98391-7

No. 79002-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

CITY OF SEATTLE,

Plaintiff/Respondent

vs.

$19,560.48 U.S. CURRENCY,

In Rem Defendant

Intervening:

REBEKAH SHIN,

Claimant/Petitioner

PETITION FOR DISCRETIONARY REVIEW TO THE WASHINGTON SUPREME COURT

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TABLE OF AUTHORITIES

"Forfeitures are not favored; they should be enforced only when within both letter and spirit of the law." –

United States v. One 1936 Model Ford V-8 De Luxe Coach, 307 U.S. 219, 226, 59 S.Ct. 861, 83 L.Ed. 1249 (1939).

I. IDENTITY OF PETITIONER

Petitioner/Claimant Ms. Rebekah Shin ("Ms. Shin") motions the Washington Supreme Court to accept review of the Court of Appeals decision designated in part II of this motion. At the time these proceedings commenced, Ms. Shin was homeless.

II. CITATION TO COURT OF APPEALS DECISION

Ms. Shin asks this court to review opinion No. 79002-1-I of Div. One of the Washington State Court of Appeals, filed on March 9, 2020.

III. ISSUES PRESENTED FOR REVIEW

A. Did the Court of Appeals incorrectly affirm the forfeiture of the $19,560.48 to the City of Seattle when the notice of seizure and intended forfeiture was constitutionally insufficient?

B. Did the Court of Appeals incorrectly affirm the forfeiture of the $19,560.48 to the City of Seattle when Ms. Shin was not given constitutionally sufficient notice of her right to petition for the return of her property?

C. Did the Court of Appeals incorrectly affirm the forfeiture of the $19,560.48 to City of Seattle when the record does not support the Court of Appeals' finding that Shin frequently and recently used the homeless shelter mailing service as her mailing address?

IV. STATEMENT OF THE CASE

A. Procedural History

i. City of Seattle Administrative Proceeding

This matter arises out of administrative forfeiture proceeding 15-380517 commenced by Respondent City of Seattle (City) under RCW 69.50.505 when it seized the *in-rem* defendant currency from Ms. Shin. (CP 21). Through counsel, Ms. Shin filed a claim to her property. (CP 28).

ii. King County District Court (KCDC)

Ms. Shin removed the matter to KCDC under cause number 165-00876, and motioned for summary judgment asserting, *inter alia*, that the Court was without authority to render judgment[8] against her property. She argued that: 1) the text of RCW 69.50.505 contains insufficient procedural instruction, rendering it insufficient to satisfy due process, and that 2) the text of the City's pre-printed process document contains materially false information regarding time-and-manner requirements to file a valid claim, rendering it, too, insufficient to satisfy due process.

KCDC agreed that the statute was unconstitutional as written.

To "save" the statute, the court "read" the requirements of *Mullane v. Central Hanover Bank & Trust Co.*[9] into the language of the statute. The Court then determined that the City's pre-printed document satisfied *Mullane*, and denied Ms. Shin's motion.

The matter proceeded to trial where Ms. Shin argued, *inter alia*, that authority to render judgment was lacking because the City provided insufficient service-of-process, and thus due process was violated. **The Court agreed with Ms. Shin that she was not provided sufficient notice, but held there was no prejudice because she filed her claim on time**. *See* RPI 392 ln 3-17.

iii. ***King County Superior Court***

Ms. Shin appealed to superior court under cause number 17-2-28716-4, which affirmed the district court.

iv. ***Division One of the Court of Appeals***

Ms. Shin motioned for discretionary review to Division One of the Court of Appeals under its case 79002-1. Commissioner Neel found that this case presented two issues of public interest that should be determined by an appellate court, and granted review under RAP 2.3(d)(3).

Oral argument was set for a March 4, 2020 oral argument. However, when the City motioned for more time to prepare, the court denied the motion, and instead struck oral argument.

The Court of Appeals affirmed the forfeiture. Although review had been granted review under RAP 2.3(d)(3), the court's opinion did not discuss the public's interest in the issues raised.

Ms. Shin now petitions this court to accept review.

B. Facts related to Issues

The facts are set forth in Ms. Shin's opening brief and are incorporated by reference herein. In addition, the following facts are relevant:

i. Facts re: Insufficient Process

The facts regarding the issue of insufficient process are identical to the facts of Court of Appeals case 79902-9-I. The cases are linked. Ms. Shin additionally relies on the statement of facts regarding this issue that is stated in Ms. Shin's petition for review of the linked case, which was filed contemporaneously with this filing.

ii. Facts re: Insufficient Service-of-Process

The facts reflected in this case record on this issue are not identical to those in the linked case 79902-9-I. The facts below apply to this case only.

a. Ms. Shin

Ms. Shin's "*particular situation*" was that she was a homeless woman surviving on the streets of Seattle, Washington. (RPI 375). She sheltered inside her boyfriend's RV that was long-term parked along 6th Ave South. (RPI 346 ln 11-17.) The vehicles Ms. Shin and her boyfriend owned were parked at the same location. (CP 479, 481, 497).

The "*circumstances*" of this case are as follows:

b.Det. Gonzales

A month prior to seizing Ms. Shin's property, Detective Gonzales obtained from DOL her then-current WA driver's license data, including her photograph and date of birth (information that is not found in vehicle registration data). (RPI 321 ln 10-22). The address on her driver's license was 2312 85th St, Seattle, WA, which the detective would have also obtained when he retrieved her photograph and date of birth from DOL. (RPI 463). The detective even witnessed her using the privileges that come with a valid driver's license. (CP 333 ln 6-8).

The record indicates that prior to the seizure, Det. Gonzales also obtained from DOL registration data all known vehicles owned by Ms. Shin and her boyfriend, which would have provided the detective with whatever addresses were provided to DOL at the time of each vehicle's most recent date of registration. (RPI 321 ln 10-22).

Even though the City, through Det. Gonzales, obtained the addresses at which the vehicles were registered, nowhere within the entirety of this case's 715-page record does it show what those addresses were at the time of the seizure.

Those addresses are not in the record precisely because the City did not deem them important enough to place into the City's search warrant affidavits, police reports, or internal database.

In fact, the City deems address information so irrelevant that nobody even bothered to ask Ms. Shin if she had a useable mailing address. (RPI 346 ln 11-13). The detective testified that the City maintains an internal RMS/Versadex database where officers, in the course of the normal duties, are to record information they obtain on various individuals such "handled by [the city] as a victim, witness, or complainant", and that the database is to be updated as new information is obtained. (RPI 375 ln 1-8, 376 ln 12-21). He did not follow this policy. Instead, the detective felt it was OK to just copy/paste into his police reports one of apparently several addresses from the City's internal database, rather than follow procedure. (RPI 377 ln 2-5).

All we know is that the 77 S. Washington St. address was in that database. The record does not tell us *when* the information was entered, or even *who* provided the information to the City: Ms. Shin or someone else. If someone else, the data may have been inaccurate to begin with! The address could be 10 years old, un-updated due to repeated copy/pasting by officers, just as Det. Gonzales had done.

Two days after the seizure, Det. Gonzales and Det. Pasquan drove to the area near the RV parking spot, and Ms. Shin's boyfriend got in their squad-car. (CP 21, RPI 344 ln 11-22). Neither detective bothered to get out of the car and attempt serve Ms. Shin the process she was due (Det. Gonzales

remember he thought she could have been asleep inside). (RPI 381 ln 8-9) Instead, Det. Gonzales handed to her boyfriend the two of City's pre-printed process documents, one for him and the other purportedly for Ms. Shin. (CP 21-22). Both showed their *actual last known address, the RV's location*. (Id). At the same time, the detective gave him a belated copy of a search warrant and its return. (RPI 344 ln 17-22). Det. Pasquan could have stepped out of the car to serve Ms. Shin while Det. Gonzales was talking to her boyfriend. Instead, he signed that he "witnessed" Det. Gonzales the hand him the papers. (CP 21-22).

Det. Gonzales admitted he communicated regularly with Ms. Shin over the next several months via phone and in person. (CP 111-113). He even met with her at Seattle DEA Headquarters, on Dec. 14, 2015, twenty-seven days after the seizure. (CP 156-57). With all those various contacts with Ms. Shin, Det. Gonzales never bothered to simply hand her the process she was due.

c. Det. Hardgrove - on or before 11/24/2015

Back at the police station, Det. Hardgrove reviewed Det. Gonzales' work. (RPI 385 ln 17-23). He saw that Det. Gonzales failed to provide Ms. Shin with the notice due her, so he looked at the police report and the internal RMS/Versadex database for an address. (RPI 395). There he saw the 77 S. Washington St. address of unknown age or origin because Det.

Gonzales failed to update the database with the new information, and he saw the same address of unknown age or origin on the police report because Det. Gonzales copy/pasted it from the database he failed to update. (Id). He filled out one of the City's pre-printed notice documents and mailed to the 77 S. Washington St address. Plaintiff's counsel asked him if he took "any other measures to try to ascertain the correct address?" His eventual answer was, "No, not that I recall." (RPI 394-400, but excluding from CP 396 ln 12 through CP 400 ln 21) [1].

d.Det. Hardgrove on or After 11/30/2015

But before admitting he performed no due diligence, first Det. Hardgrove testified through four pages of transcript about memories of dates from a week to 4 ½ months *after* he mailed the document in this case.

Det. Hardgrove said he remembered seeing, on Nov. 30, 2015 (a week later), information about perhaps a Honda that said Ms. Shin owned it, and that it was registered using the 77 S. Washington St. address. This information he remembers cannot be found anywhere else in the record. The detective admitted that when he obtains that sort of information in forfeiture matters, he prints it out onto paper, but there is no such paper here. (RPI 399 ln 10-11).

