



Sen. Don Harmon

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09700HB1927sam001

LRB097 08502 RLC 59287 a

1 AMENDMENT TO HOUSE BILL 1927

2 AMENDMENT NO. _____. Amend House Bill 1927 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 1961 is amended by
5 changing 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

1 offense if a prosecution is commenced by information or
2 complaint.

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

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

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

21 (1) the nature of the claimed hardship;

22 (2) the availability of public transportation or other
23 available means of transportation; and

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

26 If the court determines that a substantial hardship has

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

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

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

2 (B) the nature of the hardship;

3 (C) the extent and length of the usage of the
4 conveyance; and

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

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

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

1 between the full market value and the amount of the cash
2 security. If the conveyance is returned in a condition other
3 than the condition in which it was released, the cash security
4 shall be returned to the surety who posted the security minus
5 the amount of the diminished value, and that amount shall be
6 forfeited in the same manner as the conveyance subject to
7 forfeiture. Additionally, the court may enter an order allowing
8 any law enforcement agency in the State of Illinois to seize
9 the conveyance wherever it may be found in the State to satisfy
10 the judgment if the cash security was less than the full market
11 value of the conveyance. Upon making a finding of probable
12 ~~cause as required under this Section, and after taking into~~
13 ~~account the respective interests of all known claimants to the~~
14 ~~property including the State, the circuit court shall enter a~~
15 ~~restraining order or injunction, or take other appropriate~~
16 ~~action, as necessary to ensure that the property is not removed~~
17 ~~from the court's jurisdiction and is not concealed, destroyed,~~
18 ~~or otherwise disposed of by the property owner or interest~~
19 ~~holder before a forfeiture hearing is conducted.~~

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

21 Section 10. The Drug Asset Forfeiture Procedure Act is
22 amended by changing Section 3.5 as follows:

23 (725 ILCS 150/3.5)

24 Sec. 3.5. Preliminary Review.

1 (a) Within 14 days of the seizure, the State shall seek a
2 preliminary determination from the circuit court as to whether
3 there is probable cause that the property may be subject to
4 forfeiture.

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

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

12 (d) The court may accept a finding of probable cause at a
13 preliminary hearing following the filing of an information or
14 complaint charging a related criminal offense or following the
15 return of indictment by a grand jury charging the related
16 offense as sufficient evidence of probable cause as required
17 under subsection (a).

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

22 For seizures of conveyances, within 7 days of a finding of
23 probable cause under subsection (a), the registered owner or
24 other claimant may file a motion in writing supported by sworn
25 affidavits claiming that denial of the use of the conveyance
26 during the pendency of the forfeiture proceedings creates a

1 substantial hardship. The court shall consider the following
2 factors in determining whether a substantial hardship has been
3 proven:

4 (1) the nature of the claimed hardship;

5 (2) the availability of public transportation or other
6 available means of transportation; and

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

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

1 conveyance is used in the commission of any offense identified
2 in subsection (a) of Section 6-205 of the Illinois Vehicle
3 Code.

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

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

11 (B) the nature of the hardship;

12 (C) the extent and length of the usage of the
13 conveyance; and

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

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

25 If the conveyance subject to forfeiture is released under
26 this Section and is subsequently forfeited, the person to whom

1 the conveyance was released shall return the conveyance to the
2 law enforcement agency that seized the conveyance within 7 days
3 from the date of the declaration of forfeiture or order of
4 forfeiture. If the conveyance is not returned within 7 days,
5 the cash security shall be forfeited in the same manner as the
6 conveyance subject to forfeiture. If the cash security was less
7 than the full market value, a judgment shall be entered against
8 the parties to whom the conveyance was released and the
9 registered owner, jointly and severally, for the difference
10 between the full market value and the amount of the cash
11 security. If the conveyance is returned in a condition other
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13 shall be returned to the surety who posted the security minus
14 the amount of the diminished value, and that amount shall be
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16 forfeiture. Additionally, the court may enter an order allowing
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18 the conveyance wherever it may be found in the State to satisfy
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21 ~~cause as required under this Section, and after taking into~~
22 ~~account the respective interests of all known claimants to the~~
23 ~~property including the State, the circuit court shall enter a~~
24 ~~restraining order or injunction, or take other appropriate~~
25 ~~action, as necessary to ensure that the property is not removed~~
26 ~~from the court's jurisdiction and is not concealed, destroyed,~~

1 ~~or otherwise disposed of by the property owner or interest~~
2 ~~holder before a forfeiture hearing is conducted.~~

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

4 Section 99. Effective date. This Act takes effect January
5 1, 2012.".