

1 AN ACT concerning law enforcement.

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

4 Section 5. The Department of State Police Law of the Civil
5 Administrative Code of Illinois is amended by adding Sections
6 2605-585 and 2605-590 as follows:

7 (20 ILCS 2605/2605-585 new)

8 Sec. 2605-585. Money Laundering Asset Recovery Fund.
9 Moneys and the sale proceeds distributed to the Department of
10 State Police pursuant to clause (h) (6) (C) of Section 29B-1 of
11 the Criminal Code of 1961 shall be deposited in a special fund
12 in the State treasury to be known as the Money Laundering Asset
13 Recovery Fund. The moneys deposited in the Money Laundering
14 Asset Recovery Fund shall be appropriated to and administered
15 by the Department of State Police for State law enforcement
16 purposes.

17 (20 ILCS 2605/2605-590 new)

18 Sec. 2605-590. Drug Traffic Prevention Fund. Moneys
19 deposited into the Drug Traffic Prevention Fund pursuant to
20 subsection (e) of Section 5-9-1.1 and subsection (c) of Section
21 5-9-1.5 of the Unified Code of Corrections shall be
22 appropriated to and administered by the Department of State

1 Police for funding of drug task forces and Metropolitan
2 Enforcement Groups in accordance with the Intergovernmental
3 Drug Laws Enforcement Act.

4 Section 10. The State Finance Act is amended by adding
5 Section 5.756 as follows:

6 (30 ILCS 105/5.756 new)

7 Sec. 5.756. The Money Laundering Asset Recovery Fund.

8 Section 15. The Criminal Code of 1961 is amended by
9 changing Section 29B-1 as follows:

10 (720 ILCS 5/29B-1) (from Ch. 38, par. 29B-1)

11 Sec. 29B-1. (a) A person commits the offense of money
12 laundering:

13 (1) when, knowing that the property involved in a
14 financial transaction represents the proceeds of some form
15 of unlawful activity, he or she conducts or attempts to
16 conduct such a financial transaction which in fact involves
17 criminally derived property:

18 (A) with the intent to promote the carrying on of
19 the unlawful activity from which the criminally
20 derived property was obtained; or

21 (B) where he or she knows or reasonably should know
22 that the financial transaction is designed in whole or

1 in part:

2 (i) to conceal or disguise the nature, the
3 location, the source, the ownership or the control
4 of the criminally derived property; or

5 (ii) to avoid a transaction reporting
6 requirement under State law; or

7 (1.5) when he or she transports, transmits, or
8 transfers, or attempts to transport, transmit, or transfer
9 a monetary instrument:

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

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

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

18 (ii) to avoid a transaction reporting
19 requirement under State law; or

20 (2) when, with the intent to:

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

23 (B) conceal or disguise the nature, location,
24 source, ownership, or control of property believed to
25 be the proceeds of a specified criminal activity as
26 defined by subdivision (b) (6); or

1 (C) avoid a transaction reporting requirement
2 under State law,
3 he or she conducts or attempts to conduct a financial
4 transaction involving property he or she believes to be the
5 proceeds of specified criminal activity as defined by
6 subdivision (b)(6) or property used to conduct or
7 facilitate specified criminal activity as defined by
8 subdivision (b)(6).

9 (b) As used in this Section:

10 (0.5) "Knowing that the property involved in a
11 financial transaction represents the proceeds of some form
12 of unlawful activity" means that the person knew the
13 property involved in the transaction represented proceeds
14 from some form, though not necessarily which form, of
15 activity that constitutes a felony under State, federal, or
16 foreign law.

17 (1) "Financial transaction" means a purchase, sale,
18 loan, pledge, gift, transfer, delivery or other
19 disposition utilizing criminally derived property, and
20 with respect to financial institutions, includes a
21 deposit, withdrawal, transfer between accounts, exchange
22 of currency, loan, extension of credit, purchase or sale of
23 any stock, bond, certificate of deposit or other monetary
24 instrument, use of safe deposit box, or any other payment,
25 transfer or delivery by, through, or to a financial
26 institution. For purposes of clause (a)(2) of this Section,

1 the term "financial transaction" also means a transaction
2 which without regard to whether the funds, monetary
3 instruments, or real or personal property involved in the
4 transaction are criminally derived, any transaction which
5 in any way or degree: (1) involves the movement of funds by
6 wire or any other means; (2) involves one or more monetary
7 instruments; or (3) the transfer of title to any real or
8 personal property. The receipt by an attorney of bona fide
9 fees for the purpose of legal representation is not a
10 financial transaction for purposes of this Section.

