

HOUSE No. 1452

The Commonwealth of Massachusetts

PRESENTED BY:

James Arciero

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:	DATE ADDED:
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>1/7/2021</i>
<i>Sheriff Peter Koutoujian</i>	<i>Middlesex Sheriff's Office 400 Mystic Avenue Medford, MA 02115</i>	<i>1/21/2021</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>1/28/2021</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>	<i>2/18/2021</i>

HOUSE No. 1452

By Mr. Arciero of Westford, a petition (accompanied by bill, House, No. 1452) of James Arciero and others relative to asset forfeiture of property. The Judiciary.

The Commonwealth of Massachusetts

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

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 29C the
2 following section:-

3 Section 29D. (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 materials, products, and equipment of any kind which are used, or intended for
6 use: in delivering, dispensing, distributing, transmitting, encrypting, or otherwise disseminating
7 any visual material in violation of sections 29B or 29C of chapter 272; or in luring, inducing,
8 persuading, tempting, inciting, soliciting, coaxing or inviting a child under the age of 16 in
9 violation of section 26C of chapter 265.

10 (2) All conveyances, including aircraft, vehicles or vessels used, or intended for use to
11 facilitate a violation of any provision of sections 29B or 29C of chapter 272 or section 26C of
12 chapter 265.

(3) All negatives, slides, books, magazines, films, videotapes, photographs or other similar visual reproductions, computers, video cameras, or digital or analog cameras which are used, or intended for use, to facilitate a violation of sections 29B or 29C of chapter 272.

(4) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for visual material in violation of chapter 272 section 29B or 29C, or in exchange for a violation of section 26C of chapter 265; all proceeds traceable to such an exchange, including real estate and any other thing of value; and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any provision of sections 29B or 29C of chapter 272, or section 26C of chapter 265.

(5) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto, which is used in any manner or part, to commit or to facilitate the commission of a violation of any provision of sections 29B or 29C of chapter 272, or section 26C of chapter 265.

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

(b) Property subject to forfeiture under paragraphs (1) through (5) of subsection (a), inclusive, shall, upon motion of the attorney general or district attorney, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of section 26C of chapter 265 or sections 29B or 29C of chapter 272.

(c) The court shall order forfeiture of all conveyances subject to the provisions of paragraph (2) of subsection (a) and of all real property subject to the provisions of paragraph (5) of subsection (a) of this section, except as follows:

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of either section 26C of chapter 265 or sections 29B or 29C of chapter 272.

(2) No conveyance or real property shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance or real property was used in and for the business of: unlawfully disseminating visual material in violation of sections 29B or 29C of chapter 272; or enticing a child under the age of 16 in violation of section 26C of chapter 265. Proof that the conveyance or real property was used to facilitate the unlawful dissemination of visual material or the enticement of a child under the age of 16 on 3 or more different dates shall be prima facie evidence that the conveyance or real property was used in and for the business of unlawfully disseminating such visual material or enticing a child under the age of 16.

(d) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property, moneys or other things of value subject to forfeiture pursuant to paragraphs (1) through (5) of subsection (a), inclusive. Such petition shall be filed in the court having jurisdiction over said conveyance, real property, monies or other things of value or having final jurisdiction over any related criminal proceeding brought under any provision of section 26C of chapter 265 or sections 29B or 29C of chapter 272. In all such suits where the property is

55 claimed by any person, other than the commonwealth, the commonwealth shall have the burden
56 of proving to the court the existence of probable cause to institute the action, and any such
57 claimant shall then have the burden of proving that the property is not forfeitable pursuant to
58 paragraphs (1) through (5) of subsection (a), inclusive. The owner of said conveyance or real
59 property, or other person claiming thereunder shall have the burden of proof as to all exceptions
60 set forth in subsections (c) and (g). The court shall order the commonwealth to give notice by
61 certified or registered mail to the owner of said conveyance, real property, moneys or other
62 things of value and to such other persons as appear to have an interest therein, and the court shall
63 promptly, but not less than 2 weeks after notice, hold a hearing on the petition. Upon the motion
64 of the owner of said conveyance, real property, moneys or other things of value, the court may
65 continue the hearing on the petition pending the outcome of any criminal trial related to the
66 violation of section 26C of chapter 265 or sections 29B or 29C of chapter 272. At such hearing
67 the court shall hear evidence and make conclusions of law, and shall thereupon issue a final
68 order, from which the parties shall have a right of appeal. In all such suits where a final order
69 results in a forfeiture, said final order shall provide for disposition of said conveyance, real
70 property, moneys or any other thing of value by the commonwealth or any subdivision thereof in
71 any manner not prohibited by law, including official use by an authorized law enforcement or
72 other public agency, or sale at public auction or by competitive bidding. The proceeds of any
73 such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure,
74 storage, maintenance of custody, advertising, and notice, and the balance thereof shall be
75 distributed as further provided in this section.

76 The final order of the court shall provide that said moneys and the proceeds of any such
77 sale shall be distributed equally between the prosecuting district attorney or attorney general and

the city, town or state police department, or sheriff's department involved in the seizure. If more than one department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the 50 per cent equitably among these departments.

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

Any program seeking to be an eligible recipient of said funds shall file an annual audit report with the local district attorney and attorney general. Such report shall include, but not be limited to, a listing of the assets, liabilities, itemized expenditures, and board of directors of such program. Within 90 days of the close of the fiscal year, each district attorney and the attorney general shall file an annual report with the house and senate committees on ways and means on the use of the monies in the trust fund for the purposes of victim rehabilitation and therapy, internet safety education and other cyber-crime watch programs which further law enforcement purposes.

All such moneys and proceeds received by any police department or sheriff's department shall be deposited in a special law enforcement trust fund and shall be expended without further

appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish such other law enforcement purposes as the chief of police of such city or town, the colonel of state police, or the sheriff deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.

(e) Any officer, department, or agency having custody of any property subject to forfeiture under section 26C of chapter 265 or sections 29B or 29C of chapter 272 or having disposed of said property shall keep and maintain full and complete records showing from whom it received said property, under what authority it held or received or disposed of said property, to whom it delivered said property, the date and manner of destruction or disposition of said property, and the exact kinds, quantities and forms of said property. Said records shall be open to inspection by all federal and state officers charged with enforcement of federal and state child pornography and internet crimes laws. Persons making final disposition or destruction of said property under court order shall report, under oath, to the court the exact circumstances of said disposition or destruction.

(f) (1) During the pendency of the proceedings the court may issue at the request of the commonwealth ex parte any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody, including but not limited to an order that the commonwealth remove the property if possible, and safeguard it in a secure location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account; and, that a substitute custodian be appointed to manage such property or a business enterprise. Property taken or detained under this section shall not be replevable, but once seized shall be deemed to be lawfully in the custody of the commonwealth pending forfeiture, subject only to

the orders and decrees of the court having jurisdiction thereof. Process for seizure of said property shall issue only upon a showing of probable cause, and the application therefor and the issuance, execution, and return thereof shall be subject to the provisions of chapter 276, so far as applicable.

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

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

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

145 judgment, discontinuance, dismissal or other final disposition, and such certificate shall be
146 recorded in the registry in which the original memorandum recorded pursuant to this section was
147 filed.