

SENATE BILL 764

E2, E4

9lr1808

By: **Senator Smith**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Forfeiture – Equitable Sharing of Proceeds**

3 FOR the purpose of prohibiting a forfeiting authority or seizing authority from receiving
4 the proceeds of, or entering into an equitable sharing agreement with a federal
5 agency to receive the proceeds of, certain property that is forfeited under federal law;
6 repealing a certain requirement that a seizing authority, in consultation with a
7 certain forfeiting authority, report certain information on an annual basis; and
8 generally relating to forfeiture.

9 BY repealing and reenacting, without amendments,
10 Article – Criminal Procedure
11 Section 12–101(a), (f), and (o) and 12–102(a)
12 Annotated Code of Maryland
13 (2018 Replacement Volume)

14 BY repealing and reenacting, with amendments,
15 Article – Criminal Procedure
16 Section 12–403 and 12–602(a)
17 Annotated Code of Maryland
18 (2018 Replacement Volume)

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

21 **Article – Criminal Procedure**

22 12–101.

23 (a) In this title the following words have the meanings indicated.

24 (f) “Forfeiting authority” means:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (1) the unit or person designated by agreement between the State's
2 Attorney for a county and the chief executive officer of the governing body having
3 jurisdiction over assets subject to forfeiture to act on behalf of the governing body regarding
4 those assets; or

5 (2) if the seizing authority is a unit of the State, a unit or person that the
6 Attorney General or the Attorney General's designee designates by agreement with a
7 State's Attorney, county attorney, or municipal attorney to act on behalf of the State
8 regarding assets subject to forfeiture by the State.

9 (o) "Seizing authority" means a law enforcement unit in the State that is
10 authorized to investigate violations of the Controlled Dangerous Substances law and that
11 has seized property under this title.

12 12-102.

13 (a) The following are subject to forfeiture:

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

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

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

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

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

27 (6) subject to subsection (b) of this section, weapons used or intended to be
28 used in connection with the unlawful manufacture, distribution, or dispensing of a
29 controlled dangerous substance or controlled paraphernalia;

30 (7) subject to subsection (b) of this section, any amount of money that is
31 used or intended to be used in connection with the unlawful manufacture, distribution, or
32 dispensing of a controlled dangerous substance;

33 (8) drug paraphernalia under § 5-619 of the Criminal Law Article;

1 (9) controlled paraphernalia under § 5–620 of the Criminal Law Article;

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

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

6 (12) everything of value furnished, or intended to be furnished, in exchange
7 for a controlled dangerous substance in violation of the Controlled Dangerous Substances
8 law, all proceeds traceable to the exchange, and all negotiable instruments and securities
9 used, or intended to be used, to facilitate any violation of the Controlled Dangerous
10 Substances law.

11 12–403.

12 (a) (1) Whenever property is forfeited under this title, the governing body
13 where the property was seized may:

14 (i) keep the property for official use;

15 (ii) require an appropriate unit to take custody of the property and
16 destroy or otherwise dispose of it; or

17 (iii) sell the property if:

18 1. the law does not require the property to be destroyed; and

19 2. the property is not harmful to the public.

20 (2) The proceeds of a sale under this subsection shall first be used to pay
21 all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure,
22 maintenance of custody, advertising, and court costs.

23 (b) If the seizing authority was a State law enforcement unit:

24 (1) under § 12–402(b) of this subtitle, the court shall order the property to
25 be forfeited to the State law enforcement unit; or

26 (2) under § 12–402(d)(2)(iv) of this subtitle, the proceeds of the sale shall
27 be paid to the State law enforcement unit.

28 (c) Except as provided in subsection (d) of this section, the State law enforcement
29 unit that receives forfeited property or proceeds from a sale of forfeited property under this
30 section shall:

31 (1) dispose of the forfeited property as provided in subsection (a) of this

1 section; and

2 (2) pay to the General Fund of the State any proceeds of the sale of the
3 forfeited property.

4 (d) Except as otherwise provided under federal law, a law enforcement unit other
5 than a State law enforcement unit that participated with a State law enforcement unit in
6 seizing property forfeited under this section:

7 (1) shall be paid by the State law enforcement unit the share of the
8 proceeds from the sale of the forfeited property as agreed by the law enforcement units; or

9 (2) may ask the Governor's Office of Crime Control and Prevention to
10 determine its share.

11 (e) Proceeds that a law enforcement unit other than a State law enforcement unit
12 receives under subsection (d) of this section shall be deposited in the general fund of the
13 political subdivision of that law enforcement unit.

14 **(F) A FORFEITING AUTHORITY OR SEIZING AUTHORITY MAY NOT RECEIVE**
15 **THE PROCEEDS OF, OR ENTER INTO AN EQUITABLE SHARING AGREEMENT WITH A**
16 **FEDERAL AGENCY TO RECEIVE THE PROCEEDS OF, PROPERTY SUBJECT TO**
17 **FORFEITURE UNDER § 12-102 OF THIS TITLE THAT IS FORFEITED UNDER FEDERAL**
18 **LAW.**

19 12-602.

20 (a) On an annual basis, each seizing authority in consultation with the
21 corresponding forfeiting authority shall report how any funds appropriated to the authority
22 as a result of forfeiture were spent in the preceding fiscal year and the following information
23 about each individual seizure and forfeiture completed by the agency under this title:

24 (1) the date that currency, vehicles, houses, or other types of property were
25 seized;

26 (2) the type of property seized, including year, make, and model, as
27 applicable;

28 (3) the outcome of related criminal action, including whether charges were
29 brought, a plea bargain was reached, a conviction was obtained, or an acquittal was issued;

30 (4) whether a unit of federal government took custody of the seized
31 property, and the name of the unit;

32 (5) for property other than money, the market value of the property seized;

1 (6) if money was seized, the amount of money;

2 (7) [the amount the seizing authority received in the prior year from the
3 federal government as part of an equitable sharing agreement;

4 (8)] the race and gender of the person or persons from whom the property
5 was seized, if known; and

6 [(9) (8)] whether the property was returned to the owner.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2019.