

OFFICIAL RESPONSE TO THE PERFORMANCE AUDIT ON CIVIL ASSET FORFEITURE: STRENGTHENING TRANSPARENCY AND PROTECTIONS FOR PROPERTY OWNERS – JANUARY 2, 2024

The Washington State Patrol (WSP) and Office of Financial Management (OFM) provide this management response to the State Auditor’s Office (SAO) performance audit report received on November 20, 2023.

SAO PERFORMANCE AUDIT OBJECTIVES

The SAO’s performance audit addressed two questions:

1. What are the characteristics of civil asset forfeitures conducted by law enforcement agencies?
 2. What opportunities exist to address due process concerns in the state’s civil asset forfeiture program?
-

SAO Recommendations: *The SAO report makes 13 recommendations. The first nine are to the Legislature, and the remaining four are to the audited police agencies, which includes the Washington State Patrol.*

Recommendations to WSP in brief:

SAO Recommendation 10: To improve the likelihood property owners will receive notice of law enforcement intent to pursue forfeiture of property:

10. Develop written guidance describing actions they expect staff to take to find the correct address to serve notices, successfully deliver notices to the right address, and redeliver notices that come back undelivered. The guidance should include actions beyond those required in statute, including:
 - The databases, documents, and other resources staff should check to identify the correct address
 - The service methods staff should use to deliver the notice (such as in-person, regular and certified mail)
 - The follow-up measures staff should take to redeliver notices that are returned undelivered (such as sending notices to other known addresses, attempting in-person delivery, making phone calls).

STATE RESPONSE: WSP concurs with this recommendation to law enforcement agencies. Effective June 2023, WSP updated written guidance to reflect its longstanding practices shared with the audit team, which include providing more notifications than legally required. RCW 69.50.505 requires the seizing agency to send notice of seizure by certified mail and considers service complete upon mailing within 15 days following the seizure. WSP sends notice via certified and first-class mail so that a signature requirement does not interfere with the notice delivery. This method checks multiple databases for best known addresses for initial delivery, and if any returned mail occurs, sends an extra final forfeiture letter with appeal rights.

Action Steps and Time Frame

- Update written guidance to staff on notifications. *Complete.*
-

SAO Recommendations 11-13: To help property owners understand what they need to do to prevent their property from being forfeited:

11. Make it a standard practice to provide notices in English and in other languages that are predominantly spoken by their local population.
12. Have their notice templates reviewed and improved for plain talk.

13. Add to the notice of intent to forfeit, the property owner’s rights to have:
 - i. Their case moved to court
 - ii. Attorney’s fees reimbursed if they sought legal representation and won the case

STATE RESPONSE: Regarding recommendation 11, while WSP concurs there are circumstances when a law enforcement agency should provide notices in English and other languages, we disagree that a change in WSP practice is necessary. The reference in the recommendation to “languages that are predominately spoken by [the law enforcement agency’s] local population” is less practical for a statewide law enforcement agency. We respectfully contend that the proper application of this recommendation to WSP as a statewide agency is accomplished by WSP continuing its longstanding practice of issuing notices in English and any other language(s) identified during the trooper’s interaction at the time of seizure.

Regarding recommendation 12, WSP concurs with the recommendation that notices should be reviewed and improved for plain language. WSP engaged several internal resources to review and improve its notice. Effective December 2023, WSP began using an improved notice. According to the readability analysis feature in Microsoft Word, WSP’s revised notice has a Flesch-Kincaid grade level of 8.0.

Regarding recommendation 13i, WSP disagrees with the recommendation to add to its notice a property owner’s right to move their case to court. The audit report discusses stakeholder concerns about a perceived lack of independence of hearing examiners, conflicts of interest, or self-dealing by law enforcement agencies, and recommends the notice include the information about forum selection (i.e., removal to court). However, forfeiture proceedings regarding items seized by WSP pursuant to RCW 69.50.505 are administered independently by the Office of Administrative Hearings, not a WSP employee or contractor. In the Acknowledgment of Claimant’s Request for Hearing sent to the claimant by WSP, the claimant is notified that their matter is being referred to the Office of Administrative Hearings for assignment to an administrative law judge in a hearing setting. WSP will continue to defer to the individual’s consultation with a legal advisor regarding forum selection and its impact on the individual’s legal interests.

Regarding recommendation 13ii, WSP concurs with the recommendation to add information to the notice about potential reimbursement of attorney’s fees. Effective December 2023, WSP revised its notice to include this sentence, “If you pay for an attorney to help you with your case and you get the property back, your attorney’s fees may be reimbursed.”

Action Steps and Time Frame

- Review and improve the notice for plain talk. *Complete.*
 - Update the notice of intent to include language about potential reimbursement of attorney’s fees. *Complete.*
-