

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 36-1, 36-1.5, 36-2, and 36-5 as follows:

6 (720 ILCS 5/36-1) (from Ch. 38, par. 36-1)

7 Sec. 36-1. Seizure.

8 (a) Any vessel, vehicle, or aircraft may be seized and  
9 impounded by the law enforcement agency if the vessel, vehicle,  
10 or aircraft is used with the knowledge and consent of the owner  
11 in the commission of, or in the attempt to commit as defined in  
12 Section 8-4 of this Code, an offense prohibited by:

13 (1) ~~(a)~~ Section 9-1 (first degree murder, 720 ILCS  
14 5/9-1), 9-3 (involuntary manslaughter and reckless  
15 homicide, 720 ILCS 5/9-3), 10-2 (aggravated kidnaping, 720  
16 ILCS 5/10-2), 11-1.20 (criminal sexual assault, 720 ILCS  
17 5/11-1.20), 11-1.30 (aggravated criminal sexual assault,  
18 720 ILCS 5/11-1.30), 11-1.40 (predatory criminal sexual  
19 assault of a child, 720 ILCS 5/11-1.40), subsection (a) of  
20 Section 11-1.50 (criminal sexual abuse, 720 ILCS 5/11-1.50  
21 (a)), subsection (a), (c), or (d) of Section 11-1.60  
22 (aggravated criminal sexual abuse, 720 ILCS 5/11-1.60 (a),  
23 (c), or (d)), Section 11-6 (indecent solicitation of a

1 child, 720 ILCS 5/11-6), 11-14.4 (promoting juvenile  
2 prostitution, 720 ILCS 5/11-14.4) except for keeping a  
3 place of juvenile prostitution, ~~11-15.1, 11-19.1, 11-19.2,~~  
4 11-20.1 (child pornography, 720 ILCS 5/11-20.1), paragraph  
5 (a) (1), (a) (2), (a) (4), (b) (1), (e) (1), (e) (2), (e) (3),  
6 (e) (4), (e) (5), (e) (6), or (e) (7) of Section 12-3.05  
7 (aggravated battery, 12-3.05(a) (1), (a) (2), (a) (4),  
8 (b) (1), (e) (1), (e) (2), (e) (3), (e) (4), (e) (5), (e) (6), or  
9 (e) (7)), ~~11-20.1B, 11-20.3, 12-4.1, 12-4.2, 12-4.2-5,~~  
10 ~~12-4.3, 12-4.6,~~ 12-7.3 (stalking, 720 ILCS 5/12-7.3),  
11 12-7.4 (aggravated stalking, 720 ILCS 5/12-7.4), ~~12-13,~~  
12 ~~12-14,~~ 16-1 (theft, 720 ILCS 5/16-1) if the theft is of  
13 precious metal or of scrap metal, subdivisions (f) (2) or  
14 (f) (3) of Section 16-25 (retail theft, 720 ILCS 5/16-25  
15 (f) (2) or (f) (3), Section 18-2 (armed robbery, 720 ILCS  
16 5/18-2), 19-1 (burglary, 720 ILCS 5/19-1), 19-2  
17 (possession of burglary tools, 720 ILCS 5/19-2), 19-3  
18 (residential burglary, 720 ILCS 5/19-3), 20-1 (arson;  
19 residential arson; place of worship arson, 720 ILCS  
20 5/20-1), 20-2 (possession of explosives or explosive or  
21 incendiary devices, 720 ILCS 5/20-2), subdivision (a) (6)  
22 or (a) (7) of Section 24-1 (unlawful use of weapons, 720  
23 ILCS 5/24-1(a) (6) or (a) (7)), Section ~~7~~ 24-1.2 (aggravated  
24 discharge of a firearm, 720 ILCS 5/24-1.2), 24-1.2-5  
25 (aggravated discharge of a machine gun or a firearm  
26 equipped with a device designed or used for silencing the

1 report of a firearm, 720 ILCS 5/24-1.2-5), 24-1.5 (reckless  
2 discharge of a firearm, 720 ILCS 5/24-1.5), 28-1 (gambling,  
3 720 ILCS 5/28-1), or 29D-15.2 (possession of a deadly  
4 substance, 720 ILCS 5/29D-15.2) of this Code; ~~subdivision~~

5 ~~(a) (1), (a) (2), (a) (4), (b) (1), (c) (1), (c) (2), (c) (3),~~  
6 ~~(c) (4), (c) (5), (c) (6), or (c) (7) of Section 12-3.05,~~  
7 ~~paragraph (a) of Section 12-4 of this Code, paragraph (a)~~  
8 ~~of Section 11-1.50, paragraph (a) of Section 12-15,~~  
9 ~~paragraph (a), (c), or (d) of Section 11-1.60, or~~  
10 ~~paragraphs (a), (c) or (d) of Section 12-16 of this Code,~~  
11 ~~or paragraph (a) (6) or (a) (7) of Section 24-1 of this Code;~~

12 (2) ~~(b)~~ Section 21, 22, 23, 24 or 26 of the Cigarette  
13 Tax Act (35 ILCS 130/21, 22, 23, 24 or 26) if the vessel,  
14 vehicle, or aircraft contains more than 10 cartons of such  
15 cigarettes;

16 (3) ~~(c)~~ Section 28, 29, or 30 of the Cigarette Use Tax  
17 Act (35 ILCS 135/28, 29, or 30) if the vessel, vehicle, or  
18 aircraft contains more than 10 cartons of such cigarettes;

19 (4) ~~(d)~~ Section 44 of the Environmental Protection Act  
20 (415 ILCS 5/44);

21 (5) ~~(e)~~ Section 11-204.1 of the Illinois Vehicle Code  
22 (aggravated fleeing or attempting to elude a peace officer,  
23 625 ILCS 5/11-204.1);

24 (6) Section 11-501 of the Illinois Vehicle Code  
25 (driving while under the influence of alcohol or other drug  
26 or drugs, intoxicating compound or compounds or any

1 combination thereof) or a similar provision of a local  
2 ordinance, and:

3 ~~(f) (1) driving under the influence of alcohol or other drug or~~  
4 ~~drugs, intoxicating compound or compounds or any~~  
5 ~~combination thereof under Section 11-501 of the~~  
6 ~~Illinois Vehicle Code during a period in which~~

7 (A) during a period in which his or her driving  
8 privileges are revoked or suspended if ~~where~~ the  
9 revocation or suspension was for:

10 (i) driving under the influence of alcohol or  
11 other drug or drugs, intoxicating compound or  
12 compounds or any combination thereof (625 ILCS  
13 5/11-501),

14 (ii) Section 11-501.1 (625 ILCS 5/11-501.1),

15 (iii) paragraph (b) of Section 11-401 (625  
16 ILCS 5/11-401(b)), or for

17 (iv) reckless homicide as defined in Section  
18 9-3 of the Criminal Code of 1961 or the Criminal  
19 Code of 2012 (720 ILCS 5/9-3);

20 (B) (2) driving while under the influence of  
21 alcohol, other drug or drugs, intoxicating compound or  
22 compounds or any combination thereof and has been  
23 previously convicted of reckless homicide or a similar  
24 provision of a law of another state relating to  
25 reckless homicide in which the person was determined to  
26 have been under the influence of alcohol, other drug or

1 drugs, or intoxicating compound or compounds as an  
2 element of the offense or the person has previously  
3 been convicted of committing a violation of driving  
4 under the influence of alcohol or other drug or drugs,  
5 intoxicating compound or compounds or any combination  
6 thereof and was involved in a motor vehicle accident  
7 that resulted in death, great bodily harm, or permanent  
8 disability or disfigurement to another, when the  
9 violation was a proximate cause of the death or  
10 injuries;

11 (C) ~~(3)~~ the person committed a violation of driving  
12 under the influence of alcohol or other drug or drugs,  
13 intoxicating compound or compounds or any combination  
14 thereof under Section 11-501 of the Illinois Vehicle  
15 Code or a similar provision for the third or subsequent  
16 time;

17 (D) ~~(4)~~ ~~the person committed the violation while~~ he  
18 or she did not possess a valid driver's license or  
19 permit or a valid restricted driving permit or a valid  
20 judicial driving permit or a valid monitoring device  
21 driving permit; or

22 (E) ~~(5)~~ ~~the person committed the violation while~~ he  
23 or she knew or should have known that the vehicle he or  
24 she was driving was not covered by a liability  
25 insurance policy;

26 (7) ~~(g)~~ an offense described in subsection (g) of

1 Section 6-303 of the Illinois Vehicle Code (625 ILCS  
2 5/6-303(g)); or

3 (8) ~~(h)~~ an offense described in subsection (e) of  
4 Section 6-101 of the Illinois Vehicle Code (625 ILCS  
5 5/6-101). ~~may be seized and delivered forthwith to the~~  
6 ~~sheriff of the county of seizure.~~

