



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3074

by Rep. Stephanie A. Kifowit

SYNOPSIS AS INTRODUCED:

720 ILCS 5/28-5	from Ch. 38, par. 28-5
720 ILCS 5/29B-1	from Ch. 38, par. 29B-1
720 ILCS 5/36-2	from Ch. 38, par. 36-2
720 ILCS 5/47-15	
725 ILCS 5/124B-160	
725 ILCS 150/9	from Ch. 56 1/2, par. 1679
725 ILCS 175/5	from Ch. 56 1/2, par. 1655

Amends the Criminal Code of 2012, Code of Criminal Procedure of 1963, Drug Asset Forfeiture Act, and the Narcotics Profit Forfeiture Act. Provides in provisions pertaining to forfeiture proceedings that the court shall admit a signed statement by a person who is 65 years old or older to demonstrate that the conveyance or other property was used without his or her consent. Provides that a claimant may file a temporary restraining order against the person who used his or her property without his or her consent under the Code of Civil Procedure.

LRB100 10982 SLF 21220 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by changing
5 Sections 28-5, 29B-1, 36-2, and 47-15 as follows:

6 (720 ILCS 5/28-5) (from Ch. 38, par. 28-5)

7 Sec. 28-5. Seizure of gambling devices and gambling funds.

8 (a) Every device designed for gambling which is incapable
9 of lawful use or every device used unlawfully for gambling
10 shall be considered a "gambling device", and shall be subject
11 to seizure, confiscation and destruction by the Department of
12 State Police or by any municipal, or other local authority,
13 within whose jurisdiction the same may be found. As used in
14 this Section, a "gambling device" includes any slot machine,
15 and includes any machine or device constructed for the
16 reception of money or other thing of value and so constructed
17 as to return, or to cause someone to return, on chance to the
18 player thereof money, property or a right to receive money or
19 property. With the exception of any device designed for
20 gambling which is incapable of lawful use, no gambling device
21 shall be forfeited or destroyed unless an individual with a
22 property interest in said device knows of the unlawful use of
23 the device.

1 (b) Every gambling device shall be seized and forfeited to
2 the county wherein such seizure occurs. Any money or other
3 thing of value integrally related to acts of gambling shall be
4 seized and forfeited to the county wherein such seizure occurs.

5 (c) If, within 60 days after any seizure pursuant to
6 subparagraph (b) of this Section, a person having any property
7 interest in the seized property is charged with an offense, the
8 court which renders judgment upon such charge shall, within 30
9 days after such judgment, conduct a forfeiture hearing to
10 determine whether such property was a gambling device at the
11 time of seizure. Such hearing shall be commenced by a written
12 petition by the State, including material allegations of fact,
13 the name and address of every person determined by the State to
14 have any property interest in the seized property, a
15 representation that written notice of the date, time and place
16 of such hearing has been mailed to every such person by
17 certified mail at least 10 days before such date, and a request
18 for forfeiture. Every such person may appear as a party and
19 present evidence at such hearing. The quantum of proof required
20 shall be a preponderance of the evidence, and the burden of
21 proof shall be on the State. The court shall admit a signed
22 statement by a person who is 65 years old or older to
23 demonstrate that the conveyance or other property was used
24 without his or her consent. The claimant may file a temporary
25 restraining order against the person who allegedly used his or
26 her property without his or her consent under Section 11-101 of

1 the Code of Civil Procedure. If the court determines that the
2 seized property was a gambling device at the time of seizure,
3 an order of forfeiture and disposition of the seized property
4 shall be entered: a gambling device shall be received by the
5 State's Attorney, who shall effect its destruction, except that
6 valuable parts thereof may be liquidated and the resultant
7 money shall be deposited in the general fund of the county
8 wherein such seizure occurred; money and other things of value
9 shall be received by the State's Attorney and, upon
10 liquidation, shall be deposited in the general fund of the
11 county wherein such seizure occurred. However, in the event
12 that a defendant raises the defense that the seized slot
13 machine is an antique slot machine described in subparagraph
14 (b) (7) of Section 28-1 of this Code and therefore he is exempt
15 from the charge of a gambling activity participant, the seized
16 antique slot machine shall not be destroyed or otherwise
17 altered until a final determination is made by the Court as to
18 whether it is such an antique slot machine. Upon a final
19 determination by the Court of this question in favor of the
20 defendant, such slot machine shall be immediately returned to
21 the defendant. Such order of forfeiture and disposition shall,
22 for the purposes of appeal, be a final order and judgment in a
23 civil proceeding.

24 (d) If a seizure pursuant to subparagraph (b) of this
25 Section is not followed by a charge pursuant to subparagraph
26 (c) of this Section, or if the prosecution of such charge is

1 permanently terminated or indefinitely discontinued without
2 any judgment of conviction or acquittal (1) the State's
3 Attorney shall commence an in rem proceeding for the forfeiture
4 and destruction of a gambling device, or for the forfeiture and
5 deposit in the general fund of the county of any seized money
6 or other things of value, or both, in the circuit court and (2)
7 any person having any property interest in such seized gambling
8 device, money or other thing of value may commence separate
9 civil proceedings in the manner provided by law.

10 (e) Any gambling device displayed for sale to a riverboat
11 gambling operation or used to train occupational licensees of a
12 riverboat gambling operation as authorized under the Riverboat
13 Gambling Act is exempt from seizure under this Section.

14 (f) Any gambling equipment, devices and supplies provided
15 by a licensed supplier in accordance with the Riverboat
16 Gambling Act which are removed from the riverboat for repair
17 are exempt from seizure under this Section.

18 (g) The following video gaming terminals are exempt from
19 seizure under this Section:

20 (1) Video gaming terminals for sale to a licensed
21 distributor or operator under the Video Gaming Act.

22 (2) Video gaming terminals used to train licensed
23 technicians or licensed terminal handlers.

24 (3) Video gaming terminals that are removed from a
25 licensed establishment, licensed truck stop establishment,
26 licensed fraternal establishment, or licensed veterans

1 establishment for repair.

2 (Source: P.A. 98-31, eff. 6-24-13.)

3 (720 ILCS 5/29B-1) (from Ch. 38, par. 29B-1)

4 Sec. 29B-1. Money laundering; forfeiture proceedings.

5 (a) A person commits the offense of money laundering:

6 (1) when, knowing that the property involved in a
7 financial transaction represents the proceeds of some form
8 of unlawful activity, he or she conducts or attempts to
9 conduct such a financial transaction which in fact involves
10 criminally derived property:

11 (A) with the intent to promote the carrying on of
12 the unlawful activity from which the criminally
13 derived property was obtained; or

14 (B) where he or she knows or reasonably should know
15 that the financial transaction is designed in whole or
16 in part:

17 (i) to conceal or disguise the nature, the
18 location, the source, the ownership or the control
19 of the criminally derived property; or

20 (ii) to avoid a transaction reporting
21 requirement under State law; or

22 (1.5) when he or she transports, transmits, or
23 transfers, or attempts to transport, transmit, or transfer
24 a monetary instrument:

25 (A) with the intent to promote the carrying on of

1 the unlawful activity from which the criminally
2 derived property was obtained; or

3 (B) knowing, or having reason to know, that the
4 financial transaction is designed in whole or in part:

5 (i) to conceal or disguise the nature, the
6 location, the source, the ownership or the control
7 of the criminally derived property; or

8 (ii) to avoid a transaction reporting
9 requirement under State law; or

10 (2) when, with the intent to:

11 (A) promote the carrying on of a specified criminal
12 activity as defined in this Article; or

13 (B) conceal or disguise the nature, location,
14 source, ownership, or control of property believed to
15 be the proceeds of a specified criminal activity as
16 defined by subdivision (b) (6); or

17 (C) avoid a transaction reporting requirement
18 under State law,

19 he or she conducts or attempts to conduct a financial
20 transaction involving property he or she believes to be the
21 proceeds of specified criminal activity as defined by
22 subdivision (b) (6) or property used to conduct or
23 facilitate specified criminal activity as defined by
24 subdivision (b) (6).

