

PS COMMITTEE #1
October 5, 2015

MEMORANDUM

October 1, 2015

TO: Public Safety Committee

FROM: Susan J. Farag, Legislative Analyst *SJF*

SUBJECT: **Briefing:** Asset Forfeiture

Today, the Committee will receive a briefing from the Police Department on civil asset forfeiture. The following agency staff are expected to brief the Committee:

Captain Dinesh Patil, Director, Special Investigations Division, Montgomery County Police Department (MCPD)
Neil Shorb, Director, Management and Budget (MCPD)
Rich Harris, Office of Management and Budget

Background

Recently, there has been growing concern about civil asset forfeiture and how various law enforcement agencies around the nation use both local and federal laws to seize money and other property, even when the owner has not been charged with a crime. These forfeiture laws were originally designed to help law enforcement target organized crime and deplete the funds necessary to engage in criminal operations. These laws received another boost in the 80s and 90s during the "War on Drugs." While the laws still serve that purpose, there is concern that current asset forfeiture laws may not provide enough legal protection to individuals who have had their cash and assets seized, particularly when they have not been charged with an associated crime.

Civil asset forfeiture does not require that an individual be criminally charged, and the civil evidentiary standard necessary to seize assets is much lower than the one required for criminal cases. Civil asset forfeiture is a state action against the money or assets themselves, or *in rem*, and not against the person. In order to reclaim the assets, the burden of proof lies on the owner (third party claimant), rather than the State to show that the money or other property was not used in criminal activity. Attempting to reclaim assets can be cost-prohibitive to many individuals, who may therefore choose not to challenge the seizure.

Asset Forfeiture Laws: While civil forfeitures have been permitted in one form or another for decades, the primary Federal law that governs the type of civil asset forfeiture discussed today is the Comprehensive Crime Control Act of 1984. This law established the Department of Justice (DOJ) Assets Forfeiture Fund. There are two ways that DOJ may have jurisdiction over asset forfeitures: (1) adoption cases, and (2) joint investigations (or task forces) with local law enforcement. Adoption cases occur when State or local law enforcement turn over assets to DOJ for processing at the federal level. Joint investigations occur when federal law enforcement works with State or local law enforcement agencies to seize assets.

Under the DOJ's Equitable Sharing Program, up to 80% of the proceeds from adoption or joint investigations are given back to the local law enforcement entity. In 2014, the DOJ Assets Forfeiture Fund had approximately \$8.7 billion in forfeited cash and property.

Earlier this year, U.S. Attorney General Eric Holder issued an order prohibiting federal agencies from "adopting" assets seized by state and local law enforcement agencies (with some limited exceptions). The Department of the Treasury issued a similar policy.

Maryland law also governs forfeiture of money, vehicles, and other property linked drug or "controlled dangerous substance" (CDS) activity, outlining what cash and property may be seized and under what circumstances, and the procedures under which a claimant may contest the seizure. Maryland law requires that assets be deposited into the State general fund or the appropriate local government fund.

Montgomery County has its own fund, the Drug Enforcement Forfeiture Fund (DEFF), which contains money that is forfeited to the County under state law as drug-related contraband. The fund includes cash and the proceeds of the sale of real and personal property seized during drug enforcement actions. It also includes proceeds from the federal DOJ Equitable Sharing Program.

Recent State Legislation: In the last State legislative session, the Maryland General Assembly addressed some concerns about civil asset forfeiture. Senate Bill 528 (*which passed the General Assembly, but was vetoed by the Governor in May*, attached at ©5-14), would have limited forfeiture to \$300 or more, unless it was "directly connected" to unlawful CDS distribution. It would have repealed the presumption that any money or weapons found in close proximity to the contraband CDS was contraband itself and therefore forfeitable. It also would have changed the burden of proof from the asset owner to the State, to establish by a preponderance of the evidence that a CDS violation was committed with the owner's actual knowledge. It would have also prohibited local law enforcement from transferring assets to the federal government unless criminal charges were also levied.

Montgomery County Asset Forfeiture Practices

Montgomery County has the authority under both federal and State law to perform these civil asset forfeitures; however, the County generally does not seize assets without also charging the defendants criminally. MCPD may either work alone, or with federal law enforcement agencies such as the FBI, the Drug Enforcement Agency (DEA), the Bureau of Alcohol, Tobacco, and Firearms (ATF), the U.S. Marshall Service, or Homeland Security. MCPD will provide the Committee with a more detailed overview of their policies and procedures.

County Drug Enforcement Forfeiture Fund

According to the last report provided to Council in May 2015 (attached at © 1-2) the County's DEFF's unreserved balance at the end of FY14 was \$2.76 million. It also shows total deposits for FY15 (through February) as \$579,660. These funds are used for Departmental drug enforcement-related expenses, including technology, wiretap, computer equipment, investigations, and other related items. The fund also provides some funding for other departments, including the Drug Court, SCRAM monitoring bracelets for alcohol monitoring, K2 Spice drug testing for both the Department of Health and Human Services (DHHS) and the Department of Correction and Rehabilitation (DOCR), body armor purchases for the Sheriff, and substance abuse testing kits for DOCR.

Discussion Issues

- 1) Are assets still seized under civil laws even when defendants are charged criminally? If so, what is the procedure for a claimant to recover assets if he/she is not convicted?
- 2) When are assets criminally forfeited?
- 3) Under what circumstances may the County's DEFF funds be used by other Departments?

<u>This packet includes the following:</u>	©
Drug Enforcement Forfeiture Fund report to Council (December 15, 2014)	1-2
Drug Enforcement Forfeiture Fund report to Council (March 13, 2015)	3-4
Senate Bill 528 of 2015, "Criminal Procedure – Seizure and Forfeiture" (Vetoed)	5-14
Fiscal and Policy Note for Senate Bill 528	15-23
"Now 13 Police Departments Want a Cut," Washington Post (June 30, 2015)	24-27



DEPARTMENT OF POLICE

Isiah Leggett
County Executive

J. Thomas Manger
Chief of Police

MEMORANDUM

December 15, 2014

TO: The Honorable George Leventhal, President
Montgomery County Council

FROM: J. Thomas Manger
Chief of Police

SUBJECT: Drug Enforcement Forfeiture Fund

A handwritten signature in black ink, appearing to read "J. Thomas Manger", written over the "FROM:" field.

This memorandum and the attached report outline the status of the Drug Enforcement Forfeiture Fund, as required by the Montgomery County Code, Chapter 35, Police §35-13B. These documents show the current balance, expenses of the Drug Enforcement Forfeiture Fund (DEFF) to date in FY15, deposits from forfeitures between July 1, 2014, and November 30, 2014, and show a projected year-end balance for the end of our current fiscal year. Also attached for your review is an approved copy of the FY15 DEFF Anticipated Budget.

As you will see, total deposits for the year are \$309,237.33. I anticipate this number to increase between December 1, 2014, and June 30, 2015. I am not able to provide a projection on future deposits, however, as there is no timetable for each case that is adjudicated. We have appropriated \$55,000 for the Court to purchase SCRAM monitoring bracelets, as well as appropriating \$75,000 to the Drug Court. If you have any further questions, please do not hesitate to contact me.

