
SUBSTITUTE HOUSE BILL 1791

AS AMENDED BY THE SENATE

Passed Legislature - 2014 Regular Session

State of Washington 63rd Legislature 2014 Regular Session

By House Public Safety (originally sponsored by Representatives Parker, Orwall, Fagan, Riccelli, Ryu, Haler, Moscoso, and Santos)

READ FIRST TIME 02/05/14.

1 AN ACT Relating to trafficking; and amending RCW 9A.40.100,
2 9A.44.128, 9.68A.120, and 9A.88.150.

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

4 **Sec. 1.** RCW 9A.40.100 and 2013 c 302 s 6 are each amended to read
5 as follows:

6 (1)~~((a))~~ A person is guilty of trafficking in the first degree
7 when:

8 ~~((i))~~ (a) Such person:

9 ~~((A))~~ (i) Recruits, harbors, transports, transfers, provides,
10 obtains, buys, purchases, or receives by any means another person
11 knowing, or in reckless disregard of the fact, (A) that force, fraud,
12 or coercion as defined in RCW 9A.36.070 will be used to cause the
13 person to engage in:

14 (I) Forced labor~~((τ))~~;

15 (II) Involuntary servitude~~((τ))~~;

16 (III) A sexually explicit act~~((τ))~~; or

17 (IV) A commercial sex act, or (B) that the person has not attained
18 the age of eighteen years and is caused to engage in a sexually
19 explicit act or a commercial sex act; or

1 (~~(B)~~) (ii) Benefits financially or by receiving anything of value
2 from participation in a venture that has engaged in acts set forth in
3 (a)(i)(~~(A)~~) of this subsection; and
4 (~~(ii)~~) (b) The acts or venture set forth in (a)(~~(i)~~) of this
5 subsection:
6 (~~(A)~~) (i) Involve committing or attempting to commit kidnapping;
7 (~~(B)~~) (ii) Involve a finding of sexual motivation under RCW
8 9.94A.835;
9 (~~(C)~~) (iii) Involve the illegal harvesting or sale of human
10 organs; or
11 (~~(D)~~) (iv) Result in a death.
12 (~~(b)~~) (2) Trafficking in the first degree is a class A felony.
13 (~~(2)~~) (3)(a) A person is guilty of trafficking in the second
14 degree when such person:
15 (i) Recruits, harbors, transports, transfers, provides, obtains,
16 buys, purchases, or receives by any means another person knowing, or in
17 reckless disregard of the fact, that force, fraud, or coercion as
18 defined in RCW 9A.36.070 will be used to cause the person to engage in
19 forced labor, involuntary servitude, a sexually explicit act, or a
20 commercial sex act, or that the person has not attained the age of
21 eighteen years and is caused to (~~engaged—[engage]~~) engage in a
22 sexually explicit act or a commercial sex act; or
23 (ii) Benefits financially or by receiving anything of value from
24 participation in a venture that has engaged in acts set forth in (a)(i)
25 of this subsection.
26 (b) Trafficking in the second degree is a class A felony.
27 (~~(3)~~) (4)(a) A person who is either convicted or given a deferred
28 sentence or a deferred prosecution or who has entered into a statutory
29 or nonstatutory diversion agreement as a result of an arrest for a
30 violation of a trafficking crime shall be assessed a ten thousand
31 dollar fee.
32 (b) The court shall not reduce, waive, or suspend payment of all or
33 part of the fee assessed in this section unless it finds, on the
34 record, that the offender does not have the ability to pay the fee in
35 which case it may reduce the fee by an amount up to two-thirds of the
36 maximum allowable fee.
37 (c) Fees assessed under this section shall be collected by the
38 clerk of the court and remitted to the treasurer of the county where

1 the offense occurred for deposit in the county general fund, except in
2 cases in which the offense occurred in a city or town that provides for
3 its own law enforcement, in which case these amounts shall be remitted
4 to the treasurer of the city or town for deposit in the general fund of
5 the city or town. Revenue from the fees must be used for local efforts
6 to reduce the commercial sale of sex including, but not limited to,
7 increasing enforcement of commercial sex laws.

