

AN ACT concerning criminal law.

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

Section 5. The Criminal Code of 2012 is amended by changing Sections 36-1, 36-1a, 36-2, 36-3, and 36-4 as follows:

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

Sec. 36-1. Seizure. Any vessel or watercraft, vehicle or aircraft used with the knowledge and consent of the owner in the commission of, or in the attempt to commit as defined in Section 8-4 of this Code, an offense prohibited by (a) Section 9-1, 9-3, 10-2, 11-1.20, 11-1.30, 11-1.40, 11-6, 11-14.4 except for keeping a place of juvenile prostitution, 11-15.1, 11-19.1, 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-4.1, 12-4.2, 12-4.2-5, 12-4.3, 12-4.6, 12-7.3, 12-7.4, 12-13, 12-14, 16-1 if the theft is of precious metal or of scrap metal, 18-2, 19-1, 19-2, 19-3, 20-1, 20-2, 24-1.2, 24-1.2-5, 24-1.5, 28-1, or 29D-15.2 of this Code, subdivision (a)(1), (a)(2), (a)(4), (b)(1), (e)(1), (e)(2), (e)(3), (e)(4), (e)(5), (e)(6), or (e)(7) of Section 12-3.05, paragraph (a) of Section 12-4 of this Code, paragraph (a) of Section 11-1.50, paragraph (a) of Section 12-15, paragraph (a), (c), or (d) of Section 11-1.60, or paragraphs (a), (c) or (d) of Section 12-16 of this Code, or paragraph (a)(6) or (a)(7) of Section 24-1 of this Code; (b) Section 21,

22, 23, 24 or 26 of the Cigarette Tax Act if the vessel or  
watercraft, vehicle or aircraft contains more than 10 cartons  
of such cigarettes; (c) Section 28, 29 or 30 of the Cigarette  
Use Tax Act if the vessel or watercraft, vehicle or aircraft  
contains more than 10 cartons of such cigarettes; (d) Section  
44 of the Environmental Protection Act; (e) 11-204.1 of the  
Illinois Vehicle Code; (f) (1) driving under the influence of  
alcohol or other drug or drugs, intoxicating compound or  
compounds or any combination thereof under Section 11-501 of  
the Illinois Vehicle Code during a period in which his or her  
driving privileges are revoked or suspended where the  
revocation or suspension was for driving under the influence of  
alcohol or other drug or drugs, intoxicating compound or  
compounds or any combination thereof, Section 11-501.1,  
paragraph (b) of Section 11-401, or for reckless homicide as  
defined in Section 9-3 of the Criminal Code of 1961 or the  
Criminal Code of 2012; (2) driving while under the influence of  
alcohol, other drug or drugs, intoxicating compound or  
compounds or any combination thereof and has been previously  
convicted of reckless homicide or a similar provision of a law  
of another state relating to reckless homicide in which the  
person was determined to have been under the influence of  
alcohol, other drug or drugs, or intoxicating compound or  
compounds as an element of the offense or the person has  
previously been convicted of committing a violation of driving  
under the influence of alcohol or other drug or drugs,

intoxicating compound or compounds or any combination thereof and was involved in a motor vehicle accident that resulted in death, great bodily harm, or permanent disability or disfigurement to another, when the violation was a proximate cause of the death or injuries; (3) the person committed a violation of driving under the influence of alcohol or other drug or drugs, intoxicating compound or compounds or any combination thereof under Section 11-501 of the Illinois Vehicle Code or a similar provision for the third or subsequent time; (4) the person committed the violation while he or she did not possess a driver's license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit; or (5) the person committed the violation while he or she knew or should have known that the vehicle he or she was driving was not covered by a liability insurance policy; (g) an offense described in subsection (g) of Section 6-303 of the Illinois Vehicle Code; ~~or~~ (h) an offense described in subsection (e) of Section 6-101 of the Illinois Vehicle Code; or (i) (1) operating a watercraft under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or combination thereof under Section 5-16 of the Boat Registration and Safety Act during a period in which his or her privileges to operate a watercraft are revoked or suspended and the revocation or suspension was for operating a watercraft under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or combination

thereof; (2) operating a watercraft under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or combination thereof and has been previously convicted of reckless homicide or a similar provision of a law in another state relating to reckless homicide in which the person was determined to have been under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or combination thereof as an element of the offense or the person has previously been convicted of committing a violation of operating a watercraft under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or combination thereof and was involved in an accident that resulted in death, great bodily harm, or permanent disability or disfigurement to another, when the violation was a proximate cause of the death or injuries; or (3) the person committed a violation of operating a watercraft under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or combination thereof under Section 5-16 of the Boat Registration and Safety Act or a similar provision for the third or subsequent time; may be seized and delivered forthwith to the sheriff of the county of seizure.

