



Ohio Revised Code

Section 2981.04 Charging instrument - forfeiture order - amendment.

Effective: July 1, 2007

Legislation: House Bill 241 - 126th General Assembly

(A)(1) Property described in division (A) of section 2981.02 of the Revised Code may be forfeited under this section only if the complaint, indictment, or information charging the offense or municipal violation, or the complaint charging the delinquent act, contains a specification of the type described in section 2941.1417 of the Revised Code that sets forth all of the following to the extent it is reasonably known at the time of the filing:

- (a) The nature and extent of the alleged offender's or delinquent child's interest in the property;
- (b) A description of the property;
- (c) If the property is alleged to be an instrumentality, the alleged use or intended use of the property in the commission or facilitation of the offense.

(2) If any property is not reasonably foreseen to be subject to forfeiture at the time of filing the indictment, information, or complaint, the trier of fact still may return a verdict of forfeiture concerning that property in the hearing described in division (B) of this section if the prosecutor, upon discovering the property to be subject to forfeiture, gave prompt notice of this fact to the alleged offender or delinquent child under Criminal Rule 7(E) or Juvenile Rule 10(B).

(3) For good cause shown, the court may consider issues of the guilt of the alleged offender or the delinquency of the alleged delinquent child separate from whether property specified as subject to forfeiture should be forfeited.

(B) If a person pleads guilty to or is convicted of an offense or is adjudicated a delinquent child for committing a delinquent act and the complaint, indictment, or information charging the offense or act contains a specification covering property subject to forfeiture under section 2981.02 of the Revised Code, the trier of fact shall determine whether the person's property shall be forfeited. If the state or political subdivision proves by a preponderance of the evidence that the property is in whole



or part subject to forfeiture under section 2981.02 of the Revised Code, after a proportionality review under section 2981.09 of the Revised Code when relevant, the trier of fact shall return a verdict of forfeiture that specifically describes the extent of the property subject to forfeiture. If the trier of fact is a jury, on the offender's or delinquent child's motion, the court shall make the determination of whether the property shall be forfeited.

(C) If the court enters a verdict of forfeiture under this section, the court imposing sentence or disposition, in addition to any other sentence authorized by Chapter 2929. of the Revised Code or any disposition authorized by Chapter 2152. of the Revised Code, shall order that the offender or delinquent child forfeit to the state or political subdivision the offender's or delinquent child's interest in the property. The property vests with the state or political subdivision subject to the claims of third parties. The court may issue any additional order to affect the forfeiture, including, but not limited to, an order under section 2981.06 of the Revised Code.

(D) After the entry of a forfeiture order under this section, the prosecutor shall attempt to identify any person with an interest in the property subject to forfeiture by searching appropriate public records and making reasonably diligent inquiries. The prosecutor shall give notice of the forfeiture that remains subject to the claims of third parties and proposed disposal of the forfeited property to any person known to have an interest in the property. The prosecutor also shall publish notice of the forfeiture that remains subject to the claims of third parties and proposed disposal of the forfeited property once each week for two consecutive weeks in a newspaper of general circulation in the county in which the property was seized.

(E)(1) Any person, other than the offender or delinquent child whose conviction or plea of guilty or delinquency adjudication is the basis of the forfeiture order, who asserts a legal interest in the property that is the subject of the order may petition the court that issued the order for a hearing under division (E)(3) of this section to adjudicate the validity of the person's alleged interest in the property. All of the following apply to the petition:

(a) It shall be filed within thirty days after the final publication of notice or the person's receipt of notice under division (D) of this section.

(b) It shall be signed by the petitioner under the penalties for falsification specified in section



2921.13 of the Revised Code.

(c) It shall describe the nature and extent of the petitioner's interest in the property, the time and circumstances of the petitioner's acquisition of that interest, any additional facts supporting the petitioner's claim, and the relief sought.

