



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB2954

Introduced 1/20/2006, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

720 ILCS 5/36-1	from Ch. 38, par. 36-1
730 ILCS 5/3-7-6	from Ch. 38, par. 1003-7-6
730 ILCS 5/3-12-2	from Ch. 38, par. 1003-12-2
730 ILCS 5/3-12-5	from Ch. 38, par. 1003-12-5

Amends the Criminal Code of 1961 and the Unified Code of Corrections. Re-enacts provisions of those Codes affected by Public Act 88-669, which has been held to be unconstitutional as a violation of the single subject clause of the Illinois Constitution. Includes validation provisions. Effective immediately.

LRB094 19066 EFG 54568 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT in relation to criminal law.

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

4 Section 1. Findings; purpose; validation.

5 (a) The General Assembly finds and declares that:

6 (1) Public Act 88-669, effective November 29, 1994,
7 contained provisions amending the Criminal Code of 1961 and
8 the Unified Code of Corrections. Public Act 88-669 also
9 contained other provisions.

10 (2) The Illinois Supreme Court declared Public Act
11 88-669 to be unconstitutional as a violation of the single
12 subject clause of the Illinois Constitution in *People v.*
13 *Olender*, Docket No. 98932, opinion filed December 15, 2005.

14 (b) The purpose of this Act is to re-enact the provisions
15 of the Criminal Code of 1961 and the Unified Code of
16 Corrections that were affected by Public Act 88-669 and to
17 minimize or prevent any problems concerning those provisions
18 that may arise from the unconstitutionality of Public Act
19 88-669. This re-enactment is intended to remove any question as
20 to the validity and content of those provisions; it is not
21 intended to supersede any other Public Act that amends the
22 provisions re-enacted in this Act. The re-enacted material is
23 shown in this Act as existing text (i.e., without underscoring)
24 and may include changes made by subsequent amendments.

25 (c) The re-enactment of provisions of the Criminal Code of
26 1961 and the Unified Code of Corrections by this Act is not
27 intended, and shall not be construed, to impair any legal
28 argument concerning whether those provisions were
29 substantially re-enacted by any other Public Act.

30 (d) All otherwise lawful actions taken before the effective
31 date of this Act in reliance on or pursuant to the provisions
32 re-enacted by this Act, as those provisions were set forth in
33 Public Act 88-669 or as subsequently amended, by any officer,

1 employee, or agency of State government or by any other person
2 or entity, are hereby validated, except to the extent
3 prohibited under the Illinois or United States Constitution.

4 (e) This Act applies, without limitation, to actions
5 pending on or after the effective date of this Act, except to
6 the extent prohibited under the Illinois or United States
7 Constitution.

8 Section 5. The Criminal Code of 1961 is amended by
9 re-enacting Section 36-1 as follows:

10 (720 ILCS 5/36-1) (from Ch. 38, par. 36-1)

11 Sec. 36-1. Seizure. Any vessel, vehicle or aircraft used
12 with the knowledge and consent of the owner in the commission
13 of, or in the attempt to commit as defined in Section 8-4 of
14 this Code, an offense prohibited by (a) Section 9-1, 9-3, 10-2,
15 11-6, 11-15.1, 11-19.1, 11-19.2, 11-20.1, 12-4.1, 12-4.2,
16 12-4.2-5, 12-4.3, 12-4.6, 12-7.3, 12-7.4, 12-13, 12-14, 18-2,
17 19-1, 19-2, 19-3, 20-1, 20-2, 20.5-6, 24-1.2, 24-1.2-5, 24-1.5,
18 or 28-1 of this Code, paragraph (a) of Section 12-4 of this
19 Code, paragraph (a) of Section 12-15 or paragraphs (a), (c) or
20 (d) of Section 12-16 of this Code, or paragraph (a)(6) or
21 (a)(7) of Section 24-1 of this Code; (b) Section 21, 22, 23, 24
22 or 26 of the Cigarette Tax Act if the vessel, vehicle or
23 aircraft contains more than 10 cartons of such cigarettes; (c)
24 Section 28, 29 or 30 of the Cigarette Use Tax Act if the
25 vessel, vehicle or aircraft contains more than 10 cartons of
26 such cigarettes; (d) Section 44 of the Environmental Protection
27 Act; (e) 11-204.1 of the Illinois Vehicle Code; (f) the
28 offenses described in the following provisions of the Illinois
29 Vehicle Code: Section 11-501 subdivisions (c-1)(1), (c-1)(2),
30 (c-1)(3), (d)(1)(A), (d)(1)(D), (d)(1)(G), or (d)(1)(H); (g)
31 an offense described in subsection (g) of Section 6-303 of the
32 Illinois Vehicle Code; or (h) an offense described in
33 subsection (e) of Section 6-101 of the Illinois Vehicle Code;
34 may be seized and delivered forthwith to the sheriff of the