[1] The excluded pages recite Detective Hardgrove's statements about his memory of events *after* he mailed the pre-printed process document, and is discussed next in this petition.

He was then shown two pieces of paper, neither of which were the one of which he just spoke. These two papers were apparently printed out 4 ½ months later, on Apr. 13, *2016.* He was directed to read portions of them into the record. (RPI 397 ln 8-25; 399 ln 18 thru 400).

Det. Hardgrove said one piece of paper looked "familiar." (RPI 399 ln 18-24). The familiar printout indicated that the non-profit organization Compass Housing was located at that address and provided services for homeless persons, including mail. (Plaintiff's Trial Ex. 15).

When asked whether he had previously viewed the other piece of paper, at first he couldn't remember. (RPI 5-10). After reading portions of it into the record, he then indicated that he "believed" he printed out. (RPI 399 ln 4-6).

This other piece of paper appeared to indicate that four months *after* the seizure, on Mar. 30, *2016,* Ms. Shin re-registered a Dodge Intrepid using the 77 S. Washington St. (based on the expiration date of Mar. 30, *2017* stated on the paper). (Plaintiff's Trial Ex. 14). The case record indicates the City was at least aware the Intrepid existed, but it was not in any way the focus of their investigation (CP 479 ln 9 notes it was parked across from the RV, and there is no indication it ever moved from that spot). However, Ms. Shin was at one point arrested in her red Saturn wagon, which was then searched pursuant to her arrest (CP 503 ¶ 3-4). Address registration

information for the Saturn is absent from the record, too.

This paper regarding the Intrepid also appeared to indicate the date Ms. Shin "titled" the vehicle in her name: Mar. 30, 2015. Importantly, the document makes no mention of what address she used when she titled the vehicle – that information is remains unknown and cannot be found within this case record. However, RCW 46.16A.050 will not issue an "original registration certificate" upon transfer of title without the new owner first proving they are a resident of Washington State, preferably by presenting a current WA driver's license or identicard. Ms. Shin's then-current driver's license, renewed in 2015, listed her mailing address was listed: 2312 NE 85th St, Seattle, WA 98115. (RPI 454 ln 23-25; RPI 463 lns 5-9).

On cross, Det. Hardgrove admitted that even though it's his job to mail out seizure notices as necessary, SPD restricts his access to DOL data, and he cannot access reliable address information without going through another detective within the agency. (RPI 156 2-16). He also testified that he did not bother to make that effort this case. (Id).

Det. Hardgrove and plaintiff's counsel seemed to not understand the difference between vehicle titling and vehicle registration. "Titling" happens once, when ownership changes, and proves ownership. (RCW 46.12.650(5)(a)). "Registration" occurs at time of tilting, and then annually until ownership title is transferred. (RCW 46.16A.030(3)). "Registration"

means its legal to be driven on the streets. (RCW 46.16A.030(4-5). In other words, the paper provides only the date it was titled, Mar. 30, 2015, but does not disclose to what address it was titled to or registered to on that date. The trial court's finding that on Mar. 30, 2015 Ms. Shin registered a vehicle using the 77 S. Washington St address is clear error.

There is no information regarding where Det. Hardgrove obtained this paper. He testified that the City restricts his access to DOL data, so he did not get it there. He said he often found vehicle information via the internet, but he did not disclose any URL or domain. (RPI 402 ln 21). The location string at the bottom of the paper does *not* show a website, it shows the C:// drive a local computer. (Plaintiff's Trial Ex. 14). In other words, the record provides no evidence indicating whether paper's information is accurate, or whether it came from a reliable source.

When Det. Hardgrove ended his tangential testimony, Plaintiff's counsel repeated her original inquiry: "Did you take any other steps to ascertain Ms. Shin's address?" Detective Hardgrove answered, "No, not that I recall." The tangential testimony begins at CP 396 ln 12 and ends at CP 400 ln 21.

V. GROUNDS FOR REVIEW

"Great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact." *McDonald v. Mabee*, 243 U.S. 90, 91, 37 S.Ct. 343, 61 L.Ed. 608, L.R.A.1917F, 458 (1917).

THE COURT OF APPEALS' DECISION AFFIRMING THE DISTRICT COURT'S ORDER GRANTING FORFEITURE OF THE $19,560.48 IS IN CONFLICT WITH A DECISION OF THE SUPREME COURT AND A PUBLISHED DECISION OF THE COURT OF APPEALS, RAISES A SIGNIFICANT QUESTION OF LAW UNDER THE STATE AND FEDERAL CONSTITUTIONS AND INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST

The Court of Appeals incorrectly affirmed the district court's order of forfeiture. (Opinion at 2).

RAP 13.4(b) provides in relevant part:

A petition for review will be accepted by the Supreme Court only:

> (1) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
>
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b)(1)-(4).

This issues in this case meet the criteria set forth in RAP 13.4(b).

Ms. Shin incorporates by reference her petition for review, opening brief, and reply brief presented to the court of appeals in this case.

A. <u>The district court deprived Ms. Shin of her Fourteenth Amendment and Article I Section 3 right to Due Process when it relied on constitutionally deficient service of process to allow forfeiture of Ms. Shin's property</u>

This case is linked to case 79902-9. Ms. has filed a petition for review of that case contemporaneously with this case. Ms. Shin incorporates by reference the relevant portions of the linked case petition for review.

B. <u>The Court of Appeals erred in finding the contents of the notice of seizure was constitutionally sufficient</u>

This case is linked with case 79902-9. This issue is raised in that case as well. The facts are identical. Ms. Shin has contemporaneously filed a petition for review of the linked case. Ms. Shin incorporates by reference and relies on the facts, law, and argument within her petition for review of the linked case, as well as the facts, law, and argument within her court of appeals linked-case briefing.

C. <u>The Court of Appeals erred in finding The City's effort to serve Ms. Shin was constitutionally sufficient</u>

This issue is of service via the mail also raised in the linked case. Ms. Shin incorporates by reference and relies on the relevant portions in her petition for review in the on this issue, and the following analysis:

The City's actions were not "reasonably calculated, "*under all the circumstances*, to reach[2]" Ms. Shin. It was well "within the limits of practicability[3]" for Det. Gonzales to get out of his car and serve Ms. Shin personal process. Asking a private citizen to do his job for him is not "serious effort[4]" to provide notice, but "mere gesture[5]" far outside what this "*particular situation demand[ed]*.[6]" Det. Pasquan, he made no gesture at all. And even though Det. Hardgrove knew Ms. Shin was homeless, rather than make a "serious effort[7]" to ascertain whether Ms. Shin was using a particular mailing address, if any, he relied solely on Det. Gonzales' copy/pasted information of unknown age or origin in his police report and the outdated internal RMS/Versadex database from which it came, rather than make any attempt to confirm its accuracy by accessing DOL and other sources freely available to him through another detective.

"Under all the circumstances[8]" of this "particular situation,[9]" the mailing was not enough. The statute may *allow* mailing, but only so long as that mailing satisfies the requirements of *Mullane, Morrissey,* and *Mathews*. Here, the "particular situation demand[ed]" more.

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[2] *Mullane*, 339 U. S. at 318 (*emphasis added*).
[3] *Id.*
[4] *Id.*
[5] *Id. at 315.*
[6] *Morrissey*, 408 U.S. at 481.
[7] *Mullane*, 339 U. S. at 318.
[8] *Id.*
[9] *Morrissey v. Brewer*, 408 U.S. at 481.

The City could have made a "serious effort[10]" to provide Ms. Shin proper notice, without taking on any "additional fiscal or administrative burdens[11]." Asking an arrestee for their address is well "within the limits of practicability.[12]" Doing so places no burden on The City at all. Asking a fellow officer to run a routine address search is also well "within the limits of practicability[13]." The City's burden would have been a few minutes of two officer's time. But because the City did not bother, it cannot be said that the City was "desirous of actually informing[14]" Ms. Shin of these proceedings.

D. <u>This petition involves an issue of substantial public interest</u>

This issue is also raised in the linked case. Ms. Shin incorporates by reference and relies on the relevant portions of her petition for review in the on this issue.

Ms. Shin was just one of thousands[15] of homeless individuals surviving on the streets the night of Nov. 17, 2015. That night, City of Seattle police officers seized from her the *in-rem* defendant property named in this case. She was not told they planned to keep it forever. She was not told that she

[10] *Id.*
[11] *Id.*
[12] *Mullane,* 339 U.S. at 318.
[13] *Id.*
[14] *Id.* at 315.
[15] RCW 43.185B.005; RCW 43.185C.005.

had any rights. She was not provided any paperwork.

They didn't even bother to ask whether she had a mailing address.

Compared to the stably housed, homeless citizens endure a significantly higher rate of police contact simply due to their unhoused status[16]. "Every night in the United States more than **300,000** veterans sleep on the streets or inside a homeless shelter"[17]. Nearly half of those suffer from Post Trauma Stress Disorder (PTSD)[18]. "An estimated one-third of all homeless individuals suffer from mental illness[19]."

Everyone is deserving of Due Process, Even those without Homes

The City failed to provide the procedural notice she was due. But this case is bigger than Ms. Shin. When the City does attempt to provide notice, its pre-printed document demands materially false "time-and-manner" requirements for submitting a claim for seized property. And dozens, if not hundreds, of law enforcement agencies across our state use similar forms.

