

**HOUSE . . . . . No. 3114**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Leonard Mirra, (BY REQUEST)***

*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 to secure property rights and to deter criminal activity.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Bradford Wyatt</i>		<i>1/20/2017</i>

**HOUSE . . . . . No. 3114**

By Mr. Mirra of West Newbury (by request), a petition (accompanied by bill, House, No. 3114) of Bradford Wyatt relative to criminal forfeiture of property. The Judiciary.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act to secure property rights and to deter criminal activity.

*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 as appearing in the 2016 Official Edition of  
2 Massachusetts General Laws is hereby amended by striking it in its entirety and inserting in  
3 place thereof the following:-

4 Section 47. This chapter shall be a law subject to forfeiture pursuant to the provisions of  
5 chapter 280A of the General Laws and in addition to any other punishment or penalty forfeiture  
6 may be a punishment or penalty.

7 SECTION 2. The General Laws as appearing in the 2016 Official Edition are hereby  
8 amended by inserting after chapter 280 the following chapter:-

9 Chapter 280A  
10 Asset Forfeiture

11 Section 1. Definitions. As used in this chapter, the following terms shall, unless the  
12 context clearly requires otherwise, have the following meanings:

13 “Contraband”, goods that are unlawful to import, export or possess.

14 “Conveyance”, a device used for transportation and includes a motor vehicle, trailer,  
15 snowmobile, airplane, and vessel and any equipment attached to it. The term does not include  
16 property that is stolen or taken in violation of the law.

17 “Instrumentality”, property otherwise lawful to possess that is used in an offense  
18 including but not limited to a tool, a firearm, a conveyance, a computer, computer software, a  
19 telecommunications device, money, and other means of exchange.

20 “law subject to forfeiture”, a law of the Commonwealth that carries a felony penalty and  
21 that explicitly includes forfeiture as a punishment or sanction for the offense.

22 Section 2. Purpose. The purpose of this chapter is to: (a) deter criminal activity by  
23 reducing its economic incentives;

24 (b) increase the pecuniary loss from criminal activity; and

25 (c) protect against the wrongful forfeiture of property.

26 Section 3. Exclusivity. Notwithstanding any other General or Special law, or rule or  
27 regulation to the contrary, this chapter sets out the exclusive process governing forfeitures in the  
28 Commonwealth.

29           Section 4. Criminal asset forfeiture. When a person is convicted of violating a law  
30 subject to forfeiture, the court, consistent with this chapter, shall order the person to forfeit: (a)  
31 proceeds and property the person derived directly from the commission of the crime;

32           (b) proceeds and property directly traceable to proceeds and property derived directly  
33 from the commission of the crime; and

34           (c) instrumentalities the person used in the commission of the crime.

35           Section 5. Conviction required; standard of proof. (a) Property used in or derived from  
36 the violation of a law is subject to forfeiture only if

37           (1) the violation is of a law subject to forfeiture and

38           (2) the violation is established by proof of a criminal conviction.

39           (b) The Commonwealth shall establish that seized property is forfeitable under section 4  
40 by clear and convincing evidence.

41           Section 6. No civil asset forfeiture. There is no civil asset forfeiture.

42           Section 7. Rule of lenity. The court shall resolve any ambiguity in this chapter relating to  
43 the Commonwealth taking property through asset forfeiture in favor of the property owner.

44           Section 8. Court-appointed counsel. If a court determines that a person opposing  
45 forfeiture is financially unable to obtain representation by counsel, the court, at the request of the  
46 person, shall insure that the person is represented by an attorney at the Commonwealth's  
47 expense. The attorney shall submit a statement of reasonable fees and costs to the court in a  
48 manner directed by the court.

49           Section 9. Authorization to use forfeiture. (a) Except for federal forfeitures consistent  
50 with section 39, forfeiture may occur only pursuant to an explicit grant of authority in the laws of  
51 the Commonwealth. An ordinance enacted by a county, municipality, or other unit of  
52 government authorizing forfeiture is not valid.

53           (b) A prosecutor having jurisdiction over a law subject to forfeiture has authority to  
54 pursue forfeiture.

55           Section 10. Property subject to forfeiture; contraband. (a) Property subject to forfeiture is  
56 limited to:

57           (1) land, buildings, containers, conveyances, equipment, materials, products, money,  
58 securities, and negotiable instruments; and

59           (2) ammunition, firearms, and ammunition-and-firearm accessories used in the  
60 furtherance or commission of a violation of a law subject to forfeiture.

