

IN THE SENATE

SENATE BILL NO. 1087

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO CRIMINAL FORFEITURE; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE,  
2 BY THE ADDITION OF A NEW SECTION 18-1507B, IDAHO CODE, TO PROVIDE FOR  
3 CRIMINAL FORFEITURE FOR CERTAIN CRIMES AGAINST CHILDREN AND VULNERABLE  
4 ADULTS, TO DEFINE A TERM, TO PROVIDE FOR A FORFEITURE REQUEST, TO PRO-  
5 VIDE FOR PRESERVATION OF PROPERTY, TO PROVIDE FOR AN INSTITUTION OF PRO-  
6 CEEDINGS, TO PROVIDE FOR RIGHTS OF THIRD PARTIES, TO PROVIDE FOR PRO-  
7 PORTIONALITY, TO PROVIDE FOR AUTHORITY OF THE PROSECUTING ATTORNEY, TO  
8 PROHIBIT INTERVENTION IN CERTAIN INSTANCES, TO PROVIDE FOR JURISDIC-  
9 TION AND DEPOSITIONS IN CERTAIN INSTANCES, TO PROVIDE FOR THE SALE OF  
10 PROPERTY, AND TO PROVIDE FOR STATUTORY CONSTRUCTION; AND DECLARING AN  
11 EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
12

13 Be It Enacted by the Legislature of the State of Idaho:

14 SECTION 1. That Chapter 15, Title 18, Idaho Code, be, and the same is  
15 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
16 ignated as Section 18-1507B, Idaho Code, and to read as follows:

17 18-1507B. CRIMINAL FORFEITURE. (1) Any person who enters a plea of  
18 guilty or is convicted of a felony violation of section 18-1507, 18-1507A,  
19 18-1509, or 18-1509A, Idaho Code, no matter the form of the judgment or order  
20 withholding judgment, shall forfeit to the state of Idaho:

21 (a) Any property constituting or derived from any proceeds the person  
22 obtained, directly or indirectly, as the result of such violation. Such  
23 proceeds shall also include any virtual or cryptocurrency; and

24 (b) Any property, used in any manner or part, to commit or to facilitate  
25 the commission of such violation.

26 (2) The court, in imposing sentence on such person, shall order, in ad-  
27 dition to any other sentence imposed pursuant to section 18-1507, 18-1507A,  
28 18-1509, or 18-1509A, Idaho Code, that the person forfeit to the state of  
29 Idaho all property described in this section. The issue of criminal forfei-  
30 ture shall be for the court alone, without submission to a jury, as a part of  
31 the sentencing procedure within the criminal action.

32 (3) "Property" subject to criminal forfeiture under this section means  
33 personal property, including but not limited to vehicles, real property,  
34 computer files, computer hardware and software, and electronic data em-  
35 ployed in any manner or part in the commission of the violation.

36 (4) Any peace officer of this state seizing property subject to forfei-  
37 ture under the provisions of this section shall cause a written inventory to  
38 be made and shall maintain custody of the same until all legal actions have  
39 been exhausted.

40 (5) Property subject to criminal forfeiture under this section shall  
41 not be ordered forfeited unless the prosecuting attorney has filed a sepa-  
42 rate allegation within the criminal proceeding seeking forfeiture of spe-

1 cific property. The prosecuting attorney shall file, within fourteen (14)  
2 days of the filing of the criminal information or indictment, a forfeiture  
3 request and notice with the trial court. Any property of a person subject  
4 to the provisions of this section shall be subject to forfeiture under this  
5 section if the state of Idaho establishes by a preponderance of the evidence  
6 that:

7 (a) The property was acquired or used by a person during the period of  
8 the violation of section 18-1507, 18-1507A, 18-1509, or 18-1509A, Idaho  
9 Code, or within a reasonable time after such violation; and

10 (b) The property was used in the commission of the violation of section  
11 18-1507, 18-1507A, 18-1509, or 18-1509A, Idaho Code.

12 (6) (a) Upon application of the state of Idaho, the court may enter a re-  
13 straining order or injunction, require the execution of a satisfactory  
14 performance bond, or take any other action to preserve the availabil-  
15 ity of property described in subsection (3) of this section for forfei-  
16 ture under this section upon the filing of an indictment or information  
17 charging a violation of sexual exploitation of a minor for which crim-  
18 inal forfeiture may be ordered and alleging that the property with re-  
19 spect to which the order is sought would, in the event of conviction, be  
20 subject to forfeiture under this section.

21 (b) The state may request the issuance of a warrant authorizing the  
22 seizure of property subject to forfeiture under this section in the same  
23 manner as provided for a search warrant. If the court determines that  
24 there is probable cause to believe that the property to be seized would,  
25 in the event of conviction, be subject to forfeiture and that an order  
26 under subsection (2) of this section may not be sufficient to assure  
27 the availability of the property for forfeiture, the court shall issue  
28 a warrant authorizing the seizure of such property by the appropriate  
29 law enforcement agency upon such terms and conditions as the court shall  
30 deem proper.

