

FILED MAR 08 1989
Murphy

SENATE FILE 378
BY MURPHY

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the disposition of seizable and forfeitable
2 property, by providing for classes of forfeitable property,
3 amending the burden of proof at forfeiture proceedings,
4 providing for conditions of forfeiture, allowing court-
5 appointed counsel for certain indigent persons, establishing
6 certain affirmative defenses, presumptions, and counterclaims,
7 providing for the award of attorney fees, exempting real
8 property from forfeiture, and providing an applicability date.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 378

1 Section 1. Section 809.1, subsection 1, paragraph b, Code
2 1989, is amended to read as follows:

3 b. Property defined by law to be class I or class II
4 forfeitable property.

5 Sec. 2. Section 809.1, subsection 2, Code 1989, is amended
6 to read as follows:

7 2. ~~Forfeitable~~ "Class I forfeitable property" means any
8 of the following:

9 a. Property which is illegally possessed.

10 ~~b. Property which has been used or is intended to be used~~
11 ~~to facilitate the commission of a criminal offense or to avoid~~
12 ~~detection or apprehension of a person committing a criminal~~
13 ~~offense.~~

14 c. Property which is acquired as or from the proceeds of
15 a criminal offense.

16 d. Property offered or given to another as an inducement
17 for the commission of a criminal offense.

18 Sec. 3. Section 809.1, Code 1989, is amended by adding the
19 following new subsection and renumbering the subsequent
20 subsections:

21 NEW SUBSECTION. 3. "Class II forfeitable property" means
22 property which had a substantial role in the commission of a
23 criminal offense defined as a felony, assault, or violation of
24 chapter 109, or which had a substantial role in an attempt to
25 avoid detection of or apprehension for such an offense.

26 As used in this subsection, property is deemed to have a
27 substantial role if the crime or concealment of the crime
28 could only have been committed with the active use of the
29 property.

30 Sec. 4. Section 809.6, Code 1989, is amended to read as
31 follows:

32 809.6 FORFEITURE OF PROPERTY.

33 ~~Title to and responsibility~~ Responsibility for class I or
34 II forfeitable property vests in the state at the time of
35 seizure. Once forfeitable property is seized, no right to the

1 property may be transferred by anyone other than the state
2 unless the seizure and forfeiture is declared by the court to
3 be a nullity. Property which may not legally be possessed is
4 forfeited to the state by its seizure without further filing
5 of a notice of forfeiture.

6 Sec. 5. Section 809.7, unnumbered paragraph 1, Code 1989,
7 is amended to read as follows:

8 Forfeitable Class I or II forfeitable property may be
9 seized whenever and wherever the property is found within this
10 state. Forfeitable property may be seized by a peace officer
11 or county attorney or by the attorney general. Forfeitable
12 property may be seized by taking custody of the property or by
13 serving upon the person in possession of the property a notice
14 of forfeiture. If the court finds that forfeiture to the
15 state is warranted, an order transferring ownership to the
16 state shall be entered and the property shall be delivered to
17 the attorney general as the attorney general directs.

18 Sec. 6. Section 809.9, subsection 2, Code 1989, is amended
19 to read as follows:

20 2. An application for the return of class I or II
21 forfeitable property shall state the specific item or items
22 sought, the nature and the source of the claimant's interest
23 in the property, and the grounds upon which the claimant seeks
24 to avoid forfeiture. The written application shall be
25 specific and amendments to the application shall be liberally
26 permitted, including an amendment to conform to proof at the
27 close of all evidence. The fact that the property is
28 inadmissible as evidence or that it may be suppressed is not
29 grounds for its return.

30 Sec. 7. Section 809.10, subsections 1 and 2, Code 1989,
31 are amended to read as follows:

32 1. If no application for the return of class I or II
33 forfeitable property is timely made pursuant to section 809.9,
34 upon application of the attorney for the state, the clerk
35 shall enter an order transferring title to the state.

1 2. If an application for the return of class I or II
2 forfeitable property is timely made pursuant to section 809.9,
3 the claim shall be set for hearing and the hearing shall be
4 held not less than five or more than thirty days after the
5 filing of the claim and shall be tried to the court. All
6 claims to the same property shall be heard in one proceeding
7 unless it is shown that the proceeding would result in
8 prejudice to one or more of the parties. If the total value
9 of the property sought to be returned is less than five three
10 thousand dollars, the proceeding may be conducted by a
11 magistrate or a district associate judge with appeal to be as
12 in the case of small claims. In all other cases, the hearing
13 shall be conducted by a district judge, with appeal as
14 provided in section 809.12.