61           (b) No property right exists in contraband, including scheduled drugs without a valid  
62 prescription. Contraband is subject to seizure and must be disposed of according to the laws of  
63 the Commonwealth. Contraband is not subject to forfeiture under this chapter.

64           Section 11. Substitution of assets for unreachable property. Upon the Commonwealth's  
65 motion following conviction, the court may order the forfeiture of substitute property owned  
66 fully by the defendant up to the value of unreachable property only if the Commonwealth proves  
67 by a preponderance of the evidence that the defendant intentionally transferred, sold, or  
68 deposited property with a third party to avoid the court's jurisdiction.

69           Section 12. No additional remedies. Except as otherwise provided in this chapter, the  
70 Commonwealth may not seek additional remedies including but not limited to personal money  
71 judgments.

72           Section 13. No joint-and-several liability; pro rata forfeitures. (a) A defendant is not  
73 jointly and severally liable for forfeiture awards owed by other defendants.

74           (b) When ownership is unclear, a court may order each defendant to forfeit property on a  
75 pro rata basis proportional to the proceeds that each defendant personally received.

## 76           PROCESS

77           Section 14. Designating property subject to forfeiture. (a) Property subject to forfeiture  
78 must be identified by the Commonwealth in an indictment of a grand jury or by information in  
79 the court in any related criminal proceeding in which a person with an interest in the property has  
80 been simultaneously charged with a violation of a law subject to forfeiture.

81           (b) The indictment or information must specify the time and place of the violation,  
82 identify the property, and particularly describe its use in the commission of the crime or  
83 derivation from the commission of the crime.

84           (c) At any time prior to trial, the Commonwealth, with the consent of the court and any  
85 defendant with an interest in the property, may file an ancillary charge alleging that property is  
86 subject to forfeiture.

87           Section 15. Seizure with process. At the request of the Commonwealth, a court may  
88 issue an ex parte preliminary order to seize or secure property for which forfeiture is sought and

89 to provide for its custody. Application, issuance, execution, and return are subject to the laws of  
90 the Commonwealth.

91 Section 16. Seizure without process. Property subject to forfeiture may be seized without  
92 a court order if:

93 (a) the seizure is incident to a lawful arrest or a lawful search;

94 (b) the property subject to seizure has been the subject of a prior judgment in favor of the  
95 Commonwealth; or

96 (d) the Commonwealth has probable cause to believe that the delay occasioned by the  
97 necessity to obtain process would result in the removal or destruction of the property and that the  
98 property is forfeitable under section 4.

99 Section 17. Receipt for seized property. When property is seized, the law enforcement  
100 officer shall give an itemized receipt to the person in possession of the property; or in the  
101 absence of any person, leave a receipt in the place where the property was found, if reasonably  
102 possible.

103 Section 18. Bill of particulars. A motion for a bill of particulars may be made before  
104 arraignment, within 90 days after arraignment, or at any later time that the court permits. A bill  
105 of particulars may be amended at any time subject to conditions that justice requires.

106 Section 19. Title. (a) At the time of seizure or entry of a restraining order, the  
107 Commonwealth acquires provisional title to the seized property. Provisional title authorizes the  
108 Commonwealth to hold and protect the property.

109 (b) Title to the property vests with the Commonwealth when the trier of fact renders a  
110 final forfeiture verdict and relates back to the time when the Commonwealth acquired  
111 provisional title. However, this title is subject to claims by third parties adjudicated under this  
112 chapter.

113 Section 20. Storage. When property is seized, the Commonwealth shall use reasonable  
114 diligence to secure the property and prevent waste.

115 Section 21. Records. (a) A entity of the Commonwealth having custody of seized  
116 property that is subject to forfeiture shall maintain the following records:

117 (1) the exact kinds, quantities, and forms of the property;

118 (2) the date and from whom it received the property;

119 (3) the violation of law that subjected the property to seizure;

120 (4) the liens against the seized property;

121 (5) the make, model, and serial number of each seized firearm;

122 (6) to whom and when the notice of forfeiture was given;

123 (7) to whom it delivered the property; and

124 (8) the date and manner of destruction or disposition of the property.

125 (b) The records required under paragraph (a) are subject to the public records law  
126 pursuant to chapter 66 of the General Laws.



