

HON. STACY A. MAYER
CIRCUIT COURT
JUDGE
BALTIMORE COUNTY
CHAIR

HON. RICHARD SANDY
CIRCUIT COURT
JUDGE
FREDERICK COUNTY
VICE-CHAIR



KELLEY O'CONNOR
ASSISTANT STATE COURT
ADMINISTRATOR
GOVERNMENT RELATIONS
AND PUBLIC AFFAIRS
P: (410) 260-1560

SUZANNE PELZ, ESQ.
SNR. GOVT. RELATIONS AND
PUBLIC AFFAIRS OFFICER
P: (410)260-1523

MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 1063
Criminal Organizations – Criminal Prohibitions, Civil Actions, and
Forfeiture
DATE: February 21, 2024
(3/5)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 1063. House Bill 1063 establishes under Court and Judicial Proceedings § 5-122 that a civil action for damages resulting from participation in a criminal organization brought under Criminal Law Article § 9-808 shall be brought within 5 years after the conduct in violation of CR § 9-804 terminates.

This bill is unworkable and the language of the bill is vague and overly broad in several instances. For example, the definition of “criminal organization” (i.e., a gang) would include an “informal association” which is unclear and overly broad. Additionally, unlike the forfeiture provisions applicable to drugs or human trafficking, it is unclear whether the different crimes that the bill adds have a sufficient nexus to ill-begotten cash or other assets. Further, the court may grant a complaint after “making due provisions for the rights of innocent persons” which is unclear whether the court’s decision is based on a conviction or an alleged predicate crime where the court must conduct a mini trial. The bill also allows a plaintiff to recover treble damages and punitive damages although treble damages are a form of punitive damages.

The bill also prohibits the owner from posting a bond to obtain possession prior to the forfeiture proceeding since the seized property “is not repleviable” which is contrary to Criminal Procedure § 12-208; and requires the court to determine the appraised value of a motor vehicle to set a bond or the clerk to obtain an independent appraisal. It is unclear how a clerk would obtain an appraisal as this is very unusual and who would pay for such an appraisal. It would seem to be more reasonable for the entity that seized the property to get the appraisal of its value for the bond rather than have the court do it. The legislation also imposes other notice requirements on the clerks, including “immediately” furnishing notice of a case of special public importance to the Chief Justice of Supreme Court. The legislation does not define “immediately” and as such, clerks could be challenged by parties if they fail to provide the notice in a manner determined “immediate.”

In addition, the bill provides that the court must determine whether the seizing/forfeiting body abused its discretion or was clearly erroneous but does not provide the burden of proof required but “circumstances” for the court to consider. Further, while policy and under the purview of the legislation, the limitations period may be unworkable, as it allows a person to bring a civil action within 5 years after participation in a criminal organization terminates. The bill also contains multiple instances of mandatory language, which would bind the courts to take specified action. Finally, the provision requiring the Chief Justice to designate a judge to hear and determine the case interferes with the Judiciary’s internal operations.

cc. Hon. Nicole Williams
Judicial Council
Legislative Committee
Kelley O’Connor