25 (b) As used in this Section:

26 (0.5) "Knowing that the property involved in a

1 financial transaction represents the proceeds of some form
2 of unlawful activity" means that the person knew the
3 property involved in the transaction represented proceeds
4 from some form, though not necessarily which form, of
5 activity that constitutes a felony under State, federal, or
6 foreign law.

7 (1) "Financial transaction" means a purchase, sale,
8 loan, pledge, gift, transfer, delivery or other
9 disposition utilizing criminally derived property, and
10 with respect to financial institutions, includes a
11 deposit, withdrawal, transfer between accounts, exchange
12 of currency, loan, extension of credit, purchase or sale of
13 any stock, bond, certificate of deposit or other monetary
14 instrument, use of safe deposit box, or any other payment,
15 transfer or delivery by, through, or to a financial
16 institution. For purposes of clause (a) (2) of this Section,
17 the term "financial transaction" also means a transaction
18 which without regard to whether the funds, monetary
19 instruments, or real or personal property involved in the
20 transaction are criminally derived, any transaction which
21 in any way or degree: (1) involves the movement of funds by
22 wire or any other means; (2) involves one or more monetary
23 instruments; or (3) the transfer of title to any real or
24 personal property. The receipt by an attorney of bona fide
25 fees for the purpose of legal representation is not a
26 financial transaction for purposes of this Section.

1 (2) "Financial institution" means any bank; saving and
2 loan association; trust company; agency or branch of a
3 foreign bank in the United States; currency exchange;
4 credit union, mortgage banking institution; pawnbroker;
5 loan or finance company; operator of a credit card system;
6 issuer, redeemer or cashier of travelers checks, checks or
7 money orders; dealer in precious metals, stones or jewels;
8 broker or dealer in securities or commodities; investment
9 banker; or investment company.

10 (3) "Monetary instrument" means United States coins
11 and currency; coins and currency of a foreign country;
12 travelers checks; personal checks, bank checks, and money
13 orders; investment securities; bearer negotiable
14 instruments; bearer investment securities; or bearer
15 securities and certificates of stock in such form that
16 title thereto passes upon delivery.

17 (4) "Criminally derived property" means: (A) any
18 property, real or personal, constituting or derived from
19 proceeds obtained, directly or indirectly, from activity
20 that constitutes a felony under State, federal, or foreign
21 law; or (B) any property represented to be property
22 constituting or derived from proceeds obtained, directly
23 or indirectly, from activity that constitutes a felony
24 under State, federal, or foreign law.

25 (5) "Conduct" or "conducts" includes, in addition to
26 its ordinary meaning, initiating, concluding, or

1 participating in initiating or concluding a transaction.

2 (6) "Specified criminal activity" means any violation
3 of Section 29D-15.1 (720 ILCS 5/29D-15.1) and any violation
4 of Article 29D of this Code.

5 (7) "Director" means the Director of State Police or
6 his or her designated agents.

7 (8) "Department" means the Department of State Police
8 of the State of Illinois or its successor agency.

9 (9) "Transaction reporting requirement under State
10 law" means any violation as defined under the Currency
11 Reporting Act.

12 (c) Sentence.

13 (1) Laundering of criminally derived property of a
14 value not exceeding \$10,000 is a Class 3 felony;

15 (2) Laundering of criminally derived property of a
16 value exceeding \$10,000 but not exceeding \$100,000 is a
17 Class 2 felony;

18 (3) Laundering of criminally derived property of a
19 value exceeding \$100,000 but not exceeding \$500,000 is a
20 Class 1 felony;

21 (4) Money laundering in violation of subsection (a)(2)
22 of this Section is a Class X felony;

23 (5) Laundering of criminally derived property of a
24 value exceeding \$500,000 is a Class 1 non-probationable
25 felony;

26 (6) In a prosecution under clause (a)(1.5)(B)(ii) of

1 this Section, the sentences are as follows:

2 (A) Laundering of property of a value not exceeding
3 \$10,000 is a Class 3 felony;

4 (B) Laundering of property of a value exceeding
5 \$10,000 but not exceeding \$100,000 is a Class 2 felony;

6 (C) Laundering of property of a value exceeding
7 \$100,000 but not exceeding \$500,000 is a Class 1
8 felony;

9 (D) Laundering of property of a value exceeding
10 \$500,000 is a Class 1 non-probationable felony.

11 (d) Evidence. In a prosecution under this Article, either
12 party may introduce the following evidence pertaining to the
13 issue of whether the property or proceeds were known to be some
14 form of criminally derived property or from some form of
15 unlawful activity:

16 (1) A financial transaction was conducted or
17 structured or attempted in violation of the reporting
18 requirements of any State or federal law; or

19 (2) A financial transaction was conducted or attempted
20 with the use of a false or fictitious name or a forged
21 instrument; or

22 (3) A falsely altered or completed written instrument
23 or a written instrument that contains any materially false
24 personal identifying information was made, used, offered
25 or presented, whether accepted or not, in connection with a
26 financial transaction; or

1 (4) A financial transaction was structured or
2 attempted to be structured so as to falsely report the
3 actual consideration or value of the transaction; or

4 (5) A money transmitter, a person engaged in a trade or
5 business or any employee of a money transmitter or a person
6 engaged in a trade or business, knows or reasonably should
7 know that false personal identifying information has been
8 presented and incorporates the false personal identifying
9 information into any report or record; or

10 (6) The criminally derived property is transported or
11 possessed in a fashion inconsistent with the ordinary or
12 usual means of transportation or possession of such
13 property and where the property is discovered in the
14 absence of any documentation or other indicia of legitimate
15 origin or right to such property; or

16 (7) A person pays or receives substantially less than
17 face value for one or more monetary instruments; or

18 (8) A person engages in a transaction involving one or
19 more monetary instruments, where the physical condition or
20 form of the monetary instrument or instruments makes it
21 apparent that they are not the product of bona fide
22 business or financial transactions.

23 (e) Duty to enforce this Article.

24 (1) It is the duty of the Department of State Police,
25 and its agents, officers, and investigators, to enforce all
26 provisions of this Article, except those specifically

1 delegated, and to cooperate with all agencies charged with
2 the enforcement of the laws of the United States, or of any
3 state, relating to money laundering. Only an agent,
4 officer, or investigator designated by the Director may be
5 authorized in accordance with this Section to serve seizure
6 notices, warrants, subpoenas, and summonses under the
7 authority of this State.

8 (2) Any agent, officer, investigator, or peace officer
9 designated by the Director may: (A) make seizure of
10 property pursuant to the provisions of this Article; and
11 (B) perform such other law enforcement duties as the
12 Director designates. It is the duty of all State's
13 Attorneys to prosecute violations of this Article and
14 institute legal proceedings as authorized under this
15 Article.

16 (f) Protective orders.

17 (1) Upon application of the State, the court may enter
18 a restraining order or injunction, require the execution of
19 a satisfactory performance bond, or take any other action
20 to preserve the availability of property described in
21 subsection (h) for forfeiture under this Article:

22 (A) upon the filing of an indictment, information,
23 or complaint charging a violation of this Article for
24 which forfeiture may be ordered under this Article and
25 alleging that the property with respect to which the
26 order is sought would be subject to forfeiture under

1 this Article; or

2 (B) prior to the filing of such an indictment,
3 information, or complaint, if, after notice to persons
4 appearing to have an interest in the property and
5 opportunity for a hearing, the court determines that:

6 (i) there is probable cause to believe that the
7 State will prevail on the issue of forfeiture and
8 that failure to enter the order will result in the
9 property being destroyed, removed from the
10 jurisdiction of the court, or otherwise made
11 unavailable for forfeiture; and

12 (ii) the need to preserve the availability of
13 the property through the entry of the requested
14 order outweighs the hardship on any party against
15 whom the order is to be entered.

16 Provided, however, that an order entered pursuant
17 to subparagraph (B) shall be effective for not more
18 than 90 days, unless extended by the court for good
19 cause shown or unless an indictment, information,
20 complaint, or administrative notice has been filed.

21 (2) A temporary restraining order under this
22 subsection may be entered upon application of the State
23 without notice or opportunity for a hearing when an
24 indictment, information, complaint, or administrative
25 notice has not yet been filed with respect to the property,
26 if the State demonstrates that there is probable cause to

1 believe that the property with respect to which the order
2 is sought would be subject to forfeiture under this Section
3 and that provision of notice will jeopardize the
4 availability of the property for forfeiture. Such a
5 temporary order shall expire not more than 30 days after
6 the date on which it is entered, unless extended for good
7 cause shown or unless the party against whom it is entered
8 consents to an extension for a longer period. A hearing
9 requested concerning an order entered under this paragraph
10 shall be held at the earliest possible time and prior to
11 the expiration of the temporary order.

12 (3) The court may receive and consider, at a hearing
13 held pursuant to this subsection (f), evidence and
14 information that would be inadmissible under the Illinois
15 rules of evidence.

16 (4) Order to repatriate and deposit.

17 (A) In general. Pursuant to its authority to enter
18 a pretrial restraining order under this Section, the
19 court may order a defendant to repatriate any property
20 that may be seized and forfeited and to deposit that
21 property pending trial with the Illinois State Police
22 or another law enforcement agency designated by the
23 Illinois State Police.

24 (B) Failure to comply. Failure to comply with an
25 order under this subsection (f) is punishable as a
26 civil or criminal contempt of court.

1 (g) Warrant of seizure. The State may request the issuance
2 of a warrant authorizing the seizure of property described in
3 subsection (h) in the same manner as provided for a search
4 warrant. If the court determines that there is probable cause
5 to believe that the property to be seized would be subject to
6 forfeiture, the court shall issue a warrant authorizing the
7 seizure of such property.

8 (h) Forfeiture.

9 (1) The following are subject to forfeiture:

10 (A) any property, real or personal, constituting,
11 derived from, or traceable to any proceeds the person
12 obtained directly or indirectly, as a result of a
13 violation of this Article;

14 (B) any of the person's property used, or intended
15 to be used, in any manner or part, to commit, or to
16 facilitate the commission of, a violation of this
17 Article;

18 (C) all conveyances, including aircraft, vehicles
19 or vessels, which are used, or intended for use, to
20 transport, or in any manner to facilitate the
21 transportation, sale, receipt, possession, or
22 concealment of property described in subparagraphs (A)
23 and (B), but:

24 (i) no conveyance used by any person as a
25 common carrier in the transaction of business as a
26 common carrier is subject to forfeiture under this

1 Section unless it appears that the owner or other
2 person in charge of the conveyance is a consenting
3 party or privy to a violation of this Article;

4 (ii) no conveyance is subject to forfeiture
5 under this Section by reason of any act or omission
6 which the owner proves to have been committed or
7 omitted without his or her knowledge or consent;

8 (iii) a forfeiture of a conveyance encumbered
9 by a bona fide security interest is subject to the
10 interest of the secured party if he or she neither
11 had knowledge of nor consented to the act or
12 omission;

13 (D) all real property, including any right, title,
14 and interest (including, but not limited to, any
15 leasehold interest or the beneficial interest in a land
16 trust) in the whole of any lot or tract of land and any
17 appurtenances or improvements, which is used or
18 intended to be used, in any manner or part, to commit,
19 or in any manner to facilitate the commission of, any
20 violation of this Article or that is the proceeds of
21 any violation or act that constitutes a violation of
22 this Article.

23 (2) Property subject to forfeiture under this Article
24 may be seized by the Director or any peace officer upon
25 process or seizure warrant issued by any court having
26 jurisdiction over the property. Seizure by the Director or

1 any peace officer without process may be made:

2 (A) if the seizure is incident to a seizure
3 warrant;

4 (B) if the property subject to seizure has been the
5 subject of a prior judgment in favor of the State in a
6 criminal proceeding, or in an injunction or forfeiture
7 proceeding based upon this Article;

8 (C) if there is probable cause to believe that the
9 property is directly or indirectly dangerous to health
10 or safety;

11 (D) if there is probable cause to believe that the
12 property is subject to forfeiture under this Article
13 and the property is seized under circumstances in which
14 a warrantless seizure or arrest would be reasonable; or

15 (E) in accordance with the Code of Criminal
16 Procedure of 1963.

17 (3) In the event of seizure pursuant to paragraph (2),
18 forfeiture proceedings shall be instituted in accordance
19 with subsections (i) through (r).

20 (4) Property taken or detained under this Section shall
21 not be subject to replevin, but is deemed to be in the
22 custody of the Director subject only to the order and
23 judgments of the circuit court having jurisdiction over the
24 forfeiture proceedings and the decisions of the State's
25 Attorney under this Article. When property is seized under
26 this Article, the seizing agency shall promptly conduct an

1 inventory of the seized property and estimate the
2 property's value and shall forward a copy of the inventory
3 of seized property and the estimate of the property's value
4 to the Director. Upon receiving notice of seizure, the
5 Director may:

6 (A) place the property under seal;

7 (B) remove the property to a place designated by
8 the Director;

9 (C) keep the property in the possession of the
10 seizing agency;

11 (D) remove the property to a storage area for
12 safekeeping or, if the property is a negotiable
13 instrument or money and is not needed for evidentiary
14 purposes, deposit it in an interest bearing account;

15 (E) place the property under constructive seizure
16 by posting notice of pending forfeiture on it, by
17 giving notice of pending forfeiture to its owners and
18 interest holders, or by filing notice of pending
19 forfeiture in any appropriate public record relating
20 to the property; or

21 (F) provide for another agency or custodian,
22 including an owner, secured party, or lienholder, to
23 take custody of the property upon the terms and
24 conditions set by the Director.

25 (5) When property is forfeited under this Article, the
26 Director shall sell all such property unless such property

1 is required by law to be destroyed or is harmful to the
2 public, and shall distribute the proceeds of the sale,
3 together with any moneys forfeited or seized, in accordance
4 with paragraph (6). However, upon the application of the
5 seizing agency or prosecutor who was responsible for the
6 investigation, arrest or arrests and prosecution which
7 lead to the forfeiture, the Director may return any item of
8 forfeited property to the seizing agency or prosecutor for
9 official use in the enforcement of laws, if the agency or
10 prosecutor can demonstrate that the item requested would be
11 useful to the agency or prosecutor in its enforcement
12 efforts. When any real property returned to the seizing
13 agency is sold by the agency or its unit of government, the
14 proceeds of the sale shall be delivered to the Director and
15 distributed in accordance with paragraph (6).

16 (6) All monies and the sale proceeds of all other
17 property forfeited and seized under this Article shall be
18 distributed as follows:

19 (A) 65% shall be distributed to the metropolitan
20 enforcement group, local, municipal, county, or State
21 law enforcement agency or agencies which conducted or
22 participated in the investigation resulting in the
23 forfeiture. The distribution shall bear a reasonable
24 relationship to the degree of direct participation of
25 the law enforcement agency in the effort resulting in
26 the forfeiture, taking into account the total value of

1 the property forfeited and the total law enforcement
2 effort with respect to the violation of the law upon
3 which the forfeiture is based. Amounts distributed to
4 the agency or agencies shall be used for the
5 enforcement of laws.

6 (B) (i) 12.5% shall be distributed to the Office of
7 the State's Attorney of the county in which the
8 prosecution resulting in the forfeiture was
9 instituted, deposited in a special fund in the county
10 treasury and appropriated to the State's Attorney for
11 use in the enforcement of laws. In counties over
12 3,000,000 population, 25% shall be distributed to the
13 Office of the State's Attorney for use in the
14 enforcement of laws. If the prosecution is undertaken
15 solely by the Attorney General, the portion provided
16 hereunder shall be distributed to the Attorney General
17 for use in the enforcement of laws.

18 (ii) 12.5% shall be distributed to the Office of
19 the State's Attorneys Appellate Prosecutor and
20 deposited in the Narcotics Profit Forfeiture Fund of
21 that office to be used for additional expenses incurred
22 in the investigation, prosecution and appeal of cases
23 arising under laws. The Office of the State's Attorneys
24 Appellate Prosecutor shall not receive distribution
25 from cases brought in counties with over 3,000,000
26 population.

