



Senate

General Assembly

File No. 680

January Session, 2013

Substitute Senate Bill No. 871

Senate, May 2, 2013

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

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

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-33g of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 (a) When any property believed to be possessed, controlled,
4 designed or intended for use or which is or has been used or which
5 may be used as a means of committing any criminal offense, or which
6 constitutes the proceeds of the commission of any criminal offense,
7 except a violation of section 21a-267, 21a-277, 21a-278 or 21a-279, has
8 been seized as a result of a lawful arrest or lawful search, which the
9 state claims to be a nuisance and desires to have destroyed or disposed
10 of in accordance with the provisions of this section, the [judge or court
11 issuing the warrant or before whom the arrested person is to be
12 arraigned shall, within ten days after such seizure, cause to be left with
13 the owner of, and with any person claiming of record a bona fide
14 mortgage, assignment of lease or rent, lien or security interest in, the

15 property so seized, or at his usual place of abode, if he is known, or, if
16 unknown, at the place where the property was seized, a summons
17 notifying the owner and any such other person claiming such interest
18 and all others whom it may concern to appear before such judge or
19 court, at a place and time named in such notice, which shall be not less
20 than six nor more than twelve days after the service thereof. Such
21 summons may be signed by a clerk of the court or his assistant and
22 service may be made by a local or state police officer. It shall describe
23 such property with reasonable certainty and state when and where
24 and why the same was seized] Chief State's Attorney or a deputy chief
25 state's attorney, state's attorney or assistant or deputy assistant state's
26 attorney may petition the court not later than ninety days after the
27 seizure in the nature of a proceeding in rem to order forfeiture of such
28 moneys or property. Such proceeding shall be deemed a civil suit in
29 equity in which the state shall have the burden of proving all material
30 facts by clear and convincing evidence. The court shall identify the
31 owner of such property and any other person as appears to have an
32 interest in such property, and order the state to give notice to such
33 owner and any interested person by certified or registered mail. The
34 court shall promptly, but not less than two weeks after such notice,
35 hold a hearing on the petition.

36 [(b) If the owner of such property or any person claiming any
37 interest in the same appears, he shall be made a party defendant in
38 such case. Any state's attorney or assistant state's attorney may appear
39 and prosecute such complaint and shall have the burden of proving all
40 material facts by clear and convincing evidence.]

41 [(c)] (b) If the [judge or] court finds the allegations made in such
42 [complaint] petition to be true and that the property has been
43 possessed, controlled or designed for use, or is or has been or is
44 intended to be used, with intent to violate or in violation of any of the
45 criminal laws of this state, or constitutes the proceeds of a violation of
46 any of the criminal laws of this state, except a violation of section 21a-
47 267, 21a-277, 21a-278 or 21a-279, [he] the court shall render judgment
48 that such property is a nuisance and order the same to be destroyed or

49 disposed of to a charitable or educational institution or to a
50 governmental agency or institution provided, if any such property is
51 subject to a bona fide mortgage, assignment of lease or rent, lien or
52 security interest, such property shall not be so destroyed or disposed
53 of in violation of the rights of the holder of such mortgage, assignment
54 of lease or rent, lien or security interest. When [any money or valuable
55 prize has been seized upon such warrant and condemned under the
56 provisions of this section, such money or valuable prize shall become
57 the property of the state and when the property is money it shall be
58 deposited in the General Fund, provided any such property, which at
59 the time of such order] the condemned property is money, the court
60 may, in its discretion, award all or a portion of such money to the
61 investigating law enforcement agency. Any moneys not awarded to
62 such agency shall be deposited in the General Fund. When the
63 condemned property is a valuable prize that is subject to a bona fide
64 mortgage, assignment of lease or rent, lien or security interest, such
65 property shall remain subject to such mortgage, assignment of lease or
66 rent, lien or security interest. When any property or valuable prize has
67 been declared a nuisance and condemned under this section, the court
68 may also order that such property be sold by sale at public auction in
69 which case the proceeds shall become the property of the state and
70 shall be deposited in the General Fund, [; provided,] except that any
71 person who has a bona fide mortgage, assignment of lease or rent, lien
72 or security interest shall have the same right to the proceeds as [he]
73 such person had in the property prior to the sale. Final destruction or
74 disposal of such property shall not be made until any criminal trial in
75 which such property might be used as evidence has been completed.