11 (2) "Financial institution" means any bank; saving and
12 loan association; trust company; agency or branch of a
13 foreign bank in the United States; currency exchange;
14 credit union, mortgage banking institution; pawnbroker;
15 loan or finance company; operator of a credit card system;
16 issuer, redeemer or cashier of travelers checks, checks or
17 money orders; dealer in precious metals, stones or jewels;
18 broker or dealer in securities or commodities; investment
19 banker; or investment company.

20 (3) "Monetary instrument" means United States coins
21 and currency; coins and currency of a foreign country;
22 travelers checks; personal checks, bank checks, and money
23 orders; investment securities; bearer negotiable
24 instruments; bearer investment securities; or bearer
25 securities and certificates of stock in such form that
26 title thereto passes upon delivery.

1 (4) "Criminally derived property" means: (A) any
2 property, real or personal, constituting or derived from
3 proceeds obtained, directly or indirectly, from activity
4 that constitutes a felony under State, federal, or foreign
5 law; or (B) any property represented to be property
6 constituting or derived from proceeds obtained, directly
7 or indirectly, from activity that constitutes a felony
8 under State, federal, or foreign law.

9 (5) "Conduct" or "conducts" includes, in addition to
10 its ordinary meaning, initiating, concluding, or
11 participating in initiating or concluding a transaction.

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

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

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

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

22 (c) Sentence.

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

25 (2) Laundering of criminally derived property of a
26 value exceeding \$10,000 but not exceeding \$100,000 is a

1 Class 2 felony;

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

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

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

10 (6) In a prosecution under clause (a) (1.5) (B) (ii) of
11 this Section, the sentences are as follows:

12 (A) Laundering of property of a value not exceeding
13 \$10,000 is a Class 3 felony;

14 (B) Laundering of property of a value exceeding
15 \$10,000 but not exceeding \$100,000 is a Class 2 felony;

16 (C) Laundering of property of a value exceeding
17 \$100,000 but not exceeding \$500,000 is a Class 1
18 felony;

19 (D) Laundering of property of a value exceeding
20 \$500,000 is a Class 1 non-probationable felony.

21 (d) Evidence. In a prosecution under this Article, either
22 party may introduce the following evidence pertaining to the
23 issue of whether the property or proceeds were known to be some
24 form of criminally derived property or from some form of
25 unlawful activity:

26 (1) A financial transaction was conducted or

1 structured or attempted in violation of the reporting
2 requirements of any State or federal law; or

3 (2) A financial transaction was conducted or attempted
4 with the use of a false or fictitious name or a forged
5 instrument; or

6 (3) A falsely altered or completed written instrument
7 or a written instrument that contains any materially false
8 personal identifying information was made, used, offered
9 or presented, whether accepted or not, in connection with a
10 financial transaction; or

11 (4) A financial transaction was structured or
12 attempted to be structured so as to falsely report the
13 actual consideration or value of the transaction; or

14 (5) A money transmitter, a person engaged in a trade or
15 business or any employee of a money transmitter or a person
16 engaged in a trade or business, knows or reasonably should
17 know that false personal identifying information has been
18 presented and incorporates the false personal identifying
19 information into any report or record; or

20 (6) The criminally derived property is transported or
21 possessed in a fashion inconsistent with the ordinary or
22 usual means of transportation or possession of such
23 property and where the property is discovered in the
24 absence of any documentation or other indicia of legitimate
25 origin or right to such property; or

26 (7) A person pays or receives substantially less than

1 face value for one or more monetary instruments; or

2 (8) A person engages in a transaction involving one or
3 more monetary instruments, where the physical condition or
4 form of the monetary instrument or instruments makes it
5 apparent that they are not the product of bona fide
6 business or financial transactions.

7 (e) Duty to enforce this Article.

8 (1) It is the duty of the Department of State Police,
9 and its agents, officers, and investigators, to enforce all
10 provisions of this Article, except those specifically
11 delegated, and to cooperate with all agencies charged with
12 the enforcement of the laws of the United States, or of any
13 state, relating to money laundering. Only an agent,
14 officer, or investigator designated by the Director may be
15 authorized in accordance with this Section to serve seizure
16 notices, warrants, subpoenas, and summonses under the
17 authority of this State.

18 (2) Any agent, officer, investigator, or peace officer
19 designated by the Director may: (A) make seizure of
20 property pursuant to the provisions of this Article; and
21 (B) perform such other law enforcement duties as the
22 Director designates. It is the duty of all State's
23 Attorneys to prosecute violations of this Article and
24 institute legal proceedings as authorized under this
25 Article.

26 (f) Protective orders.

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

6 (A) upon the filing of an indictment, information,
7 or complaint charging a violation of this Article for
8 which forfeiture may be ordered under this Article and
9 alleging that the property with respect to which the
10 order is sought would be subject to forfeiture under
11 this Article; or

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

16 (i) there is probable cause to believe that the
17 State will prevail on the issue of forfeiture and
18 that failure to enter the order will result in the
19 property being destroyed, removed from the
20 jurisdiction of the court, or otherwise made
21 unavailable for forfeiture; and

22 (ii) the need to preserve the availability of
23 the property through the entry of the requested
24 order outweighs the hardship on any party against
25 whom the order is to be entered.

26 Provided, however, that an order entered pursuant

1 to subparagraph (B) shall be effective for not more
2 than 90 days, unless extended by the court for good
3 cause shown or unless an indictment, information,
4 complaint, or administrative notice has been filed.

5 (2) A temporary restraining order under this
6 subsection may be entered upon application of the State
7 without notice or opportunity for a hearing when an
8 indictment, information, complaint, or administrative
9 notice has not yet been filed with respect to the property,
10 if the State demonstrates that there is probable cause to
11 believe that the property with respect to which the order
12 is sought would be subject to forfeiture under this Section
13 and that provision of notice will jeopardize the
14 availability of the property for forfeiture. Such a
15 temporary order shall expire not more than 30 days after
16 the date on which it is entered, unless extended for good
17 cause shown or unless the party against whom it is entered
18 consents to an extension for a longer period. A hearing
19 requested concerning an order entered under this paragraph
20 shall be held at the earliest possible time and prior to
21 the expiration of the temporary order.

22 (3) The court may receive and consider, at a hearing
23 held pursuant to this subsection (f), evidence and
24 information that would be inadmissible under the Illinois
25 rules of evidence.

26 (4) Order to repatriate and deposit.

1 (A) In general. Pursuant to its authority to enter
2 a pretrial restraining order under this Section, the
3 court may order a defendant to repatriate any property
4 that may be seized and forfeited and to deposit that
5 property pending trial with the Illinois State Police
6 or another law enforcement agency designated by the
7 Illinois State Police.

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

11 (g) Warrant of seizure. The State may request the issuance
12 of a warrant authorizing the seizure of property described in
13 subsection (h) in the same manner as provided for a search
14 warrant. If the court determines that there is probable cause
15 to believe that the property to be seized would be subject to
16 forfeiture, the court shall issue a warrant authorizing the
17 seizure of such property.

18 (h) Forfeiture.

19 (1) The following are subject to forfeiture:

20 (A) any property, real or personal, constituting,
21 derived from, or traceable to any proceeds the person
22 obtained directly or indirectly, as a result of a
23 violation of this Article;

24 (B) any of the person's property used, or intended
25 to be used, in any manner or part, to commit, or to
26 facilitate the commission of, a violation of this

1 Article;

2 (C) all conveyances, including aircraft, vehicles
3 or vessels, which are used, or intended for use, to
4 transport, or in any manner to facilitate the
5 transportation, sale, receipt, possession, or
6 concealment of property described in subparagraphs (A)
7 and (B), but:

8 (i) no conveyance used by any person as a
9 common carrier in the transaction of business as a
10 common carrier is subject to forfeiture under this
11 Section unless it appears that the owner or other
12 person in charge of the conveyance is a consenting
13 party or privy to a violation of this Article;

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

18 (iii) a forfeiture of a conveyance encumbered
19 by a bona fide security interest is subject to the
20 interest of the secured party if he or she neither
21 had knowledge of nor consented to the act or
22 omission;

23 (D) all real property, including any right, title,
24 and interest (including, but not limited to, any
25 leasehold interest or the beneficial interest in a land
26 trust) in the whole of any lot or tract of land and any

1 appurtenances or improvements, which is used or
2 intended to be used, in any manner or part, to commit,
3 or in any manner to facilitate the commission of, any
4 violation of this Article or that is the proceeds of
5 any violation or act that constitutes a violation of
6 this Article.

