

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 1271

(Delegate Dumais)

Judiciary

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. The bill contains provisions for ordering forfeiture upon conviction, returning seized property, and distributing the proceeds of forfeiture after sale.

The bill applies prospectively to offenses committed on or after the bill's October 1, 2007 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: 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.

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.

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.

Law enforcement agencies must return seized property within 14 days after the seizure unless a hearing is 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 to the unit having budgetary authority over the seizing law enforcement agency after a deduction for costs.

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. For example, with regard to controlled dangerous substance violations, 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 1,898 arrests for prostitution and commercialized vice statewide in 2005.

Local Fiscal Effect: Carroll, Harford, and Prince George's counties, and the City of Bel Air indicate that the bill's provisions could be handled with existing resources. Caroline and Montgomery counties and the City of Salisbury advise that the impact on local finances depends on the value and condition of seized property and the level of care needed to maintain the property until forfeiture. Montgomery County and Prince

George's County also report that there could be a minimal increase in revenues from the proceeds of forfeiture auctions.

Additional Information

Prior Introductions: HB 655 of 2006, an identical bill, received an unfavorable report in the House Judiciary Committee.

Cross File: SB 932 (Senator Forehand) – Judicial Proceedings.

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

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