15 Sec. 8. Section 809.11, subsections 1 and 2, Code 1989,
16 are amended to read as follows:

17 1. Forfeiture is a civil proceeding. At the hearing the
18 burden is on the state to prove by ~~a-preponderance-of-the~~
19 clear and convincing evidence that the property is
20 forfeitable. ~~However,-forfeiture~~ Forfeiture of property,
21 except property which may not legally be possessed, is not
22 dependent upon a ~~prosecution-for,-or~~ conviction of, a criminal
23 offense ~~and-forfeiture.~~ Forfeiture proceedings are separate
24 and distinct from any related criminal action.

25 2. ~~Court-appointed-counsel,-~~ Counsel shall be appointed at
26 the state's expense, ~~-is-not-available-in-forfeiture~~
27 proceedings for indigent persons having ownership interests in
28 property that is subject to the forfeiture proceeding. The
29 attorney general or county attorney may represent the state in
30 all forfeiture proceedings.

31 Sec. 9. Section 809.11, Code 1989, is amended by adding
32 the following new subsections:

33 NEW SUBSECTION. 5. At a hearing to determine whether
34 certain class II forfeitable property, should be forfeited,
35 any of the following may be established as affirmative de-

1 fenses, by a preponderance of the evidence, by the person
2 seeking return of the property:

3 a. That the person reported the alleged criminal activity
4 to the appropriate law enforcement agency prior to the seizure
5 of the property or the notice of forfeiture proceedings.

6 b. That the person acted reasonably in attempting to
7 prevent or terminate the unlawful use of the property.

8 NEW SUBSECTION. 6. Cash found in close proximity to
9 controlled substances is presumed to be class I or II
10 forfeitable property.

11 NEW SUBSECTION. 7. At a hearing to determine whether
12 class I or II forfeitable property should be forfeited, the
13 court shall consider a counterclaim filed by the person
14 seeking return of the property with respect to damage to the
15 property caused by the negligence or wrongful acts of the
16 seizing agency. The counterclaim shall be served upon the
17 state no later than five days before the hearing on the
18 forfeiture. The burden is on the counterclaimant to prove the
19 allegations of the counterclaim by a preponderance of the
20 evidence.

21 NEW SUBSECTION. 8. At the conclusion of the hearing, the
22 court may, in its discretion, award attorney fees to a person
23 who successfully defends against a proceeding for forfeiture.

24 Sec. 10. Section 809.13, subsections 1, 2, 3, and 4, Code
25 1989, are amended to read as follows:

26 1. Any A person having control over class I or II
27 forfeited property shall communicate that fact to the attorney
28 general or the attorney general's designee.

29 2. Forfeited Class I or II forfeited property not needed
30 as evidence in a criminal case shall be delivered to the
31 department of justice, or, upon written authorization of the
32 attorney general or the attorney general's designee, the
33 property may be destroyed, sold, or delivered to an
34 appropriate agency for disposal in accordance with this
35 section.

1 3. Forfeited Class I or II forfeited property may be used
2 by the department of justice in the enforcement of the
3 criminal law. The department may give, sell, or trade
4 property to any other state agency or to any other law
5 enforcement agency within the state if, in the opinion of the
6 attorney general, it will enhance law enforcement within the
7 state.

8 4. Forfeited Class I or II forfeited property, which is
9 not used by the department of justice in the enforcement of
10 the law, may be requisitioned by the department of public
11 safety or any law enforcement agency within the state for use
12 in enforcing the criminal laws of this state. Forfeited Such
13 forfeited property not requisitioned may be delivered to the
14 director of the department of general services to be disposed
15 of in the same manner as property received pursuant to section
16 18.15.

17 Sec. 11. Section 809.14, Code 1989, is amended by adding
18 the following new subsection:

19 NEW SUBSECTION. 5. Real property is not subject to
20 forfeiture under this chapter.

21 Sec. 12. This Act applies to any seizure or forfeiture
22 proceeding or action commenced on or after the effective date
23 of this Act.

24 EXPLANATION

25 This bill amends the definition of "forfeitable property"
26 by providing for class I and II forfeitable property, and in-
27 creases the state's burden of proof at forfeiture proceedings
28 from a "preponderance of the evidence" to "clear and convinc-
29 ing". Forfeiture of property, except property which may not
30 legally be possessed, is dependent upon conviction of a
31 criminal offense. Certain indigent persons shall have court-
32 appointed representation at forfeiture hearings.

33 The bill allows a person to assert certain affirmative
34 defenses and counterclaims in forfeiture proceedings, and
35 allows the court to award attorney fees to a party who

1 successfully defends against a proceeding for forfeiture. The
2 bill exempts real property from forfeiture.

3 The bill provides for an applicability date.

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