If the City's "mere gesture[20]" is allowed to stand in for the "serious

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[16] Seth Lemings, The De-Criminalization of Homelessness, 10 UC Irvine L. Rev. 287 (2019); Brendan M. Conner, *Salvaging Safe Spaces: Toward Model Standards for LGBTQ Youth-Serving Professionals Encountering Law Enforcement*, 24 Am. U. J. Gender Soc. Pol'y & L. 199, 206 ln 9-12 (2016); Maya Nordberg, *Jails Not Homes: Quality of Life on the Street of San Francisco*, 13 Hastings Women's L.J. 261, 270 f 72 (2002).

[17] Claire Voegele, *Never Again: Correcting the Administrative Abandonment of Vietnam Veterans with other than Honorable Discharges Induced by Post-Traumatic Stress Disorder*, 68 S. C. L. Rev. 1077, 1086 ¶ 2 (2017) *(emphasis original).*

[18] *Id.* at 1086-87.

[19] Allison N. Winnike & Bobby Joe III Dale, *Rewiring Mental Health: Legal and Regulatory Solutions for the Effective Implementation of Telepsychiatry and Telemental Health Care*, 17 Hous. J. Health L. & Pol'y 21, 31 ln 4 (2017).

[20] *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950).

effort[21]" due process requires, then there is nothing to persuade the City, or any other law enforcement agency in Washington, to "employ means[22]" that evidence they are "desirous of actually informing[23]" homeless individuals that forfeiture proceedings commenced or that they are risk of permanent deprivation of their seized property.

E. <u>The Court of Appeals Decision is in Conflict with other decisions</u>

This issue is also raised in the linked case. Ms. Shin incorporates by reference and relies on the relevant portions her petition for review in the on this issue, as well as her analysis above.

VI. <u>CONCLUSION</u>

Ms. Shin respectfully petitions this court to accept discretionary review.

PRESENTED FOR DECISION April 8, 2020.

Billie R. Morelli, WSBA No. 36105
Counsel for Claimant/Petitioner Rebekah Shin

[21] *Id*. at 318.
[22] *Id*. at 315.
[23] *Id.*

The Court of Appeals
of the
State of Washington

RICHARD D. JOHNSON,
Court Administrator/Clerk

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February 11, 2020

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CASE #: 79002-1-I
Rebekah Shin, Appellant v. City of Seattle, SPD and Seattle Chief of Police, Respondents
CASE #: 79902-9-I
Rebekah Shin, Petitioner v. City of Seattle, et al., Respondents

Counsel:

The following notation ruling by Richard D. Johnson, Court Administrator/Clerk of the Court was entered on February 11, 2020, regarding Respondent's Motion to Continue:

> These cases are set for consideration with oral argument on March 4, 2020 at 9:30 am. On February 7, 2020 motions to continue were filed on both cases. At the direction of the panel, the motions to continue are denied. These cases will be considered without oral argument on March 4, 2020 at 1:30 pm.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

lls

FILED
3/9/2020
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

THE CITY OF SEATTLE, a Washington municipal corporation, and THE SEATTLE POLICE DEPARTMENT, Respondents, v. $43,697.18 in UNITED STATES CURRENCY, In Rem Defendant, REBEKAH SHIN, Intervening Claimant/Appellant.	No. 79902-9-I UNPUBLISHED OPINION FILED: March 9, 2020

VERELLEN, J. — Here, a convoluted procedural history clouds the core issue whether Rebekah Shin timely filed her claim to the $43,697.18 that is the subject of this forfeiture. Specifically, Shin raises due process challenges to deficiencies in the City of Seattle's notice of seizure and intended forfeiture and to the adequacy of the city's service of the notice. Shin contends that the deadline for her claim did not begin to run because of those due process violations and asks this court to address the timeliness of her claim. We do not need to untangle the procedural snags because the undisputed facts and

governing law reflect that the city gave Shin adequate notice of the forfeiture, she did not timely file her claim, and, as a result, her challenges to the forfeiture of the $43,697.18 necessarily fail.

Therefore, we affirm.

FACTS

The procedural history of this case is complex with overlapping actions on the "agency track" and "removal track." The agency track includes proceedings before the agency hearing examiner and the superior court's review of the hearing examiner's rulings under the Washington Administrative Procedure Act (WAPA).[1] The removal track consists of proceedings before the district court, after Shin purported to remove the forfeiture from the agency, and Shin's appeal of the district court's rulings to the superior court under rules governing appeals from courts of lower jurisdiction.

On November 24, 2015,[2] Detective Rudy Gonzales, an officer with the Drug Enforcement Agency on loan to the Seattle Police Department (SPD), arrested Shin for suspected violation of the uniform controlled substances act.[3] At that time, the police seized $43,697.18.

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[1] Ch. 34.05 RCW.

[2] Shin moved to correct certain dates in the commissioner's ruling granting discretionary review. This opinion uses the dates supported by the record; there is no need for further correction.

[3] Ch. 69.50 RCW.

On November 25, 2015, Detective Gonzales served a copy of the notice of seizure and intended forfeiture at the recreational vehicle (RV) where Shin lived with her boyfriend, Kiel Krogstadt. Detective Gonzales told Krogstadt to give the form to Shin. And on November 30, Detective Donald Hardgrove mailed the notice form to Shin at 77 South Washington. On February 8, 2016, Shin filed a claim with the city. And on March 24, 2016, Shin filed her petition to remove the case to district court. Shin served the petition for removal on the district court and the city.

On April 13, 2016, the hearing examiner issued an automatic forfeiture order. At a conference prior to the hearing, Shin argued that she perfected and satisfied all the requirements to remove the matter to district court. Shin argued because the matter had been removed to district court, "no further action should be taken by the agency . . . because the agency is now without jurisdiction."[4] On the agency track, on April 21, 2016, Shin moved to vacate the hearing examiner's order. Shin asked the hearing examiner "to vacate the April 13, 2016 order of forfeiture as void and effect removal of the matter to district court."[5]

On May 16, 2016, the hearing examiner denied Shin's motion to vacate. The examiner reasoned Shin's "failure to file [her claim] within the 45-day

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[4] Declaration of Gabriella Sanders in Support of Respondent's Motion to Supplement the Record (Dec. 3, 2017) Ex. A at 12.

[5] Id. Ex. B at 41.

statutory period means that the property was forfeit as of January 15, 2015," and determined "[a]ctions taken thereafter by either of the parties did not change the fact that on that date, [Shin's] interest, if any, was extinguished by her failure to make a timely claim."[6]

Shin filed a petition for review under the WAPA, asking the superior court to review the hearing examiner's automatic forfeiture order, arguing the forfeiture order was void. On March 28, 2017, the superior court remanded to the hearing examiner for fact finding. The superior court determined the hearing examiner "'had an obligation to make a factual determination based on sworn testimony as to whether service was proper.'"[7] The court also ruled that "'assuming proper service, if the claim was untimely, the case could not be removed to [d]istrict [c]ourt.'"[8]

On the removal track, Shin moved the district court for default judgment. In response, the city moved to dismiss for lack of jurisdiction. On April 10 and 11, 2017, the district court heard argument on the motions. On April 25, 2017, the district court stayed the case pending "any further orders or determinations."[9]

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[6] Id. Ex. C at 70.

[7] Resp't's Br. at 10.

[8] Id.

[9] City of Seattle Answer In Opposition to Petitioner's Motion for Discretionary Review, Appendix at 17-18.

On April 26, 2017, the hearing examiner held a fact-finding hearing on whether service was proper. Shin did not appear. On July 11, 2017, the hearing examiner issued its findings of fact and conclusions of law. The hearing examiner concluded Shin received proper and actual notice but she failed to make a timely claim. The hearing examiner's findings and conclusions stated Shin had 10 days to move for reconsideration and 30 days to petition the superior court for review. Shin did not move for reconsideration or petition the superior court.

On May 24, 2018, the district court entered an order dismissing the case. Shin filed a superior court appeal of the district court's dismissal. On April 9, 2019, the superior court denied Shin's appeal. Shin moved this court for discretionary review. A commissioner of this court granted review under RAP 2.3(d)(3).[10]

ANALYSIS

I. Timeliness of Claim

Much of the briefing focuses on the effect and validity of Shin's March 24, 2016 petition for removal and how that relates to the timeliness of her claim of ownership.

[10] The record on discretionary review includes evidence that other jurisdictions in Washington continue to use forfeiture form documents that are inconsistent with the forfeiture statute. The merits of this appeal do not require any consideration of those documents.

Under the forfeiture statute, "[i]f any person notifies the seizing law enforcement agency . . . of the person's claim of ownership . . . within forty-five days of the service of notice from the seizing agency in the case of personal property . . . the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right."[11] Following a timely claim of ownership, the hearing "shall be before the chief law enforcement officer of the seizing agency." The claimant also has the right to "remove the matter to a court of competent jurisdiction."[12] To accomplish removal, the claimant must comply with "the rules of civil procedure."[13] Specifically, the claimant must serve the petition for removal on the seizing agency and any other interested party.

The forfeiture statute's reference to the "rules of civil procedure" appears to include chapter 4.14 RCW, which governs removal from district court ("justice court") to superior court. Under RCW 4.14.020(1),

> A defendant or defendants desiring to remove any civil action from a justice court as authorized by RCW 4.14.010 shall file in the superior court in the county where such action is pending, a verified petition containing a short and plain statement of the facts which entitle him, her, or them to removal together with a copy of all process, pleadings, and orders served upon him, her, or them in such action.

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[11] RCW 69.50.505(5).

