

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

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

Sec. 36-1. Seizure.

(a) Any vessel, vehicle, or aircraft may be seized and impounded by the law enforcement agency if the vessel, vehicle, or aircraft is 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:

(1) ~~(a)~~ Section 9-1 (first degree murder), 9-3 (involuntary manslaughter and reckless homicide), 10-2 (aggravated kidnaping), 11-1.20 (criminal sexual assault), 11-1.30 (aggravated criminal sexual assault), 11-1.40 (predatory criminal sexual assault of a child), subsection (a) of Section 11-1.50 (criminal sexual abuse), subsection (a), (c), or (d) of Section 11-1.60 (aggravated criminal sexual abuse), Section 11-6 (indecent solicitation of a child), 11-14.4 (promoting juvenile prostitution except for keeping a place of juvenile prostitution), ~~11-15.1, 11-19.1, 11-19.2,~~ 11-20.1 (child pornography), paragraph

(a) (1), (a) (2), (a) (4), (b) (1), (b) (2), (e) (1), (e) (2), (e) (3), (e) (4), (e) (5), (e) (6), or (e) (7) of Section 12-3.05 (aggravated battery), 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 (stalking), 12-7.4 (aggravated stalking), 12-13, 12-14, 16-1 (theft if the theft is of precious metal or of scrap metal), subdivision (f) (2) or (f) (3) of Section 16-25 (retail theft), Section 18-2 (armed robbery), 19-1 (burglary), 19-2 (possession of burglary tools), 19-3 (residential burglary), 20-1 (arson; residential arson; place of worship arson), 20-2 (possession of explosives or explosive or incendiary devices), subdivision (a) (6) or (a) (7) of Section 24-1 (unlawful use of weapons), Section 24-1.2 (aggravated discharge of a firearm), 24-1.2-5 (aggravated discharge of a machine gun or a firearm equipped with a device designed or used for silencing the report of a firearm), 24-1.5 (reckless discharge of a firearm), 28-1 (gambling), or 29D-15.2 (possession of a deadly substance) 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), (e), or (d) of Section 11-1.60, or paragraphs (a), (e) or (d) of Section 12-16 of this Code, or paragraph (a) (6) or (a) (7) of Section 24-1 of this Code;~~

(2) ~~(b)~~ Section 21, 22, 23, 24 or 26 of the Cigarette Tax Act if the vessel, vehicle, or aircraft contains more than 10 cartons of such cigarettes;

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

(4) ~~(d)~~ Section 44 of the Environmental Protection Act;

(5) ~~(e)~~ Section 11-204.1 of the Illinois Vehicle Code (aggravated fleeing or attempting to elude a peace officer);

(6) Section 11-501 of the Illinois Vehicle Code (driving while under the influence of alcohol or other drug or drugs, intoxicating compound or compounds or any combination thereof) or a similar provision of a local ordinance, and:

~~(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~~

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

(i) Section 11-501 (driving under the influence of alcohol or other drug or drugs, intoxicating compound or compounds or any combination thereof),

(ii) Section 11-501.1 (statutory summary suspension or revocation),

(iii) paragraph (b) of Section 11-401 (motor vehicle accidents involving death or personal injuries), or for

(iv) reckless homicide as defined in Section 9-3 of this ~~the Criminal Code of 1961 or the Criminal Code of 2012;~~

(B) ~~(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;~~

(C) ~~(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;

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

(E) ~~(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;

(7) ~~(g)~~ an offense described in subsection (g) of Section 6-303 of the Illinois Vehicle Code; or

(8) ~~(h)~~ an offense described in subsection (e) of Section 6-101 of the Illinois Vehicle Code; ~~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, 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, 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.~~

(b) 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, vehicles, and aircraft, and any such equipment shall be deemed a vessel, vehicle, or aircraft for purposes of this Article.

(c) In addition, when ~~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 (1),

(2), (3), or (4) of subsection (a) ~~(a), (b), (c), or (d)~~ of this Section.

(d) 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.

(e) In addition, property ~~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 5/36-1.5)

Sec. 36-1.5. Preliminary Review.

(a) Within 14 days of the seizure, the State's Attorney in the county in which the seizure occurred ~~State~~ shall seek a preliminary determination from the circuit court as to whether there is probable cause that the property may be subject to forfeiture.

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

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

(d) The court may accept a finding of probable cause at a preliminary hearing following the filing of an information or

complaint charging a related criminal offense or following the return of indictment by a grand jury charging the related offense as sufficient evidence of probable cause as required under subsection (a).

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

For seizures of conveyances, within 7 days of a finding of probable cause under subsection (a), the registered owner or other claimant may file a motion in writing supported by sworn affidavits claiming that denial of the use of the conveyance during the pendency of the forfeiture proceedings creates a substantial hardship. The court shall consider the following factors in determining whether a substantial hardship has been proven:

- (1) the nature of the claimed hardship;
- (2) the availability of public transportation or other available means of transportation; and
- (3) any available alternatives to alleviate the hardship other than the return of the seized conveyance.