1 (C) 10% shall be retained by the Department of
2 State Police for expenses related to the
3 administration and sale of seized and forfeited
4 property.

5 Moneys and the sale proceeds distributed to the
6 Department of State Police under this Article shall be
7 deposited in the Money Laundering Asset Recovery Fund
8 created in the State treasury and shall be used by the
9 Department of State Police for State law enforcement
10 purposes.

11 (7) All moneys and sale proceeds of property forfeited
12 and seized under this Article and distributed according to
13 paragraph (6) may also be used to purchase opioid
14 antagonists as defined in Section 5-23 of the Alcoholism
15 and Other Drug Abuse and Dependency Act.

16 (i) Notice to owner or interest holder.

17 (1) Whenever notice of pending forfeiture or service of
18 an in rem complaint is required under the provisions of
19 this Article, such notice or service shall be given as
20 follows:

21 (A) If the owner's or interest holder's name and
22 current address are known, then by either personal
23 service or mailing a copy of the notice by certified
24 mail, return receipt requested, to that address. For
25 purposes of notice under this Section, if a person has
26 been arrested for the conduct giving rise to the

1 forfeiture, then the address provided to the arresting
2 agency at the time of arrest shall be deemed to be that
3 person's known address. Provided, however, if an owner
4 or interest holder's address changes prior to the
5 effective date of the notice of pending forfeiture, the
6 owner or interest holder shall promptly notify the
7 seizing agency of the change in address or, if the
8 owner or interest holder's address changes subsequent
9 to the effective date of the notice of pending
10 forfeiture, the owner or interest holder shall
11 promptly notify the State's Attorney of the change in
12 address; or

13 (B) If the property seized is a conveyance, to the
14 address reflected in the office of the agency or
15 official in which title or interest to the conveyance
16 is required by law to be recorded, then by mailing a
17 copy of the notice by certified mail, return receipt
18 requested, to that address; or

19 (C) If the owner's or interest holder's address is
20 not known, and is not on record as provided in
21 paragraph (B), then by publication for 3 successive
22 weeks in a newspaper of general circulation in the
23 county in which the seizure occurred.

24 (2) Notice served under this Article is effective upon
25 personal service, the last date of publication, or the
26 mailing of written notice, whichever is earlier.

1 (j) Notice to State's Attorney. The law enforcement agency
2 seizing property for forfeiture under this Article shall,
3 within 90 days after seizure, notify the State's Attorney for
4 the county, either where an act or omission giving rise to the
5 forfeiture occurred or where the property was seized, of the
6 seizure of the property and the facts and circumstances giving
7 rise to the seizure and shall provide the State's Attorney with
8 the inventory of the property and its estimated value. When the
9 property seized for forfeiture is a vehicle, the law
10 enforcement agency seizing the property shall immediately
11 notify the Secretary of State that forfeiture proceedings are
12 pending regarding such vehicle.

13 (k) Non-judicial forfeiture. If non-real property that
14 exceeds \$20,000 in value excluding the value of any conveyance,
15 or if real property is seized under the provisions of this
16 Article, the State's Attorney shall institute judicial in rem
17 forfeiture proceedings as described in subsection (l) of this
18 Section within 45 days from receipt of notice of seizure from
19 the seizing agency under subsection (j) of this Section.
20 However, if non-real property that does not exceed \$20,000 in
21 value excluding the value of any conveyance is seized, the
22 following procedure shall be used:

23 (1) If, after review of the facts surrounding the
24 seizure, the State's Attorney is of the opinion that the
25 seized property is subject to forfeiture, then within 45
26 days after the receipt of notice of seizure from the

1 seizing agency, the State's Attorney shall cause notice of
2 pending forfeiture to be given to the owner of the property
3 and all known interest holders of the property in
4 accordance with subsection (i) of this Section.

5 (2) The notice of pending forfeiture must include a
6 description of the property, the estimated value of the
7 property, the date and place of seizure, the conduct giving
8 rise to forfeiture or the violation of law alleged, and a
9 summary of procedures and procedural rights applicable to
10 the forfeiture action.

11 (3) (A) Any person claiming an interest in property
12 which is the subject of notice under paragraph (1) of this
13 subsection (k), must, in order to preserve any rights or
14 claims to the property, within 45 days after the effective
15 date of notice as described in subsection (i) of this
16 Section, file a verified claim with the State's Attorney
17 expressing his or her interest in the property. The claim
18 must set forth:

19 (i) the caption of the proceedings as set forth on
20 the notice of pending forfeiture and the name of the
21 claimant;

22 (ii) the address at which the claimant will accept
23 mail;

24 (iii) the nature and extent of the claimant's
25 interest in the property;

26 (iv) the date, identity of the transferor, and

1 circumstances of the claimant's acquisition of the
2 interest in the property;

3 (v) the name and address of all other persons known
4 to have an interest in the property;

5 (vi) the specific provision of law relied on in
6 asserting the property is not subject to forfeiture;

7 (vii) all essential facts supporting each
8 assertion; and

9 (viii) the relief sought.

10 (B) If a claimant files the claim and deposits with the
11 State's Attorney a cost bond, in the form of a cashier's
12 check payable to the clerk of the court, in the sum of 10%
13 of the reasonable value of the property as alleged by the
14 State's Attorney or the sum of \$100, whichever is greater,
15 upon condition that, in the case of forfeiture, the
16 claimant must pay all costs and expenses of forfeiture
17 proceedings, then the State's Attorney shall institute
18 judicial in rem forfeiture proceedings and deposit the cost
19 bond with the clerk of the court as described in subsection
20 (1) of this Section within 45 days after receipt of the
21 claim and cost bond. In lieu of a cost bond, a person
22 claiming interest in the seized property may file, under
23 penalty of perjury, an indigency affidavit which has been
24 approved by a circuit court judge.

25 (C) If none of the seized property is forfeited in the
26 judicial in rem proceeding, the clerk of the court shall

1 return to the claimant, unless the court orders otherwise,
2 90% of the sum which has been deposited and shall retain as
3 costs 10% of the money deposited. If any of the seized
4 property is forfeited under the judicial forfeiture
5 proceeding, the clerk of the court shall transfer 90% of
6 the sum which has been deposited to the State's Attorney
7 prosecuting the civil forfeiture to be applied to the costs
8 of prosecution and the clerk shall retain as costs 10% of
9 the sum deposited.

10 (4) If no claim is filed or bond given within the 45
11 day period as described in paragraph (3) of this subsection
12 (k), the State's Attorney shall declare the property
13 forfeited and shall promptly notify the owner and all known
14 interest holders of the property and the Director of State
15 Police of the declaration of forfeiture and the Director
16 shall dispose of the property in accordance with law.

17 (1) Judicial in rem procedures. If property seized under
18 the provisions of this Article is non-real property that
19 exceeds \$20,000 in value excluding the value of any conveyance,
20 or is real property, or a claimant has filed a claim and a cost
21 bond under paragraph (3) of subsection (k) of this Section, the
22 following judicial in rem procedures shall apply:

23 (1) If, after a review of the facts surrounding the
24 seizure, the State's Attorney is of the opinion that the
25 seized property is subject to forfeiture, then within 45
26 days of the receipt of notice of seizure by the seizing

1 agency or the filing of the claim and cost bond, whichever
2 is later, the State's Attorney shall institute judicial
3 forfeiture proceedings by filing a verified complaint for
4 forfeiture and, if the claimant has filed a claim and cost
5 bond, by depositing the cost bond with the clerk of the
6 court. When authorized by law, a forfeiture must be ordered
7 by a court on an action in rem brought by a State's
8 Attorney under a verified complaint for forfeiture.

9 (2) During the probable cause portion of the judicial
10 in rem proceeding wherein the State presents its
11 case-in-chief, the court must receive and consider, among
12 other things, all relevant hearsay evidence and
13 information. The laws of evidence relating to civil actions
14 apply to all other portions of the judicial in rem
15 proceeding.