(2)(a) In lieu of filing a petition as described in division (E)(1) of this section, a person, other than the offender or delinquent child whose conviction or plea of guilty or delinquency adjudication is the basis of the forfeiture order, may file an affidavit as described in this division to establish the validity of the alleged right, title, or interest in the property that is the subject of the forfeiture order if the person is a secured party or other lienholder of record that asserts a legal interest in the property, including, but not limited to, a mortgage, security interest, or other type of lien. The affidavit shall contain averments that the secured party or other lienholder acquired its alleged right, title, or interest in the property in the regular course of its business, for a specified valuable consideration, without actual knowledge of any facts pertaining to the offense that was the basis of the forfeiture order, in good faith, and without the intent to prevent or otherwise impede the state or political subdivision from seizing or obtaining a forfeiture of the property. The person shall file the affidavit within thirty days after the earlier of the final publication of notice or the receipt of notice under division (D) of this section.

(b) Except as otherwise provided in this section, the affidavit shall constitute prima-facie evidence of the validity of the affiant's alleged interest in the property.

(c) Unless the prosecutor files a motion challenging the affidavit within ten days after its filing and unless the prosecutor establishes by a preponderance of the evidence at the hearing held under division (E)(3) of this section that the affiant does not possess the alleged interest in the property or that the affiant had actual knowledge of facts pertaining to the offense or delinquent act that was the basis of the forfeiture order, the affidavit shall constitute conclusive evidence of the validity of the affiant's interest in the property.

(d) Any subsequent purchaser or other transferee of property pursuant to forfeiture under this section shall take the property subject to the continued validity of the interest of the affiant.



(3) Upon receipt of a petition or affidavit filed under division (E)(1) or (2) of this section, the court shall hold a hearing to determine the validity of the petitioner's interest in the property that is the subject of the forfeiture order or, if the affidavit was challenged, to determine the validity of the affiant's interest in the property. To the extent practicable and consistent with the interests of justice, the court shall hold the hearing within thirty days after the filing of the petition or within thirty days after the prosecutor files the motion challenging the affidavit. The court may consolidate the hearing with a hearing on any other petition or affidavit that is filed by a person other than the offender or delinquent child whose conviction or plea of guilty or delinquency adjudication is the basis of the forfeiture order and that relates to the property that is the subject of the forfeiture order.

At the hearing, the petitioner or affiant may testify, present evidence and witnesses on the petitioner's or affiant's behalf, and cross-examine witnesses for the state or political subdivision. In regards to a petition, the state or political subdivision may present evidence and witnesses in rebuttal and in defense of its claim to the property and may cross-examine witnesses for the petitioner. In regards to an affidavit, the prosecutor may present evidence and witnesses and cross-examine witnesses for the affiant.

In addition to the evidence and testimony presented at the hearing, the court also shall consider the relevant portions of the record in the criminal or delinquent child case that resulted in the forfeiture order.

(F)(1) If the hearing involves a petition, the court shall amend its forfeiture order if it determines at the hearing held pursuant to division (E)(3) of this section that the petitioner has established either of the following by a preponderance of the evidence:

(a) The petitioner has a legal interest in the property that is subject to the forfeiture order that renders the order completely or partially invalid because the legal interest in the property was vested in the petitioner, rather than the offender or delinquent child whose conviction or plea of guilty or delinquency adjudication is the basis of the order, or was superior to any interest of that offender or delinquent child, at the time of the commission of the offense or delinquent act that is the basis of the order.

(b) The petitioner is a bona fide purchaser for value of the interest in the property that is subject to



the forfeiture order and was, at the time of the purchase, reasonably without cause to believe that it was subject to forfeiture.

(2) The court also shall amend its forfeiture order to reflect any interest of a secured party or other lienholder of record in the property subject to forfeiture who prevails at a hearing on the petition or affidavit filed pursuant to division (E)(1) or (2) of this section.

(G) If the court disposes of all petitions or affidavits timely filed under this section in favor of the state or political subdivision, the state or political subdivision shall have clear title to the property that is the subject of a forfeiture order issued under this section, but only to the extent that other parties' lawful interests in the property are not infringed. To the extent that the state or political subdivision has clear title to the property, the state or political subdivision may warrant good title to any subsequent purchaser or other transferee.