

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 2. The Criminal Code of 1961 is amended by changing  
5 Section 36-1.5 as follows:

6 (720 ILCS 5/36-1.5)

7 Sec. 36-1.5. Preliminary Review.

8 (a) Within 21 ~~14~~ days of the seizure, the State shall seek  
9 a preliminary determination from the circuit court as to  
10 whether there is probable cause that the property may be  
11 subject to forfeiture.

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

14 (c) The court may conduct the review under subsection (a)  
15 simultaneously with a proceeding pursuant to Section 109-1 of  
16 the Code of Criminal Procedure of 1963 for a related criminal  
17 offense if a prosecution is commenced by information or  
18 complaint, however if the review is not conducted  
19 simultaneously, the court's findings shall not constitute a  
20 collateral estoppel to the filing of criminal charges.

21 (d) The court may accept a finding of probable cause at a  
22 preliminary hearing following the filing of an information or  
23 complaint charging a related criminal offense or following the

1 return of indictment by a grand jury charging the related  
2 offense as sufficient evidence of probable cause as required  
3 under subsection (a).

4 (e) (Blank). ~~Upon making a finding of probable cause as~~  
5 ~~required under this Section, and after taking into account the~~  
6 ~~respective interests of all known claimants to the property~~  
7 ~~including the State, the circuit court shall enter a~~  
8 ~~restraining order or injunction, or take other appropriate~~  
9 ~~action, as necessary to ensure that the property is not removed~~  
10 ~~from the court's jurisdiction and is not concealed, destroyed,~~  
11 ~~or otherwise disposed of by the property owner or interest~~  
12 ~~holder before a forfeiture hearing is conducted.~~

13 (Source: P.A. 97-544, eff. 1-1-12.)

14 Section 5. The Drug Asset Forfeiture Procedure Act is  
15 amended by changing Sections 3.5, 5, and 9 as follows:

16 (725 ILCS 150/3.5)

17 Sec. 3.5. Preliminary Review.

18 (a) Within 21 ~~14~~ days of the seizure, the State shall seek  
19 a preliminary determination from the circuit court as to  
20 whether there is probable cause that the property may be  
21 subject to forfeiture.

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

24 (c) The court may conduct the review under subsection (a)

1 simultaneously with a proceeding pursuant to Section 109-1 of  
2 the Code of Criminal Procedure of 1963 for a related criminal  
3 offense if a prosecution is commenced by information or  
4 complaint, however if the review is not conducted  
5 simultaneously, the court's findings shall not constitute a  
6 collateral estoppel to the filing of criminal charges.

7 (d) The court may accept a finding of probable cause at a  
8 preliminary hearing following the filing of an information or  
9 complaint charging a related criminal offense or following the  
10 return of indictment by a grand jury charging the related  
11 offense as sufficient evidence of probable cause as required  
12 under subsection (a).

13 (e) (Blank) Upon making a finding of probable cause as  
14 required under this Section, and after taking into account the  
15 respective interests of all known claimants to the property  
16 including the State, the circuit court shall enter a  
17 restraining order or injunction, or take other appropriate  
18 action, as necessary to ensure that the property is not removed  
19 from the court's jurisdiction and is not concealed, destroyed,  
20 or otherwise disposed of by the property owner or interest  
21 holder before a forfeiture hearing is conducted.

22 (Source: P.A. 97-544, eff. 1-1-12.)

23 (725 ILCS 150/5) (from Ch. 56 1/2, par. 1675)

24 Sec. 5. Notice to State's Attorney. The law enforcement  
25 agency seizing property for forfeiture under the Illinois

1 Controlled Substances Act, the Cannabis Control Act, or the  
2 Methamphetamine Control and Community Protection Act shall,  
3 within 52 days of seizure, notify the State's Attorney for the  
4 county in which an act or omission giving rise to the  
5 forfeiture occurred or in which the property was seized of the  
6 seizure of the property and the facts and circumstances giving  
7 rise to the seizure and shall provide the State's Attorney with  
8 the inventory of the property and its estimated value. For  
9 purposes of forfeiture proceedings pursuant to Sections 6 and 9  
10 of this Act, the notification to the State's Attorney shall  
11 only be perfected by the delivery of the Illinois State Police  
12 approved form 4-64. When the property seized for forfeiture is  
13 a vehicle, the law enforcement agency seizing the property  
14 shall immediately notify the Secretary of State that forfeiture  
15 proceedings are pending regarding such vehicle.

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

17 (725 ILCS 150/9) (from Ch. 56 1/2, par. 1679)

18 Sec. 9. Judicial in rem procedures. If property seized  
19 under the provisions of the Illinois Controlled Substances Act,  
20 the Cannabis Control Act, or the Methamphetamine Control and  
21 Community Protection Act is non-real property that exceeds  
22 \$150,000 ~~\$20,000~~ in value excluding the value of any  
23 conveyance, or is real property, or a claimant has filed a  
24 claim and a cost bond under subsection (C) of Section 6 of this  
25 Act, the following judicial in rem procedures shall apply:

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

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

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

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

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

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

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

5           (iv) the date, identity of 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 to  
9 have an interest in the property;

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

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

14           (viii) the precise relief sought.

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

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

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

24           (H) If the State does not show existence of probable cause  
25 or a claimant has established by a preponderance of evidence  
26 that the claimant has an interest that is exempt under Section

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

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

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

1 property unless such return or release is consented to by the  
2 State's Attorney.

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

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

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

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