

SENATE BILL 528

E2

5lr1517
CF HB 360

By: **Senators Raskin, Brochin, Currie, Feldman, Lee, Madaleno, Manno, Muse, Pinsky, and Zirkin**

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 18, 2015

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; repealing a
5 certain presumption that certain money or weapons are forfeitable; altering a certain
6 provision of law so as to provide that certain property may not be forfeited unless the
7 State establishes by a preponderance of the evidence that a violation of a certain law
8 was committed with the property owner's actual knowledge, rather than that the
9 property may not be forfeited if the owner establishes by a preponderance of the
10 evidence that the violation of law was committed without the owner's actual
11 knowledge; prohibiting a certain seizing authority or prosecuting authority from
12 directly or indirectly transferring seized property to a federal law enforcement
13 authority or agency, with a certain exception; providing that if the owner of seized
14 property is not charged with a violation of a certain law in connection with the
15 seizure of the property within a certain amount of time, the property shall be
16 immediately returned to the owner; repealing a certain rebuttable presumption that
17 certain property is subject to forfeiture as proceeds; ~~requiring a certain law~~
18 ~~enforcement agency to report, on an annual basis, certain information about each~~
19 ~~individual seizure and forfeiture completed by the agency under State or federal~~
20 ~~forfeiture law; authorizing the Maryland Statistical Analysis Center (MSAC) to~~
21 ~~require a law enforcement agency to provide relevant information not specified in~~
22 ~~this Act; requiring a certain law enforcement agency to file a certain report for the~~
23 ~~agency and the corresponding prosecutor's office with MSAC; requiring MSAC to~~
24 ~~develop a certain form, a process, and deadlines for certain data entry; requiring~~

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.



~~MSAC to compile certain submissions and issue a certain report; requiring MSAC to make certain reports available in a certain manner; requiring the Governor's Office of Crime Control and Prevention (GOCCP) to submit a certain report to the Governor, the General Assembly, and each law enforcement agency before a certain date each year; authorizing GOCCP to include in a certain report certain recommendations; requiring GOCCP to report information on law enforcement agencies not in compliance with this Act to the Police Training Commission; requiring the Police Training Commission to contact a certain law enforcement agency and request certain compliance; requiring GOCCP and the Police Training Commission to report certain noncompliance to the Governor and the Legislative Policy Committee of the General Assembly under certain circumstances; authorizing MSAC to recoup certain costs in a certain manner; authorizing a certain law enforcement agency to use forfeiture proceeds to pay the cost of compiling and reporting information required under this Act; defining certain terms; and generally relating to seizure and forfeiture.~~

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

BY adding to
 Article – Criminal Procedure
~~Section 12–211; and 13–601 to be under the new subtitle “Subtitle 6. Reporting”~~
Section 12–212
 Annotated Code of Maryland
 (2008 Replacement Volume and 2014 Supplement)

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

Article – Criminal Procedure

12–102.

(a) 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 in item (1) or (2) of this subsection;

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

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

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

11 (7) drug paraphernalia under § 5–619 of the Criminal Law Article;

12 (8) controlled paraphernalia under § 5–620 of the Criminal Law Article;

13 (9) except as provided in § 12–103 of this subtitle, the remaining balance
14 of the proceeds of a sale by a holder of an installment sale agreement under § 12–626 of the
15 Commercial Law Article of goods seized under this subtitle;

16 (10) except as provided in § 12–103 of this subtitle, real property; and

17 (11) everything of value furnished, or intended to be furnished, in exchange
18 for a controlled dangerous substance in violation of the Controlled Dangerous Substances
19 law, all proceeds traceable to the exchange, and all negotiable instruments and securities
20 used, or intended to be used, to facilitate any violation of the Controlled Dangerous
21 Substances law.

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

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

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

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

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

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

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

12-103.

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

~~12-211.~~ 12-212.