7 (2) Property subject to forfeiture under this Article
8 may be seized by the Director or any peace officer upon
9 process or seizure warrant issued by any court having
10 jurisdiction over the property. Seizure by the Director or
11 any peace officer without process may be made:

12 (A) if the seizure is incident to a seizure
13 warrant;

14 (B) if the property subject to seizure has been the
15 subject of a prior judgment in favor of the State in a
16 criminal proceeding, or in an injunction or forfeiture
17 proceeding based upon this Article;

18 (C) if there is probable cause to believe that the
19 property is directly or indirectly dangerous to health
20 or safety;

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

25 (E) in accordance with the Code of Criminal
26 Procedure of 1963.

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

4 (4) Property taken or detained under this Section shall
5 not be subject to replevin, but is deemed to be in the
6 custody of the Director subject only to the order and
7 judgments of the circuit court having jurisdiction over the
8 forfeiture proceedings and the decisions of the State's
9 Attorney under this Article. When property is seized under
10 this Article, the seizing agency shall promptly conduct an
11 inventory of the seized property and estimate the
12 property's value and shall forward a copy of the inventory
13 of seized property and the estimate of the property's value
14 to the Director. Upon receiving notice of seizure, the
15 Director may:

16 (A) place the property under seal;

17 (B) remove the property to a place designated by
18 the Director;

19 (C) keep the property in the possession of the
20 seizing agency;

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

25 (E) place the property under constructive seizure
26 by posting notice of pending forfeiture on it, by

1 giving notice of pending forfeiture to its owners and
2 interest holders, or by filing notice of pending
3 forfeiture in any appropriate public record relating
4 to the property; or

5 (F) provide for another agency or custodian,
6 including an owner, secured party, or lienholder, to
7 take custody of the property upon the terms and
8 conditions set by the Director.

9 (5) When property is forfeited under this Article, the
10 Director shall sell all such property unless such property
11 is required by law to be destroyed or is harmful to the
12 public, and shall distribute the proceeds of the sale,
13 together with any moneys forfeited or seized, in accordance
14 with paragraph (6). However, upon the application of the
15 seizing agency or prosecutor who was responsible for the
16 investigation, arrest or arrests and prosecution which
17 lead to the forfeiture, the Director may return any item of
18 forfeited property to the seizing agency or prosecutor for
19 official use in the enforcement of laws, if the agency or
20 prosecutor can demonstrate that the item requested would be
21 useful to the agency or prosecutor in its enforcement
22 efforts. When any real property returned to the seizing
23 agency is sold by the agency or its unit of government, the
24 proceeds of the sale shall be delivered to the Director and
25 distributed in accordance with paragraph (6).

26 (6) All monies and the sale proceeds of all other

1 property forfeited and seized under this Article shall be
2 distributed as follows:

3 (A) 65% shall be distributed to the metropolitan
4 enforcement group, local, municipal, county, or State
5 law enforcement agency or agencies which conducted or
6 participated in the investigation resulting in the
7 forfeiture. The distribution shall bear a reasonable
8 relationship to the degree of direct participation of
9 the law enforcement agency in the effort resulting in
10 the forfeiture, taking into account the total value of
11 the property forfeited and the total law enforcement
12 effort with respect to the violation of the law upon
13 which the forfeiture is based. Amounts distributed to
14 the agency or agencies shall be used for the
15 enforcement of laws.

16 (B) (i) 12.5% shall be distributed to the Office of
17 the State's Attorney of the county in which the
18 prosecution resulting in the forfeiture was
19 instituted, deposited in a special fund in the county
20 treasury and appropriated to the State's Attorney for
21 use in the enforcement of laws. In counties over
22 3,000,000 population, 25% shall be distributed to the
23 Office of the State's Attorney for use in the
24 enforcement of laws. If the prosecution is undertaken
25 solely by the Attorney General, the portion provided
26 hereunder shall be distributed to the Attorney General

1 for use in the enforcement of laws.