76 [(d)] (c) If the [judge or] court finds the allegations not to be true or
77 that the property has not been kept with intent to violate or in
78 violation of the criminal laws of this state, or that the property does not
79 constitute the proceeds of a violation of the criminal laws of this state,
80 or that [it] the property is the property of a person not a defendant,
81 [he] the court shall order the property returned to the owner forthwith
82 and the party in possession of such property pending such
83 determination shall be responsible and personally liable for such

84 property from the time of seizure and shall immediately comply with
85 such order.

86 [(e)] (d) Failure of the state to proceed against such property in
87 accordance with the provisions of this section shall not prevent the use
88 of such property as evidence in any criminal trial.

89 Sec. 2. Subsection (a) of section 54-36p of the general statutes is
90 repealed and the following is substituted in lieu thereof (*Effective*
91 *October 1, 2013*):

92 (a) The following property shall be subject to forfeiture to the state
93 pursuant to subsection (b) of this section:

94 (1) All moneys used, or intended for use, in a violation of
95 subdivision (3) of subsection (a) of section 53-21 or section 53a-86, 53a-
96 87, 53a-90a, 53a-189a, as amended by this act, 53a-189b, 53a-192a, 53a-
97 196a, 53a-196b or 53a-196c;

98 (2) All property constituting the proceeds obtained, directly or
99 indirectly, from a violation of subdivision (3) of subsection (a) of
100 section 53-21 or section 53a-86, 53a-87, 53a-90a, 53a-189a, as amended
101 by this act, 53a-189b, 53a-192a, 53a-196a, 53a-196b or 53a-196c;

102 (3) All property derived from the proceeds obtained, directly or
103 indirectly, [from any sale or exchange for pecuniary gain] from a
104 violation of subdivision (3) of subsection (a) of section 53-21 or section
105 53a-86, 53a-87, 53a-90a, 53a-189a, as amended by this act, 53a-189b,
106 53a-192a, 53a-196a, 53a-196b or 53a-196c;

107 (4) All property used or intended for use, in any manner or part, to
108 commit or facilitate the commission of a violation [for pecuniary gain]
109 of subdivision (3) of subsection (a) of section 53-21 or section 53a-86,
110 53a-87, 53a-90a, 53a-189a, as amended by this act, 53a-189b, 53a-192a,
111 53a-196a, 53a-196b or 53a-196c.

112 Sec. 3. Section 53a-189a of the general statutes is repealed and the
113 following is substituted in lieu thereof (*Effective October 1, 2013*):

114 (a) A person is guilty of voyeurism when, (1) with malice, such
115 person knowingly photographs, films, videotapes or otherwise records
116 the image of another person (A) without the knowledge and consent of
117 such other person, (B) while such other person is not in plain view, and
118 (C) under circumstances where such other person has a reasonable
119 expectation of privacy, or (2) with intent to arouse or satisfy the sexual
120 desire of such person or any other person, such person knowingly
121 photographs, films, videotapes or otherwise records the image of
122 another person (A) without the knowledge and consent of such other
123 person, (B) while such other person is not in plain view, and (C) under
124 circumstances where such other person has a reasonable expectation of
125 privacy, or (3) with intent to arouse or satisfy the sexual desire of such
126 person, such person commits simple trespass, as provided in section
127 53a-110a, and observes, in other than a casual or cursory manner,
128 another person (A) without the knowledge or consent of such other
129 person, (B) while such other person is inside a dwelling, as defined in
130 section 53a-100, and not in plain view, and (C) under circumstances
131 where such other person has a reasonable expectation of privacy.

132 (b) Voyeurism is (1) a class D felony for a first offense, except as
133 provided in subdivision (3) of this subsection, (2) a class C felony for
134 any subsequent offense, and (3) a class C felony for a first offense when
135 (A) such person has been previously convicted of an offense
136 enumerated in subsection (f) of section 53a-29, as amended by this act,
137 or (B) the intended target of the offense is a person under sixteen years
138 of age.

139 (c) Notwithstanding the provisions of section 54-193, no person may
140 be prosecuted for an offense under subdivision (1) of subsection (a) of
141 this section except within five years from the date of the offense or
142 within five years from the date the subject of the offense discovers the
143 existence of the photograph, film, videotape or other recording that
144 constitutes a violation of subdivision (1) of subsection (a) of this
145 section.