127           Section 22. Bond by owner for possession. (a) If the owner of property that has been  
128 seized seeks its possession before the criminal trial, the owner may post bond or give substitute  
129 property in an amount equal to the fair market value of the seized property at the time the bond  
130 amount is determined.

131           (b) On the posting of bond or the giving of substitute property, the Commonwealth shall  
132 return the seized property to the owner within a reasonable period of time not to exceed 3  
133 business days. The forfeiture action may then proceed against the bond or substitute property as  
134 if it were the seized property.

135           (c) This section does not apply to property reasonably held for investigatory purposes.

136           Section 23. Petition for remission or mitigation. Prior to the entry of a court's order  
137 disposing of the forfeiture action, any person who has an interest in seized property may file with  
138 the state's attorney general a petition for remission or mitigation of the forfeiture. The attorney  
139 general shall remit or mitigate the forfeiture upon terms and conditions the attorney general  
140 deems reasonable if the attorney general finds that: (a) the petitioner did not intend to violate the  
141 law or (b) extenuating circumstances justify the remission or mitigation of the forfeiture.

142           Section 24. Pretrial replevin hearing. (a) Following the seizure of property under this  
143 chapter, a defendant or third-party has a right to a pretrial hearing to determine the validity of the  
144 seizure.

145           (b) The claimant may claim at any time prior to 60 days before trial of the related  
146 criminal violation the right to possession of property by motion to the court to issue a writ of  
147 replevin.

148 (c) The claimant shall file a motion establishing the validity of the alleged right, title, or  
149 interest in the property.

150 (d) The court shall hear the motion no more than 30 days after the motion is filed.

151 (e) The Commonwealth shall file an answer showing probable cause for the seizure, or  
152 cross-motions at least 10 days before the hearing.

153 (f) The court shall grant the motion if it finds that (1) it is likely the final judgment will  
154 be that the Commonwealth must return the property to the claimant or (2) the property is the only  
155 reasonable means for a defendant to pay for legal representation in the forfeiture or criminal  
156 proceeding.

157 (g) In lieu of ordering the issuance of the writ, the court may order the Commonwealth to  
158 give security for satisfaction of any judgment, including damages, that may be rendered in the  
159 action, or order other relief as may be just.

160 Section 25. Discovery. Discovery is subject to the rules of criminal procedure.

161 Section 26. Right to trial by jury. Any party to a forfeiture action has a right to trial by  
162 jury.

163 Section 27. Trial proceedings. (a) A trial related to the forfeiture of property must be  
164 held in a single proceeding together with the trial of the related alleged crime unless the  
165 defendant moves to bifurcate the trial.

166 (b) The court, upon motion of a defendant, shall separate the trial of the criminal matter  
167 against the defendant from the matter related to the forfeiture of property.

168 (c) The court, upon motion of a defendant, shall allow a defendant to waive the right to  
169 trial by jury related to the forfeiture of property while preserving the right to trial by jury of any  
170 crime alleged.

171 (d) If the court bifurcates the jury trial, the court shall first instruct and submit to the jury  
172 the issue of the guilt or innocence of the defendant to be determined by proof beyond a  
173 reasonable doubt and shall restrict argument of counsel to those issues.

174 (e) If the court bifurcates the jury trial, each party may introduce evidence in the  
175 forfeiture phase that was not introduced in the criminal phase.

176 (f) If the jury finds a defendant guilty of the related criminal offense and the defendant  
177 did not waive the right to trial by jury related to the forfeiture, the court shall instruct and submit  
178 to the jury the issue of the forfeiture. The court may use interrogatories to address the forfeiture  
179 issue.

180 Section 28. Proportionality. (a) Following determination by the trier of fact, the owner  
181 may petition the court to determine whether the forfeiture is unconstitutionally excessive under  
182 the Constitution of the Commonwealth or U.S. constitution.

183 (b) The owner has the burden of establishing that the forfeiture is grossly disproportional  
184 to the seriousness of the offense by a preponderance of the evidence at a hearing conducted by  
185 the court without a jury.

186 (c) In determining whether the forfeiture of an instrumentality is constitutionally  
187 excessive, the court shall consider all relevant factors, including, but not limited to:

188 (1) the seriousness of the offense and its impact on the community, including the duration  
189 of the activity and the harm caused by the person whose property is subject to forfeiture;

190 (2) the extent to which the person whose property is subject to forfeiture participated in  
191 the offense;

192 (3) the extent to which the property was used in committing the offense;

193 (4) the sentence imposed for committing the crime subject to forfeiture; and

194 (5) whether the offense was completed or attempted.

