

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 1111 (Senator Muse)  
Judicial Proceedings

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**Criminal Organizations - Criminal Prohibitions, Civil Actions, and Forfeiture**

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This bill generally (1) expands the meaning of “underlying crime” (for the purposes of establishing a “pattern of organized criminal activity”); (2) authorizes and establishes procedures for civil actions arising out of organized criminal activity (including a statute of limitations of five years); and (3) establishes procedures for the forfeiture of property connected to organized criminal activity.

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**Fiscal Summary**

**State Effect:** General fund revenues increase to the extent State entities collect net proceeds from the sale of forfeited property in accordance with the bill. As discussed below, the bill is expected to have a minimal impact on *overall* general fund expenditures and operations of the Judiciary. Potential minimal increase in general fund expenditures due to the bill’s authorization for additional civil actions and expanded application of existing criminal penalty provisions.

**Local Effect:** Local revenues increase to the extent local entities collect net proceeds from the sale of forfeited property in accordance with the bill. Potential minimal increase in local revenues from fines imposed in the circuit courts under the bill’s expanded application of existing penalty provisions. Potential minimal increase in overall expenditures and operations of the circuit courts.

**Small Business Effect:** Minimal.

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## Analysis

### Bill Summary:

#### *Organized Crime Activity*

The bill specifies that “criminal organization” includes an informal association. The bill also expands what “underlying crime” means (for the purposes of establishing a “pattern of organized crime activity”) to include:

- use of a firearm in the commission of a crime under § 4-204 of the Criminal Law Article;
- contraband – in general under § 9-412 of the Criminal Law Article;
- the common law misdemeanor of misconduct in office;
- fraud and related crimes under Title 8 of the Criminal Law Article;
- bribery under §§ 9-201 *et. seq.* of the Criminal Law Article;
- false statements under § 9-501 of the Criminal Law Article;
- impersonating a police officer under § 3-502 of the Public Safety Article;
- threat of mass violence under §§ 3-1001 *et. seq.* of the Criminal Law Article;
- indecency and obscenity under §§ 11-101 *et. seq.* and §§ 11-201 *et. seq.* of the Criminal Law Article;
- insurance fraud under §§ 27-401 *et. seq.* of the Insurance Article;
- a violation of the Maryland Consumer Protection Act under Title 13 of the Commercial Law Article.;
- removal or falsification of vehicle identification number under § 14-107 of the Transportation Article; and
- abuse or neglect of a vulnerable adult under §§ 3-604 or 3-605 of the Criminal Law Article.

#### *Civil Cause of Action for Damages*

A person who is injured as a result of a violation of § 9-804 of the Criminal Law Article (participating in a criminal organization) (1) has a civil cause of action against the violator for three times the actual damages sustained and punitive damages and (2) is entitled to recover attorney’s fees in the trial and appellate courts and costs of investigation and litigation reasonably incurred.

A civil action for damages resulting from participating in a criminal organization must be brought within five years after the conduct in violation of § 9-804 terminates. The plaintiff or defendant may demand a jury trial in a civil action for a violation under § 9-804.

A criminal conviction under § 9-804 must estop the defendant in any subsequent civil action or civil forfeiture proceeding as to all matters proved in the criminal proceeding.

### *Injunctions*

An aggrieved person or the State may file a complaint in circuit court to enjoin a violation of § 9-804. After making due provisions for the rights of innocent persons, a court may grant a complaint by issuing appropriate orders and judgments, including:

- ordering a defendant to divest any interest in an enterprise, real property, or personal property;
- imposing reasonable restrictions on the future activities or investments of a defendant, including prohibiting the defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of § 9-804;
- ordering the dissolution or reorganization of an enterprise;
- ordering the suspension or revocation of a license, permit, or prior approval granted to an enterprise by a State agency; and
- ordering the forfeiture of the charter of a corporation organized under State law or the revocation of authorization for a foreign corporation to conduct business in the State if specified findings are made.

The court must grant relief in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases if no showing of special or irreparable damage to the plaintiff is made.

On the execution of proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, the court may issue a temporary restraining order and a preliminary injunction before a final determination on the merits of the claim.

The application of one civil remedy does not preclude the application of any other civil or criminal remedy for a violation of § 9-804. The aforementioned civil remedies are supplemental and not mutually exclusive.