146 Sec. 4. Subsection (f) of section 53a-29 of the general statutes is

147 repealed and the following is substituted in lieu thereof (*Effective*
148 *October 1, 2013*):

149 (f) The period of probation, unless terminated sooner as provided in
150 section 53a-32, shall be not less than ten years or more than thirty-five
151 years for conviction of a violation of subdivision (2) of subsection (a) of
152 section 53-21, [or] section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-
153 72b [,] or 53a-90a, subdivision (2) or (3) of subsection (a) of section 53a-
154 189a, as amended by this act, or section 53a-196b, 53a-196c, 53a-196d,
155 53a-196e or 53a-196f.

156 Sec. 5. Subdivision (5) of section 54-250 of the general statutes is
157 repealed and the following is substituted in lieu thereof (*Effective*
158 *October 1, 2013*):

159 (5) "Nonviolent sexual offense" means (A) a violation of section 53a-
160 73a or subdivision (2) or (3) of subsection (a) of section 53a-189a, as
161 amended by this act, or (B) a violation of any of the offenses specified
162 in subparagraph (A) of this subdivision for which a person is
163 criminally liable under section 53a-8, 53a-48 or 53a-49.

164 Sec. 6. Section 54-86k of the general statutes is repealed and the
165 following is substituted in lieu thereof (*Effective October 1, 2013*):

166 (a) In any criminal proceeding, DNA (deoxyribonucleic acid) testing
167 shall be deemed to be a reliable scientific technique and the evidence of
168 a DNA profile comparison may be admitted to prove or disprove the
169 identity of any person. This section shall not otherwise limit the
170 introduction of any relevant evidence bearing upon any question at
171 issue before the court. The court shall, regardless of the results of the
172 DNA analysis, if any, consider such other relevant evidence of the
173 identity of the accused as shall be admissible in evidence.

174 (b) If the results of the DNA analysis tend to exculpate the accused,
175 the prosecuting authority shall disclose such exculpatory information
176 or material to the accused in accordance with section 54-86c.

177 [(c) At least twenty-one days prior to commencement of the

178 proceeding in which the results of a DNA analysis will be offered as
179 evidence, the party intending to offer the evidence shall notify the
180 opposing party, in writing, of the intent to offer the analysis and shall
181 provide or make available copies of the profiles and the report or
182 statement to be introduced. In the event that such notice is not given,
183 and the person proffers such evidence, then the court may in its
184 discretion either allow the opposing party a continuance or, under the
185 appropriate circumstances, bar the person from presenting such
186 evidence. The period of any such continuance shall not be counted for
187 speedy trial purposes under section 54-82c. If the opposing party
188 intends to object to the admissibility of such evidence he shall give
189 written notice of that fact and the basis for his objections at least ten
190 days prior to commencement of the proceedings.]

191 (c) Any party that intends to offer the results of a DNA analysis in a
192 criminal proceeding shall notify the opposing party, in writing, of its
193 intent to offer the analysis and shall provide or make available copies
194 of the profiles and the report or statement to be introduced. If such
195 notice is provided less than twenty-one days prior to the
196 commencement of the proceeding, the court shall allow the opposing
197 party a thirty-day continuance upon the request of the opposing party.

198 (d) No blood sample submitted to the Division of Scientific Services
199 within the Department of Emergency Services and Public Protection
200 for analysis and use as provided in this section and no results of the
201 analysis performed shall be included in the DNA data bank
202 established by the division pursuant to section 54-102j or otherwise
203 used in any way with identifying information on the person whose
204 sample was submitted.

205 Sec. 7. Section 54-63c of the general statutes is repealed and the
206 following is substituted in lieu thereof (*Effective October 1, 2013*):

207 (a) Except in cases of arrest pursuant to a bench warrant of arrest in
208 which the court or a judge thereof has indicated that bail should be
209 denied or ordered that the officer or indifferent person making such
210 arrest shall, without undue delay, bring such person before the clerk or