2 (ii) 12.5% shall be distributed to the Office
3 of the State's Attorneys Appellate Prosecutor and
4 deposited in the Narcotics Profit Forfeiture Fund
5 of that office to be used for additional expenses
6 incurred in the investigation, prosecution and
7 appeal of cases arising under laws. The Office of
8 the State's Attorneys Appellate Prosecutor shall
9 not receive distribution from cases brought in
10 counties with over 3,000,000 population.

11 (C) 10% shall be retained by the Department of
12 State Police for expenses related to the
13 administration and sale of seized and forfeited
14 property.

15 Moneys and the sale proceeds distributed to the
16 Department of State Police under this Article shall be
17 deposited in the Money Laundering Asset Recovery Fund
18 created in the State treasury and shall be used by the
19 Department of State Police for State law enforcement
20 purposes.

21 (i) Notice to owner or interest holder.

22 (1) Whenever notice of pending forfeiture or service of
23 an in rem complaint is required under the provisions of
24 this Article, such notice or service shall be given as
25 follows:

26 (A) If the owner's or interest holder's name and

1 current address are known, then by either personal
2 service or mailing a copy of the notice by certified
3 mail, return receipt requested, to that address. For
4 purposes of notice under this Section, if a person has
5 been arrested for the conduct giving rise to the
6 forfeiture, then the address provided to the arresting
7 agency at the time of arrest shall be deemed to be that
8 person's known address. Provided, however, if an owner
9 or interest holder's address changes prior to the
10 effective date of the notice of pending forfeiture, the
11 owner or interest holder shall promptly notify the
12 seizing agency of the change in address or, if the
13 owner or interest holder's address changes subsequent
14 to the effective date of the notice of pending
15 forfeiture, the owner or interest holder shall
16 promptly notify the State's Attorney of the change in
17 address; or

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

24 (C) If the owner's or interest holder's address is
25 not known, and is not on record as provided in
26 paragraph (B), then by publication for 3 successive

1 weeks in a newspaper of general circulation in the
2 county in which the seizure occurred.

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

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

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

1 following procedure shall be used:

2 (1) If, after review of the facts surrounding the
3 seizure, the State's Attorney is of the opinion that the
4 seized property is subject to forfeiture, then within 45
5 days after the receipt of notice of seizure from the
6 seizing agency, the State's Attorney shall cause notice of
7 pending forfeiture to be given to the owner of the property
8 and all known interest holders of the property in
9 accordance with subsection (i) of this Section.

10 (2) The notice of pending forfeiture must include a
11 description of the property, the estimated value of the
12 property, the date and place of seizure, the conduct giving
13 rise to forfeiture or the violation of law alleged, and a
14 summary of procedures and procedural rights applicable to
15 the forfeiture action.

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

24 (i) the caption of the proceedings as set forth on
25 the notice of pending forfeiture and the name of the
26 claimant;

1 (ii) the address at which the claimant will accept
2 mail;

3 (iii) the nature and extent of the claimant's
4 interest in the property;

5 (iv) the date, identity of the transferor, and
6 circumstances of the claimant's acquisition of the
7 interest in the property;

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

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

12 (vii) all essential facts supporting each
13 assertion; and

14 (viii) the relief sought.

15 (B) If a claimant files the claim and deposits with the
16 State's Attorney a cost bond, in the form of a cashier's
17 check payable to the clerk of the court, in the sum of 10%
18 of the reasonable value of the property as alleged by the
19 State's Attorney or the sum of \$100, whichever is greater,
20 upon condition that, in the case of forfeiture, the
21 claimant must pay all costs and expenses of forfeiture
22 proceedings, then the State's Attorney shall institute
23 judicial in rem forfeiture proceedings and deposit the cost
24 bond with the clerk of the court as described in subsection
25 (1) of this Section within 45 days after receipt of the
26 claim and cost bond. In lieu of a cost bond, a person

1 claiming interest in the seized property may file, under
2 penalty of perjury, an indigency affidavit which has been
3 approved by a circuit court judge.

