

State of California

PENAL CODE

Section 598.1

598.1. (a) The prosecuting agency in a criminal proceeding in which the defendant has been charged with the commission of any of the crimes listed in subdivision (a) of Section 597.5 or subdivision (b) of Section 597b may, in conjunction with the criminal proceeding, file a petition for forfeiture as provided in subdivision (c). If the prosecuting agency has filed a petition for forfeiture pursuant to subdivision (c) and the defendant is convicted of any of the crimes described in subdivision (a) of Section 597.5 or subdivision (b) of Section 597b, the assets listed in subdivision (b) shall be subject to forfeiture upon proof of the elements of subdivision (b) and in accordance with this section.

(b) (1) Any property interest, whether tangible or intangible, that was acquired through the commission of any of the crimes listed in subdivision (a) of Section 597.5 or subdivision (b) of Section 597b shall be subject to forfeiture, including both personal and real property, profits, proceeds, and the instrumentalities acquired, accumulated, or used by cockfighting or dogfighting participants, organizers, transporters of animals and equipment, breeders and trainers of fighting birds or fighting dogs, and persons who steal or illegally obtain dogs or other animals for fighting, including bait and sparring animals.

(2) Notwithstanding paragraph (1), the following property shall not be subject to forfeiture under this section:

(A) Property solely owned by a bona fide purchaser for value, who was without knowledge that the property was intended to be used for a purpose which would subject it to forfeiture under this section, or is subject to forfeiture under this section.

(B) Property used as a family residence and owned by two or more inhabitants, one of whom had no knowledge of its unlawful use.

(c) (1) If the prosecuting agency proceeds under subdivision (a), that agency shall, in conjunction with the criminal proceeding, file a petition for forfeiture with the superior court of the county in which the defendant has been charged with the commission of any of the crimes listed in subdivision (a) of Section 597.5 or subdivision (b) of Section 597b, that shall allege that the defendant has committed those crimes and the property is forfeitable pursuant to subdivision (a).

(2) The prosecuting agency shall make service of process of a notice regarding that petition upon every individual who may have a property interest in the alleged proceeds, and that notice shall state that any interested party may file a verified claim with the superior court stating the amount of the party's claimed interest and an affirmation or denial of the prosecuting agency's allegation.

(3) If the notices cannot be served by registered mail or personal delivery, the notices shall be published for at least three consecutive weeks in a newspaper of general circulation in the county where the property is located.

(4) If the property alleged to be subject to forfeiture is real property, the prosecuting agency shall, at the time of filing the petition for forfeiture, record a lis pendens in each county in which real property alleged to be subject to forfeiture is located.

(5) The judgment of forfeiture shall not affect the interest of any third party in real property that was acquired prior to the recording of the lis pendens.

(6) All notices shall set forth the time within which a claim of interest in the property seized is required to be filed pursuant to this section.

(d) Any person claiming an interest in the property or proceeds seized may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of the actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General, or the district or city attorney, whichever is the prosecuting agency of the underlying crime.

(e) (1) If, at the end of the time set forth in subdivision (d), an interested person, other than the defendant, has not filed a claim, the court, upon a motion, shall declare that the person has defaulted upon his or her alleged interest, and that interest shall be subject to forfeiture upon proof of the elements of subdivision (b).

(2) The defendant may admit or deny that the property is subject to forfeiture pursuant to this section. If the defendant fails to admit or deny, or fails to file a claim of interest in the property or proceeds, the court shall enter a response of denial on behalf of the defendant.

(f) (1) The forfeiture proceeding shall be set for hearing in the superior court in which the underlying criminal offense will be tried.

(2) If the defendant is found guilty of the underlying offense, the issue of forfeiture shall be promptly tried, either before the same jury or before a new jury in the discretion of the court, unless waived by the consent of all parties.

(g) At the forfeiture hearing, the prosecuting agency shall have the burden of establishing beyond a reasonable doubt that the defendant was engaged in any of the crimes described in subdivision (a) of Section 597.5 or subdivision (b) of Section 597b and that the property comes within the provisions of subdivision (b).