Attachment
JTM:manm

Office of the Chief of Police

Public Safety Headquarters • 100 Edison Park Drive • Gaithersburg, Maryland 20878
www.montgomerycountymd.gov • www.mymcpnews.com • MCPDChief@montgomerycountymd.gov

montgomerycountymd.gov/311



301-251-4850 TTY

Drug Enforcement Fund	
FY15 Final Budget	
	Unreserved Balance FY14 \$ 2,763,406.00
	Deposits July 1 - November 30, 2014 \$ 309,237.33
EXPENSE	Budget
SID ENHANCEMENTS & OPERATIONAL EXPENSE	
Technology and Related Expenses	\$ 219,366.00
Communications	\$ 81,000.00
Wiretap	\$ 200,000.00
Computer Equipment	\$ 445,100.00
Car/Ino	\$ 10,000.00
Facilities	\$ 128,196.00
Investigations	\$ 65,000.00
Dues and Subscriptions	\$ 2,500.00
Travel/Education/Training	\$ 100,000.00
Vehicle Repairs	\$ 5,000.00
SID Vehicles	
Vehicle Purchases	\$ 240,000.00
Weapons and Tactical Equipment	\$ 10,000.00
Extra Departmental Project Support	\$ 207,343.00
Drug Court (Judge Rupp - Circuit Court - HHS Partnership)	\$ 75,000.00
SCRAM Monitoring Bracelets (Circuit Court - Alcohol monitoring)	\$ 55,000.00
K2 Spice drug testing for HHS/DOCR	\$ 25,000.00
sheriff's Body Armor - Grant Match	\$ 14,343.00
DOCR -substance abuse testing kits	\$ 38,000.00
Departmental Projects	\$ 1,016,000.00
SOD -Buildout	\$ 835,000.00
CODIS	\$ 171,000.00
Drug turn in boxes	\$ 10,000.00
	Grand Total \$ 2,729,505.00
Reserved for Future Relocation of S.I.D. - Projection Date August 2015	\$ 343,138.33



DEPARTMENT OF POLICE

Isiah Leggett
County Executive

J. Thomas Manger
Chief of Police

MEMORANDUM

March 13, 2015

TO: The Honorable George Leventhal, President
Montgomery County Council

FROM: J. Thomas Manger
Chief of Police

SUBJECT: Drug Enforcement Forfeiture Fund

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As you will see, total deposits for the year are \$579,660.16. I anticipate this number to increase between March 1, 2015, and June 30, 2015. I am not able to provide a projection on future deposits; however, as there is no timetable for each case that is adjudicated. We have appropriated \$55,000 for the Court to purchase SCRAM monitoring bracelets, as well as appropriating \$75,000 to the Drug Court. If you have any further questions, please do not hesitate to contact me.

Attachment
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Office of the Chief of Police

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Drug Enforcement Fund

FY15 Final Budget

	Unreserved Balance FY14	\$ 2,763,406.00
	Deposits July 1 - February 28, 2015	\$ 579,660.16
EXPENSE		Budget
SID ENHANCEMENTS & OPERATIONAL EXPENSE		
Technology and Related Expenses		\$ 219,366.00
Communications		\$ 81,000.00
Wiretap		\$ 200,000.00
Computer Equipment		\$ 445,100.00
Canine		\$ 10,000.00
Facilities		\$ 128,196.00
Investigations		\$ 65,000.00
Dues and Subscriptions		\$ 2,500.00
Travel/Education/Training		\$ 100,000.00
Vehicle Repairs		\$ 5,000.00
SID Vehicles		
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CODIS		\$ 171,000.00
Drug turn in boxes		\$ 10,000.00
	Grand Total	\$ 2,729,505.00
Reserved for Future Relocation of S.I.D. - Projection Date August 2015		\$ 613,561.16

SENATE BILL 528

E2

(5lr1517)

ENROLLED BILL

— Judicial Proceedings/Judiciary —

Introduced by Senators Raskin, Brochin, Currie, Feldman, Lee, Madaleno, Manno, Muse, Pinsky, and Zirkin

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Seizure and Forfeiture**

3 FOR the purpose of establishing a certain minimum amount of money that is subject to
4 forfeiture in connection with a controlled dangerous substance violation under
5 certain circumstances; repealing a certain presumption that certain money or
6 weapons are forfeitable; altering a certain provision of law so as to provide that
7 certain property may not be forfeited unless the State establishes by a preponderance
8 of the evidence that a violation of a certain law was committed with the property
9 owner's actual knowledge, rather than that the property may not be forfeited if the
10 owner establishes by a preponderance of the evidence that the violation of law was
11 committed without the owner's actual knowledge; requiring a certain seizing
12 authority to send certain information to the owner of certain property at a certain
13 time; prohibiting a certain seizing authority or prosecuting authority from directly
14 or indirectly transferring seized property to a federal law enforcement authority or

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber / conference committee amendments.



5

1 agency, with a certain ~~exception~~ *exceptions*; providing that if the owner of seized
 2 property is not charged with a violation of a certain law in connection with the
 3 seizure of the property within a certain amount of time, the property shall be
 4 immediately returned to the owner; repealing a certain rebuttable presumption that
 5 certain property is subject to forfeiture as proceeds; requiring a certain law
 6 enforcement agency to report, on an annual basis, certain information about each
 7 individual seizure and forfeiture completed by the agency under State or federal
 8 forfeiture law; authorizing the Maryland Statistical Analysis Center (MSAC) to
 9 require a law enforcement agency to provide relevant information not specified in
 10 this Act; requiring a certain law enforcement agency to file a certain report for the
 11 agency and the corresponding prosecutor's office with MSAC; requiring MSAC to
 12 develop a certain form, a process, and deadlines for certain data entry; requiring
 13 MSAC to compile certain submissions and issue a certain report; requiring MSAC to
 14 make certain reports available in a certain manner; requiring the Governor's Office
 15 of Crime Control and Prevention (GOCCP) to submit a certain report to the
 16 Governor, the General Assembly, and each law enforcement agency before a certain
 17 date each year; authorizing GOCCP to include in a certain report certain
 18 recommendations; requiring GOCCP to report information on law enforcement
 19 agencies not in compliance with this Act to the Police Training Commission;
 20 requiring the Police Training Commission to contact a certain law enforcement
 21 agency and request certain compliance; requiring GOCCP and the Police Training
 22 Commission to report certain noncompliance to the Governor and the Legislative
 23 Policy Committee of the General Assembly under certain circumstances; authorizing
 24 MSAC to recoup certain costs in a certain manner; authorizing a certain law
 25 enforcement agency to use forfeiture proceeds to pay the cost of compiling and
 26 reporting information required under this Act; defining certain terms; and generally
 27 relating to seizure and forfeiture.

28 BY repealing and reenacting, with amendments,
 29 Article – Criminal Procedure
 30 Section 12-102, 12-103(a), ~~12-301~~, and 12-312
 31 Annotated Code of Maryland
 32 (2008 Replacement Volume and 2014 Supplement)

33 BY adding to
 34 Article – Criminal Procedure
 35 ~~Section 12-211; and 13-601 to be under the new subtitle "Subtitle 6. Reporting"~~
 36 Section 12-104 and 12-212
 37 Annotated Code of Maryland
 38 (2008 Replacement Volume and 2014 Supplement)

39 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 40 That the Laws of Maryland read as follows:

41 **Article – Criminal Procedure**

42 12-102.

