
OLR Bill Analysis

sSB 871 (File 680, as amended by Senate "A")*

AN ACT CONCERNING REVISIONS TO VARIOUS STATUTES CONCERNING THE CRIMINAL JUSTICE SYSTEM.

SUMMARY:

This bill makes a number of changes to criminal justice statutes, including:

1. altering the forfeiture procedures for property connected to criminal offenses other than certain drug crimes and allowing forfeiture of proceeds of these crimes;
2. expanding forfeiture provisions for sexual exploitation and human trafficking crimes to cover more property;
3. expanding the conduct punished by the crime of voyeurism and expanding sex offender registry requirements to cover this new voyeurism conduct;
4. increasing the penalty for voyeurism when the victim is under age 16 or the offender has a prior conviction of voyeurism or certain other crimes, extending the statute of limitation for voyeurism under specified circumstances, and increasing the possible probation term for certain types of voyeurism;
5. changing the notice requirements for offering DNA evidence in a criminal trial;
6. giving probation officers serving violation of probation warrants the same responsibilities as police officers when arresting someone under a warrant, including allowing them to release someone arrested on a violation of probation warrant; and
7. making a minor change to the crime of 1st degree harassment.

*Senate Amendment "A" changes the forfeiture provisions for property related to crimes other than drug crimes by (1) restoring existing law that a seized valuable prize becomes the state's property, rather than allowing it to be disposed of to other entities; (2) restoring existing law that seized money is subject to mortgages and other interests; and (3) requiring transfer of a portion of seized money to the investigating law enforcement agency rather than allowing a judge to give some or all of it to an investigating agency.

EFFECTIVE DATE: October 1, 2013

§ 1 — FORFEITURE OF PROPERTY RELATED TO CRIMES

The bill makes a number of changes to the law authorizing forfeiture of property connected to a crime other than most drug crimes, making them similar to procedures for forfeiture of property related to other crimes such as drug crimes and sexual exploitation and human trafficking crimes.

Property Subject to Forfeiture

Current law subjects to forfeiture property possessed, controlled, designed, intended for use, or which is, has been, or may be used to commit a crime. The bill also subjects to forfeiture the proceeds of a crime.

Notice

Currently, the judge issuing the warrant or the arraignment court must notify the property owner and anyone with a recorded mortgage, assignment of lease or rent, lien, or security interest in the property through a summons within 10 days of the seizure. The bill instead:

1. allows a prosecutor to petition the court, within 90 days of seizure, for a civil proceeding to forfeit the money or property,
2. requires the court to identify owners and any others who appear to have an interest in the property, and
3. requires the state to notify owners and interested parties.

Current law allows a police officer to serve the notice by leaving it with such person, at his or her usual place of abode, or at the place where the property was seized if the person's address is unknown. The bill instead requires the state to provide notice by certified or registered mail.

The bill eliminates requirements that the notice describe the property with reasonable certainty; state when, where, and why it was seized; and the date and place of the hearing.

Hearing

Current law requires the court to hold a hearing between six and 12 days after serving the notice. The bill requires the hearing within two weeks of the notice.

It eliminates a provision making parties of those with an interest who appear at the court hearing. The bill makes the action an in rem action (an action against the property) that is a civil suit in equity. As under current law, the state must prove the material facts by clear and convincing evidence.

Disposition of Property

As under current law, the court can determine the property is a nuisance and order it destroyed or disposed of to a charitable or educational institution or a government agency or institution. Property may also be sold at public auction. It cannot be destroyed or disposed of in violation of a mortgage, assignment, lien, or security interest.

Currently, seized money is deposited in the General Fund but remains subject to a bona fide mortgage, assignment of lease or rent, lien, or security interest. The bill requires transferring an amount equal to the cost of the investigation, but not more than 10% of the money, to the investigating law enforcement agency.

§ 2 — FORFEITURE OF PROPERTY RELATED TO SEXUAL EXPLOITATION AND HUMAN TRAFFICKING

The bill expands the types of property that can be seized and

forfeited related to sexual exploitation and human trafficking crimes.

Current law authorizes forfeiture of property (1) derived from the proceeds obtained, directly or indirectly, from any sale or exchange for pecuniary gain from these criminal violations and (2) used or intended for use, in any manner or part, to commit or facilitate the violation of those laws for pecuniary gain. The bill no longer requires these actions be connected to pecuniary gain.

By law, other funds and property are subject to forfeiture if they are (1) money used or intended for use in certain crimes or (2) property constituting the proceeds obtained, directly or indirectly, from these crimes.

By law, this forfeiture procedure relates to property connected with the crimes of (1) risk of injury to a minor, involving sale of a child under age 16; (2) 1st or 2nd degree promoting prostitution; (3) enticing a minor using an interactive computer; (4) voyeurism, disseminating voyeuristic material, and employing or promoting a minor in an obscene performance; (5) human trafficking; and (6) importing child pornography.

§§ 3-5 — VOYEURISM

Criminal Conduct

The bill expands the crime of voyeurism to punish someone who:

1. intends to arouse or satisfy his or her sexual desire,
2. commits simple trespass (entering premises knowing he or she is not entitled to do so without intent to harm any property, which is punishable as an infraction),
3. observes another person who is inside a dwelling and not in plain view under circumstances where there is a reasonable expectation or privacy, and
4. does not have the other person's knowledge or consent and the observation is not casual or cursory.