4 (C) If none of the seized property is forfeited in the
5 judicial in rem proceeding, the clerk of the court shall
6 return to the claimant, unless the court orders otherwise,
7 90% of the sum which has been deposited and shall retain as
8 costs 10% of the money deposited. If any of the seized
9 property is forfeited under the judicial forfeiture
10 proceeding, the clerk of the court shall transfer 90% of
11 the sum which has been deposited to the State's Attorney
12 prosecuting the civil forfeiture to be applied to the costs
13 of prosecution and the clerk shall retain as costs 10% of
14 the sum deposited.

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

22 (l) Judicial in rem procedures. If property seized under
23 the provisions of this Article is non-real property that
24 exceeds \$20,000 in value excluding the value of any conveyance,
25 or is real property, or a claimant has filed a claim and a cost
26 bond under paragraph (3) of subsection (k) of this Section, the

1 following judicial in rem procedures shall apply:

2 (1) If, after a review of the facts surrounding the
3 seizure, the State's Attorney is of the opinion that the
4 seized property is subject to forfeiture, then within 45
5 days of the receipt of notice of seizure by the seizing
6 agency or the filing of the claim and cost bond, whichever
7 is later, the State's Attorney shall institute judicial
8 forfeiture proceedings by filing a verified complaint for
9 forfeiture and, if the claimant has filed a claim and cost
10 bond, by depositing the cost bond with the clerk of the
11 court. When authorized by law, a forfeiture must be ordered
12 by a court on an action in rem brought by a State's
13 Attorney under a verified complaint for forfeiture.

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

21 (3) Only an owner of or interest holder in the property
22 may file an answer asserting a claim against the property
23 in the action in rem. For purposes of this Section, the
24 owner or interest holder shall be referred to as claimant.
25 Upon motion of the State, the court shall first hold a
26 hearing, wherein any claimant must establish by a

1 preponderance of the evidence, that he or she has a lawful,
2 legitimate ownership interest in the property and that it
3 was obtained through a lawful source.

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

6 (A) the caption of the proceedings as set forth on
7 the notice of pending forfeiture and the name of the
8 claimant;

9 (B) the address at which the claimant will accept
10 mail;

11 (C) the nature and extent of the claimant's
12 interest in the property;

13 (D) the date, identity of transferor, and
14 circumstances of the claimant's acquisition of the
15 interest in the property;

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

18 (F) all essential facts supporting each assertion;
19 and

20 (G) the precise relief sought.

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

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

25 (7) The State shall show the existence of probable
26 cause for forfeiture of the property. If the State shows

1 probable cause, the claimant has the burden of showing by a
2 preponderance of the evidence that the claimant's interest
3 in the property is not subject to forfeiture.

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

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

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

1 by the State's Attorney.

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

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

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

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

26 (o) Property constituting attorney fees. Nothing in this

1 Article applies to property which constitutes reasonable bona
2 fide attorney's fees paid to an attorney for services rendered
3 or to be rendered in the forfeiture proceeding or criminal
4 proceeding relating directly thereto where such property was
5 paid before its seizure, before the issuance of any seizure
6 warrant or court order prohibiting transfer of the property and
7 where the attorney, at the time he or she received the property
8 did not know that it was property subject to forfeiture under
9 this Article.

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

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

24 (r) Burden of proof of exemption or exception. It is not
25 necessary for the State to negate any exemption or exception in
26 this Article in any complaint, information, indictment or other

1 pleading or in any trial, hearing, or other proceeding under
2 this Article. The burden of proof of any exemption or exception
3 is upon the person claiming it.

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

25 (Source: P.A. 96-275, eff. 8-11-09; 96-710, eff. 1-1-10;
26 revised 10-9-09.)

1 Section 20. The Unified Code of Corrections is amended by
2 changing Sections 5-9-1.1 and 5-9-1.1-5 as follows:

3 (730 ILCS 5/5-9-1.1) (from Ch. 38, par. 1005-9-1.1)
4 (Text of Section from P.A. 94-550, 96-132, and 96-402)
5 Sec. 5-9-1.1. Drug related offenses.

6 (a) When a person has been adjudged guilty of a drug
7 related offense involving possession or delivery of cannabis or
8 possession or delivery of a controlled substance, other than
9 methamphetamine, as defined in the Cannabis Control Act, as
10 amended, or the Illinois Controlled Substances Act, as amended,
11 in addition to any other penalty imposed, a fine shall be
12 levied by the court at not less than the full street value of
13 the cannabis or controlled substances seized.