1 (a) The following are subject to forfeiture:

2 (1) controlled dangerous substances manufactured, distributed, dispensed,
3 acquired, or possessed in violation of the Controlled Dangerous Substances law;

4 (2) raw materials, products, and equipment used, or intended for use, in
5 manufacturing, compounding, processing, delivering, importing, or exporting a controlled
6 dangerous substance in violation of the Controlled Dangerous Substances law;

7 (3) property used or intended for use as a container for property described
8 in item (1) or (2) of this subsection;

9 (4) except as provided in § 12-103 of this subtitle, conveyances, including
10 aircraft, vehicles, or vessels used or intended to be used to transport, or facilitate the
11 transportation, sale, receipt, possession, or concealment of property described in item (1) or
12 (2) of this subsection;

13 (5) books, records, and research, including formulas, microfilm, tapes, and
14 data used or intended for use in violation of the Controlled Dangerous Substances law;

15 (6) subject to subsection (b) of this section, money **OF MORE THAN \$300**
16 or weapons used or intended to be used in connection with the unlawful manufacture,
17 distribution, dispensing, or possession of a controlled dangerous substance or controlled
18 paraphernalia;

19 (7) SUBJECT TO SUBSECTION (B) OF THIS SECTION, ANY AMOUNT OF
20 MONEY THAT IS DIRECTLY CONNECTED TO THE UNLAWFUL DISTRIBUTION OF A
21 CONTROLLED DANGEROUS SUBSTANCE;

22 (8) drug paraphernalia under § 5-619 of the Criminal Law Article;

23 ~~(9)~~ (9) controlled paraphernalia under § 5-620 of the Criminal Law
24 Article;

25 ~~(10)~~ (10) except as provided in § 12-103 of this subtitle, the remaining
26 balance of the proceeds of a sale by a holder of an installment sale agreement under §
27 12-626 of the Commercial Law Article of goods seized under this subtitle;

28 ~~(11)~~ (11) except as provided in § 12-103 of this subtitle, real property; and

29 ~~(12)~~ (12) everything of value furnished, or intended to be furnished, in
30 exchange for a controlled dangerous substance in violation of the Controlled Dangerous
31 Substances law, all proceeds traceable to the exchange, and all negotiable instruments and
32 securities used, or intended to be used, to facilitate any violation of the Controlled
33 Dangerous Substances law.

1 (b) (1) [(i) Money or weapons that are found in close proximity to a
2 contraband controlled dangerous substance, controlled paraphernalia, or forfeitable
3 records of the importation, manufacture, or distribution of controlled dangerous substances
4 are contraband and presumed to be forfeitable.

5 (ii) A claimant of money or weapons has the burden to rebut the
6 presumption.

7 (2)] All rights in, title to, and interest in the money or weapons immediately
8 shall vest in:

9 (i) the State, if the seizing authority was a State unit;

10 (ii) the county in which the money or weapons were seized, if the
11 seizing authority was a county law enforcement unit, including a sheriff's office; or

12 (iii) the municipal corporation in which the money or weapons were
13 seized, if the seizing authority was a law enforcement unit of a municipal corporation.

14 [(3)] (2) The money or weapons may be returned to the claimant only as
15 this title provides.

16 12-103.

17 (a) Property or an interest in property described in ~~§ 12-102(a)(4), (10), and (11)~~
18 **§ 12-102(A)(4), (11), AND (12)** of this subtitle may not be forfeited [if the owner] UNLESS
19 THE STATE establishes by a preponderance of the evidence that the violation of the
20 Controlled Dangerous Substances law was committed [without] WITH the owner's actual
21 knowledge.

22 **12-104.**

23 (A) **WITHIN 30 DAYS AFTER THE SEIZURE OF PROPERTY BY A SEIZING**
24 **AUTHORITY, THE SEIZING AUTHORITY SHALL SEND BY FIRST-CLASS MAIL WRITTEN**
25 **INFORMATION TO THE OWNER OF THE SEIZED PROPERTY, IF KNOWN, PROVIDING:**

26 (1) **THE LOCATION AND DESCRIPTION OF THE SEIZED PROPERTY; AND**

27 (2) **THE NAME AND CONTACT INFORMATION OF AN INDIVIDUAL OR**
28 **OFFICE WITHIN THE SEIZING AUTHORITY THAT CAN PROVIDE FURTHER**
29 **INFORMATION CONCERNING THE SEIZED PROPERTY, INCLUDING INFORMATION ON**
30 **HOW THE PROPERTY MAY BE RETURNED TO THE OWNER.**

1 (B) THE WRITTEN INFORMATION REQUIRED UNDER THIS SECTION SHALL
 2 STATE: "SEIZURE AND FORFEITURE OF PROPERTY IS A LEGAL MATTER. NOTHING IN
 3 THIS DOCUMENT MAY BE CONSTRUED AS LEGAL ADVICE. YOU MAY WISH TO CONSULT
 4 AN ATTORNEY CONCERNING THIS MATTER."

5 ~~12-211, 12-212.~~

6 A SEIZING AUTHORITY OR PROSECUTING AUTHORITY MAY NOT DIRECTLY OR
 7 INDIRECTLY TRANSFER SEIZED PROPERTY TO A FEDERAL LAW ENFORCEMENT
 8 AUTHORITY OR AGENCY UNLESS ~~THE CASE;~~

9 (1) A CRIMINAL CASE RELATED TO THE SEIZURE IS PROSECUTED IN
 10 THE FEDERAL COURT SYSTEM UNDER FEDERAL LAW; OR

11 (2) THE OWNER OF THE PROPERTY CONSENTS TO THE FORFEITURE.

12 ~~12-301.~~

13 ~~(A) Except as provided in § 12-304(c) of this subtitle, if property is seized under §~~
 14 ~~12-202(a)(2)(iv) and (v) of this title because there is probable cause to believe that the~~
 15 ~~property is directly or indirectly dangerous to health or safety and that the property was or~~
 16 ~~will be used to violate this title, forfeiture proceedings under this subtitle shall be filed~~
 17 ~~promptly.~~

18 ~~(B) IF THE OWNER OF SEIZED PROPERTY IS NOT CHARGED WITH A~~
 19 ~~VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES LAW IN CONNECTION~~
 20 ~~WITH THE SEIZURE OF THE PROPERTY WITHIN 90 180 DAYS, THE PROPERTY SHALL~~
 21 ~~BE IMMEDIATELY RETURNED TO THE OWNER.~~

22 12-312.

23 (a) [(1)] Except as provided in subsection (b) of this section, [there is a
 24 rebuttable presumption that] property or part of a property in which a person has an
 25 ownership interest is subject to forfeiture as proceeds, if the State establishes by clear and
 26 convincing evidence that:

27 [(i)] (1) the person has violated §§ 5-602 through 5-609, §§ 5-612
 28 through 5-614, § 5-617, § 5-618, or § 5-628 of the Criminal Law Article or has attempted
 29 or conspired to violate Title 5 of the Criminal Law Article;

30 [(ii)] (2) the property was acquired by the person during the
 31 violation or within a reasonable time after the violation; and

32 [(iii)] (3) there was no other likely source for the property.

1 [(2) A claimant of the property has the burden of proof to rebut the
2 presumption in paragraph (1) of this subsection.]

3 (b) Real property used as the principal family residence may not be forfeited
4 under this section unless:

5 (1) an owner of the real property was convicted of a crime described under
6 subsection (a)(1) of this section; or

7 (2) the real property is covered by § 12-103(d)(2) of this title.

