

809A.12 Judicial proceedings generally.

1. A judicial forfeiture proceeding under this chapter is subject to the provisions of this section.

2. The court, before or after the filing of a notice of pending forfeiture or complaint and on application of the prosecuting attorney, may do any of the following:

- a. Enter a restraining order or injunction.
- b. Require the execution of satisfactory performance bonds.
- c. Create receiverships.
- d. Appoint conservators, custodians, appraisers, accountants, or trustees.
- e. Take any other action to seize, secure, maintain, or preserve the availability of property subject to forfeiture under this chapter, including a writ of attachment or a warrant for its seizure.

3. The court, after five days' notice to the prosecuting attorney, may issue an order to show cause to the seizing agency, for a hearing on the sole issue of whether probable cause for forfeiture of the property then exists if all of the following exist:

a. Property is seized for forfeiture or a forfeiture lien is filed without a previous judicial determination of probable cause, order of forfeiture, or a hearing under section 809A.14, subsection 4.

b. An owner of or interest holder in the property files an application for a hearing within ten days after notice of its seizure for forfeiture or lien, or actual knowledge of its seizure, whichever is earlier.

c. The owner of or interest holder in the property complies with the requirements for claims or petitions in section 809A.11.

The hearing shall be held within thirty days of the order to show cause unless continued for good cause on motion of either party.

4. If the court finds in a hearing under subsection 3 that no probable cause exists for forfeiture of the property, or if the state elects not to contest the issue, the property shall be released to the custody of the applicant, as custodian for the court, or from the lien pending the outcome of a judicial proceeding pursuant to this chapter. If the court finds that probable cause for the forfeiture of the property exists, the court shall not order the property released.

5. All applications filed within the ten-day period prescribed by subsection 3 shall be consolidated for a single hearing relating to each applicant's interest in the property seized for forfeiture.

6. A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding pursuant to this section. For the purposes of this section, a conviction results from a verdict or a plea of guilty. A defendant whose conviction is overturned on appeal may file a motion to correct, vacate, or modify a judgment of forfeiture under this subsection.

7. In any proceeding under this chapter, if a claim is based on an exemption provided for in this chapter, the burden of proving the existence of the exemption is on the claimant. However, once the claimant comes forward with some evidence supporting the existence of the exemption, the state must provide some evidence to negate the assertion of the exemption. The state's evidence must be substantial, though not necessarily rising to the level of a preponderance of the evidence, and more than a simple assertion of the claimant's interest in the property. The agency or political subdivision bringing the forfeiture action shall pay the reasonable attorney fees and costs, as determined by the court, incurred by a claimant who prevails on a claim for exemption in a proceeding under this chapter.

8. In hearings and determinations pursuant to this section, the court may receive and consider, in making any determination of probable cause, all evidence admissible in determining probable cause at a preliminary hearing or by a judge pursuant to chapter 808 together with inferences therefrom.

9. The fact that money or a negotiable instrument was found in close proximity to any contraband or an instrumentality of conduct giving rise to forfeiture shall give rise to the presumption that the money or negotiable instrument was the proceeds of conduct giving rise to forfeiture or was used or intended to be used to facilitate the conduct.

10. Subject to the exemptions contained in section 809A.5, a presumption arises that any

property of a person is subject to forfeiture under this chapter if the state establishes any of the following:

- a. The person has engaged in conduct giving rise to forfeiture.
- b. The property was acquired by the person during that period of the conduct giving rise to forfeiture or within a reasonable time after that period.
- c. No likely source for acquisition of the property exists other than the conduct giving rise to the forfeiture.

11. A finding that property is the proceeds of conduct giving rise to forfeiture does not require proof that the property is the proceeds of any particular exchange or transaction.

12. A person who acquires property subject to forfeiture is a constructive trustee of the property, and its fruits, for the benefit of the state, to the extent that the person's interest is not exempt from forfeiture. If property subject to forfeiture has been commingled with other property, the court shall order the forfeiture of the commingled property, and of any fruits of the commingled property, to the extent of the property subject to forfeiture, unless an owner or interest holder proves that specified property does not contain property subject to forfeiture, or that the person's interest in specified property is exempt from forfeiture.

13. Title to all property declared forfeited under this chapter vests in the state on the commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Any such property or proceeds subsequently transferred to any person remain subject to forfeiture and thereafter shall be ordered forfeited unless the transferee claims and establishes in a hearing under the provisions of this chapter that the transferee's interest is exempt under section 809A.5.

14. An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this chapter.

15. For good cause shown, on motion by either party, the court may stay discovery in civil forfeiture proceedings during a criminal trial for a related criminal indictment or information alleging the same conduct, after making provision to prevent loss to any party resulting from the stay. Such a stay shall not be available pending an appeal.

16. Except as otherwise provided by this chapter, all proceedings hereunder shall be governed by the rules of civil procedure.

17. An action brought pursuant to this chapter shall be consolidated with any other action or proceeding brought pursuant to this chapter or chapter 626 or 654 relating to the same property on motion of the prosecuting attorney, and may be consolidated on motion of an owner or interest holder.

96 Acts, ch 1133, §12

Referred to in §809A.14