[12] Id.

[13] Id.

Additionally, "[p]romptly after the filing of such petition the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the justice court."[14]

RCW 4.14.030 provides:

> In any case removed from justice court under the provisions of this chapter, the superior court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the justice court or otherwise.
>
> If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the superior court shall remand the case to the justice court. The justice court may thereupon proceed with such case.

We note the district court's findings in the order staying the proceeding and in the order of dismissal and the subsequent findings of the superior court on appeal appear to be inconsistent with chapter 4.14 RCW. In the order staying the proceeding, the district court found:

> g. [The superior court] made an informed decision to remand the case to the SPD hearing examiner, rather than to District Court;
>
> h. [The superior court's] decision inherently determined that removal was ineffective because authority to remove did not exist due to an untimely claim, and that a timely claim was a condition precedent for removal;
>
> i. This court does not have the authority to decide factual or legal issues for this case; nor does the court have the authority to dismiss.[15]

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[14] RCW 4.14.020(3).

[15] City of Seattle Answer In Opposition to Petitioner's Motion for Discretionary Review, Appendix at 18.

And in the order of dismissal, the district court found:

> a) [The superior court's] decision inherently determined that removal was ineffective because authority to remove did not exist due to an untimely claim, and that a timely claim was a condition precedent for removal;
>
> b) The hearing examiner, on remand from the Superior Court, found that Claimant received proper and timely notice;
>
> c) Claimant did not appeal from the hearing [examiner's factual determinations];
>
> d) This court does not have the authority to decide factual or legal issues for this case or legal jurisdiction to address the issues due to [the] procedural posture in the case.[16]

In the order on appeal, the superior court found the district court did not err in staying the proceeding on April 25, 2017, and that the district court "correctly deferred to [the superior court's[17]] decision as the appellate court in determining that removal was ineffective if the Hearing Examiner correctly determined that Ms. Shin's property claim was untimely and that a timely claim was a condition precedent for removal."[18] The court noted: "In some respects, it is surprising that this matter is before this Court under this cause number, as the issues presented in this appeal could have or should have been raised under the previously filed [superior court case.]."[19] The court also ruled:

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[16] Order Striking Hearing and Dismissing Case (May 14, 2018) at 2.

[17] This refers to the superior court's review under the WAPA of the hearing examiner's decision on the agency track.

[18] Clerk's Papers at 12-13.

[19] Id. at 13.

> As to Ms. Shin's claim with regard to proper form of notice, this Court makes no finding. Per the record provided, form of notice was not addressed in King County District Court, and the parties have indicated that Division One of the Washington Court of Appeals has accepted discretionary review on that issue arising from another claim filed by Ms. Shin.[20]

It appears the district court and the superior court, on the removal track, confused the authority of the superior court when acting as the reviewer of the hearing examiner's determination, on the agency track, and the authority of the superior court conducting appeal of the district court's determination, on the removal track.

The issues briefed in this appeal all relate to the timeliness of Shin's claim of ownership. Specifically, whether removal was valid, whether decisions by the agency hearing examiner after the purported removal were void for purposes of res judicata and whether the district court and the superior court on appeal on the removal track incorrectly deferred to the hearing examiner and the superior court on WAPA review on the agency track all turn on the timeliness of Shin's claim.

However, we need not unravel these procedural knots. Ultimately, the dispositive question is whether Shin's claim was timely. Our resolution of this question turns on Shin's arguments that the notice form and the city's method of service did not comply with due process requirements. Notably, in her briefing in this court, Shin asks this court to resolve whether her claim was timely filed.

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[20] Id.

She argues the notice form "misstates the law regarding the time-and-manner requirements . . . for submitting a claim," the form notice was not "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," and that the city's method of service "was not reasonably calculated, under all the circumstances, to provide her . . . a reasonable opportunity to be heard."[21]

If Shin received proper notice and service, then her failure to file a timely claim is fatal to her appeal. And if her claim was untimely, her challenge to the forfeiture and request for return of the property necessarily fails. In this setting, we go directly to Shin's dispositive challenges to the adequacy of notice and service.

Shin was arrested on November 24, 2015. SPD seized $43,697.18. Under RCW 69.50.505(3), proceedings for forfeiture are commenced by the seizure, and the seizing agency must serve the notice of seizure within 15 days. Detective Hardgrove mailed the forms to Shin on November 30, 2015. The forfeiture statute provides a person has a right to a forfeiture hearing if they serve the seizing agency with a claim of ownership within 45 days of service of the notice of seizure from the seizing agency.[22] Shin did not file a claim until

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[21] Petitioner's Opening Br. at 46, 48 (internal quotation marks omitted).

[22] RCW 69.50.505(5).

February 8, 2016, 70 days after SPD served the notice of seizure. Shin filed a petition for removal on March 24, 2016.

The city argues Shin's claim of ownership was untimely and, as a result, the cash "shall be deemed forfeited."[23] Relying on due process requirements, Shin argues her claim was not untimely because the 45-day window did not start on November 30, 2015 because of due process defects. Specifically, she contends the notice form was inconsistent with RCW 69.50.505, in violation of due process, and the city failed to properly serve Shin in violation of due process.

First, Shin argues the notice form violated due process because it "misstate[d] the time-and-manner requirements for submitting a claim."[24] Here, the form provides (1) a claimant must send a claim of ownership "via certified mail," (2) the time period for filing a claim starts on "the date that the property was seized," and (3) a claim of ownership "must be received by the Seattle Police Department within 45 days" of the seizure.[25] In contrast, the statute provides (1) a claimant may serve a claim of ownership "by any method

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[23] RCW 69.50.505(4) ("If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items . . . within forty-five days of the service of notice from the seizing agency in the case of personal property . . . the item seized shall be deemed forfeited.").

[24] Petitioner's s Opening Br. at 45.

[25] City of Seattle Answer In Opposition to Petitioner's Motion for Discretionary Review, Appendix at 1.

authorized by law or court rule including, but not limited to, service by first-class mail," (2) the time period for filing a claim starts upon "service of the notice of seizure in the case," and (3) a claim of ownership, if served by mail, "shall be deemed complete upon mailing."[26]

The United States Constitution and the Washington Constitution guarantee an individual's right to due process.[27] Due process generally includes notice and an opportunity to be heard.[28] However, "minor procedural errors do not necessarily rise to the level of due process violations."[29]

In State v. Storhoff, the Department of Licensing (DOL) sent each defendant a written notice of license revocation.[30] Subsequently, the State charged each defendant with driving while license suspended. The defendants argued the notice violated their right to due process because it misstated the time to request a hearing. Our Supreme Court determined:

> To establish a violation of due process, Defendants must at least allege that the incorrect DOL revocation notices deprived them of notice and/or an opportunity to be heard. But the Defendants . . . have not explained how DOL's error deprived them of notice of their license revocations or their opportunity to request a formal hearing. Furthermore, due process does not require express notification of the deadline for requesting a formal hearing as long

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[26] RCW 69.50.505(5).

[27] Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313-14, 70 S. Ct. 652, 94 L. Ed. 865 (1950); Yim v. City of Seattle, 194 Wn.2d 682, 688, 451 P.3d 694 (2019).

[28] Tellevik v. Real Property Known as 31641 W. Rutherford St. Located in City of Carnation, Wash., 125 Wn.2d 364, 370-71, 884 P.2d 1319 (1994).

[29] State v. Storhoff, 133 Wn.2d 523, 527, 946 P.2d 783 (1997).

[30] 133 Wn.2d 523, 946 P.2d 783 (1997).

> as the order of revocation cites the statute that contains the applicable time limit.[31]

The court held the notices did not violate the defendants' due process rights "[i]n the absence of any suggestion that the erroneous DOL revocation notices deprived Defendants of notice or an opportunity to be heard."[32]

Similar to Storhoff, Shin fails to explain how the discrepancies in the notice of seizure form deprived her of notice and/or an opportunity to be heard. Rather, Shin argues a forfeiture is a "special proceeding" subject to heightened due process protection,[33] citing Putnam v. Wenatchee Valley Medical Center, P.S.[34] In Putnam, our Supreme Court considered whether medical malpractice proceedings are special proceedings and therefore exempt from certain civil rules. Even if a forfeiture action is a special proceeding, Shin fails to provide any authority to support her proposition that all special proceedings are subject to heightened due process protection. Putnam addresses the application of the civil rules to special proceedings and does not mention heightened due process protection.

Shin also relies on Truly v. Heuft[35] to argue "[n]o tribunal, whether agency or court, has authority to order property forfeited unless the seizing

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[31] Id. at 527-28 (internal citation omitted).

[32] Id. at 528.

[33] Petitioner's Opening Br. at 32.

[34] 166 Wn.2d 974, 981, 216 P.3d 374 (2009).

[35] 138 Wn. App. 913, 158 P.3d 1276 (2007), abrogated by MHM & F, LLC v. Pryor, 168 Wn. App. 451, 277 P.3d 62 (2012).

agency first provided timely, accurate, and complete notice" consistent with RCW 69.50.505.[36] In Truly, the landlord, Truly, brought a residential unlawful detainer action against his tenant, Heuft, for nonpayment of rent. The residential unlawful detainer statute required the plaintiff to allow the defendant to answer by personal delivery, mail, or fax.[37] In Truly, the summons did not comply with these statutory requirements. This court acknowledged the case presented an issue of first impression, "whether a court has jurisdiction to enter judgment in a residential unlawful detainer action when the plaintiff-landlord fails to use [the unlawful detainer statute] summons language allowing a defendant-tenant to answer not only by personal delivery but also by mail or facsimile."[38]

Ultimately, this court held "that the lower court lacked jurisdiction over this unlawful detainer action because the summons did not strictly comply with [the unlawful detainer statute]."[39] In part, the court relied on case law that provided "[i]n the context of a residential unlawful detainer action, the summons must comply with the [unlawful detainer statute] to confer both personal and subject matter jurisdiction."[40] The court determined a tenant's available method

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[36] Petitioner's Opening Br. at 22.

