



Testimony for the Judiciary Committee

March 9, 2023

HB 1138- Criminal Law - Maryland RICO (Racketeer Influenced and Corrupt Organizations) Act

GREGORY BROWN
PUBLIC POLICY
COUNSEL

UNFAVORABLE

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

3600 CLIPPER MILL
ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND
DIRECTORS
HOMAYRA ZIAD
PRESIDENT

DANA VICKERS
SHELLEY
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

The ACLU of Maryland opposes HB 1138, a bill that would establish a RICO statute in the state. The nature of RICO statutes is to enhance criminal penalties for patterns of racketeering by broadly defining associations of people as “enterprises.” The definitions in the proposed statute are too broad and meant to label simple groupings of people and their doings “gang activity” and “organized crime.” The wide net RICO statutes cast essentially sets a standard of guilty until proven innocent by criminalizing activity that, on its own, would not rise to the level of a criminal act. This bill also allows for warrantless seizures of property and arbitrary standards for recoverable damages that do not hold any justifiable basis.

Overly broad definitions

§9-901 (D)(1)(II) of the statute defines “enterprise” as an “unchartered union, an association, or a group of individuals associated in fact although not a legal entity.” Providing for groups of individuals to be categorized as an enterprise for mere association with one another in order to prove a pattern of racketeering activity is too broad and unnecessarily criminalizes actions that are in and of themselves noncriminal. The categorization of a “group of individuals” as an enterprise will undoubtedly be used in the same vein as the label “gang activity” has been used to criminalize Black and brown neighborhoods for decades. Allowing these definitions to be codified only serves the goal of over policing and mass incarceration.

Functions as enhanced penalties

This bill, as most RICO statutes do, establish derivative crimes that essentially function as enhanced penalties. Under this bill, if a person is indicted under this statute, then their assets and possessions are

legally allowed to be seized and, in most cases, forfeited, especially if the possessions were acquired due to income from a “pattern of racketeering.” This becomes even more problematic when that “pattern of racketeering” is defined as only two acts over a span of four years. Allowing the state to seize and force forfeiture of assets and properties by proving only two acts were in furtherance of a “pattern of racketeering” over a time span of four full years is too low of a bar to prove criminal activity and too long of a time span to try to connect these actions as a pattern. These provisions function as enhanced penalties by criminalizing new behavior, even if the act was on its own noncriminal.

Additionally, the bill allows for three times the amount of any pecuniary value gained by the violation of the RICO statute to be recoverable in civil suits resulting from a conviction in a criminal case. This amount is arbitrary and is completely unrelated to the goals of “punitive damages.” The bill does not provide for intent to be present for the acts to be categorized as criminal. Punitive damages are meant to curb the behavior of people intentionally violating the law. Here, a defendant who may have been unaware of how their actions contributed to a pattern of racketeering would now be responsible for three times the amount of any pecuniary value gained due to the violation. These penalties are arbitrary and unnecessarily enhanced.

For these reasons we urge an unfavorable report on HB1138.

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND