

**SENATE . . . . . No. 797**

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The Commonwealth of Massachusetts

PRESENTED BY:

***Sal N. DiDomenico***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act regarding asset forfeiture.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>

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By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 797) of Sal N. DiDomenico, Daniel J. Hunt, Joseph W. McGonagle, Jr., Daniel J. Ryan and other members of the General Court for legislation relative to asset forfeiture. The Judiciary.

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The Commonwealth of Massachusetts

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
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An Act regarding asset forfeiture.

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

1 Chapter 272 of the General Laws is hereby amended by inserting after section 13 the  
2 following section:-

3 Section 13A. (a) The following property shall be subject to forfeiture to the  
4 commonwealth and all property rights therein shall be in the commonwealth:

5 (1) All vehicles used, or intended for use to facilitate a violation of any provision of  
6 sections 26D and/or 50 of chapter 265 or sections 2--, 4B, 6-9, 12, 13 and/or 53A of chapter 272.

7 (2) All monies, negotiable instruments, or other things of value furnished or intended to  
8 be furnished by any person in exchange for commercial sexual activity in violation of sections 2-  
9 4B, 6-9, 12, 13 and/or 53A of chapter 272, or in exchange for a violation of section 26D and/or  
10 50 of chapter 265; all proceeds traceable to such an exchange, including real estate and any other  
11 thing of value; and all monies, negotiable instruments, and securities used or intended to be used

12 to facilitate any violation of any provision of sections 2-4B, 6-9, 12, 13 and/or 53A of chapter  
13 272, or section 26D and/or 50 of chapter 265.

14 (3) All real property, including any right, title, and interest in the whole of any lot or tract  
15 of land and any appurtenances or improvements thereto, which is used in any manner or part, to  
16 commit or to facilitate the commission of a violation of any provision of sections 2-4B, 6-9, 12,  
17 13 and/or 53A of chapter 272, or section 26D and/or 50 of chapter 265.

18 (4) No forfeiture under this section shall extinguish a perfected security interest held by a  
19 creditor in a conveyance or in any real property at the time of the filing of the forfeiture action.

20 (b) Property subject to forfeiture under paragraphs (1) through (4) of subsection (a),  
21 inclusive, shall, upon motion of the attorney general or district attorney, be declared forfeit by  
22 any court having jurisdiction over said property or having final jurisdiction over any related  
23 criminal proceeding brought under any provision of sections 2- 4B, 6-9, 12, 13 and/or 53A of  
24 chapter 272, or section 26D and/or 50 of chapter 265.

25 (c) The court shall order forfeiture of all conveyances subject to the provisions of  
26 paragraph (2) of subsection (a) and of all real property subject to the provisions of paragraph (3)  
27 of subsection (a) of this section, except as follows:

28 (1) No conveyance or real property shall be subject to forfeiture unless the owner thereof  
29 knew or should have known that such conveyance or real property was used in and for the  
30 business of commercial sexual activity in violation of sections 2- 4B, 6-9, 12, 13 and/or 53A of  
31 chapter 272, or section 26D and/or 50 of chapter 265.

32 (d) A district attorney or the attorney general may petition the superior court in the name  
33 of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance,  
34 real property, monies or other things of value subject to forfeiture pursuant to paragraphs (1)  
35 through (4) of subsection (a), inclusive. Such petition shall be filed in the court having  
36 jurisdiction over said conveyance, real property, monies or other things of value or having final  
37 jurisdiction over any related criminal proceeding brought under any provision of sections 2- 4B,  
38 6-9, 12, 13 and/or 53A of chapter 272, or section 26D and/or 50 of chapter 265. In all such suits  
39 where the property is claimed by any person, other than the commonwealth, the commonwealth  
40 shall have the burden of proving to the court the existence of probable cause to institute the  
41 action, and any such claimant shall then have the burden of proving that the property is not  
42 forfeitable pursuant to paragraphs (1) through (4) of subsection (a), inclusive. The owner of said  
43 conveyance or real property, or other person claiming thereunder shall have the burden of proof  
44 as to all exceptions set forth in subsections (c) and (g). The court shall order the commonwealth  
45 to give notice by certified or registered mail to the owner of said conveyance, real property,  
46 monies or other things of value and to such other persons as appear to have an interest therein,  
47 and the court shall promptly, but not less than 2 weeks after notice, hold a hearing on the  
48 petition. Upon the motion of the owner of said conveyance, real property, monies or other things  
49 of value, the court may continue the hearing on the petition pending the outcome of any criminal  
50 trial related to the violation of sections 2- 4B, 6-9, 12, 13 and/or 53A of chapter 272, or section  
51 26D and/or 50 of chapter 265. At such hearing the court shall hear evidence and make  
52 conclusions of law, and shall thereupon issue a final order, from which the parties shall have a  
53 right of appeal. In all such suits where a final order results in a forfeiture, said final order shall  
54 provide for disposition of said conveyance, real property, monies or any other thing of value by

55 the commonwealth or any subdivision thereof in any manner not prohibited by law, including  
56 official use by an authorized law enforcement or other public agency, or sale at public auction or  
57 by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable  
58 expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising, and  
59 notice, and the balance thereof shall be distributed as further provided in this section.

