

BILL TEXT:

STATE OF NEW YORK

5894

2005-2006 Regular Sessions

IN ASSEMBLY

March 2, 2005

Introduced by M. of A. IGNIZIO, KOLB -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, the penal law, the criminal procedure law, and the public health law, in relation to asset forfeiture for certain crimes and to repeal subdivisions 4-a and 4-b of section 1310, subparagraph (v) of paragraph (b) of subdivision 3 of section 1311, paragraphs (d) and (e) of subdivision 3, subdivisions 3-a and 4-a, paragraph (c) of subdivision 11 and subdivision 12 of section 1311, section 1311-a, subdivision 4 of section 1312, and section 1349 of the civil practice law and rules, article 480 of the penal law, subdivision 6 of section 220.50 of the criminal procedure law, and subdivision 6 of section 837-a of the executive law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 4 of section 1310 of the civil practice law and
2 rules, as added by chapter 669 of the laws of 1984, is amended to read
3 as follows:
4 4. "Instrumentality of a crime" in cases involving the commission of
5 felonies defined in article two hundred twenty or section 221.30 or
6 221.55 of the penal law means any property, including real property and
7 any buildings, fixtures, appurtenances and improvements thereon and any
8 right, title or interest in the whole or part of any lot or tract of
9 land whose use contributes directly and materially to the commission of
10 the felony. However, in cases involving any other felony defined in the
11 penal law or any other chapter of the consolidated laws of the state,
12 "instrumentality of a crime" means any property, other than real prop-
13 erty and any buildings, fixtures, appurtenances, and improvements there-
14 on, whose use contributes directly and materially to the commission of a
15 crime defined in [~~subdivisions~~] subdivision five [~~and six~~] hereof.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 § 2. Subdivisions 4-a and 4-b of section 1310 of the civil practice
2 law and rules are REPEALED.

3 § 3. Subdivision 11 of section 1310 of the civil practice law and
4 rules, as amended by chapter 655 of the laws of 1990, is amended to read
5 as follows:

6 11. "Claiming authority" means the district attorney having jurisdic-
7 tion over the offense or the attorney general for purpose of those
8 crimes for which the attorney general has criminal jurisdiction in a
9 case where the [~~underlying~~] defendant in the forfeiture action is a
10 person against whom a criminal charge has been, is being or is about to
11 be brought by the attorney general, or the deputy attorney general in
12 charge of the organized crime task force, when exercising the powers and
13 performing the duties of the district attorney pursuant to subdivision
14 seven of section seventy-a of the executive law or pursuant to cross-de-
15 signation by the district attorney or the appropriate corporation coun-
16 sel or county attorney, provided that the corporation counsel or county
17 attorney may act as a claiming authority only with the consent of the
18 district attorney or the attorney general or the deputy attorney general
19 in charge of the organized crime task force, as appropriate.

20 § 4. The opening paragraph of subdivision 1 of section 1311 of the
21 civil practice law and rules, as amended by chapter 655 of the laws of
22 1990, is amended to read as follows:

23 A civil action may be commenced by the appropriate claiming authority
24 against a criminal defendant to recover the property which constitutes
25 the proceeds of a crime, the substituted proceeds of a crime[~~7~~] or an
26 instrumentality of a crime [~~or the real property instrumentality of a~~
27 ~~crime~~] or to recover a money judgment in an amount equivalent in value
28 to the property which constitutes the proceeds of a crime, the substi-
29 tuted proceeds of a crime, or an instrumentality of a crime[~~7~~, ~~or the~~
30 ~~real property instrumentality of a crime~~]. A civil action may be
31 commenced against a non-criminal defendant to recover the property which
32 constitutes the proceeds of a crime, the substituted proceeds of a
33 crime[~~7~~] or an instrumentality of a crime[~~7~~, ~~or the real property instru-~~
34 ~~mentality of a crime~~] provided, however, that a judgment of forfeiture
35 predicated upon clause (A) of subparagraph (iv) of paragraph (b) of
36 subdivision three hereof shall be limited to the amount of the proceeds
37 of the crime. Any action under this article must be commenced within
38 five years of the commission of the crime and shall be civil, remedial,
39 and in personam in nature and shall not be deemed to be a penalty or
40 criminal forfeiture for any purpose. Except as otherwise specially
41 provided by statute, the proceedings under this article shall be
42 governed by this chapter. An action under this article is not a crimi-
43 nal proceeding and may not be deemed to be a previous prosecution under
44 article forty of the criminal procedure law.

45 § 5. Paragraph (b) of subdivision 1 of section 1311 of the civil prac-
46 tice law and rules, as added by chapter 669 of the laws of 1984, is
47 amended to read as follows:

48 (b) Actions relating to pre-conviction forfeiture crimes. An action
49 relating to a pre-conviction forfeiture crime need not be grounded upon
50 conviction of a pre-conviction forfeiture crime, provided, however, that
51 if the action is not grounded upon such a conviction, it shall be neces-
52 sary in the action for the claiming authority to prove the commission of
53 a pre-conviction forfeiture crime by clear and convincing evidence. An
54 action relating to a pre-conviction forfeiture crime which is grounded
55 upon a conviction of a pre-conviction forfeiture crime may also be
56 grounded upon criminal activity arising from a common scheme or plan of

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1 which such conviction is a part, or upon a count of an indictment or
2 information alleging a felony which was dismissed at the time of a plea
3 of guilty in satisfaction of such count. An action under this paragraph
4 shall be stayed during the pendency of a criminal action which is
5 related to it; provided, that upon motion of a defendant in the forfei-
6 ture action or the claiming authority, a court may, in the interest of
7 justice and for good cause, and with the consent of all parties, order
8 that the forfeiture action proceed despite the pending criminal action;
9 and provided that such stay shall not prevent the granting or contin-
10 uance of any provisional remedy provided under this article or any other
11 provision of law.

12 § 6. Subparagraph (iv) of paragraph (b) of subdivision 3 of section
13 1311 of the civil practice law and rules, as added by chapter 669 of the
14 laws of 1984, is amended to read as follows:

15 (iv) if the action relates to an instrumentality of a crime, except as
16 provided for in subparagraph (i) hereof, the burden shall be upon the
17 claiming authority to prove by a preponderance of the evidence the facts
18 necessary to establish a claim for forfeiture and that the non-criminal
19 defendant either (A) knew that the instrumentality was or would be used
20 in the commission of a crime; provided, however, that where the instru-
21 mentality is real property and any buildings, fixtures, appurtenances
22 and improvements thereon, and any right, title or interest in the whole
23 or part of any lot or tract of land, no forfeiture of such property
24 shall be ordered against a non-criminal defendant who has such knowledge
25 and who makes a reasonable effort to prevent the use of such property in
26 the commission of the crime or (B) knowingly obtained his or her inter-
27 est in the instrumentality to avoid forfeiture.

28 § 7. Subparagraph (v) of paragraph (b) of subdivision 3 of section
29 1311 of the civil practice law and rules is REPEALED.

30 § 8. Paragraphs (d) and (e) of subdivision 3 of section 1311 of the
31 civil practice law and rules are REPEALED.

32 § 9. Subdivision 3 of section 1311 of the civil practice law and rules
33 is amended by adding a new paragraph (d) to read as follows:

34 (d) In a forfeiture action commenced by a claiming authority against
35 any defendant the following rebuttable presumption shall apply:

36 All currency or negotiable instruments payable to the defendant or
37 payable to the bearer and exceeding one thousand dollars in value, (i)
38 found in close proximity to controlled substances criminally possessed
39 in an amount sufficient to constitute a violation of subdivision eight,
40 nine, ten, eleven, twelve or thirteen of section 220.16, section 220.18
41 or section 220.21 of the penal law; or (ii) found in close proximity to
42 marihuana criminally possessed in an amount sufficient to constitute a
43 violation of section 221.25 or section 221.30 of the penal law; or (iii)
44 found in close proximity to drug paraphernalia possessed or sold in
45 violation of section 220.50 or section 220.55 of the penal law; or (iv)
46 found in close proximity to precursors of controlled substances crimi-
47 nally possessed in combinations sufficient to constitute a violation of
48 section 220.60 of the penal law; or (v) found in close proximity to
49 records reflecting the manufacture, sale, distribution, importation or
50 transportation of controlled substances or marihuana in amounts suffi-
51 cient to constitute a violation of section 220.16, 220.18, 220.21,
52 221.25 or 221.30 of the penal law, are presumed to be the proceeds of a
53 common scheme or plan to unlawfully sell a controlled substance or mari-
54 huana, as the case may be.

55 § 10. Subdivision 3-a of section 1311 of the civil practice law and
56 rules is REPEALED.

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1 § 11. Subdivision 4-a of section 1311 of the civil practice law and
2 rules is REPEALED.

3 § 12. Paragraph (a) of subdivision 11 of section 1311 of the civil
4 practice law and rules, as added by chapter 655 of the laws of 1990, is
5 amended to read as follows:

6 (a) Any stipulation or settlement agreement between the parties to a
7 forfeiture action shall be filed with the clerk of the court in which
8 the forfeiture action is pending. No stipulation or settlement agree-
9 ment shall be accepted for filing unless it is accompanied by [~~an affi-
10 davit~~] a certification from the claiming authority that written notice
11 of the stipulation or settlement agreement, including the terms of such,
12 has been given to the state crime victims board, the state division of
13 criminal justice services, and in the case of a forfeiture based on a
14 felony defined in article two hundred twenty or section 221.30 or 221.55
15 of the penal law, to the [~~state division of substance abuse services~~]
16 office of alcoholism and substance abuse services.

17 § 13. Paragraph (c) of subdivision 11 of section 1311 of the civil
18 practice law and rules is REPEALED.

19 § 14. Subdivision 12 of section 1311 of the civil practice law and
20 rules is REPEALED.

21 § 15. Section 1311-a of the civil practice law and rules is REPEALED
22 and a new section 1311-a is added to read as follows:

23 § 1311-a. Subpoena duces tecum. 1. An application for a subpoena duces
24 tecum may be made to a court by a claiming authority at any time,
25 including prior to the commencement of an action without notice. Such
26 subpoena shall be directed only to financial institutions as that term
27 is defined in subdivision six of section 470.00 of the penal law.

28 2. An application for a subpoena duces tecum shall be supported by an
29 affidavit, and such other written documentation as may be submitted,
30 which demonstrates sufficient reason to believe that information may be
31 obtained about any debt or property against which a forfeiture judgment
32 may be enforced.

33 3. Allegations of fact in the application may be based upon the
34 personal knowledge of the claiming authority or upon information or
35 belief. If the facts stated in the application are derived in whole or
36 in part from the statements of persons other than the claiming authori-
37 ty, the sources of the facts must be either described or disclosed, and
38 the application must contain facts establishing the existence and reli-
39 ability of the information supplied by them.

40 4. In an application for a subpoena duces tecum without notice, the
41 claiming authority shall state whether any other such subpoena has been
42 previously sought in the same matter against the same defendant.

43 5. A court may grant an application for a subpoena duces tecum without
44 notice when it determines that the affidavit or documentation submitted
45 by the claiming authority establishes sufficient reason to believe that
46 information may be obtained about any debt or property against which a
47 forfeiture judgment may be enforced. The subpoena duces tecum shall
48 direct that the recipient of the subpoena shall not disclose the subject
49 of the subpoena to any person. The court shall seal all papers which
50 relate to the application, issuance or proceedings about the subpoena
51 duces tecum until such time as the debt or property which was the
52 subject of the subpoena has been levied upon.

53 § 16. Subdivision 3 of section 1312 of the civil practice law and
54 rules, as amended by chapter 655 of the laws of 1990, is amended to read
55 as follows:

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1 3. A court may grant an application for a provisional remedy when it
2 determines that: (a) there is a substantial probability that the claim-
3 ing authority will prevail on the issue of forfeiture and that failure
4 to enter the order may result in the property being destroyed, removed
5 from the jurisdiction of the court, or otherwise be unavailable for
6 forfeiture; and (b) the need to preserve the availability of the proper-
7 ty through the entry of the requested order outweighs the hardship on
8 any party against whom the order may operate[~~, and (c) in an action~~
9 ~~relating to real property, that entry of the requested order will not~~
10 ~~substantially diminish, impair, or terminate the lawful property inter-~~
11 ~~est in such real property of any person or persons other than the~~
12 ~~defendant or defendants].~~

13 § 17. Subdivision 4 of section 1312 of the civil practice law and
14 rules is REPEALED.

15 § 18. Section 1349 of the civil practice law and rules is REPEALED and
16 a new section 1349 is added to read as follows:

17 § 1349. Disposition of property. 1. Any judgment or order of forfei-
18 ture issued pursuant to this article shall include provisions for the
19 disposition of the property found to have been forfeited.

20 2. If any other provision of law expressly governs the manner of
21 disposition of property subject to the judgment or order of forfeiture,
22 that provision of law shall be controlling. Upon application by a claim-
23 ing agent for reimbursement of moneys directly expended by a claiming
24 agent for the investigation of bribery-related felonies defined in arti-
25 cles one hundred eighty, two hundred and two hundred fifteen of the
26 penal law, the court shall direct such reimbursement from money secured
27 pursuant to this article. Upon application of the claiming agent, the
28 court may direct that any vehicles, vessels or aircraft secured pursuant
29 to this article be retained by the claiming agent for law enforcement
30 purposes. In the absence of an application by the claiming agent, the
31 claiming authority may apply to the court to retain such property for
32 law enforcement purposes. In addition, the claiming agent or the claim-
33 ing authority may apply to the court to retain any personal property
34 secured pursuant to this article, excluding vehicles, vessels, aircraft
35 or money, for law enforcement purposes. If not so retained, the judgment
36 or order shall direct the claiming authority to sell the property and
37 all other property secured under this article in accordance with article
38 fifty-one of this chapter, and that the proceeds of such sale and any
39 other moneys realized as a consequence of any forfeiture pursuant to
40 this article shall be apportioned and paid in the following descending
41 order of priority as follows:

42 (a) Amounts ordered to be paid by the court in satisfaction of any
43 lien or claim against property forfeited. A fine imposed pursuant to the
44 penal law shall not be deemed to constitute a lien or claim for purposes
45 of this section;

46 (b) Amounts ordered to be paid by the defendant in any other action or
47 proceeding as restitution, reparations or damages to a victim of the
48 crime, which crime constituted the basis upon which forfeiture was
49 effected under this article, to the extent that such amounts remain
50 unpaid;

51 (c) Amounts ordered to be paid by the defendant in any other action or
52 proceeding as restitution, reparations or damages to a victim of any
53 crime committed by the defendant even though such crime did not consti-
54 tute the basis for forfeiture under this article, to the extent that
55 such amounts remain unpaid;

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1 (d) Amounts actually expended by a claiming agent in the underlying
2 criminal law action for the investigation of bribery-related felonies
3 defined in articles one hundred eighty, two hundred and two hundred
4 fifteen of the penal law which were converted into a non-monetary form
5 and have not been reimbursed pursuant to this subdivision;

6 (e) Amounts actually expended by a claiming authority or claiming
7 agent, which amounts are substantiated by vouchers or other evidence,
8 for the:

9 (i) Maintenance and operation of real property seized, attached or
10 forfeited under this chapter. Expenditures authorized by this subpara-
11 graph are limited to mortgage, tax and other financial obligations
12 imposed by law and those other payments necessary to provide essential
13 service and repairs to real property whose occupants are innocent of the
14 criminal conduct which led to the seizure, attachment or forfeiture; and

15 (ii) Proper storage, cleanup and disposal of hazardous substances or
16 other materials, the disposal of which is governed by the environmental
17 conservation law when such storage, cleanup or disposal is required by
18 circumstances attendant to either the commission of the crime or the
19 forfeiture action;

20 (f) In addition to amounts, if any, distributed pursuant to paragraph
21 (e) of this subdivision, fifteen percent of all moneys realized through
22 forfeiture to the claiming authority in satisfaction of actual costs and
23 expenses incurred in the investigation, preparation and litigation of
24 the forfeiture action, including that proportion of the salaries of the
25 attorneys, clerical and investigative personnel devoted thereto, plus
26 all costs and disbursements taxable under the provisions of this chap-
27 ter;

28 (g) In addition to amounts, if any, distributed pursuant to paragraph
29 (e) of this subdivision, five percent of all moneys realized through
30 forfeiture to the claiming agent in satisfaction of actual costs
31 incurred for protecting, maintaining and forfeiting the property includ-
32 ing that proportion of the salaries of attorneys, clerical and investi-
33 gative personnel devoted thereto, less any costs already received as
34 reimbursement for these expenses;

35 (h) The remaining moneys shall be divided between the claiming agents
36 and claiming authority. The claiming authority shall receive twenty-five
37 percent of the remaining moneys and the claiming agents shall equally
38 share the remaining seventy-five percent. The fair market value of any
39 personal property retained by the claiming agents or authority pursuant
40 to this subdivision, except moneys received as direct reimbursement for
41 the investigation of bribery-related felonies, shall be deducted from
42 any amount of moneys the claiming agent or authority receives under this
43 section; and

44 (i) All moneys secured by the claiming agent or claiming authority
45 under this section shall be used to enhance law enforcement efforts and
46 not a reimbursement of ordinary budgetary costs including salaries of
47 personnel and expenses of the claiming authority or claiming agent
48 during the fiscal year in which this section takes effect.

49 3. When the claiming authority is the deputy attorney general in
50 charge of the organized crime task force, the proceeds due to the claim-
51 ing authority pursuant to paragraph (f) of subdivision two of this
52 section shall be paid to said deputy attorney general; and of the
53 proceeds due to the claiming authority pursuant to paragraph (h) of
54 subdivision two of this section, one-half shall be paid to the district
55 attorney and one-half shall be paid to said deputy attorney general.

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1 4. The claiming authority shall report the disposal of property and
2 collection of assets pursuant to this section to the state crime victims
3 board and the state division of criminal justice services.

4 § 19. The civil practice law and rules is amended by adding a new
5 section 1349-a to read as follows:

6 § 1349-a. Disposal of property when the crime upon which the forfei-
7 ture action is based is defined in article two hundred twenty or two
8 hundred twenty-one of the penal law. 1. Any judgment or order of forfei-
9 ture issued pursuant to this article shall include provisions for the
10 disposal of the property found to have been forfeited.

11 2. If any other provision of law expressly governs the manner of
12 disposition of property subject to the judgment or order of forfeiture,
13 that provision of law shall be controlling. Upon application by a claim-
14 ing agent for reimbursement of moneys directly expended by a claim-
15 ing agent in the underlying criminal investigation for the purchase of
16 contraband, the court shall direct such reimbursement from money secured
17 pursuant to this article. Upon application of the claiming agent, the
18 court may direct that any vehicles, vessels or aircraft secured pursuant
19 to this article be retained by the claiming agent for law enforcement
20 purposes. In the absence of an application by the claiming agent, the
21 claiming authority may apply to the court to retain such property for
22 law enforcement purposes. The claiming agent or claiming authority may
23 apply to retain any personal property secured pursuant to this article,
24 excluding vehicles, vessels, aircraft or money, for law enforcement
25 purposes. If not so retained, the judgment or order shall direct the
26 claiming authority to sell the property and all other property secured
27 under this article in accordance with article fifty-one of this chapter,
28 and that the proceeds of such sale and any other moneys realized as a
29 consequence of any forfeiture pursuant to this article shall be appor-
30 tioned and paid in the following descending order of priority as
31 follows:

32 (a) Amounts ordered to be paid by the court in satisfaction of any
33 lien or claim against property forfeited. A fine imposed pursuant to the
34 penal law shall not be deemed to constitute a lien or claim for purposes
35 of this section;

36 (b) Amounts ordered to be paid by the defendant in any other action or
37 proceeding as restitution, reparations or damages to a victim of the
38 crime, which crime constitutes the basis upon which forfeiture was
39 effected under this article, to the extent that such amounts remain
40 unpaid;

41 (c) Amounts ordered to be paid by the defendant in any other action or
42 proceeding as restitution, reparations or damages to a victim of any
43 crime committed by the defendant even though such crime did not consti-
44 tute the basis for forfeiture under this article, to the extent that
45 such amounts remain unpaid;

46 (d) Amounts directly expended by a claiming agent in the underlying
47 criminal law action for the purchase of contraband which were converted
48 into a non-monetary form and have not been reimbursed pursuant to this
49 subdivision;

50 (e) Amounts actually expended by a claiming authority or claiming
51 agent, which amounts are substantiated by vouchers or other evidence,
52 for the:

53 (i) Maintenance and operation of real property seized, attached or
54 forfeited under this chapter. Expenditures authorized by this subpara-
55 graph are limited to mortgage, tax and other financial obligations
56 imposed by law and those other payments necessary to provide essential

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1 services and repairs to real property whose occupants are innocent of
2 the criminal conduct which led to the seizure, attachment or forfeiture;
3 and

4 (ii) Proper storage, cleanup and disposal of hazardous substances or
5 other materials, the disposal of which is governed by the environmental
6 conservation law when such storage, cleanup or disposal is required by
7 circumstances attendant to either the commission of the crime or the
8 forfeiture action;

9 (f) In addition to amounts, if any, distributed pursuant to paragraph
10 (e) of this subdivision, fifteen percent of all moneys realized through
11 forfeiture to the claiming authority in satisfaction of actual costs and
12 expenses incurred in the investigation, preparation and litigation of
13 the forfeiture action, including that proportion of the salaries of the
14 attorneys, clerical and investigative personnel devoted thereto, plus
15 all costs and disbursements taxable under the provisions of this chap-
16 ter;

17 (g) In addition to amounts, if any, distributed pursuant to paragraph
18 (e) of this subdivision, five percent of all moneys realized through
19 forfeiture to the claiming agent in satisfaction of actual costs
20 incurred for protecting, maintaining and forfeiting the property includ-
21 ing that proportion of the salaries of attorneys, clerical and investi-
22 gative personnel devoted thereto, less any costs already received as
23 reimbursement for these expenses;

24 (h) Thirty percent of all moneys realized through forfeiture to the
25 substance abuse service fund established pursuant to section ninety-
26 seven-w of the state finance law;

27 (i) The remaining moneys shall be divided between the claiming agents
28 and claiming authority. The claiming authority shall receive twenty-five
29 percent of the remaining moneys and the claiming agents shall equally
30 share the remaining seventy-five percent. The fair market value of any
31 personal property retained by the claiming agent or authority pursuant
32 to this subdivision, except moneys received as direct reimbursement for
33 the purchase of contraband, shall be deducted from any amount of moneys
34 the claiming agent or authority receives under this section; and

35 (j) All moneys secured by the claiming agent and the claiming authori-
36 ty under this section shall be used to enhance law enforcement efforts
37 and not as reimbursement for ordinary budgetary costs including salaries
38 of personnel, and expenses of the claiming authority or claiming agent
39 during the fiscal year in which this section takes effect.

40 3. When the claiming authority is the deputy attorney general in
41 charge of the organized crime task force, the proceeds due to the claim-
42 ing authority pursuant to paragraph (f) of subdivision two of this
43 section shall be paid to said deputy attorney general; and of the
44 proceeds due to the claiming authority pursuant to paragraph (i) of
45 subdivision two of this section, one-half shall be paid to the district
46 attorney and one-half shall be paid to said deputy attorney general.

47 4. The claiming authority shall report the disposal of property and
48 collection of assets pursuant to this section to the state crime victims
49 board, the state division of criminal justice services and the state
50 office of alcoholism and substance abuse services.

51 § 20. The civil practice law and rules is amended by adding a new
52 article 13-C to read as follows:

53 ARTICLE 13-C

54 FORFEITURE PROCEEDING INVOLVING CONTROLLED SUBSTANCES

55 AND FELONY MARIHUANA OFFENSES

56 Section 1370. Definitions.

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1 1371. Property subject to forfeiture.

2 1372. In rem civil forfeiture proceeding.

3 1373. Disposition of forfeited property.

4 § 1370. Definitions. (a) "Controlled substances contraband" means any
5 of the following:

6 (1) Any controlled substance as defined in subdivision five of section
7 220.00 of the penal law; or

8 (2) Any raw material, product or equipment of any kind which is used
9 or intended for use in manufacturing, compounding, processing, deliver-
10 ing, importing or exporting any controlled substance.

11 (b) "Controlled substances offense" means any offense defined in arti-
12 cle two hundred twenty of the penal law, any solicitation or facili-
13 tation of such offense in violation of article one hundred or one
14 hundred fifteen of the penal law, and any conspiracy or attempt to
15 commit such offense in violation of article one hundred five or one
16 hundred ten of the penal law.

17 (c) "Marihuana contraband" means any of the following:

18 (1) Marihuana as defined in subdivision twenty-one of section thirty-
19 three hundred two of the public health law; or

20 (2) Any raw material, product or equipment of any kind which is used
21 or intended for use in manufacturing, compounding, processing, deliver-
22 ing, importing or exporting marihuana.

23 (d) "Felony marihuana offense" means any felony defined in article two
24 hundred twenty-one of the penal law, any solicitation or facilitation of
25 such felony in violation of article one hundred or one hundred fifteen
26 of the penal law, and any conspiracy or attempt to commit such felony in
27 violation of article one hundred five or one hundred ten of the penal
28 law.

29 (e) "Proceeds of a controlled substances offense or felony marihuana
30 offense" means any property obtained through the commission of a
31 controlled substances or felony marihuana offense and includes the
32 appreciation in value of such property.

33 (f) "Substituted proceeds of a controlled substances offense or felony
34 marihuana offense" means any property obtained by the sale or exchange
35 of proceeds of a controlled substances or felony marihuana offense, and
36 any gain realized by such sale or exchange.

37 (g) "Property" means and includes: real property; personal property,
38 other than vehicles, vessels or aircraft; money; negotiable instruments;
39 securities; any thing of value or any interest in a thing of value; and
40 intangible personal property, including rights, privileges, interests
41 and claims.

42 (h) "Real property" means any right, title or interest in the whole or
43 any part of any lot or tract and any buildings, fixtures, appurtenances
44 and improvements thereon, including but not limited to any condominium,
45 cooperative, leasehold or tenancy interest in real property.

46 (i) "Instrumentality of a controlled substances offense or felony
47 marihuana offense" means any property whose use contributes directly and
48 materially to the commission of a controlled substances or a felony
49 marihuana offense; provided, however, that where the instrumentality is
50 real property, the real property must have been used as an instrumental-
51 ity of an offense classified as a felony.

52 (j) "Claiming authority" means the district attorney having jurisdic-
53 tion over the offense giving rise to the forfeiture, or the attorney
54 general, in connection with forfeitures arising out of those crimes for
55 which the attorney general has criminal jurisdiction, or the deputy
56 attorney general in charge of the statewide organized crime task force

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1 where said deputy attorney general has received approval pursuant to
2 subdivision seven of section seventy-a of the executive law, or the
3 appropriate corporation counsel or county attorney, provided that the
4 corporation counsel or county attorney may act as a claiming authority
5 only with the consent of the district attorney, attorney general or
6 deputy attorney general in charge of the statewide organized crime task
7 force, as appropriate.

8 (k) "Claiming agent" means any persons described in subdivision thir-
9 ty-four of section 1.20 of the criminal procedure law, and sheriffs,
10 undersheriffs and deputy sheriffs of counties within the city of New
11 York.

12 (l) "Owner" means any person, including a lienholder, whose rights or
13 interest in property are or may be affected by a judgment in the forfei-
14 ture proceeding.

15 (m) "Claimant" means any person who objects to forfeiture.

16 § 1371. Property subject to forfeiture. (a) The following is forfeited
17 to the state and all rights or interests therein shall be extinguished
18 in accordance with the provisions of this article:

19 (1) All property furnished or intended to be furnished by any person
20 in exchange for controlled substances contraband or marihuana contraband
21 or in connection with a controlled substances offense or a felony mari-
22 huana offense;

23 (2) All proceeds or substituted proceeds of a controlled substances
24 offense or a felony marihuana offense;

25 (3) Any instrumentality of a controlled substances offense or a felony
26 marihuana offense.

27 (b) All rights or interests forfeited to the state shall vest in the
28 state upon the commission of the offense giving rise to forfeiture under
29 this article.

30 (c) Except as otherwise specifically provided in this article, the
31 procedures set forth in article four of this chapter shall govern
32 proceedings under this article.

33 § 1372. In rem civil forfeiture proceeding. A proceeding to enforce a
34 forfeiture declared by section thirteen hundred seventy-one of this
35 article shall be governed by the following provisions:

36 (a) Seizure of property. (1) In all cases, except those identified in
37 paragraph two of this subdivision, the claiming authority shall make
38 application to the supreme or a county court for a warrant of seizure
39 upon affidavits and other appropriate supporting papers describing the
40 property to be seized and, if known, its location. The court shall
41 promptly review the application and supporting papers, and if there is
42 reasonable cause therefrom to believe that such property has been
43 forfeited, the court shall promptly issue a warrant of seizure directed
44 to a claiming agent in any county where such property may be found,
45 authorizing the claiming agent to seize such property. Proceedings under
46 this paragraph may be conducted without notice to any person who may
47 claim an interest in such property or the proceeding. The court shall
48 order the sealing of all papers and proceedings conducted under this
49 paragraph until such time as seizure has occurred.