### *Organized Crime Activity – Property Subject to Forfeiture*

With specified exceptions, the following property is subject to forfeiture related to violations of, arrests for, and convictions for organized crime activity: (1) a motor vehicle used in connection with a violation of and conviction under the criminal organizations law; (2) money used in connection with a violation of and a conviction under the criminal

organizations law, found in close proximity to or at the scene of the arrest a for a violation of the criminal organizations law; and (3) real property used in connection with a violation of the criminal organizations law.

An owner's interest in real property may be forfeited if the owner is convicted under § 9-804 or attempting or conspiring to violate § 9-804. However, real property used as the principal family residence *may not* be forfeited unless one of the owners of the real property was convicted under § 9-804 or of an attempt or conspiracy to violate § 9-804. Also, real property used as the principal family residence by spouses and held by the spouses as tenants by the entirety *may not* be forfeited unless (1) the property was used in connection with a violation of § 9-804 or with an attempt or conspiracy to violate § 9-804 and (2) both spouses are convicted of a violation of § 9-804 or with an attempt or conspiracy to violate § 9-804. If an owner of real property used as the principal family residence is convicted under § 9-804 or of an attempt or conspiracy to violate § 9-804, and the owner files an appeal of the conviction, the court *must* stay forfeiture proceedings against the real property during the pendency of the appeal.

Property or an interest in property, not including money, *may not* be forfeited if the owner establishes by a preponderance of the evidence that the violation of the criminal organizations law was committed without the owner's actual knowledge.

A motor vehicle for hire in the transaction of business as a common carrier or a motor vehicle for hire *may not* be seized or forfeited unless it appears that the owner or other person in charge of the motor vehicle was a consenting party or privy to a violation of the criminal organizations law. A motor vehicle *may not* be forfeited for an act or omission that the owner shows was committed or omitted by a person other than the owner while the person other than the owner possessed the motor vehicle in criminal violation of federal law or the law of any state.

#### *Seized Property – Procedural Provisions*

Personal property subject to forfeiture may be seized on a warrant issued by a court that has jurisdiction over the property and without a warrant when:

- the seizure is incident to an arrest or a search under a search warrant;
- the seizure is incident to an inspection under an administrative inspection warrant;
- the property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding under the organized crime law; or
- there is probable cause to believe that the property is directly or indirectly dangerous to health or safety.

Seized property is not repleviable, but is in the custody of the seizing authority, subject to the orders, judgments, and decrees of the court or the official having jurisdiction over the property. A seizing authority may place seized property under seal and remove the property to a place designated by the court.

With specified exceptions described below, an owner of seized property who wishes to obtain possession of the property, to convey an interest in real property, or to remove a building or fixture from real property must notify the clerk of the proper court, as specified.

Subject to the rights of a lienholder, an owner or an owner's tenant may remain in possession of seized real property until forfeiture is ordered. The forfeiting authority may apply to the court for the appointment of a receiver to apply income from income-producing property. If a person who is an owner or an owner's tenant remains in possession of the real property and the person's interest in the real property is forfeited, the person must immediately surrender the real property to the seizing authority in substantially the same condition as when it was seized.

Until a court enters judgment in favor of the owner, an owner may not attempt to convey or encumber an interest in seized real property or remove a building or fixture on seized real property. This *does not* apply if an act is agreed to by a forfeiting authority or is ordered by the court or if an owner posts a bond.

#### *Processing of Seized Property and Recommendations of Forfeiture*

A seizing authority may seize a motor vehicle and recommend forfeiture to the forfeiting authority if the total circumstances of the case dictate that seizure and forfeiture are justified. The chief law enforcement officer of the seizing authority that seizes a motor vehicle for a violation of the criminal organization law may recommend to the appropriate forfeiting authority in writing that the motor vehicle be forfeited only if specified requirements, including a personal review of the underlying facts and circumstances, are satisfied. A sworn affidavit by the chief law enforcement officer that the officer followed the requirements is admissible in evidence in a proceeding.

The forfeiting authority must surrender a seized motor vehicle on request to the owner if the forfeiting authority determines, independent of the decision of the seizing authority, that the total circumstances of the case do not justify forfeiture. The court may determine whether the seizing authority or forfeiting authority abused its discretion or was clearly erroneous in recommending the forfeiture of a motor vehicle or in not surrendering on request a motor vehicle to an owner.