8 (i) At least fifty percent of the revenue from fees imposed under
9 this section must be spent on prevention, including education programs
10 for offenders, such as john school, and rehabilitative services, such
11 as mental health and substance abuse counseling, parenting skills,
12 training, housing relief, education, vocational training, drop-in
13 centers, and employment counseling.

14 (ii) Revenues from these fees are not subject to the distribution
15 requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or
16 35.20.220.

17 (~~(4)~~) (5) If the victim of any offense identified in this section
18 is a minor, force, fraud, or coercion are not necessary elements of an
19 offense and consent to the sexually explicit act or commercial sex act
20 does not constitute a defense.

21 (~~(5)~~) (6) For purposes of this section:

22 (a) "Commercial sex act" means any act of sexual contact or sexual
23 intercourse, both as defined in chapter 9A.44 RCW, for which something
24 of value is given or received by any person; and

25 (b) "Sexually explicit act" means a public, private, or live
26 photographed, recorded, or videotaped act or show intended to arouse or
27 satisfy the sexual desires or appeal to the prurient interests of
28 patrons for which something of value is given or received.

29 **Sec. 2.** RCW 9A.44.128 and 2013 c 302 s 8 are each amended to read
30 as follows:

31 For the purposes of RCW 9A.44.130 through 9A.44.145, 10.01.200,
32 43.43.540, 70.48.470, and 72.09.330, the following definitions apply:

33 (1) "Business day" means any day other than Saturday, Sunday, or a
34 legal local, state, or federal holiday.

35 (2) "Conviction" means any adult conviction or juvenile
36 adjudication for a sex offense or kidnapping offense.

1 (3) "Disqualifying offense" means a conviction for: Any offense
2 that is a felony; a sex offense as defined in this section; a crime
3 against children or persons as defined in RCW 43.43.830(7) and
4 9.94A.411(2)(a); an offense with a domestic violence designation as
5 provided in RCW 10.99.020; permitting the commercial sexual abuse of a
6 minor as defined in RCW 9.68A.103; or any violation of chapter 9A.88
7 RCW.

8 (4) "Employed" or "carries on a vocation" means employment that is
9 full time or part time for a period of time exceeding fourteen days, or
10 for an aggregate period of time exceeding thirty days during any
11 calendar year. A person is employed or carries on a vocation whether
12 the person's employment is financially compensated, volunteered, or for
13 the purpose of government or educational benefit.

14 (5) "Fixed residence" means a building that a person lawfully and
15 habitually uses as living quarters a majority of the week. Uses as
16 living quarters means to conduct activities consistent with the common
17 understanding of residing, such as sleeping; eating; keeping personal
18 belongings; receiving mail; and paying utilities, rent, or mortgage.
19 A nonpermanent structure including, but not limited to, a motor home,
20 travel trailer, camper, or boat may qualify as a residence provided it
21 is lawfully and habitually used as living quarters a majority of the
22 week, primarily kept at one location with a physical address, and the
23 location it is kept at is either owned or rented by the person or used
24 by the person with the permission of the owner or renter. A shelter
25 program may qualify as a residence provided it is a shelter program
26 designed to provide temporary living accommodations for the homeless,
27 provides an offender with a personally assigned living space, and the
28 offender is permitted to store belongings in the living space.

29 (6) "In the community" means residing outside of confinement or
30 incarceration for a disqualifying offense.

31 (7) "Institution of higher education" means any public or private
32 institution dedicated to postsecondary education, including any
33 college, university, community college, trade, or professional school.

34 (8) "Kidnapping offense" means:

35 (a) The crimes of kidnapping in the first degree, kidnapping in the
36 second degree, and unlawful imprisonment, as defined in chapter 9A.40
37 RCW, where the victim is a minor and the offender is not the minor's
38 parent;

1 (b) Any offense that is, under chapter 9A.28 RCW, a criminal
2 attempt, criminal solicitation, or criminal conspiracy to commit an
3 offense that is classified as a kidnapping offense under this
4 subsection; and

5 (c) Any federal or out-of-state conviction for: An offense for
6 which the person would be required to register as a kidnapping offender
7 if residing in the state of conviction; or, if not required to register
8 in the state of conviction, an offense that under the laws of this
9 state would be classified as a kidnapping offense under this
10 subsection.

