
SUBSTITUTE SENATE BILL 6017

State of Washington

63rd Legislature

2014 Regular Session

By Senate Law & Justice (originally sponsored by Senators Kohl-Welles, O'Ban, Darneille, Padden, Kline, Keiser, Dammeier, and Fraser)

READ FIRST TIME 02/05/14.

1 AN ACT Relating to the use of proceeds from seizure and forfeiture
2 activities from sexual exploitation of children and promoting
3 prostitution; and amending RCW 9.68A.120 and 9A.88.150.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9.68A.120 and 2009 c 479 s 12 are each amended to read
6 as follows:

7 The following are subject to seizure and forfeiture:

8 (1) All visual or printed matter that depicts a minor engaged in
9 sexually explicit conduct.

10 (2) All raw materials, equipment, and other tangible personal
11 property of any kind used or intended to be used to manufacture or
12 process any visual or printed matter that depicts a minor engaged in
13 sexually explicit conduct, and all conveyances, including aircraft,
14 vehicles, or vessels that are used or intended for use to transport, or
15 in any manner to facilitate the transportation of, visual or printed
16 matter in violation of RCW 9.68A.050 or 9.68A.060, but:

17 (a) No conveyance used by any person as a common carrier in the
18 transaction of business as a common carrier is subject to forfeiture

1 under this section unless it appears that the owner or other person in
2 charge of the conveyance is a consenting party or privy to a violation
3 of this chapter;

4 (b) No property is subject to forfeiture under this section by
5 reason of any act or omission established by the owner of the property
6 to have been committed or omitted without the owner's knowledge or
7 consent;

8 (c) A forfeiture of property encumbered by a bona fide security
9 interest is subject to the interest of the secured party if the secured
10 party neither had knowledge of nor consented to the act or omission;
11 and

12 (d) When the owner of a conveyance has been arrested under this
13 chapter the conveyance may not be subject to forfeiture unless it is
14 seized or process is issued for its seizure within ten days of the
15 owner's arrest.

16 (3) All personal property, moneys, negotiable instruments,
17 securities, or other tangible or intangible property furnished or
18 intended to be furnished by any person in exchange for visual or
19 printed matter depicting a minor engaged in sexually explicit conduct,
20 or constituting proceeds traceable to any violation of this chapter.

21 (4) Property subject to forfeiture under this chapter may be seized
22 by any law enforcement officer of this state upon process issued by any
23 superior court having jurisdiction over the property. Seizure without
24 process may be made if:

25 (a) The seizure is incident to an arrest or a search under a search
26 warrant or an inspection under an administrative inspection warrant;

27 (b) The property subject to seizure has been the subject of a prior
28 judgment in favor of the state in a criminal injunction or forfeiture
29 proceeding based upon this chapter;

30 (c) A law enforcement officer has probable cause to believe that
31 the property is directly or indirectly dangerous to health or safety;
32 or

33 (d) The law enforcement officer has probable cause to believe that
34 the property was used or is intended to be used in violation of this
35 chapter.

36 (5) In the event of seizure under subsection (4) of this section,
37 proceedings for forfeiture shall be deemed commenced by the seizure.
38 The law enforcement agency under whose authority the seizure was made

1 shall cause notice to be served within fifteen days following the
2 seizure on the owner of the property seized and the person in charge
3 thereof and any person having any known right or interest therein, of
4 the seizure and intended forfeiture of the seized property. The notice
5 may be served by any method authorized by law or court rule including
6 but not limited to service by certified mail with return receipt
7 requested. Service by mail shall be deemed complete upon mailing
8 within the fifteen day period following the seizure.

9 (6) If no person notifies the seizing law enforcement agency in
10 writing of the person's claim of ownership or right to possession of
11 seized items within forty-five days of the seizure, the item seized
12 shall be deemed forfeited.

13 (7) If any person notifies the seizing law enforcement agency in
14 writing of the person's claim of ownership or right to possession of
15 seized items within forty-five days of the seizure, the person or
16 persons shall be afforded a reasonable opportunity to be heard as to
17 the claim or right. The hearing shall be before an administrative law
18 judge appointed under chapter 34.12 RCW, except that any person
19 asserting a claim or right may remove the matter to a court of
20 competent jurisdiction if the aggregate value of the article or
21 articles involved is more than five hundred dollars. The hearing
22 before an administrative law judge and any appeal therefrom shall be
23 under Title 34 RCW. In a court hearing between two or more claimants
24 to the article or articles involved, the prevailing party shall be
25 entitled to a judgment for costs and reasonable attorney's fees. The
26 burden of producing evidence shall be upon the person claiming to be
27 the lawful owner or the person claiming to have the lawful right to
28 possession of the seized items. The seizing law enforcement agency
29 shall promptly return the article or articles to the claimant upon a
30 determination by the administrative law judge or court that the
31 claimant is lawfully entitled to possession thereof of the seized
32 items.