8 ~~SUBTITLE 6. REPORTING.~~

9 ~~13-601.~~

10 (A) (1) ~~IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~
11 ~~INDICATED.~~

12 (2) ~~“GOCCP” MEANS THE GOVERNOR’S OFFICE OF CRIME CONTROL~~
13 ~~AND PREVENTION.~~

14 (3) ~~“LAW ENFORCEMENT AGENCY” MEANS A POLICE FORCE, A~~
15 ~~MULTIJURISDICTIONAL TASK FORCE, A FIRE DEPARTMENT, OR ANY OTHER LOCAL,~~
16 ~~COUNTY, OR STATE AGENCY THAT HAS THE AUTHORITY UNDER STATE LAW OR~~
17 ~~OPERATES IN COOPERATION WITH A FEDERAL AGENCY UNDER FEDERAL LAW TO~~
18 ~~ENGAGE IN SEIZURE AND FORFEITURE.~~

19 (4) ~~“MSAC” MEANS THE MARYLAND STATISTICAL ANALYSIS~~
20 ~~CENTER OF GOCCP.~~

21 (B) ~~ON AN ANNUAL BASIS, EACH LAW ENFORCEMENT AGENCY SHALL~~
22 ~~REPORT THE FOLLOWING INFORMATION ABOUT EACH INDIVIDUAL SEIZURE AND~~
23 ~~FORFEITURE COMPLETED BY THE AGENCY UNDER STATE FORFEITURE LAW AND~~
24 ~~FEDERAL FORFEITURE LAW:~~

25 (1) ~~DATA ON SEIZURES AND FORFEITURES, INCLUDING:~~

26 (I) ~~THE DATE THAT CURRENCY, VEHICLES, HOUSES, OR OTHER~~
27 ~~TYPES OF PROPERTY WERE SEIZED;~~

28 (II) ~~THE TYPE OF PROPERTY SEIZED, INCLUDING YEAR, MAKE,~~
29 ~~AND MODEL, AS APPLICABLE;~~

30 (III) ~~THE TYPE OF ALLEGED CRIME ASSOCIATED WITH THE~~
31 ~~SEIZURE OF THE PROPERTY;~~

1 ~~(IV) THE OUTCOME OF RELATED CRIMINAL ACTION, INCLUDING~~
2 ~~WHETHER CHARGES WERE BROUGHT, A PLEA BARGAIN WAS REACHED, A~~
3 ~~CONVICTION WAS OBTAINED, OR AN ACQUITTAL WAS ISSUED;~~

4 ~~(V) WHETHER THE PROCEDURE WAS A CRIMINAL FORFEITURE~~
5 ~~OR CIVIL FORFEITURE;~~

6 ~~(VI) IF THE PROCEDURE WAS A CIVIL FORFEITURE, WHETHER~~
7 ~~THE PROCEDURE WAS ADMINISTRATIVE, JUDICIAL, OR OTHER;~~

8 ~~(VII) WHETHER THE VENUE OF THE FORFEITURE CASE WAS AN~~
9 ~~ADMINISTRATIVE AGENCY, A SMALL CLAIMS COURT, A CIVIL COURT, A CRIMINAL~~
10 ~~COURT, OR ANY OTHER VENUE;~~

11 ~~(VIII) WHETHER THE PROPERTY OWNER WAS REPRESENTED BY~~
12 ~~AN ATTORNEY IN THE FORFEITURE CASE;~~

13 ~~(IX) THE MARKET VALUE OF THE PROPERTY SEIZED;~~

14 ~~(X) THE GROSS AMOUNT RECEIVED FROM THE FORFEITURE;~~

15 ~~(XI) THE TOTAL ADMINISTRATIVE AND OTHER EXPENSES~~
16 ~~DEDUCTED AS PART OF THE FORFEITURE PROCESS;~~

17 ~~(XII) THE NET AMOUNT RECEIVED FROM THE FORFEITURE;~~

18 ~~(XIII) THE DISPOSITION OF THE PROPERTY FOLLOWING SEIZURE,~~
19 ~~INCLUDING WHETHER THE PROPERTY WAS:~~

20 ~~1. RETURNED TO THE OWNER;~~

21 ~~2. DESTROYED; OR~~

22 ~~3. SOLD OR RETAINED AFTER FORFEITURE; AND~~

23 ~~(XIV) THE DATE OF THE DISPOSITION OF PROPERTY; AND~~

24 ~~(2) DATA ON EXPENDITURES OF FORFEITURE FUNDS BY THE LAW~~
25 ~~ENFORCEMENT AGENCY, INCLUDING FUNDS SPENT ON:~~

26 ~~(I) CRIME, GANG, AND SUBSTANCE ABUSE PREVENTION~~
27 ~~PROGRAMS;~~

- 1 ~~(II) WITNESS PROTECTION;~~
- 2 ~~(III) VICTIM REPARATIONS;~~
- 3 ~~(IV) INFORMANT FEES AND BUY MONEY;~~
- 4 ~~(V) REGULAR TIME SALARIES, OVERTIME PAY, AND EMPLOYEE~~
5 ~~BENEFITS FOR PROSECUTORS;~~
- 6 ~~(VI) REGULAR TIME SALARIES, OVERTIME PAY, AND EMPLOYEE~~
7 ~~BENEFITS FOR SWORN LAW ENFORCEMENT AGENCY PERSONNEL OTHER THAN~~
8 ~~PROSECUTORS;~~
- 9 ~~(VII) REGULAR TIME SALARIES, OVERTIME PAY, AND EMPLOYEE~~
10 ~~BENEFITS FOR UNSWORN LAW ENFORCEMENT AGENCY PERSONNEL OTHER THAN~~
11 ~~PROSECUTORS;~~
- 12 ~~(VIII) PROFESSIONAL OR OUTSIDE SERVICES, INCLUDING~~
13 ~~SERVICES RELATED TO AUDITING, COURT REPORTING, EXPERT WITNESSES, AND~~
14 ~~OTHER COURT COSTS;~~
- 15 ~~(IX) TRAVEL AND MEALS;~~
- 16 ~~(X) ENTERTAINMENT;~~
- 17 ~~(XI) TRAINING;~~
- 18 ~~(XII) CONFERENCES;~~
- 19 ~~(XIII) VEHICLE PURCHASES;~~
- 20 ~~(XIV) CANINES, FIREARMS, AND EQUIPMENT, INCLUDING~~
21 ~~TACTICAL GEAR;~~
- 22 ~~(XV) CAPITAL EXPENDITURES, INCLUDING FURNITURE,~~
23 ~~COMPUTERS, AND OFFICE EQUIPMENT; AND~~
- 24 ~~(XVI) OTHER USES.~~
- 25 ~~(C) MSAC MAY REQUIRE A LAW ENFORCEMENT AGENCY TO PROVIDE~~
26 ~~RELEVANT INFORMATION NOT SPECIFIED IN SUBSECTION (B) OF THIS SECTION.~~

1 ~~(D) (1) EACH LAW ENFORCEMENT AGENCY SHALL FILE WITH MSAC THE~~
2 ~~REPORT REQUIRED UNDER SUBSECTION (B) OF THIS SECTION FOR THE LAW~~
3 ~~ENFORCEMENT AGENCY AND THE CORRESPONDING PROSECUTOR'S OFFICE.~~

4 ~~(2) THE LAW ENFORCEMENT AGENCY SHALL FILE SEPARATE~~
5 ~~REPORTS FOR FORFEITURES COMPLETED UNDER STATE FORFEITURE LAW AND~~
6 ~~FEDERAL FORFEITURE LAW.~~

7 ~~(3) A NULL REPORT SHALL BE FILED BY A LAW ENFORCEMENT~~
8 ~~AGENCY THAT DID NOT ENGAGE IN SEIZURES OR FORFEITURES DURING THE~~
9 ~~REPORTING PERIOD.~~