50 (2) Seizure of the property without a warrant of seizure may be made
51 by a claiming agent when there is reasonable cause to believe that prop-
52 erty has been forfeited under section thirteen hundred seventy-one of
53 this article, and either:

54 (i) the seizure is incident to an arrest or a search pursuant to a
55 search warrant or an inspection pursuant to an administrative inspection
56 warrant; or

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1 (ii) the seizure is necessary to prevent imminent removal,
2 destruction, concealment or transfer of the property.

3 (b) Claiming agent's duties during and after seizure. (1) In making a
4 seizure of property pursuant to the provisions of this section, a claim-
5 ing agent must give, or make reasonable effort to give, notice of his
6 authority and purpose and if the seizure is based on a warrant of
7 seizure, show the warrant or a copy thereof upon request. If any person
8 resists or refuses to permit the seizure, the claiming agent may use any
9 degree of physical force, other than deadly physical force, necessary to
10 effect the seizure.

11 (2) Upon seizing property pursuant to the provisions of this section,
12 the claiming agent shall write and subscribe a receipt itemizing the
13 property seized and identifying the claiming agent who has made the
14 seizure and the claiming authority to be notified pursuant to the
15 provisions of paragraph three of this subdivision. If the property is
16 taken from a person, the receipt shall be given to such person. If prop-
17 erty is taken from premises or a vehicle, such receipt shall be given to
18 the owner, tenant or other person in possession thereof if he is pres-
19 ent; or if he is not, the claiming agent shall leave the receipt in the
20 premises or vehicle from which the property was seized. If the property
21 seized is not taken or readily capable of movement, the receipt shall be
22 affixed thereto.

23 (3) Upon seizing property pursuant to the provisions of this section,
24 the claiming agent shall, without unnecessary delay, notify the claiming
25 authority named in the warrant of seizure or an appropriate claiming
26 authority of the facts of the seizure. The claiming agent shall deliver
27 actual or constructive custody of the seized property to the claiming
28 authority.

29 (c) Claiming authority's duty after seizure. (1) After being notified
30 of a seizure, the claiming authority shall promptly cause the seized
31 property to be returned if it is of the opinion either that a forfeiture
32 proceeding could not be successfully maintained or that the ends of
33 justice do not warrant the institution or prosecution of a forfeiture
34 proceeding.

35 (2) At any time after seizure, the claiming authority may apply to the
36 court without notice to any person for an order authorizing the immedi-
37 ate sale of any perishable goods or the storage or repair of any seized
38 property.

39 (d) Notice of forfeiture proceeding. Within twenty days after the
40 seizure of property made either pursuant to a warrant of seizure or
41 without a warrant, unless the property has been released pursuant to
42 subdivision (c) of this section, the claiming authority shall institute
43 an in rem civil forfeiture proceeding pursuant to this article as
44 follows:

45 (1) By personal service of a notice of petition and verified petition
46 on any owner of the seized property; or

47 (2) By first class mail of a notice of petition and verified petition
48 to the last known residence of any owner whose present residence cannot
49 be reasonably ascertained, and by publication of the notice of petition
50 in a newspaper published or circulated in the county where the seizure
51 occurred, provided that the notice of petition shall be published once
52 each week for two successive weeks and provided further that it shall be
53 sufficient if only the first of the two said publications shall have
54 been made during the twenty day period; or

55 (3) In any case where the identity of an owner of seized property
56 cannot be reasonably ascertained, by publication of the notice of peti-

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1 tion in a newspaper published or circulated in the county where the
2 seizure occurred, provided that the notice of petition shall be
3 published once each week for two successive weeks and provided further
4 that it shall be sufficient if only the first of the two said publica-
5 tions shall have been made during the twenty day period.

6 In all cases, the claiming authority shall file a copy of such notice
7 of petition and verified petition with the state division of criminal
8 justice services; however, failure to file such papers shall not be
9 grounds for any relief in the proceeding.

10 (e) Notice of petition and verified petition. The contents of the
11 notice of petition and verified petition shall be as follows:

12 (1) The notice of petition shall contain the following:

13 (i) identification of the claiming authority as petitioner;

14 (ii) identification of the seized property and any owners, if any are
15 reasonably identifiable, as respondents;

16 (iii) a description of the seized property with reasonable particular-
17 ity;

18 (iv) the statutory basis for forfeiture;

19 (v) the basis for venue; and

20 (vi) the time and procedure for interposing an answer and bond for the
21 purpose of contesting the forfeiture.

22 (2) The verified petition shall contain the following information:

23 (i) a description of the seized property including its appraised
24 value, if known;

25 (ii) a statement that the seized property is or will be within the
26 state during the pendency of the proceeding, or that it has been
27 disposed of in accordance with subdivision (c) of this section;

28 (iii) the date, place and circumstances of the seizure of the property
29 and the identity of the claiming agent who made the seizure; and

30 (iv) the factual grounds upon which a judgment of forfeiture is
31 sought.

32 (f) Procedure for contesting forfeiture. (1) Within thirty days after
33 personal service or first publication of the notice of petition, a
34 claimant may interpose a verified answer by personal service of the same
35 upon the claiming authority, which answer shall contain the following:

36 (i) a statement setting forth the factual basis of the claimant's
37 interest in the seized property;

38 (ii) a response to the petition; and

39 (iii) the factual basis for any affirmative defense asserted by the
40 claimant.

41 (2) At the time of interposing an answer, a claimant must also post a
42 bond with the clerk of the court in which the proceeding has been insti-
43 tuted in the amount of ten percent of the value of the seized property
44 or ten thousand dollars, whichever is less. If the claiming authority
45 recovers judgment, the court shall order payment from the bond of the
46 claiming authority's reasonable costs of conducting the proceeding,
47 including the cost of the legal and investigative resources expended in
48 conducting the proceeding.

49 (3) An answer which is not in full compliance with this section and
50 accompanied by a bond as required shall be dismissed.

51 (g) Standing of claimants. (1) A claimant must demonstrate that he has
52 standing to contest a forfeiture by establishing by a preponderance of
53 evidence that:

54 (i) he has an actual, personal and substantial interest in the proper-
55 ty and is not merely the agent of another person who has such an inter-
56 est in the property; and

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1 (ii) if he has obtained his interest in the property subsequent to the
2 offense giving rise to forfeiture, he must also show:

3 (A) he obtained his interest in the property for fair consideration;

4 (B) he did not know and could not reasonably have known of the circum-
5 stances subjecting the property to forfeiture at the time he obtained
6 his interest in the property;

7 (C) he had no knowledge of and could not reasonably have known of the
8 forfeiture action at the time he obtained his interest in the property;
9 and

10 (D) he did not participate in and was unaware of any scheme to conceal
11 or disguise the manner in which he obtained his interest in the proper-
12 ty.

13 (2) A claimant shall retain the burden of establishing his standing
14 notwithstanding whether he is identified as an owner in the notice of
15 petition or verified petition.

16 (h) Release petition. At any time subsequent to a seizure of property
17 pursuant to this section, a claimant who has established his standing in
18 accordance with this section may make application to the court for
19 release of the seized property on the ground that there is no reasonable
20 cause to believe that the property has been forfeited pursuant to this
21 article. If the claimant has received the claiming authority's notice of
22 petition and verified petition, a claimant may make such application
23 only if he has interposed an answer and bond in conformity with the
24 requirements of this section. The claiming authority shall have the
25 burden of proving reasonable cause for the forfeiture whenever such an
26 application is made. The court may conduct a hearing on any issue of
27 fact necessary to determine the application and, if the application is
28 granted, shall order the release of the seized property to the claimant.