7 ~~Within 15 days after such delivery the sheriff shall give~~  
8 ~~notice of seizure to each person according to the following~~  
9 ~~method: Upon each such person whose right, title or interest is~~  
10 ~~of record in the office of the Secretary of State, the~~  
11 ~~Secretary of Transportation, the Administrator of the Federal~~  
12 ~~Aviation Agency, or any other Department of this State, or any~~  
13 ~~other state of the United States if such vessel, vehicle or~~  
14 ~~aircraft is required to be so registered, as the case may be,~~  
15 ~~by mailing a copy of the notice by certified mail to the~~  
16 ~~address as given upon the records of the Secretary of State,~~  
17 ~~the Department of Aeronautics, Department of Public Works and~~  
18 ~~Buildings or any other Department of this State or the United~~  
19 ~~States if such vessel, vehicle or aircraft is required to be so~~  
20 ~~registered. Within that 15 day period the sheriff shall also~~  
21 ~~notify the State's Attorney of the county of seizure about the~~  
22 ~~seizure.~~

23 (b) In addition, any mobile or portable equipment used in  
24 the commission of an act which is in violation of Section 7g of  
25 the Metropolitan Water Reclamation District Act (70 ILCS  
26 2605/7g) shall be subject to seizure and forfeiture under the

1 same procedures provided in this Article for the seizure and  
2 forfeiture of vessels, vehicles, and aircraft, and any such  
3 equipment shall be deemed a vessel, vehicle, or aircraft for  
4 purposes of this Article.

5 (c) In addition, when ~~When~~ a person discharges a firearm at  
6 another individual from a vehicle with the knowledge and  
7 consent of the owner of the vehicle and with the intent to  
8 cause death or great bodily harm to that individual and as a  
9 result causes death or great bodily harm to that individual,  
10 the vehicle shall be subject to seizure and forfeiture under  
11 the same procedures provided in this Article for the seizure  
12 and forfeiture of vehicles used in violations of clauses (1),  
13 (2), (3), or (4) of subsection (a) ~~(a), (b), (c), or (d)~~ of  
14 this Section.

15 (d) If the spouse of the owner of a vehicle seized for an  
16 offense described in subsection (g) of Section 6-303 of the  
17 Illinois Vehicle Code, a violation of subdivision (d)(1)(A),  
18 (d)(1)(D), (d)(1)(G), (d)(1)(H), or (d)(1)(I) of Section  
19 11-501 of the Illinois Vehicle Code, or Section 9-3 of this  
20 Code makes a showing that the seized vehicle is the only source  
21 of transportation and it is determined that the financial  
22 hardship to the family as a result of the seizure outweighs the  
23 benefit to the State from the seizure, the vehicle may be  
24 forfeited to the spouse or family member and the title to the  
25 vehicle shall be transferred to the spouse or family member who  
26 is properly licensed and who requires the use of the vehicle

1 for employment or family transportation purposes. A written  
2 declaration of forfeiture of a vehicle under this Section shall  
3 be sufficient cause for the title to be transferred to the  
4 spouse or family member. The provisions of this paragraph shall  
5 apply only to one forfeiture per vehicle. If the vehicle is the  
6 subject of a subsequent forfeiture proceeding by virtue of a  
7 subsequent conviction of either spouse or the family member,  
8 the spouse or family member to whom the vehicle was forfeited  
9 under the first forfeiture proceeding may not utilize the  
10 provisions of this paragraph in another forfeiture proceeding.  
11 If the owner of the vehicle seized owns more than one vehicle,  
12 the procedure set out in this paragraph may be used for only  
13 one vehicle.

14 (e) In addition, property ~~Property~~ declared contraband  
15 under Section 40 of the Illinois Streetgang Terrorism Omnibus  
16 Prevention Act (740 ILCS 147/40) may be seized and forfeited  
17 under this Article.

18 (Source: P.A. 96-313, eff. 1-1-10; 96-710, eff. 1-1-10;  
19 96-1000, eff. 7-2-10; 96-1267, eff. 7-26-10; 96-1289, eff.  
20 1-1-11; 96-1551, Article 1, Section 960, eff. 7-1-11; 96-1551,  
21 Article 2, Section 1035, eff. 7-1-11; 97-333, eff. 8-12-11;  
22 97-1109, eff. 1-1-13; 97-1150, eff. 1-25-13.)

23 (720 ILCS 5/36-1.5)

24 Sec. 36-1.5. Preliminary Review.

25 (a) Within 14 days of the seizure, the State's Attorney in



1 the county in which the seizure occurred ~~State~~ shall seek a  
2 preliminary determination from the circuit court as to whether  
3 there is probable cause that the property may be subject to  
4 forfeiture.