33 (8) If property is sought to be forfeited on the ground that it
34 constitutes proceeds traceable to a violation of this chapter, the
35 seizing law enforcement agency must prove by a preponderance of the
36 evidence that the property constitutes proceeds traceable to a
37 violation of this chapter.

1 (9) When property is forfeited under this chapter the seizing law
2 enforcement agency may:

3 (a) Retain it for official use or upon application by any law
4 enforcement agency of this state release the property to that agency
5 for the exclusive use of enforcing this chapter or chapter 9A.88 RCW;

6 (b) Sell that which is not required to be destroyed by law and
7 which is not harmful to the public(~~(. The proceeds and all moneys~~
8 ~~forfeited under this chapter shall be used for payment of all proper~~
9 ~~expenses of the investigation leading to the seizure, including any~~
10 ~~money delivered to the subject of the investigation by the law~~
11 ~~enforcement agency, and of the proceedings for forfeiture and sale,~~
12 ~~including expenses of seizure, maintenance of custody, advertising,~~
13 ~~actual costs of the prosecuting or city attorney, and court costs.~~
14 ~~Fifty percent of the money remaining after payment of these expenses~~
15 ~~shall be deposited in the state general fund and fifty percent shall be~~
16 ~~deposited in the general fund of the state, county, or city of the~~
17 ~~seizing law enforcement agency)); or~~

18 (c) Request the appropriate sheriff or director of public safety to
19 take custody of the property and remove it for disposition in
20 accordance with law.

21 (10)(a) By January 31st of each year, each seizing agency shall
22 remit to the state treasurer an amount equal to ten percent of the net
23 proceeds of any property forfeited during the preceding calendar year.
24 Money remitted shall be deposited in the state general fund.

25 (b) The net proceeds of forfeited property is the value of the
26 forfeitable interest in the property after deducting the cost of
27 satisfying any bona fide security interest to which the property is
28 subject at the time of seizure; and in the case of sold property, after
29 deducting the cost of sale, including reasonable fees or commissions
30 paid to an independent selling agency.

31 (c) The value of sold forfeited property is the sale price. The
32 value of retained forfeited property is the fair market value of the
33 property at the time of seizure determined when possible by reference
34 to an applicable commonly used index. A seizing agency may use, but
35 need not use, an independent qualified appraiser to determine the value
36 of retained property. If an appraiser is used, the value of the
37 property appraised is net of the cost of the appraisal. The value of
38 destroyed property and retained firearms or illegal property is zero.

1 (11) Forfeited property and net proceeds not required to be paid to
2 the state treasurer under this chapter shall be used for payment of all
3 proper expenses of the investigation leading to the seizure, including
4 any money delivered to the subject of the investigation by the law
5 enforcement agency, and of the proceedings for forfeiture and sale,
6 including expenses of seizure, maintenance of custody, advertising,
7 actual costs of the prosecuting or city attorney, and court costs.
8 Money remaining after payment of these expenses shall be retained by
9 the seizing law enforcement agency for the exclusive use of enforcing
10 the provisions of this chapter or chapter 9A.88 RCW.

11 **Sec. 2.** RCW 9A.88.150 and 2012 c 140 s 1 are each amended to read
12 as follows:

13 (1) The following are subject to seizure and forfeiture and no
14 property right exists in them:

15 (a) Any property or other interest acquired or maintained in
16 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of
17 the investment of funds, and any appreciation or income attributable to
18 the investment, from a violation of RCW 9.68A.100, 9.68A.101, or
19 9A.88.070;

20 (b) All conveyances, including aircraft, vehicles, or vessels,
21 which are used, or intended for use, in any manner to facilitate a
22 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, except that:

23 (i) No conveyance used by any person as a common carrier in the
24 transaction of business as a common carrier is subject to forfeiture
25 under this section unless it appears that the owner or other person in
26 charge of the conveyance is a consenting party or privy to a violation
27 of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

28 (ii) No conveyance is subject to forfeiture under this section by
29 reason of any act or omission established by the owner thereof to have
30 been committed or omitted without the owner's knowledge or consent;

31 (iii) A forfeiture of a conveyance encumbered by a bona fide
32 security interest is subject to the interest of the secured party if
33 the secured party neither had knowledge of nor consented to the act or
34 omission; and

35 (iv) When the owner of a conveyance has been arrested for a
36 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, the conveyance in