195 (d) In determining the value of the instrumentality subject to forfeiture, the court shall  
196 consider relevant factors, including, but not limited to:

197 (1) the fair market value of the property;

198 (2) the value of the property to the person whose property is subject to forfeiture  
199 including hardship to the owner if the forfeiture is realized; and

200 (3) the hardship from the loss of a motor vehicle or other property to family members or  
201 others if the property is forfeited assets.

202 (e) The court may not consider the value of the instrumentality to the Commonwealth in  
203 determining whether the forfeiture of an instrumentality is constitutionally excessive.

204 THIRD-PARTY INTERESTS

205           Section 29. Secured interest. (a) A bona fide security interest is not subject to forfeiture  
206 unless the person claiming a security interest had actual knowledge that the property was subject  
207 to forfeiture at the time of the property was seized or restrained under this chapter.

208           (b) A person claiming a security interest bears the burden of establishing that the validity  
209 of the interest by a preponderance of the evidence.

210           Section 30. Ancillary hearing of third-party interests. (a) A person not charged in the  
211 indictment or information but who has an interest in property subject to forfeiture may not  
212 intervene after the criminal trial has begun.

213           (b) Following the entry of a verdict of forfeiture of property pursuant to this chapter or  
214 the entry of a guilty plea in court on the record, the Commonwealth shall exercise reasonable  
215 diligence to identify persons with a potential interest in the property and make reasonable efforts  
216 to give notice to potential claimants. The Commonwealth shall provide written notice of its  
217 intent to dispose of the property to any person known or alleged to have an interest in the  
218 property exempted from forfeiture under this chapter, including any person potentially making  
219 claims for (1) court-ordered child support, (2) employment-related compensation or (3) payment  
220 of unsecured debts. The notice must also be made by publication in a reasonable geographic  
221 area.

222           (c) A person other than the defendant asserting a legal interest in the property, within 60  
223 days of the date of the notice, may petition the court for a hearing to adjudicate the validity of the  
224 alleged interest in the property. The request for the hearing must be signed by the petitioner  
225 under penalty of perjury and state the nature and extent of the petitioner's right, title, or interest

226 in the property; the time and circumstances of the petitioner's acquisition of the right, title, or  
227 interest; and any additional facts supporting the petitioner's claim and the relief sought.

228 (d) Upon the filing of a petition, the court shall schedule the hearing as soon as  
229 practicable but in no event later than 6 months after the sentencing of any defendant convicted  
230 upon the same indictment. The court shall issue or amend a final order of forfeiture in  
231 accordance with its determination if, after the hearing, the court determines that:

232 (1) the petitioner has a legal right, title, or interest in the property, and such right, title or  
233 interest renders the order of forfeiture invalid in whole or in part because the right, title or  
234 interest was vested in the petitioner rather the defendant or was superior to any right, title or  
235 interest of the defendant at the time of the property was seized or restrained under this chapter; or

236 (2) the petitioner is a bona fide purchaser for value of the right, title, or interest in the  
237 property and was at the time of purchase without cause to believe that the property was subject to  
238 forfeiture under this chapter. The Commonwealth has the burden of proof with respect to the  
239 issue of whether the petitioner was without cause to believe that the property was subject to  
240 forfeiture at the time of purchase or other acquisition of value.

241 (e) A qualified indigent who wishes to contest the forfeiture of property and appears to  
242 have an exempt interest has a right to court-appointed counsel as provided in section 8. In  
243 addition, the court shall waive the person's court fees.

244 Section 31. Innocent partial or joint owner. (a) The property of an innocent partial or  
245 joint owner may not be forfeited under any forfeiture statute. The process for determining  
246 whether a person is an innocent partial or joint owner is set out in this section.

247 (b) A person who has any form of partial or joint interest, including joint tenancy,  
248 tenancy in common, or tenancy by the entirety, in property subject to forfeiture existing at the  
249 time the illegal conduct giving rise to forfeiture occurred and who claims to be an innocent  
250 partial or joint owner shall make a prima facie case that the person has a legal right, title, or  
251 interest in the property seized or restrained under this chapter.

252 (c) If paragraph (b) is satisfied and the Commonwealth seeks to proceed with the  
253 forfeiture against the person's ownership interest, the Commonwealth shall prove by a  
254 preponderance of the evidence that the person had actual knowledge of the underlying crime  
255 giving rise to the forfeiture or was willfully blind to its commission.