[37] Truly, 138 Wn. App. at 916 (citing LAWS OF 2005, ch. 130, § 3).

[38] Id. at 918.

[39] Id. at 923.

[40] Id. at 918 (emphasis added).

of answering a summons was a "manner requirement" and as a result, "required strict compliance."[41]

Shin's analogy to the unlawful detainer statute is not compelling. The details of how and when to file a claim of ownership, under the forfeiture statute, are not the equivalent of the strict jurisdictional statutory summons dictated by the unlawful detainer statute and accompanying case law. Although forfeiture is purely statutory,[42] Shin fails to establish the jurisdiction rule from Truly extends to a forfeiture proceeding. Shin does not establish the district court lacked the authority to render judgment.

We do not condone the city's failure to update the seizure form to comply with the 2009 amendments to RCW 69.50.505. When the city served Shin in this case, six years had passed since the legislature enacted the amendments. Using forms consistent with the statute is not an undue burden. But on this briefing, Shin fails to establish that the discrepancies in the notice of seizure form deprived her of notice and/or an opportunity to be heard.

Second, Shin contends the city's method of service "was not reasonably calculated, under all the circumstances, to provide Ms. Shin her statutory and constitutional right to a reasonable opportunity to be heard."[43]

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[41] Id. at 920-21.

[42] State v. Alaway, 64 Wn. App. 796, 799-801, 828 P.2d 591 (1992).

[43] Petitioner's Br. at 48.

Due process requires notice that is "'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'"[44] Additionally, service of process must comply with statutory service requirements.[45] Under RCW 69.50.505(3), notice of seizure of personal property "may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested."

On November 30, 2015, Detective Hardgrove mailed the notice of seizure and intended forfeiture to Shin by certified mail at 77 South Washington, which is the address of a homeless shelter with a mail acceptance service. Shin used this address frequently, and it was listed on her recent vehicle registration.

Shin does not dispute these facts and suggests, in order to comply with RCW 69.50.505, Detective Hardgrove was required to search further, including DOL records. But Shin does not provide any authority or meaningful argument to support this proposition. And notably, there is no evidence in the record that the address in DOL records was in fact a valid mailing address for Shin when the forfeiture was commenced. Although mailing the notice to an outdated residential address may not be reasonably calculated to give notice to a

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[44] Bruett v. Real Property Known As 18328 11th Ave. N.E., 93 Wn. App. 290, 298, 968 P.2d 913 (1998) (quoting Mullane, 339 U.S. at 314).

[45] Id. at 299 (quoting Weiss v. Glemp, 127 Wn.2d 726, 734, 903 P.2d 455 (1995)).

homeless person in some circumstances, SPD's mailing to the address identified by Shin frequently and recently is reasonably calculated to give her notice.

Additionally, Shin suggests that the city should have personally served or attempted to contact her by phone, but RCW 69.50.505(3) does not require personal service or telephone notice. And, even assuming the RV was the equivalent of Shin's residence for purposes of service, on November 25, 2015, Detective Gonzales went to the RV and handed the seizure forms to Shin's boyfriend, Kiel Krogstadt, who lived with Shin.[46] Detective Gonzales told Krogstadt to give the forms to Shin. Even under Shin's personal service argument, the city provided the equivalent of valid substitute service by leaving the notice addressed to Shin with a person of suitable age and discretion at Shin's "residence."

Shin's due process rights were not violated. Even giving Shin the benefit of the later date of service, Shin filed her claim of ownership outside the 45-day window. Because Shin received adequate notice and because she failed to file a timely claim of ownership, under RCW 69.50.505(3), Shin's right to the property expired prior to her claim on February 8, 2016 and her petition for removal on March 24, 2016.

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[46] See Petitioner's Opening Br. at 46-47 ("City of Seattle Detective Gonzales knew Ms. Shin was [h]omeless and slept in an RV that was long-term parked on 6th Ave S, in Seattle. The Detective took the time to serve Mr. Krogstadt, making a personal trip to the RV to do so.").

We can affirm the superior court on the alternative ground that Shin did not file a timely claim because that ground is supported by the record on appeal.[47] In her briefing, Shin invites us to address her due process challenges to the notice form and the method of service. Because those claims fail, she did not timely file her claim of ownership, and her challenge to the forfeiture necessarily fails.

II. Fees on Appeal

Shin requests fees on appeal under RCW 69.50.505(6). The statute allows for an award of reasonable attorney fees "where the claimant substantially prevails." Because Shin has not prevailed on appeal, we deny her request for fees.

Therefore, we affirm.

WE CONCUR:

[47] State v. Torres, 151 Wn. App. 378, 389, 212 P.3d 573 (2009) ("We may affirm on any basis supported by the record.").

Chapter Listing

Chapter 4.14 RCW

REMOVAL OF CERTAIN ACTIONS TO SUPERIOR COURT

Sections

RCW 4.14.010

Removal of certain actions from justice court to superior court authorized—Grounds—Joint claims or actions—Exceptions.

Whenever the removal of such action to superior court is required in order to acquire jurisdiction over a third party defendant, who is or may be liable to the defendant for all or part of the judgment and resides outside the county wherein the action was commenced, any civil action which could have been brought in superior court may, if commenced in district court, be removed by the defendant or defendants to the superior court for the county where such action is pending if the district court determines that there are reasonable grounds to believe that a third party may be liable to the plaintiff and issues an order so stating.

Whenever a separate or independent claim or cause of action which would be removable if sued upon alone is joined with one or more otherwise nonremovable claims or causes of action, the entire case may be removed and the superior court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction.

This section does not apply to cases originally filed in the small claims department of a district court, or transferred to the small claims department pursuant to RCW 12.40.025, except as set forth in RCW 12.40.027.

[1997 c 352 § 6; 1967 ex.s. c 46 § 4.]

RCW 4.14.020

Petition for removal—Contents—Filing—Notice.

(1) A defendant or defendants desiring to remove any civil action from a justice court as authorized by RCW 4.14.010 shall file in the superior court in the county where such action is pending, a verified petition containing a short and plain statement of the facts which entitle him, her, or them to removal together with a copy of all process, pleadings and orders served upon him, her, or them in such action.

(2) The petition for removal of a civil action or proceeding shall be filed within twenty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.

If the case stated by the initial pleading is not removable, a petition for removal may be filed within twenty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order, or other paper, including the defendant's answer, from which it may first be ascertained that the case is or has become removable.

(3) Promptly after the filing of such petition the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the justice court, which shall effect the removal and the justice court shall proceed no further unless and until the case is remanded.

[**2011 c 336 § 81; 1967 ex.s. c 46 § 5.**]

RCW 4.14.030

Orders and process upon removal—Remand of cases improvidently removed.

In any case removed from justice court under the provisions of this chapter, the superior court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the justice court or otherwise.

If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the superior court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by the clerk of the superior court to the justice court. The justice court may thereupon proceed with such case.

[**1967 ex.s. c 46 § 6.**]

RCW 4.14.040

Attached property—Custody.

Whenever any action is removed from a justice court to a superior court under the provisions of this chapter, any attachment or sequestration of the property of the defendant in such action in the justice court shall remain in the custody of the sheriff to answer the final judgment or decree in the same manner as would have been held to answer had the cause been brought in the superior court originally.

[**1967 ex.s. c 46 § 7.**]

RCW 43.185B.005

Finding.

(1) The legislature finds that:

(a) Housing is of vital statewide importance to the health, safety, and welfare of the residents of the state;

(b) Reducing homelessness and moving individuals and families toward stable, affordable housing is of vital statewide importance;

(c) Safe, affordable housing is an essential factor in stabilizing communities;

(d) Residents must have a choice of housing opportunities within the community where they choose to live;

(e) Housing markets are linked to a healthy economy and can contribute to the state's economy;

(f) Land supply is a major contributor to the cost of housing;

(g) Housing must be an integral component of any comprehensive community and economic development strategy;

(h) State and local government must continue working cooperatively toward the enhancement of increased housing units by reviewing, updating, and removing conflicting regulatory language;

(i) State and local government should work together in developing creative ways to reduce the shortage of housing;

(j) The lack of a coordinated state housing policy inhibits the effective delivery of housing for some of the state's most vulnerable citizens and those with limited incomes; and

(k) It is in the public interest to adopt a statement of housing policy objectives.

(2) The legislature declares that the purposes of the Washington housing policy act are to:

(a) Provide policy direction to the public and private sectors in their attempt to meet the shelter needs of Washington residents;

(b) Reevaluate housing and housing-related programs and policies in order to ensure proper coordination of those programs and policies to meet the housing needs of Washington residents;

(c) Improve the delivery of state services and assistance to very low-income and low-income households and special needs populations;

(d) Strengthen partnerships among all levels of government, and the public and private sectors, including for-profit and nonprofit organizations, in the production and operation of housing to targeted populations including low-income and moderate-income households;

(e) Increase the supply of housing for persons with special needs;

(f) Encourage collaborative planning with social service providers;

(g) Encourage financial institutions to increase residential mortgage lending; and

(h) Coordinate housing into comprehensive community and economic development strategies at the state and local level.