14 "Street value" shall be determined by the court on the
15 basis of testimony of law enforcement personnel and the
16 defendant as to the amount seized and such testimony as may be
17 required by the court as to the current street value of the
18 cannabis or controlled substance seized.

19 (b) In addition to any penalty imposed under subsection (a)
20 of this Section, a fine of \$100 shall be levied by the court,
21 the proceeds of which shall be collected by the Circuit Clerk
22 and remitted to the State Treasurer under Section 27.6 of the
23 Clerks of Courts Act for deposit into the Trauma Center Fund
24 for distribution as provided under Section 3.225 of the

1 Emergency Medical Services (EMS) Systems Act.

2 (c) In addition to any penalty imposed under subsection (a)
3 of this Section, a fee of \$5 shall be assessed by the court,
4 the proceeds of which shall be collected by the Circuit Clerk
5 and remitted to the State Treasurer under Section 27.6 of the
6 Clerks of Courts Act for deposit into the Spinal Cord Injury
7 Paralysis Cure Research Trust Fund. This additional fee of \$5
8 shall not be considered a part of the fine for purposes of any
9 reduction in the fine for time served either before or after
10 sentencing.

11 (d) In addition to any penalty imposed under subsection (a)
12 of this Section for a drug related offense involving possession
13 or delivery of cannabis or possession or delivery of a
14 controlled substance as defined in the Cannabis Control Act,
15 the Illinois Controlled Substances Act, or the Methamphetamine
16 Control and Community Protection Act, a fee of \$50 shall be
17 assessed by the court, the proceeds of which shall be collected
18 by the Circuit Clerk and remitted to the State Treasurer under
19 Section 27.6 of the Clerks of Courts Act for deposit into the
20 Performance-enhancing Substance Testing Fund. This additional
21 fee of \$50 shall not be considered a part of the fine for
22 purposes of any reduction in the fine for time served either
23 before or after sentencing. The provisions of this subsection
24 (d), other than this sentence, are inoperative after June 30,
25 2011.

26 (e)~~(d)~~ In addition to any penalty imposed under subsection

1 (a) of this Section, a \$25 assessment shall be assessed by the
2 court, the proceeds of which shall be collected by the Circuit
3 Clerk and remitted to the State Treasurer for deposit into the
4 Drug Traffic Prevention Fund. The moneys deposited into the
5 Drug Traffic Prevention Fund pursuant to this Section shall be
6 appropriated to and administered ~~State Police Services Fund and~~
7 ~~shall be used for grants~~ by the Department of State Police for
8 funding of ~~to~~ drug task forces and Metropolitan Enforcement
9 Groups in accordance with the Intergovernmental Drug Laws
10 Enforcement Act.

11 (Source: P.A. 94-550, eff. 1-1-06; 96-132, eff. 8-7-09; 96-402,
12 eff. 1-1-10, revised 10-6-09.)

13 (Text of Section from P.A. 94-556, 96-132, and 96-402)

14 Sec. 5-9-1.1. Drug related offenses.

15 (a) When a person has been adjudged guilty of a drug
16 related offense involving possession or delivery of cannabis or
17 possession or delivery of a controlled substance as defined in
18 the Cannabis Control Act, the Illinois Controlled Substances
19 Act, or the Methamphetamine Control and Community Protection
20 Act, in addition to any other penalty imposed, a fine shall be
21 levied by the court at not less than the full street value of
22 the cannabis or controlled substances seized.

23 "Street value" shall be determined by the court on the
24 basis of testimony of law enforcement personnel and the
25 defendant as to the amount seized and such testimony as may be

1 required by the court as to the current street value of the
2 cannabis or controlled substance seized.

3 (b) In addition to any penalty imposed under subsection (a)
4 of this Section, a fine of \$100 shall be levied by the court,
5 the proceeds of which shall be collected by the Circuit Clerk
6 and remitted to the State Treasurer under Section 27.6 of the
7 Clerks of Courts Act for deposit into the Trauma Center Fund
8 for distribution as provided under Section 3.225 of the
9 Emergency Medical Services (EMS) Systems Act.

