

2C:64-1 to 2C:64-8

LEGISLATIVE HISTORY CHECKLIST

WJA 2C:64-1 to 2C:64-8; 24:21-35 (Gambling--Forfeiture of money seized in)

LAWS OF 1979 CHAPTER 344

Bill No. S3410

Sponsor(s) Musto and others

Date Introduced Aug. 6, 1979

Committee: Assembly -----

Senate County and Municipal Government

Amended during passage Yes

x\* Amendments during passage denoted by asterisks. Senate Committee substitute (OCR) enacted.

Date of Passage: Assembly Jan. 5, 1980

Senate Dec. 3, 1979

Date of approval Jan. 23, 1980

Following statements are attached if available:

Sponsor statement	Yes	<del>xix</del>
Committee Statement: Assembly	<del>Yes</del>	No
Senate	Yes	<del>xix</del>
Fiscal Note	<del>Yes</del>	No
Veto message	<del>Yes</del>	No
Message on signing	<del>Yes</del>	No

Following were printed.

Reports	Yes	<del>xix</del>
Hearings	<del>Yes</del>	No

Report cited in Senate Committee statement:

974.90 N.J. Organized Crime Task Force.  
C929 Report---Trenton, 1978.  
1978b

9/3/78

## SENATE, No. 3410

## STATE OF NEW JERSEY

ADOPTED NOVEMBER 13, 1979

By Senators MUSTO, MERLINO and RODGERS

AN ACT concerning contraband and other property subject to forfeiture, and amending sections 2C:64-1, 2C:64-2, 2C:64-3, 2C:64-4, 2C:64-5, 2C:64-6, 2C:64-7 and 2C:64-8 of the New Jersey Statutes and P. L. 1970, c. 226.

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

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

2 2C:64-1. Property Subject to Forfeiture. a. The defendant's  
3 interest in the following shall be subject to forfeiture and no prop-  
4 erty right shall exist in them:

5 (1) Controlled dangerous substances, firearms which are unlaw-  
6 fully possessed, carried, acquired or used, illegally possessed gam-  
7 bling devices and untaxed cigarettes. These shall be designated  
8 prima facie contraband.

9 (2) All property which has been, or is intended to be, utilized  
10 in furtherance of an unlawful activity, including, but not limited  
11 to, conveyances intended to facilitate the perpetration of illegal  
12 acts, or buildings or premises maintained for the purpose of com-  
13 mitting offenses against the State.

14 (3) Property which has become or is intended to become an  
15 integral part of illegal activity, including, but not limited to, money  
16 which is earmarked for use as financing for an illegal gambling  
17 enterprise.

18 (4) Proceeds of illegal activities, including, but not limited to,  
19 property or money obtained as a result of the sale of prima facie  
20 contraband as defined by subsection a. (1), proceeds of illegal  
21 gambling, prostitution, bribery and extortion. **[**Provided that an  
22 individual, who can demonstrate that said money or property was  
23 his, may recover such money or property.**]** *Any person who did*  
24 *not willingly participate or aid in the commission of an offense*  
25 *may recover such money or property if he can demonstrate that*  
26 *the money or property belongs to him and that he was neither a*

**EXPLANATION—**Matter enclosed in bold-faced brackets **[**thus**]** in the above bill is not enacted and is intended to be omitted in the law.

27 *participant in nor did he assist in or have knowledge of the com-*  
 28 *mission of the offense.*

29 b. Any article subject to forfeiture under this chapter may be  
 30 seized by the State or any law enforcement officer upon process  
 31 issued by any court of competent jurisdiction over the property,  
 32 except that seizure without such process may be made when **[:]** *not*  
 33 *inconsistent with the Constitution of this State or the United States,*  
 34 *and when*

35 (1) The article is prima facie contraband**[:]**; **\*[and]\* \*or\***,

36 (2) The property subject to seizure poses an immediate threat  
 37 to the public health, safety or welfare.

38 **[(3) It is otherwise not inconsistent with the Constitution of**  
 39 **this State or the United States.]**

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

2 2C:64-2. Forfeiture Procedures; Prima Facie Contraband. **[a.**  
 3 Upon seizure of prima facie contraband, the seizing officer shall  
 4 immediately file an application with a court of competent jurisdic-  
 5 tion seeking a judicial declaration that the property has been for-  
 6 feited to the State. Such a determination may be made in an ex  
 7 parte proceeding.

8 b. The court shall declare all prima facie contraband forfeited  
 9 either to the State, or to the county, whichever was the seizing  
 10 authority, unless it shall have reason to believe that the seized  
 11 property was possessed or utilized in a legal manner or that the  
 12 owner of the article had no knowledge of its illegal possession or  
 13 use.

14 c. If the court finds that the seized property may have been  
 15 possessed or utilized in a legal manner or that the owner of the  
 16 property had no knowledge of its unlawful possession or use, the  
 17 seizing officer shall be required to serve notice that the property  
 18 had been seized, in accordance with the provisions of 2C:64-3 c.

19 d. Any person with an interest in the seized property shall file  
 20 his claim within 30 days. The claim shall set forth the reason or  
 21 reasons why the claimant has a legitimate interest in the property.

22 e. The claimant shall be required to prove, by a preponderance  
 23 of the evidence, that the property claimed was possessed or utilized  
 24 by him in a lawful manner, or that he had no knowledge of its  
 25 illegal possession or use.

26 f. If no action is commenced within 30 days of the service of  
 27 notice, the property seized shall be disposed of in accordance with  
 28 the provisions of 2C:64-6. **]** *Prima facie contraband shall be re-*  
 29 *tained by the State until disposition of the criminal proceeding*  
 30 *arising out of the seizure. If the criminal proceeding results in a*

31 *conviction for illegal possession, use or sale of the prima facie*  
 32 *contraband, the item shall be forfeited pursuant to 2C:64-4c. If the*  
 33 *prosecution for possession, use or sale of prima facie contraband*  
 34 *terminates without a conviction, the State may institute forfeiture*  
 35 *proceedings pursuant to 2C:64-3.*

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

2 2C:64-3. Forfeiture Procedures【; Other Property】. a. When-  
 3 ever any property other than prima facie contraband is subject  
 4 to forfeiture under this chapter, such forfeiture may be enforced  
 5 by a civil action, *instituted within 30 days of the seizure and com-*  
 6 *menced by the seizing authority in the name of the State of New*  
 7 *Jersey and against the property sought to be forfeited.*

8 b. The complaint shall be verified on oath or affirmation. It shall  
 9 describe with reasonable particularity the property that is the sub-  
 10 ject matter of the action and shall contain allegations setting forth  
 11 the reason or reasons the article sought to be or which has been  
 12 seized is contraband. *In addition, upon the filing of an indictment*  
 13 *a notice of intention to forfeit the property shall be filed and it*  
 14 *shall set forth the property being forfeited and the names of all*  
 15 *persons who may have an interest in the property.*

16 c. Notice of the action shall be given to any person known to  
 17 have a property interest in the article. In addition, the notice re-  
 18 quirements of the Rules of Court for an in rem action shall be  
 19 followed.

20 d. The claimant of the property that is the subject of an action  
 21 under this chapter shall file *and serve* his claim 【within 10 days  
 22 after the service of notice or within such additional time as may be  
 23 allowed by the court, and shall serve his answer within 20 days  
 24 after the filing of the claim】 *in the form of an answer in accordance*  
 25 *with the rules of court.* The 【claim】 *answer* shall be verified on  
 26 oath or affirmation, and shall state the interest in the property by  
 27 virtue of which the claimant demands its restitution and the right  
 28 to defend the action. If the claim is made in behalf of the person  
 29 entitled to possession by an agent, bailee or attorney, it shall state  
 30 that he is duly authorized to make the claim.