5 (b) The rules of evidence shall not apply to any proceeding  
6 conducted under this Section.

7 (c) The court may conduct the review under subsection (a)  
8 simultaneously with a proceeding pursuant to Section 109-1 of  
9 the Code of Criminal Procedure of 1963 for a related criminal  
10 offense if a prosecution is commenced by information or  
11 complaint.

12 (d) The court may accept a finding of probable cause at a  
13 preliminary hearing following the filing of an information or  
14 complaint charging a related criminal offense or following the  
15 return of indictment by a grand jury charging the related  
16 offense as sufficient evidence of probable cause as required  
17 under subsection (a).

18 (e) Upon making a finding of probable cause as required  
19 under this Section, the circuit court shall order the property  
20 subject to the provisions of the applicable forfeiture Act held  
21 until the conclusion of any forfeiture proceeding.

22 For seizures of conveyances, within 7 days of a finding of  
23 probable cause under subsection (a), the registered owner or  
24 other claimant may file a motion in writing supported by sworn  
25 affidavits claiming that denial of the use of the conveyance  
26 during the pendency of the forfeiture proceedings creates a

1 substantial hardship. The court shall consider the following  
2 factors in determining whether a substantial hardship has been  
3 proven:

4 (1) the nature of the claimed hardship;

5 (2) the availability of public transportation or other  
6 available means of transportation; and

7 (3) any available alternatives to alleviate the  
8 hardship other than the return of the seized conveyance.

9 If the court determines that a substantial hardship has  
10 been proven, the court shall then balance the nature of the  
11 hardship against the State's interest in safeguarding the  
12 conveyance. If the court determines that the hardship outweighs  
13 the State's interest in safeguarding the conveyance, the court  
14 may temporarily release the conveyance to the registered owner  
15 or the registered owner's authorized designee, or both, until  
16 the conclusion of the forfeiture proceedings or for such  
17 shorter period as ordered by the court provided that the person  
18 to whom the conveyance is released provides proof of insurance  
19 and a valid driver's license and all State and local  
20 registrations for operation of the conveyance are current. The  
21 court shall place conditions on the conveyance limiting its use  
22 to the stated hardship and restricting the conveyance's use to  
23 only those individuals authorized to use the conveyance by the  
24 registered owner. The court shall revoke the order releasing  
25 the conveyance and order that the conveyance be reseized by law  
26 enforcement if the conditions of release are violated or if the

1 conveyance is used in the commission of any offense identified  
2 in subsection (a) of Section 6-205 of the Illinois Vehicle  
3 Code.

4 If the court orders the release of the conveyance during  
5 the pendency of the forfeiture proceedings, the registered  
6 owner or his or her authorized designee shall post a cash  
7 security with the Clerk of the Court as ordered by the court.  
8 The court shall consider the following factors in determining  
9 the amount of the cash security:

10 (A) the full market value of the conveyance;

11 (B) the nature of the hardship;

12 (C) the extent and length of the usage of the  
13 conveyance; and

14 (D) such other conditions as the court deems necessary  
15 to safeguard the conveyance.

16 If the conveyance is released, the court shall order that  
17 the registered owner or his or her designee safeguard the  
18 conveyance, not remove the conveyance from the jurisdiction,  
19 not conceal, destroy, or otherwise dispose of the conveyance,  
20 not encumber the conveyance, and not diminish the value of the  
21 conveyance in any way. The court shall also make a  
22 determination of the full market value of the conveyance prior  
23 to it being released based on a source or sources defined in 50  
24 Ill. Adm. Code 919.80(c)(2)(A) or 919.80(c)(2)(B).

25 If the conveyance subject to forfeiture is released under  
26 this Section and is subsequently forfeited, the person to whom

1 the conveyance was released shall return the conveyance to the  
2 law enforcement agency that seized the conveyance within 7 days  
3 from the date of the declaration of forfeiture or order of  
4 forfeiture. If the conveyance is not returned within 7 days,  
5 the cash security shall be forfeited in the same manner as the  
6 conveyance subject to forfeiture. If the cash security was less  
7 than the full market value, a judgment shall be entered against  
8 the parties to whom the conveyance was released and the  
9 registered owner, jointly and severally, for the difference  
10 between the full market value and the amount of the cash  
11 security. If the conveyance is returned in a condition other  
12 than the condition in which it was released, the cash security  
13 shall be returned to the surety who posted the security minus  
14 the amount of the diminished value, and that amount shall be  
15 forfeited in the same manner as the conveyance subject to  
16 forfeiture. Additionally, the court may enter an order allowing  
17 any law enforcement agency in the State of Illinois to seize  
18 the conveyance wherever it may be found in the State to satisfy  
19 the judgment if the cash security was less than the full market  
20 value of the conveyance.

