other

If property that is subject to forfeiture under this bill may also be seized and forfeited under another forfeiture statute, the seizing law enforcement agency may designate which law applies to the forfeiture proceedings.

Provisions are included to address when a landlord may assert a claim against proceeds from the sale of forfeited property.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.