1 which the person is arrested may not be subject to forfeiture unless it
2 is seized or process is issued for its seizure within ten days of the
3 owner's arrest;

4 (c) Any property, contractual right, or claim against property used
5 to influence any enterprise that a person has established, operated,
6 controlled, conducted, or participated in the conduct of, in violation
7 of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

8 (d) All proceeds traceable to or derived from an offense defined in
9 RCW 9.68A.100, 9.68A.101, or 9A.88.070 and all moneys, negotiable
10 instruments, securities, and other things of value significantly used
11 or intended to be used significantly to facilitate commission of the
12 offense;

13 (e) All books, records, and research products and materials,
14 including formulas, microfilm, tapes, and data which are used, or
15 intended for use, in violation of RCW 9.68A.100, 9.68A.101, or
16 9A.88.070;

17 (f) All moneys, negotiable instruments, securities, or other
18 tangible or intangible property of value furnished or intended to be
19 furnished by any person in exchange for a violation of RCW 9.68A.100,
20 9.68A.101, or 9A.88.070, all tangible or intangible personal property,
21 proceeds, or assets acquired in whole or in part with proceeds
22 traceable to an exchange or series of exchanges in violation of RCW
23 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable
24 instruments, and securities used or intended to be used to facilitate
25 any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A forfeiture
26 of money, negotiable instruments, securities, or other tangible or
27 intangible property encumbered by a bona fide security interest is
28 subject to the interest of the secured party if, at the time the
29 security interest was created, the secured party neither had knowledge
30 of nor consented to the act or omission. No personal property may be
31 forfeited under this subsection (1)(f), to the extent of the interest
32 of an owner, by reason of any act or omission, which that owner
33 establishes was committed or omitted without the owner's knowledge or
34 consent; and

35 (g) All real property, including any right, title, and interest in
36 the whole of any lot or tract of land, and any appurtenances or
37 improvements which are being used with the knowledge of the owner for
38 a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have

1 been acquired in whole or in part with proceeds traceable to an
2 exchange or series of exchanges in violation of RCW 9.68A.100,
3 9.68A.101, or 9A.88.070, if a substantial nexus exists between the
4 violation and the real property. However:

5 (i) No property may be forfeited pursuant to this subsection
6 (1)(g), to the extent of the interest of an owner, by reason of any act
7 or omission committed or omitted without the owner's knowledge or
8 consent;

9 (ii) A forfeiture of real property encumbered by a bona fide
10 security interest is subject to the interest of the secured party if
11 the secured party, at the time the security interest was created,
12 neither had knowledge of nor consented to the act or omission.

13 (2) Real or personal property subject to forfeiture under this
14 section may be seized by any law enforcement officer of this state upon
15 process issued by any superior court having jurisdiction over the
16 property. Seizure of real property shall include the filing of a lis
17 pendens by the seizing agency. Real property seized under this section
18 shall not be transferred or otherwise conveyed until ninety days after
19 seizure or until a judgment of forfeiture is entered, whichever is
20 later: PROVIDED, That real property seized under this section may be
21 transferred or conveyed to any person or entity who acquires title by
22 foreclosure or deed in lieu of foreclosure of a security interest.
23 Seizure of personal property without process may be made if:

24 (a) The seizure is incident to an arrest or a search under a search
25 warrant;

26 (b) The property subject to seizure has been the subject of a prior
27 judgment in favor of the state in a criminal injunction or forfeiture
28 proceeding; or

29 (c) The law enforcement officer has probable cause to believe that
30 the property was used or is intended to be used in violation of RCW
31 9.68A.100, 9.68A.101, or 9A.88.070.

32 (3) In the event of seizure pursuant to subsection (2) of this
33 section, proceedings for forfeiture shall be deemed commenced by the
34 seizure. The law enforcement agency under whose authority the seizure
35 was made shall cause notice to be served within fifteen days following
36 the seizure on the owner of the property seized and the person in
37 charge thereof and any person having any known right or interest
38 therein, including any community property interest, of the seizure and

1 intended forfeiture of the seized property. Service of notice of
2 seizure of real property shall be made according to the rules of civil
3 procedure. However, the state may not obtain a default judgment with
4 respect to real property against a party who is served by substituted
5 service absent an affidavit stating that a good faith effort has been
6 made to ascertain if the defaulted party is incarcerated within the
7 state, and that there is no present basis to believe that the party is
8 incarcerated within the state. Notice of seizure in the case of
9 property subject to a security interest that has been perfected by
10 filing a financing statement, or a certificate of title, shall be made
11 by service upon the secured party or the secured party's assignee at
12 the address shown on the financing statement or the certificate of
13 title. The notice of seizure in other cases may be served by any
14 method authorized by law or court rule including, but not limited to,
15 service by certified mail with return receipt requested. Service by
16 mail shall be deemed complete upon mailing within the fifteen day
17 period following the seizure.

