§ 480.10 Procedure.

1. After the grand jury votes to file an indictment charging a person with a felony offense as that term is defined in section 480.00 of this article, it may subsequently receive evidence that property is subject to forfeiture under this article. If such evidence is legally sufficient and provides reasonable cause to believe that such property is subject to forfeiture under this article, the grand jury shall file together with the indictment a special forfeiture information specifying the property for which forfeiture is sought and containing a plain and concise factual statement which sets forth the basis for the forfeiture. Alternatively, where the defendant has waived indictment and has consented to be prosecuted for a felony offense by superior court information pursuant to article one hundred ninety-five of the criminal procedure law, the prosecutor may, in addition to the superior court information, file a special forfeiture information specifying the property for which the forfeiture is sought and containing a plain and concise factual statement which sets forth the basis for the forfeiture.

2. At any time before entry of a plea of guilty to an indictment or commencement of a trial thereof, the prosecutor may file a superseding special forfeiture information in the same court in accordance with the provisions of subdivision one of this section. Upon the filing of such a superseding forfeiture information the court must, upon application of the defendant, order any adjournment of the proceedings which may, by reason of such superseding special forfeiture information, be necessary to accord the defendant adequate opportunity to prepare his defense of the forfeiture action.

3. A motion to inspect and reduce made pursuant to section 210.20 of the criminal procedure law may seek modification of a special forfeiture information dismissing a claim with respect to any property interest therein where the court finds the evidence before the grand jury was legally insufficient to support a claim against such interest.

4. The prosecutor shall promptly file a copy of the special forfeiture information, including the terms thereof, with the state division of

criminal justice services and with the local agency responsible for criminal justice planning. Failure to file such information shall not be grounds for any relief under this chapter. The prosecutor shall also report such demographic data as required by the state division of criminal justice services when filing a copy of the special forfeiture information with the state division of criminal justice services.

5. In addition to information required to be disclosed pursuant to article two hundred forty-five of the criminal procedure law, when forfeiture is sought pursuant to this article, and following the defendant's arraignment on the special forfeiture information, the court shall order discovery of any information not otherwise disclosed which is material and reasonably necessary for preparation by the defendant with respect to a forfeiture proceeding brought pursuant to this article. Such material shall include those portions of the grand jury minutes and such other information which pertain solely to the special forfeiture information and shall not include information which pertains to the criminal charges. Upon application of the prosecutor, the court may issue a protective order pursuant to section 245.70 of the criminal procedure law with respect to any information required to be disclosed pursuant to this subdivision.

6. (a) Trial of forfeiture counts by jury or by the court. Evidence which relates solely to the issue of forfeiture shall not be presented during the trial on the underlying felony offense or specified felony offense, and the defendant shall not be required to present such evidence prior to the verdict on such offense. A defendant who does not present evidence in his defense with respect to the trial of the underlying offense is not precluded on account thereof from presenting evidence during the trial of the forfeiture count or counts.

(b) Trial of forfeiture counts by the jury. After returning a verdict of guilty of a felony offense or specified felony offense, or where the defendant has pled guilty to a felony offense or a specified felony offense and has not waived a jury trial of the forfeiture count or counts pursuant to article three hundred twenty of the criminal procedure law, the jury shall be given the forfeiture information and shall hear any additional evidence which is relevant and legally

admissible upon the forfeiture count or counts. After hearing such evidence, the jury shall then deliberate upon the forfeiture count or counts, and based upon all the evidence admitted in connection with the indictment or superior court information and the forfeiture information, may, if satisfied by proof beyond a reasonable doubt that the property, or a portion thereof, is subject to forfeiture pursuant to this article, return a verdict directing that such property, or portion thereof, is subject to forfeiture.

(c) Trial of forfeiture counts by the court. Where a defendant has waived a jury trial of the forfeiture count or counts pursuant to article three hundred twenty of the criminal procedure law, the court shall hear all evidence upon the forfeiture information and may, if satisfied by proof beyond a reasonable doubt that the property, or a portion thereof, is subject to forfeiture under this article, render a verdict determining that such property, or a portion thereof, is subject to forfeiture under this article.

(d) After the verdict of forfeiture, the court shall hear arguments and may receive additional evidence upon a motion of the defendant that the verdict of forfeiture (i) is against the weight of the evidence, or (ii) is, with respect to a forfeiture pursuant to this article, disproportionate to the defendant's gain from the offense, or the defendant's interest in the property, or the defendant's participation in the conduct upon which the forfeiture is based. Upon such a finding, the court may in the interest of justice set aside, modify, limit or otherwise condition the verdict of forfeiture.

7. A final judgment or order of forfeiture issued pursuant to this article shall authorize the prosecutor to seize all property directed to be forfeited under this article upon such terms and conditions as the court deems proper. If a property right is not exercisable or transferable for value by the prosecutor, it shall expire and shall not revert to the convicted person.

8. Where the forfeited property consists of real property, the court may at any time prior to a verdict of forfeiture, enter an order pursuant to subdivision four-a of section thirteen hundred eleven of the civil practice law and rules.

9. No person shall forfeit any right, title, or interest in any property under this article who has not been convicted of a felony offense or specified felony offense, as the case may be. Any person claiming an interest in property subject to forfeiture may institute a special proceeding to determine that claim, before or after the trial, pursuant to section thirteen hundred twenty-seven of the civil practice law and rules; provided, however, that if such special proceeding is initiated before trial on the forfeiture count or counts, it may, upon written motion of the prosecutor, and in the court's discretion, be postponed by the court until completion of the trial. In addition, any person claiming an interest in property subject to forfeiture may petition for remission as provided for in subdivision seven of section thirteen hundred eleven of the civil practice law and rules.

10. Testimony of the defendant or evidence derived therefrom introduced in the trial of the forfeiture count may not be used by the prosecution in any post-trial motion proceedings, appeals, or retrials relating to the defendant's criminal liability for the underlying criminal offense unless the defendant has previously referred to such evidence in such post-trial proceeding, appeal, or retrial relating to the underlying offense and the evidence is presented by the prosecutor in response thereto. Upon vacatur or reversal on appeal of a judgment of conviction upon which a verdict of forfeiture is based, any verdict of forfeiture which is based upon such conviction shall also be vacated or reversed.