256 (d) If paragraph (c) is satisfied and the person seeks to establish the person's innocent  
257 owner status, the person shall show by a preponderance of the evidence that the person did all  
258 that reasonably could be expected under the circumstances to prohibit, abate, or terminate the  
259 illegal use of the property. The person may show that the person did all that reasonably could be  
260 expected by demonstrating, among other things, that the person, to the extent permitted by law:

261 (1) gave timely notice to an appropriate law enforcement agency of information that led  
262 the person to know the conduct giving rise to a forfeiture would occur or had occurred; or

263 (2) in a timely fashion revoked or made a good-faith attempt to revoke permission for  
264 those engaging in the illegal conduct to use the property or took reasonable actions in  
265 consultation with a law enforcement agency to discourage or prevent the illegal use of the  
266 property.

267 A person is not required under this paragraph to take steps that the person reasonably  
268 believes would be likely to subject the person to physical danger.

269 (e) If paragraph (d) is satisfied, the court shall find that the claimant was not a party to the  
270 crime and is an innocent partial or joint owner.

271 (f) A person who acquired an ownership interest in property after the commission of a  
272 crime giving rise to the forfeiture has occurred and who claims to be an innocent partial or joint  
273 owner, shall make a prima facie case that the person has a legal right, title, or interest in the  
274 property seized or restrained under this chapter.

275 (g) If paragraph (f) is satisfied and the Commonwealth seeks to proceed with the  
276 forfeiture against the person's ownership interest, the Commonwealth shall prove by a  
277 preponderance of the evidence that at the time the person acquired the property interest the  
278 person had actual knowledge that the property was subject to forfeiture or was willfully blind to  
279 the commission of the crime that subjected the property to forfeiture.

280 (h) If the Commonwealth fails to meet its burden in paragraph (g), the court shall find  
281 that the person was not a party to the crime and is an innocent partial or joint owner.

282 (i) An otherwise valid claim under paragraph (f) may not be denied on the grounds that  
283 the person gave nothing of value in exchange for the property if:

284 (1) the property is the person's primary residence;

285 (2) depriving the person of the property would deprive the person of the means to  
286 maintain reasonable shelter in the community for the person and all dependents residing with the  
287 person;

288 (3) the property is not, and is not traceable to, the proceeds of any criminal offense; and



289 (4) the person acquired interest in the property through marriage, divorce, or legal  
290 separation, or the person was the spouse or legal dependent of someone whose death resulted in  
291 the transfer of the property to the person through inheritance or probate, except that the court  
292 shall limit the value of any real property interest for which innocent ownership is recognized  
293 under this paragraph to the value necessary to maintain reasonable shelter in the community for  
294 the person and all dependents residing with the person.

295 (j) If the innocent joint or partial owner's claim is established under this section, the  
296 Commonwealth shall relinquish all claims of title to the property that may have vested with it.

297 (k) If the court determines that an innocent joint or partial owner has any form of partial  
298 or joint interest in a conveyance subject to forfeiture related to operating a conveyance while  
299 impaired, the court may order that the innocent joint or partial owner participate in the ignition  
300 interlock device program under the laws of the Commonwealth as a condition of ordering the  
301 device be returned to the innocent joint or partial owner.

302 (l) If the court determines that an innocent joint or partial owner has any form of partial  
303 or joint interest in property, other than property described in paragraph (k), the court shall enter  
304 an appropriate order reflecting the innocent owner's preference for:

305 (1) severing the property;

306 (2) transferring the property to the Commonwealth with a provision that the  
307 Commonwealth compensate the innocent owner to the extent of the owner's ownership interest  
308 once a final order of forfeiture has been entered and the property has been reduced to liquid  
309 assets; or

310 (3) permitting the innocent owner to retain the property subject to a lien in favor of the  
311 Commonwealth to the extent of the forfeitable interest in the property.

312 POSTFORFEITURE

313 Section 32. Sale of property. If a trier of fact finds that property is to be forfeited, the  
314 court shall order the Commonwealth to:

315 (a) return stolen property to its owner;

316 (b) sell all other firearms, ammunition and firearm accessories to licensed firearms  
317 dealers in a commercially reasonable manner; and

318 (c) sell other property in a commercially reasonable manner.

