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FISCAL AND POLICY NOTE
First Reader

House Bill 1306
Judiciary

(Delegate Ciliberti, *et al.*)

Habitual Drunk Driver - Mandatory Minimum Penalty and Vehicle Forfeiture

For a person who is convicted of a third or subsequent offense, within 10 years of driving while under the influence of alcohol or under the influence of alcohol *per se*, this bill authorizes the seizure and forfeiture of the person's motor vehicle and increases mandatory minimum criminal penalties from 10 days to 1 year imprisonment. The bill sets forth procedures for forfeitures and payment of bond, lienholder rights and duties, and procedural requirements for State and local law enforcement agencies involved in the seizure and forfeiture of vehicles.

Fiscal Summary

State Effect: General fund expenditures increase due to the bill's enhanced mandatory minimum imprisonment provisions and likely for additional hearings within the Judiciary to determine whether forfeiture should take place. Otherwise, it is anticipated that the provisions of the bill can generally be implemented with existing resources. Potential minimal increase in general fund revenues from the proceeds of forfeited motor vehicles.

Local Effect: Local expenditures increase significantly due to the bill's enhanced mandatory minimum imprisonment provisions and likely for additional hearing at the circuit courts for more jury trials and to determine whether forfeiture should take place. Otherwise, although the bill may result in increased search and seizure activity, it is anticipated that local authorities can generally implement the bill's provisions with existing resources. Potential minimal revenue increase from the proceeds of forfeited motor vehicles.

Small Business Effect: None.

Analysis

Bill Summary:

Definitions: “Forfeiting authority” means the unit or person designated to have jurisdiction over forfeited assets on behalf of the governing body or, if the seizing authority is a unit of the State, a unit or person that the Attorney General or designee designates by agreement with a State’s Attorney, county attorney, or municipal attorney to act on behalf of the State regarding assets subject to forfeiture by the State.

“Governing body” includes (1) the State, if the seizing authority is a unit of the State; (2) a county, if the seizing authority is a unit of a county; (3) a municipal corporation, if the seizing authority is a unit of a municipality; and (4) Baltimore City, if the seizing authority is the Baltimore City Police Department.

“Seizing authority” means a law enforcement unit in the State that is authorized to investigate violations of the vehicle law and has seized a motor vehicle under the bill.

Driving While Under the Influence of Alcohol: The bill subjects an individual’s vehicle to forfeiture if the individual drives or attempts to drive the vehicle while under the influence of alcohol or under the influence of alcohol *per se* and has been convicted of a third or subsequent violation of the same offense within 10 years. The vehicle may not be seized if the registered owner is not in possession of the vehicle at the time of the violation.

Under the bill, a motor vehicle subject to forfeiture may be seized on a warrant issued by a court with jurisdiction over the vehicle, without a warrant when the seizure is incident to an arrest or search under a search warrant, or if the vehicle has been the subject of a prior judgment in favor of the State in a forfeiture proceeding as specified in the bill. A vehicle seized under the bill’s provisions is not repleviable but is in the custody of the seizing authority, subject only to the orders, judgments, and decrees of the court or the official with jurisdiction over the vehicle. A seizing authority may remove the vehicle to a place designated by the court.

The chief law enforcement officer of the seizing authority must recommend to the appropriate forfeiting authority in writing that the vehicle be forfeited only if the officer:

- determines from the records of the Motor Vehicle Administration the names and address of all the registered owners and secured parties as defined in State law;
- personally reviews the facts and circumstances of the seizure; and
- personally determines and represents in writing that the forfeiture is warranted.

A vehicle owner may request that a forfeiting authority surrender the vehicle, and the forfeiting authority must comply if it determines, independent of the seizing authority, that the vehicle was not in possession of the registered owner at the time of the alcohol-related driving violation.

Vehicle Seizure Procedure: The seizure of a vehicle occurs on the earlier of the filing of a complaint for forfeiture under the bill or a notice pending litigation in the circuit court of the county in which the vehicle was seized. The appropriate forfeiting authority must file proceedings in the circuit court within 45 days after a vehicle is seized. A complaint seeking forfeiture must contain:

- a description of the vehicle seized;
- the date and place of the seizure;
- the name of the owner of the vehicle, if known;
- the name of the person in possession of the vehicle, if known;
- the name of each lienholder, if known or reasonably ascertainable;
- an allegation that the property is subject to forfeiture;
- a statement of the facts and circumstances surrounding the seizure;
- a statement setting forth the specific grounds for forfeiture; and
- an oath or affirmation by the forfeiting authority that the contents of the complaint are true.