Within 15 days after such delivery the sheriff shall give notice of seizure to each person according to the following method: Upon each such person whose right, title or interest is of record in the office of the Secretary of State, the

Secretary of Transportation, the Administrator of the Federal Aviation Agency, or any other Department of this State, or any other state of the United States if such vessel or watercraft, vehicle or aircraft is required to be so registered, as the case may be, by mailing a copy of the notice by certified mail to the address as given upon the records of the Secretary of State, the Department of Aeronautics, Department of Public Works and Buildings or any other Department of this State or the United States if such vessel or watercraft, vehicle or aircraft is required to be so registered. Within that 15 day period the sheriff shall also notify the State's Attorney of the county of seizure about the seizure.

In addition, any mobile or portable equipment used in the commission of an act which is in violation of Section 7g of the Metropolitan Water Reclamation District Act shall be subject to seizure and forfeiture under the same procedures provided in this Article for the seizure and forfeiture of vessels or watercraft, vehicles and aircraft, and any such equipment shall be deemed a vessel or watercraft, vehicle or aircraft for purposes of this Article.

When a person discharges a firearm at another individual from a vehicle with the knowledge and consent of the owner of the vehicle and with the intent to cause death or great bodily harm to that individual and as a result causes death or great bodily harm to that individual, the vehicle shall be subject to seizure and forfeiture under the same procedures provided in

this Article for the seizure and forfeiture of vehicles used in violations of clauses (a), (b), (c), or (d) of this Section.

If the spouse of the owner of a vehicle seized for an offense described in subsection (g) of Section 6-303 of the Illinois Vehicle Code, a violation of subdivision (d)(1)(A), (d)(1)(D), (d)(1)(G), (d)(1)(H), or (d)(1)(I) of Section 11-501 of the Illinois Vehicle Code, or Section 9-3 of this Code makes a showing that the seized vehicle is the only source of transportation and it is determined that the financial hardship to the family as a result of the seizure outweighs the benefit to the State from the seizure, the vehicle may be forfeited to the spouse or family member and the title to the vehicle shall be transferred to the spouse or family member who is properly licensed and who requires the use of the vehicle for employment or family transportation purposes. A written declaration of forfeiture of a vehicle under this Section shall be sufficient cause for the title to be transferred to the spouse or family member. The provisions of this paragraph shall apply only to one forfeiture per vehicle. If the vehicle is the subject of a subsequent forfeiture proceeding by virtue of a subsequent conviction of either spouse or the family member, the spouse or family member to whom the vehicle was forfeited under the first forfeiture proceeding may not utilize the provisions of this paragraph in another forfeiture proceeding. If the owner of the vehicle seized owns more than one vehicle, the procedure set out in this paragraph may be used for only

one vehicle.

Property declared contraband under Section 40 of the Illinois Streetgang Terrorism Omnibus Prevention Act may be seized and forfeited under this Article.

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

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

Sec. 36-1a. Rights of lienholders and secured parties. The State's Attorney shall promptly release a vessel or watercraft, vehicle or aircraft seized under the provisions of this Article to any lienholder or secured party whose right, title or interest is of record as described in Section 36-1 if such lienholder or secured party shows to the State's Attorney that his lien or secured interest is bona fide and was created without actual knowledge that such vessel or watercraft, vehicle or aircraft was used or to be used in the commission of the offense charged.

(Source: Laws 1965, p. 2868.)

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

Sec. 36-2. Action for forfeiture.

