

SENATE BILL 161

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CF 6lr1244

By: **Senators Hough, Raskin, and Zirkin**
Introduced and read first time: January 15, 2016
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Seizure and Forfeiture**

3 FOR the purpose of authorizing the forfeiture of certain property under certain
4 circumstances; prohibiting a certain law enforcement agency or prosecuting
5 authority from directly or indirectly transferring or referring seized property to a
6 federal government agency or law enforcement authority for forfeiture under federal
7 law unless certain conditions are met; authorizing a certain defendant or third party
8 to file a motion for replevin in a certain criminal case at a certain time if the
9 defendant or third party claims that he or she has the right to possession of certain
10 property; requiring a motion for replevin under this Act to be in writing and state in
11 detail the grounds on which it is based; requiring a claimant to notify the State's
12 Attorney in writing of the filing of a motion for replevin under this Act; authorizing
13 the State's Attorney to file a response to a motion for replevin at a certain time;
14 requiring the court to hold a hearing on a motion for replevin at a certain time under
15 certain circumstances; authorizing the court to dismiss a motion for replevin without
16 a hearing under certain circumstances; requiring the court to grant a motion for
17 replevin under certain circumstances; authorizing the court to order the return of
18 funds or property sufficient to obtain legal counsel but less than the total amount
19 seized; authorizing the court to take certain actions in lieu of ordering issuance of
20 the writ of replevin; requiring a certain law enforcement agency to report, on an
21 annual basis, certain information about each individual seizure and forfeiture
22 completed by the agency under State or federal forfeiture law; authorizing the
23 Maryland Statistical Analysis Center (MSAC) to require a law enforcement agency
24 to provide relevant information not specified in this Act; requiring a certain law
25 enforcement agency to file a certain report for the agency and the corresponding
26 prosecutor's office with MSAC; requiring MSAC to develop a certain form, a process,
27 and deadlines for certain data entry; requiring MSAC to compile certain submissions
28 and issue a certain report; requiring MSAC to make certain reports available in a
29 certain manner; requiring the Governor's Office of Crime Control and Prevention
30 (GOCCP) to submit a certain report to the Governor, the General Assembly, and each
31 law enforcement agency before a certain date each year; authorizing GOCCP to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 include in a certain report certain recommendations; requiring GOCCP to report
2 information on law enforcement agencies not in compliance with this Act to the
3 Police Training Commission; requiring the Police Training Commission to contact a
4 certain law enforcement agency and request compliance; requiring GOCCP and the
5 Police Training Commission to report certain noncompliance to the Governor and
6 the Legislative Policy Committee of the General Assembly under certain
7 circumstances; authorizing MSAC to recoup certain costs in a certain manner;
8 authorizing a certain law enforcement agency to use forfeiture proceeds to pay the
9 cost of compiling and reporting information required under this Act; making a
10 conforming change; defining certain terms; and generally relating to seizure and
11 forfeiture.

12 BY repealing and reenacting, without amendments,
13 Article – Criminal Procedure
14 Section 12–102(a)
15 Annotated Code of Maryland
16 (2008 Replacement Volume and 2015 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Criminal Procedure
19 Section 12–103 and 12–203
20 Annotated Code of Maryland
21 (2008 Replacement Volume and 2015 Supplement)

22 BY adding to
23 Article – Criminal Procedure
24 Section 12–203.1; and 13–601 and 13–602 to be under the new subtitle “Subtitle 6.
25 Reporting”
26 Annotated Code of Maryland
27 (2008 Replacement Volume and 2015 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
29 That the Laws of Maryland read as follows:

30 **Article – Criminal Procedure**

31 12–102.

32 (a) The following are subject to forfeiture:

33 (1) controlled dangerous substances manufactured, distributed, dispensed,
34 acquired, or possessed in violation of the Controlled Dangerous Substances law;

35 (2) raw materials, products, and equipment used, or intended for use, in
36 manufacturing, compounding, processing, delivering, importing, or exporting a controlled
37 dangerous substance in violation of the Controlled Dangerous Substances law;

1 (3) property used or intended for use as a container for property described
2 in item (1) or (2) of this subsection;

3 (4) except as provided in § 12–103 of this subtitle, conveyances, including
4 aircraft, vehicles, or vessels used or intended to be used to transport, or facilitate the
5 transportation, sale, receipt, possession, or concealment of property described in item (1) or
6 (2) of this subsection;