21 (Source: P.A. 97-544, eff. 1-1-12; 97-680, eff. 3-16-12.)

22 (720 ILCS 5/36-2) (from Ch. 38, par. 36-2)

23 Sec. 36-2. Action for forfeiture.

24 (a) The State's Attorney in the county in which such  
25 seizure occurs if he or she finds that the ~~such~~ forfeiture was

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

13 (b) If the State's Attorney does not cause the forfeiture  
14 to be remitted he or she shall forthwith bring an action for  
15 forfeiture in the Circuit Court within whose jurisdiction the  
16 seizure and confiscation has taken place. The State's Attorney  
17 shall give notice of seizure and the forfeiture proceeding to  
18 each person according to the following method: Upon each person  
19 whose right, title, or interest is of record in the office of  
20 the Secretary of State, the Secretary of Transportation, the  
21 Administrator of the Federal Aviation Agency, or any other  
22 Department of this State, or any other state of the United  
23 States if the vessel, vehicle, or aircraft is required to be so  
24 registered, as the case may be, by delivering the notice and  
25 complaint in open court or by certified mail to the address as  
26 given upon the records of the Secretary of State, the Division

1 of Aeronautics of the Department of Transportation, the Capital  
2 Development Board, or any other Department of this State or the  
3 United States if the vessel, vehicle, or aircraft is required  
4 to be so registered ~~the forfeiture proceeding by mailing a copy~~  
5 ~~of the Complaint in the forfeiture proceeding to the persons,~~  
6 ~~and upon the manner, set forth in Section 36-1.~~

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

13 (d) The State shall show at such hearing by a preponderance  
14 of the evidence, that such vessel, vehicle, l or aircraft was  
15 used in the commission of an offense described in Section 36-1.

16 (e) The owner of such vessel, vehicle, l or aircraft or any  
17 person whose right, title, or interest is of record as  
18 described in Section 36-1, may show by a preponderance of the  
19 evidence that he did not know, and did not have reason to know,  
20 that the vessel, vehicle, l or aircraft was to be used in the  
21 commission of such an offense or that any of the exceptions set  
22 forth in Section 36-3 are applicable.

23 (f) Unless the State shall make such showing, the Court  
24 shall order such vessel, vehicle, l or aircraft released to the  
25 owner. Where the State has made such showing, the Court may  
26 order the vessel, vehicle, l or aircraft destroyed or may order

1 it forfeited ~~delivered~~ to any local, municipal or county law  
2 enforcement agency, or the Department of State Police or the  
3 Department of Revenue of the State of Illinois; ~~or may order it~~  
4 ~~sold at public auction.~~

5 (g) ~~(b)~~ A copy of the order shall be filed with the law  
6 enforcement agency, ~~sheriff of the county in which the seizure~~  
7 ~~occurs~~ and with each Federal or State office or agency with  
8 which such vessel, vehicle, or aircraft is required to be  
9 registered. Such order, when filed, constitutes authority for  
10 the issuance of clear title to such vessel, vehicle, or  
11 aircraft, ~~or boat~~ to the department or agency to whom it is  
12 delivered or any purchaser thereof. The law enforcement agency  
13 ~~sheriff~~ shall comply promptly with instructions to remit  
14 received from the State's Attorney or Attorney General in  
15 accordance with Sections 36-2(a) or 36-3.

16 (h) ~~(e)~~ The proceeds of any sale at public auction pursuant  
17 to Section 36-2 of this Act, after payment of all liens and  
18 deduction of the reasonable charges and expenses incurred by  
19 the State's Attorney's Office ~~sheriff in storing and selling~~  
20 ~~such vehicle,~~ shall be paid to ~~into~~ the law enforcement agency  
21 having seized the vehicle for forfeiture ~~general fund of the~~  
22 ~~county of seizure.~~

23 (Source: P.A. 84-25.)

24 (720 ILCS 5/36-5)

25 Sec. 36-5. The law enforcement agency, County or sheriff

1 not liable for stored forfeited vehicle. A law enforcement  
2 agency, county, sheriff, law enforcement officer or employee of  
3 the law enforcement agency or deputy sheriff, or employee of  
4 ~~the~~ county sheriff shall not be civilly or criminally liable  
5 for any damage to a forfeited vehicle stored with a commercial  
6 vehicle safety relocater.

7 (Source: P.A. 96-1274, eff. 7-26-10.)

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law.