

CHAPTER 371

AN ACT concerning asset forfeiture proceedings and amending N.J.S.2C:64-3, N.J.S.2C:64-4, and N.J.S.2C:64-5.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.2C:64-3 is amended to read as follows:

Forfeiture procedures.

2C:64-3. Forfeiture procedures. a. Whenever any property other than prima facie contraband is subject to forfeiture under this chapter, the forfeiture may be enforced by a civil action, instituted within 90 days of the seizure and commenced by the State and against the property sought to be forfeited.

b. The complaint shall be verified on oath or affirmation. It shall describe with reasonable particularity the property that is the subject matter of the action and shall contain allegations setting forth the reason or reasons the article sought to be or which has been seized is contraband.

c. Notice of the action shall be given to any person known to have a property interest in the article. In addition, the notice requirements of the Rules of Court for an in rem action shall be followed.

d. The claimant of the property that is the subject of an action under this chapter shall file and serve the claim in the form of an answer in accordance with the Rules of Court. The answer shall be verified on oath or affirmation, and shall state the interest in the property by virtue of which the claimant demands its restitution and the right to defend the action. If the claim is made in behalf of the person entitled to possession by an agent, bailee, or attorney, it shall state that the claimant is duly authorized to make the claim.

e. If no answer is filed and served within the applicable time, the property seized shall be disposed of pursuant to N.J.S.2C:64-6.

f. If an answer is filed, the Superior court shall set the matter down for a summary hearing as soon as practicable. Upon application of the State or claimant, if the claimant is a defendant in a criminal proceeding arising out of the seizure, the Superior court may stay proceedings in the forfeiture action until the criminal proceedings have been concluded by an entry of final judgment.

g. Any person with a property interest in the seized property, other than a defendant who is being prosecuted in connection with the seizure of property may secure its release pending the forfeiture action unless the article is dangerous to the public health, safety, and welfare or the State can demonstrate that the property will probably be lost or destroyed if released or employed in subsequent criminal activity. Any person with a property interest other than a defendant who is being prosecuted, prior to the release of that property shall post a bond with the court in the amount of the market value of the seized item.

h. The prosecuting agency with approval of the entity funding the agency, or any other entity, with the approval of the prosecuting agency, where the other entity's law enforcement agency participated in the surveillance, investigation or arrest which is the subject of the forfeiture action, may apply to the Superior Court for an order permitting use of seized property, pending the disposition of the forfeiture action provided, however, that the property shall be used solely for law enforcement purposes. Approval shall be liberally granted but shall be conditioned upon the filing of a bond in an amount equal to the market value of the item seized or a written guarantee of payment for property which may be subject to return,

replacement or compensation as to reasonable value in the event that the forfeiture is refused or only partial extinguishment of property rights is ordered by the court.

i. If the property is of the nature that substantial difficulty may result in preserving its value during the pendency of the forfeiture action, the Superior court may appoint a trustee to protect the interests of all parties involved in the action.

j. Evidence of a conviction of a criminal offense in which seized property was either used or provided an integral part of the State's proofs in the prosecution shall be considered in the forfeiture proceeding as creating a rebuttable presumption that the property was utilized in furtherance of an unlawful activity.

k. Seized property other than prima facie contraband shall not be subject to forfeiture pursuant to the provisions of this chapter if there are no criminal charges arising out of or related to the property seizure or a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability unless:

(1) there is no known owner of the seized property and no person credibly asserts an ownership interest in the seized property; or

(2) the State establishes by a preponderance of the evidence, in the case of seized property in the form of cash, negotiable instruments, or other cash equivalents, that the property has a value of greater than \$1,000, or in the case of seized property other than cash, negotiable instruments, or other cash equivalent, that the property has a value of greater than \$10,000.

l. For the purposes of this section, a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability if, with respect to all criminal charges involving the seized property, the prosecution resulted in:

(1) an acquittal;

(2) a dismissal with prejudice, excluding a dismissal with prejudice in which the defendant was admitted into a program of supervisory treatment pursuant to the provisions of N.J.S.2C:43-12 through N.J.S.2C:43-22 or any other law or functionally equivalent program of another state or the United States pursuant to which an offense was dismissed or a felony conviction avoided or eliminated from the record when the defendant successfully completed the program; or

(3) a finding of not guilty by reason of insanity.

2. N.J.S.2C:64-4 is amended to read as follows:

Seized property; evidentiary use.

a. Nothing in this chapter shall impair the right of the State to retain evidence pending a criminal prosecution.

b. The fact that a prosecution involving seized property other than prima facie contraband terminates with no criminal culpability shall preclude forfeiture proceedings against the property pursuant to this chapter if the State fails to establish by a preponderance of evidence that the seized property has a value of more than \$1,000 in the case of property in the form of cash, negotiable instruments, or other cash equivalents or more than \$10,000 in the case of property other than cash, negotiable instruments, or other cash equivalent; otherwise, the fact that a prosecution involving seized property other than prima facie contraband terminates with no criminal culpability shall not preclude forfeiture proceedings against the property pursuant to this chapter.

c. For the purposes of this section, a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability if, with respect to all criminal charges involving the seized property, the prosecution resulted in:

(1) an acquittal;

(2) a dismissal with prejudice, excluding a dismissal with prejudice in which the defendant was admitted into a program of supervisory treatment pursuant to the provisions of N.J.S.2C:43-12 through N.J.S.2C:43-22 or any other law or functionally equivalent program of another state or the United States pursuant to which an offense was dismissed or a felony conviction avoided or eliminated from the record when the defendant successfully completed the program; or

(3) a finding of not guilty by reason of insanity.

3. N.J.S.2C:64-5 is amended to read as follows:

Seized property; rights of owners and others holding interests.

Seized Property; Rights of Owners and Others Holding Interests.

a. Forfeiture pursuant to this chapter shall not affect the rights of any lessor in the ordinary course of business or any person holding a perfected security interest in property subject to seizure unless it shall appear that the person had knowledge of or consented to any act or omission upon which the right of forfeiture is based. These rights are only to the extent of interest in the seized property and at the option of the entity funding the prosecuting agency involved may be extinguished by appropriate payment.

b. Property seized under this chapter shall not be subject to forfeiture if:

(1) the prosecutor fails to establish by a preponderance of the evidence that the owner of the property was involved in or aware of the unlawful activity: or

(2) the prosecutor establishes by a preponderance of the evidence that the owner of the property was involved in or aware of the unlawful activity, but the owner establishes by a preponderance of the evidence that the owner had done all that could reasonably be expected to prevent the proscribed use of the property by an agent. A person who uses or possesses property with the consent or knowledge of the owner is deemed to be the agent of the owner for purposes of this chapter.

c. Property seized under this chapter shall not be subject to forfeiture if the property is seized while entrusted to a person by the owner or the agent of the owner when the property has been entrusted to the person for repairs, restoration or other services to be performed on the property, and that person, without the owner's knowledge or consent, uses the property for unlawful purposes.

4. This act shall take effect immediately.

Approved January 20, 2020.