10 ~~(E) (1) MSAC SHALL DEVELOP A STANDARD FORM, A PROCESS, AND~~
11 ~~DEADLINES FOR ELECTRONIC DATA ENTRY FOR ANNUAL SUBMISSION OF~~
12 ~~FORFEITURE DATA BY LAW ENFORCEMENT AGENCIES.~~

13 ~~(2) MSAC SHALL COMPILE THE SUBMISSIONS AND ISSUE AN~~
14 ~~AGGREGATE REPORT OF ALL FORFEITURES IN THE STATE.~~

15 ~~(F) (1) BY MARCH 1 OF EACH YEAR, MSAC SHALL MAKE AVAILABLE ON~~
16 ~~MSAC'S WEB SITE THE REPORTS SUBMITTED BY LAW ENFORCEMENT AGENCIES~~
17 ~~AND MSAC'S AGGREGATE REPORT.~~

18 ~~(2) GOCCP SHALL SUBMIT THE AGGREGATE REPORT TO THE~~
19 ~~GOVERNOR, THE GENERAL ASSEMBLY, AS PROVIDED IN § 2-1246 OF THE STATE~~
20 ~~GOVERNMENT ARTICLE, AND EACH LAW ENFORCEMENT AGENCY BEFORE~~
21 ~~SEPTEMBER 1 OF EACH YEAR.~~

22 ~~(G) GOCCP MAY INCLUDE, WITH MSAC'S AGGREGATE REPORT,~~
23 ~~RECOMMENDATIONS TO THE LEGISLATURE TO IMPROVE FORFEITURE STATUTES TO~~
24 ~~BETTER ENSURE THAT FORFEITURE PROCEEDINGS ARE REPORTED AND HANDLED~~
25 ~~IN A MANNER THAT IS FAIR TO CRIME VICTIMS, INNOCENT PROPERTY OWNERS,~~
26 ~~SECURED INTEREST HOLDERS, CITIZENS, AND TAXPAYERS.~~

27 ~~(H) (1) IF A LAW ENFORCEMENT AGENCY FAILS TO COMPLY WITH THE~~
28 ~~REPORTING PROVISIONS OF THIS SECTION, GOCCP SHALL REPORT THE~~
29 ~~NONCOMPLIANCE TO THE POLICE TRAINING COMMISSION.~~

30 ~~(2) THE POLICE TRAINING COMMISSION SHALL CONTACT THE LAW~~
31 ~~ENFORCEMENT AGENCY AND REQUEST THAT THE AGENCY COMPLY WITH THE~~
32 ~~REQUIRED REPORTING PROVISIONS.~~

33 ~~(3) IF THE LAW ENFORCEMENT AGENCY FAILS TO COMPLY WITH THE~~
34 ~~REQUIRED REPORTING PROVISIONS WITHIN 30 DAYS AFTER BEING CONTACTED BY~~

1 ~~THE POLICE TRAINING COMMISSION, GOCCP AND THE POLICE TRAINING~~
2 ~~COMMISSION JOINTLY SHALL REPORT THE NONCOMPLIANCE TO THE GOVERNOR~~
3 ~~AND THE LEGISLATIVE POLICY COMMITTEE OF THE GENERAL ASSEMBLY.~~

4 ~~(1) MSAC MAY RECOUP ITS COSTS BY CHARGING A FEE TO LAW~~
5 ~~ENFORCEMENT AGENCIES THAT ENGAGE IN SEIZURES OR FORFEITURES DURING~~
6 ~~THE REPORTING PERIOD.~~

7 ~~(2) A LAW ENFORCEMENT AGENCY MAY USE FORFEITURE PROCEEDS~~
8 ~~TO PAY THE COST OF COMPILING AND REPORTING DATA UNDER THIS SUBTITLE,~~
9 ~~INCLUDING ANY FEE IMPOSED BY MSAC.~~

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2015.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 528

(Senator Raskin, *et al.*)

Judicial Proceedings

Judiciary

Criminal Procedure - Seizure and Forfeiture

This bill makes several changes to statutes pertaining to seizure and forfeiture of property in connection with violations of the State's controlled dangerous substances laws.

The bill specifies that cash of \$300 or less may not be forfeited unless directly connected to the unlawful distribution of a controlled dangerous substance. The bill also alters the burden of proof in specified forfeiture proceedings by requiring that the State prove by a preponderance of the evidence that the violation of the controlled dangerous substances law was committed with the owner's actual knowledge. In addition, the bill requires law enforcement to send specified written information to the owner of seized property within 30 days of the seizure and prohibits the transfer of seized property to the federal government except under specified conditions.

Fiscal Summary

State Effect: General fund revenues decrease to the extent that the bill's changes to the seizure and forfeiture process decrease general fund revenues from forfeitures in controlled dangerous substances cases. Any potential minimal increase in State expenditures for State law enforcement agencies to comply with the bill's notice requirements is not expected to materially affect State finances.

Local Effect: Local revenues decrease to the extent that the bill's changes to the seizure and forfeiture process decrease local revenues from forfeitures in controlled dangerous substances cases. Any potential minimal increase in local expenditures for local law enforcement agencies to comply with the bill's notice requirements is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Bill Summary:

Property Subject to Forfeiture: The bill removes the following from the statutorily specified list of property and items subject to forfeiture in a controlled dangerous substances case: money of \$300 or less used or intended to be used in connection with the unlawful manufacture, distribution, dispensing, or possession of a controlled dangerous substance or controlled paraphernalia. However, the bill authorizes seizure of any amount of money that is directly connected to drug distribution.

The bill repeals the statutory provision that money or weapons that are found in close proximity to a contraband controlled dangerous substance, controlled paraphernalia, or forfeitable records of the importation, manufacture, or distribution of controlled dangerous substances are contraband and presumed to be forfeitable. The bill also removes the burden on the claimant of seized money or weapons to rebut this presumption.

Forfeiture Procedures: The State must prove, by a preponderance of the evidence, that the violation of the controlled dangerous substance law was committed *with* the owner's actual knowledge before the following property or an interest in the following property can be forfeited: (1) conveyances used or intended to be used to transport controlled dangerous substances or specified activity related to controlled dangerous substance violations; (2) real property; and (3) everything of value furnished or intended to be furnished in exchange for a controlled dangerous substance in violation of the controlled dangerous substance law, all proceeds traceable to the exchange, and all negotiable instruments and securities used, or intended to be used to facilitate any violation of the controlled dangerous substance law.

Under current law, this property is subject to forfeiture unless the owner proves, by a preponderance of the evidence, that the violation was committed without the owner's actual knowledge.

The direct or indirect transfer of seized property to a federal law enforcement authority or agency is prohibited unless a criminal case related to the seizure is prosecuted in the federal court system under federal law or the property owner consents to the forfeiture.

The bill establishes that a claimant's property is subject to forfeiture if the State establishes, by clear and convincing evidence, that the claimant violated specified provisions of the controlled dangerous substance law or attempted or conspired to violate the controlled dangerous substance law. Accordingly, the bill repeals the rebuttable presumption and the claimant's burden of proof to rebut that presumption.

Notification Requirements: Within 30 days after the seizure of property, a seizing authority must send written information via first-class mail to the owner of seized property, if known, providing (1) the location and description of the seized property and (2) the name and contact information of an individual or office within the seizing authority that can provide further information concerning the seized property, including information on how the property may be returned to the owner. The written information must contain a disclaimer that the document does not constitute legal advice, as specified in the bill.

Current Law: While several provisions of State law may provide for the seizure and forfeiture of property under certain circumstances, one primary example of property that is subject to forfeiture is property seized in connection with a violation of the controlled dangerous substances law. Seizures and forfeitures are subject to extensive procedural requirements, as specified in statute.

