



General Assembly

January Session, 2017

**Raised Bill No. 7146**

LCO No. 4362



Referred to Committee on BANKING

Introduced by:  
(BA)

***AN ACT REQUIRING A CRIMINAL CONVICTION FOR CERTAIN OFFENSES BEFORE ASSETS SEIZED IN A LAWFUL ARREST OF LAWFUL SEARCH MAY BE FORFEITED IN A CIVIL PROCEEDING.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-33g of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2017*):

3 (a) (1) When any property believed to [be possessed, controlled,  
4 designed or intended for use or which is or has] have been used [or  
5 which may be used] as a means of committing any criminal offense, or  
6 which constitutes the proceeds of the commission of any criminal  
7 offense or is directly traceable to the proceeds derived from the  
8 commission of any criminal offense, except a violation of section 21a-  
9 267, 21a-277, 21a-278 or 21a-279, has been seized as a result of a lawful  
10 arrest or lawful search, which the state claims to be a nuisance and  
11 desires to have destroyed or disposed of in accordance with the  
12 provisions of this section, the Chief State's Attorney or a deputy chief  
13 state's attorney, state's attorney or assistant or deputy assistant state's  
14 attorney may petition the court not later than ninety days after [the

15 seizure,] proof of the commission of such criminal offense is  
16 established by criminal conviction, in the nature of a proceeding in  
17 rem, to order forfeiture of such property. Such proceeding shall be  
18 deemed a civil suit in equity, in which the state shall have the burden  
19 of proving [all material facts] by clear and convincing evidence that the  
20 property (i) has been used in the commission of such criminal offense,  
21 (ii) constitutes proceeds derived from the commission of such criminal  
22 offense, or (iii) is directly traceable to proceeds derived from the  
23 commission of such criminal offense. The court shall identify the  
24 owner of such property and any other person as appears to have an  
25 interest in such property, and order the state to give notice to such  
26 owner and any interested person by certified or registered mail. The  
27 court shall promptly, but not less than two weeks after such notice,  
28 hold a hearing on the petition.

29 [(b)] (2) If the court finds the allegations made in such petition to be  
30 true and that the property has been [possessed, controlled or designed  
31 for use, or is or has been or is intended to be] used [, with intent to  
32 violate or in violation of any of the criminal laws of this state, or  
33 constitutes the proceeds of a violation of any of the criminal laws of  
34 this state,] in the commission of such criminal offense, constitutes  
35 proceeds derived from the commission of such criminal offense or is  
36 directly traceable to proceeds derived from the commission of such  
37 criminal offense, except a violation of section 21a-267, 21a-277, 21a-278  
38 or 21a-279, the court shall render judgment that such property is a  
39 nuisance and order the property to be destroyed or disposed of to a  
40 charitable or educational institution or to a governmental agency or  
41 institution, except that if any such property is subject to a bona fide  
42 mortgage, assignment of lease or rent, lien or security interest, such  
43 property shall not be so destroyed or disposed of in violation of the  
44 rights of the holder of such mortgage, assignment of lease or rent, lien  
45 or security interest.

46 (c) (1) When the [condemned] property forfeited under this section  
47 is money, (A) on and after October 1, 2014, and prior to July 1, 2016,

48 the court shall order that such money be distributed as follows: (i)  
49 Seventy per cent shall be allocated to the law enforcement agency,  
50 including the Department of Emergency Services and Public Protection  
51 and local police departments, responsible for investigating the criminal  
52 violation and seizing the money, and such local police departments  
53 shall use such money for the detection, investigation, apprehension  
54 and prosecution of persons for the violation of criminal laws, and any  
55 money allocated to the Department of Emergency Services and Public  
56 Protection shall be deposited in the General Fund; (ii) twenty per cent  
57 shall be deposited in the Criminal Injuries Compensation Fund  
58 established in section 54-215; and (iii) ten per cent shall be allocated to  
59 the Division of Criminal Justice and deposited in the General Fund;  
60 and (B) on and after July 1, 2016,] such money shall be deposited in the  
61 General Fund.

62 (2) When the [condemned] property forfeited under this section is a  
63 valuable prize [, which] that is subject to a bona fide mortgage,  
64 assignment of lease or rent, lien or security interest, such property  
65 shall remain subject to such mortgage, assignment of lease or rent, lien  
66 or security interest.