### *Appraisals and Bonds*

Unless the forfeiting authority and the owner agree to a bond in another amount, if a motor vehicle is not needed for evidentiary purposes in a judicial proceeding (1) the court must appraise the value of the motor vehicle as specified or (2) if the owner shows that a lien is on the motor vehicle and the owner agrees to make the required payments to the lienholder, the court must require a bond in an amount that complies with specified provisions. An appraisal of a motor vehicle must be provided by the court to the clerk of the court in writing.

If property other than a motor vehicle is not needed for evidentiary purposes in a judicial proceeding, the clerk of court must obtain an independent appraisal of the value of the property. The sheriff or other person responsible for an appraisal must promptly (1) inspect and appraise the value of the property and (2) return the appraisal in writing under oath to the clerk of the court. Notice of the appraisal must be sent to all lienholders shown in the records required by law for notice or the perfection of the lien.

On the filing of an appraisal, the owner may give bond payable to the clerk of the court in an amount equal to the greater of (1) the appraised value of the property plus any accrued costs or (2) the aggregate amount of the liens on the property, as specified. The bill contains procedural requirements regarding these bonds. If the court orders that property or an interest or equity in the property or proceeds be forfeited, the court must enter judgment in the amount of the bond against the obligors on the bond without further proceedings.

### *Seizures and Forfeitures of Real Property*

Seizure of real property occurs on the earlier of the filing of a complaint for forfeiture or a notice of pending litigation in the circuit court of the county where the real property is located. Forfeiture proceedings for real property may be brought in the jurisdiction where (1) the criminal charges are pending; (2) the owner resides; or (3) the real property is located. If forfeiture proceedings for real property are brought in a jurisdiction other than where the real property is located, a notice of pending litigation must be filed in the jurisdiction where the property is located.

### *Complaints for Forfeiture*

To apply for the forfeiture of money, the appropriate local financial authority or the Attorney General must file a complaint and an affidavit in the District Court or the circuit court for the county in which the money was seized. For other forms of property, the appropriate forfeiting authority must file proceedings in the circuit court.

A complaint seeking forfeiture must contain specified information and an oath or affirmation by the forfeiting authority that the contents of the complaint are true to the best of the forfeiting authority's knowledge, information, and belief. The complaint and affidavit must be served in accordance with the Maryland Rules of Civil Procedure.

The bill specifies the time by which a complaint seeking forfeiture must generally be filed. If property is seized 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 § 9-804, forfeiture proceedings must be filed promptly.

If the State or a political subdivision does not file proceedings about money within 90 days after the final disposition of criminal proceedings that arise out of the criminal organizations law, the money seized must be returned to the owner on request. If the owner fails to ask for the return of the money within one year after the final disposition, the money must revert to the political subdivision in which the money was seized or the State, if the money was seized by State authorities.

Within 20 days after the filing of the complaint (1) copies of the summons and complaint must be sent to all known owners and lienholders whose identities are reasonably subject to discovery, as specified and (2) a notice signed by the clerk containing specified information regarding the case, the property subject to forfeiture, and where to file a response or obtain more information must be posted by the sheriff and published in a newspaper of general circulation, as specified.

#### *Answer to a Complaint for Forfeiture*

The answer to a complaint must (1) comply with the Maryland Rules; (2) state the nature and extent of the person's right in, title to, or interest in the property; (3) state how and when the person acquired a right in, title to, or interest in the property; and (4) contain a request for relief and a request for a prompt hearing.

If an answer has been filed on time, the court must set a hearing on the forfeiture claim within 60 days after the later of the posting of the notice or the final publication of the notice. The court may, without a hearing, order forfeiture of the property interest of a person who fails to timely file an answer.

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 (1) the person was convicted of violating § 9-804 or of an attempt or conspiracy to violate § 9-804; (2) the property was acquired by the person during the § 9-804 violation or within a reasonable time after the violation; and (3) there was no

other likely source for the property. A claimant of the property has the burden of proof to rebut the presumption.

#### *Forfeiture Proceedings – Dispositions*

If, after a full hearing, the court determines that the property should not be forfeited, the court must order that the property be released. If the court determines that the property should be forfeited, the court must order that the property be forfeited to the appropriate governing body.