11 (9) "Lacks a fixed residence" means the person does not have a
12 living situation that meets the definition of a fixed residence and
13 includes, but is not limited to, a shelter program designed to provide
14 temporary living accommodations for the homeless, an outdoor sleeping
15 location, or locations where the person does not have permission to
16 stay.

17 (10) "Sex offense" means:

18 (a) Any offense defined as a sex offense by RCW 9.94A.030;

19 (b) Any violation under RCW 9A.44.096 (sexual misconduct with a
20 minor in the second degree);

21 (c) Any violation under RCW 9A.40.100(1)(~~(a)(ii)(B)~~) (b)(ii)
22 (trafficking);

23 (d) Any violation under RCW 9.68A.090 (communication with a minor
24 for immoral purposes);

25 (e) A violation under RCW 9A.88.070 (promoting prostitution in the
26 first degree) or RCW 9A.88.080 (promoting prostitution in the second
27 degree) if the person has a prior conviction for one of these offenses;

28 (f) Any violation under RCW 9A.40.100(1)(a)(i)(A) (III) or (IV) or
29 (a)(i)(B);

30 (g) Any gross misdemeanor that is, under chapter 9A.28 RCW, a
31 criminal attempt, criminal solicitation, or criminal conspiracy to
32 commit an offense that is classified as a sex offense under RCW
33 9.94A.030 or this subsection;

34 (~~(g)~~) (h) Any out-of-state conviction for an offense for which
35 the person would be required to register as a sex offender while
36 residing in the state of conviction; or, if not required to register in
37 the state of conviction, an offense that under the laws of this state
38 would be classified as a sex offense under this subsection;

1 ~~((h))~~ (i) Any federal conviction classified as a sex offense
2 under 42 U.S.C. Sec. 16911 (SORNA);

3 ~~((i))~~ (j) Any military conviction for a sex offense. This
4 includes sex offenses under the uniform code of military justice, as
5 specified by the United States secretary of defense;

6 ~~((j))~~ (k) Any conviction in a foreign country for a sex offense
7 if it was obtained with sufficient safeguards for fundamental fairness
8 and due process for the accused under guidelines or regulations
9 established pursuant to 42 U.S.C. Sec. 16912.

10 (11) "School" means a public or private school regulated under
11 Title 28A RCW or chapter 72.40 RCW.

12 (12) "Student" means a person who is enrolled, on a full-time or
13 part-time basis, in any school or institution of higher education.

14 **Sec. 3.** RCW 9.68A.120 and 2009 c 479 s 12 are each amended to read
15 as follows:

16 The following are subject to seizure and forfeiture:

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

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

26 (a) No conveyance used by any person as a common carrier in the
27 transaction of business as a common carrier is subject to forfeiture
28 under this section unless it appears that the owner or other person in
29 charge of the conveyance is a consenting party or privy to a violation
30 of this chapter;

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

35 (c) A forfeiture of property encumbered by a bona fide security
36 interest is subject to the interest of the secured party if the secured

1 party neither had knowledge of nor consented to the act or omission;
2 and

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

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

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

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

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

21 (c) A law enforcement officer has probable cause to believe that
22 the property is directly or indirectly dangerous to health or safety;
23 or

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

27 (5) In the event of seizure under subsection (4) of this section,
28 proceedings for forfeiture shall be deemed commenced by the seizure.
29 The law enforcement agency under whose authority the seizure was made
30 shall cause notice to be served within fifteen days following the
31 seizure on the owner of the property seized and the person in charge
32 thereof and any person having any known right or interest therein, of
33 the seizure and intended forfeiture of the seized property. The notice
34 may be served by any method authorized by law or court rule including
35 but not limited to service by certified mail with return receipt
36 requested. Service by mail shall be deemed complete upon mailing
37 within the fifteen day period following the seizure.

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

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

25 (8) If property is sought to be forfeited on the ground that it
26 constitutes proceeds traceable to a violation of this chapter, the
27 seizing law enforcement agency must prove by a preponderance of the
28 evidence that the property constitutes proceeds traceable to a
29 violation of this chapter.