1 county of seizure.

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

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

25 When a person discharges a firearm at another individual
26 from a vehicle with the knowledge and consent of the owner of
27 the vehicle and with the intent to cause death or great bodily
28 harm to that individual and as a result causes death or great
29 bodily harm to that individual, the vehicle shall be subject to
30 seizure and forfeiture under the same procedures provided in
31 this Article for the seizure and forfeiture of vehicles used in
32 violations of clauses (a), (b), (c), or (d) of this Section.

33 If the spouse of the owner of a vehicle seized for an
34 offense described in subsection (g) of Section 6-303 of the
35 Illinois Vehicle Code, a violation of subdivision (c-1)(1),
36 (c-1)(2), (c-1)(3), (d)(1)(A), or (d)(1)(D) of Section 11-501

1 of the Illinois Vehicle Code, or Section 9-3 of this Code makes
2 a showing that the seized vehicle is the only source of
3 transportation and it is determined that the financial hardship
4 to the family as a result of the seizure outweighs the benefit
5 to the State from the seizure, the vehicle may be forfeited to
6 the spouse or family member and the title to the vehicle shall
7 be transferred to the spouse or family member who is properly
8 licensed and who requires the use of the vehicle for employment
9 or family transportation purposes. A written declaration of
10 forfeiture of a vehicle under this Section shall be sufficient
11 cause for the title to be transferred to the spouse or family
12 member. The provisions of this paragraph shall apply only to
13 one forfeiture per vehicle. If the vehicle is the subject of a
14 subsequent forfeiture proceeding by virtue of a subsequent
15 conviction of either spouse or the family member, the spouse or
16 family member to whom the vehicle was forfeited under the first
17 forfeiture proceeding may not utilize the provisions of this
18 paragraph in another forfeiture proceeding. If the owner of the
19 vehicle seized owns more than one vehicle, the procedure set
20 out in this paragraph may be used for only one vehicle.

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

24 (Source: P.A. 93-187, eff. 7-11-03; 94-329, eff. 1-1-06.)

25 Section 10. The Unified Code of Corrections is amended by
26 re-enacting Sections 3-7-6, 3-12-2, and 3-12-5 as follows:

27 (730 ILCS 5/3-7-6) (from Ch. 38, par. 1003-7-6)

28 Sec. 3-7-6. Reimbursement for expenses.

29 (a) Responsibility of committed persons. For the purposes
30 of this Section, "committed persons" mean those persons who
31 through judicial determination have been placed in the custody
32 of the Department on the basis of a conviction as an adult.
33 Committed persons shall be responsible to reimburse the
34 Department for the expenses incurred by their incarceration at

1 a rate to be determined by the Department in accordance with
2 this Section.

3 (1) Committed persons shall fully cooperate with the
4 Department by providing complete financial information for
5 the purposes under this Section.

6 (2) The failure of a committed person to fully
7 cooperate as provided for in clauses (3) and (4) of
8 subsection (a-5) shall be considered for purposes of a
9 parole determination. Any committed person who willfully
10 refuses to cooperate with the obligations set forth in this
11 Section may be subject to the loss of good conduct credit
12 towards his or her sentence of up to 180 days.

13 (a-5) Assets information form.

14 (1) The Department shall develop a form, which shall be
15 used by the Department to obtain information from all
16 committed persons regarding assets of the persons.