Property Subject to Seizure: A Schedule I substance must be seized and summarily forfeited to the State if the substance is (1) possessed, transferred, sold, or offered for sale in violation of the law or (2) possessed by the State and its owner is not known. A plant may be seized and summarily forfeited if it is one from which a Schedule I or Schedule II substance may be derived and it (1) has been planted or cultivated in violation of the law; (2) has an unknown owner or cultivator; or (3) is a wild growth.

Property Subject to Forfeiture: The following are subject to forfeiture:

- (1) controlled dangerous substances manufactured, distributed, dispensed, acquired, or possessed in violation of the controlled dangerous substances law;
- (2) raw materials, products, and equipment used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting a controlled dangerous substance in violation of the controlled dangerous substances law;
- (3) property used or intended for use as a container for property described above;
- (4) conveyances, including aircraft, vehicles, or vessels used or intended to be used to transport, or facilitate the transportation, sale, receipt, possession, or concealment of property described items (1) or (2);
- (5) books, records, and research, including formulas, microfilm, tapes, and data used or intended for use in violation of the controlled dangerous substances law;
- (6) money or weapons used or intended to be used in connection with the unlawful manufacture, distribution, dispensing, or possession of a controlled dangerous substance or controlled paraphernalia;
- (7) drug paraphernalia;
- (8) controlled paraphernalia;
- (9) the remaining balance of the proceeds of a sale by a holder of an installment sale agreement of goods seized;
- (10) real property; and

- (11) everything of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the controlled dangerous substances law, all proceeds traceable to the exchange, and all negotiable instruments and securities used, or intended to be used, to facilitate any violation of the controlled dangerous substances law.

Money or weapons that are found in close proximity to a contraband controlled dangerous substance, controlled paraphernalia, or forfeitable records of the importation, manufacture, or distribution of controlled dangerous substances are contraband and presumed to be forfeitable. A claimant of money or weapons has the burden to rebut this presumption.

Conditions Excluding Property from Forfeiture: Property or an interest in conveyances, real property, everything of value furnished or intended to be furnished in exchange for a controlled dangerous substance, all proceeds traceable to the exchange, and all applicable negotiable instruments and securities used or intended to be used to facilitate a controlled dangerous substances violation may not be forfeited if the owner establishes by a preponderance of the evidence that the violation of the controlled dangerous substances law was committed without the owner's actual knowledge. Additional exclusions apply to conveyances used as a common carrier or vehicle for hire, conveyances forfeited when a person other than the owner illegally possessed the conveyance, real property associated with specified controlled dangerous substance violations, and property used as the principal family residence.

Forfeiture of Ownership Interest in Property: There is a rebuttable presumption that property or part of a property in which a person has an ownership interest is subject to forfeiture as proceeds, if the State establishes by clear and convincing evidence that:

- the person has violated specified statutory provisions pertaining to controlled dangerous substances or has attempted or conspired to violate State controlled dangerous substances laws;
- the property was acquired by the person during the violation or within a reasonable time after the violation; and
- there was no other likely source for the property.

A claimant of the property has the burden of proof to rebut the presumption. Real property used as the principal family residence may not be forfeited unless an owner of the real property (1) was convicted of one of a list of specified crimes or (2) was not convicted, but failed to appear for a required court appearance and failed to surrender to the jurisdiction of the court within 180 days after the required court appearance.

Background: Asset forfeiture programs exist nationwide at the federal, State, and local levels. Forfeitures typically fall into two categories – criminal forfeiture and civil forfeiture.

Criminal forfeiture actions are brought against a criminal defendant. In criminal forfeiture, the government must prove beyond a reasonable doubt that the property in question was used for or derived from the underlying crime. Criminal forfeitures occur after an individual has been convicted; an action is then brought against the individual, to which civil liberty protections apply.

Civil forfeiture actions are brought against property, not people. In fact, under civil forfeiture, criminal charges do not need to be brought against the owner of the property, and the government can pursue property even if the property owner was not involved in the underlying crime. Civil forfeitures occur irrespective of a conviction; an action is brought against an individual's property, to which civil liberty protections do not apply. The standard of proof for civil forfeiture is considerably lower than the criminal standard, in that the government must only prove by a preponderance of the evidence, rather than beyond a reasonable doubt, that the property in question was used or obtained illegally.

Forfeiture programs, particularly civil forfeiture, have received increased scrutiny in recent years, with news reports of individuals facing the loss of a home or property without ever being charged with a crime, while fighting to keep their property in a system they claim is stacked against them. Challenging civil forfeiture can be costly and time consuming, which can discourage citizens from initiating the process to retrieve their property.

Proponents of forfeiture programs claim asset forfeiture is an important law enforcement tool that assists in dismantling criminal organizations and offsets the cost of criminal investigations. Opponents of these programs argue that they lead to potential corruption, improper usage, and civil liberty violations. Critics of forfeiture programs claim the programs create financial incentives for officers to seize assets, which cause "policing for profit." Law enforcement agencies that participate in a forfeiture are directly rewarded for their involvement, which creates concerns that officers will focus more on crimes that result in seized assets than on any other activity. With many law enforcement agencies facing shrinking budgets, there is also concern that departments become dependent on forfeiture money, which in turn creates pressure on officers to seize assets. Critics also claim that these programs have resulted in fishing expeditions for cash and specific valuables during traffic stops and warrantless searches of vehicles.

Another criticism of these programs is that the money is used to purchase items that are unnecessary, wasteful, or contribute to the militarization of police forces. Although replacing bullet-proof vests for officers may seem to be a reasonable purchase, others

question the merits of small-town police forces owning Humvees, automatic weapons, or gas grenades purchased with forfeiture proceeds.

While the laws in some jurisdictions allow a seizing agency to retain the proceeds from forfeited property, Maryland law requires that the proceeds from forfeitures processed under State law be deposited into the general fund of the State or the appropriate local government.

Federal Asset Forfeiture Program: The U.S. Department of Justice (DOJ) Asset Forfeiture Program (AFP) was established by the Comprehensive Crime Control Act of 1984. The program's objective is the seizure and forfeiture of assets that represent the proceeds of, or were used to facilitate, federal crimes. The U.S. Marshals Service, under DOJ, is responsible for the management and disposal of forfeited property. Other components of DOJ involved in the AFP include the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); the Drug Enforcement Administration (DEA); the Federal Bureau of Investigation (FBI); and the U.S. Attorneys' Offices. Participating components outside of DOJ include the U.S. Department of Agriculture (Office of Inspector General), U.S. Department of Defense (Criminal Investigative Service), U.S. Department of State (Bureau of Diplomatic Security), U.S. Food and Drug Administration (Office of Criminal Investigations), and the U.S. Postal Inspection Service (USPIS).

