



Ohio Revised Code

Section 2981.03 Provisional title to property subject to forfeiture.

Effective: July 1, 2007

Legislation: House Bill 241 - 126th General Assembly

(A)(1) The state or political subdivision acquires provisional title to property subject to forfeiture under this chapter upon a person's commission of an offense giving rise to forfeiture, subject to third party claims and a final adjudication under section 2981.04 or 2981.05 of the Revised Code. Provisional title authorizes the state or political subdivision to seize and hold the property, and to act to protect the property, under this section before any proceeding under this chapter. Title to the property vests with the state or political subdivision when the trier of fact renders a final forfeiture verdict or order under section 2981.04 or 2981.05 of the Revised Code, but that title is subject to third party claims adjudicated under those sections.

(2) A law enforcement officer may seize property that the officer has probable cause to believe is property subject to forfeiture. If a law enforcement officer seizes property that is titled or registered under law, the officer or the law enforcement agency that employs the officer shall notify the property owner of the seizure. The agency shall give notice to the property owner at the owner's last known address as soon as practical after the seizure and may give the notice by certified mail or orally by any means, including telephone. If the officer or agency is unable to provide the notice required by this division despite reasonable, good faith efforts, those efforts constitute fulfillment of the notice requirement.

(3) In a civil forfeiture case under this chapter in which the state or political subdivision seeks to seize real property, the property owner may request a hearing before the seizure, and in the hearing the state or political subdivision shall show probable cause that the real property is subject to forfeiture.

(4) A person aggrieved by an alleged unlawful seizure of property may seek relief from the seizure by filing a motion in the appropriate court that shows the person's interest in the property, states why the seizure was unlawful, and requests the property's return. If the motion is filed before an indictment, information, or a complaint seeking forfeiture of the property is filed, the court shall promptly schedule a hearing on the motion, and at the hearing the person shall demonstrate by a



preponderance of the evidence that the seizure was unlawful and that the person is entitled to the property. If the motion is filed by a defendant after an indictment, information, or a complaint seeking forfeiture of the property has been filed, the court shall treat the motion as a motion to suppress evidence. If the motion is filed by a third party after an indictment, information, or complaint seeking forfeiture of the property has been filed, the court shall treat the motion as a petition of a person with an alleged interest in the subject property, pursuant to divisions (E) and (F) of section 2981.04 of the Revised Code.

(5)(a) In any action under section 2981.04 or 2981.05 of the Revised Code, if a property owner or third party claims lawful interest in the subject property alleged to be proceeds, the state or political subdivision has provisional title and a right to hold property if it proves both of the following by a preponderance of the evidence:

(i) The interest in the property was acquired by the alleged offender or delinquent child during the commission of the offense or within a reasonable time after that period.

(ii) There is no likely source for the interest in the property other than as proceeds derived from or acquired through the commission of the offense.

(b) The alleged offender or delinquent child shall have the burden to prove the amount of any direct costs lawfully incurred.

(B)(1) Upon application by the prosecutor who prosecutes or brings an action that allows forfeiture under this chapter, the court in which the action is prosecuted or filed may issue an order taking any reasonable action necessary to preserve the reachability of the property including, but not limited to, a restraining order or injunction, an order requiring execution of a satisfactory bond or insurance policy, an order to inspect, photograph, or inventory the property, an order placing a lien or lis pendens against the property, or an order appointing a receiver or trustee. The court may issue an order of this nature at any of the following times:

(a) Upon the filing of a complaint, indictment, or information alleging the property to be subject to forfeiture under section 2981.02 of the Revised Code;



(b) Prior to the filing of a complaint, an indictment, or information alleging the property to be subject to forfeiture under section 2981.02 of the Revised Code, if, after giving notice to all persons known to have a interest in the property and giving those persons an opportunity to be heard, the court determines that all of the following apply:

(i) There is a substantial probability the state or political subdivision will prevail on the forfeiture issue.