31 e. 【If no claim is filed in accordance with the provisions of sub-  
 32 section d. the property seized shall be declared forfeited to the  
 33 State.】 *If no answer is filed and served within the applicable time,*  
 34 *the property seized shall be disposed of pursuant to N. J. S.*  
 35 *2C:64-6.*

36 f. *If an answer is filed, the Superior or county district court shall*  
 37 *set the matter down for a summary hearing as soon as practicable.*  
 38 *Upon application of the State or claimant, if he be a defendant in a*

39 *criminal proceeding arising out of the seizure, the Superior or*  
 40 *county district court may stay proceedings in the forfeiture action*  
 41 *until the criminal proceedings have been concluded by an entry of*  
 42 *final judgment.*

43 **[f.]** *g. Any person with a property interest in the seized prop-*  
 44 *erty, other than a defendant who is being prosecuted in connection*  
 45 *with the seizure of property may secure its release pending the*  
 46 *forfeiture action unless the article is dangerous to the public health,*  
 47 *safety and welfare or the [seizing officer] State can demonstrate*  
 48 *that the property will probably be lost or destroyed if released*  
 49 *or employed in subsequent criminal activity. Any person with*  
 50 *such a property interest other than a defendant who is being*  
 51 *prosecuted, prior to the release of said property shall post a bond*  
 52 *with the court in the amount of the market value of the seized item.*

53 *h. The prosecuting agency with approval of the entity funding*  
 54 *such agency may apply to the Superior or county district court for*  
 55 *an order permitting use of seized property, pending the disposition*  
 56 *of the forfeiture action. Approval shall be liberally granted but*  
 57 *shall be conditioned upon the filing of a bond in an amount equal to*  
 58 *the market value of the item seized or a written guarantee of pay-*  
 59 *ment for property which may be subject to return, replacement or*  
 60 *compensation as to reasonable value in the event that the forfeiture*  
 61 *is refused or only partial extinguishment of property rights is*  
 62 *ordered by the court.*

63 *i. If the property is of such nature that substantial difficulty may*  
 64 *result in preserving its value during the pendency of the forfeiture*  
 65 *action, the Superior or county district court may appoint a trustee*  
 66 *to protect the interests of all parties involved in the action.*

67 *j. Evidence of a conviction of a criminal offense in which seized*  
 68 *property was either used or provided an integral part of the State's*  
 69 *proofs in the prosecution shall be considered in the forfeiture pro-*  
 70 *ceeding as creating a rebuttable presumption that the property*  
 71 *was utilized in furtherance of an unlawful activity.*

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

2 2C:64-4. Seized Property; Evidentiary Use. a. Nothing in this  
 3 chapter shall impair the right of the State to retain evidence  
 4 pending a criminal prosecution.

5 b. The fact that a prosecution for possession, use or sale of  
 6 **[prima facie contraband]** *seized property, whether or not prima*  
 7 *facie contraband, terminates without a conviction does not pre-*  
 8 *clude forfeiture proceedings against the property.*

9 c. If an individual is convicted of the illegal possession, use or  
10 sale of prima facie contraband, the article which is the subject  
11 matter of the conviction shall be forfeited upon the entry of judg-  
12 ment, subject to the provisions of 2C:64-5 of this chapter.

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

2 2C:64-5. Seized Property; Rights of Owners and Others Holding  
3 Interests. No property subject to seizure under this chapter shall  
4 be forfeited unless it shall appear that the owner of the property  
5 or his agent was a consenting party or privy to its unlawful pos-  
6 session, use or sale, nor shall any forfeiture under this chapter  
7 affect the rights of any person holding an interest in property  
8 subject to seizure **[under this chapter]** unless it shall appear that  
9 such person had knowledge of or consented to any act or omission  
10 upon which the right of forfeiture is based. *Such rights are only*  
11 *to the extent of interest in the seized property and at the option of*  
12 *the entity funding the prosecuting agency involved may be extin-*  
13 *guished by appropriate payment.*

1 6. N. J. S. 2C:64-6 is amended to read as follows:

2 2C:64-6. Disposal of Forfeited Property. Property which has  
3 been forfeited shall be destroyed if it can serve no lawful purpose  
4 or it presents a danger to the public health, safety or welfare.  
5 **[Otherwise, articles forfeited pursuant to this chapter may be sold**  
6 **and the proceeds retained by the State or they may be placed at the**  
7 **disposal of any public agency or charitable institution which shall**  
8 **demonstrate a need for the property. All money seized pursuant to**  
9 **this chapter shall become the property of the State.\*]** *All other*  
10 *forfeited property or any proceeds resulting from the forfeiture*  
11 *and all money seized pursuant to this chapter shall become the*  
12 *property of the entity funding the prosecuting agency involved.*

1 7. N. J. S. 2C:64-7 is amended to read as follows:

2 2C:64-7. Vesting of Title in Forfeited Property. Title to prop-  
3 erty forfeited under this chapter shall **[be considered to]** have  
4 vested in the **[State]** *entity funding the prosecuting agency in-*  
5 *volved* at the time the **[article]** *item* was utilized illegally or, in  
6 the case of proceeds, when received.

1 8. N. J. S. 2C:64-8 is amended to read as follows:

2 2C:64-8. Seized Property; Statute of Limitations on Claims.  
3 Any person who could not with due diligence have discovered that  
4 property which he owns was seized as contraband may file a claim  
5 for its return *or the value thereof at the time of seizure* within 3  
6 years of the seizure if he can demonstrate that he did not consent  
7 to, **[or have]** *and had no* knowledge of its unlawful use. If the  
8 property has been sold, the claimant receives a claim against  
9 proceeds.

1 9. Section 35 of P. L. 1970, c. 226 (C. 24:21-35) is amended to  
2 read as follows:

3 35. Nuisances [and forfeitures. a]. The maintenance of any  
4 building, conveyance or premises whatever which is restored to by  
5 persons for the unlawful manufacture, distribution, dispensing,  
6 administration or use of controlled dangerous substances shall con-  
7 stitute the keeping of a common nuisance.

8 [b. The following shall be subject to forfeiture and no property  
9 right shall exist in them:

10 (1) All controlled dangerous substances which have been manu-  
11 factured, distributed, dispensed or acquired in violation of the  
12 provisions of this act;

13 (2) All raw materials, products and equipment of any kind which  
14 are used, or intended for use, in manufacturing, compounding,  
15 processing, delivering, importing, or exporting any controlled  
16 dangerous substance in violation of the provisions of this act;

17 (3) All property which is used or intended for use, as a container  
18 for property described in subsections b. (1) and (2) above;

19 (4) All conveyances including aircraft, vehicles, or vessels, which  
20 are used or intended for use, to transport, or in any manner to  
21 facilitate the transportation, for the purpose of sale or receipt of  
22 property described in b. (1) or (2) above, except that:

23 (a) No conveyance used by any person as a common carrier  
24 in the transaction of business as a common carrier shall be  
25 forfeited under the provisions of this chapter unless it shall  
26 appear that the owner or other person in charge of such con-  
27 veyance was a consenting party or privy to a violation of this  
28 act; and

29 (b) No conveyance shall be forfeited under the provisions  
30 of this section by reason of any act or omission, established by  
31 the owner thereof to have been committed or omitted without  
32 the knowledge or consent of such owner, and by any person  
33 other than such owner while such conveyance was unlawfully  
34 in the possession of a person other than the owner in violation  
35 of the criminal laws of the United States, or of any state; and

36 (c) The forfeiture of any conveyance encumbered by a bona  
37 fide security interest shall remain subject to the interest of  
38 the secured party if he neither had knowledge of nor consented  
39 to the act or omission; and

40 (5) All books, records, and research, including formulas, micro-  
41 film, tapes, and data which are used, or intended for use, in viola-  
42 tion of this act.