211 assistant clerk of the superior court for the geographical area under
212 section 54-2a, when any person is arrested for a bailable offense, the
213 chief of police, or the chief's authorized designee, of the police
214 department having custody of the arrested person or any probation
215 officer serving a violation of probation warrant shall promptly advise
216 such person of the person's rights under section 54-1b, and of the
217 person's right to be interviewed concerning the terms and conditions
218 of release. Unless the arrested person waives or refuses such interview,
219 the police officer or probation officer shall promptly interview the
220 arrested person to obtain information relevant to the terms and
221 conditions of the person's release from custody, and shall seek
222 independent verification of such information where necessary. At the
223 request of the arrested person, the person's counsel may be present
224 during the interview. No statement made by the arrested person in
225 response to any question during the interview related to the terms and
226 conditions of release shall be admissible as evidence against the
227 arrested person in any proceeding arising from the incident for which
228 the conditions of release were set. After such a waiver, refusal or
229 interview, the police officer or probation officer shall promptly order
230 release of the arrested person upon the execution of a written promise
231 to appear or the posting of such bond as may be set by the police
232 officer or probation officer, except that no condition of release set by
233 the court or a judge thereof may be modified by such [officer] officers
234 and no person shall be released upon the execution of a written
235 promise to appear or the posting of a bond without surety if the person
236 is charged with the commission of a family violence crime, as defined
237 in section 46b-38a, and in the commission of such crime the person
238 used or threatened the use of a firearm.

239 (b) If the person is charged with the commission of a family violence
240 crime, as defined in section 46b-38a, and the police officer does not
241 intend to impose nonfinancial conditions of release pursuant to this
242 subsection, the police officer shall, pursuant to the procedure set forth
243 in subsection (a) of this section, promptly order the release of such
244 person upon the execution of a written promise to appear or the
245 posting of such bond as may be set by the police officer. If such person

246 is not so released, the police officer shall make reasonable efforts to
247 immediately contact a bail commissioner or an intake, assessment and
248 referral specialist employed by the Judicial Branch to set the conditions
249 of such person's release pursuant to section 54-63d. If, after making
250 such reasonable efforts, the police officer is unable to contact a bail
251 commissioner or an intake, assessment and referral specialist or
252 contacts a bail commissioner or an intake, assessment and referral
253 specialist but such bail commissioner or intake, assessment and
254 referral specialist is unavailable to promptly perform such bail
255 commissioner's or intake, assessment and referral specialist's duties
256 pursuant to section 54-63d, the police officer shall, pursuant to the
257 procedure set forth in subsection (a) of this section, order the release of
258 such person upon the execution of a written promise to appear or the
259 posting of such bond as may be set by the police officer and may
260 impose nonfinancial conditions of release which may require that the
261 arrested person do one or more of the following: (1) Avoid all contact
262 with the alleged victim of the crime, (2) comply with specified
263 restrictions on the person's travel, association or place of abode that are
264 directly related to the protection of the alleged victim of the crime, or
265 (3) not use or possess a dangerous weapon, intoxicant or controlled
266 substance. Any such nonfinancial conditions of release shall be
267 indicated on a form prescribed by the Judicial Branch and sworn to by
268 the police officer. Such form shall articulate (A) the efforts that were
269 made to contact a bail commissioner or an intake, assessment and
270 referral specialist, (B) the specific factual basis relied upon by the
271 police officer to impose the nonfinancial conditions of release, and (C)
272 if the arrested person was non-English-speaking, that the services of a
273 translation service or interpreter were used. A copy of that portion of
274 the form that indicates the nonfinancial conditions of release shall
275 immediately be provided to the arrested person. A copy of the entire
276 form shall be provided to counsel for the arrested person at
277 arraignment. Any nonfinancial conditions of release imposed pursuant
278 to this subsection shall remain in effect until the arrested person is
279 presented before the Superior Court pursuant to subsection (a) of
280 section 54-1g. On such date, the court shall conduct a hearing pursuant

281 to section 46b-38c at which the defendant is entitled to be heard with
282 respect to the issuance of a protective order.

283 (c) When cash bail in excess of ten thousand dollars is received for a
284 detained person accused of a felony, where the underlying facts and
285 circumstances of the felony involve the use, attempted use or
286 threatened use of physical force against another person, the police
287 officer shall prepare a report that contains (1) the name, address and
288 taxpayer identification number of the accused person, (2) the name,
289 address and taxpayer identification number of each person offering the
290 cash bail, other than a person licensed as a professional bondsman
291 under chapter 533 or a surety bail bond agent under chapter 700f, (3)
292 the amount of cash received, and (4) the date the cash was received.
293 Not later than fifteen days after receipt of such cash bail, the police
294 officer shall file the report with the Department of Revenue Services
295 and mail a copy of the report to the state's attorney for the judicial
296 district in which the alleged offense was committed and to each person
297 offering the cash bail.