If the court determines that a substantial hardship has been proven, the court shall then balance the nature of the hardship against the State's interest in safeguarding the conveyance. If the court determines that the hardship outweighs the State's interest in safeguarding the conveyance, the court

may temporarily release the conveyance to the registered owner or the registered owner's authorized designee, or both, until the conclusion of the forfeiture proceedings or for such shorter period as ordered by the court provided that the person to whom the conveyance is released provides proof of insurance and a valid driver's license and all State and local registrations for operation of the conveyance are current. The court shall place conditions on the conveyance limiting its use to the stated hardship and restricting the conveyance's use to only those individuals authorized to use the conveyance by the registered owner. The court shall revoke the order releasing the conveyance and order that the conveyance be resealed by law enforcement if the conditions of release are violated or if the conveyance is used in the commission of any offense identified in subsection (a) of Section 6-205 of the Illinois Vehicle Code.

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

- (A) the full market value of the conveyance;
- (B) the nature of the hardship;
- (C) the extent and length of the usage of the conveyance; and

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

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

If the conveyance subject to forfeiture is released under this Section and is subsequently forfeited, the person to whom the conveyance was released shall return the conveyance to the law enforcement agency that seized the conveyance within 7 days from the date of the declaration of forfeiture or order of forfeiture. If the conveyance is not returned within 7 days, the cash security shall be forfeited in the same manner as the conveyance subject to forfeiture. If the cash security was less than the full market value, a judgment shall be entered against the parties to whom the conveyance was released and the registered owner, jointly and severally, for the difference between the full market value and the amount of the cash security. If the conveyance is returned in a condition other than the condition in which it was released, the cash security shall be returned to the surety who posted the security minus

the amount of the diminished value, and that amount shall be forfeited in the same manner as the conveyance subject to forfeiture. Additionally, the court may enter an order allowing any law enforcement agency in the State of Illinois to seize the conveyance wherever it may be found in the State to satisfy the judgment if the cash security was less than the full market value of the conveyance.

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

(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 or she finds that the ~~such~~ forfeiture was incurred without willful negligence or without any intention on the part of the owner of the vessel, 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 law enforcement agency ~~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 or her discretion under the foregoing provision of this Section 36-2(a) prior to or promptly after the preliminary review under Section 36-1.5 ~~notice is given in accordance with Section 36-1.~~

(b) If the State's Attorney does not cause the forfeiture

to be remitted he or she 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 seizure and the forfeiture proceeding to each person according to the following method: Upon each 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 the vessel, vehicle, or aircraft is required to be so registered, as the case may be, by delivering the notice and complaint in open court or by certified mail to the address as given upon the records of the Secretary of State, the Division of Aeronautics of the Department of Transportation, the Capital Development Board, or any other Department of this State or the United States if the vessel, vehicle, or aircraft is required to be so registered ~~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.~~

(c) The owner of the seized vessel, 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 delivery in open court or the mailing of such notice file a verified answer to the Complaint and may appear at the hearing on the action for forfeiture.

(d) The State shall show at such hearing by a preponderance

of the evidence, that such vessel, vehicle, or aircraft was used in the commission of an offense described in Section 36-1.

(e) The owner of such vessel, 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, 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.

(f) Unless the State shall make such showing, the Court shall order such vessel, vehicle, or aircraft released to the owner. Where the State has made such showing, the Court may order the vessel, vehicle, or aircraft destroyed or may order it forfeited ~~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.~~

(g) ~~(b)~~ A copy of the order shall be filed with the law enforcement agency, ~~sheriff of the county in which the seizure occurs~~ and with each Federal or State office or agency with which such vessel, vehicle, or aircraft is required to be registered. Such order, when filed, constitutes authority for the issuance of clear title to such vessel, vehicle, or aircraft, ~~or boat~~ to the department or agency to whom it is delivered or any purchaser thereof. The law enforcement agency ~~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.

(h) ~~(e)~~ 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 State's Attorney's Office ~~sheriff in storing and selling such vehicle,~~ shall be paid to ~~into~~ the law enforcement agency having seized the vehicle for forfeiture ~~general fund of the county of seizure.~~

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

(720 ILCS 5/36-5)

Sec. 36-5. The law enforcement agency, county or sheriff not liable for stored forfeited vehicle. A law enforcement agency, county, sheriff, law enforcement officer or employee of the law enforcement agency or ~~deputy sheriff, or employee of the~~ county sheriff shall not be civilly or criminally liable for any damage to a forfeited vehicle stored with a commercial vehicle safety relocater.

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

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