29 (i) The forfeiture proceeding. (1) In any forfeiture proceeding pursu-
30 ant to this article in which no claimant interposes an answer and bond,
31 or in which all claimants' answers are dismissed, the court shall enter
32 judgment in favor of the claiming authority.

33 (2) In any forfeiture proceeding brought pursuant to this article, a
34 claimant who files a fully complying answer and the required bond shall
35 have the right to trial by jury on any issue of fact.

36 (3) In any trial of a forfeiture proceeding pursuant to this article,
37 it shall be the claiming authority's burden to prove by a preponderance
38 of the evidence that a forfeiture has occurred.

39 (4) In any trial of a forfeiture proceeding pursuant to this article,
40 it shall be the claimant's burden to establish by a preponderance of the
41 evidence both his standing in accordance with subdivision (g) of this
42 section and one of the following affirmative defenses:

43 (i) the offenses giving rise to the forfeiture of the property
44 occurred without the knowledge and consent of the claimant; or

45 (ii) the offenses giving rise to the forfeiture of the property
46 occurred while the property was unlawfully in the possession or control
47 of a person other than the claimant due to a violation of the criminal
48 laws of the United States or any state.

49 (5) In the trial of any forfeiture proceeding pursuant to this arti-
50 cle, except as the court directs judgment in favor of any party as a
51 matter of law, the issues shall be submitted to the jury or the court,
52 as the case may be, for determination and judgment shall be entered in
53 accordance with such determination. Judgment shall be entered in favor
54 of a prevailing claiming authority, exclusive of any interest estab-
55 lished by a prevailing claimant.

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1 (6) (i) Any stipulation or settlement agreement between the parties to
2 a forfeiture proceeding shall be filed with the clerk of the court in
3 which the proceeding is pending. No stipulation or settlement agreement
4 shall be accepted for filing unless accompanied by an affidavit from the
5 claiming authority that written notice of the stipulation or settlement
6 agreement, including the terms of such, has been given to the state
7 crime victims board, the state division of criminal justice services and
8 the state office of alcoholism and substance abuse services.

9 (ii) No judgment or order of forfeiture shall be accepted for filing
10 unless it is accompanied by an affidavit from the claiming authority
11 that written notice of the judgment or order, including the terms of
12 such, has been given to the state crime victims board, the state divi-
13 sion of criminal justice services and the state office of alcoholism and
14 substance abuse services.

15 (j) Vacatur or modification of judgment. Any person may petition to
16 the court in which a judgment of forfeiture was entered, at any time
17 within one year after entry of the judgment, for vacatur or modification
18 of the judgment of forfeiture upon a substantial showing that the person
19 was not a party to, did not seek to interpose or answer in, and had no
20 actual knowledge of the forfeiture proceeding. A proposed answer and a
21 bond in accordance with this article must accompany the petition which
22 must also make a substantial showing of the person's standing as a
23 claimant and reasons why the judgment should be vacated or modified.
24 Following service of the petition on the claiming authority, the court
25 shall hear and determine any issues raised by the petition and, if
26 necessary, conduct an immediate trial on any disputed issue of fact. If
27 it does not deny the petition, the court may vacate or modify the judg-
28 ment upon such terms and conditions as it deems just, including a direc-
29 tion for trial of issues raised by the answer. If the petition is made
30 following the sale of forfeited property, any relief accorded to a
31 prevailing claimant shall be limited to the proceeds after deducting the
32 expenses and costs incurred by the claiming authority in effecting the
33 sale.

34 (k) Venue. The proper venue for a proceeding for forfeiture pursuant
35 to this section is:

36 (1) The county where the seizure occurred; or

37 (2) The county in which a criminal prosecution relating to the offense
38 giving rise to the forfeiture could be commenced under article twenty of
39 the criminal procedure law, or in the case of an action commenced by the
40 office of prosecution, special narcotics courts of the city of New York,
41 under section one hundred seventy-seven-b of the judiciary law.

42 (1) Limitations. A proceeding pursuant to this article must be
43 commenced within five years of the commission of the offense giving rise
44 to the forfeiture proceeding.

45 (m) Stay of proceedings. A proceeding pursuant to this article shall
46 be stayed during the pendency of a criminal action relating to the
47 offense giving rise to the forfeiture proceeding, provided that such
48 stay shall not prevent: the granting of a warrant of seizure; the
49 seizure and retention of property subject to forfeiture; the service of
50 process of the forfeiture proceeding; or a claimant's right to make an
51 application for release of seized property, provided further that the
52 stay may be modified by the court in which the forfeiture proceeding is
53 pending upon a finding that a modification is necessary to prevent undue
54 hardship to an innocent party.

55 (n) Liability of a claiming agent and claiming authority. (1) Except
56 as provided in paragraph two of this subdivision, no claiming authority

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1 or claiming agent shall have any liability to any person who claims to
2 have been affected by the seizure or the forfeiture proceeding if the
3 claiming authority recovers judgment.

4 (2) The claiming authority or claiming agent shall be liable to a
5 claimant who recovers judgment for all the claimant's costs and damages
6 which have been sustained by reason of the seizure and the institution
7 and conduct of the forfeiture action when the claimant proves by a
8 preponderance of the evidence that in seizing the property or institut-
9 ing and conducting the action, the claiming authority or claiming agent
10 acted without reasonable cause and not in good faith.

11 (o) Forfeiture total value limits. The total amount that may be recov-
12 ered by any claiming authority in any forfeiture proceeding pursuant to
13 this article shall be limited to the value of the proceeds of the crime
14 or substituted proceeds of the crime, whichever amount is greater, and,
15 in addition, the value of all instrumentalities of the crime. Such
16 amount shall be reduced by the value of any property forfeited pursuant
17 to article thirteen-A of this chapter to the extent such action arises
18 out of the same offense.

19 (p) Election of remedies. The imposition of a judgment of civil
20 forfeiture pursuant to this article shall preclude the imposition of a
21 judgment or order of forfeiture pursuant to article four hundred sixty
22 or four hundred eighty of the penal law based upon the same criminal
23 offense.

24 (q) Bona fide attorneys' fees. (1) Notwithstanding any inconsistent
25 provisions in this article, upon a substantial showing by a claimant who
26 has interposed an answer and posted a bond as required in subdivision
27 (f) of this section that:

28 (i) he has standing in accordance with the provisions of subdivision
29 (g) of this section;

30 (ii) he has a meritorious defense; and

31 (iii) a seizure of property has created a financial hardship in secur-
32 ing the services of, and paying bona fide fees for, legal defense coun-
33 sel in a criminal action relating to the offense giving rise to forfei-
34 ture, the court in which the forfeiture proceeding is pending may order
35 the release of seized property, upon such conditions and security as may
36 be appropriate, for the payment of bona fide fees for legal defense
37 counsel in said criminal action.

38 (2) Notwithstanding any inconsistent provisions in this article, prop-
39 erty paid to legal defense counsel as bona fide fees for legal services
40 in defending a criminal action relating to the offense giving rise to
41 the forfeiture shall be exempt from a judgment of forfeiture pursuant to
42 this action.

43 § 1373. Disposition of forfeited property. (a) Any judgment or order
44 of forfeiture pursuant to this article shall include provisions for the
45 disposition of forfeited property.