7 (5) books, records, and research, including formulas, microfilm, tapes, and
8 data used or intended for use in violation of the Controlled Dangerous Substances law;

9 (6) subject to subsection (b) of this section, money or weapons used or
10 intended to be used in connection with the unlawful manufacture, distribution, dispensing,
11 or possession of a controlled dangerous substance or controlled paraphernalia;

12 (7) drug paraphernalia under § 5–619 of the Criminal Law Article;

13 (8) controlled paraphernalia under § 5–620 of the Criminal Law Article;

14 (9) except as provided in § 12–103 of this subtitle, the remaining balance
15 of the proceeds of a sale by a holder of an installment sale agreement under § 12–626 of the
16 Commercial Law Article of goods seized under this subtitle;

17 (10) except as provided in § 12–103 of this subtitle, real property; and

18 (11) everything of value furnished, or intended to be furnished, in exchange
19 for a controlled dangerous substance in violation of the Controlled Dangerous Substances
20 law, all proceeds traceable to the exchange, and all negotiable instruments and securities
21 used, or intended to be used, to facilitate any violation of the Controlled Dangerous
22 Substances law.

23 12–103.

24 (a) **(1) PROPERTY DESCRIBED IN § 12–102(A)(4), (10), OR (11) OF THIS**
25 **SUBTITLE MAY BE FORFEITED IF:**

26 **(I) THE PROPERTY IS CLAIMED TO BE OWNED BY A PERSON**
27 **WHO IS CONVICTED OF VIOLATING THE CONTROLLED DANGEROUS SUBSTANCES**
28 **LAW; AND**

29 **(II) THE STATE ESTABLISHES BY CLEAR AND CONVINCING**
30 **EVIDENCE THAT THE PROPERTY IS AN INSTRUMENTALITY OF THE OFFENSE OR**
31 **PROCEEDS DERIVED FROM THE OFFENSE OF WHICH THE PERSON IS CONVICTED.**

1 **(2) THIS SUBSECTION DOES NOT PROHIBIT PROPERTY FROM BEING**
2 **SEIZED UNDER STATE LAW AND HELD AS EVIDENCE OR FORFEITED BY PLEA**
3 **AGREEMENT APPROVED BY THE PRESIDING CRIMINAL COURT.**

4 **(B)** Property or an interest in property described in § 12–102(a)(4), (10), **[and] OR**
5 (11) of this subtitle may not be forfeited if the owner establishes by a preponderance of the
6 evidence that the violation of the Controlled Dangerous Substances law was committed
7 without the owner’s actual knowledge.

8 **[(b)](C)** (1) A conveyance used as a common carrier or vehicle for hire in the
9 transaction of business as a common carrier or vehicle for hire may not be seized or forfeited
10 under this title unless it appears that the owner or other person in charge of the conveyance
11 was a consenting party or privy to a violation of the Controlled Dangerous Substances law.

12 (2) A conveyance may not be forfeited under this title for an act or omission
13 that the owner shows was committed or omitted by a person other than the owner while
14 the person other than the owner possessed the conveyance in criminal violation of federal
15 law or the law of any state.

16 **[(c)](D)** An owner’s interest in real property may not be forfeited for a violation
17 of § 5–601, § 5–619, or § 5–620 of the Criminal Law Article.

18 **[(d)](E)** (1) Except as provided in paragraph (2) of this subsection, real
19 property used as the principal family residence may not be forfeited under this subtitle
20 unless one of the owners of the real property was convicted of a violation of §§ 5–602
21 through 5–609, §§ 5–612 through 5–614, § 5–617, § 5–618, or § 5–628 of the Criminal Law
22 Article or of an attempt or conspiracy to violate Title 5 of the Criminal Law Article.

23 (2) Without a conviction, a court may order a forfeiture of real property
24 used as the principal family residence if the owner of the family residence:

25 (i) fails to appear for a required court appearance; and

26 (ii) fails to surrender to the jurisdiction of the court within 180 days
27 after the required court appearance.

28 **[(e)](F)** Real property used as the principal family residence by a husband and
29 wife and held by the husband and wife as tenants by the entirety may not be forfeited
30 unless:

31 (1) the property was used in connection with a violation of §§ 5–602
32 through 5–609, §§ 5–612 through 5–614, § 5–617, § 5–618, or § 5–628 of the Criminal Law
33 Article or with an attempt or conspiracy to violate Title 5 of the Criminal Law Article; and

1 (2) both the husband and wife are convicted of a violation of §§ 5–602
2 through 5–609, §§ 5–612 through 5–614, § 5–617, § 5–618, or § 5–628 of the Criminal Law
3 Article or of an attempt or conspiracy to violate Title 5 of the Criminal Law Article.

