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## Judiciary Committee

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### HB 2718

**Title:** An act relating to seizure and forfeiture procedures and reporting.

**Brief Description:** Concerning seizure and forfeiture procedures and reporting.

**Sponsors:** Representatives Shea and Goodman.

#### Brief Summary of Bill

- Makes changes to a variety of civil asset forfeiture statutes, including:
  - explicitly providing that the burden of proof is on the seizing agency;
  - allowing prevailing claimants to recover attorneys' fees and expenses and damages for loss of use of property;
  - requiring that, when ordered to return property, the seizing agency return it in the same or substantially similar condition as when seized; and
  - making all seizing agencies subject to detailed reporting requirements.

**Hearing Date:** 1/17/18

**Staff:** Cece Clynych (786-7195).

#### Background:

##### Forfeiture Generally.

When authorized by statute, a law enforcement agency may take possession of property for the purpose of forfeiting a person's right to own or possess that property. Generally, civil asset forfeiture is permitted when the property itself is illegal, was used to facilitate a crime, is an actual proceed of a crime, or was purchased from proceeds traceable to criminal activity.

Civil asset forfeiture is permitted under a variety of statutes, including in the case of drug crimes, crimes committed with a firearm, and human sex trafficking and sexual exploitation crimes. The seizing agency must comply with specific statutory process requirements, which operate separately from a criminal proceeding. These statutes do not require the property owner to be

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convicted of the alleged crime for the property to be forfeited. Many of the statutes' procedures and requirements are similar, but not identical, to those found in the Uniform Controlled Substances Act (UCSA).

#### Uniformed Controlled Substances Act.

*Property subject to forfeiture:* Under the UCSA, no property right exists in the controlled substances themselves, anything used to manufacture or pay for them, or proceeds traceable to the sale or exchange of controlled substances. Conveyances, such as vehicles used to facilitate distribution of controlled substances, and other personal property, such as money furnished or intended to be furnished in exchange for a controlled substance or acquired via an exchange in violation of the UCSA, are subject to forfeiture, unless the owner establishes that the act or omission was committed or omitted without his or her knowledge or consent. Real property that is being used with the knowledge of the owner in connection with a crime, or which has been acquired in whole or in part with proceeds of a crime, is subject to forfeiture.

*Seizure process:* Upon seizure by a law enforcement agency, the agency must serve notice of seizure and possible forfeiture upon the owner within 15 days. If no person notifies the seizing agency in writing of a claim of ownership or right to possession within 45 days of service of notice in the case of personal property, and 90 days in the case of real property, the property is deemed forfeited by default.

*Hearing process:* A person who timely notifies the seizing agency in writing of a claim of ownership or right to possession is entitled to a hearing. The hearing is before the chief law enforcement officer of the seizing agency, or an administrative law judge if the seizure is by a state agency; however, the person asserting a claim or right may remove the matter to a court of competent jurisdiction. 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. Claimants who prevail are entitled to reasonable attorneys' fees. In addition, in a court hearing between two or more claimants to the property, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

*Disposition of forfeited property:* If property is forfeited, the seizing agency may sell, or retain for official use, anything not required by law to be destroyed. A seizing agency must remit to the State Treasurer 10 percent of the net proceeds of any property forfeited during the preceding calendar year for deposit in the State General Fund. The remaining net proceeds are retained by the seizing agency exclusively for the expansion and improvement of controlled substances-related law enforcement, but must not supplant existing funding sources.

*Record-keeping Requirements:* When property is forfeited, seizing agencies must keep, and retain for at least seven years, a record indicating:

- a) the identity of the prior owner;
- b) a description of the property;
- c) the disposition of the property;
- d) the value of the property at the time of seizure; and
- e) the amount of proceeds realized from disposition.

Quarterly reports detailing the above must be filed by each seizing agency. By January 31 of each year, each seizing agency must remit, for deposit into the State General Fund, an amount equal to 10 percent of any property forfeited during the preceding calendar year.

#### Service Members' Civil Relief Act.

The Washington Service Members' Civil Relief Act (SCRA) contains certain rights for service members and their dependents whose financial and legal obligations may be adversely impacted by active military duty. It applies to any judicial or administrative proceeding commenced in any court or agency in the state in which a service member or his or her dependent is a party. The SCRA also contains provisions restricting contract fines and penalties, restructuring interest rates on certain business loans, and tolling statutes of limitations during military service periods.

#### **Summary of Bill:**

##### Forfeiture Generally.

A new chapter is created with respect to civil asset forfeiture proceedings. The entirety of the new chapter is applicable to seizures under statutes regarding the following:

- sexual exploitation of children;
- indecent exposure and prostitution;
- money laundering;
- theft of metal;
- driving while under the influence; and,
- fish and wildlife violations.