46 (b) All property which is forfeited following the commencement of a
47 proceeding under this article, whether by judgment, order or other
48 agreement, shall be disposed of in accordance with the provisions of
49 section thirteen hundred forty-nine-a of this chapter.

50 § 21. Subdivision (a) of section 2302 of the civil practice law and
51 rules, as amended by chapter 398 of the laws of 1997, is amended to read
52 as follows:

53 (a) Without court order. Subpoenas may be issued without a court
54 order by the clerk of the court, a judge where there is no clerk, the
55 attorney general, a claiming authority as defined in subdivision eleven
56 of section thirteen hundred ten of this chapter, an attorney of record

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1 for a party to an action, an administrative proceeding or an arbit-
2 tration, an arbitrator, a referee, or any member of a board, commission
3 or committee authorized by law to hear, try or determine a matter or to
4 do any other act, in an official capacity, in relation to which proof
5 may be taken or the attendance of a person as a witness may be required;
6 provided, however, that a subpoena to compel production of a patient's
7 clinical record maintained pursuant to the provisions of section 33.13
8 of the mental hygiene law shall be accompanied by a court order. A
9 child support subpoena may be issued by the department, or the child
10 support enforcement unit coordinator or support collection unit supervi-
11 sor of a social services district, or his or her designee, or another
12 state's child support enforcement agency governed by title IV-D of the
13 social security act.

14 § 22. Article 480 of the penal law is REPEALED and a new article 480
15 is added to read as follows:

16 ARTICLE 480

17 CRIMINAL FORFEITURE - FELONY CONTROLLED SUBSTANCE OFFENSES

18 Section 480.00 Definitions.

19 480.05 Provisional remedies.

20 480.10 Scope of forfeiture.

21 480.15 Rebuttable presumption.

22 480.20 Procedure.

23 480.25 Disposal of property.

24 § 480.00 Definitions.

25 The following definitions are applicable to this article:

26 1. A "felony controlled substance offense" means conduct constituting:

27 (a) any felony offense defined in article two hundred twenty or two
28 hundred twenty-one of this chapter; or

29 (b) any solicitation or facilitation of any felony offense defined in
30 article two hundred twenty or two hundred twenty-one of this chapter; or

31 (c) any attempt or conspiracy to commit any felony offense defined in
32 article two hundred twenty or two hundred twenty-one of this chapter.

33 2. "Property" means any real property; personal property; currency;
34 negotiable instruments; securities; and intangible personal property,
35 including rights, privileges, interests and claims.

36 3. "Real property" means any right, title or interest in the whole or
37 any part of any lot or tract and any buildings, fixtures, appurtenances,
38 and improvements thereon, including but not limited to any condominium,
39 cooperative, leasehold or tenancy interest in real property.

40 4. "Proceeds" means any property obtained through the commission of a
41 felony controlled substance offense and includes the appreciation in
42 value of such property.

43 5. "Substituted proceeds" means any property obtained by the sale or
44 exchange of proceeds of a felony controlled substance offense and any
45 gain realized by such sale or exchange.

46 6. "Instrumentality of a felony controlled substance offense" means
47 any property of a person who has committed a felony controlled substance
48 offense whose use contributed directly and materially to the commission
49 of such offense; provided, however, that where the instrumentality is
50 real property, the real property must have been used as an instrumental-
51 ity of an offense classified as a felony.

52 § 480.05 Provisional remedies.

53 1. The provisional remedies authorized by article thirteen-A of the
54 civil practice law and rules shall be available in all criminal actions
55 in which criminal forfeiture is sought pursuant to this article to the

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1 extent and under the same terms and conditions as provided in article
2 thirteen-A of such law and rules.

3 2. Upon the filing of an indictment and special information, or a
4 superior court information and special information, seeking criminal
5 forfeiture under this article, all further proceedings with respect to
6 provisional remedies shall be heard by the judge or justice in the crim-
7 inal part to which the criminal action is assigned.

8 3. For purposes of this section, the indictment and special informa-
9 tion, or superior court information and special information, seeking
10 criminal forfeiture shall constitute the summons with notice or summons
11 and verified complaint referred to in article thirteen-A of the civil
12 practice law and rules.

13 § 480.10 Scope of forfeiture.

14 Any person convicted of a felony controlled substance offense may be
15 ordered pursuant to this article to criminally forfeit to the state:

16 1. any property constituting the proceeds or substituted proceeds of
17 such offense unless the value of forfeited property is disproportionate
18 to the person's gain from the offense, in which event the forfeiture of
19 a portion thereof may be ordered; and

20 2. any property constituting an instrumentality of a felony controlled
21 substance offense unless the value of the forfeited property is
22 disproportionate to the person's gain from the offense, in which event
23 the forfeiture of a portion thereof may be ordered.

24 § 480.15 Rebuttable presumption.

25 When criminal forfeiture is sought pursuant to this article, the
26 following rebuttable presumption shall apply:

27 All currency or negotiable instruments found in close proximity to
28 controlled substances or marihuana in amounts constituting a felony
29 offense, or found in close proximity to hypodermic instruments, drug
30 manufacturing or distributing paraphernalia or records reflecting the
31 manufacture, distribution, or importation of such controlled substances
32 or marihuana are presumed to be the proceeds of a felony controlled
33 substance offense. The presumption created by this section may be
34 rebutted by a preponderance of evidence that such currency or negotiable
35 instruments do not constitute the proceeds of a felony controlled
36 substance offense.

37 § 480.20 Procedure.

38 1. When the grand jury files an indictment charging a person with a
39 felony controlled substance offense and has received evidence legally
40 sufficient to establish, and providing reasonable cause to believe, that
41 property is subject to forfeiture under this article, the grand jury
42 shall file a special information specifying the property for which
43 forfeiture is sought and containing a plain and concise statement of the
44 factual basis for seeking forfeiture. Alternatively, where the defendant
45 has waived indictment and consented to be prosecuted for a felony
46 controlled substance offense by superior court information pursuant to
47 article one hundred ninety-five of the criminal procedure law, the
48 prosecutor may, in addition to superior court information, file a
49 special information specifying the property for which forfeiture is
50 sought and containing a plain and concise statement of the factual basis
51 for seeking forfeiture.

52 The prosecutor shall file a copy of the special information, including
53 the terms thereof, with the state division of criminal justice services.
54 Failure to file such information, however, shall not be grounds for any
55 relief under this article.

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1 2. After accepting a verdict of guilty of a felony controlled
2 substance offense, the court shall present the special information to
3 the jury and proceed to hear any additional evidence which is relevant
4 and legally admissible upon the forfeiture of property specified in the
5 special information. Based upon all the evidence received in connection
6 with the indictment or superior court information and the special infor-
7 mation, the jury shall deliberate and may, if satisfied by proof beyond
8 a reasonable doubt that the property, or portions thereof, is subject to
9 a forfeiture, direct the forfeiture of such property. When a person has
10 waived a jury trial pursuant to article three hundred twenty of the
11 criminal procedure law, upon a verdict or a plea of guilty of a felony
12 controlled substance offense, the court shall hear and determine all
13 evidence upon the special information and may, if satisfied by proof
14 beyond a reasonable doubt that the property, or portions thereof, is
15 subject to a forfeiture, direct the forfeiture of such property.

16 3. Following a direction of forfeiture, the court may hear arguments
17 and receive additional evidence upon a motion by the convicted person
18 that the direction of forfeiture (i) is against the weight of evidence,
19 or (ii) is, with respect to a forfeiture pursuant to this article,
20 disproportionate to such person's gain from the offense, or (iii) is,
21 with respect to a forfeiture pursuant to this article, disproportionate
22 to such person's gain from the offense. Upon granting such a motion, or
23 in the interests of justice, the court may set aside, modify, limit or
24 otherwise condition a direction of forfeiture. Unless relief is granted
25 under this subdivision, the court shall issue an order of criminal
26 forfeiture.