60         The final order of the court shall provide that said monies and the proceeds of any such  
61 sale shall be distributed equally between the prosecuting district attorney or attorney general and  
62 the city, town or state police department, or sheriff's department involved in the seizure. If more  
63 than one department was substantially involved in the seizure, the court having jurisdiction over  
64 the forfeiture proceeding shall distribute the 50 per cent equitably among these departments.

65         All such monies and proceeds received by any prosecuting district attorney or attorney  
66 general shall be deposited in a trust fund established pursuant to subsection (d) of section 47 of  
67 chapter 94C, and shall then be expended without further appropriation to defray the costs of  
68 protracted investigations, to provide additional technical equipment or expertise, to provide  
69 matching funds to obtain federal grants, or such other law enforcement purposes as the district  
70 attorney or attorney general deems appropriate. The district attorney or attorney general may  
71 expend up to 10 per cent of the monies and proceeds for victim rehabilitation and therapy.

72         Any program seeking to be an eligible recipient of said funds shall file an annual audit  
73 report with the local district attorney and attorney general. Such report shall include, but not be  
74 limited to, a listing of the assets, liabilities, itemized expenditures, and board of directors of such  
75 program. Within 90 days of the close of the fiscal year, each district attorney and the attorney  
76 general shall file an annual report with the house and senate committees on ways and means on

77 the use of the monies in the trust fund for the purposes of victim rehabilitation and therapy,  
78 internet safety education and other cyber-crime watch programs which further law enforcement  
79 purposes.

80 All such monies and proceeds received by any police department or sheriff's department  
81 shall be deposited in a special law enforcement trust fund and shall be expended without further  
82 appropriation to defray the costs of protracted investigations, to provide additional technical  
83 equipment or expertise, to provide matching funds to obtain federal grants, to provide monies  
84 for survivor led programs for victims, or to accomplish such other law enforcement purposes as  
85 the chief of police of such city or town, the colonel of state police, or the sheriff deems  
86 appropriate, but such funds shall not be considered a source of revenue to meet the operating  
87 needs of such department.

88 (e) Any officer, department, or agency having custody of any property subject to  
89 forfeiture under section sections 2- 4B, 6-9, 12, 13 and/or 53A of chapter 272, or section 26D  
90 and/or 50 of chapter 265 or having disposed of said property shall keep and maintain full and  
91 complete records showing from whom it received said property, under what authority it held or  
92 received or disposed of said property, to whom it delivered said property, the date and manner of  
93 destruction or disposition of said property, and the exact kinds, quantities and forms of said  
94 property. Said records shall be open to inspection by all federal and state officers charged with  
95 enforcement of federal and state commercial sexual activity laws. Persons making final  
96 disposition or destruction of said property under court order shall report, under oath, to the court  
97 the exact circumstances of said disposition or destruction.

98 (f)(1) During the pendency of the proceedings the court may issue at the request of the  
99 commonwealth ex parte any preliminary order or process as is necessary to seize or secure the  
100 property for which forfeiture is sought and to provide for its custody, including but not limited to  
101 an order that the commonwealth remove the property if possible, and safeguard it in a secure  
102 location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account;  
103 and, that a substitute custodian be appointed to manage such property or a business enterprise.  
104 Property taken or detained under this section shall not be repleviable, but once seized shall be  
105 deemed to be lawfully in the custody of the commonwealth pending forfeiture, subject only to  
106 the orders and decrees of the court having jurisdiction thereof. Process for seizure of said  
107 property shall issue only upon a showing of probable cause, and the application therefor and the  
108 issuance, execution, and return thereof shall be subject to the provisions of chapter 276, so far as  
109 applicable.

110 (2) A district attorney or the attorney general may refer any real property, and any  
111 furnishings, equipment and related personal property located therein, for which seizure is sought  
112 to the office of seized property management, as established by section 47 of chapter 94C.

113 (g) The owner of any real property which is the principal domicile of the immediate  
114 family of the owner and which is subject to forfeiture under this section may file a petition for  
115 homestead exemption with the court having jurisdiction over such forfeiture. The court may, in  
116 its discretion, allow the petition exempting from forfeiture an amount allowed under section 1 of  
117 chapter 188. The value of the balance of said principal domicile, if any, shall be forfeited as  
118 provided in this section. Such homestead exemption may be acquired on only 1 principal  
119 domicile for the benefit of the immediate family of the owner.

120 (j) A forfeiture proceeding affecting the title to real property or the use and occupation  
121 thereof or the buildings thereon shall not have any effect except against the parties thereto and  
122 persons having actual notice thereof, until a memorandum containing the names of the parties to  
123 such proceeding, the name of the town where the affected real property lies, and a description of  
124 such real property sufficiently accurate for identification is recorded in the registry of deeds for  
125 the county or district where the real property lies. At any time after a judgment on the merits, or  
126 after the discontinuance, dismissal or other final disposition is recorded by the court having  
127 jurisdiction over such matter, the clerk of such court shall issue a certificate of the fact of such  
128 judgment, discontinuance, dismissal or other final disposition, and such certificate shall be  
129 recorded in the registry in which the original memorandum recorded pursuant to this section was  
130 filed.