#### *Forfeiture Proceedings – Abilities of the Court*

The court may order the forfeiture of other property of the owner up to the value of any property seized, with the exception of real property, if as a result of an act or omission of the owner, the property to be forfeited cannot be located after the exercise of due diligence; has been transferred to, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value; or has been commingled with other property and cannot be divided without difficulty.

If property has been placed beyond the jurisdiction of the court, the court may order the owner to return the property to the jurisdiction of the court.

A court may (1) grant requests for mitigation or remission of forfeiture or take other action that protects the rights of innocent persons, is consistent with the provisions of the bill, and is in the interest of justice; (2) resolve claims arising under the criminal organization law; and (3) take appropriate measures to safeguard and maintain property forfeited pending the disposition of the property.

#### *Seized and Forfeited Property Subject to Liens*

If the court determines that the forfeited property is subject to a valid lien created without actual knowledge of the lienholder that the property was being or was to be used in violation of § 9-804, the court must order that the property be released within five days to the first priority lienholder. The lienholder must sell the property in a commercially reasonable manner; the bill specifies the manner in which the proceeds must be applied.

In general, the law governing the sale of collateral securing an obligation in default governs a lienholder's repossession and sale of property that has been seized. The bill includes additional provisions regarding the rights and responsibilities of lienholders with respect to seized and forfeited property and the procedures under which the seizing and the forfeiting authority may then proceed with the forfeiture of the property or the proceeds from the sale of the property.



### *Proceeds from Sale*

Any part of the proceeds from a sale of property that has been seized that would be paid to an owner of the property under the applicable law relating to distribution of proceeds must be paid to the seizing authority and must be property subject to forfeiture. If an order of forfeiture is not entered, the State must return the part of the proceeds and any costs of the forfeiture proceedings paid from the proceeds of the sale to the owner.

### *Disposition of Forfeited Property – Governing Bodies*

If property is forfeited, the governing body where the property was seized may (1) keep the property for official use; (2) require an appropriate unit to take custody of the property and destroy or otherwise dispose of it; or (3) sell the property if the law does not require the property to be destroyed and the property is not harmful to the public. The proceeds from a sale or the retention of property declared to be forfeited and any interest accrued shall be applied first to the proper expenses of the forfeiture proceeding and the resulting sale, including the expense of seizing and maintain custody of the property and advertising. Any remaining balance must be distributed to the general fund of the State or the general fund of the seizing political subdivision.

### *Case of Public Importance*

In an action brought under the bill regarding forfeiture and seizures related to organized crime activity, the State may file with the clerk of the court a certificate stating that the case is of special public importance. The clerk of the court must immediately furnish a copy of the certificate to the Chief Justice of the Supreme Court of Maryland or the Chief Justice's designee. On receipt of a certificate, the Chief Justice or the Chief Justice's designee must immediately designate a judge to hear and determine the case. The judge designated must promptly assign the case for hearing, participate in the hearings and determination, and cause the case to be expedited.

**Current Law:** Title 9, Subtitle 8 of the Criminal Law Article contains several prohibitions on engaging in activities as part of a criminal organization. For example, under § 9-804 of the Criminal Law Article, a person may not (1) participate in a criminal organization knowing that the members of the criminal organization engage in a pattern of organized crime activity and (2) knowingly and willfully direct or participate in an underlying crime (as defined in statute) or an act by a juvenile that would be an underlying crime if committed by an adult, committed for the benefit of, at the direction of, or in association with a criminal organization. The statute further prohibits a criminal organization or an individual belonging to a criminal organization from (1) receiving proceeds known to have been derived directly or indirectly from an underlying crime and (2) using or investing, directly or indirectly, an aggregate of \$10,000 or more of the proceeds from an underlying

crime in the acquisition of real property or the establishment or operation of any enterprise. Finally, a criminal organization is prohibited from acquiring or maintaining, directly or indirectly, any interest in or control of any enterprise or real property through an underlying crime. A person may not conspire or attempt to violate these prohibitions.