31 (c) The court may, upon application of the state of Idaho, enter such  
32 appropriate restraining orders or injunctions, require the execution  
33 of satisfactory performance bonds, appoint receivers, conservators,  
34 appraisers, accountants, or trustees, or take any other action to  
35 protect the interest of the state of Idaho in the property subject to  
36 forfeiture. Any income accruing to or derived from property subject to  
37 forfeiture under this section may be used to offset ordinary and neces-  
38 sary expenses to the property that are required by law or that are neces-  
39 sary to protect the interests of the state of Idaho or third parties.

40 (7) Upon the filing of a forfeiture request pursuant to subsection (5)  
41 of this section, or in the event of seizure pursuant to a warrant of seizure,  
42 or upon entry of an order of forfeiture, the prosecuting attorney shall, if  
43 appropriate, institute proceedings pursuant to subsection (8) of this sec-  
44 tion within twenty (20) days of such event.

45 (8) (a) Within twenty (20) days of an institution of proceedings as pro-  
46 vided in subsection (7) of this section, notice, including a copy of the  
47 request for forfeiture, shall be given to each co-owner or party in in-  
48 terest who has or claims any right, title, or interest in any of such  
49 personal property according to one (1) of the following methods:

1 (i) Upon each co-owner of or party in interest in a titled motor  
2 vehicle, aircraft, or other conveyance, by mailing notice by cer-  
3 tified mail to the last known address of each co-owner and party in  
4 interest as given upon the records of the appropriate department  
5 of state or federal government where records relating to such con-  
6 veyances are maintained;

7 (ii) Upon each secured party and assignee designated as such in  
8 any UCC-1 financing statement on file in an appropriate filing  
9 office covering any personal property sought to be forfeited, by  
10 mailing notice by certified mail to the secured party and the as-  
11 signee, if any, at their respective last known addresses as shown  
12 on such financing statement; or

13 (iii) Upon each co-owner or party in interest whose name and last  
14 known address is known, by mailing notice by certified mail to the  
15 last known address of such person.

16 (b) Within twenty (20) days after the mailing of the notice, the  
17 co-owner or party in interest shall file a verified answer and claim to  
18 the property described in the notice.

19 (c) If a verified answer is filed within twenty (20) days after mailing  
20 of the notice, the forfeiture proceeding against all co-owners and par-  
21 ties in interest who have filed verified answers shall be set for hear-  
22 ing before the court without a jury on a day not less than sixty (60) days  
23 after the mailing of the notice, and the proceeding shall have prior-  
24 ity over other civil cases, except as provided in chapter 28, title 37,  
25 Idaho Code.

26 (i) At a hearing held pursuant to this subsection, any co-owner  
27 or party in interest who has a verified answer on file may show by  
28 competent evidence that his interest in the titled motor vehicle,  
29 aircraft, or other conveyance is not subject to forfeiture because  
30 he could not have known in the exercise of reasonable diligence  
31 that the titled motor vehicle, aircraft, or other conveyance was  
32 being used, had been used, or was intended to be used for the pur-  
33 poses described in subsection (1) of this section;

34 (ii) A co-owner or claimant of any right, title, or interest in the  
35 property may prove that his right, title, or interest, whether un-  
36 der a lien, mortgage, security agreement, conditional sales con-  
37 tract, or otherwise, was created without any knowledge or reason  
38 to believe that the property was being used, had been used, or was  
39 intended to be used for the purpose alleged;

40 1. In the event of such proof, the court shall order that  
41 portion of the property or interest released to the bona fide  
42 or innocent co-owner, purchaser, lienholder, mortgagee, se-  
43 cured party, or conditional sales vendor;

44 2. If the amount due to such person is less than the value of  
45 the property, the property may be sold at public auction or  
46 in another commercially reasonable method by the prosecut-  
47 ing attorney. If sold at public auction, the prosecuting at-  
48 torney shall publish a notice of the sale by at least one (1)  
49 publication in a newspaper published and circulated in the  
50 city, community, or locality where the sale is to take place

1 at least one (1) week prior to sale of the property. The pro-  
2 ceeds from such sale shall be distributed as follows in the  
3 order indicated:

4 (A) To the bona fide or innocent co-owner, purchaser,  
5 conditional sales vendor, lienholder, mortgagee, or  
6 secured party of the property, if any, up to the value  
7 of his interest in the property.

8 (B) The balance, if any, in the following order:

9 a. To the prosecuting attorney, for all expendi-  
10 tures made or incurred by him in connection with  
11 the sale, including expenditure for any neces-  
12 sary repairs, storage, or transportation of the  
13 property, and for all expenditures made or in-  
14 curred by him in connection with the forfeiture  
15 proceedings, including but not limited to expen-  
16 ditures for witnesses' fees, reporters' fees,  
17 transcripts, printing, traveling, and investi-  
18 gation; and

19 b. To the law enforcement agency of this state  
20 that seized the property for all expenditures for  
21 traveling, investigation, storage, and other ex-  
22 penses made or incurred after the seizure and in  
23 connection with the forfeiture of any property  
24 seized under this chapter.

