
SENATE BILL 6017

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By Senators Kohl-Welles, O'Ban, Darneille, Padden, Kline, Keiser, Dammeier, and Fraser

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1 AN ACT Relating to the use of proceeds from seizure and forfeiture
2 activities from sex crimes; and amending RCW 9.68A.120 and 9A.88.150.

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

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

6 The following are subject to seizure and forfeiture:

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

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

16 (a) No conveyance used by any person as a common carrier in the
17 transaction of business as a common carrier is subject to forfeiture
18 under this section unless it appears that the owner or other person in

1 charge of the conveyance is a consenting party or privy to a violation
2 of this chapter;

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

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

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

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

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

24 (a) The seizure is incident to an arrest or a search under a search
25 warrant or an inspection under an administrative inspection 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 based upon this chapter;

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

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

35 (5) In the event of seizure under subsection (4) of this section,
36 proceedings for forfeiture shall be deemed commenced by the seizure.
37 The law enforcement agency under whose authority the seizure was made
38 shall cause notice to be served within fifteen days following the

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

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

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

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

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

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

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

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

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

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

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

37 (11) Forfeited property and net proceeds not required to be paid to
38 the state treasurer under this chapter shall be used for payment of all

1 proper expenses of the investigation leading to the seizure, including
2 any money delivered to the subject of the investigation by the law
3 enforcement agency, and of the proceedings for forfeiture and sale,
4 including expenses of seizure, maintenance of custody, advertising,
5 actual costs of the prosecuting or city attorney, and court costs.
6 Money remaining after payment of these expenses shall be retained by
7 the seizing law enforcement agency for the exclusive use of enforcing
8 the provisions of this chapter or chapter 9A.88 RCW.

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

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

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

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

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

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

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

33 (iv) When the owner of a conveyance has been arrested for a
34 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, the conveyance in
35 which the person is arrested may not be subject to forfeiture unless it
36 is seized or process is issued for its seizure within ten days of the
37 owner's arrest;

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

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

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

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

32 (g) All real property, including any right, title, and interest in
33 the whole of any lot or tract of land, and any appurtenances or
34 improvements which are being used with the knowledge of the owner for
35 a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have
36 been acquired in whole or in part with proceeds traceable to an
37 exchange or series of exchanges in violation of RCW 9.68A.100,

1 9.68A.101, or 9A.88.070, if a substantial nexus exists between the
2 violation and the real property. However:

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

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

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

22 (a) The seizure is incident to an arrest or a search under a search
23 warrant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 independent selling agents, and the cost of any valid
31 landlord's claim for damages under subsection ~~((11))~~ (12) of this
32 section.

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

36 (10) Net proceeds not required to be paid to the state treasurer
37 shall be used for payment of all proper expenses of the investigation
38 leading to the seizure, including any money delivered to the subject of

1 the investigation by the law enforcement agency, and of the proceedings
2 for forfeiture and sale, including expenses of seizure, maintenance of
3 custody, advertising, actual costs of the prosecuting or city attorney,
4 and court costs. Money remaining after payment of these expenses shall
5 be retained by the seizing law enforcement agency for the exclusive use
6 of enforcing the provisions of this chapter or chapter 9.68A RCW.

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

14 ~~((11))~~ (12) A landlord may assert a claim against proceeds from
15 the sale of assets seized and forfeited under subsection (9) of this
16 section, only if:

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

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

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

29 (ii) Only if the governmental entity denies or fails to respond to
30 the landlord's claim within sixty days of the date of filing, may the
31 landlord collect damages under this subsection by filing within thirty
32 days of denial or the expiration of the sixty day period, whichever
33 occurs first, a claim with the seizing law enforcement agency. The
34 seizing law enforcement agency must notify the landlord of the status
35 of the claim by the end of the thirty day period. Nothing in this
36 section requires the claim to be paid by the end of the sixty day or
37 thirty day period; and

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

4 (i) Knew or consented to actions of the tenant in violation of RCW
5 9.68A.100, 9.68A.101, or 9A.88.070; or

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

9 ~~((+12+))~~ (13) The landlord's claim for damages under subsection
10 ~~((+11+))~~ (12) of this section may not include a claim for loss of
11 business and is limited to:

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

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

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

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

21 ~~((+13+))~~ (14) Subsections ~~((+11+))~~ (12) and ~~((+12+))~~ (13) of this
22 section do not limit any other rights a landlord may have against a
23 tenant to collect for damages. However, if a law enforcement agency
24 satisfies a landlord's claim under subsection ~~((+11+))~~ (12) of this
25 section, the rights the landlord has against the tenant for damages
26 directly caused by a law enforcement officer under the terms of the
27 landlord and tenant's contract are subrogated to the law enforcement
28 agency.

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