In general, violators are guilty of a felony, punishable by imprisonment for up to 15 years and/or a \$1 million maximum fine. However, if the person's participation in the criminal organization or an underlying crime on behalf of the organization resulted in the death of a victim, the person is guilty of a felony, punishable by imprisonment for up to 25 years and/or a \$5 million fine. Sentences may or must be consecutive to other sentences imposed as specified. In addition, the court may order a person or criminal organization to be divested of any interest in an enterprise or real property; order the dissolution or reorganization of an enterprise; and order the suspension or revocation of any license, permit, or prior approval granted to the enterprise or person by a unit of the State or a political subdivision of the State. The statute contains additional provisions regarding divested assets connected to drug offenses and the Attorney's General's authority to prosecute a violation or act establishing a violation of the statute.

**State Revenues:** General fund revenues increase to the extent State entities collect net proceeds from the sale of forfeited property in accordance with the bill. The magnitude of this increase cannot be reliably determined at this time and depends on various factors that can only be determined with actual experience under the bill, such as the frequency of use of the bill's forfeiture provisions, the value of forfeited items, and costs associated with the forfeiture (*e.g.*, maintenance and processing of the seized property).

**State Expenditures:**

*Judiciary*

General fund expenditures increase for the Judiciary to implement the bill. While the bill's authorized forfeiture proceedings appear to require more court resources than other types of cases (as discussed below), this analysis assumes that the bill's provisions will be used infrequently compared to other types of cases/proceedings, which is unlikely to result in a significant *overall* impact on the Judiciary.

The Judiciary advises that the bill may have a major and significant operational impact on civil caseloads and court operations, which is difficult to estimate due to uncertainty of the number of criminal organization law violations and additional cases or forfeitures that will be filed. Regardless, the Judiciary advises that the procedures involved are labor and time intensive and impose additional and new administrative tasks on clerks and staff.

According to the Judiciary, the legislation imposes a new duty on the clerks, requiring a clerk to potentially obtain independent appraisals of property to set a bond amount. Clerks would be required to obtain such services pursuant to Judiciary procurement policies; depending on the services, this process can take at least several weeks but can last up to a year. Moreover, it is unclear who would be responsible for paying for such an appraisal, and if it is the clerks, their offices would be responsible for absorbing those costs. Additional provisions, including those related to cases of special public importance and notices for applications of forfeited money, may also affect court operations.

#### *Office of the Attorney General*

The Office of the Attorney General (OAG) advises that to the extent circumstances warrant initiating injunctive or forfeiture proceedings under the bill *and* OAG chooses to initiate such proceedings additional staff would be necessary as the Civil Division within OAG lacks sufficient personnel to handle this work. However, any such impact cannot be reliably estimated without actual experience under the bill. *For illustrative purposes only*, the cost to hire one Assistant Attorney General VII is \$101,437 in fiscal 2025 and increases to \$139,863 by fiscal 2029.

#### *Department of Public Safety and Correctional Services*

General fund expenditures for the Department of Public Safety and Correctional Services may increase minimally as a result of the bill's expanded application of existing incarceration penalties due to more people being committed to State correctional facilities. The number of people convicted under the bill is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per incarcerated individual, including overhead, is estimated at \$5,110 per month. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

#### *Office of the Public Defender*

The Office of the Public Defender (OPD) advises that the bill's provisions may result in costs for the agency due to additional cases and an increased level of effort in existing cases. While the impact of the bill on OPD caseloads is anticipated to be minimal, any increase in workloads for OPD resulting from the bill cannot be reliably estimated without actual experience under the bill.

**Local Revenues:** Local revenues increase to the extent local entities collect net proceeds from the sale of forfeited property in accordance with the bill. The magnitude of this increase cannot be reliably determined at this time and depends on various factors that can only be determined with actual experience under the bill, such as frequency of use of the organized criminal activity statute and its forfeiture provisions, the value of forfeited items, and costs associated with the forfeiture (*e.g.*, maintenance and processing of the seized property).

Local revenues may increase minimally from fines imposed in circuit court cases due to the expanded application of existing penalty provisions under the bill.

**Local Expenditures:** The procedural requirements of the bill may result in additional expenditures for the circuit courts, as discussed above. Baltimore, Frederick, and Montgomery counties and the City of Annapolis do not anticipate a material fiscal impact from the bill.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has been introduced within the last three years. See HB 1138 and SB 606 of 2023.

**Designated Cross File:** HB 1063 (Delegate Williams) - Judiciary.

**Information Source(s):** Baltimore, Frederick, and Montgomery counties; City of Annapolis; Office of the Attorney General; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; Maryland Department of Labor; Comptroller's Office; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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