67 (d) When any property or valuable prize has been declared a  
68 nuisance and [condemned] forfeited under this section, the court may  
69 also order that such property be sold in accordance with procedures  
70 approved by the Commissioner of Administrative Services. Proceeds  
71 of such sale shall first be allocated toward the balance of any mortgage,  
72 assignment of lease or rent, lien or security interest, and the remaining  
73 proceeds of such sale, if any, shall be [allocated in accordance with  
74 subparagraphs (A) to (C), inclusive, of subdivision (1) of subsection (c)  
75 of this section] deposited in the General Fund. In any criminal  
76 prosecution, secondary evidence of property condemned and  
77 destroyed pursuant to this section shall be admissible against the  
78 defendant to the same extent as such evidence would have been  
79 admissible had the property not been condemned and destroyed.

80 (e) If the court finds the allegations not to be true, or [that the  
81 property has not been kept with intent to violate or in violation of the  
82 criminal laws of this state, or that the property does not constitute the  
83 proceeds of a violation of the criminal laws of this state, or] that the  
84 state has not satisfied its burden of proving the requirements of  
85 subsection (a) of this section, or that the property is the property of a  
86 person who [is] was not a defendant in a related criminal proceeding,  
87 the court shall order the property returned to the owner forthwith and  
88 the party in possession of such property pending such determination  
89 shall be responsible and personally liable for such property from the  
90 time of seizure and shall immediately comply with such order.

91 (f) [Failure of the state to proceed against such property in  
92 accordance with the provisions of this section shall not prevent the use  
93 of such property as evidence in any criminal trial] (1) Any person  
94 claiming the right to possession of property seized as a result of a  
95 lawful arrest or lawful search may petition the court for the return or  
96 delivery of such property at any time prior to sixty days before trial of  
97 the criminal offense. The court shall identify the owner of such  
98 property and any other person as appears to have an interest in such  
99 property, and order the claimant to give notice to such owner and any  
100 interested person by certified or registered mail. The court shall  
101 promptly, but not less than thirty days after such notice, hold a hearing  
102 on the petition.

103 (2) The court shall order that such property be returned or delivered  
104 to the claimant if the court finds that: (A) Such claimant has a legal  
105 right or title to, or interest in, the property, (B) the state is not likely to  
106 obtain an order of forfeiture pursuant to subsection (a) of this section;  
107 (C) the property is not reasonably required to be held by the state for  
108 investigatory purposes; and (D) the property is intended to be used by  
109 such claimant to pay legitimate attorney's fees in a forfeiture  
110 proceeding under subsection (a) of this section or a related criminal  
111 prosecution. The court may order the return or delivery of property in  
112 an amount sufficient to pay legitimate attorney's fees, but less than the

113 total amount seized, and require an accounting of such property.

114 Sec. 2. Section 54-36h of the general statutes is repealed and the  
115 following is substituted in lieu thereof (*Effective October 1, 2017*):

116 (a) The following property shall be subject to forfeiture to the state  
117 pursuant to subsection (b) of this section:

118 (1) All moneys used, or intended for use, in the procurement,  
119 manufacture, compounding, processing, delivery or distribution of any  
120 controlled substance, as defined in subdivision (9) of section 21a-240;

121 (2) All property constituting the proceeds obtained, directly or  
122 indirectly, from any sale or exchange of any such controlled substance  
123 in violation of section 21a-277 or 21a-278;

124 (3) All property derived from the proceeds obtained, directly or  
125 indirectly, from any sale or exchange for pecuniary gain of any such  
126 controlled substance in violation of section 21a-277 or 21a-278;

127 (4) All property used or intended for use, in any manner or part, to  
128 commit or facilitate the commission of a violation for pecuniary gain of  
129 section 21a-277 or 21a-278;

130 (5) All property constituting, or derived from, the proceeds  
131 obtained, directly or indirectly, by a corporation as a result of a  
132 violation of section 53a-276, 53a-277 or 53a-278.

