



General Assembly

**Substitute Bill No. 7146**

January Session, 2017



**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 Section 54-33g of the general statutes is repealed and the  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 (A) has been used in the commission of such criminal offense,  
21 (B) constitutes proceeds derived from the commission of such criminal  
22 offense, or (C) 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)] (b) (1) When the [condemned] property forfeited under this  
47 section is money, [(A) on and after October 1, 2014, and prior to July 1,  
48 2016, the court shall order that such money be distributed as follows:  
49 (i) 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)] (c) 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)] (d) 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] (e) (1) Any person  
94 claiming an interest in property seized in connection with a lawful  
95 arrest or lawful search may petition the court for the return or delivery  
96 of such property at any time prior to sixty days before trial of the  
97 criminal offense. The court shall identify the owner of such property  
98 and any other person as appears to have an interest in such property,  
99 and order the claimant to give notice to such owner and any interested  
100 person by certified or registered mail. The court shall promptly, but  
101 not less than thirty days after such notice, hold a hearing on the  
102 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.

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 Section 54-36h of the general statutes is repealed and the  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

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

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

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

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

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

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

131 (b) Not later than ninety days after [the seizure of moneys or  
132 property subject to forfeiture pursuant to subsection (a) of this section,  
133 in connection with a lawful criminal arrest or a lawful search,] a  
134 criminal conviction for a violation of section 21a-777, 21a-778 or 53a-  
135 276 to 53a-278, inclusive, the Chief State's Attorney or a deputy chief  
136 state's attorney, state's attorney or assistant or deputy assistant state's  
137 attorney may petition the court in the nature of a proceeding in rem to  
138 order forfeiture of [said] any moneys or property seized in connection  
139 with a lawful criminal arrest or lawful search for such violation and  
140 subject to forfeiture pursuant to subsection (a) of this section. Such  
141 proceeding shall be deemed a civil suit in equity, in which the state  
142 shall have the burden of proving all material facts by clear and  
143 convincing evidence. The court shall identify the owner of said  
144 moneys or property and any other person as appears to have an  
145 interest therein, and order the state to give notice to such owner and  
146 any interested person by certified or registered mail, and shall

147 promptly, but not less than two weeks after notice, hold a hearing on  
148 the petition. No testimony offered or evidence produced by such  
149 owner or interested person at such hearing and no evidence  
150 discovered as a result of or otherwise derived from such testimony or  
151 evidence, may be used against such owner or interested person in any  
152 proceeding, except that no such owner or interested person shall be  
153 immune from prosecution for perjury or contempt committed while  
154 giving such testimony or producing such evidence. At such hearing  
155 the court shall hear evidence and make findings of fact and enter  
156 conclusions of law and shall issue a final order, from which the parties  
157 shall have such right of appeal as from a decree in equity.

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

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

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

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

179 established under section 54-36i.

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

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

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

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

208 (b) Not later than ninety days after [the seizure of property subject  
209 to forfeiture pursuant to subsection (a) of this section,] a criminal

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

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

241 [(d) Notwithstanding the provisions of subsection (a) of this section,  
242 no property used or intended to be used by the owner thereof to pay



243 legitimate attorney's fees in connection with his defense in a criminal  
244 prosecution shall be subject to forfeiture under this section.]

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

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

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

265 (2) The court shall order the moneys or property be returned or  
266 delivered to the claimant if the court finds that: (A) Such claimant has a  
267 legal right to, or title or interest in, the moneys or property; (B) the  
268 state is not likely to obtain an order of forfeiture of the property  
269 pursuant to subsection (b) of this section; (C) the moneys or property  
270 are not reasonably required to be held by the state for investigatory  
271 purposes; and (D) the moneys or property are intended to be used by  
272 such claimant to pay legitimate attorney's fees in a forfeiture  
273 proceeding under subsection (b) of this section or a related criminal  
274 prosecution.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2017</i>	54-33g
Sec. 2	<i>October 1, 2017</i>	54-36h
Sec. 3	<i>October 1, 2017</i>	54-36o

**BA**      *Joint Favorable Subst.*

**JUD**     *Joint Favorable*