16 (3) Only an owner of or interest holder in the property
17 may file an answer asserting a claim against the property
18 in the action in rem. For purposes of this Section, the
19 owner or interest holder shall be referred to as claimant.
20 Upon motion of the State, the court shall first hold a
21 hearing, wherein any claimant must establish by a
22 preponderance of the evidence, that he or she has a lawful,
23 legitimate ownership interest in the property and that it
24 was obtained through a lawful source.

25 (4) The answer must be signed by the owner or interest
26 holder under penalty of perjury and must set forth:

1 (A) the caption of the proceedings as set forth on
2 the notice of pending forfeiture and the name of the
3 claimant;

4 (B) the address at which the claimant will accept
5 mail;

6 (C) the nature and extent of the claimant's
7 interest in the property;

8 (D) the date, identity of transferor, and
9 circumstances of the claimant's acquisition of the
10 interest in the property;

11 (E) the name and address of all other persons known
12 to have an interest in the property;

13 (F) all essential facts supporting each assertion;
14 and

15 (G) the precise relief sought.

16 (5) The answer must be filed with the court within 45
17 days after service of the civil in rem complaint.

18 (6) The hearing must be held within 60 days after
19 filing of the answer unless continued for good cause.

20 (7) The State shall show the existence of probable
21 cause for forfeiture of the property. If the State shows
22 probable cause, the claimant has the burden of showing by a
23 preponderance of the evidence that the claimant's interest
24 in the property is not subject to forfeiture.

25 (7.5) The court shall admit a signed statement by a
26 person who is 65 years old or older to demonstrate that the

1 conveyance or other property was used without his or her
2 consent. The claimant may file a temporary restraining
3 order against the person who allegedly used his or her
4 property without his or her consent under Section 11-101 of
5 the Code of Civil Procedure.

6 (8) If the State does not show existence of probable
7 cause, the court shall order the interest in the property
8 returned or conveyed to the claimant and shall order all
9 other property forfeited to the State. If the State does
10 show existence of probable cause, the court shall order all
11 property forfeited to the State.

12 (9) A defendant convicted in any criminal proceeding is
13 precluded from later denying the essential allegations of
14 the criminal offense of which the defendant was convicted
15 in any proceeding under this Article regardless of the
16 pendency of an appeal from that conviction. However,
17 evidence of the pendency of an appeal is admissible.

18 (10) An acquittal or dismissal in a criminal proceeding
19 does not preclude civil proceedings under this Article;
20 however, for good cause shown, on a motion by the State's
21 Attorney, the court may stay civil forfeiture proceedings
22 during the criminal trial for a related criminal indictment
23 or information alleging a money laundering violation. Such
24 a stay shall not be available pending an appeal. Property
25 subject to forfeiture under this Article shall not be
26 subject to return or release by a court exercising

1 jurisdiction over a criminal case involving the seizure of
2 such property unless such return or release is consented to
3 by the State's Attorney.

4 (11) All property declared forfeited under this
5 Article vests in this State on the commission of the
6 conduct giving rise to forfeiture together with the
7 proceeds of the property after that time. Any such property
8 or proceeds subsequently transferred to any person remain
9 subject to forfeiture and thereafter shall be ordered
10 forfeited.

11 (12) A civil action under this Article must be
12 commenced within 5 years after the last conduct giving rise
13 to forfeiture became known or should have become known or 5
14 years after the forfeitable property is discovered,
15 whichever is later, excluding any time during which either
16 the property or claimant is out of the State or in
17 confinement or during which criminal proceedings relating
18 to the same conduct are in progress.

19 (m) Stay of time periods. If property is seized for
20 evidence and for forfeiture, the time periods for instituting
21 judicial and non-judicial forfeiture proceedings shall not
22 begin until the property is no longer necessary for evidence.

23 (n) Settlement of claims. Notwithstanding other provisions
24 of this Article, the State's Attorney and a claimant of seized
25 property may enter into an agreed-upon settlement concerning
26 the seized property in such an amount and upon such terms as

1 are set out in writing in a settlement agreement.

2 (o) Property constituting attorney fees. Nothing in this
3 Article applies to property which constitutes reasonable bona
4 fide attorney's fees paid to an attorney for services rendered
5 or to be rendered in the forfeiture proceeding or criminal
6 proceeding relating directly thereto where such property was
7 paid before its seizure, before the issuance of any seizure
8 warrant or court order prohibiting transfer of the property and
9 where the attorney, at the time he or she received the property
10 did not know that it was property subject to forfeiture under
11 this Article.

12 (p) Construction. It is the intent of the General Assembly
13 that the forfeiture provisions of this Article be liberally
14 construed so as to effect their remedial purpose. The
15 forfeiture of property and other remedies hereunder shall be
16 considered to be in addition to, and not exclusive of, any
17 sentence or other remedy provided by law.

18 (q) Judicial review. If property has been declared
19 forfeited under subsection (k) of this Section, any person who
20 has an interest in the property declared forfeited may, within
21 30 days after the effective date of the notice of the
22 declaration of forfeiture, file a claim and cost bond as
23 described in paragraph (3) of subsection (k) of this Section.
24 If a claim and cost bond is filed under this Section, then the
25 procedures described in subsection (l) of this Section apply.

26 (r) Burden of proof of exemption or exception. It is not

1 necessary for the State to negate any exemption or exception in
2 this Article in any complaint, information, indictment or other
3 pleading or in any trial, hearing, or other proceeding under
4 this Article. The burden of proof of any exemption or exception
5 is upon the person claiming it.

6 (s) Review of administrative decisions. All administrative
7 findings, rulings, final determinations, findings, and
8 conclusions of the State's Attorney's Office under this Article
9 are final and conclusive decisions of the matters involved. Any
10 person aggrieved by the decision may obtain review of the
11 decision pursuant to the provisions of the Administrative
12 Review Law and the rules adopted pursuant to that Law. Pending
13 final decision on such review, the administrative acts, orders,
14 and rulings of the State's Attorney's Office remain in full
15 force and effect unless modified or suspended by order of court
16 pending final judicial decision. Pending final decision on such
17 review, the acts, orders, and rulings of the State's Attorney's
18 Office remain in full force and effect, unless stayed by order
19 of court. However, no stay of any decision of the
20 administrative agency shall issue unless the person aggrieved
21 by the decision establishes by a preponderance of the evidence
22 that good cause exists for the stay. In determining good cause,
23 the court shall find that the aggrieved party has established a
24 substantial likelihood of prevailing on the merits and that
25 granting the stay will not have an injurious effect on the
26 general public.

1 (Source: P.A. 99-480, eff. 9-9-15.)

2 (720 ILCS 5/36-2) (from Ch. 38, par. 36-2)

3 Sec. 36-2. Action for forfeiture.

4 (a) The State's Attorney in the county in which such
5 seizure occurs if he or she finds that the forfeiture was
6 incurred without willful negligence or without any intention on
7 the part of the owner of the vessel or watercraft, vehicle or
8 aircraft or any person whose right, title or interest is of
9 record as described in Section 36-1, to violate the law, or
10 finds the existence of such mitigating circumstances as to
11 justify remission of the forfeiture, may cause the law
12 enforcement agency to remit the same upon such terms and
13 conditions as the State's Attorney deems reasonable and just.
14 The State's Attorney shall exercise his or her discretion under
15 the foregoing provision of this Section 36-2(a) prior to or
16 promptly after the preliminary review under Section 36-1.5.

17 (b) If the State's Attorney does not cause the forfeiture
18 to be remitted he or she shall forthwith bring an action for
19 forfeiture in the Circuit Court within whose jurisdiction the
20 seizure and confiscation has taken place. The State's Attorney
21 shall give notice of seizure and the forfeiture proceeding to
22 each person according to the following method: upon each person
23 whose right, title, or interest is of record in the office of
24 the Secretary of State, the Secretary of Transportation, the
25 Administrator of the Federal Aviation Agency, or any other

1 department of this State, or any other state of the United
2 States if the vessel or watercraft, vehicle, or aircraft is
3 required to be so registered, as the case may be, by delivering
4 the notice and complaint in open court or by certified mail to
5 the address as given upon the records of the Secretary of
6 State, the Division of Aeronautics of the Department of
7 Transportation, the Capital Development Board, or any other
8 department of this State or the United States if the vessel or
9 watercraft, vehicle, or aircraft is required to be so
10 registered.