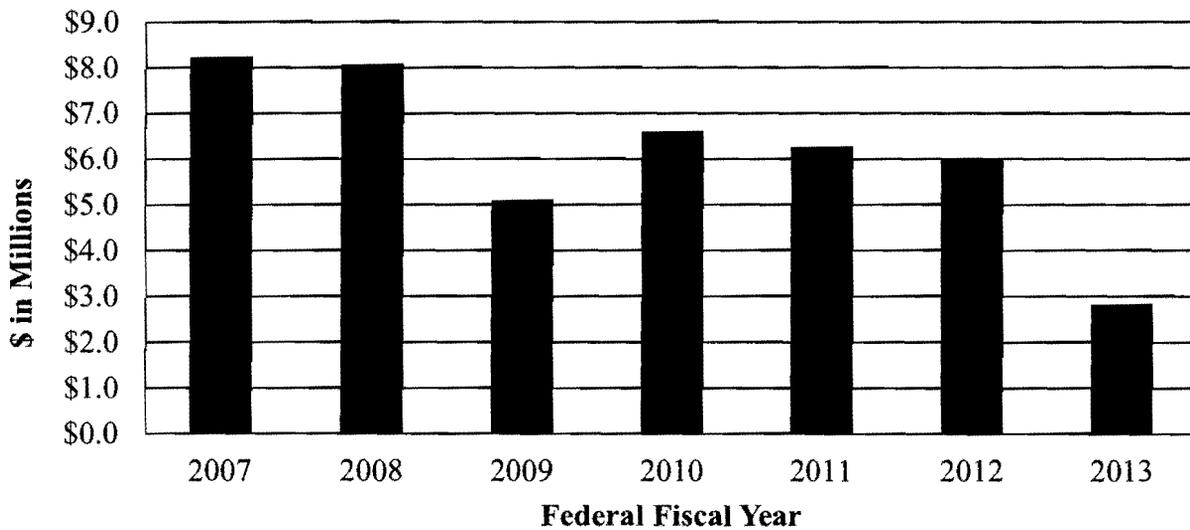
Under the federal Equitable Sharing Program, the net proceeds from sales of forfeited assets are shared with the state and local law enforcement agencies that participated in the seizure. There are two options for state and local forfeitures: joint investigative and adoptive. Joint investigative forfeitures occur when federal law enforcement agencies cooperate with state or local law enforcement agencies to seize assets; adoptive forfeitures occur when state and local law enforcement agencies forfeit assets from state crimes to be processed at the federal level. DOJ advises that adoption cases represent a small percentage of the Equitable Sharing Program; joint task forces and joint investigations represent the majority of the program. The FBI, DEA, ATF, and USPIS are the only agencies participating in the DOJ Asset Forfeiture Program that directly adopt seizures by state and local law enforcement agencies.

According to DOJ, with respect to joint investigations and adoptions, the percentage of funds shared is based on the level of participation/effort of each agency and is determined on a case-by-case basis. Joint task forces often determine sharing percentages based on prearranged written sharing agreements. In adoption cases, the federal government retains at least 20% of the net proceeds from the sale of an adopted asset. This 20% minimum typically applies to cases in which the state/local law enforcement agency performed all of the pre-seizure activity and the federal government merely processed the forfeiture.

In October 2014, the Department of State Police (DSP) advised that it processes all of its forfeitures through the AFP.

In federal fiscal year 2013, State and local law enforcement agencies in Maryland received \$2.8 million in Equitable Sharing payments from the DOJ Asset Forfeiture Fund (AFF). Local law enforcement agencies received \$2.25 million, or 80.3% of this amount. **Exhibit 1** shows the amount Maryland received from the AFF from federal fiscal 2007 to 2013. According to the Equitable Sharing Program, AFF money may only be used for specific law enforcement purposes, such as investigative support, training, equipment, facility upgrades, and educational programs. Funding is usually used for one-time purposes and is meant to supplement, not supplant, law enforcement agencies' budgets.

Exhibit 1
U.S. Department of Justice Assets Forfeiture Fund
Amount Shared with Maryland Law Enforcement Agencies
Federal Fiscal Years 2007-2013



Source: U.S. Department of Justice and National Conference of State Legislatures

On January 16, 2015, U.S. Attorney General Eric Holder issued an order, effective immediately, prohibiting federal agencies from “adopting” assets seized by state and local law enforcement agencies. However, the order contains an exception for property that directly relates to public safety concerns (e.g., firearms, ammunition, explosives, and property associated with child pornography). Examples of property subject to the order include vehicles, valuables, cash, and other monetary instruments.

The U.S. Department of the Treasury issued a similar policy for its forfeiture programs.

State Fiscal Effect: General fund revenues decrease to the extent that the bill's changes to the seizure and forfeiture process under State law decreases the amount of property seized by and forfeited to State law enforcement agencies. Any potential minimal increase in State expenditures for State law enforcement agencies to comply with the bill's notice requirements is not expected to materially affect State finances.

As previously mentioned, proceeds from property forfeited and processed under Maryland law must be deposited into the State's general fund or the general fund of the applicable local government. Under the federal Equitable Sharing Program, State and local law enforcement agencies can seize property under State law and request that a federal agency take the seized asset and forfeit it under federal law. The bill prohibits a seizing authority or prosecuting authority from directly or indirectly transferring seized property to a federal law enforcement authority unless a criminal case related to the seizure is prosecuted in the federal court system under federal law or the owner of the property consents to the forfeiture. The U.S. Attorney General's recent order produces a similar effect. This estimate assumes that property forfeited due to the efforts of federal/State joint task forces and investigations is connected to federal criminal cases.

As previously mentioned, DSP advised in October 2014 that it processes seized assets exclusively through the federal Asset Forfeiture Program. The Natural Resources Police (NRP) within the Department of Natural Resources (DNR) advises that it participates in the federal Equitable Sharing Program as a member of federal task forces. Other than this information, it is unclear to what extent local law enforcement agencies in the State participate in the federal program, the frequency with which they participate or plan to participate in the federal program following the Attorney General's January 2015 order, and to what extent they would seize and forfeit assets under State law given the changing landscape of forfeitures after the Attorney General's order and the provisions of the bill.

Regardless, to the extent that law enforcement agencies seize and forfeit assets under State law, the bill's restrictions on the types of property that may be seized and the mandatory return of seized property when charges have not been brought against the owner of the seized property reduce State general fund revenues from forfeiture proceeds. The bill's changes to the "rebuttable presumption" in forfeiture proceedings may also result in reduced State general fund revenues. The magnitude of any such decrease cannot be reliably determined at this time because data is not readily available on the frequency with which the property prohibited from seizure/forfeiture under the bill is seized by local authorities and the frequency with which charges are not brought against the owner of the property within 90 days of the seizure.

This analysis assumes that agencies are in compliance with the bill's requirements when they seize property as part of a federal task force.

Local Revenues: Local revenues decrease to the extent that the bill's alteration of seizure/forfeiture eligibility and procedures reduces the amount of property seized by and forfeited to local law enforcement agencies. Any potential minimal increase in local expenditures for local law enforcement agencies to comply with the bill's notice requirements is not expected to materially affect local finances.

The Montgomery County Police Department (MCPD) advises that the bill has the potential to reduce the amount of revenue available to the department (which is used to support the department's needs related to drug enforcement) by restricting items subject to seizure and mandating the return of seized property in certain circumstances. MCPD advises that it is impossible to quantify the fiscal impact because the department cannot predict the scope of future investigations and the corresponding impact of the bill's proposed changes to seizures and forfeitures. MCPD also advises that many drug investigations involve multiple agencies as part of local, State, or federal task forces, and in those cases, forfeited assets are divided between the participating agencies.

Additional Information

Prior Introductions: None.

Cross File: HB 360 (Delegate Vallario, *et al.*) - Judiciary.