(ii) There is a substantial probability that failure to enter the order will result in the property being destroyed, being removed from the court's jurisdiction, or otherwise being made unavailable for forfeiture.

(iii) The need to preserve the availability of the property outweighs the hardship on the person against whom the order is to be entered.

(c) As a condition of releasing the property based on a determination of substantial hardship under division (D) of this section.

(2) Except as otherwise provided in division (B)(3) of this section, the court shall make an order under division (B)(1)(b) of this section effective for not more than ninety days, but the court may extend the order if the prosecutor demonstrates that the need to preserve the reachability of the property still exists or for other good cause shown and shall extend the order if an indictment, information, or a complaint is filed alleging that the property is subject to forfeiture.

(3) A court may issue an order under division (B)(1) of this section without giving notice or a hearing to a person known to have a interest in the property if the prosecutor demonstrates that the property is subject to forfeiture and that giving notice and a hearing will jeopardize the availability of the property for forfeiture. Notwithstanding the ninety-day limit described in division (B)(2) of this section, the court shall make an order under division (B)(3) of this section effective for not more than ten days, but the court may extend the order if the prosecutor again demonstrates that the property is subject to forfeiture and that a hearing will jeopardize the availability of the property or for other good cause shown or if the person subject to the order consents to a longer period. If a party requests a hearing on the order, the court shall hold the hearing at the earliest possible time



before the order expires.

(4) At any hearing under division (B) of this section, the court may receive and consider evidence and information that is inadmissible under the Rules of Evidence. The court shall cause the hearing to be recorded and shall cause a transcript to be made. If property is to be seized as a result of the hearing, the recording and transcript shall not be a public record for purposes of section 149.43 of the Revised Code until the property is seized. This section does not authorize making available for inspection any confidential law enforcement investigatory record or trial preparation record, as defined in section 149.43 of the Revised Code.

(C) Except as otherwise provided in division (E) of this section, any replevin, conversion, or other civil action brought concerning property subject to a criminal or civil forfeiture action under this chapter shall be stayed until the forfeiture action is resolved.

(D)(1) A person with an interest in property that is subject to forfeiture and that is seized under this chapter may seek conditional release of the property by requesting possession from the person with custody of the property. The request shall demonstrate how the person meets the requirements specified in divisions (D)(3)(a), (b), and (c) of this section.

(2) If the person with custody of the property does not release the property within fifteen days after a person makes a request under division (D)(1) of this section, or within seven days after a person makes the request if the property was seized as a mobile instrumentality or if the request is to copy records, the person who made the request may file a petition for conditional release with the court in which the complaint, indictment, or information is filed or, if no complaint, indictment, or information is filed, the court that issued the seizure warrant for the property. The petition shall demonstrate how the person meets the requirements specified in divisions (D)(3)(a), (b), and (c) of this section and the steps the person has taken to secure release of the property from the official. Unless extended for good cause shown, the petition shall be filed either within thirty days of the filing of a complaint, an indictment, or information in the forfeiture action or, if no complaint, indictment, or information is filed, within thirty days of the issuance of the seizure warrant of the property.

If the court finds that the person meets the criteria specified in divisions (D)(3)(a), (b), and (c) of



this section, the court shall order the property's conditional return to the person pending completion of the forfeiture action. In issuing this order, the court shall notify the person of the prohibitions against interfering with or diminishing property in section 2981.07 of the Revised Code and may make any order necessary to ensure that the value of the property is maintained.

If personal, business, or governmental records are seized, including those contained in computer files, a person may petition the court for a prompt opportunity to copy, at the person's expense, any records that are not contraband. The court may grant the petition if the person demonstrates how the person meets the requirements specified in divisions (D)(3)(a) and (c) of this section. The court shall order a competent person to supervise the copying.