11 (c) The owner of the seized vessel or watercraft, vehicle,
12 or aircraft or any person whose right, title, or interest is of
13 record as described in Section 36-1, may within 20 days after
14 delivery in open court or the mailing of such notice file a
15 verified answer to the Complaint and may appear at the hearing
16 on the action for forfeiture.

17 (d) The State shall show at such hearing by a preponderance
18 of the evidence, that such vessel or watercraft, vehicle, or
19 aircraft was used in the commission of an offense described in
20 Section 36-1.

21 (e) The owner of such vessel or watercraft, vehicle, or
22 aircraft or any person whose right, title, or interest is of
23 record as described in Section 36-1, may show by a
24 preponderance of the evidence that he did not know, and did not
25 have reason to know, that the vessel or watercraft, vehicle, or
26 aircraft was to be used in the commission of such an offense or

1 that any of the exceptions set forth in Section 36-3 are
2 applicable.

3 (e-5) The court shall admit a signed statement by a person
4 who is 65 years old or older to demonstrate that the conveyance
5 or other property was used without his or her consent. The
6 claimant may file a temporary restraining order against the
7 person who allegedly used his or her property without his or
8 her consent under Section 11-101 of the Code of Civil
9 Procedure.

10 (f) Unless the State shall make such showing, the Court
11 shall order such vessel or watercraft, vehicle, or aircraft
12 released to the owner. Where the State has made such showing,
13 the Court may order the vessel or watercraft, vehicle, or
14 aircraft destroyed or may order it forfeited to any local,
15 municipal or county law enforcement agency, or the Department
16 of State Police or the Department of Revenue of the State of
17 Illinois.

18 (g) A copy of the order shall be filed with the law
19 enforcement agency, and with each Federal or State office or
20 agency with which such vessel or watercraft, vehicle, or
21 aircraft is required to be registered. Such order, when filed,
22 constitutes authority for the issuance of clear title to such
23 vessel or watercraft, vehicle, or aircraft, to the department
24 or agency to whom it is delivered or any purchaser thereof. The
25 law enforcement agency shall comply promptly with instructions
26 to remit received from the State's Attorney or Attorney General

1 in accordance with Sections 36-2(a) or 36-3.

2 (h) The proceeds of any sale at public auction pursuant to
3 Section 36-2 of this Act, after payment of all liens and
4 deduction of the reasonable charges and expenses incurred by
5 the State's Attorney's Office shall be paid to the law
6 enforcement agency having seized the vehicle for forfeiture.

7 (Source: P.A. 98-699, eff. 1-1-15; 98-1020, eff. 8-22-14;
8 99-78, eff. 7-20-15.)

9 (720 ILCS 5/47-15)

10 Sec. 47-15. Dumping garbage upon real property.

11 (a) It is unlawful for a person to dump, deposit, or place
12 garbage, rubbish, trash, or refuse upon real property not owned
13 by that person without the consent of the owner or person in
14 possession of the real property.

15 (b) A person who violates this Section is liable to the
16 owner or person in possession of the real property on which the
17 garbage, rubbish, trash, or refuse is dumped, deposited, or
18 placed for the reasonable costs incurred by the owner or person
19 in possession for cleaning up and properly disposing of the
20 garbage, rubbish, trash, or refuse, and for reasonable
21 attorneys' fees.

22 (c) A person violating this Section is guilty of a Class B
23 misdemeanor for which the court must impose a minimum fine of
24 \$500. A second conviction for an offense committed after the
25 first conviction is a Class A misdemeanor for which the court

1 must impose a minimum fine of \$500. A third or subsequent
2 violation, committed after a second conviction, is a Class 4
3 felony for which the court must impose a minimum fine of \$500.
4 A person who violates this Section and who has an equity
5 interest in a motor vehicle used in violation of this Section
6 is presumed to have the financial resources to pay the minimum
7 fine not exceeding his or her equity interest in the vehicle.
8 Personal property used by a person in violation of this Section
9 shall on the third or subsequent conviction of the person be
10 forfeited to the county where the violation occurred and
11 disposed of at a public sale. Before the forfeiture, the court
12 shall conduct a hearing to determine whether property is
13 subject to forfeiture under this Section. At the forfeiture
14 hearing the State has the burden of establishing by a
15 preponderance of the evidence that property is subject to
16 forfeiture under this Section. The court shall admit a signed
17 statement by a person who is 65 years old or older to
18 demonstrate that the conveyance or other property was used
19 without his or her consent. The claimant may file a temporary
20 restraining order against the person who allegedly used his or
21 her property without his or her consent under Section 11-101 of
22 the Code of Civil Procedure.

23 (d) The statutory minimum fine required by subsection (c)
24 is not subject to reduction or suspension unless the defendant
25 is indigent. If the defendant files a motion with the court
26 asserting his or her inability to pay the mandatory fine

1 required by this Section, the court must set a hearing on the
2 motion before sentencing. The court must require an affidavit
3 signed by the defendant containing sufficient information to
4 ascertain the assets and liabilities of the defendant. If the
5 court determines that the defendant is indigent, the court must
6 require that the defendant choose either to pay the minimum
7 fine of \$500 or to perform 100 hours of community service.

8 (Source: P.A. 90-655, eff. 7-30-98; 91-409, eff. 1-1-00.)

9 Section 10. The Code of Criminal Procedure of 1963 is
10 amended by changing Section 124B-160 as follows:

11 (725 ILCS 5/124B-160)

12 Sec. 124B-160. Petition for forfeiture; forfeiture
13 hearing; burden of proof.

14 (a) The Attorney General or State's Attorney may file a
15 petition for forfeiture of property in connection with an
16 offense as defined in this Article, and, within a reasonable
17 time after sentencing, the court shall conduct a hearing to
18 determine whether any property is subject to forfeiture under
19 this Article. Every person with any property interest in the
20 property alleged to be subject to forfeiture may appear as a
21 party and present evidence at the hearing.

22 (b) At the forfeiture hearing, the State has the burden of
23 establishing, by a preponderance of the evidence, that the
24 property is subject to forfeiture under this Article. The court

1 shall admit a signed statement by a person who is 65 years old
2 or older to demonstrate that the conveyance or other property
3 was used without his or her consent. The claimant may file a
4 temporary restraining order against the person who allegedly
5 used his or her property without his or her consent under
6 Section 11-101 of the Code of Civil Procedure.

7 (Source: P.A. 96-712, eff. 1-1-10.)

8 Section 15. The Drug Asset Forfeiture Procedure Act is
9 amended by changing Section 9 as follows:

10 (725 ILCS 150/9) (from Ch. 56 1/2, par. 1679)

11 Sec. 9. Judicial in rem procedures. If property seized
12 under the provisions of the Illinois Controlled Substances Act,
13 the Cannabis Control Act, or the Methamphetamine Control and
14 Community Protection Act is non-real property that exceeds
15 \$20,000 in value excluding the value of any conveyance, or is
16 real property, or a claimant has filed a claim and a cost bond
17 under subsection (C) of Section 6 of this Act, the following
18 judicial in rem procedures shall apply:

19 (A) If, after a review of the facts surrounding the
20 seizure, the State's Attorney is of the opinion that the seized
21 property is subject to forfeiture, then within 45 days of the
22 receipt of notice of seizure by the seizing agency or the
23 filing of the claim and cost bond, whichever is later, the
24 State's Attorney shall institute judicial forfeiture

1 proceedings by filing a verified complaint for forfeiture and,
2 if the claimant has filed a claim and cost bond, by depositing
3 the cost bond with the clerk of the court. When authorized by
4 law, a forfeiture must be ordered by a court on an action in
5 rem brought by a State's Attorney under a verified complaint
6 for forfeiture.

7 (B) During the probable cause portion of the judicial in
8 rem proceeding wherein the State presents its case-in-chief,
9 the court must receive and consider, among other things, all
10 relevant hearsay evidence and information. The laws of evidence
11 relating to civil actions shall apply to all other portions of
12 the judicial in rem proceeding.

