



**Testimony for the House Judiciary Committee
February 20, 2015**

HB 360 – Criminal Procedure – Seizure and Forfeiture

SUPPORT

The ACLU of Maryland supports HB 360, which would tighten the rules for when police may use civil asset forfeiture to seize Marylanders' money and property. HB 360 would make important changes to Maryland's law on civil asset forfeiture, curb federal seizures, and institute a reporting requirement for state seizures.

Originally created to combat organized crime and to go after 'kingpins,' civil asset forfeiture laws have turned into cash cows for law enforcement at the detriment of citizens. Civil asset forfeiture laws recently gained national attention with several news outlets exposing law enforcement's abuse of the laws across the country.¹ For example, *The Washington Post* described multiple examples of innocent Americans having their money taken – money they were going to use to buy a car or a restaurant – by police. Citizens then had to hire lawyers and go to court to fight to get their money back. Even more appallingly, agencies then used the money to buy anything from armored vehicles to Corvettes to coffeemakers to renting a clown.²

Maryland's Law

Maryland's civil asset forfeiture law, Criminal Procedure §12-101 *et seq.*, provides the rules for when and how law enforcement may seize money, houses, cars and other property that they claim is being used to commit a drug-related crime or is the proceeds from a drug-related crime. The process is complex, but in essence proceeds as follows: an officer stops a citizen and in the context of that stop determines that the citizen has money or property the officer claims is related to drugs. The officer takes the money from the citizen. The State of Maryland then files a suit against the money. The owner of the money must then hire a lawyer to come to court and prove that the money was not drug-related. Money seized and retained in this manner goes to the General Fund of the State or of the political subdivision of the seizing law enforcement unit. Crim. Pro. §12-403.

HB 360 would do three things with respect to Maryland law. First, it would set a \$300 floor, which must be met before cash may be seized. The reason for this is

¹ <http://www.baltimoresun.com/news/maryland/crime/blog/bal-investigative-series-digs-into-cash-seized-by-police-during-car-stops-20140908-story.html>;
<http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/>;
<http://www.washingtonpost.com/sf/investigative/2014/09/07/police-intelligence-targets-cash/>;
<http://www.washingtonpost.com/sf/investigative/2014/09/08/they-fought-the-law-who-won/>;
<http://www.washingtonpost.com/sf/investigative/2014/10/11/cash-seizures-fuel-police-spending/>
² <http://www.washingtonpost.com/sf/investigative/2014/10/11/cash-seizures-fuel-police-spending/>

AMERICAN CIVIL
LIBERTIES UNION OF
MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
F/410-366-7838

FIELD OFFICE
6930 CARROLL AVENUE
SUITE 410
TAKOMA PARK, MD 20912
T/301-270-2258

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
COLEMAN BAZELON
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

two-fold: prosecuting a case against the money is expensive, and the State should not lose money in order to gain money. In addition, the civil asset forfeiture laws were designed to reach the ‘kingpins’ – common sense tells us that someone with less than \$300 is not operating as a ‘kingpin.’

Second, there is no requirement in Maryland law that an individual be convicted of – or even charged with – a crime. HB 360 would change that, and require that an individual be charged with a crime within 90 days or the property must be returned. Third, HB 360 would shift the burden of proof to require that the State prove that the money was drug-related. In civil cases the burden rests on the plaintiff, here the State, and it should be that way in civil asset forfeiture cases as well.

Federal Equitable Sharing

In addition to Maryland’s law on asset forfeiture, there is a federal “equitable sharing” program, whereby assets seized are shared between local jurisdictions and the federal government. Under equitable sharing, the proceeds are split between the federal agencies and the local agencies involved, with the local agencies receiving approximately 80% of the proceeds.³

Attorney General Holder recently suspended a part of the equitable sharing program, that in which the federal government “adopts” a local seizure.⁴ However, that program is only a small portion of the equitable sharing program and, in fact payments to state and local agencies under equitable forfeiture are projected to increase.⁵

According to documents obtained by *The Washington Post*, 72 different agencies in Maryland filed reports on funds received under federal equitable sharing between 2008 and 2013 or 2014. The funds received ranged from \$0 to over \$1,500,000 to a single agency in a single year.⁶