17 (2) In order to enable the Department to determine the
18 financial status of the committed person, the form shall
19 provide for obtaining the age and marital status of a
20 committed person, the number and ages of children of the
21 person, the number and ages of other dependents, the type
22 and value of real estate, the type and value of personal
23 property, cash and bank accounts, the location of any lock
24 boxes, the type and value of investments, pensions and
25 annuities and any other personalty of significant cash
26 value, including but not limited to jewelry, art work and
27 collectables, and all medical or dental insurance policies
28 covering the committed person. The form may also provide
29 for other information deemed pertinent by the Department in
30 the investigation of a committed person's assets.

31 (3) Upon being developed, the form shall be submitted
32 to each committed person as of the date the form is
33 developed and to every committed person who thereafter is
34 sentenced to imprisonment under the jurisdiction of the
35 Department. The form may be resubmitted to a committed
36 person by the Department for purpose of obtaining current

1 information regarding the assets of the person.

2 (4) Every committed person shall complete the form or
3 provide for completion of the form and the committed person
4 shall swear under oath or affirm that to the best of his or
5 her knowledge the information provided is complete and
6 accurate.

7 (b) Expenses. The rate at which sums to be charged for the
8 expenses incurred by a committed person for his or her
9 confinement shall be computed by the Department as the average
10 per capita cost per day for all inmates of that institution or
11 facility for that fiscal year. The average per capita cost per
12 day shall be computed by the Department based on the average
13 per capita cost per day for the operation of that institution
14 or facility for the fiscal year immediately preceding the
15 period of incarceration for which the rate is being calculated.
16 The Department shall establish rules and regulations providing
17 for the computation of the above costs, and shall determine the
18 average per capita cost per day for each of its institutions or
19 facilities for each fiscal year. The Department shall have the
20 power to modify its rules and regulations, so as to provide for
21 the most accurate and most current average per capita cost per
22 day computation. Where the committed person is placed in a
23 facility outside the Department, the Department may pay the
24 actual cost of services in that facility, and may collect
25 reimbursement for the entire amount paid from the committed
26 person receiving those services.

27 (c) Records. The records of the Department, including, but
28 not limited to, those relating to: the average per capita cost
29 per day for a particular institution or facility for a
30 particular year, and the calculation of the average per capita
31 cost per day; the average daily population of a particular
32 Department correctional institution or facility for a
33 particular year; the specific placement of a particular
34 committed person in various Department correctional
35 institutions or facilities for various periods of time; and the
36 record of transactions of a particular committed person's trust

1 account under Section 3-4-3 of this Act; may be proved in any
2 legal proceeding, by a reproduced copy thereof or by a computer
3 printout of Department records, under the certificate of the
4 Director. If reproduced copies are used, the Director must
5 certify that those are true and exact copies of the records on
6 file with the Department. If computer printouts of records of
7 the Department are offered as proof, the Director must certify
8 that those computer printouts are true and exact
9 representations of records properly entered into standard
10 electronic computing equipment, in the regular course of the
11 Department's business, at or reasonably near the time of the
12 occurrence of the facts recorded, from trustworthy and reliable
13 information. The reproduced copy or computer printout shall,
14 without further proof, be admitted into evidence in any legal
15 proceeding, and shall be prima facie correct and prima facie
16 evidence of the accuracy of the information contained therein.

17 (d) Authority. The Director, or the Director's designee,
18 may, when he or she knows or reasonably believes that a
19 committed person, or the estate of that person, has assets
20 which may be used to satisfy all or part of a judgment rendered
21 under this Act, or when he or she knows or reasonably believes
22 that a committed person is engaged in gang-related activity and
23 has a substantial sum of money or other assets, provide for the
24 forwarding to the Attorney General of a report on the committed
25 person and that report shall contain a completed form under
26 subsection (a-5) together with all other information available
27 concerning the assets of the committed person and an estimate
28 of the total expenses for that committed person, and authorize
29 the Attorney General to institute proceedings to require the
30 persons, or the estates of the persons, to reimburse the
31 Department for the expenses incurred by their incarceration.
32 The Attorney General, upon authorization of the Director, or
33 the Director's designee, shall institute actions on behalf of
34 the Department and pursue claims on the Department's behalf in
35 probate and bankruptcy proceedings, to recover from committed
36 persons the expenses incurred by their confinement. For

1 purposes of this subsection (d), "gang-related" activity has
2 the meaning ascribed to it in Section 10 of the Illinois
3 Streetgang Terrorism Omnibus Prevention Act.