13 (C) Only an owner of or interest holder in the property may
14 file an answer asserting a claim against the property in the
15 action in rem. For purposes of this Section, the owner or
16 interest holder shall be referred to as claimant.

17 (D) The answer must be signed by the owner or interest
18 holder under penalty of perjury and must set forth:

19 (i) the caption of the proceedings as set forth on the
20 notice of pending forfeiture and the name of the claimant;

21 (ii) the address at which the claimant will accept
22 mail;

23 (iii) the nature and extent of the claimant's interest
24 in the property;

25 (iv) the date, identity of transferor, and
26 circumstances of the claimant's acquisition of the

1 interest in the property;

2 (v) the name and address of all other persons known to
3 have an interest in the property;

4 (vi) the specific provisions of Section 8 of this Act
5 relied on in asserting it is not subject to forfeiture;

6 (vii) all essential facts supporting each assertion;
7 and

8 (viii) the precise relief sought.

9 (E) The answer must be filed with the court within 45 days
10 after service of the civil in rem complaint.

11 (F) The hearing must be held within 60 days after filing of
12 the answer unless continued for good cause.

13 (G) The State shall show the existence of probable cause
14 for forfeiture of the property. If the State shows probable
15 cause, the claimant has the burden of showing by a
16 preponderance of the evidence that the claimant's interest in
17 the property is not subject to forfeiture.

18 (G-5) The court shall admit a signed statement by a person
19 who is 65 years old or older to demonstrate that the conveyance
20 or other property was used without his or her consent. The
21 claimant may file a temporary restraining order against the
22 person who allegedly used his or her property without his or
23 her consent under Section 11-101 of the Code of Civil
24 Procedure.

25 (H) If the State does not show existence of probable cause
26 or a claimant has established by a preponderance of evidence

1 that the claimant has an interest that is exempt under Section
2 8 of this Act, the court shall order the interest in the
3 property returned or conveyed to the claimant and shall order
4 all other property forfeited to the State. If the State does
5 show existence of probable cause and the claimant does not
6 establish by a preponderance of evidence that the claimant has
7 an interest that is exempt under Section 8 of this Act, the
8 court shall order all property forfeited to the State.

9 (I) A defendant convicted in any criminal proceeding is
10 precluded from later denying the essential allegations of the
11 criminal offense of which the defendant was convicted in any
12 proceeding under this Act regardless of the pendency of an
13 appeal from that conviction. However, evidence of the pendency
14 of an appeal is admissible.

15 (J) An acquittal or dismissal in a criminal proceeding
16 shall not preclude civil proceedings under this Act; however,
17 for good cause shown, on a motion by the State's Attorney, the
18 court may stay civil forfeiture proceedings during the criminal
19 trial for a related criminal indictment or information alleging
20 a violation of the Illinois Controlled Substances Act, the
21 Cannabis Control Act, or the Methamphetamine Control and
22 Community Protection Act. Such a stay shall not be available
23 pending an appeal. Property subject to forfeiture under the
24 Illinois Controlled Substances Act, the Cannabis Control Act,
25 or the Methamphetamine Control and Community Protection Act
26 shall not be subject to return or release by a court exercising

1 jurisdiction over a criminal case involving the seizure of such
2 property unless such return or release is consented to by the
3 State's Attorney.

4 (K) All property declared forfeited under this Act vests in
5 this State on the commission of the conduct giving rise to
6 forfeiture together with the proceeds of the property after
7 that time. Any such property or proceeds subsequently
8 transferred to any person remain subject to forfeiture and
9 thereafter shall be ordered forfeited unless the transferee
10 claims and establishes in a hearing under the provisions of
11 this Act that the transferee's interest is exempt under Section
12 8 of this Act.

13 (L) A civil action under this Act must be commenced within
14 5 years after the last conduct giving rise to forfeiture became
15 known or should have become known or 5 years after the
16 forfeitable property is discovered, whichever is later,
17 excluding any time during which either the property or claimant
18 is out of the State or in confinement or during which criminal
19 proceedings relating to the same conduct are in progress.

20 (Source: P.A. 94-556, eff. 9-11-05.)

21 Section 20. The Narcotics Profit Forfeiture Act is amended
22 by changing Section 5 as follows:

23 (725 ILCS 175/5) (from Ch. 56 1/2, par. 1655)

24 Sec. 5. Forfeiture procedures.

1 (a) A person who commits the offense of narcotics
2 racketeering shall:

3 (1) be guilty of a Class 1 felony; and

4 (2) be subject to a fine of up to \$250,000.

5 A person who commits the offense of narcotics racketeering
6 or who violates Section 3 of the Drug Paraphernalia Control Act
7 shall forfeit to the State of Illinois: (A) any profits or
8 proceeds and any property or property interest he has acquired
9 or maintained in violation of this Act or Section 3 of the Drug
10 Paraphernalia Control Act or has used to facilitate a violation
11 of this Act that the court determines, after a forfeiture
12 hearing, under subsection (b) of this Section to have been
13 acquired or maintained as a result of narcotics racketeering or
14 violating Section 3 of the Drug Paraphernalia Control Act, or
15 used to facilitate narcotics racketeering; and (B) any interest
16 in, security of, claim against, or property or contractual
17 right of any kind affording a source of influence over, any
18 enterprise which he has established, operated, controlled,
19 conducted, or participated in the conduct of, in violation of
20 this Act or Section 3 of the Drug Paraphernalia Control Act,
21 that the court determines, after a forfeiture hearing, under
22 subsection (b) of this Section to have been acquired or
23 maintained as a result of narcotics racketeering or violating
24 Section 3 of the Drug Paraphernalia Control Act or used to
25 facilitate narcotics racketeering.

26 (b) The court shall, upon petition by the Attorney General

1 or State's Attorney, at any time subsequent to the filing of an
2 information or return of an indictment, conduct a hearing to
3 determine whether any property or property interest is subject
4 to forfeiture under this Act. At the forfeiture hearing the
5 people shall have the burden of establishing, by a
6 preponderance of the evidence, that property or property
7 interests are subject to forfeiture under this Act. The court
8 shall admit a signed statement by a person who is 65 years old
9 or older to demonstrate that the conveyance or other property
10 was used without his or her consent. The claimant may file a
11 temporary restraining order against the person who allegedly
12 used his or her property without his or her consent under
13 Section 11-101 of the Code of Civil Procedure. There is a
14 rebuttable presumption at such hearing that any property or
15 property interest of a person charged by information or
16 indictment with narcotics racketeering or who is convicted of a
17 violation of Section 3 of the Drug Paraphernalia Control Act is
18 subject to forfeiture under this Section if the State
19 establishes by a preponderance of the evidence that:

20 (1) such property or property interest was acquired by
21 such person during the period of the violation of this Act
22 or Section 3 of the Drug Paraphernalia Control Act or
23 within a reasonable time after such period; and

24 (2) there was no likely source for such property or
25 property interest other than the violation of this Act or
26 Section 3 of the Drug Paraphernalia Control Act.

1 (c) In an action brought by the People of the State of
2 Illinois under this Act, wherein any restraining order,
3 injunction or prohibition or any other action in connection
4 with any property or property interest subject to forfeiture
5 under this Act is sought, the circuit court which shall preside
6 over the trial of the person or persons charged with narcotics
7 racketeering as defined in Section 4 of this Act or violating
8 Section 3 of the Drug Paraphernalia Control Act shall first
9 determine whether there is probable cause to believe that the
10 person or persons so charged has committed the offense of
11 narcotics racketeering as defined in Section 4 of this Act or a
12 violation of Section 3 of the Drug Paraphernalia Control Act
13 and whether the property or property interest is subject to
14 forfeiture pursuant to this Act.

