§ 480.35 Rebuttable presumption.

1. In a criminal forfeiture proceeding commenced pursuant to this article, the following rebuttable presumption shall apply: all currency or negotiable instruments payable to the bearer shall be presumed to be the proceeds of a felony offense when such currency or negotiable instruments are (i) found in close proximity to a controlled substance unlawfully possessed by the defendant in an amount sufficient to constitute a violation of section 220.18 or 220.21 of the penal law, or (ii) found in close proximity to any quantity of a controlled substance or marihuana unlawfully possessed by such defendant in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, package, distribute or otherwise prepare for sale such controlled substance or marihuana.

2. The presumption established by this section shall be rebutted by credible and reliable evidence which tends to show that such currency or negotiable instruments payable to the bearer is not the proceeds of a felony offense. In an action tried before a jury, the jury shall be so instructed. Any sworn testimony of a defendant offered to rebut the presumption and any other evidence which is obtained as a result of such testimony, shall be inadmissible in any subsequent proceeding relating to the forfeiture action, or in any other civil or criminal action, except in a prosecution for a violation of article two hundred ten of this chapter. In an action tried before a jury, at the commencement of the trial, or at such other time as the court reasonably directs, the prosecutor shall provide notice to the court and to the defendant of its intent to request that the court charge such presumption.