133 (b) Not later than ninety days after [the seizure of moneys or  
134 property subject to forfeiture pursuant to subsection (a) of this section,  
135 in connection with a lawful criminal arrest or a lawful search,] a  
136 criminal conviction for a violation of section 21a-777, 21a-778 or 53a-  
137 276 to 53a-278, inclusive, the Chief State's Attorney or a deputy chief  
138 state's attorney, state's attorney or assistant or deputy assistant state's  
139 attorney may petition the court in the nature of a proceeding in rem to  
140 order forfeiture of [said] any moneys or property seized in connection  
141 with a lawful criminal arrest or lawful search for such violation and

142 subject to forfeiture pursuant to subsection (a) of this section. Such  
143 proceeding shall be deemed a civil suit in equity, in which the state  
144 shall have the burden of proving all material facts by clear and  
145 convincing evidence. The court shall identify the owner of said  
146 moneys or property and any other person as appears to have an  
147 interest therein, and order the state to give notice to such owner and  
148 any interested person by certified or registered mail, and shall  
149 promptly, but not less than two weeks after notice, hold a hearing on  
150 the petition. No testimony offered or evidence produced by such  
151 owner or interested person at such hearing and no evidence  
152 discovered as a result of or otherwise derived from such testimony or  
153 evidence, may be used against such owner or interested person in any  
154 proceeding, except that no such owner or interested person shall be  
155 immune from prosecution for perjury or contempt committed while  
156 giving such testimony or producing such evidence. At such hearing  
157 the court shall hear evidence and make findings of fact and enter  
158 conclusions of law and shall issue a final order, from which the parties  
159 shall have such right of appeal as from a decree in equity.

160 (c) No property shall be forfeited under this section to the extent of  
161 the interest of an owner or lienholder by reason of any act or omission  
162 committed by another person if such owner or lienholder did not  
163 know and could not have reasonably known that such property was  
164 being used or was intended to be used in, or was derived from,  
165 criminal activity.

166 [(d) Notwithstanding the provisions of subsection (a) of this section,  
167 no moneys or property used or intended to be used by the owner  
168 thereof to pay legitimate attorney's fees in connection with his defense  
169 in a criminal prosecution shall be subject to forfeiture under this  
170 section.]

171 [(e)] (d) Any property ordered forfeited pursuant to subsection (b)  
172 of this section shall be sold at public auction conducted by the  
173 Commissioner of Administrative Services or his designee.

174 [(f)] (e) The proceeds from any sale of property under subsection  
175 [(e)] (d) of this section and any moneys forfeited under this section  
176 shall be applied: (1) To payment of the balance due on any lien  
177 preserved by the court in the forfeiture proceedings; (2) to payment of  
178 any costs incurred for the storage, maintenance, security and forfeiture  
179 of such property; and (3) to payment of court costs. The balance, if any,  
180 shall be deposited in the drug assets forfeiture revolving account  
181 established under section 54-36i.

182 (f) (1) Any person claiming the right to moneys or property seized  
183 as a result of a lawful criminal arrest or lawful search may petition the  
184 court for the return or delivery of such moneys or property at any time  
185 prior to sixty days before trial of the criminal offense. The court shall  
186 identify the owner of such moneys or property and any other person  
187 as appears to have an interest in such moneys or property, and order  
188 the claimant to give notice to such owner and any interested persons  
189 by certified or registered mail. The court shall promptly, but not less  
190 than thirty days after such notice, hold a hearing on the petition.

191 (2) The court shall order the moneys or property be returned or  
192 delivered to the claimant if the court finds that: (A) Such claimant has a  
193 legal right or title to, or interest in, the moneys or property, (B) the  
194 state is not likely to obtain an order of forfeiture of the property  
195 pursuant to subsection (b) of this section; (C) the moneys or property  
196 are not reasonably required to be held by the state for investigatory  
197 purposes; and (D) the moneys or property are intended to be used by  
198 such claimant to pay legitimate attorney's fees in a forfeiture  
199 proceeding under subsection (b) of this section or a related criminal  
200 prosecution. The court may order the return or delivery of property in  
201 an amount sufficient to pay legitimate attorney's fees, but less than the  
202 total amount seized, and require an accounting of such property.

203 Sec. 3. Section 54-360 of the general statutes is repealed and the  
204 following is substituted in lieu thereof (*Effective October 1, 2017*):

205 (a) All property constituting, or derived from, the proceeds  
206 obtained, directly or indirectly, by a person as a result of a violation of  
207 section 53a-129a of the general statutes, revision of 1958, revised to  
208 January 1, 2003, or section 53a-127g, 53a-129b, 53a-129c, 53a-129d, 53a-  
209 129e, 53a-130, 21-120 or 21-121 shall be subject to forfeiture to the state  
210 pursuant to subsection (b) of this section.