(3) Except when there is probable cause that the property is contraband, property that must be held for a reasonable time as evidence related to an offense, or property that is likely to be used in additional offenses or except when the state or political subdivision meets the burden imposed under division (A)(5) of this section regarding alleged proceeds, a court may conditionally release property subject to forfeiture to a person who demonstrates all of the following:

(a) A possessory interest in the property;

(b) Sufficient ties to the community to provide assurance that the property will be available at the time of trial;

(c) That failure to conditionally release the property will cause a substantial hardship to the claimant.

(4) In determining whether a substantial hardship exists, the court shall weigh the claimant's likely hardship from the state's or political subdivision's continued possession of the property against the risk that the property will be destroyed, damaged, lost, concealed, or transferred if returned to the claimant. The court shall consider in favor of release the possibility that withholding the property would prevent a legitimate business from functioning, prevent the claimant's or an innocent person from maintaining employment, or leave the claimant or an innocent person homeless.

(5) If the state or political subdivision shows that the claimant's petition is frivolous, the court shall



deny the petition. Otherwise, the state or political subdivision may respond to the petition by submitting evidence ex parte to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending trial.

(6) The court shall decide on the petition not more than thirty days after it is filed. If the property seized is alleged to be a mobile instrumentality, the court shall decide on the petition as soon as practicable within the thirty-day period. If personal, business, or governmental records were seized and a person files a petition to copy the records, the court shall decide on the petition as soon as practicable. In any case, the court may extend the time for deciding on the petition by consent of the parties or for good cause shown.

(E) Nothing in this section precludes a financial institution that has or purports to have a security interest in or lien on property described in section 2981.02 of the Revised Code from filing an action in connection with the property, prior to its disposition under this chapter, to obtain possession of the property in order to foreclose or otherwise enforce the security interest or lien.

If a financial institution commences a civil action or takes any other appropriate legal action to sell the property prior to its seizure or prior to its disposition under this chapter, if the person who is responsible for conducting the sale has actual knowledge of the commencement of a forfeiture action under either section 2981.04 or 2981.05 of the Revised Code, and if the property is sold, then the person shall dispose of the proceeds of the sale in the following order:

(1) First, to the payment of the costs of the sale, excluding any associated attorney's fees, and to the payment of the costs incurred by law enforcement agencies and financial institutions in connection with the seizure, storage, and maintenance of, and provision of security for, the property;

(2) Second, in the order of priority of the security interests and liens, to the payment of valid security interests and liens pertaining to the property that, at the time at which the state or political subdivision gains provisional title, are held by known secured parties and lienholders;

(3) Third, to the court that has or would have jurisdiction in a case or proceeding under section 2981.04 or section 2981.05 of the Revised Code for disposition under this chapter.



(F) A prosecutor may file a forfeiture action under section 2981.04 or 2981.05 of the Revised Code, or both. If property is seized pursuant to this section and a criminal forfeiture has not begun under section 2981.04 of the Revised Code, the prosecutor of the county in which the seizure occurred shall commence a civil action to forfeit that property under section 2981.05 of the Revised Code.

If the property seized includes property alleged to be a mobile instrumentality or includes personal, business, or governmental records, the civil forfeiture action shall be brought within thirty days of seizure. Otherwise, the action shall be brought within sixty days of seizure. In either case, the period within which the action shall be brought may be extended by agreement of the parties or by the court for good cause shown.

A prosecutor may file an appropriate charging instrument under section 2981.04 of the Revised Code to seek a criminal forfeiture after a civil forfeiture action begins. Filing a charging instrument for an offense that is also the basis of a civil forfeiture action shall stay the civil action.

A civil action to obtain civil forfeiture may be commenced as described in section 2981.05 of the Revised Code regardless of whether the offender or delinquent child has pleaded guilty to, been convicted of, or been adjudicated a delinquent child for the act that is the basis of the order.

(G) The prosecutor shall maintain an accurate record of each item disposed of under section 2981.04 or 2981.05 of the Revised Code. The record shall not identify or enable the identification of the officer who seized the property. The record is a public record open for inspection under section 149.43 of the Revised Code.