18 (4) If no person notifies the seizing law enforcement agency in
19 writing of the person's claim of ownership or right to possession of
20 items specified in subsection (1) of this section within forty-five
21 days of the service of notice from the seizing agency in the case of
22 personal property and ninety days in the case of real property, the
23 item seized shall be deemed forfeited. The community property interest
24 in real property of a person whose spouse or domestic partner committed
25 a violation giving rise to seizure of the real property may not be
26 forfeited if the person did not participate in the violation.

27 (5) If any person notifies the seizing law enforcement agency in
28 writing of the person's claim of ownership or right to possession of
29 items specified in subsection (1) of this section within forty-five
30 days of the service of notice from the seizing agency in the case of
31 personal property and ninety days in the case of real property, the
32 person or persons shall be afforded a reasonable opportunity to be
33 heard as to the claim or right. The notice of claim may be served by
34 any method authorized by law or court rule including, but not limited
35 to, service by first-class mail. Service by mail shall be deemed
36 complete upon mailing within the forty-five day period following
37 service of the notice of seizure in the case of personal property and
38 within the ninety day period following service of the notice of seizure

1 in the case of real property. The hearing shall be before the chief
2 law enforcement officer of the seizing agency or the chief law
3 enforcement officer's designee, except where the seizing agency is a
4 state agency as defined in RCW 34.12.020(4), the hearing shall be
5 before the chief law enforcement officer of the seizing agency or an
6 administrative law judge appointed under chapter 34.12 RCW, except that
7 any person asserting a claim or right may remove the matter to a court
8 of competent jurisdiction. Removal of any matter involving personal
9 property may only be accomplished according to the rules of civil
10 procedure. The person seeking removal of the matter must serve process
11 against the state, county, political subdivision, or municipality that
12 operates the seizing agency, and any other party of interest, in
13 accordance with RCW 4.28.080 or 4.92.020, within forty-five days after
14 the person seeking removal has notified the seizing law enforcement
15 agency of the person's claim of ownership or right to possession. The
16 court to which the matter is to be removed shall be the district court
17 when the aggregate value of personal property is within the
18 jurisdictional limit set forth in RCW 3.66.020. A hearing before the
19 seizing agency and any appeal therefrom shall be under Title 34 RCW.
20 In all cases, the burden of proof is upon the law enforcement agency to
21 establish, by a preponderance of the evidence, that the property is
22 subject to forfeiture.

23 The seizing law enforcement agency shall promptly return the
24 article or articles to the claimant upon a determination by the
25 administrative law judge or court that the claimant is the present
26 lawful owner or is lawfully entitled to possession thereof of items
27 specified in subsection (1) of this section.

28 (6) In any proceeding to forfeit property under this title, where
29 the claimant substantially prevails, the claimant is entitled to
30 reasonable attorneys' fees reasonably incurred by the claimant. In
31 addition, in a court hearing between two or more claimants to the
32 article or articles involved, the prevailing party is entitled to a
33 judgment for costs and reasonable attorneys' fees.

34 (7) When property is forfeited under this chapter, the seizing law
35 enforcement agency (~~shall sell the property that is not required to be~~
36 ~~destroyed by law and that is not harmful to the public~~) may:

37 (a) Retain it for official use or upon application by any law

1 enforcement agency of this state release the property to that agency
2 for the exclusive use of enforcing this chapter or chapter 9.68A RCW;

3 (b) Sell that which is not required to be destroyed by law and
4 which is not harmful to the public; or

5 (c) Request the appropriate sheriff or director of public safety to
6 take custody of the property and remove it for disposition in
7 accordance with law.

8 (8)(a) When property is forfeited, the seizing agency shall keep a
9 record indicating the identity of the prior owner, if known, a
10 description of the property, the disposition of the property, the value
11 of the property at the time of seizure, and the amount of proceeds
12 realized from disposition of the property.

13 (b) Each seizing agency shall retain records of forfeited property
14 for at least seven years.

15 (c) Each seizing agency shall file a report including a copy of the
16 records of forfeited property with the state treasurer each calendar
17 quarter.

18 (d) The quarterly report need not include a record of forfeited
19 property that is still being held for use as evidence during the
20 investigation or prosecution of a case or during the appeal from a
21 conviction.