15 In order to make such a determination, prior to entering
16 any such order, the court shall conduct a hearing without a
17 jury, wherein the People shall establish that there is: (i)
18 probable cause that the person or persons so charged have
19 committed the offense of narcotics racketeering or violating
20 Section 3 of the Drug Paraphernalia Control Act and (ii)
21 probable cause that any property or property interest may be
22 subject to forfeiture pursuant to this Act. Such hearing may be
23 conducted simultaneously with a preliminary hearing, if the
24 prosecution is commenced by information or complaint, or by
25 motion of the People, at any stage in the proceedings. The
26 court may accept a finding of probable cause at a preliminary

1 hearing following the filing of an information charging the
2 offense of narcotics racketeering as defined in Section 4 of
3 this Act or the return of an indictment by a grand jury
4 charging the offense of narcotics racketeering as defined in
5 Section 4 of this Act or after a charge is filed for violating
6 Section 3 of the Drug Paraphernalia Control Act as sufficient
7 evidence of probable cause as provided in item (i) above.

8 Upon such a finding, the circuit court shall enter such
9 restraining order, injunction or prohibition, or shall take
10 such other action in connection with any such property or
11 property interest subject to forfeiture under this Act, as is
12 necessary to insure that such property is not removed from the
13 jurisdiction of the court, concealed, destroyed or otherwise
14 disposed of by the owner of that property or property interest
15 prior to a forfeiture hearing under subsection (b) of this
16 Section. The Attorney General or State's Attorney shall file a
17 certified copy of such restraining order, injunction or other
18 prohibition with the recorder of deeds or registrar of titles
19 of each county where any such property of the defendant may be
20 located. No such injunction, restraining order or other
21 prohibition shall affect the rights of any bona fide purchaser,
22 mortgagee, judgment creditor or other lien holder arising prior
23 to the date of such filing.

24 The court may, at any time, upon verified petition by the
25 defendant, conduct a hearing to release all or portions of any
26 such property or interest which the court previously determined

1 to be subject to forfeiture or subject to any restraining
2 order, injunction, or prohibition or other action. The court
3 may release such property to the defendant for good cause shown
4 and within the sound discretion of the court.

5 (d) Prosecution under this Act may be commenced by the
6 Attorney General or a State's Attorney.

7 (e) Upon an order of forfeiture being entered pursuant to
8 subsection (b) of this Section, the court shall authorize the
9 Attorney General to seize any property or property interest
10 declared forfeited under this Act and under such terms and
11 conditions as the court shall deem proper. Any property or
12 property interest that has been the subject of an entered
13 restraining order, injunction or prohibition or any other
14 action filed under subsection (c) shall be forfeited unless the
15 claimant can show by a preponderance of the evidence that the
16 property or property interest has not been acquired or
17 maintained as a result of narcotics racketeering or has not
18 been used to facilitate narcotics racketeering.

19 (f) The Attorney General or his designee is authorized to
20 sell all property forfeited and seized pursuant to this Act,
21 unless such property is required by law to be destroyed or is
22 harmful to the public, and, after the deduction of all
23 requisite expenses of administration and sale, shall
24 distribute the proceeds of such sale, along with any moneys
25 forfeited or seized, in accordance with subsection (g) or (h),
26 whichever is applicable.

1 (g) All monies and the sale proceeds of all other property
2 forfeited and seized pursuant to this Act shall be distributed
3 as follows:

4 (1) An amount equal to 50% shall be distributed to the
5 unit of local government whose officers or employees
6 conducted the investigation into narcotics racketeering
7 and caused the arrest or arrests and prosecution leading to
8 the forfeiture. Amounts distributed to units of local
9 government shall be used for enforcement of laws governing
10 narcotics activity or for public education in the community
11 or schools in the prevention or detection of the abuse of
12 drugs or alcohol. In the event, however, that the
13 investigation, arrest or arrests and prosecution leading
14 to the forfeiture were undertaken solely by a State agency,
15 the portion provided hereunder shall be paid into the Drug
16 Traffic Prevention Fund in the State treasury to be used
17 for enforcement of laws governing narcotics activity.

18 (2) An amount equal to 12.5% shall be distributed to
19 the county in which the prosecution resulting in the
20 forfeiture was instituted, deposited in a special fund in
21 the county treasury and appropriated to the State's
22 Attorney for use in the enforcement of laws governing
23 narcotics activity or for public education in the community
24 or schools in the prevention or detection of the abuse of
25 drugs or alcohol.

26 An amount equal to 12.5% shall be distributed to the

1 Office of the State's Attorneys Appellate Prosecutor and
2 deposited in the Narcotics Profit Forfeiture Fund, which is
3 hereby created in the State treasury, to be used by the
4 Office of the State's Attorneys Appellate Prosecutor for
5 additional expenses incurred in prosecuting appeals
6 arising under this Act. Any amounts remaining in the Fund
7 after all additional expenses have been paid shall be used
8 by the Office to reduce the participating county
9 contributions to the Office on a pro-rated basis as
10 determined by the board of governors of the Office of the
11 State's Attorneys Appellate Prosecutor based on the
12 populations of the participating counties.

13 (3) An amount equal to 25% shall be paid into the Drug
14 Traffic Prevention Fund in the State treasury to be used by
15 the Department of State Police for funding Metropolitan
16 Enforcement Groups created pursuant to the
17 Intergovernmental Drug Laws Enforcement Act. Any amounts
18 remaining in the Fund after full funding of Metropolitan
19 Enforcement Groups shall be used for enforcement, by the
20 State or any unit of local government, of laws governing
21 narcotics activity or for public education in the community
22 or schools in the prevention or detection of the abuse of
23 drugs or alcohol.

24 (h) Where the investigation or indictment for the offense
25 of narcotics racketeering or a violation of Section 3 of the
26 Drug Paraphernalia Control Act has occurred under the

1 provisions of the Statewide Grand Jury Act, all monies and the
2 sale proceeds of all other property shall be distributed as
3 follows:

4 (1) 60% shall be distributed to the metropolitan
5 enforcement group, local, municipal, county, or State law
6 enforcement agency or agencies which conducted or
7 participated in the investigation resulting in the
8 forfeiture. The distribution shall bear a reasonable
9 relationship to the degree of direct participation of the
10 law enforcement agency in the effort resulting in the
11 forfeiture, taking into account the total value of the
12 property forfeited and the total law enforcement effort
13 with respect to the violation of the law on which the
14 forfeiture is based. Amounts distributed to the agency or
15 agencies shall be used for the enforcement of laws
16 governing cannabis and controlled substances or for public
17 education in the community or schools in the prevention or
18 detection of the abuse of drugs or alcohol.

19 (2) 25% shall be distributed by the Attorney General as
20 grants to drug education, treatment and prevention
21 programs licensed or approved by the Department of Human
22 Services. In making these grants, the Attorney General
23 shall take into account the plans and service priorities
24 of, and the needs identified by, the Department of Human
25 Services.

26 (3) 15% shall be distributed to the Attorney General

1 and the State's Attorney, if any, participating in the
2 prosecution resulting in the forfeiture. The distribution
3 shall bear a reasonable relationship to the degree of
4 direct participation in the prosecution of the offense,
5 taking into account the total value of the property
6 forfeited and the total amount of time spent in preparing
7 and presenting the case, the complexity of the case and
8 other similar factors. Amounts distributed to the Attorney
9 General under this paragraph shall be retained in a fund
10 held by the State Treasurer as ex-officio custodian to be
11 designated as the Statewide Grand Jury Prosecution Fund and
12 paid out upon the direction of the Attorney General for
13 expenses incurred in criminal prosecutions arising under
14 the Statewide Grand Jury Act. Amounts distributed to a
15 State's Attorney shall be deposited in a special fund in
16 the county treasury and appropriated to the State's
17 Attorney for use in the enforcement of laws governing
18 narcotics activity or for public education in the community
19 or schools in the prevention or detection of the abuse of
20 drugs or alcohol.

21 (i) All monies deposited pursuant to this Act in the Drug
22 Traffic Prevention Fund established under Section 5-9-1.2 of
23 the Unified Code of Corrections are appropriated, on a
24 continuing basis, to the Department of State Police to be used
25 for funding Metropolitan Enforcement Groups created pursuant
26 to the Intergovernmental Drug Laws Enforcement Act or otherwise

1 for the enforcement of laws governing narcotics activity or for
2 public education in the community or schools in the prevention
3 or detection of the abuse of drugs or alcohol.

4 (Source: P.A. 99-686, eff. 7-29-16.)