Copies of the summons and complaint must be sent by certified mail “restricted delivery” and first-class mail to all known owners and lienholders that are reasonably ascertainable, within 20 days of filing the complaint. Within 20 days after the filing of the complaint, a notice describing the substance of the complaint and the relief sought must be posted by the sheriff on the courthouse door or on a bulletin board near the door where the action is pending.

Court Proceedings: Generally, a court may grant requests for mitigation or remission of forfeiture or take other action protecting the rights of innocent persons including taking the appropriate measures to safeguard property forfeited pending disposition of the property. The court may determine whether a seizing authority or forfeiting authority abused its discretion or was clearly erroneous in recommending forfeiture or not surrendering, on request, a vehicle to an owner.

An owner of a seized vehicle may file with a court to regain possession (1) in a circuit court, for the county in which the vehicle was seized if neither the criminal nor forfeiture proceedings have begun; (2) in the court where forfeiture proceedings have begun; or (3) in the court where criminal proceedings have begun if no forfeiture proceedings have been initiated. If a vehicle is not needed for evidentiary purposes in a judicial proceeding, and

unless the forfeiting authority and the vehicle owner have agreed to a bond in another amount, the court must appraise the value of the vehicle on the basis of average value set forth in the National Automobile Dealer's Association official used car guide. If the owner shows that a lien is on the vehicle and agrees to make required payments to the lienholder, the court must deduct the amount owed on the lien when calculating the bond amount. Notice of the appraisal must be sent to all lienholders.

Payment of Bond: Owners may give bond payable to the clerk of the court via cash, surety, lien on real property, or by any other means the clerk approves. The bond must be in an amount equal to the greater of the appraised value plus any accrued costs, or the aggregate amount of the liens that are shown on the records required under State law for the notice of perfection of liens. Any bond payable to the court must be conditioned for performance on final judgment by the court, must be filed in the District Court or circuit court where the criminal action that gave rise to the seizure is pending, and is part of the same criminal proceeding unless a complaint for forfeiture has been filed. If a criminal action is not pending or a forfeiture has not been filed, the bond must be filed in the circuit court or District Court in the county in which the vehicle was seized.

If a court orders that a vehicle be forfeited, the court must enter a judgment in the amount of the bond against the obligors on the bond without further proceedings. Payment of the amount of the bond is applied in the following order:

- to the court costs of the forfeiture proceeding;
- to the balance due the lienholder, including all reasonable costs incident to the sale;
- to payment of all other expenses of the proceedings for forfeiture, including expenses of seizure or maintenance of custody; and
- the general fund of the State or the political subdivision that seized the property, except where the governing body chooses to keep the vehicle for official use, sells the vehicle, or destroys or otherwise disposes of it.

If a governing body chooses to sell a forfeited vehicle, the proceeds of the sale must first be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, and court costs.

State Law Enforcement Unit: If the seizing authority was a State law enforcement unit, the court must order the property to be forfeited to the unit for disposal via sale, disposal, or for official use. The unit must pay any proceeds of a sale of the vehicle to the general fund. Any law enforcement unit that participated with a State law enforcement unit in seizing a vehicle forfeited under the bill must be paid an agreed-upon share of the proceeds from the sale of the vehicle for deposit into its general fund or may ask the Governor's Office of

Crime Control and Prevention to determine its share. Any sale of a vehicle under the bill must be made for cash and gives the purchaser clear and absolute title.

Lienholder Rights: A lienholder's right to repossession and sale of a seized vehicle is governed by the law of the sale of collateral securing an obligation in default. However, a lienholder is not required to take possession of a vehicle before its sale. The forfeiting authority must release a vehicle to the lienholder on request if a lienholder gives to the forfeiting authority (1) written notice of the intention to sell; (2) copies of documents giving rise to the lien; and (3) an affidavit under oath stating that the underlying obligation is in default and the reasons for default.

Any portion of the proceeds from a sale of a seized vehicle that would be paid to an owner under the applicable law relating to distribution of proceeds must be paid to the seizing authority and are considered property subject to forfeiture. If an order of forfeiture is not entered, the State must return to the owner that part of the proceeds and any costs of the proceedings paid from the proceeds of the sale. A lienholder maintains the rights under applicable law, including the right to sell a seized vehicle if a default occurs in the obligation giving rise to the lien.