(a) The State's Attorney in the county in which such

seizure occurs if he finds that such forfeiture was incurred without willful negligence or without any intention on the part of the owner of the vessel or watercraft, vehicle or aircraft or any person whose right, title or interest is of record as described in Section 36-1, to violate the law, or finds the existence of such mitigating circumstances as to justify remission of the forfeiture, may cause the sheriff to remit the same upon such terms and conditions as the State's Attorney deems reasonable and just. The State's Attorney shall exercise his discretion under the foregoing provision of this Section 36-2(a) promptly after notice is given in accordance with Section 36-1. If the State's Attorney does not cause the forfeiture to be remitted he shall forthwith bring an action for forfeiture in the Circuit Court within whose jurisdiction the seizure and confiscation has taken place. The State's Attorney shall give notice of the forfeiture proceeding by mailing a copy of the Complaint in the forfeiture proceeding to the persons, and upon the manner, set forth in Section 36-1. The owner of the seized vessel or watercraft, vehicle or aircraft or any person whose right, title, or interest is of record as described in Section 36-1, may within 20 days after the mailing of such notice file a verified answer to the Complaint and may appear at the hearing on the action for forfeiture. The State shall show at such hearing by a preponderance of the evidence, that such vessel or watercraft, vehicle or aircraft was used in the commission of an offense



described in Section 36-1. The owner of such vessel or watercraft, vehicle or aircraft or any person whose right, title, or interest is of record as described in Section 36-1, may show by a preponderance of the evidence that he did not know, and did not have reason to know, that the vessel or watercraft, vehicle or aircraft was to be used in the commission of such an offense or that any of the exceptions set forth in Section 36-3 are applicable. Unless the State shall make such showing, the Court shall order such vessel or watercraft, vehicle or aircraft released to the owner. Where the State has made such showing, the Court may order the vessel or watercraft, vehicle or aircraft destroyed; may order it delivered to any local, municipal or county law enforcement agency, or the Department of State Police or the Department of Revenue of the State of Illinois; or may order it sold at public auction.

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

(c) The proceeds of any sale at public auction pursuant to Section 36-2 of this Act, after payment of all liens and deduction of the reasonable charges and expenses incurred by the sheriff in storing and selling such vehicle, shall be paid into the general fund of the county of seizure.

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

(720 ILCS 5/36-3) (from Ch. 38, par. 36-3)

Sec. 36-3. Exceptions to forfeiture.

(a) No vessel or watercraft, vehicle, or aircraft used by any person as a common carrier in the transaction of business as such common carrier may be forfeited under the provisions of Section 36-2 unless it appears that (1) in the case of a railway car or engine, the owner, or (2) in the case of any other such vessel or watercraft, vehicle or aircraft, the owner or the master of such vessel or watercraft or the owner or conductor, driver, pilot, or other person in charge of such vehicle or aircraft was at the time of the alleged illegal act a consenting party or privy thereto.

(b) No vessel or watercraft, vehicle, or aircraft shall be forfeited under the provisions of Section 36-2 by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such vessel or watercraft, vehicle, or aircraft was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States, or of

any state.

(Source: Laws 1965, p. 2868.)

(720 ILCS 5/36-4) (from Ch. 38, par. 36-4)

Sec. 36-4. Remission by Attorney General. Whenever any owner of, or other person interested in, a vessel or watercraft, vehicle, or aircraft seized under the provisions of this Act files with the Attorney General before the sale or destruction of such vessel or watercraft, vehicle, or aircraft, a petition for the remission of such forfeiture the Attorney General if he finds that such forfeiture was incurred without willful negligence or without any intention on the part of the owner or any person whose right, title or interest is of record as described in Section 36-1, to violate the law, or finds the existence of such mitigating circumstances as to justify the remission of forfeiture, may cause the same to be remitted upon such terms and conditions as he deems reasonable and just, or order discontinuance of any forfeiture proceeding relating thereto.

(Source: Laws 1965, p. 2868.)

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Statutes amended in order of appearance

720 ILCS 5/36-1	from Ch. 38, par. 36-1
720 ILCS 5/36-1a	from Ch. 38, par. 36-1a
720 ILCS 5/36-2	from Ch. 38, par. 36-2
720 ILCS 5/36-3	from Ch. 38, par. 36-3
720 ILCS 5/36-4	from Ch. 38, par. 36-4