25 (C) Notwithstanding any other provision of this sec-  
26 tion, upon being satisfied that the interest of a  
27 co-owner or claimant should not be subject to forfei-  
28 ture because he neither knew nor should have known that  
29 the personal property was being used or had been used  
30 for the purposes alleged, or that due to preexisting  
31 security interests in such property there is no equity  
32 that may be forfeited, the prosecuting attorney may  
33 release the property to the co-owner, holder of the se-  
34 curity interest, or other claimant.

35 (D) In any case, the prosecuting attorney, may, within  
36 thirty (30) days after order of forfeiture, pay the  
37 balance due to the bona fide lienholder, mortgagee,  
38 secured party, or conditional sales vendor and thereby  
39 purchase the property for use to enforce the provisions  
40 of this section.

41 (d) The provisions of this subsection shall not apply to any seized  
42 electronic or computer hardware, and the seizing law enforcement agency  
43 shall destroy such property upon exhaustion of all legal actions.

44 (9) In issuing any order under the provisions of this section, the court  
45 shall make a determination that the property, or a portion thereof in the  
46 case of real property, was actually used in the violation. The property for-  
47 feited shall not be unfairly disproportionate to the property actually used  
48 in violation of the provisions of this chapter.

49 (10) With respect to property ordered forfeited under this section, the  
50 prosecuting attorney is authorized to:

1 (a) Restore forfeited property to victims of a violation of this sec-  
2 tion or take any other action to protect the rights of innocent persons  
3 that is in the interest of justice and that is not inconsistent with the  
4 provisions of this section;

5 (b) Compromise claims arising under this section;

6 (c) Award compensation to persons providing information resulting in a  
7 forfeiture under this section; and

8 (d) Take appropriate measures necessary to safeguard and maintain  
9 property ordered forfeited under this section pending its disposition.

10 (11) Except as provided in subsection (8) of this section and notwith-  
11 standing any other provision of law, no party claiming an interest in prop-  
12 erty subject to forfeiture under this section may:

13 (a) Intervene in a trial or appeal of a criminal case involving the for-  
14 feiture of such property under this section; or

15 (b) Commence an action at law or equity against the state of Idaho con-  
16 cerning the validity of his alleged interest in the property subsequent  
17 to the filing of an indictment or information alleging that the property  
18 is subject to forfeiture under this section.

19 (12) (a) The district courts of the state of Idaho shall have jurisdic-  
20 tion over:

21 (i) Property for which forfeiture is sought that is within the  
22 state at the time the action is filed; and

23 (ii) The interest of a co-owner or interest holder in the property  
24 if the co-owner or interest holder is subject to personal juris-  
25 diction in this state.

26 (b) In order to facilitate the identification and location of prop-  
27 erty declared forfeited after the entry of an order declaring property  
28 forfeited to the state of Idaho, the court may, upon application of the  
29 state of Idaho, order that the testimony of any witness relating to the  
30 property forfeited be taken by deposition and that any designated book,  
31 paper, document, record, recording, or other material not privileged be  
32 produced at the same time and place and in the same manner as provided  
33 for the taking of depositions under rule 26 of the Idaho rules of civil  
34 procedure.

35 (13) (a) On the motion of a party and after notice to any persons who  
36 are known to have an interest in the property and an opportunity to be  
37 heard, the court may order property that has been seized for forfeiture  
38 sold, leased, rented, or operated to satisfy an interest of any interest  
39 holder who has timely filed a proper claim or to preserve the interests  
40 of any party. The court may order a sale or any other disposition of the  
41 property if the property may perish, waste, be foreclosed on, or other-  
42 wise be significantly reduced in value or if the expenses of maintaining  
43 the property are or will become greater than its fair market value. If  
44 the court orders a sale, the court shall designate a third party or state  
45 property manager to dispose of the property by public sale or other com-  
46 mercially reasonable method and shall distribute the proceeds in the  
47 following order of priority:

48 (i) Payment of reasonable expenses incurred in connection with  
49 the sale;

- 1           (ii) Satisfaction of exempt interests in the order of their prior-
- 2           ity; and
- 3           (iii) Preservation of the balance, if any, in the actual or con-
- 4           structive custody of the court in an interest-bearing account,
- 5           subject to further proceedings under this section.
- 6       (b) When property is forfeited under this section, the prosecuting at-
- 7       torney may:
- 8           (i) Retain it for official use by law enforcement; or
- 9           (ii) Sell that which is not required to be destroyed by law and
- 10          that is not harmful to the public.
- 11       (14) The provisions of this section shall be liberally construed to ef-
- 12       fectuate its purposes.

13           SECTION 2. An emergency existing therefor, which emergency is hereby  
14       declared to exist, this act shall be in full force and effect on and after  
15       July 1, 2023.