§ 3388. Seizure and forfeiture of vehicles, vessels or aircraft unlawfully used to conceal, convey or transport controlled substances. 1. Except as authorized in this article, it shall be unlawful to:

(a) transport, carry, or convey any controlled substance in, upon, or by means of any vehicle, vessel or aircraft; or

(b) conceal or possess any controlled substance in or upon any vehicle, vessel or aircraft, or upon the person of anyone in or upon any vehicle, vessel or aircraft; or

(c) use any vehicle, vessel or aircraft to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, or sale of any controlled substance.

2. Any vehicle, vessel or aircraft which has been or is being used in violation of subdivision one, except a vehicle, vessel or aircraft used by any person as a common carrier in the transaction of business as such common carrier shall be seized by any peace officer, acting pursuant to his special duties, or police officer, and forfeited as hereinafter in this section provided. A vehicle, vessel or aircraft is not subject to forfeiture unless used in connection with acts or conduct which would constitute a felony under article 220 of the penal law.

3. The seized property shall be delivered by the officer having made the seizure to the custody of the district attorney of the county wherein the seizure was made, except that in the cities of New York, Yonkers, Rochester and Buffalo the seized property shall be delivered to the custody of the police department of such cities and such property seized by a member or members of the state police shall be delivered to the custody of the superintendent of state police, together with a report of all the facts and circumstances of the seizure.

4. It shall be the duty of the attorney general in seizures by members of the state police, otherwise it shall be the duty of the district attorney of the county wherein the seizure is made, if elsewhere than in the cities of New York, Yonkers, Rochester or Buffalo, and where the seizure is made in such cities it shall be the duty of the corporation counsel of the city, to inquire into the facts of the seizure so reported to him and if it appears probable that a forfeiture has been

incurred by reason of a violation of this section, for the determination of which the institution of proceedings in the supreme court is necessary, to cause the proper proceedings to be commenced and prosecuted, not later than twenty days after written demand by a person claiming ownership thereof, to declare such forfeiture, unless, upon inquiry and examination, such district attorney, attorney general or corporation counsel decides that such proceedings cannot probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case, the district attorney, the attorney general or corporation counsel shall cause such seized property to be returned to the owner thereof. The procedure for proceedings instituted under this section shall conform as much as possible to the procedure for attachment.

5. Notice of the institution of the forfeiture proceeding shall be served either:

(a) personally on the owners of the seized property; or

(b) by registered mail to the owners' last known address and by publication of the notice once a week for two successive weeks in a newspaper published or circulated in the county wherein the seizure was made.

6. Forfeiture shall not be adjudged where the owners establish by preponderance of the evidence that:

(a) the use of such seized property, in violation of subdivision one of this section, was not intentional on the part of any owner; or

(b) said seized property was used in violation of subdivision one of this section by any person other than an owner thereof, while such seized property was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States, or of any state.

7. The district attorney, the superintendent of state police or the police department having custody of the seized property, after such judicial determination of forfeiture, shall, at their discretion, either retain such seized property for the official use of their office, division or department, or, by a public notice of at least five days,

sell such forfeited property at public sale; provided, however, that where such property is subject to a perfected lien such property may not be retained for their official use unless all such liens on the property to be retained have been or will be satisfied. The net proceeds of any such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the county wherein the seizure was made except that the net proceeds of the sale of property seized in the cities of New York, Yonkers, Rochester and Buffalo shall be paid into the respective general funds of such cities, and of the sale of property seized by the state police into the general fund of the state.

8. Whenever any person interested in any property which is seized and declared forfeited under the provisions of this section files with a justice of the supreme court a petition for the recovery of such forfeited property, the justice of the supreme court may restore said forfeited property upon such terms and conditions as he deems reasonable and just, if the petitioner establishes either of the affirmative defenses set forth in subdivision six of this section and that the petitioner was without personal or actual knowledge of the forfeiture proceeding. If the petition be filed after the sale of the forfeited property, any judgment in favor of the petitioner shall be limited to the net proceeds of such sale, after deduction of the lawful expenses and costs incurred by the district attorney, police department or corporation counsel.

9. No suit or action under this section for wrongful seizure shall be instituted unless such suit or action is commenced within two years after the time when the property was seized.