4 **(G) A LAW ENFORCEMENT AGENCY OR PROSECUTING AUTHORITY MAY NOT**
5 **DIRECTLY OR INDIRECTLY TRANSFER OR REFER SEIZED PROPERTY TO A FEDERAL**
6 **GOVERNMENT AGENCY OR LAW ENFORCEMENT AUTHORITY FOR FORFEITURE**
7 **UNDER FEDERAL LAW UNLESS:**

8 **(1) THE PROPERTY INCLUDES SEIZED CASH IN EXCESS OF \$50,000;**
9 **AND**

10 **(2) A CRIMINAL CASE RELATED TO THE SEIZURE IS PROSECUTED IN**
11 **THE FEDERAL COURT SYSTEM UNDER FEDERAL LAW.**

12 12–203.

13 (a) Property seized under this title[:

14 (1) is not repleviable; but

15 (2)] is in the custody of the seizing authority, subject only to the orders,
16 judgments, and decrees of the court or the official having jurisdiction over the property.

17 (b) A seizing authority may place seized property under seal and remove the
18 property to a place designated by the court.

19 **12–203.1.**

20 **(A) FOLLOWING THE SEIZURE OF PROPERTY, A DEFENDANT OR THIRD**
21 **PARTY MAY FILE A MOTION FOR WRIT OF REPLEVIN IN THE CRIMINAL CASE IF THE**
22 **DEFENDANT OR THIRD PARTY CLAIMS TO HAVE THE RIGHT TO POSSESSION OF THE**
23 **PROPERTY.**

24 **(B) A MOTION FOR WRIT OF REPLEVIN UNDER THIS SECTION MAY BE FILED**
25 **AT ANY TIME BEFORE TRIAL OF THE CRIMINAL OFFENSE OR OFFENSES.**

26 **(C) A MOTION UNDER THIS SECTION SHALL:**

27 **(1) BE IN WRITING; AND**

28 **(2) STATE IN DETAIL THE GROUNDS ON WHICH THE MOTION IS BASED.**

1 (D) (1) A CLAIMANT SHALL NOTIFY THE STATE'S ATTORNEY IN WRITING
2 OF THE FILING OF A MOTION UNDER THIS SECTION.

3 (2) THE STATE'S ATTORNEY MAY FILE A RESPONSE TO THE MOTION
4 WITHIN 15 DAYS AFTER RECEIPT OF THE NOTICE REQUIRED UNDER THIS
5 SUBSECTION OR WITHIN THE PERIOD OF TIME THAT THE COURT ORDERS.

6 (E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
7 THE COURT SHALL HOLD A HEARING ON A MOTION FILED UNDER THIS SECTION
8 WITHIN 30 DAYS AFTER THE FILING OF THE MOTION.

9 (2) THE COURT MAY DISMISS A MOTION WITHOUT A HEARING IF THE
10 COURT FINDS THAT THE MOTION FAILS TO ASSERT GROUNDS ON WHICH RELIEF MAY
11 BE GRANTED.

12 (F) THE COURT SHALL GRANT THE MOTION IF IT FINDS THAT THE
13 CLAIMANT HAS SHOWN BY A PREPONDERANCE OF THE EVIDENCE THAT:

14 (1) THE CLAIMANT HAS THE RIGHT TO POSSESSION OF THE
15 PROPERTY AND THE PROPERTY IS NOT REASONABLY REQUIRED TO BE HELD FOR
16 INVESTIGATORY OR EVIDENTIARY REASONS; OR

17 (2) THE PROPERTY IS THE ONLY REASONABLE MEANS FOR A
18 DEFENDANT TO PAY FOR LEGAL REPRESENTATION IN THE FORFEITURE OR
19 CRIMINAL PROCEEDING.

20 (G) THE COURT MAY ORDER THE RETURN OF FUNDS OR PROPERTY
21 SUFFICIENT TO OBTAIN LEGAL COUNSEL BUT LESS THAN THE TOTAL AMOUNT
22 SEIZED.