[**2005 c 484 § 22; 1993 c 478 § 1.**]

NOTES:

Findings—Conflict with federal requirements—Effective date—2005 c 484: See RCW **43.185C.005**, **43.185C.901**, and **43.185C.902**.

Persons with handicaps: RCW 35.63.220, 35A.63.240, 36.70.990, 36.70A.410.

RCW 43.185C.005

Findings.

Despite laudable efforts by all levels of government, private individuals, nonprofit organizations, and charitable foundations to end homelessness, the number of homeless persons in Washington is unacceptably high. The state's homeless population, furthermore, includes a large number of families with children, youth, and employed persons. The legislature finds that the fiscal and societal costs of homelessness are high for both the public and private sectors, and that ending homelessness should be a goal for state and local government.

The legislature finds that there are many causes of homelessness, including a shortage of affordable housing; a shortage of family-wage jobs which undermines housing affordability; a lack of an accessible and affordable health care system available to all who suffer from physical and mental illnesses and chemical and alcohol dependency; domestic violence; and a lack of education and job skills necessary to acquire adequate wage jobs in the economy of the twenty-first century.

The support and commitment of all sectors of the statewide community is critical to the chances of success in ending homelessness in Washington. While the provision of housing and housing-related services to the homeless should be administered at the local level to best address specific community needs, the legislature also recognizes the need for the state to play a primary coordinating, supporting, and monitoring role. There must be a clear assignment of responsibilities and a clear statement of achievable and quantifiable goals. Systematic statewide data collection on homelessness in Washington must be a critical component of such a program enabling the state to work with local governments to count homeless persons and assist them in finding housing.

The systematic collection and rigorous evaluation of homeless data, a search for and implementation through adequate resource allocation of best practices, and the systematic measurement of progress toward interim goals and the ultimate goal of ending homelessness are all necessary components of a statewide effort to end homelessness in Washington by July 1, 2015.

[**2005 c 484 § 1.**]

(5)(a) **Transferring ownership.** A person who has recently acquired a vehicle by purchase, exchange, gift, lease, inheritance, or legal action shall apply to the department, county auditor or other agent, or subagent appointed by the director for a new certificate of title within fifteen days of delivery of the vehicle. A secured party who has possession of the certificate of title shall either:

(i) Apply for a new certificate of title on behalf of the owner and pay the fee required under RCW**46.17.100**; or

(ii) Provide all required documents to the owner, as long as the transfer was not a breach of its security agreement, to allow the owner to apply for a new certificate of title.

RCW 46.16A.030

Registration and display of plates required—Penalties—Expired registration, impoundment.

(1) Vehicles must be registered as required by this chapter and must display license plates or decals assigned by the department.

(2) It is unlawful for a person to operate any vehicle on a public highway of this state without having in full force and effect a current and proper vehicle registration and displaying license plates on the vehicle.

(3) Vehicle license plates or registration certificates, whether original issues or duplicates, may not be issued or furnished by the department until the applicant makes satisfactory application for a certificate of title or presents satisfactory evidence that a certificate of title covering the vehicle has been previously issued.

(4) Failure to make initial registration before operating a vehicle on the public highways of this state is a traffic infraction. A person committing this infraction must pay a fine of five hundred twenty-nine dollars, which may not be suspended or reduced. This fine is in addition to any delinquent taxes and fees that must be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion. The five hundred twenty-nine dollar fine must be deposited into the vehicle licensing fraud account created in the state treasury in RCW **46.68.250**.

(5) Failure to renew an expired registration before operating a vehicle on the public highways of this state is a traffic infraction.

(6) It is a gross misdemeanor for a resident, as identified in RCW **46.16A.140**, to register a vehicle in another state, evading the payment of any tax or vehicle license fee imposed in connection with registration. It is punishable, in lieu of the fine in subsection (4) of this section, as follows:

(a) For a first offense:

(i) Up to three hundred sixty-four days in the county jail;

(ii) Payment of a fine of five hundred twenty-nine dollars plus any applicable assessments, which may not be suspended or reduced. The fine of five hundred twenty-nine dollars must be deposited into the vehicle licensing fraud account created in the state treasury in RCW **46.68.250**;

(iii) A fine of one thousand dollars to be deposited into the vehicle licensing fraud account created in the state treasury in RCW **46.68.250**, which may not be suspended or reduced; and

(iv) The delinquent taxes and fees, which must be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion, and which may not be suspended or reduced;

(b) For a second or subsequent offense:

(i) Up to three hundred sixty-four days in the county jail;

(ii) Payment of a fine of five hundred twenty-nine dollars plus any applicable assessments, which may not be suspended or reduced, except as provided in RCW **10.05.180**. The fine of five hundred twenty-nine dollars must be deposited into the vehicle licensing fraud account created in the state treasury in RCW **46.68.250**;

(iii) A fine of five thousand dollars to be deposited into the vehicle licensing fraud account created in the state treasury in RCW **46.68.250**, which may not be suspended or reduced; and

(iv) The amount of delinquent taxes and fees, which must be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion, and which may not be suspended or reduced.

(7) A vehicle with an expired registration of more than forty-five days parked on a public street may be impounded by a police officer under RCW **46.55.113**(2).

[**2019 c 459 § 3; 2019 c 423 § 203.** Prior: **2011 c 171 § 43; 2011 c 96 § 31;** prior: **2010 c 270 § 1; 2010 c 217 § 5; 2010 c 161 § 403; 2007 c 242 § 2; 2006 c 212 § 1;** prior: **2005 c 350 § 1; 2005 c 323 § 2;**

RCW 46.16A.050

Registration—Requirements before issuance—Penalty—Rules.

(1) The department, county auditor or other agent, or subagent appointed by the director shall not issue an initial registration certificate for a motor vehicle to a natural person under this chapter unless the natural person at time of application:

(a) Presents an unexpired Washington state driver's license; or

(b) Certifies that he or she is:

(i) A Washington state resident who does not operate a motor vehicle on public roads; or

(ii) Exempt from the requirement to obtain a Washington state driver's license under RCW 46.20.025.

(2) The department must set up procedures to verify that all owners meet the requirements of this section.

(3) A person falsifying residency is guilty of a gross misdemeanor punishable only by a fine of five hundred twenty-nine dollars.

(4) The department may adopt rules necessary to implement this section, including rules under which a natural person applying for registration may be exempt from the requirements of this section if the person provides evidence satisfactory to the department that he or she has a valid and compelling reason for not being able to meet the requirements of this section.

[2014 c 197 § 1; 2010 c 161 § 405.]

NOTES:

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

RCW 69.50.505

Seizure and forfeiture.

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

(a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter **69.41** or **69.52** RCW, and all hazardous chemicals, as defined in RCW **64.44.010**, used or intended to be used in the manufacture of controlled substances;

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter **69.41** or **69.52** RCW;

(c) All property which is used, or intended for use, as a container for property described in (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in (a) or (b) of this subsection, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter **69.41** or **69.52** RCW;

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

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW **69.50.4014**;

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

(v) When the owner of a conveyance has been arrested under this chapter or chapter **69.41** or **69.52** RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter **69.41** or **69.52** RCW;

(f) All drug paraphernalia*21 other than paraphernalia possessed, sold, or used solely to facilitate marijuana-related activities that are not violations of this chapter;

(g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter **69.41** or **69.52** RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter **69.41** or **69.52** RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter **69.41** or **69.52** RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(h) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of

exchanges in violation of this chapter or chapter **69.41** or **69.52** RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

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

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes that are unlawful under Washington state law, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, whether the offender was licensed to produce, process, or sell marijuana, or was an employee of a licensed producer, processor, or retailer, and other evidence which demonstrates the offender's intent to engage in unlawful commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

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

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

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

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

(c) A **board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

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

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter

62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

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

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The notice of claim may be served by any method authorized by law or court rule including, but not limited to, service by first-class mail. Service by mail shall be deemed complete upon mailing within the forty-five day period following service of the notice of seizure in the case of personal property and within the ninety-day period following service of the notice of seizure in the case of real property. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW **34.12.020**(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter **34.12** RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW **4.28.080** or **4.92.020**, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW **3.66.020**. A hearing before the seizing agency and any appeal therefrom shall be under Title **34** RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section.

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

(7) When property is forfeited under this chapter the **board or seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

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

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

(d) Forward it to the drug enforcement administration for disposition.

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

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

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

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

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

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (15) of this section.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(11) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the **board, the owners of which are unknown, are contraband and shall be summarily forfeited to the **board.

(12) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the **board.

(13) The failure, upon demand by a **board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he or she is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

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

(15)(a) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (7)(b) of this section, only if:

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

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

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

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

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

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter **69.41** or **69.52** RCW; or

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

(16) The landlord's claim for damages under subsection (15) of this section may not include a claim for loss of business and is limited to:

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

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

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (7)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (9)(b) of this section.

(17) Subsections (15) and (16) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (15) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

[2013 c 3 § 25 (Initiative Measure No. 502, approved November 6, 2012). Prior: **2009 c 479 § 46; 2009 c 364 § 1; 2008 c 6 § 631; 2003 c 53 § 348; 2001 c 168 § 1; 1993 c 487 § 1; 1992 c 211 § 1;** prior: (1992 c 210 § 5 repealed by 1992 c 211 § 2); **1990 c 248 § 2; 1990 c 213 § 12; 1989 c 271 § 212; 1988 c 282 § 2; 1986 c 124 § 9; 1984 c 258 § 333; 1983 c 2 § 15;** prior: **1982 c 189 § 6; 1982 c 171 § 1;** prior: **1981 c 67 § 32; 1981 c 48 § 3; 1977 ex.s. c 77 § 1; 1971 ex.s. c 308 § 69.50.505.**]

NOTES:

Reviser's note: *(1) The number 21 was inadvertently added in the document filed with the secretary of state's office.

