

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 5. 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 14 days of the seizure, the State shall seek a
9 preliminary determination from the circuit court as to whether
10 there is probable cause that the property may be subject to
11 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.

19 (d) The court may accept a finding of probable cause at a
20 preliminary hearing following the filing of an information or
21 complaint charging a related criminal offense or following the
22 return of indictment by a grand jury charging the related
23 offense as sufficient evidence of probable cause as required

1 under subsection (a).

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

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

14 (1) the nature of the claimed hardship;

15 (2) the availability of public transportation or other
16 available means of transportation; and

17 (3) any available alternatives to alleviate the
18 hardship other than the return of the seized conveyance.

19 If the court determines that a substantial hardship has
20 been proven, the court shall then balance the nature of the
21 hardship against the State's interest in safeguarding the
22 conveyance. If the court determines that the hardship outweighs
23 the State's interest in safeguarding the conveyance, the court
24 may temporarily release the conveyance to the registered owner
25 or the registered owner's authorized designee, or both, until
26 the conclusion of the forfeiture proceedings or for such

1 shorter period as ordered by the court provided that the person
2 to whom the conveyance is released provides proof of insurance
3 and a valid driver's license and all State and local
4 registrations for operation of the conveyance are current. The
5 court shall place conditions on the conveyance limiting its use
6 to the stated hardship and restricting the conveyance's use to
7 only those individuals authorized to use the conveyance by the
8 registered owner. The court shall revoke the order releasing
9 the conveyance and order that the conveyance be reseized by law
10 enforcement if the conditions of release are violated or if the
11 conveyance is used in the commission of any offense identified
12 in subsection (a) of Section 6-205 of the Illinois Vehicle
13 Code.

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

20 (A) the full market value of the conveyance;

21 (B) the nature of the hardship;

22 (C) the extent and length of the usage of the
23 conveyance; and

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

26 If the conveyance is released, the court shall order that

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

9 If the conveyance subject to forfeiture is released under
10 this Section and is subsequently forfeited, the person to whom
11 the conveyance was released shall return the conveyance to the
12 law enforcement agency that seized the conveyance within 7 days
13 from the date of the declaration of forfeiture or order of
14 forfeiture. If the conveyance is not returned within 7 days,
15 the cash security shall be forfeited in the same manner as the
16 conveyance subject to forfeiture. If the cash security was less
17 than the full market value, a judgment shall be entered against
18 the parties to whom the conveyance was released and the
19 registered owner, jointly and severally, for the difference
20 between the full market value and the amount of the cash
21 security. If the conveyance is returned in a condition other
22 than the condition in which it was released, the cash security
23 shall be returned to the surety who posted the security minus
24 the amount of the diminished value, and that amount shall be
25 forfeited in the same manner as the conveyance subject to
26 forfeiture. Additionally, the court may enter an order allowing

1 any law enforcement agency in the State of Illinois to seize
2 the conveyance wherever it may be found in the State to satisfy
3 the judgment if the cash security was less than the full market
4 value of the conveyance. ~~Upon making a finding of probable~~
5 ~~cause as required under this Section, and after taking into~~
6 ~~account the respective interests of all known claimants to the~~
7 ~~property 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 10. The Drug Asset Forfeiture Procedure Act is
15 amended by changing Section 3.5 as follows:

16 (725 ILCS 150/3.5)

17 Sec. 3.5. Preliminary Review.

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

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

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

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

23 (1) the nature of the claimed hardship;

24 (2) the availability of public transportation or other
25 available means of transportation; and

26 (3) any available alternatives to alleviate the

1 hardship other than the return of the seized conveyance.

2 If the court determines that a substantial hardship has
3 been proven, the court shall then balance the nature of the
4 hardship against the State's interest in safeguarding the
5 conveyance. If the court determines that the hardship outweighs
6 the State's interest in safeguarding the conveyance, the court
7 may temporarily release the conveyance to the registered owner
8 or the registered owner's authorized designee, or both, until
9 the conclusion of the forfeiture proceedings or for such
10 shorter period as ordered by the court provided that the person
11 to whom the conveyance is released provides proof of insurance
12 and a valid driver's license and all State and local
13 registrations for operation of the conveyance are current. The
14 court shall place conditions on the conveyance limiting its use
15 to the stated hardship and restricting the conveyance's use to
16 only those individuals authorized to use the conveyance by the
17 registered owner. The court shall revoke the order releasing
18 the conveyance and order that the conveyance be reseized by law
19 enforcement if the conditions of release are violated or if the
20 conveyance is used in the commission of any offense identified
21 in subsection (a) of Section 6-205 of the Illinois Vehicle
22 Code.

23 If the court orders the release of the conveyance during
24 the pendency of the forfeiture proceedings, the registered
25 owner or his or her authorized designee shall post a cash
26 security with the Clerk of the Court as ordered by the court.

1 The court shall consider the following factors in determining
2 the amount of the cash security:

3 (A) the full market value of the conveyance;

4 (B) the nature of the hardship;

5 (C) the extent and length of the usage of the
6 conveyance; and

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

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

18 If the conveyance subject to forfeiture is released under
19 this Section and is subsequently forfeited, the person to whom
20 the conveyance was released shall return the conveyance to the
21 law enforcement agency that seized the conveyance within 7 days
22 from the date of the declaration of forfeiture or order of
23 forfeiture. If the conveyance is not returned within 7 days,
24 the cash security shall be forfeited in the same manner as the
25 conveyance subject to forfeiture. If the cash security was less
26 than the full market value, a judgment shall be entered against

1 the parties to whom the conveyance was released and the
2 registered owner, jointly and severally, for the difference
3 between the full market value and the amount of the cash
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6 shall be returned to the surety who posted the security minus
7 the amount of the diminished value, and that amount shall be
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9 forfeiture. Additionally, the court may enter an order allowing
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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 Section 99. Effective date. This Act takes effect January
24 1, 2012.