Redemption of Interest: If the interest of an owner of a seized vehicle is redeemed, the lienholder must mail a notice of the redemption to the forfeiting authority within 10 days after the redemption. If the vehicle has been repossessed or otherwise lawfully taken by the lienholder, the lienholder must return the vehicle to the seizing authority within 21 days after redemption. Notice and filing deadlines under the bill run from the date of redemption or purchase of the seized vehicle.

Current Law: A person may not drive or attempt to drive any vehicle while under the influence of alcohol or under the influence of alcohol *per se*. Driving under the influence of alcohol *per se* means driving with a blood alcohol concentration (BAC) of 0.08 or higher. BAC is measured, at the time of testing, as grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

A person convicted of driving under the influence of alcohol or under the influence of alcohol *per se* is subject to maximum penalties of (1) for a first offense, a \$1,000 fine and/or one year imprisonment; (2) for a second offense, a \$2,000 fine of \$2,000 and/or two years imprisonment; and (3) for a third or subsequent offense, a \$3,000 fine and/or three years imprisonment.

Persons convicted of a second offense within five years are subject to a mandatory minimum penalty of 5 days imprisonment. Persons convicted of a third or subsequent offense within five years are subject to a mandatory minimum penalty of 10 days imprisonment.

Penalties increase if this offense is committed while transporting a minor. A person convicted of driving while under the influence of alcohol, or under the influence of alcohol *per se*, while transporting a minor is subject to maximum penalties of (1) for a first offense, a \$2,000 fine and/or two years imprisonment; (2) for a second offense, a \$3,000 fine and/or three years imprisonment; and (3) for a third or subsequent offense, a \$4,000 fine and/or four years imprisonment.

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.

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 “indicts” the seized property and 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. Furthermore, the criminal forfeiture is part of the defendant’s sentence and is generally limited to property involved in the specific counts for which the defendant was convicted. Maryland does not have a criminal forfeiture process.

Civil forfeiture actions are brought against property, not people. 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 lower than the criminal standard, in that the government must 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. Contesting 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. 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 into the general fund of the appropriate local government.

State Revenues: Potential minimal increase in general fund revenues, to the extent that State law enforcement agencies initiate forfeiture proceedings.

State Expenditures: General fund expenditures increase minimally for the Judiciary due to the additional hearings likely required under the bill. The Judiciary advises that there were 34,463 violations of driving while under the influence of alcohol or under the influence of alcohol *per se* in fiscal 2015. It is unknown how many were repeat offenders who would be subject to forfeiture and enhanced mandatory minimum sentences under the bill. Even so, caseloads are likely to increase minimally due to forfeiture proceedings, which require a substantial amount of processing. The exact impact cannot be reliably estimated since there is no way to determine the level of forfeiture activity as a result of the bill.

General fund expenditures also increase, potentially significantly, as a result of the bill's enhanced mandatory minimum incarceration penalty due to more people being committed to State correctional facilities for convictions in Baltimore City for a longer period of time. The extent of the increase cannot be reliably estimated as it depends on current sentencing practices and the number of individuals who are repeat offenders. The bill increases the minimum sentence for specified violations from 10 days to one year and increases the lookback period to be three offenses within a 10-year period.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Local revenues increase as a result of the bill's forfeiture provisions. The magnitude of the increase depends on the level of forfeiture activity that a local government engages in. The procedural costs, however, may offset some of the revenue gain since there are distinct procedural and legal costs associated with a forfeiture proceeding.

Local Expenditures: Circuit courts may incur increased costs from additional jury trials and forfeiture proceedings under the bill. The magnitude of the increase cannot be reliably estimated.

Expenditures increase, likely significantly, as a result of the bill's enhanced mandatory minimum incarceration penalty. The extent of the increase cannot be reliably estimated as it depends on current sentencing practices and the number of individuals who are repeat

offenders. The bill increases the minimum sentence for specified violations from 10 days to 1 year and increases the lookback period to be three offenses within a 10-year period.

Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery, Washington, and Worcester counties; Maryland Association of Counties; City of Salisbury; Maryland Municipal League; towns of Bel Air and Leonardtown; Office of the Attorney General; Governor's Office of Crime Control and Prevention; Judiciary (Administrative Office of the Courts); State's Attorneys' Association; Department of General Services; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

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