As a few examples:

- * From 2008-2014, the Anne Arundel Police Department received \$2,739,174; from 2008-2013, the City of Annapolis received \$365,651.31.
- * From 2008-2013, the Baltimore County Police Department received \$6,851,060.08; from 2008-2014, the Baltimore County State’s Attorney’s Office received \$897,461.92
- * From 2008-2014, the Baltimore Police Department received \$12,754,954.65.
- * From 2008-2014, the Calvert County Sheriff received \$304,521.98.
- * From 2008-2014, the Carroll County Drug Task Force received \$485,245.64.
- * From 2008-2013, the Cecil County Drug Task Force received \$666,567.49.
- * From 2008-2014, the Charles County Sheriff received \$496,215.27.
- * From 2008-2014, the Dorchester County Narcotics Task Force Received \$21,041.85.

³ <http://www.justice.gov/usao/ri/projects/esguidelines.pdf>

⁴ <http://www.justice.gov/opa/pr/attorney-general-prohibits-federal-agency-adoptions-assets-seized-state-and-local-law>

⁵ http://www.huffingtonpost.com/2015/02/05/justice-department-asset-forfeiture_n_6625960.html

⁶ <http://www.washingtonpost.com/blogs/federal-eye/wp/2015/01/16/how-police-spent-billions-seized-from-americans/>

- * From 2008-2014, the Comptroller of Maryland, Field Enforcement Division received \$200,747.05.
- * From 2008-2014, the Frederick County Narcotics Task Force received \$201,332.21.
- * From 2008-2014, the Garrett County Narcotics Task Force received \$90,921.13
- * From 2008-2013, the Hagerstown PD received \$34,705.87.
- * From 2008-2013, the Harford County Sheriff's office received \$594,869.99.
- * From 2008-2014, the Howard County PD received \$2,313,461.16.
- * From 2008-2013, the Maryland State Police received \$10,384,819
- * From 2008-2013, the Montgomery County PD received \$2,594,831.52⁷

Something is tremendously wrong with this picture. The amount of money taken in over alleged drug seizures is staggering – and this is only the federally reported seized money. We do not know how much is brought in by Maryland state agencies.

In an effort to rein in federal equitable sharing, HB 360 would prohibit a Maryland agency from transferring seized property to a federal law enforcement agency unless the case is prosecuted under federal law.

The importance of a reporting requirement

The inherent conflict of interest in asset forfeiture requires reporting to guard against abuse. A 2013 investigatory report by the Baltimore Sun revealed that Maryland's law enforcement agencies are reaping substantial rewards from the sale of seized assets. In fiscal year 2012, Maryland police agencies received \$6 million for selling property they seized. About \$1 million of that amount went to Baltimore police and \$650,000 went to state police.⁸

By the police force's own admission, the revenue from seizures is "absolutely vital" to the operation of the police force.⁹ The heavy reliance on seizure-generated revenue creates a significant conflict of interest for law enforcement because law enforcement agencies are being funded by seized property.

In *Tumey v. Ohio*, the Supreme Court held, "it certainly [...] deprives a defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case."¹⁰ Similarly here, law enforcement has a pecuniary interest in revenues from property seizure and this pecuniary interest creates a perverse incentive for law enforcement agencies to carry out seizures.

For the foregoing reasons, the ACLU of Maryland supports HB 360.

⁷ See <http://www.washingtonpost.com/blogs/federal-eye/wp/2015/01/16/how-police-spent-billions-seized-from-americans/> at the particular jurisdictions and dates. Numbers obtained by adding line 2 "Federal Sharing Funds Received" from both Justice Agencies and Treasury Agencies.

⁸ Ian Duncan, *Maryland police seek federal help to take ill-gotten gains* (The Baltimore Sun, Feb. 14, 2013).

⁹ Ian Duncan, *Maryland police seek federal help to take ill-gotten gains* (The Baltimore Sun, Feb. 14, 2013).

¹⁰ *Tumey v. Ohio*, 273 U.S. 510 (1927).