319 Section 33. Prohibition on retaining property; sale restrictions. The law enforcement  
320 agency that seized property forfeited under this chapter may not retain it for its own use or sell it  
321 directly or indirectly to any employee of the agency, to a person related to an employee by blood  
322 or marriage, or to another law enforcement agency.

323 Section 34. Disposition of proceeds. (a) Proceeds seized and proceeds from the sale of  
324 forfeited assets may be distributed only following a court order. The court shall order the funds  
325 be used to pay, in order of priority, for the following purposes:

326 (1) storage and sale expenses;

327 (2) satisfaction of valid liens against the property;

328 (3) restitution ordered to the victim of the criminal offense;

329 (4) reimbursement of investigation costs excluding salaries that the law enforcement  
330 agency incurred in the seizure of the assets subject to the forfeiture action;

331 (5) court-ordered child support obligations;

332 (6) claims for compensation by the defendant's employees; and

333 (7) claims for compensation by defendant's unsecured creditors.

334 (b) All remaining funds must be deposited into the Commonwealth's treasury and  
335 credited to the general fund.

336 Section 35. Reporting. (a) For each forfeiture action occurring in the Commonwealth  
337 regardless of the authority for it, the participating law enforcement agency and prosecutor shall  
338 provide a written record of the forfeiture incident to the Commonwealth reporting agency.

339 (b) The record must include the amount forfeited, the underlying crime or conduct, its  
340 date, and whether the property had a lien against it. The record must also list the number of  
341 firearms forfeited and the make, model, and serial number of each firearm forfeited. The record  
342 must indicate how the property was disposed.

343 (c) The law enforcement agency and the prosecutor shall report to the Commonwealth  
344 reporting agency all instances in which property seized for forfeiture is returned to its owner  
345 either because forfeiture is not pursued or for any other reason.

346 (d) For forfeitures resulting from the activities of multi-jurisdictional law enforcement  
347 entities, each entity on its own behalf shall report the information required in this section.

348 (e) The reporting agency of the Commonwealth may require information not specified in  
349 this section to be reported as well.

350 (f) Reports must be made on a monthly basis in a manner prescribed by the reporting  
351 agency of the Commonwealth.

352 (g) The reporting agency of the Commonwealth shall report annually to the legislature  
353 and the public on the nature and extent of forfeitures.

354 (h) The reporting agency of the Commonwealth shall include in its report required under  
355 paragraph (g) recommended changes to forfeiture law to better ensure that forfeiture proceedings  
356 are handled in a manner that is fair to innocent property owners, secured interest holders,  
357 citizens, and taxpayers.

358 (i) The reporting agency of the Commonwealth shall include in its report required under  
359 paragraph (g) information on law enforcement agencies and prosecutorial offices not in  
360 compliance with this section and shall order the Commonwealth to withhold payment of any  
361 funds to those agencies and offices until compliance is achieved.

## 362 MISCELLANEOUS PROVISIONS

363 Section 36. Disposing of Property of a Person Deported. (a) This section covers  
364 procedures for disposing of property when the owner is deported from the United States to a  
365 foreign country.

366 (b) If the owner of property is deported after being convicted of a violation of a state law  
367 that is subject to forfeiture and the property is found to be an instrumentality or proceeds of the

368 violation of that state law, the court shall enter an order disposing of the property in accordance  
369 with sections 33 and 34.

370 (c) If the owner of property is deported but the owner is not convicted of violating a state  
371 law that is subject to forfeiture or the property is not found to be an instrumentality or proceeds  
372 from the violation of a state law subject to forfeiture for which the owner of the property is  
373 convicted, the property shall be returned to the next of kin of the person deported.

374 (d) If the next of kin is not known or refuses the property, the Commonwealth shall  
375 exercise reasonable diligence to identify persons with a potential interest in the property and  
376 make reasonable efforts to give notice to potential claimants. The Commonwealth shall provide  
377 written notice to persons known or alleged to have an interest in the property including other  
378 family members and any person potentially making claims for court-ordered child support,  
379 employment-related compensation, or payment of debts. The notice must also be made by  
380 publication in a reasonable geographic area.

381 (e) If no claim is made within 60 days of the notice's publication date, the court shall  
382 enter an order disposing of the property in accordance with sections 33 and 34.