Information Source(s): Montgomery County, Town of Leonardtown, Governor's Office of Crime Control and Prevention, Department of Natural Resources, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, State's Attorneys' Association, Maryland Department of Transportation, U.S. Department of Justice, U.S. Department of the Treasury, Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2015
mar/kdm Revised - Senate Third Reader - March 30, 2015
Revised - Enrolled Bill - May 18, 2015

Analysis by: Amy A. Devadas

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The Washington Post**now 13**

police departments want a cut

By Christopher Ingraham June 30

In February 2014, Drug Enforcement Administration task force officers at Cincinnati/Northern Kentucky Airport seized \$11,000 in cash from 24-year-old college student Charles Clarke. They didn't find any guns, drugs or contraband on him. But, according to an affidavit filled out by one of the agents, the task force officers reasoned that the cash was the proceeds of drug trafficking, because Clarke was traveling on a recently-purchased one-way ticket, he was unable to provide documentation for where the money came from, and his checked baggage had an odor of marijuana. (He was a marijuana smoker.)

Clarke's cash, which says he he spent five years saving up, was seized under civil asset forfeiture, where cops are able to take cash and property from people who are never convicted of -- and in some cases, never even charged with -- a crime. The DEA maintains that asset forfeiture is an important crime-fighting tool: "By attacking the financial infrastructure of drug trafficking organizations world-wide, DEA has disrupted and dismantled major drug trafficking organizations and their supply chains, thereby improving national security and increasing the quality of life for the American public."

But the practice has become contentious, in part because agencies are generally allowed to keep a share of the cash and property they seize. In cases like Clarke's, where local and federal agents cooperate on a seizure, federal agencies typically keep at least 20 percent of the assets, while local cops split the remainder among themselves. Critics argue that this creates a profit motive and leads to "policing for profit."

[Stop and seize: Aggressive police take hundreds of millions of dollars from motorists not charged with crimes]

Two local agencies were involved in the seizure of Clarke's cash: the Cincinnati/Northern Kentucky Airport Police, and the Covington Police Department, which is the home office of the DEA task force officer who detained and spoke with Clarke. But according to the Institute for Justice, a nonprofit civil liberties group now representing Clarke in court, 11 additional law enforcement agencies -- who were not involved in Clarke's case at all -- have also requested a share of Clarke's cash under the federal asset forfeiture program. They include the Kentucky State Police, the Ohio Highway Patrol, and even the Bureau of Criminal Investigations within the Ohio Attorney General's office.

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These numbers all come from an Institute for Justice review of the Justice Department's Consolidated Asset Tracking System, the federal asset forfeiture database. The airport police have requested the lion's share of Charles Clarke's \$11,000, at 40 percent. The Cincinnati Police Dept. has requested an additional 6.14 percent of it, with the rest of the agencies requesting 3.07 percent each. That all adds up to just under 80 percent, which by law is the maximum amount local agencies are allowed to receive in cases like this.

Civil asset forfeiture exists, in part, to compensate law enforcement agencies for their crime-fighting efforts. The Controlled Substances Act states that forfeited property handed over to local law enforcement should have "a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort as a whole."

But there have been a series of high-profile controversies over civil asset forfeiture lately, and the practice has drawn increasing scrutiny from lawmakers. Just recently, three Democratic members of the House Judiciary Committee sent a letter to the acting head of the Drug Enforcement Administration expressing concern over a recent forfeiture case involving a young man, Joseph Rivers, who had \$16,000 seized at an Amtrak stop in New Mexico. The letter describes the circumstances of the seizure as "disturbing," particularly Rivers' contention that he was racially profiled as the only black person on that part of the train.

Like Joseph Rivers, Charles Clarke is a young black man. And like Rivers, he lost his cash at a so-called "cold consent" encounter -- that is, a warrantless search voluntarily agreed to -- at one of the nation's transportation hubs. Clarke didn't have any marijuana on him or in his baggage, so he hasn't been charged with any drug crimes. He was charged with resisting arrest and assaulting an officer, however, after he tried to prevent the agents from seizing his money by yelling at them and struggling with the agents when they grabbed the cash, according to the agent's affidavit. The charges were subsequently dropped, according to his lawyers at the Institute for Justice.

[Why the TSA posted a photo of a passenger's cash-filled luggage on Twitter]

So why are 11 agencies that were not involved with the forfeiture of Clarke's cash requesting a cut of it? The most likely reason, according to Darpana Sheth, the lead attorney representing Charles Clarke, is that they all participate in the same DEA drug task force that's home to the officer who made the seizure. Jill Del Greco, a public information officer with the Ohio Attorney General's office, confirmed that their Bureau of Criminal Investigations has an agent on that task force, but that they "weren't directly involved" with the Charles Clarke case. She referred additional questions to the DEA, who oversees the task force.

Brian Steffen, assistant Chief of the Covington Police Department which is home to the task force agent who made the seizure, also referred questions about the nature of the task force to the DEA. "Wherever [the task force] conducts its operations is at the discretion of the DEA," he said. A representative for the Cincinnati/Northern Kentucky International Airport similarly referred inquires about the task force to the DEA.

The DEA's Cincinnati office, home to the task force, wouldn't comment on the case or answer questions about the task force. Rich Isaacson, a public information officer with the Detroit DEA office, would only say that "we are bound by the rules and regulations of the asset forfeiture section of the Department of Justice. We don't comment on pending litigation and pending investigations."

The Justice Department's Guide to Equitable Sharing describes how asset forfeiture funds are typically handled in cases overseen by a drug task force: "Many task forces involving federal, state, and local law enforcement agencies have pre-arranged, written equitable sharing agreements based upon relative numbers of personnel and other contributions to the task force operation." It states that these agreements will only be honored when "the pre-arranged percentages continue to reflect the true overall agency contributions to the task force."

But in Charles Clarke's case, agencies stand to receive payouts even though they had nothing to do with the seizure. "Law enforcement agencies are just scrambling to get a cut of the money and it has nothing to do with legitimate law enforcement incentives," said Clarke's attorney Darpana Sheth. "It's more about policing for profit." The small amounts that most agencies requested -- just a few hundred dollars -- represent what Sheth calls the "pettiness" of much of civil asset forfeiture. "It's really just the money, its not anything else that's driving the request," she said.

And over time, these payouts can add up. The Institute for Justice provided numbers from their analysis of Department of Justice forfeiture data on the cash value of seizures at the Cincinnati/Northern Kentucky International Airport (CVG) from 2000 to 2013. Those number show seizure amounts spiking sharply in recent years, even as overall passenger volume has dropped precipitously.

According to the Federal Aviation Administration, passenger departures at CVG have dropped by about 75 percent since 2005, from a high of roughly 11 million down to fewer than 3 million in 2013. Over the same time, the total amount of cash seized at the airport has increased more than sixteen-fold, from \$147,000 to \$3 million in 2012. So in stepping up their seizure efforts, authorities at the airport are squeezing more cash out of fewer passengers.

In some ways, this increase mirrors the overall rise in asset forfeitures seen around the country in recent years. And it's worth reiterating that this is all above-board and perfectly legal. But for critics, that's precisely the problem. And their efforts are starting to bear fruit: Congress has been holding hearings on the issue. Senator 26 Rand Paul has introduced legislation that would remove some of the profit motive from asset forfeiture practices.

But until such reforms pass, people like Charles Clarke will have to work within the current forfeiture system, which allows law enforcement officers to seize property first under the presumption of guilt. The title of the federal government's lawsuit perfectly encapsulates the odd situation that forfeiture defendants find themselves in: "*United States of America v. \$11,000 in United States Currency and Charles L. Clarke, II.*"

His case is currently making its way through federal court.

Update: The headline of this story has been updated. The story has also been updated to add that Clarke was a recreational smoker of marijuana at the time his assets were seized, and to note that he says he spent five years saving up the money that was seized.

Christopher Ingraham writes about politics, drug policy and all things data. He previously worked at the Brookings Institution and the Pew Research Center.