23 (H) IN LIEU OF ORDERING THE ISSUANCE OF THE WRIT OF REPLEVIN, THE
24 COURT MAY:

25 (1) ORDER THE STATE TO GIVE SECURITY OR WRITTEN ASSURANCE
26 FOR SATISFACTION OF ANY JUDGMENT, INCLUDING DAMAGES, THAT MAY BE
27 RENDERED IN THE ACTION; OR

28 (2) ORDER ANY OTHER APPROPRIATE RELIEF.

29 SUBTITLE 6. REPORTING.

30 13-601.

1 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
2 INDICATED.

3 (B) “GOCCP” MEANS THE GOVERNOR’S OFFICE OF CRIME CONTROL AND
4 PREVENTION.

5 (C) “LAW ENFORCEMENT AGENCY” MEANS A POLICE FORCE, A
6 MULTIJURISDICTIONAL TASK FORCE, A FIRE DEPARTMENT, OR ANY OTHER LOCAL,
7 COUNTY, OR STATE AGENCY THAT HAS THE AUTHORITY UNDER STATE LAW OR
8 OPERATES IN COOPERATION WITH A FEDERAL AGENCY UNDER FEDERAL LAW TO
9 ENGAGE IN SEIZURE AND FORFEITURE.

10 (D) “MSAC” MEANS THE MARYLAND STATISTICAL ANALYSIS CENTER OF
11 GOCCP.

12 **13-602.**

13 (A) ON AN ANNUAL BASIS, EACH LAW ENFORCEMENT AGENCY SHALL
14 REPORT THE FOLLOWING INFORMATION ABOUT EACH INDIVIDUAL SEIZURE AND
15 FORFEITURE COMPLETED BY THE AGENCY UNDER STATE FORFEITURE LAW AND
16 FEDERAL FORFEITURE LAW:

17 (1) THE DATE THAT CURRENCY, VEHICLES, HOUSES, OR OTHER TYPES
18 OF PROPERTY WERE SEIZED;

19 (2) THE TYPE OF PROPERTY SEIZED, INCLUDING YEAR, MAKE, AND
20 MODEL, AS APPLICABLE;

21 (3) THE TYPE OF ALLEGED CRIME ASSOCIATED WITH THE SEIZURE OF
22 THE PROPERTY;

23 (4) THE OUTCOME OF RELATED CRIMINAL ACTION, INCLUDING
24 WHETHER CHARGES WERE BROUGHT, A PLEA BARGAIN WAS REACHED, A
25 CONVICTION WAS OBTAINED, OR AN ACQUITTAL WAS ISSUED;

26 (5) WHETHER THE FORFEITURE PROCEDURE WAS ADMINISTRATIVE,
27 JUDICIAL, OR OTHER;

28 (6) WHETHER THE CLAIMANT WAS THE CRIMINAL SUSPECT,
29 INNOCENT OWNER, OR BOTH AS JOINT OWNERS;

1 **(7) WHETHER THE VENUE OF THE FORFEITURE CASE WAS AN**
2 **ADMINISTRATIVE AGENCY, A SMALL CLAIMS COURT, A CIVIL COURT, A CRIMINAL**
3 **COURT, OR ANY OTHER VENUE;**

4 **(8) WHETHER THE PROPERTY OWNER WAS REPRESENTED BY AN**
5 **ATTORNEY IN THE FORFEITURE CASE;**

6 **(9) THE MARKET VALUE OF THE PROPERTY SEIZED;**

7 **(10) THE GROSS AMOUNT RECEIVED FROM THE FORFEITURE;**

8 **(11) THE TOTAL ADMINISTRATIVE AND OTHER EXPENSES DEDUCTED**
9 **AS PART OF THE FORFEITURE PROCESS;**

10 **(12) THE NET AMOUNT RECEIVED FROM THE FORFEITURE;**

11 **(13) THE DISPOSITION OF THE PROPERTY FOLLOWING SEIZURE,**
12 **INCLUDING WHETHER THE PROPERTY WAS:**

13 **(I) RETURNED TO THE OWNER;**

14 **(II) DESTROYED; OR**

15 **(III) SOLD OR RETAINED AFTER FORFEITURE; AND**

16 **(14) THE DATE OF THE DISPOSITION OF THE PROPERTY.**

17 **(B) MSAC MAY REQUIRE A LAW ENFORCEMENT AGENCY TO PROVIDE**
18 **RELEVANT INFORMATION NOT SPECIFIED IN SUBSECTION (A) OF THIS SECTION.**