10 (c) In addition to any penalty imposed under subsection (a)
11 of this Section, a fee of \$5 shall be assessed by the court,
12 the proceeds of which shall be collected by the Circuit Clerk
13 and remitted to the State Treasurer under Section 27.6 of the
14 Clerks of Courts Act for deposit into the Spinal Cord Injury
15 Paralysis Cure Research Trust Fund. This additional fee of \$5
16 shall not be considered a part of the fine for purposes of any
17 reduction in the fine for time served either before or after
18 sentencing.

19 (d) In addition to any penalty imposed under subsection (a)
20 of this Section for a drug related offense involving possession
21 or delivery of cannabis or possession or delivery of a
22 controlled substance as defined in the Cannabis Control Act,
23 the Illinois Controlled Substances Act, or the Methamphetamine
24 Control and Community Protection Act, a fee of \$50 shall be
25 assessed by the court, the proceeds of which shall be collected
26 by the Circuit Clerk and remitted to the State Treasurer under

1 Section 27.6 of the Clerks of Courts Act for deposit into the
2 Performance-enhancing Substance Testing Fund. This additional
3 fee of \$50 shall not be considered a part of the fine for
4 purposes of any reduction in the fine for time served either
5 before or after sentencing. The provisions of this subsection
6 (d), other than this sentence, are inoperative after June 30,
7 2011.

8 ~~(e)-(d)~~ In addition to any penalty imposed under subsection
9 (a) of this Section, a \$25 assessment shall be assessed by the
10 court, the proceeds of which shall be collected by the Circuit
11 Clerk and remitted to the State Treasurer for deposit into the
12 Drug Traffic Prevention Fund. The moneys deposited into the
13 Drug Traffic Prevention Fund pursuant to this Section shall be
14 appropriated to and administered ~~State Police Services Fund and~~
15 ~~shall be used for grants~~ by the Department of State Police for
16 funding of ~~to~~ drug task forces and Metropolitan Enforcement
17 Groups in accordance with the Intergovernmental Drug Laws
18 Enforcement Act.

19 (Source: P.A. 94-556, eff. 9-11-05; 96-132, eff. 8-7-09;
20 96-402, eff. 1-1-10, revised 10-6-09.)

21 (730 ILCS 5/5-9-1.1-5)

22 Sec. 5-9-1.1-5. Methamphetamine related offenses.

23 (a) When a person has been adjudged guilty of a
24 methamphetamine related offense involving possession or
25 delivery of methamphetamine or any salt of an optical isomer of

1 methamphetamine or possession of a methamphetamine
2 manufacturing material as set forth in Section 10 of the
3 Methamphetamine Control and Community Protection Act with the
4 intent to manufacture a substance containing methamphetamine
5 or salt of an optical isomer of methamphetamine, in addition to
6 any other penalty imposed, a fine shall be levied by the court
7 at not less than the full street value of the methamphetamine
8 or salt of an optical isomer of methamphetamine or
9 methamphetamine manufacturing materials seized.

10 "Street value" shall be determined by the court on the
11 basis of testimony of law enforcement personnel and the
12 defendant as to the amount seized and such testimony as may be
13 required by the court as to the current street value of the
14 methamphetamine or salt of an optical isomer of methamphetamine
15 or methamphetamine manufacturing materials seized.

16 (b) In addition to any penalty imposed under subsection (a)
17 of this Section, a fine of \$100 shall be levied by the court,
18 the proceeds of which shall be collected by the Circuit Clerk
19 and remitted to the State Treasurer under Section 27.6 of the
20 Clerks of Courts Act for deposit into the Methamphetamine Law
21 Enforcement Fund and allocated as provided in subsection (d) of
22 Section 5-9-1.2.

23 (c) In addition to any penalty imposed under subsection (a)
24 of this Section, a \$25 assessment shall be assessed by the
25 court, the proceeds of which shall be collected by the Circuit
26 Clerk and remitted to the State Treasurer for deposit into the

1 Drug Traffic Prevention Fund. The moneys deposited into the
2 Drug Traffic Prevention Fund pursuant to this Section shall be
3 appropriated to and administered ~~State Police Services Fund and~~
4 ~~shall be used for grants~~ by the Department of State Police for
5 funding of ~~to~~ drug task forces and Metropolitan Enforcement
6 Groups in accordance with the Intergovernmental Drug Laws
7 Enforcement Act.

8 (Source: P.A. 96-200, eff. 8-10-09; 96-402, eff. 1-1-10;
9 revised 9-25-09.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.