43 c. Any property subject to forfeiture under this act may be  
44 seized by the State or any person charged with enforcement of this  
45 act, upon process issued by any court of competent jurisdiction  
46 over the property except that seizure without such process may be  
47 made when:

48 (1) It is not inconsistent with the Constitution of this State and  
49 the United States;

50 (2) The property subject to seizure has been the subject of a  
51 prior judgment in favor of the State in a criminal injunction or  
52 forfeiture proceeding under this act;

53 (3) The commissioner or any other person charged with enforce-  
54 ment of this act has probable cause to believe that the property is  
55 directly or indirectly dangerous to health or safety; or

56 (4) The commissioner or any other person charged with enforce-  
57 ment of this act has probable cause to believe that the property has  
58 been used or intended to be used in violation of this act.

59 In the event of seizure pursuant to paragraphs (3) and (4) of  
60 this subsection, proceedings under subsection d. of this section shall  
61 be instituted promptly.

62 d. Property taken or detained under this section shall not be  
63 repleivable, but shall be deemed to be in the custody of the State  
64 or political subdivision, acting as agent for the State, whichever  
65 may have seized said property, and subject only to the orders and  
66 decrees of the court or the official having jurisdiction thereof.  
67 Whenever property is seized under the provisions of this act, the  
68 State may:

69 (1) Place the property under seal;

70 (2) Remove the property to a place designated by it; or

71 (3) Require that the political subdivision or State take custody  
72 of the property and remove it to an appropriate location for dis-  
73 position in accordance with law.

74 e. Whenever any property, including motor vehicles and other  
75 conveyances, is forfeited under this act, it shall be forthwith de-  
76 posited in the custody of the Director of the Division of Purchase  
77 and Property, State Department of the Treasury, whereupon dis-  
78 position of such property shall be carried out in the following  
79 manner:

80 (1) Any State agency or bureau, or any county or municipality,  
81 having a demonstrated need for specific property or classes of prop-  
82 erty, subject to forfeiture under this act, shall make application for  
83 such property to the Director of the Division of Budget and Ac-  
84 counting, State Department of the Treasury, and shall clearly set  
85 forth in the application his or its need for the property and the  
86 use to which such property will be put; and



87 (2) The Director of the Division of Budget and Accounting shall  
88 review all applications for such property submitted pursuant to  
89 subsection e. (1) of this section, and shall make a determination  
90 based on necessity and advisability, as to final disposition, and shall  
91 so notify the applicant and the Director of Purchase and Property,  
92 subject to such rules and regulations as may be required.

93 (3) In the event no application or disposition is made under (1)  
94 or (2) above the Director of Purchase and Property shall dispose  
95 of such property in the manner authorized by law for disposal of  
96 surplus property.

97 f. All substances listed in Schedule I that are possessed, trans-  
98 ferred, sold, or offered for sale in violation of the provisions of this  
99 act shall be deemed contraband and seized and summarily forfeited  
100 to the State of New Jersey. Similarly, all substances listed in  
101 Schedule I, the owners of which are unknown, shall be deemed  
102 contraband and summarily forfeited to the State of New Jersey.

103 (1) All species of plants from which controlled substances in  
104 Schedules I and II may be derived which have been planted or  
105 cultivated in violation of this act, or of which the owners or culti-  
106 vators are unknown, or which are wild growths, may be seized and  
107 summarily forfeited to the State of New Jersey.

108 (2) The failure upon demand by the commissioner, or his duly  
109 authorized agent, of the person in occupancy or in control of land  
110 or premises upon which such species of plants are growing or being  
111 stored, to produce an appropriate registration, or proof that he is  
112 the holder thereof, shall constitute authority for the seizure and  
113 forfeiture.

114 g. Whenever any property is subject to forfeiture under this act,  
115 such forfeiture may be enforced by a civil action, commenced by  
116 the seizing authority in the name of the State of New Jersey and  
117 against the property sought to be forfeited.

118 (1) Complaint. The complaint shall be verified on oath or affirma-  
119 tion. It shall describe with reasonable particularity the property  
120 that is the subject matter of the action and the place of seizure and  
121 shall contain such allegations as may be required by this act.

122 (2) Process. Upon the filing of the complaint, the clerk shall  
123 forthwith issue a warrant for the seizure of the property that is the  
124 subject matter of the action and deliver it to the sheriff for service.

125 (3) Notice. The notice requirements of the Rules of Court for  
126 an in rem action shall be followed.