**(2) Chapter 19, Laws of 2013 changed "state board of pharmacy" to "pharmacy quality assurance commission."

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW **69.50.101**.

Effective date—2009 c 479: See note following RCW **2.56.030**.

Part headings not law—Severability—2008 c 6: See RCW **26.60.900** and **26.60.901**.

Intent—Effective date—2003 c 53: See notes following RCW **2.48.180**.

Severability—2001 c 168: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [**2001 c 168 § 5.**]

Effective date—1990 c 213 §§ 2 and 12: See note following RCW **64.44.010**.

Findings—1989 c 271: "The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest." [**1989 c 271 § 211.**]

Severability—1989 c 271: See note following RCW **9.94A.510**.

Severability—1988 c 282: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [**1988 c 282 § 3.**]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW **3.30.010**.

Intent—1984 c 258: See note following RCW **3.34.130**.

Severability—1983 c 2: See note following RCW **18.71.030**.

Effective date—1982 c 189: See note following RCW **34.12.020**.

Effective date—1982 c 171: See RCW **69.52.901**.

Severability—1981 c 48: See note following RCW **69.50.102**.

FILED
3/9/2020
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

THE CITY OF SEATTLE, a Washington municipal corporation, and THE SEATTLE POLICE DEPARTMENT, Respondents, v. $19,560.48 in UNITED STATES CURRENCY, In Rem Defendant, REBEKAH SHIN, Intervening Claimant/Appellant.	No. 79002-1-I UNPUBLISHED OPINION FILED: March 9, 2020

VERELLEN, J. — Rebekah Shin raises two due process challenges to the forfeiture of $19,560.48 to the City of Seattle. First, she contends inaccuracies in the notice of seizure and intended forfeiture rendered the notice inadequate. But she fails to establish the notice was not reasonably calculated to apprise her of the pendency of the action and afford her an opportunity to present her objections. And she fails to establish any prejudice because after the city served notice, Shin filed a timely claim of ownership and removed the matter to district court, where she received a full adversarial hearing.

Second, Shin challenges the adequacy of the service of the notice. The forfeiture statute allows service by mail and does not require personal service. The city served the notice by certified mail at 77 South Washington. This is a homeless shelter with a mail receiving service. Although Shin is homeless and was living in a recreational vehicle (RV) at the time of the seizure, a diligent search showed that Shin frequently and recently used that as her mailing address. Shin provides no authority that police were compelled to give notice by telephone or trace the current location of the RV to perform personal service.

Therefore, we affirm.

FACTS

On November 17, 2015, Detective Rudy Gonzales, an officer with the Drug Enforcement Agency on loan to the Seattle Police Department (SPD), arrested Shin for suspected violation of the uniform controlled substances act.[1] At that time, the police seized $19,560.48. On November 19, 2015, the detective gave a notice of seizure and intended forfeiture to Shin's boyfriend, Kiel Krogstadt. And on November 24, 2015, Detective Donald Hardgrove mailed the forms to Shin at the 77 South Washington address.

On December 30, 2015, Shin filed a claim with the city and then removed the matter to district court. Before trial, Shin moved for summary judgment, arguing the seizure form misstated the statutory time and manner requirements for filing a claim.

[1] Ch. 69.50 RCW.

Shin also challenged the service of the notice. The court denied Shin's summary judgment motion.

The district court held a full adversarial hearing on June 20, 2017. After a bench trial, the court forfeited the $19,560.48 to the city. Shin filed a timely RALJ appeal to the superior court. The superior court affirmed the district court.

Shin moved this court for discretionary review. A commissioner of this court granted review under RAP 2.3(d)(3).

ANALYSIS

Shin contends her due process rights were violated because portions of the notice of seizure form were inconsistent with RCW 69.50.505 and because the city did not comply with the service of process requirements.

The superior court's review of a district court decision is governed by RALJ 9.1. Under RALJ 9.1(a), "[t]he superior court shall review the decision of the court of limited jurisdiction to determine whether that court has committed any errors of law." With regard to factual challenges, "[t]he superior court shall accept those factual determinations supported by substantial evidence in the record (1) which were expressly made by the court of limited jurisdiction, or (2) that may reasonably be inferred from the judgment of the court of limited jurisdiction."[2] Our review is also governed by RALJ 9.1.[3] And unchallenged findings of fact are verities on appeal.[4]

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[2] RALJ 9.1(b).

[3] State v. Ford, 110 Wn.2d 827, 829, 755 P.2d 806 (1988).

[4] Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 808, 828 P.2d 549 (1992).

Here, in the order on summary judgment, the district court concluded, "The notice provided in this case satisfies constitutional due process requirements regarding notice," and "[m]isstatements made in the notice do not go to jurisdiction."[5]

After a full adversarial hearing on the intended forfeiture, the district court entered findings of facts and conclusions of law. The court found it had jurisdiction over both the subject matter and the parties pursuant to RCW 69.50.505. The court concluded, "SPD's effort to determine Shin's address were adequate and . . . SPD made a good faith search to determine her address."[6] The court also concluded, "All statutory requirements of Notice of Hearing have been satisfied . . . pursuant to RCW 69.50.505."[7] The court ordered the "defendant in rem U.S. currency shall be forfeited to the City of Seattle and the Seattle Police Department."[8]

Shin filed a timely RALJ appeal to the superior court. The superior court affirmed the district court. The court determined Shin "failed to carry the burden of showing that the trial court's Findings of Facts are not supported by substantial evidence."[9] The court determined there was no violation of due process.

Before the superior court, Shin did not challenge the district court's finding that Detective Hardgrove mailed notice to 77 South Washington. The court determined the detective performed an adequate address search and the service of process requirements were satisfied when the detective mailed the notice. And as to the

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[5] Appellant's Motion for Discretionary Review, Appendix at 26.

[6] Appendix at 35.

[7] Appendix at 33.

[8] Appendix at 36.

[9] Clerk's Papers (CP) at 571.

notice form, the court concluded "the inconsistencies . . . do not invalidate the due process and notice requirement under RCW 69.50.505 [and t]he inconsistencies did not deprive Ms. Shin of notice and the opportunity to be heard."[10]

First, Shin argues the district court and subsequently, the superior court, did not have the "authority to render judgment" because the form "materially misstated the statutory 'time-and-manner' requirements."[11] The city concedes there are discrepancies between the notice form and RCW 69.50.505 but argues these inconsistencies do not amount to a due process violation.

Here, the form provides (1) a claimant must send a claim of ownership "via certified mail," (2) the time period for filing a claim starts on "the date that the property was seized," and (3) a claim of ownership "must be received by the Seattle Police Department within 45 days" of the seizure.[12] In contrast, the statute provides (1) a claimant may serve a claim of ownership "by any method authorized by law or court rule including, but not limited to, service by first-class mail," (2) the time period for filing a claim starts upon "service of the notice of seizure in the case," and (3) a claim of ownership, if served by mail, "shall be deemed complete upon mailing."[13]

The United States Constitution and the Washington Constitution guarantee an individual's right to due process.[14] "[D]ue process generally affords an individual

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[10] Appendix at 42 (finding 5).

[11] Appellant's Br. at 21, 19.

[12] Appendix at 10.

[13] RCW 69.50.505(5).

[14] Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313-14, 70 S. Ct. 652, 94 L. Ed. 865 (1950); Yim v. City of Seattle, 194 Wn.2d 682, 688, 451 P.3d 694 (2019).

notice and an opportunity to be heard when the government deprives the individual of a life, liberty, or property interest."[15] Although the State concedes some details in the form were inconsistent with the statute, not every defect constitutes a denial of due process; "minor procedural errors do not necessarily rise to the level of due process violations."[16]

In State v. Storhoff, the Department of Licensing (DOL) sent each defendant a written notice of license revocation.[17] Subsequently, the State charged each defendant with driving while license suspended. The defendants argued the notice violated their right to due process because it misstated the time to request a hearing. Our Supreme Court determined:

> To establish a violation of due process, Defendants must at least allege that the incorrect DOL revocation notices deprived them of notice and/or an opportunity to be heard. But the Defendants . . . have not explained how DOL's error deprived them of notice of their license revocations or their opportunity to request a formal hearing. Furthermore, due process does not require express notification of the deadline for requesting a formal hearing as long as the order of revocation cites the statute that contains the applicable time limit.[18]

The court held the notices did not violate the defendants' due process rights "[i]n the absence of any suggestion that the erroneous DOL revocation notices deprived Defendants of notice or an opportunity to be heard."[19]

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[15] Tellevik v. Real Property Known as 31641 W. Rutherford St. Located in City of Carnation, Wash., 125 Wn.2d 364, 370-71, 884 P.2d 1319 (1994).

[16] State v. Storhoff, 133 Wn.2d 523, 527, 946 P.2d 783 (1997).

[17] 133 Wn.2d 523, 526, 946 P.2d 783 (1997).

[18] Id. at 527-28 (internal citation omitted).

[19] Id. at 528.