*Commencement of Forfeiture Proceedings:* Except with respect to contraband items, which shall be seized and summarily forfeited, proceedings for forfeiture are deemed commenced by the seizure. Upon seizure by a law enforcement agency, the agency must serve notice of seizure and possible forfeiture upon the owner within 15 days. If no person notifies the seizing agency in writing of a claim of ownership or right to possession within 45 days of service of notice in the case of personal property, and 90 days in the case of real property, the property is deemed forfeited by default.

The Service Members' Civil Relief Act (SCRA) is applicable to civil asset proceedings.

*Hearing process:* A person who timely notifies the seizing agency in writing of a claim of ownership or right to possession is entitled to a hearing. The hearing is before the chief law enforcement officer of the seizing agency, or an administrative law judge if the seizure is by a state agency; however, the person asserting a claim or right may remove the matter to a court of competent jurisdiction. 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. No personal or real property may be forfeited to the extent of the interest of an owner by reason of any act or omission committed or omitted without the owner's knowledge or consent.

Upon a determination by a court or hearing officer that the claimant is the present lawful owner or is lawfully entitled to possession, the seizing agency must promptly return seized items in the same or substantially similar condition as when they were seized. Claimants who prevail are entitled to reasonable attorneys' fees, together with expenses and damages for loss of use of the property.

*Disposition of forfeited property and proceeds:* If property is forfeited, the seizing agency may sell, retain for official use, request another entity to take custody of, or forward to an appropriate entity, anything not required by law to be destroyed. By January 31 of each year, each seizing agency must remit to the State Treasurer (Treasurer) 10 percent of the proceeds of any property forfeited during the previous calendar year. These moneys are to be deposited into the State General Fund. Forfeited property and net proceeds not required to be paid to the Treasurer shall be retained by the seizing agency exclusively for the expansion and improvement of related enforcement activities. They may not be used to supplant preexisting funding sources.

#### Uniform Controlled Substances Act.

The Uniform Controlled Substances Act (UCSA) is amended to:

- strike language regarding forfeiture of conveyances and personal property that requires the owner, in order to avoid forfeiture, to establish that the commission or omission was without the owner's knowledge or consent;
- require that when property is ordered to be returned to a claimant, it shall be returned in the same or substantially similar condition as when seized;
- provide that, in addition to reasonable attorneys' fees, a substantially prevailing claimant may also recover expenses and fees reasonably incurred by the claimant;
- strike the provision governing recovery of costs and reasonable attorneys' fees in a court hearing between two or more claimants;
- strike the current reporting requirements, and make the UCSA subject to the reporting requirements found in the new chapter; and
- provide that the protections afforded by the SCRA are applicable to proceedings under the UCSA.

#### Reporting Requirements Applicable to All Seizing Agencies.

General reporting requirements are included in the new chapter and made applicable to all seizures by seizing agencies, regardless of whether the seizure was made pursuant to the new chapter, other state statutes, or was conducted in collaboration with a federal agency under federal law. The Treasurer must establish and maintain a case tracking system and searchable public website that includes 21 different categories of information about property seized and forfeited under state law and under any agreement with the federal government. Seizing agencies must provide annual updates, and if an agency has made no seizures during the previous year it must file a report to that effect.

The Treasurer must also establish and maintain a searchable public website regarding the expenditure of forfeiture proceeds that includes:

- the total amount of funds expended, in each of 10 categories (such as prevention programs, victim reparations, court costs, salaries, travel, and operating expenses), which resulted from property seized, forfeited, and reported; and
- the total value of seized and forfeited property held by the agency at the end of the reporting period.

A seizing agency that expends proceeds related to forfeiture must update this website within 30 days after the end of each fiscal year. The commander of a multi-jurisdictional task force may appoint one agency to report its expenditures.

Annually, the Treasurer must submit a written report to the Legislature and the Governor summarizing forfeiture activity. The report must provide a categorized accounting of all proceeds expended. Summary data on seizures, forfeitures, and expenditures must be disaggregated by agency. The aggregate report must be made available on the Treasurer's web site.

An agency failing to file a report as required is subject to a civil penalty payable to the State General Fund of \$500 or the equivalent of one-quarter of the forfeiture proceeds received during the reporting period, whichever is greater. In addition, the Treasurer is precluded from making any expenditures from the forfeiture fund for that agency until the report is filed.

The state Auditor (auditor) must annually perform a financial audit, under generally accepted government auditing standards, of records related to inventory of seized property and expenditures of forfeiture proceeds. The auditor must submit the audit report to the Treasurer.

The Treasurer may recover its costs by charging a fee to seizing agencies filing reports. Agencies may use forfeiture proceeds to pay the costs of compilation, reporting data, and fees.

The data and reports are public information under the Public Records Act.

Application.

The act applies to seizures occurring on or after January 1, 2019.

**Appropriation:** None.

**Fiscal Note:** Requested on 1/14/18.

**Effective Date:** The bill takes effect on January 1, 2019, except for section 6, authorizing the State Treasurer to adopt rules necessary to implement the new chapter, which takes effect July 1, 2018.