127 (4) Claim and answer. The claimant of property that is the sub-  
128 ject of an action under this section shall file his claim within 10 days

129 after the execution of process, or within such additional time as  
130 may be allowed by the court, and shall serve his answer within 20  
131 days after the filing of the claim. The claim shall be verified on  
132 oath or affirmation, and shall state the interest in the property by  
133 virtue of which the claimant demands its restitution and the right  
134 to defend the action. If the claim is made on behalf of the person  
135 entitled to possession by an agent, bailee or attorney, it shall state  
136 that he is duly authorized to make the claim. At the time of answer-  
137 ing the claimant shall also serve answers to any interrogatories  
138 served with the complaint.】

1     10. This act shall take effect immediately.

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90 Laws of 1962, c. 113 (C. 2A:170-77.8 to C. 2A:170-77.11 both  
 91 inclusive);  
 92 Laws of 1964, c. 230 (C. 2A:170-77.12 to C. 2A:170-77.14 both  
 93 inclusive);  
 94 Laws of 1966, c. 314 (C. 2A:170-77.15);  
 95 *Laws of 1977, c. 215 (C. 2A:170-77.16 to C. 2A:170-77.18 both*  
 96 *inclusive);*  
 97 Laws of 1966, c. 114 (C. 2A:170-90.1 and C. 2A:170-90.2) **[.]**;  
 98 *Laws of 1975, c. 182 (C. 2A:170-90.3 to C. 2A:170-90.5 both*  
 99 *inclusive);*  
 100 *Laws of 1955, c. 254 (C. 2A:171-1.1 and C. 2A:171-1.2);*  
 101 *Laws of 1959, c. 119 (C. 2A:171-5.8 to C. 2A:171-5.18 both in-*  
 102 *clusive).*

1 3. Chapter 64 (Forfeiture) of Title 2C of the New Jersey Statutes  
 2 (New Jersey Code of Criminal Justice) is repealed.

1 4. This act shall take effect September 1, 1979.

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#### STATEMENT

The purpose of the bill is to restore the prior law relative to forfeiture of money seized in connection with illegal gambling which will be repealed when the new penal code takes effect. It repeals the provisions of the penal code concerning forfeitures of property unlawfully possessed or involved in unlawful activities and deletes the repeal of the prior law.

The provisions of the penal code relative to forfeitures would substantially change the law in this area. It would deprive counties of forfeited moneys from illegal gambling activities. It would also make the procedure for effectuating forfeiture more difficult.

This bill would leave the law relative to forfeiture as it is. This will provide time for further consideration of this subject by the parties affected, and for development of a revision of the law relative to forfeitures which is more satisfactory to all interested parties.

S. 3410 (1979)

SENATE COUNTY AND MUNICIPAL  
GOVERNMENT COMMITTEE

STATEMENT TO  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 3410**

**STATE OF NEW JERSEY**

DATED: NOVEMBER 13, 1979

The Senate Committee Substitute amends in several respects Chapter 64 of the "New Jersey Code of Criminal Justice" which establishes the procedure to be followed in the forfeiture of contraband and other property used in the furtherance of criminal activity. Alternative procedures are established that would permit moving ahead with the forfeiture action or staying the hearing pending disposition of the underlying criminal charge. The amendments bring the procedures in line with the Rules of Court pertaining to civil actions. Rather than having all forfeited property vest in the State, this bill provides a more equitable distribution to the entity funding the prosecuting agency involved. Thus, forfeited property or any proceeds resulting from forfeiture will become the property of the State, a county or a municipality depending upon which entity has funded the particular prosecuting agency involved. The bill also repeals that subsection of the "New Jersey Controlled Dangerous Substances Act" which provided for forfeiture under said act. The provisions of the Code of Criminal Justice will now control.

The committee substitute was proposed by the sponsor. In addition, the provisions of this bill were recommended in the Report of the Task Force on Organized Crime which was a joint effort by the County Prosecutors' Association and the Division of Criminal Justice in the Department of Law and Public Safety.