(h) Concurrent with, or subsequent to, the filing of the petition, the prosecuting agency may move the superior court for the following pendente lite orders to preserve the status quo of the property alleged in the petition of forfeiture:

(1) An injunction to restrain all interested parties and enjoin them from transferring, encumbering, hypothecating, or otherwise disposing of that property.

(2) Appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that the property may be maintained and preserved.

(i) (1) No preliminary injunction may be granted or receiver appointed without notice to the interested parties and a hearing to determine that the order is necessary to preserve the property, pending the outcome of the criminal proceedings, and that

there is probable cause to believe that the property alleged in the forfeiture proceedings are proceeds or property interests forfeitable under subdivision (a). However, a temporary restraining order may issue pending that hearing pursuant to the provisions of Section 527 of the Code of Civil Procedure.

(2) Notwithstanding any other provision of law, the court, when granting or issuing these orders may order a surety bond or undertaking to preserve the property interests of the interested parties. The court shall, in making its orders, seek to protect the interest of those who may be involved in the same enterprise as the defendant, but who are not involved in any of the crimes described in subdivision (a) of Section 597.5 or subdivision (b) of Section 597b.

(j) If the trier of fact at the forfeiture hearing finds that the alleged property or proceeds are forfeitable pursuant to subdivision (a), and that the defendant was convicted of a crime listed in subdivision (a) of Section 597.5 or subdivision (b) of Section 597b, the court shall declare that property or proceeds forfeited to the state or local governmental entity, subject to distribution as provided in subdivision (l).

(k) (1) If the trier of fact at the forfeiture hearing finds that the alleged property is forfeitable pursuant to subdivision (a) but does not find that a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract acquired that interest with actual knowledge that the property was to be used for a purpose for which forfeiture is permitted, and the amount due to that person is less than the appraised value of the property, that person may pay to the state or the local governmental entity that initiated the forfeiture proceeding the amount of the registered owner's equity, which shall be deemed to be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon that payment, the state or local governmental entity shall relinquish all claims to the property.

(2) If the holder of the interest elects not to make that payment to the state or local governmental entity, the property shall be deemed forfeited to the state or local governmental entity.

(3) The appraised value shall be determined as of the date judgment is entered either by agreement between the legal owner and the governmental entity involved, or if they cannot agree, then by a court-appointed appraiser for the county in which the action is brought.

(4) If the amount due to a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract is less than the value of the property and the person elects not to make payment to the governmental entity, the property shall be sold at public auction by the Department of General Services or by the local governmental entity which shall provide notice of that sale by one publication in a newspaper published and circulated in the city, community, or locality where the sale is to take place. Proceeds of the sale shall be distributed pursuant to subdivision (l).

(l) Notwithstanding that no response or claim has been filed pursuant to subdivision (d), in all cases where property is forfeited pursuant to this section and is sold by the Department of General Services or a local governmental entity, the property forfeited

or the proceeds of the sale shall be distributed by the state or local governmental entity, as follows:

(1) To the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage, or security interest, if any, up to the amount of his or her interest in the property or proceeds, when the court declaring the forfeiture orders a distribution to that person. The court shall endeavor to discover all those lienholders and protect their interests and may, at its discretion, order the proceeds placed in escrow for a period not to exceed 60 additional days to ensure that all valid claims are received and processed.

(2) To the Department of General Services or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized under this section.

(3) To local nonprofit organizations exempt under Section 501(c)(3) of the Internal Revenue Code, the primary activities of which include ongoing rescue, foster, or other care of animals that are the victims of cockfighting or dogfighting, and to law enforcement entities, including multiagency task forces, that actively investigate and prosecute animal fighting crimes.

(4) Any remaining funds not fully distributed to organizations or entities pursuant to paragraph (3) shall be deposited in an escrow account or restricted fund to be distributed as soon as possible in accordance with paragraph (3).

(Amended by Stats. 2011, Ch. 562, Sec. 3. (SB 425) Effective January 1, 2012.)