27 4. An order of criminal forfeiture shall authorize the prosecutor to
28 seize all property directed to be forfeited under this article upon such
29 terms and conditions as the court deems proper. If a property right is
30 not exercisable or transferable for value by the prosecutor, it shall
31 expire and shall not revert to the convicted person.

32 5. No person shall forfeit any right, title or interest in any proper-
33 ty under this article who has not been convicted of a felony controlled
34 substance offense. Any person claiming an interest in forfeited property
35 may institute a special proceeding to determine that claim pursuant to
36 section thirteen hundred twenty-seven of the civil practice law and
37 rules; provided, however, that if such special proceeding is initiated
38 prior to the conclusion of the criminal action, it may, upon motion of
39 the prosecutor, and in the court's discretion, be stayed by the court in
40 which the criminal action is pending until the conclusion thereof. In
41 addition, any person, other than the convicted person, claiming an
42 interest in property ordered forfeited may within one year after such
43 order was entered, petition the court which issued such order for
44 remission as provided in subdivision seven of section thirteen hundred
45 eleven of the civil practice law and rules.

46 § 480.25 Disposal of property.

47 1. All property which is ordered criminally forfeited under this arti-
48 cle following the commencement of a criminal action, or which is relin-
49 quished to the prosecutor as part of any stipulation or understanding by
50 the convicted person in connection with the disposition of a felony
51 controlled substance offense, shall be disposed of in accordance with
52 the provisions of section thirteen hundred forty-nine-a of the civil
53 practice law and rules. Written notice of the disposition of any such
54 property, including the terms thereof, shall be given to the state crime
55 victims board, the state division of criminal justice services and to
56 the state office of alcoholism and substance abuse services.

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1 2. If any property ordered criminally forfeited under this article, as
2 a result of any act or omission of the convicted person:

3 (a) cannot be located upon the exercise of due diligence; or

4 (b) has been transferred or sold to, or deposited with, a third party;
5 or

6 (c) has been placed beyond the jurisdiction of the court; or

7 (d) has been substantially diminished in value; or

8 (e) has been commingled with other property which cannot be divided
9 without difficulty;

10 the court may, upon application of the prosecutor, direct the forfeiture
11 of any other property of the convicted person up to the value of proper-
12 ty initially ordered forfeited.

13 3. The imposition of an order of criminal forfeiture pursuant to
14 section 480.20 of this article shall preclude the imposition of any
15 other such order or judgment of forfeiture based upon the same criminal
16 conduct.

17 § 23. Subdivision 6 of section 220.50 of the criminal procedure law is
18 REPEALED.

19 § 24. Paragraph (a) of subdivision 1 of section 200.95 of the criminal
20 procedure law, as amended by chapter 655 of the laws of 1990, is amended
21 to read as follows:

22 (a) "Bill of particulars" is a written statement by the prosecutor
23 specifying, as required by this section, items of factual information
24 which are not recited in the indictment and which pertain to the offense
25 charged and including the substance of each defendant's conduct encom-
26 passed by the charge which the people intend to prove at trial on their
27 direct case, and whether the people intend to prove that the defendant
28 acted as principal or accomplice or both[~~, and items of factual informa-~~
29 ~~tion which are not recited in a special forfeiture information or~~
30 ~~prosecutor's forfeiture information containing one or more forfeiture~~
31 ~~counts and which pertain to the substance of each defendant's conduct~~
32 ~~giving rise to the forfeiture claim, the approximate value of property~~
33 ~~for which forfeiture is sought, the nature and extent of the defendant's~~
34 ~~interest in such property, and the extent of the defendant's gain, if~~
35 ~~any, from the offense charged]. However, the prosecutor shall not be~~
36 required to include in the bill of particulars matters of evidence
37 relating to how the people intend to prove the elements of the offense
38 charged or how the people intend to prove any item of factual informa-
39 tion included in the bill of particulars.

40 § 25. Subdivision 6 of section 837-a of the executive law is REPEALED.

41 § 26. Subdivision 7 of section 3388 of the public health law, as
42 amended by chapter 655 of the laws of 1990, is amended to read as
43 follows:

44 7. The district attorney, the superintendent of state police or the
45 police department having custody of the seized property, after such
46 judicial determination of forfeiture, shall, at their discretion, either
47 retain such seized property for the official use of their office, divi-
48 sion or department, or, by a public notice of at least five days, sell
49 such forfeited property at public sale[~~, provided, however, that where~~
50 ~~such property is subject to a perfected lien such property may not be~~
51 ~~retained for their official use unless all such liens on the property to~~
52 ~~be retained have been or will be satisfied]. The net proceeds of any~~
53 such sale, after deduction of the lawful expenses incurred, shall be
54 paid into the general fund of the county wherein the seizure was made
55 except that the net proceeds of the sale of property seized in the
56 cities of New York, Yonkers, Rochester and Buffalo shall be paid into

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1 the respective general funds of such cities, and of the sale of property
2 seized by the state police into the general fund of the state.
3 § 27. This act shall take effect on the first of November next
4 succeeding the date on which it shall have become a law.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A5894

SPONSOR: Ignizio (MS)

TITLE OF BILL: An act to amend the civil practice law and rules, the penal law, the criminal procedure law, and the public health law, in relation to asset forfeiture for certain crimes and to repeal subdivisions 4-a and 4-b of section 1310, subparagraph (v) of paragraph (b) of subdivision 3 of section 1311, paragraphs (d) and (e) of subdivision 3, subdivisions 3-a and 4-a, paragraph (c) of subdivision 11 and subdivision 12 of section 1311, section 1311-a, subdivision 4 of section 1312, and section 1349 of the civil practice law and rules, article 480 of the penal law, subdivision 6 of section 220.50 of the criminal procedure law, and subdivision 6 of section 837-a of the executive law relating thereto

PURPOSE OR GENERAL IDEA OF BILL:

Provides for criminal forfeitures of property in felony controlled substance and marijuana cases.

SUMMARY OF SPECIFIC PROVISIONS:

This bill authorizes the forfeiture of property used in felony controlled substance and marijuana cases. Amends section 1, subdivision 4 of section 1310 of the civil practice law and rules, in cases involving the commission of felonies defined in article two hundred twenty or section 221.30 or 221.55 to mean any property whose use contributes directly and materially to the commission of a felony. Subdivisions 4-a and 4-b of section 1310, paragraphs (d) and (e) of subdivision 3 of section 1311, subdivision 3-a of section 1311, subdivision 4-a of section 1311, paragraph (c) of subdivision 11 of section 1311, subdivision 12 of section 1311 of the civil practice law and rules are repealed.

JUSTIFICATION:

The use and abuse of controlled substances is a growing problem in New York State. This bill attempts to reduce offenses concerning controlled substances by increasing the penalties for their sale and use. Confiscating the property whose use contributes directly and materially to the commission of the felony, those persons will be less likely to become repeat offenders as the means through which they committed said felonies have been forfeited to the state.

PRIOR LEGISLATIVE HISTORY:

1999-2000: A5821

RETRIEVE BILL

2001-2002: A4039

2003-2004: A4578

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

This act shall take effect on the first of November next succeeding the date on which it shall have become law.
