REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.4705 Motion to return property or discharge lien; grounds; hearing; burden of proof; order; filing lien against vehicle and returning vehicle to owner; admissibility of testimony in criminal prosecution.

Sec. 4705.

(1) A person who did not have prior knowledge of, or consent to the commission of, the crime, or a transferee under section 4703(7), may move the court having jurisdiction to return the property or discharge the lien on the grounds that the property was illegally seized, that the property is not subject to forfeiture under this chapter, or that the person has an ownership or security interest in the property and did not have prior knowledge of, or consent to the commission of, the crime, or acquired an ownership or security interest by a transfer that is not void under section 4703(7). The court shall hear the motion within 28 days after the motion is filed.

(2) At the hearing on the motion filed under subsection (1), the attorney general, or the prosecuting attorney or the city or township attorney for the local unit of government in which the property was seized or the lien was filed, shall establish the following:

(a) Probable cause to believe that the property is subject to forfeiture under this chapter and that the person filing the motion had prior knowledge of, or consented to the commission of, the crime, or acquired his or her interest by a transfer that is void under section 4703(7). Prior written notice of illegal use of the property to the interest holder constitutes prima facie evidence of knowledge of the crime.

(b) If the person filing the motion claims the property was illegally seized, that the property was properly seized.

(3) If the attorney general, prosecuting attorney, or city or township attorney fails to sustain his or her burden of proof under subsection (2), the court shall order the return of the property, including any interest earned on money deposited in a financial institution as defined in section 4703(6), or the discharge of the lien.

(4) If a motor vehicle is seized under section 4703, the owner of the vehicle may move the court having jurisdiction over the forfeiture proceedings to require the seizing agency to file a lien against the vehicle and to return the vehicle to the owner. The court shall hear the motion within 7 days after the motion is filed. If the owner of the vehicle establishes at the hearing that he or she holds the legal title of the vehicle and that it is necessary for him or her or his or her family to use the vehicle pending the outcome of the forfeiture action, the court may order the seizing agency to return the vehicle to the owner. If the court orders the return of the vehicle to the owner, the court shall order the seizing agency to file a lien against the vehicle and the owner to post a bond in an amount equal to the value of the vehicle.

(5) The testimony of a person at a hearing held under this section is not admissible against him or her in any criminal proceeding except in a criminal prosecution for perjury. The testimony of a person at a hearing held under this section does not waive the person's constitutional right against self-incrimination.

History: Add. 1988, Act 104, Eff. June 1, 1988 ;-- Am. 2006, Act 128, Imd. Eff. May 5, 2006 ;-- Am. 2014, Act 333, Eff. Jan. 14, 2015