

Department of Legislative Services  
Maryland General Assembly  
2002 Session

FISCAL NOTE

House Bill 1068  
Judiciary

(Delegates Hutchins and Barkley)

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Controlled Dangerous Substances Violations - Seized Property - Summary  
Forfeiture

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This bill authorizes a seizing authority to petition for summary forfeiture of property seized pursuant to a violation of the controlled dangerous substances law where: (1) the owner is a fugitive from justice or has absconded from the jurisdiction where criminal charges are pending; or (2) except for proceedings about money, the seizing authority has not filed a complaint seeking forfeiture within the statutory time limits and the owner has not requested the return of the seized property. The petition may be filed one year after the earlier of: (1) the final disposition of criminal proceedings involving the owner; (2) a State's Attorney's declination of prosecution; or (3) the issuance of an unserved warrant or bench warrant for the owner's arrest. The petition must contain the same information as a complaint to begin forfeiture proceedings plus a description of the efforts made to notify the owner and take the owner into custody. Notice must be posted at the courthouse and, if the property is real property, on the land. Within 30 days after posting, if the owner requests the property's return, it must be returned. Otherwise, the court must order that the property be forfeited to the seizing authority.

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Fiscal Summary

**State Effect:** Although this bill may speed the process for forfeiture of property, it is not expected to have any significant net impact on governmental finances.

**Local Effect:** None -- see above.

**Small Business Effect:** None.

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## Analysis

**Current Law:** The only properties subject to summary forfeiture pursuant to a violation of the controlled dangerous substances law are controlled dangerous substances and plants from which they are derived. A Schedule I substance must be seized and summarily forfeited to the State if the substance is: (1) possessed, transferred, sold, or offered for sale in violation of the law; or (2) possessed by the State and its owner is not known. A plant may be seized and summarily forfeited if it is one from which a Schedule I or Schedule II substance may be derived and it: (1) has been planted or cultivated in violation of the law; (2) has an unknown owner or cultivator; or (3) is a wild growth.

State law otherwise provides for non-summary forfeiture proceedings and methods by which an owner may reclaim possession of property subject to forfeiture (depending on the stage of proceedings begun). Generally, a complaint seeking forfeiture must be filed within the earlier of: (1) 90 days after the seizure; or (2) 1 year after the final disposition of the criminal charge for the violation giving rise to the forfeiture. A complaint for forfeiture of a motor vehicle must be filed within 45 days after the motor vehicle is seized. A proceeding about money must be filed within 90 days after the final disposition of criminal proceedings that arise out of the controlled dangerous substances law. If the State or a political subdivision does not file proceedings about money within the 90-day period, the money seized must be returned to the owner on request by the owner. If the owner fails to ask for the return of the money within one year after the final disposition of criminal proceedings the money reverts to the State or locality, depending on which authority seized the money.

The complaint seeking forfeiture must contain:

- a description of the property seized;
- the date and place of the seizure;
- the name of the owner, if known;
- the name of the person in possession, if known;
- the name of each lienholder, if known or reasonably subject to discovery;
- an allegation that the property is subject to forfeiture;
- if seeking forfeiture of a lienholder's interest in property, an allegation that the lien was created with actual knowledge that the property was being or was to be used in violation of the controlled dangerous substances law;
- a statement of the facts and circumstances surrounding the seizure;
- a statement setting forth the specific grounds for forfeiture; and
- an oath or affirmation that the contents of the complaint are true to the best of the affiant's knowledge, information, and belief.

Within 20 days after the filing of the complaint, copies of the summons and complaint must be sent by certified mail requesting “restricted delivery -- show to whom, date, address of delivery” and first class mail to all known owners and lienholders whose identities are reasonably subject to discovery, including all real property owners and lienholders shown in the records required by law for notice or perfection of the lien.

Notice of the proceedings must be given by posting at the courthouse, on the land if the property is real property, and in a newspaper for three consecutive weeks. If the owner does not timely file an answer to the complaint, the court may order forfeiture of the property without a hearing. Otherwise, a hearing must be held. Subsequent to a full hearing, a court may order that the property: (1) be released; (2) be forfeited to the appropriate governing body; or (3) be released within five days to the first priority lienholder if the property is subject to a valid lien and the lienholder did not have actual knowledge of the property’s unlawful use.

A “seizing authority” means a law enforcement unit in the State that is authorized to investigate violations of the controlled dangerous substances law and that has seized property pursuant to State law.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Allegany County, Montgomery County, Prince George’s County, Wicomico County, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Legislative Services

**Fiscal Note History:** First Reader - March 8, 2002  
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