

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 633 (Senator Jacobs)
Judicial Proceedings

Criminal Law - Property Used in Gang Activity - Seizure and Forfeiture

This bill provides that all property used in connection with, intended for use in the course of, or traceable to conduct in violation of a provision of the Criminal Gang Law is subject to forfeiture. The bill establishes procedures for conducting forfeiture proceedings.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues from the sale of forfeited property when State law enforcement agencies seize and sell property.

Local Effect: Potential significant revenue increase from forfeited property for local governments that seize property as authorized by this bill.

Small Business Effect: None.

Analysis

Bill Summary: The bill provides that all real or personal property, including money, used in connection with conduct in violation of the Criminal Gang Law is subject to forfeiture. In general, there is a rebuttable presumption that property in which a person has an ownership interest is subject to forfeiture as proceeds obtained from the violation of the Criminal Gang Law if the State establishes by clear and convincing evidence that:

- the person has violated, attempted, or conspired to violate the Criminal Gang Law;
- the property was acquired by the person during the violation or within a reasonable time after the violation; and

- there was no other likely source for the property.

A forfeiture action must be filed in the circuit court by the appropriate forfeiting authority. 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 that jurisdiction.

Subject to specified exceptions regarding the forfeiture of money or motor vehicles, a complaint seeking forfeiture must be filed within the earlier of 90 days after the seizure or 1 year after the final disposition of the criminal charge for the violation giving rise to the forfeiture. A complaint seeking forfeiture is required to contain specified information, including a description of the property seized, the date and place of the seizure, the name of the owner or person in possession of the property, and a statement of the facts and circumstances surrounding the seizure. Within 20 days after the filing of a complaint, copies of the summons and complaint must be sent by certified mail to all known owners and lienholders whose identities are reasonably subject to discovery.

Within 20 days after the filing of the complaint, specified notice requirements apply.

An 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 within 60 days after the filing of the answer. The court may order forfeiture of the property interest of a person who has failed to timely file an answer without a hearing.

If an owner of real property used as the principal family residence is convicted under the Criminal Gang Law or an attempt or conspiracy to violate the Criminal Gang Law and the owner files an appeal, the court shall stay forfeiture proceedings against the real property during the pendency of the appeal. Real property used as the principal family residence may not be forfeited unless the owner was convicted of a crime described under the Criminal Gang Law or the property is covered by other exceptions as set forth in statute.

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. The proceeds of any sale must first be used to pay all proper expenses of the proceedings. If the seizing authority was a State law enforcement unit, then proceeds from the sale must be paid to the State law enforcement unit. The unit shall appropriately dispose of the forfeited property and pay to the general fund of the State any proceeds from the sale. Except as otherwise provided under federal law, a law enforcement unit other than a State unit that participated in seizing property shall be paid a proportionate share and may ask the Governor's Office of Crime Control and Prevention to determine the appropriate share. If the seizing authority is a local government, then proceeds from the sale must be deposited into the general fund of the appropriate political subdivision.

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 gang activity. 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 the offense.

Background: Chapter 496 of 2007, an Administration initiative, created new offenses regarding criminal gangs. The Attorney General was authorized to aid in the investigation or prosecute violations of the Act. By January 1, 2008, the Attorney General and the Maryland State Attorneys' Association were required to report to the General Assembly on recommendations for more legislation to assist prosecution of gang activity. This bill emerges from those recommendations.

Additional Information

Prior Introductions: SB 570 of 2006, a similar bill, received a hearing in the Senate Judicial Proceedings Committee but was withdrawn by the sponsor.

Cross File: None.

Information Source(s): Allegany County, Montgomery County, Judiciary (Administrative Office of the Courts), Baltimore City, Department of Public Safety and Correctional Services, Department of Legislative Services

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mll/jr

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510