298 (d) No police officer or probation officer serving a violation of
299 probation warrant shall set the terms and conditions of a person's
300 release, set a bond for a person or release a person from custody under
301 this section unless the police officer or probation officer has first
302 checked the National Crime Information Center (NCIC) computerized
303 index of criminal justice information to determine if such person is
304 listed in such index.

305 (e) If the arrested person has not posted bail, the police officer or
306 probation officer serving a violation of probation warrant shall
307 immediately notify a bail commissioner or an intake, assessment and
308 referral specialist.

309 (f) The chief, acting chief, superintendent of police, the
310 Commissioner of Emergency Services and Public Protection, any
311 captain or lieutenant of any local police department or the Division of
312 State Police within the Department of Emergency Services and Public
313 Protection or any person lawfully exercising the powers of any such

314 officer may take a written promise to appear or a bond with or without
 315 surety from an arrested person as provided in subsection (a) of this
 316 section, or as fixed by the court or any judge thereof, may administer
 317 such oaths as are necessary in the taking of promises or bonds and
 318 shall file any report required under subsection (c) of this section.

319 Sec. 8. Subsections (a) and (b) of section 53a-182b of the general
 320 statutes are repealed and the following is substituted in lieu thereof
 321 (*Effective October 1, 2013*):

322 (a) A person is guilty of harassment in the first degree when, with
 323 the intent to harass, annoy, alarm or terrorize another person, he
 324 threatens to kill or physically injure that person or any other person,
 325 and communicates such threat by telephone, or by telegraph, mail,
 326 computer network, as defined in section 53a-250, or any other form of
 327 written communication, in a manner likely to cause annoyance or
 328 alarm and has been convicted of a capital felony under the provisions
 329 of section 53a-54b in effect prior to April 25, 2012, a class A felony, a
 330 class B felony, except a conviction under section 53a-86 or 53a-122, a
 331 class C felony, except a conviction under section 53a-87, 53a-152 or 53a-
 332 153, or a class D felony under sections 53a-60 to 53a-60c, inclusive, 53a-
 333 72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216. For
 334 the purposes of this section, "convicted" means having a judgment of
 335 conviction entered by a court of competent jurisdiction.

336 (b) For the purposes of this section, such offense may be deemed to
 337 have been committed either at the place where the [telephone call was
 338 made or] communication originated or at the place where it was
 339 received.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	54-33g
Sec. 2	<i>October 1, 2013</i>	54-36p(a)
Sec. 3	<i>October 1, 2013</i>	53a-189a
Sec. 4	<i>October 1, 2013</i>	53a-29(f)
Sec. 5	<i>October 1, 2013</i>	54-250(5)

Sec. 6	<i>October 1, 2013</i>	54-86k
Sec. 7	<i>October 1, 2013</i>	54-63c
Sec. 8	<i>October 1, 2013</i>	53a-182b(a) and (b)

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
Criminal Justice Agencies	GF - Potential Revenue Gain	Indeterminate	Indeterminate

Municipal Impact:

Municipalities	Effect	FY 14 \$	FY 15 \$
Municipal Police Departments	Potential Revenue Gain	Indeterminate	Indeterminate

Explanation

The bill results in a potential revenue gain to the state and municipalities by altering forfeiture provisions related to property seized in connection to specific crimes. The bill allows a judge to give some or all of the assets seized to the investigating law enforcement agency. To the extent that this results in more convictions with seized property, this may result in a revenue gain to the state (for any funds deposited to the General Fund) and to the municipalities. In addition, the bill expands the type of property that can be seized and forfeited related to sexual exploitation and human trafficking crimes. Current law requires that seized property must be connected to pecuniary gain. The bill no longer requires these actions to be connected to pecuniary gain.

The bill also changes the penalty for voyeurism from a class D felony to a class C felony. This is not anticipated to result in a fiscal impact as there has only been 1 conviction under this statute for the past three years.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 871*****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 servicing 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.

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 state 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. Under the bill, the judge can give some or all of it to the investigating law enforcement agency and any remainder goes to the General Fund.

Currently, a seized valuable prize becomes the state's property subject to a mortgage, assignment, lien, or security interest. The bill no longer requires it to become state property and thus allows it to be disposed of to other entities.

§ 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, favorably reported 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, favorably reported 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)