19 **(C) (1) EACH LAW ENFORCEMENT AGENCY SHALL FILE WITH MSAC THE**
20 **REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION FOR THE LAW**
21 **ENFORCEMENT AGENCY AND THE CORRESPONDING PROSECUTOR'S OFFICE.**

22 **(2) THE LAW ENFORCEMENT AGENCY SHALL FILE SEPARATE**
23 **REPORTS FOR FORFEITURES COMPLETED UNDER STATE FORFEITURE LAW AND**
24 **FEDERAL FORFEITURE LAW.**

25 **(3) A NULL REPORT SHALL BE FILED BY A LAW ENFORCEMENT**
26 **AGENCY THAT DID NOT ENGAGE IN SEIZURES OR FORFEITURES DURING THE**
27 **REPORTING PERIOD.**

1 **(D) (1) MSAC SHALL DEVELOP A STANDARD FORM, A PROCESS, AND**
2 **DEADLINES FOR ELECTRONIC DATA ENTRY FOR ANNUAL SUBMISSION OF**
3 **FORFEITURE DATA BY LAW ENFORCEMENT AGENCIES.**

4 **(2) MSAC SHALL COMPILE THE SUBMISSIONS AND ISSUE AN**
5 **AGGREGATE REPORT OF ALL FORFEITURES IN THE STATE.**

6 **(E) (1) BY MARCH 1 OF EACH YEAR, MSAC SHALL MAKE AVAILABLE ON**
7 **ITS WEB SITE THE REPORTS SUBMITTED BY LAW ENFORCEMENT AGENCIES AND THE**
8 **AGGREGATE REPORT OF MSAC.**

9 **(2) GOCCP SHALL SUBMIT THE AGGREGATE REPORT TO THE**
10 **GOVERNOR, THE GENERAL ASSEMBLY, AS PROVIDED IN § 2-1246 OF THE STATE**
11 **GOVERNMENT ARTICLE, AND EACH LAW ENFORCEMENT AGENCY BEFORE**
12 **SEPTEMBER 1 OF EACH YEAR.**

13 **(F) GOCCP MAY INCLUDE, WITH THE AGGREGATE REPORT OF MSAC,**
14 **RECOMMENDATIONS TO THE LEGISLATURE TO IMPROVE FORFEITURE STATUTES TO**
15 **BETTER ENSURE THAT FORFEITURE PROCEEDINGS ARE REPORTED AND HANDLED**
16 **IN A MANNER THAT IS FAIR TO CRIME VICTIMS, INNOCENT PROPERTY OWNERS,**
17 **SECURED INTEREST HOLDERS, CITIZENS, AND TAXPAYERS.**

18 **(G) (1) IF A LAW ENFORCEMENT AGENCY FAILS TO COMPLY WITH THE**
19 **REPORTING PROVISIONS OF THIS SECTION:**

20 **(i) GOCCP SHALL REPORT THE NONCOMPLIANCE TO THE**
21 **POLICE TRAINING COMMISSION; AND**

22 **(ii) THE POLICE TRAINING COMMISSION SHALL CONTACT THE**
23 **LAW ENFORCEMENT AGENCY AND REQUEST THAT THE AGENCY COMPLY WITH THE**
24 **REQUIRED REPORTING PROVISIONS.**

25 **(2) IF THE LAW ENFORCEMENT AGENCY FAILS TO COMPLY WITH THE**
26 **REQUIRED REPORTING PROVISIONS WITHIN 30 DAYS AFTER BEING CONTACTED BY**
27 **THE POLICE TRAINING COMMISSION, GOCCP AND THE POLICE TRAINING**
28 **COMMISSION JOINTLY SHALL REPORT THE NONCOMPLIANCE TO THE GOVERNOR**
29 **AND THE LEGISLATIVE POLICY COMMITTEE OF THE GENERAL ASSEMBLY.**

30 **(H) (1) MSAC MAY RECOUP ITS COSTS BY CHARGING A FEE TO LAW**
31 **ENFORCEMENT AGENCIES THAT ENGAGE IN SEIZURES OR FORFEITURES DURING**
32 **THE REPORTING PERIOD.**

1 **(2) A LAW ENFORCEMENT AGENCY MAY USE FORFEITURE PROCEEDS**
2 **TO PAY THE COST OF COMPILING AND REPORTING DATA UNDER THIS SUBTITLE,**
3 **INCLUDING ANY FEE IMPOSED BY MSAC.**

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2016.