

**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. a. 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:
  - (1) 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](#).
  - (2) 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.
  - (3) The owner of or interest holder in the property complies with the requirements for claims or petitions in [section 809A.11](#).
- b. 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 whose criminal proceeding results in a conviction is precluded from later denying the essential allegations of the criminal offense in any proceeding pursuant to [this section](#). 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 claimant must make a prima facie showing of the existence of the exemption. The prosecuting attorney must then prove by clear and convincing evidence that the exemption does not apply. 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. The prosecuting attorney must prove by clear and convincing evidence that the property is property subject to forfeiture.
9. 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.
10. 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.
11. 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. If the property to be forfeited is equal to or exceeds the minimum civil forfeiture amount, that the person engaged in conduct giving rise to forfeiture. If the property to be forfeited is less than the minimum civil forfeiture amount, that the person was convicted for the 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.

12. 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.

13. 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.

14. 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](#).

15. An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under [this chapter](#) if the value of the property to be forfeited is equal to or exceeds the minimum civil forfeiture amount.

16. 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.

17. Except as otherwise provided by [this chapter](#), all proceedings hereunder shall be governed by the rules of civil procedure.

18. 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; 2013 Acts, ch 30, §261; 2017 Acts, ch 114, §5 – 7, 15](#)

Referred to in [§809A.14](#)

2017 amendments to subsections 6, 7, 11, and 15 and new subsection 8 apply to forfeiture proceedings that begin on or after July 1, 2017; 2017 Acts, ch 114, §15

Subsections 6 and 7 amended

NEW subsection 8 and former subsections 8 and 9 renumbered as 9 and 10

Former subsection 10, paragraph a amended and subsection renumbered as 11

Former subsections 11 – 13 renumbered as 12 – 14

Former subsection 14 amended and renumbered as 15

Former subsections 15 – 17 renumbered as 16 – 18