383 (f) A person wanting to assert a legal claim to the property shall, within 60 days of the  
384 date of the applicable notice in (d), petition the court for a hearing to adjudicate the validity of  
385 the alleged interest in the property. The petition for the hearing must be signed by the claimant  
386 under penalty of perjury. It must state the nature and extent of the claimant's right, title, or  
387 interest in the property; the time and circumstances of the claimant's acquisition of the right,  
388 title, or interest; and any additional facts supporting the claim and the relief sought.

389 (g) The court shall schedule a hearing as soon as practicable to determine if the claimant  
390 has a legal right, title or interest in the property or is a bona fide purchaser for value of the legal  
391 right, title or interest in the property.

392 Section 37. Return of property, damages, and costs. (a) The Commonwealth shall return  
393 property to the owner within a reasonable period of time not to exceed 3 business days after a  
394 court finds that:

395 (1) the owner had a bona fide security interest;

396 (2) the owner was an innocent owner;

397 (3) charges against the owner were dismissed; or

398 (4) the owner was found not guilty of the criminal charge that is the basis for the  
399 forfeiture action.

400 (b) If property returned under paragraph (a) has been damaged, the owner may make a  
401 claim in small claims court or court for the damages to the seized property against the agency  
402 that seized the property.

403 (c) The Commonwealth is responsible for any storage fees and related costs applicable to  
404 property returned under paragraph (a).

405 Section 38. Penalty for violations. (a) Any person acting under color of law, official title,  
406 or position who takes any action intending to conceal, transfer, withhold, retain, divert, or  
407 otherwise prevent any proceeds, conveyances, real property, or any things of value forfeited  
408 under the laws of the Commonwealth or the United States from being applied, deposited, used,  
409 or returned to the owner in accordance with this chapter is subject to a civil penalty in an amount

410 of three times the value of the forfeited property concealed, transferred, withheld, retained, or  
411 diverted.

412 (b) Any taxpayer to the Commonwealth has standing to challenge in court any action  
413 contrary to this chapter.

414 Section 39. Interaction with federal government. (a) No unit of government of the  
415 Commonwealth may transfer a criminal investigation or proceeding to the federal government to  
416 circumvent forfeiture law of the Commonwealth.

417 (b) For a government unit of the Commonwealth to transfer a criminal investigation or  
418 proceeding that includes forfeiture to the federal government, a court of the Commonwealth shall  
419 affirmatively find that:

420 (1) the suspected criminal activity giving rise to the forfeiture is interstate in nature and  
421 sufficiently complex to justify the transfer; or

422 (2) the seized property is forfeitable only as a violation of federal law.

423 (c) All funds paid by the federal government must be deposited into the treasury of the  
424 Commonwealth. The Commonwealth shall credit: (1) the government unit of the  
425 Commonwealth involved with the federal government sufficiently to reimburse it for  
426 investigation costs, excluding salaries, that the government unit of the Commonwealth incurred  
427 related to the seizure of the assets subject to the forfeiture action and (2) the remainder to the  
428 general fund.

429 (d) No government unit of the Commonwealth may accept from the federal government  
430 any

431 instrumentality or payment of proceeds not permitted by paragraph (c).

432 (e) The government unit of the Commonwealth shall report all transfers to the federal  
433 government of an investigation or criminal proceeding that involves forfeiture per the reporting  
434 requirements in section 35.

435 (f) Any taxpayer has standing to challenge in court the receipt of any proceeds or  
436 instrumentality by a government unit of the Commonwealth from the federal government  
437 contrary to paragraphs (c) and (d).

438 Section 40. Attorneys' fees. In any forfeiture proceeding under this chapter in which the  
439 claimant prevails, the Commonwealth is liable for:

440 (1) reasonable attorney fees and other litigation costs reasonably incurred by the  
441 claimant;

442 (2) postjudgment interest; and

443 (3) in cases involving currency, other negotiable instruments, or the proceeds of an  
444 interlocutory sale: (a) interest actually paid to the Commonwealth from the date of seizure of the  
445 property that resulted from the investment of the property in an interest-bearing account or  
446 instrument; and (b) an imputed amount of interest that the currency, instruments, or proceeds  
447 would have earned at the rate applicable to the 30-day U.S. Treasury Bill, for any period during  
448 which no interest was paid (not including any period when the property reasonably was in use as  
449 evidence in an official proceeding or in conducting scientific tests for the purpose of collecting  
450 evidence), commencing 15 days after the property was seized by a law enforcement agency.



451           SECTION 3. The effective date of this shall be in compliance with laws regarding  
452 effective dates.