

HOUSE No. 4279

The Commonwealth of Massachusetts

PRESENTED BY:

Carlos González and David M. Rogers

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 relative to civil asset forfeiture.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Carlos González</i>	<i>10th Hampden</i>	<i>10/20/2021</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>10/20/2021</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>10/26/2021</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>11/9/2021</i>

HOUSE No. 4279

By Messrs. González of Springfield and Rogers of Cambridge, a petition (subject to Joint Rule 12) of Carlos González, David M. Rogers and Russell E. Holmes relative to civil asset forfeiture. The Judiciary.

The Commonwealth of Massachusetts

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

An Act relative to civil 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 SECTION 1. Section 2BBBB of chapter 29 of the General Laws, as appearing in the
2 2018 Official Edition, is hereby amended by inserting after the figure “10”, in line 4, the
3 following words:-

4 and all monies, proceeds from assets, or other such funds forfeited pursuant to section 47
5 of chapter 94C

6 SECTION 2. Section 47 of chapter 94C of the General Laws, as so appearing, is hereby
7 amended by adding the following paragraph:-

8 (10) No moneys, negotiable instruments, securities, proceeds or other things of value
9 furnished or intended to be furnished by any person in exchange for a controlled substance in
10 violation of this chapter shall be subject to forfeiture to the commonwealth unless they exceed
11 \$250 in value.

12 SECTION 3. Said section 47 of said chapter 94C of the General Laws, as so appearing, is
13 hereby further amended by striking out subsection (d) and inserting in place thereof the
14 following subsection:-

15 (d) A district attorney or the attorney general may petition the superior court in the name
16 of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance,
17 real property, moneys or other things of value subject to forfeiture under the provisions of
18 subparagraphs (3), (5), and (7) of subsection (a). Such petition shall be filed in the court having
19 jurisdiction over said conveyance, real property, monies or other things of value or having final
20 jurisdiction over any related criminal proceeding brought under any provision of this chapter. In
21 all such suits where the property is claimed by any person, other than the commonwealth, the
22 commonwealth shall have the burden of proving all material facts by clear and convincing
23 evidence, and any such claimant shall then have the burden of proving that the property is not
24 forfeitable pursuant to subparagraph (3), (5), or (7) of said subsection (a). The owner of said
25 conveyance or real property, or other person claiming thereunder shall have the burden of proof
26 as to all exceptions set forth in subsections (c) and (i).

27 The court shall order the commonwealth to give notice by certified or registered mail to
28 the owner of said conveyance, real property, moneys or other things of value and to such other
29 persons as appear to have an interest therein, and the court shall promptly, but not less than two
30 weeks after notice, hold a hearing on the petition. The court shall continue the hearing on the
31 petition pending the outcome of any criminal trial related to the violation of this chapter. A
32 criminal defendant represented by public counsel in any criminal trial related to the violation of
33 this chapter shall be entitled to continued public counsel representation at the hearing on the
34 petition to order a forfeiture. At such hearing the court shall hear evidence and make conclusions

35 of law, and shall thereupon issue a final order, from which the parties shall have a right of
36 appeal. In all such suits where a final order results in a forfeiture, said final order shall provide
37 for disposition of said conveyance, real property, moneys or any other thing of value by the
38 commonwealth or any subdivision thereof in any manner not prohibited by law, including
39 official use by an authorized law enforcement or other public agency, or sale at public auction or
40 by competitive bidding. The proceeds of any such sale may be used to pay the reasonable
41 expenses of the storage, maintenance of custody, advertising, and notice, and the balance thereof
42 shall be distributed as further provided in this section.

43 The final order of the court shall provide that said moneys and the proceeds of any such
44 sale shall deposit fifty (50) percent into the Commonwealth Substance Abuse Prevention and
45 Treatment Fund established pursuant to section 2BBBB of chapter 29 and used solely for the
46 purpose of substance abuse treatment and prevention services and fifty (50) percent in a fund that
47 assists communities that have been adversely affected economically by the opioid epidemic
48 and/or criminal justice policies and procedures.

49 SECTION 4. Said section 47 of said chapter 94C of the General Laws, as so appearing, is
50 hereby further amended by striking out subsection (k) and inserting in place thereof the
51 following subsection:-

52 (k)(1) The attorney general, each district attorney and each police department shall file an
53 annual report with the executive office of administration and finance and the house and senate
54 committees on ways and means detailing all assets, monies and proceeds from assets seized
55 pursuant to this section. The report shall provide itemized accounting for all assets, monies and
56 proceeds from assets within the following asset categories: cash, personal property, conveyances

57 and real property, including any property disposed of by the office of seized property
58 management. The report shall be filed not later than January 31 for the preceding calendar year
59 and shall be a public record.

60 (2) The attorney general, each district attorney and each police department shall file an
61 annual report with the executive office of administration and finance and the house and senate
62 committees on ways and means regarding all expenditures of funds allocated to them from the
63 Commonwealth Substance Abuse Prevention and Treatment Fund pursuant to section 2BBBB of
64 chapter 29. The report shall be filed not later than January 31 for the preceding calendar year and
65 shall be a public record.