

SENATE No. 2671

The Commonwealth of Massachusetts

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In the One Hundred and Ninety-Second General Court
(2021-2022)
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SENATE, February 10, 2022.

The committee on the Judiciary, to whom was referred the petitions (accompanied by bill, Senate, No. 965) of Cynthia Stone Creem and Elizabeth A. Malia for legislation relative to criminal forfeiture; (accompanied by bill, House, No. 1452) of James Arciero and others relative to asset forfeiture of property; (accompanied by bill, House, No. 1724) of David Henry Argosky LeBoeuf, David Allen Robertson and Elizabeth A. Malia establishing a right to counsel in civil asset forfeiture cases; (accompanied by bill, House, No. 1757) of Jay D. Livingstone, Elizabeth A. Malia and Tami L. Gouveia relative to human trafficking forfeiture reform; and (accompanied by bill, House, No. 4279) (subject to Joint Rule 12) of Carlos González, David M. Rogers and Russell E. Holmes relative to civil asset forfeiture, reports the accompanying bill (Senate, No. 2671).

For the committee,
James B. Eldridge

SENATE No. 2671

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**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to forfeiture reform.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 47 of chapter 94C of the General Laws, as appearing in the 2020
2 Official Edition, is amended by striking out subsection (d) and inserting in place thereof the
3 following subsection:-

4 (d) A district attorney or the attorney general may petition the superior court in the name
5 of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance,
6 real property, moneys or other things of value exceeding \$250 subject to forfeiture under the
7 provisions of subparagraphs (3), (5), and (7) of subsection (a). Such petition shall be filed in the
8 court having jurisdiction over said conveyance, real property, monies or other things of value or
9 having final jurisdiction over any related criminal proceeding brought under any provision of this
10 chapter. In all such suits where the property is claimed by any person, other than the
11 commonwealth, the commonwealth shall have the burden of proving to the court by a
12 preponderance of the evidence that the property is forfeitable. The owner of said conveyance or
13 real property, or other person claiming thereunder shall have the burden of proof as to all
14 exceptions set forth in subsections (c) and (i).

15 The court shall order the commonwealth to give notice by certified or registered mail to
16 the owner of said conveyance, real property, moneys or other things of value and to such other
17 persons as appear to have an interest therein, and the court shall promptly, but not less than two
18 weeks after notice, hold a hearing on the petition. A criminal defendant represented by public
19 counsel in any criminal trial related to the violation of this chapter shall be entitled to continued
20 public counsel representation at the hearing on the petition to order a forfeiture. A property
21 owner who is not a criminal defendant shall be entitled to public counsel to the extent that
22 individual satisfies the requirements for indigency under section 2 of chapter 211D. Upon the
23 motion of the owner of said conveyance, real property, moneys or other things of value, the court
24 shall continue the hearing on the petition pending the outcome of any criminal trial related to the
25 violation of this chapter. At such hearing the court shall hear evidence and make conclusions of
26 law, and shall thereupon issue a final order, from which the parties shall have a right of appeal.
27 In all such suits where a final order results in a forfeiture, said final order shall provide for
28 disposition of said conveyance, real property, moneys or any other thing of value by the
29 commonwealth or any subdivision thereof in any manner not prohibited by law, including sale at
30 public auction or by competitive bidding. The proceeds of any such sale may be used to pay the
31 reasonable expenses of storage, maintenance of custody, advertising, and notice, and the balance
32 thereof shall be distributed as further provided in this section.

33 The final order of the court shall provide that said moneys and the proceeds of any such
34 sale shall be deposited in the general fund. Forfeited property received from another jurisdiction,
35 including the federal government, shall be transferred to the office of the state treasurer, sold by
36 the treasurer or designee, and deposited in the general fund. Proceeds from the sale of forfeited

37 property received from another jurisdiction, including, but not limited to, the federal government,
38 shall be transferred to the office of the state treasurer and deposited in the general fund.

39 SECTION 2. Said section 47 of said chapter 94C, as so appearing, is amended by striking
40 out in subsection (f)(2), in lines 197-203, the following words:- The office of seized property
41 management may receive initial funding from the special law enforcement trust funds of the
42 attorney general and each district attorney established pursuant to subsection (d) and shall
43 subsequently be funded by a portion of the proceeds of each sale of such managed property to
44 the extent provided as payment of reasonable expenses in subsection (d).

45 SECTION 3. Said section 47 of said chapter 94C, as so appearing, is amended by striking
46 out subsection (k) and inserting in place thereof the following subsection:-

47 (k) The attorney general, each district attorney and each police department shall file an
48 annual report with the executive office of administration and finance and the house and senate
49 committees on ways and means detailing all assets, monies and proceeds from assets seized
50 pursuant to this section. The report shall provide itemized accounting for all assets, monies and
51 proceeds from assets within the following asset categories: cash, personal property, conveyances
52 and real property, including any property disposed of by the office of seized property
53 management. The report shall be filed not later than January 31 for the preceding calendar year
54 and shall be a public record.