A SEIZING AUTHORITY OR PROSECUTING AUTHORITY MAY NOT DIRECTLY OR INDIRECTLY TRANSFER SEIZED PROPERTY TO A FEDERAL LAW ENFORCEMENT AUTHORITY OR AGENCY UNLESS THE CASE IS PROSECUTED IN THE FEDERAL COURT SYSTEM UNDER FEDERAL LAW.

12-301.

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

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

12-312.

(a) **[(1)]** Except as provided in subsection (b) of this section, [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:

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

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

1 ~~(H) THE TYPE OF PROPERTY SEIZED, INCLUDING YEAR, MAKE,~~
2 ~~AND MODEL, AS APPLICABLE;~~

3 ~~(II) THE TYPE OF ALLEGED CRIME ASSOCIATED WITH THE~~
4 ~~SEIZURE OF THE PROPERTY;~~

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

8 ~~(V) WHETHER THE PROCEDURE WAS A CRIMINAL FORFEITURE~~
9 ~~OR CIVIL FORFEITURE;~~

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

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

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

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

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

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

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

22 ~~(XIII) THE DISPOSITION OF THE PROPERTY FOLLOWING SEIZURE,~~
23 ~~INCLUDING WHETHER THE PROPERTY WAS:~~

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

25 ~~2. DESTROYED; OR~~

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

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

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

3 ~~(I) CRIME, GANG, AND SUBSTANCE ABUSE PREVENTION~~
4 ~~PROGRAMS;~~

5 ~~(II) WITNESS PROTECTION;~~

6 ~~(III) VICTIM REPARATIONS;~~

7 ~~(IV) INFORMANT FEES AND BUY MONEY;~~

8 ~~(V) REGULAR TIME SALARIES, OVERTIME PAY, AND EMPLOYEE~~
9 ~~BENEFITS FOR PROSECUTORS;~~

10 ~~(VI) REGULAR TIME SALARIES, OVERTIME PAY, AND EMPLOYEE~~
11 ~~BENEFITS FOR SWORN LAW ENFORCEMENT AGENCY PERSONNEL OTHER THAN~~
12 ~~PROSECUTORS;~~

13 ~~(VII) REGULAR TIME SALARIES, OVERTIME PAY, AND EMPLOYEE~~
14 ~~BENEFITS FOR UNSWORN LAW ENFORCEMENT AGENCY PERSONNEL OTHER THAN~~
15 ~~PROSECUTORS;~~

16 ~~(VIII) PROFESSIONAL OR OUTSIDE SERVICES, INCLUDING~~
17 ~~SERVICES RELATED TO AUDITING, COURT REPORTING, EXPERT WITNESSES, AND~~
18 ~~OTHER COURT COSTS;~~

19 ~~(IX) TRAVEL AND MEALS;~~

20 ~~(X) ENTERTAINMENT;~~

21 ~~(XI) TRAINING;~~

22 ~~(XII) CONFERENCES;~~

23 ~~(XIII) VEHICLE PURCHASES;~~

24 ~~(XIV) CANINES, FIREARMS, AND EQUIPMENT, INCLUDING~~
25 ~~TACTICAL GEAR;~~

26 ~~(XV) CAPITAL EXPENDITURES, INCLUDING FURNITURE,~~
27 ~~COMPUTERS, AND OFFICE EQUIPMENT; AND~~

~~(XVI) OTHER USES.~~

~~(c) MSAC MAY REQUIRE A LAW ENFORCEMENT AGENCY TO PROVIDE RELEVANT INFORMATION NOT SPECIFIED IN SUBSECTION (B) OF THIS SECTION.~~

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

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

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

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

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

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

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

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

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

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

~~(3) IF THE LAW ENFORCEMENT AGENCY FAILS TO COMPLY WITH THE REQUIRED REPORTING PROVISIONS WITHIN 30 DAYS AFTER BEING CONTACTED BY THE POLICE TRAINING COMMISSION, GOCCP AND THE POLICE TRAINING COMMISSION JOINTLY SHALL REPORT THE NONCOMPLIANCE TO THE GOVERNOR AND THE LEGISLATIVE POLICY COMMITTEE OF THE GENERAL ASSEMBLY.~~

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.