Similar to Storhoff, Shin fails to explain how the discrepancies in the notice of seizure form deprived her of notice and/or an opportunity to be heard. Rather, Shin argues a forfeiture is a "special proceeding" subject to heightened due process protection.[20] She cites Putnam v. Wenatchee Valley Medical Center, P.S.[21] for the proposition that "[a]ll purely statutory actions are 'special proceedings,' deserving of heightened due process protection."[22] In Putnam, our Supreme Court considered whether medical malpractice proceedings are special proceedings and therefore exempt from certain civil rules. Even if a forfeiture action is a special proceeding, Shin fails to provide any authority to support her proposition that all special proceedings are subject to heightened due process protection. Putnam addresses the application of the civil rules to special proceedings and does not mention heightened due process protection.

Shin also relies on Truly v. Heuft[23] to argue "[a] tribunal does not have the authority to render judgment in a special proceeding unless the notices, summonses, and similar methods of process strictly complied with the statute."[24] In Truly, the landlord, Truly, brought a residential unlawful detainer action against his tenant, Heuft, for nonpayment of rent. The residential unlawful detainer statute required the

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[20] Appellant's Br. at 20.

[21] 166 Wn.2d 974, 216 P.3d 374 (2009).

[22] Appellant's Br. at 20.

[23] 138 Wn. App. 913, 158 P.3d 1276 (2007), abrogated by MHM & F, LLC v. Pryor, 168 Wn. App. 451, 277 P.3d 62 (2012).

[24] Appellant's Br. at 21.

plaintiff to allow the defendant to answer by personal delivery, mail, or fax.[25] In Truly, the summons did not comply with these statutory requirements. This court acknowledged the case presented an issue of first impression, "whether a court has jurisdiction to enter judgment in a residential unlawful detainer action when the plaintiff-landlord fails to use [the unlawful detainer statute] summons language allowing a defendant-tenant to answer not only by personal delivery but also by mail or facsimile."[26]

Ultimately, this court held that "the lower court lacked jurisdiction over this unlawful detainer action because the summons did not strictly comply with [the unlawful detainer statute]."[27] In part, the court relied on case law that provided "[i]n the context of a residential unlawful detainer action, the summons must comply with the [unlawful detainer statute] to confer both personal and subject matter jurisdiction."[28] The court determined a tenant's available method of answering a summons was a "manner requirement," and as a result, "required strict compliance."[29]

Shin's analogy to the unlawful detainer statute is not compelling. The details of how and when to file a claim of ownership, under the forfeiture statute, are not the equivalent of the strict jurisdictional statutory summons dictated by the unlawful detainer statute and accompanying case law. Although forfeiture is purely

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[25] Truly, 138 Wn. App. at 916 (citing LAWS OF 2005, ch. 130, § 3).

[26] Id. at 918.

[27] Id. at 923.

[28] Id. at 918 (emphasis added).

[29] Id. at 920-21.

statutory,[30] Shin fails to establish the jurisdiction rule from Truly extends to a forfeiture proceeding. Shin does not establish the district court lacked the authority to render judgment.

We do not condone the city's failure to update the seizure form to comply with the 2009 amendments to RCW 69.50.505. When the city served Shin in this case, six years had passed since the legislature enacted the amendments. Using forms consistent with the statute is not an undue burden. But on this briefing, Shin fails to establish that the discrepancies in the notice of seizure form deprived her of notice and/or an opportunity to be heard.

And even if the discrepancies in the notice form constituted a due process violation, other cases recognize the need for prejudice. In State v. Getty, the 17-year-old defendant was arrested, and the arresting officer issued an adult "Citation/Complaint Form."[31] The officer sent the citation to juvenile court. Several months later, the State filed an information in juvenile court, charging Getty with first degree malicious mischief. Getty moved to dismiss, arguing the initial adult citation commenced an action in Renton municipal court and the subsequent information initiated an action in King County juvenile court, in violation of double jeopardy.

This court acknowledged that "even if the use of the adult form constituted a violation of Getty's due process rights, dismissal is inappropriate because Getty suffered no prejudice" because the municipal court did not attempt to proceed on the

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[30] State v. Alaway, 64 Wn. App. 796, 799-801, 828 P.2d 591 (1992).

[31] 55 Wn. App. 152, 153, 777 P.2d 1 (1989).

adult citation.[32] "Under the harmless error theory, a violation of Getty's constitutional rights does not warrant dismissal if the State proves beyond a reasonable doubt that the violation did not prejudice Getty."[33]

Here, Detective Gonzales arrested Shin on November 17, 2015. At that time, the police seized $19,560.48. On November 19, 2015, the detective gave a notice of seizure and intended forfeiture to Krogstadt, Shin's boyfriend. On November 24, 2015, Detective Hardgrove mailed the notice to Shin at her last known mailing address. Additionally, Shin's attorney testified:

> I send out public disclosure requests regularly to law enforcement agencies all across the state. And I pick and choose ones that I want to work on and write letters and asked them, hey, if you don't have counsel, I'd love to help. And that's what I did with her. And she called me by phone and said, "Absolutely. I have been calling attorneys, and nobody wants to take this case."[34]

The parties dispute how Shin received the notice, but the record reflects Shin had notice of the pending forfeiture no later than December 30, 2015.[35] On that date, Shin filed a timely claim with the city and then removed the matter to district court. The district court held a full adversarial hearing on June 20, 2017. Under the harmless error theory, dismissal of the forfeiture is not warranted because any defect in the notice form did not prejudice Shin. Shin fails to establish that inaccuracies in the form warrant any relief on appeal.

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[32] Id. at 155.

[33] Id. at 155-56.

[34] CP at 452-53 (emphasis added).

[35] Appendix at 33 (finding 28) ("When Morelli contacted Shin, Shin was already aware that the defendant in rem property had been seized.") Shin does not challenge this finding.

Second, Shin argues her due process rights were violated because the city failed to "attempt in good faith or with due diligence to ascertain Ms. Shin's current mailing address prior to mailing out its [notice]."[36]

Due process requires notice that is "'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'"[37] Additionally, service of process must comply with statutory service requirements.[38] Under RCW 69.50.505(3), notice of seizure of personal property "may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested."

Here, on November 24, 2015, Detective Hardgrove mailed the notice of seizure and intended forfeiture to Shin by certified mail at 77 South Washington,[39] which is the address of a homeless shelter with a mail acceptance service. Before mailing the notice forms, Detective Hardgrove checked the general offense report, the SPD records management system, and a current car registration for Shin. All of those sources listed her address as 77 South Washington.

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[36] Appellant's Br. at 26.

[37] Bruett v. Real Property Known As 18328 11th Ave. N.E., 93 Wn. App. 290, 298, 968 P.2d 913 (1998) (quoting Mullane, 339 U.S. at 314).

[38] Id. at 299 (quoting Weiss v. Glemp, 127 Wn.2d 726, 734, 903 P.2d 455 (1995)).

[39] Appendix at 32 (finding 24) ("On November 24, 2015, Detective Donald Hardgrove sent two notices of seizure and intended forfeiture to Rebekah Shin by both certified and regular mail; one notice was for the $19,560 seizure . . . . Detective Hardgrove sent the notices to the address of 77 South Washington Street.") Shin does not challenge this finding.

Shin does not dispute these facts and argues, in order to comply with RCW 69.50.505, Detective Hardgrove was required to search further, including DOL records. But Shin does not provide any authority or meaningful argument to support this proposition. And notably, there is no evidence in the record that the address in DOL records was in fact a valid mailing address for Shin when the forfeiture was commenced. Although mailing the notice to an outdated residential address may not be reasonably calculated to give notice to a homeless person in some circumstances, SPD's mailing to the address identified by Shin frequently and recently is reasonably calculated to give her notice. Detective Hardgrove's diligent inquiry and subsequent certified mailing was sufficient to satisfy due process and the service of process requirements of RCW 69.50.505(3).

To the extent Shin suggests the city should have personally served or attempted to contact her by telephone, RCW 69.50.505(3) does not require personal service or telephone notice.[40] The city was aware Shin slept in an RV parked at various locations along a city street, and the city had Shin's telephone number. However, that information does not mean that sending the notices by mail, as provided for in RCW 69.50.505(3), to the mailing address Shin frequently and recently used was not reasonably calculated to give Shin notice of the forfeiture proceeding.

We conclude Shin's due process rights were not violated.

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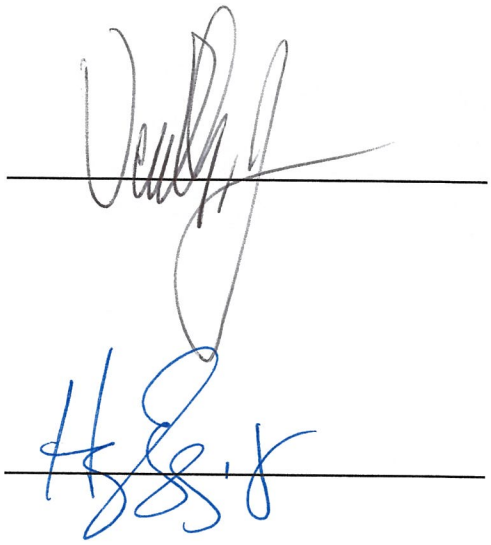
[40] It is undisputed Detective Gonzales left a second set of forms addressed to Shin with Shin's boyfriend and directed him to give the documents to Shin. Because the city clarified on RALJ appeal that it was not relying on the delivery of the notice to the boyfriend addressed to Shin, we do not address the impact of that delivery.

Shin requests fees on appeal under RCW 69.50.505(6). The statute allows for an award of reasonable attorney fees "where the claimant substantially prevails." Because Shin has not prevailed on appeal, we deny her request for fees.

Therefore, we affirm.

WE CONCUR:



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