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

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

35 (b) Sell that which is not required to be destroyed by law and
36 which is not harmful to the public(~~(. The proceeds and all moneys~~
37 ~~forfeited under this chapter shall be used for payment of all proper~~
38 ~~expenses of the investigation leading to the seizure, including any~~

1 money—delivered—to—the—subject—of—the—investigation—by—the—law
2 enforcement—agency,—and—of—the—proceedings—for—forfeiture—and—sale,
3 including—expenses—of—seizure,—maintenance—of—custody,—advertising,
4 actual—costs—of—the—prosecuting—or—city—attorney,—and—court—costs.
5 Fifty percent of the money remaining after payment of these expenses
6 shall be deposited in the state general fund and fifty percent shall be
7 deposited in the general fund of the state, county, or city of the
8 seizing law enforcement agency)); or

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

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

17 (b) The net proceeds of forfeited property is the value of the
18 forfeitable interest in the property after deducting the cost of
19 satisfying any bona fide security interest to which the property is
20 subject at the time of seizure; and in the case of sold property, after
21 deducting the cost of sale, including reasonable fees or commissions
22 paid to an independent selling agency.

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

31 (11) Forfeited property and net proceeds not required to be paid to
32 the state treasurer under this chapter shall be used for payment of all
33 proper expenses of the investigation leading to the seizure, including
34 any money delivered to the subject of the investigation by the law
35 enforcement agency, and of the proceedings for forfeiture and sale,
36 including expenses of seizure, maintenance of custody, advertising,
37 actual costs of the prosecuting or city attorney, and court costs.

1 Money remaining after payment of these expenses shall be retained by
2 the seizing law enforcement agency for the exclusive use of enforcing
3 the provisions of this chapter or chapter 9A.88 RCW.

4 **Sec. 4.** RCW 9A.88.150 and 2012 c 140 s 1 are each amended to read
5 as follows:

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

8 (a) Any property or other interest acquired or maintained in
9 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of
10 the investment of funds, and any appreciation or income attributable to
11 the investment, from a violation of RCW 9.68A.100, 9.68A.101, or
12 9A.88.070;

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

16 (i) 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
19 charge of the conveyance is a consenting party or privy to a violation
20 of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

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

24 (iii) A forfeiture of a conveyance encumbered by a bona fide
25 security interest is subject to the interest of the secured party if
26 the secured party neither had knowledge of nor consented to the act or
27 omission; and

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

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

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

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

10 (f) All moneys, negotiable instruments, securities, or other
11 tangible or intangible property of value furnished or intended to be
12 furnished by any person in exchange for a violation of RCW 9.68A.100,
13 9.68A.101, or 9A.88.070, all tangible or intangible personal property,
14 proceeds, or assets acquired in whole or in part with proceeds
15 traceable to an exchange or series of exchanges in violation of RCW
16 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable
17 instruments, and securities used or intended to be used to facilitate
18 any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A forfeiture
19 of money, negotiable instruments, securities, or other tangible or
20 intangible property encumbered by a bona fide security interest is
21 subject to the interest of the secured party if, at the time the
22 security interest was created, the secured party neither had knowledge
23 of nor consented to the act or omission. No personal property may be
24 forfeited under this subsection (1)(f), to the extent of the interest
25 of an owner, by reason of any act or omission, which that owner
26 establishes was committed or omitted without the owner's knowledge or
27 consent; and

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

36 (i) No property may be forfeited pursuant to this subsection
37 (1)(g), to the extent of the interest of an owner, by reason of any act

1 or omission committed or omitted without the owner's knowledge or
2 consent;

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

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

18 (a) The seizure is incident to an arrest or a search under a search
19 warrant;

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

23 (c) The law enforcement officer has probable cause to believe that
24 the property was used or is intended to be used in violation of RCW
25 9.68A.100, 9.68A.101, or 9A.88.070.

