

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 655
Judiciary

(Delegate Dumais)

Criminal Procedure - Prostitution and Pandering - Seizure and Forfeiture

This bill authorizes a State or local law enforcement agency, on process from a court of competent jurisdiction, to seize property used or intended for use in a violation of the State's prostitution law. Property eligible for seizure includes real property, conveyances, money, everything of value furnished for an act of prostitution, and all proceeds traceable to the exchange. The bill also authorizes courts to direct defendants to forfeit properly seized property upon conviction.

The bill applies prospectively to offenses committed on or after the bill's October 1, 2006 effective date.

Fiscal Summary

State Effect: Potential minimal revenue increase from the proceeds of forfeited property. It is expected that the bill could be implemented with existing resources.

Local Effect: Potential minimal revenue increase from the proceeds of forfeited property. Although the bill could cause an increase in search and seizure activity, it is anticipated that local law enforcement would be able to implement the bill with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: Money or weapons found in close proximity to an act in violation of the prostitution laws are contraband and are presumed forfeitable. A claimant of money or weapons has the burden to rebut this presumption.

A State or local law enforcement agency, on proper process, may seize this property without a warrant when the seizure is:

- incident to an arrest;
- incident to a search made under a search warrant;
- made in accordance with a valid consent to search; or
- made with probable cause to believe that the property has been used or is intended to be used in connection with a crime under the prostitution law.

Law enforcement agencies must return seized property within 14 days after the seizure unless a hearing was scheduled to determine the propriety of the seizure and the reasonableness of the notice provided to the person from whom the property was seized. The bill contains provisions detailing the requirements and procedures for providing notice in these cases. Law enforcement agencies must return seized property to its owner if the owner can show that the owner did not have knowledge of or consent to the violation of the prostitution law.

The bill also provides that a secured party who did not have knowledge of or consent to the violation of the prostitution law retains its security interest over the law enforcement agency if the forfeited property is encumbered by a bona fide security interest.

The bill authorizes sales of forfeited property and provides for distribution of the proceeds from these sales.

Current Law: State laws authorizing search and seizure of property, money, or valuables do not apply to property that may have been used in furtherance of a violation of prostitution provisions. Search and seizure provisions apply to property used or intended to be used to violate controlled dangerous substance, gambling, gun, and explosive laws.

Procedures vary for the search, seizure, and forfeiture of property depending on whether the offense involves controlled dangerous substances, gambling, guns, or explosives. Generally, raw materials, equipment, books, records, research, motor vehicles, other vehicles or vessels, real property, money, contraband, negotiable instruments, as well as other items of value may be subject to search, seizure, and forfeiture. Once the property

is seized, a law enforcement authority must file a complaint seeking forfeiture. The owner of the seized property is entitled to notice and opportunity for hearing on the forfeiture claim. The courts are authorized to mitigate the impact of forfeiture or return all seized property to the owner. The courts are also authorized to take appropriate measures to safeguard and maintain forfeited property.

Once forfeiture is authorized, the governing body where the property was seized may keep the property for official use or dispose of or sell the property. If the property is sold by a State law enforcement unit, then proceeds from the sale must be deposited into the general fund of the State. If the property is sold by a local law enforcement unit, then proceeds from the sale must be deposited into the general fund of the political subdivision that has jurisdiction over the law enforcement unit.

The State prostitution law consists of the following misdemeanor offenses:

<u>Offense</u>	<u>Maximum Penalty</u>
Pandering	10 years/\$5,000
Receiving earnings of prostitute	10 years/\$10,000
Abduction of child under 16 for prostitution	10 years/\$5,000
Prostitution; House of Prostitution	1 year/\$500

Background: According to the Federal Bureau of Investigation, there were 2,637 arrests for prostitution and commercialized vice statewide in 2004.

Local Fiscal Effect: Baltimore City, Howard County, and Prince George’s County indicate that the bill’s provisions could be handled with existing resources. Howard County advises that seizures average less than \$30,000 annually and that procedures and staff are in place to handle a modest increase in activity. Also, Howard County excludes real estate seizures due to the extensive requirements to maintain and protect that asset class while court action proceeds.

Caroline County, Montgomery County, and the City of Salisbury advise that the impact of the bill on local finances depends on the value and condition of seized property and the level of care needed to maintain the property until forfeiture.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Town of Bel Air, City of Salisbury, Montgomery County, Prince George's County, Caroline County, Howard County, Judiciary (Administrative Office of the Courts), Department of State Police, Town of Leonardtown, Baltimore City, Department of Legislative Services

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nas/jr

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