22 (9)(a) By January 31st of each year, each seizing agency shall
23 remit to the state treasurer an amount equal to ten percent of the net
24 proceeds of any property forfeited during the preceding calendar year.
25 Money remitted shall be deposited in the prostitution prevention and
26 intervention account under RCW 43.63A.740.

27 (b) The net proceeds of forfeited property is the value of the
28 forfeitable interest in the property after deducting the cost of
29 satisfying any bona fide security interest to which the property is
30 subject at the time of seizure; and in the case of sold property, after
31 deducting the cost of sale, including reasonable fees or commissions
32 paid to independent selling agents, and the cost of any valid
33 landlord's claim for damages under subsection ~~((+11+))~~ (12) of this
34 section.

35 (c) The value of sold forfeited property is the sale price. The
36 value of destroyed property and retained firearms or illegal property
37 is zero.

1 (10) Net proceeds not required to be paid to the state treasurer
2 shall be used for payment of all proper expenses of the investigation
3 leading to the seizure, including any money delivered to the subject of
4 the investigation by the law enforcement agency, and of the proceedings
5 for forfeiture and sale, including expenses of seizure, maintenance of
6 custody, advertising, actual costs of the prosecuting or city attorney,
7 and court costs. Money remaining after payment of these expenses shall
8 be retained by the seizing law enforcement agency for the exclusive use
9 of enforcing the provisions of this chapter or chapter 9.68A RCW.

10 (11) Upon the entry of an order of forfeiture of real property, the
11 court shall forward a copy of the order to the assessor of the county
12 in which the property is located. Orders for the forfeiture of real
13 property shall be entered by the superior court, subject to court
14 rules. Such an order shall be filed by the seizing agency in the
15 county auditor's records in the county in which the real property is
16 located.

17 ~~((11))~~ (12) A landlord may assert a claim against proceeds from
18 the sale of assets seized and forfeited under subsection (9) of this
19 section, only if:

20 (a) A law enforcement officer, while acting in his or her official
21 capacity, directly caused damage to the complaining landlord's property
22 while executing a search of a tenant's residence;

23 (b) The landlord has applied any funds remaining in the tenant's
24 deposit, to which the landlord has a right under chapter 59.18 RCW, to
25 cover the damage directly caused by a law enforcement officer prior to
26 asserting a claim under the provisions of this section:

27 (i) Only if the funds applied under (b) of this subsection are
28 insufficient to satisfy the damage directly caused by a law enforcement
29 officer, may the landlord seek compensation for the damage by filing a
30 claim against the governmental entity under whose authority the law
31 enforcement agency operates within thirty days after the search;

32 (ii) Only if the governmental entity denies or fails to respond to
33 the landlord's claim within sixty days of the date of filing, may the
34 landlord collect damages under this subsection by filing within thirty
35 days of denial or the expiration of the sixty day period, whichever
36 occurs first, a claim with the seizing law enforcement agency. The
37 seizing law enforcement agency must notify the landlord of the status

1 of the claim by the end of the thirty day period. Nothing in this
2 section requires the claim to be paid by the end of the sixty day or
3 thirty day period; and

4 (c) For any claim filed under (b) of this subsection, the law
5 enforcement agency shall pay the claim unless the agency provides
6 substantial proof that the landlord either:

7 (i) Knew or consented to actions of the tenant in violation of RCW
8 9.68A.100, 9.68A.101, or 9A.88.070; or

9 (ii) Failed to respond to a notification of the illegal activity,
10 provided by a law enforcement agency under RCW 59.18.075, within seven
11 days of receipt of notification of the illegal activity.

12 (~~(+12)~~) (13) The landlord's claim for damages under subsection
13 (~~(+11)~~) (12) of this section may not include a claim for loss of
14 business and is limited to:

15 (a) Damage to tangible property and clean-up costs;

16 (b) The lesser of the cost of repair or fair market value of the
17 damage directly caused by a law enforcement officer;

18 (c) The proceeds from the sale of the specific tenant's property
19 seized and forfeited under subsection (9) of this section; and

20 (d) The proceeds available after the seizing law enforcement agency
21 satisfies any bona fide security interest in the tenant's property and
22 costs related to sale of the tenant's property as provided by
23 subsection (~~(+11)~~) (12) of this section.

24 (~~(+13)~~) (14) Subsections (~~(+11)~~) (12) and (~~(+12)~~) (13) of this
25 section do not limit any other rights a landlord may have against a
26 tenant to collect for damages. However, if a law enforcement agency
27 satisfies a landlord's claim under subsection (~~(+11)~~) (12) of this
28 section, the rights the landlord has against the tenant for damages
29 directly caused by a law enforcement officer under the terms of the
30 landlord and tenant's contract are subrogated to the law enforcement
31 agency.

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