211 (b) Not later than ninety days after [the seizure of property subject  
212 to forfeiture pursuant to subsection (a) of this section,] a criminal  
213 conviction for a violation of section 53a-129a, revision of 1958, revised  
214 to January 1, 2003, or section 21-120, 21-121, 53a-127g, 53a-129b, 53a-  
215 129c, 53a-129d, 53a-129e or 53a-130, the Chief State's Attorney or a  
216 deputy chief state's attorney, state's attorney or assistant or deputy  
217 assistant state's attorney may petition the court in the nature of a  
218 proceeding in rem to order forfeiture of [said] any moneys or property  
219 seized in connection with a lawful criminal arrest or lawful search for  
220 such violation and subject to forfeiture pursuant to subsection (a) of  
221 this section. Such proceeding shall be deemed a civil suit in equity, in  
222 which the state shall have the burden of proving all material facts by  
223 clear and convincing evidence. The court shall identify the owner of  
224 such property and any other person as appears to have an interest  
225 therein, and order the state to give notice to such owner and any  
226 interested person by certified or registered mail, and shall promptly,  
227 but not less than two weeks after notice, hold a hearing on the petition.  
228 No testimony offered or evidence produced by such owner or  
229 interested person at such hearing and no evidence discovered as a  
230 result of or otherwise derived from such testimony or evidence, may  
231 be used against such owner or interested person in any proceeding,  
232 except that no such owner or interested person shall be immune from  
233 prosecution for perjury or contempt committed while giving such  
234 testimony or producing such evidence. At such hearing the court shall  
235 hear evidence and make findings of fact and enter conclusions of law  
236 and shall issue a final order, from which the parties shall have such  
237 right of appeal as from a decree in equity.



238 (c) No property shall be forfeited under this section to the extent of  
239 the interest of an owner or lienholder by reason of any act or omission  
240 committed by another person if such owner or lienholder did not  
241 know and could not have reasonably known that such property was  
242 being used or was intended to be used in, or was derived from,  
243 criminal activity.

244 [(d) Notwithstanding the provisions of subsection (a) of this section,  
245 no property used or intended to be used by the owner thereof to pay  
246 legitimate attorney's fees in connection with his defense in a criminal  
247 prosecution shall be subject to forfeiture under this section.]

248 [(e)] (d) Any property ordered forfeited pursuant to subsection (b)  
249 of this section shall be sold at public auction conducted by the  
250 Commissioner of Administrative Services.

251 [(f)] (e) The proceeds from any sale of property under subsection  
252 [(e)] (d) of this section shall be applied: (1) To payment of the balance  
253 due on any lien preserved by the court in the forfeiture proceedings;  
254 (2) to payment of any costs incurred for the storage, maintenance,  
255 security and forfeiture of such property; and (3) to payment of court  
256 costs. The balance, if any, shall be deposited in the privacy protection  
257 guaranty and enforcement account established under section 42-472a.

258 (g) (1) Any person claiming the right to moneys or property seized  
259 as a result of a lawful criminal arrest or lawful search may petition the  
260 court for the return or delivery of such moneys or property at any time  
261 prior to sixty days before trial of the criminal offense. The court shall  
262 identify the owner of such moneys or property and any other person  
263 as appears to have an interest in such moneys or property, and order  
264 the claimant to give notice to such owner and any interested persons  
265 by certified or registered mail. The court shall promptly, but not less  
266 than thirty days after such notice, hold a hearing on the petition.

267 (2) The court shall order the moneys or property be returned or  
268 delivered to the claimant if the court finds that: (A) Such claimant has a

269 legal right to, or title or interest in, the moneys or property, (B) the  
270 state is not likely to obtain an order of forfeiture of the property  
271 pursuant to subsection (b) of this section; (C) the moneys or property  
272 are not reasonably required to be held by the state for investigatory  
273 purposes; and (D) the moneys or property are intended to be used by  
274 such claimant to pay legitimate attorney's fees in a forfeiture  
275 proceeding under subsection (b) of this section or a related criminal  
276 prosecution. The court may order the return or delivery of property in  
277 an amount sufficient to pay legitimate attorney's fees, but less than the  
278 total amount seized, and require an accounting of such property.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2017	54-33g
Sec. 2	October 1, 2017	54-36h
Sec. 3	October 1, 2017	54-36o

**Statement of Purpose:**

To require a criminal conviction for certain offenses before assets seized in a lawful arrest or lawful search may be forfeited to the state in civil proceeding.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*