4 (e) Scope and limitations.

5 (1) No action under this Section shall be initiated
6 more than 2 years after the release or death of the
7 committed person in question.

8 (2) The death of a convicted person, by execution or
9 otherwise, while committed to a Department correctional
10 institution or facility shall not act as a bar to any
11 action or proceeding under this Section.

12 (3) The assets of a committed person, for the purposes
13 of this Section, shall include any property, tangible or
14 intangible, real or personal, belonging to or due to a
15 committed or formerly committed person including income or
16 payments to the person from social security, worker's
17 compensation, veteran's compensation, pension benefits, or
18 from any other source whatsoever and any and all assets and
19 property of whatever character held in the name of the
20 person, held for the benefit of the person, or payable or
21 otherwise deliverable to the person. Any trust, or portion
22 of a trust, of which a convicted person is a beneficiary,
23 shall be construed as an asset of the person, to the extent
24 that benefits thereunder are required to be paid to the
25 person, or shall in fact be paid to the person. At the time
26 of a legal proceeding by the Attorney General under this
27 Section, if it appears that the committed person has any
28 assets which ought to be subjected to the claim of the
29 Department under this Section, the court may issue an order
30 requiring any person, corporation, or other legal entity
31 possessed or having custody of those assets to appropriate
32 any of the assets or a portion thereof toward reimbursing
33 the Department as provided for under this Section. No
34 provision of this Section shall be construed in violation
35 of any State or federal limitation on the collection of
36 money judgments.

1 (4) Nothing in this Section shall preclude the
2 Department from applying federal benefits that are
3 specifically provided for the care and treatment of a
4 committed person toward the cost of care provided by a
5 State facility or private agency.

6 (Source: P.A. 92-564, eff. 1-1-03.)

7 (730 ILCS 5/3-12-2) (from Ch. 38, par. 1003-12-2)

8 Sec. 3-12-2. Types of employment.

9 (a) The Department may establish, maintain, train and
10 employ committed persons in industries for the production of
11 articles, materials or supplies for resale to authorized
12 purchasers. It may also employ committed persons on public
13 works, buildings and property, the conservation of natural
14 resources of the State, anti-pollution or environmental
15 control projects, or for other public purposes, for the
16 maintenance of the Department's buildings and properties and
17 for the production of food or other necessities for its
18 programs. The Department may establish, maintain and employ
19 committed persons in the production of vehicle registration
20 plates. A committed person's labor shall not be sold,
21 contracted or hired out by the Department except under this
22 Article and under Section 3-9-2.

23 (b) Works of art, literature, handicraft or other items
24 produced by committed persons as an avocation and not as a
25 product of a work program of the Department may be sold to the
26 public under rules and regulations established by the
27 Department. The cost of selling such products may be deducted
28 from the proceeds, and the balance shall be credited to the
29 person's account under Section 3-4-3. The Department shall
30 notify the Attorney General of the existence of any proceeds
31 which it believes should be applied towards a satisfaction, in
32 whole or in part, of the person's incarceration costs.

33 (Source: P.A. 88-669, eff. 11-29-94; 88-679, eff. 7-1-95.)

34 (730 ILCS 5/3-12-5) (from Ch. 38, par. 1003-12-5)

1 Sec. 3-12-5. Compensation. Persons performing a work
2 assignment under subsection (a) of Section 3-12-2 may receive
3 wages under rules and regulations of the Department. In
4 determining rates of compensation, the Department shall
5 consider the effort, skill and economic value of the work
6 performed. Compensation may be given to persons who participate
7 in other programs of the Department. Of the compensation earned
8 pursuant to this Section, a portion, as determined by the
9 Department, shall be used to offset the cost of the committed
10 person's incarceration. If the committed person files a lawsuit
11 determined frivolous under Article XXII of the Code of Civil
12 Procedure, 50% of the compensation shall be used to offset the
13 filing fees and costs of the lawsuit as provided in that
14 Article until all fees and costs are paid in full. All other
15 wages shall be deposited in the individual's account under
16 rules and regulations of the Department. The Department shall
17 notify the Attorney General of any compensation applied towards
18 a satisfaction, in whole or in part, of the person's
19 incarceration costs.

20 (Source: P.A. 90-505, eff. 8-19-97.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.