26 (3) In the event of seizure pursuant to subsection (2) of this
27 section, proceedings for forfeiture shall be deemed commenced by the
28 seizure. The law enforcement agency under whose authority the seizure
29 was made shall cause notice to be served within fifteen days following
30 the seizure on the owner of the property seized and the person in
31 charge thereof and any person having any known right or interest
32 therein, including any community property interest, of the seizure and
33 intended forfeiture of the seized property. Service of notice of
34 seizure of real property shall be made according to the rules of civil
35 procedure. However, the state may not obtain a default judgment with
36 respect to real property against a party who is served by substituted
37 service absent an affidavit stating that a good faith effort has been
38 made to ascertain if the defaulted party is incarcerated within the

1 state, and that there is no present basis to believe that the party is
2 incarcerated within the state. Notice of seizure in the case of
3 property subject to a security interest that has been perfected by
4 filing a financing statement, or a certificate of title, shall be made
5 by service upon the secured party or the secured party's assignee at
6 the address shown on the financing statement or the certificate of
7 title. The notice of seizure in other cases may be served by any
8 method authorized by law or court rule including, but not limited to,
9 service by certified mail with return receipt requested. Service by
10 mail shall be deemed complete upon mailing within the fifteen day
11 period following the seizure.

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

21 (5) If any person notifies the seizing law enforcement agency in
22 writing of the person's claim of ownership or right to possession of
23 items specified in subsection (1) of this section within forty-five
24 days of the service of notice from the seizing agency in the case of
25 personal property and ninety days in the case of real property, the
26 person or persons shall be afforded a reasonable opportunity to be
27 heard as to the claim or right. The notice of claim may be served by
28 any method authorized by law or court rule including, but not limited
29 to, service by first-class mail. Service by mail shall be deemed
30 complete upon mailing within the forty-five day period following
31 service of the notice of seizure in the case of personal property and
32 within the ninety day period following service of the notice of seizure
33 in the case of real property. The hearing shall be before the chief
34 law enforcement officer of the seizing agency or the chief law
35 enforcement officer's designee, except where the seizing agency is a
36 state agency as defined in RCW 34.12.020(4), the hearing shall be
37 before the chief law enforcement officer of the seizing agency or an
38 administrative law judge appointed under chapter 34.12 RCW, except that

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

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

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

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

31 (a) Retain it for official use or upon application by any law
32 enforcement agency of this state release the property to that agency
33 for the exclusive use of enforcing this chapter or chapter 9.68A RCW;

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

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

1 (8)(a) When property is forfeited, the seizing agency shall keep a
2 record indicating the identity of the prior owner, if known, a
3 description of the property, the disposition of the property, the value
4 of the property at the time of seizure, and the amount of proceeds
5 realized from disposition of the property.

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

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

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

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

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

28 (c) The value of sold forfeited property is the sale price. The
29 value of destroyed property and retained firearms or illegal property
30 is zero.

31 (10) Net proceeds not required to be paid to the state treasurer
32 shall be used for payment of all proper expenses of the investigation
33 leading to the seizure, including any money delivered to the subject of
34 the investigation by the law enforcement agency, and of the proceedings
35 for forfeiture and sale, including expenses of seizure, maintenance of
36 custody, advertising, actual costs of the prosecuting or city attorney,
37 and court costs. Money remaining after payment of these expenses shall

1 be retained by the seizing law enforcement agency for the exclusive use
2 of enforcing the provisions of this chapter or chapter 9.68A RCW.

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

10 ~~((11))~~ (12) A landlord may assert a claim against proceeds from
11 the sale of assets seized and forfeited under subsection (9) of this
12 section, only if:

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

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

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

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

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

37 (i) Knew or consented to actions of the tenant in violation of RCW
38 9.68A.100, 9.68A.101, or 9A.88.070; or

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

4 (~~(12)~~) (13) The landlord's claim for damages under subsection
5 (~~(11)~~) (12) of this section may not include a claim for loss of
6 business and is limited to:

7 (a) Damage to tangible property and clean-up costs;
8 (b) The lesser of the cost of repair or fair market value of the
9 damage directly caused by a law enforcement officer;

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

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

16 (~~(13)~~) (14) Subsections (~~(11)~~) (12) and (~~(12)~~) (13) of this
17 section do not limit any other rights a landlord may have against a
18 tenant to collect for damages. However, if a law enforcement agency
19 satisfies a landlord's claim under subsection (~~(11)~~) (12) of this
20 section, the rights the landlord has against the tenant for damages
21 directly caused by a law enforcement officer under the terms of the
22 landlord and tenant's contract are subrogated to the law enforcement
23 agency.

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