By law, a person commits voyeurism when (1) he or she photographs, films, videotapes, or records the victim's image; (2) he or she acts maliciously and knowingly or intends to satisfy his or her or another's sexual desire; and (3) the victim is not in plain view, has a reasonable expectation of privacy under the circumstances, and does not know or consent to the conduct.

Penalty

Under current law, voyeurism is a class D felony punishable by up to five years in prison, a fine of up to \$5,000, or both. Under the bill, it is a class C felony when (1) the target of the voyeurism is under age 16 or (2) it is a subsequent voyeurism conviction or the offender has a prior conviction of:

1. risk of injury to a minor involving sale of a child under age 16;
2. 1st degree sexual assault, 1st degree aggravated sexual assault, sexual assault in a spousal or cohabiting relationship, 2nd degree sexual assault, 3rd degree sexual assault, or 3rd degree sexual assault with a firearm;
3. enticing a minor, promoting a minor in an obscene performance, or importing child pornography; or
4. 1st, 2nd, or 3rd degree possessing child pornography.

By law, a class C felony is punishable by up to 10 years in prison, a fine of up to \$10,000, or both.

Statute of Limitation

The bill extends the time period for prosecuting certain types of voyeurism crimes. Currently, any voyeurism prosecution must begin within five years of the date of the offense. The bill allows a prosecution for maliciously and knowingly recording a victim's image until five years from the date the victim discovers the recording's existence.

Probation Term

Currently, a court can impose a three-year probation term after a voyeurism conviction, but the court has discretion to increase this term to five years. The bill increases the possible probation term to 10 to 35 years when the voyeurism conviction involves (1) the type of voyeurism added by the bill or (2) recording a person's image with intent to arouse or satisfy someone's sexual desire.

Sex Offender Registration

The bill designates as a "nonviolent sexual offense" subject to 10 years sex offender registration, committing the type of voyeurism added by the bill (trespassing to observe the victim in a dwelling with intent to a arouse or satisfy the actor's sexual desire). Existing law subjects to this same requirement voyeurism committed by recording the victim's image when the victim is not in plain view with intent to satisfy the actor's or another's sexual desire. For the existing type of voyeurism designated as a nonviolent sexual offense, the court may exempt a person from registration if it is not required for public safety. The bill does not extend this provision to the new type of voyeurism.

As under current law, someone who commits a subsequent nonviolent sexual offense must register for life.

§ 6 — USE OF DNA EVIDENCE

The law allows the use of DNA evidence in court to identify someone and requires prosecutors to disclose to the accused any DNA analysis that tends to exculpate him or her.

Currently a party intending to introduce DNA analysis must (1) notify the opposing party in writing at least 21 days before the proceeding begins and (2) provide or make available copies of the profiles and statement to be introduced. If notice is not given, the court can give the opposing party a continuance or bar the evidence.

The bill instead provides that if the notice is given less than 21 days before the proceeding begins, the court must give the opposing party a 30 day continuance on request.

The bill eliminates a requirement that an opposing party who

intends to object to the evidence must inform the other party of that fact in writing at least 10 days before the proceeding begins.

§ 7 — PROBATION

The bill requires a probation officer serving a violation of probation warrant to:

1. advise the subject of the warrant of his or her right to (a) counsel and (b) refuse to make statements and that statements may be introduced as evidence against him or her;
2. interview the subject to obtain information relevant to terms and conditions of release, unless the person waives or refuses the interview, and independently verify information when necessary;
3. release the person on a written promise to appear or on posting a bond with conditions set by the officer (conditions may not modify those set by the court), except for those charged with a family violence crime;
4. check the National Crime Information Center criminal information database before setting conditions of release; and
5. immediately notify a bail commissioner or intake, assessment, and referral specialist if the person does not post bail.

Under current law, a police officer has these responsibilities for any warrants including violation of probation warrants, but not bench warrants indicating no bail or ordering the person be brought to court.

§ 8 — 1ST DEGREE HARASSMENT

Under the bill, someone who commits 1st degree harassment is deemed to have committed the crime where the harassing communication originated or where it was received. Current law only deems the crime to have been committed in both places when the conduct involves telephone calls, although someone can commit 1st degree harassment through a telephone, telegraph, mail, computer

network, or other form of communication.

A similar provision already applies to 2nd degree harassment.

BACKGROUND

Probation Terms

Currently, a court can sentence someone to 10 to 35 years of probation for conviction of:

1. risk of injury to a minor involving sale of a child under age 16;
2. 1st degree sexual assault, 1st degree aggravated sexual assault, sexual assault in a spousal or cohabiting relationship, 2nd degree sexual assault, 3rd degree sexual assault, or 3rd degree sexual assault with a firearm;
3. enticing a minor, promoting a minor in an obscene performance, or importing child pornography; or
4. 1st, 2nd, or 3rd degree possessing child pornography.

Related Bills

sSB 1158, reported favorably by the Judiciary Committee, (1) adds commercial exploitation of a minor as a crime that can be a basis for forfeiting property related to sexual exploitation and human trafficking crimes and (2) requires depositing any proceeds left after publicly auctioning forfeited property and paying required costs in the Criminal Injuries Compensation Fund, rather than the General Fund.

HB 5666, reported favorably by the Judiciary Committee, adds prostitution and 3rd degree promoting prostitution as a basis for forfeiting property related to sexual exploitation and human trafficking crimes.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 44 Nay 0 (04/16/2013)

