

SENATE No. 2944

The Commonwealth of Massachusetts

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

SENATE, June 21, 2022.

The committee on Senate Ways and Means, to whom was referred the Senate Bill relative to forfeiture reform (Senate, No. 2671) (also based on Senate, No. 2105),- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2944).

For the committee,
Michael J. Rodrigues

SENATE No. 2944

The Commonwealth of Massachusetts

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 hereby amended by striking out subsection (d) and inserting in place thereof
3 the 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 the forfeiture of a
6 conveyance, real property, money or other things of value exceeding \$250 subject to forfeiture
7 under subparagraphs (3), (5) and (7) of subsection (a). The petition shall be filed in the court
8 having jurisdiction over the conveyance, real property, money or other things of value or having
9 final jurisdiction over any related criminal proceeding brought under any provision of this
10 chapter. In such a proceeding in which the property is claimed by a person other than the
11 commonwealth or a subdivision thereof, the commonwealth or the subdivision shall have the
12 burden of proving to the court by a preponderance of the evidence that the property is forfeitable.
13 The owner of the conveyance or real property, or other person claiming thereunder, shall have
14 the burden of proof as to all 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 the conveyance, real property, money 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 2
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 under this
21 section. An owner of the conveyance, real property, money or other things of value who is not a
22 criminal defendant shall be entitled to public counsel if the owner satisfies the requirements for
23 indigency under section 2 of chapter 211D. Upon the motion of the owner of the conveyance,
24 real property, money or other things of value, the court shall continue the hearing on the petition
25 pending the outcome of any criminal trial related to the violation of this chapter. At such hearing,
26 the court shall hear evidence and make conclusions of law and shall thereupon issue a final order
27 from which the parties shall have a right of appeal. In any such proceeding in which a final order
28 results in a forfeiture, the final order shall provide for disposition of the conveyance, real
29 property, money or any other things of value by the commonwealth, or any subdivision thereof,
30 in any manner not prohibited by law, including sale at public auction or a competitive bidding
31 process. The proceeds of any such sale may be used to pay the reasonable expenses of storage,
32 maintenance of custody, advertising and notice and the balance thereof shall be distributed as
33 further provided in this section.

34 The final order of the court shall provide that forfeited money and the proceeds of any
35 sale under this subsection shall be deposited in the trust fund established in subsection (l).
36 Forfeited property received from another jurisdiction, including the federal government, shall be
37 transferred to the state treasurer, sold by the state treasurer or a designee and deposited in said

trust fund. Proceeds from the sale of forfeited property received from another jurisdiction, including, but not limited to, the federal government, shall be transferred to the state treasurer and deposited in said trust fund.

SECTION 2. Paragraph (2) of subsection (f) of said section 47 of said chapter 94C, as so appearing, is hereby amended by striking out the last sentence.

SECTION 3. Said section 47 of said chapter 94C, as so appearing, is hereby further amended by striking out subsection (k) and inserting in place thereof the following 2 subsections:-

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

(l) There shall be a trust fund administered by the state treasurer that shall be credited with all money or proceeds received by a police department, prosecuting attorney or the attorney general pursuant to this section. The money in the fund shall be spent, subject to appropriation: (i) to support jail diversion programs; (ii) for training for prosecutors and law enforcement; (iii) to support violence prevention programs; (iv) to support substance use disorder treatment programs; (v) to defray the costs of protracted investigations; (vi) to provide additional technical equipment or expertise; (vii) to provide matching funds to obtain federal grants; or (viii) for

60 other law enforcement, diversion or crime prevention purposes. Any money remaining in the
61 fund at the close of a fiscal year shall not revert to the General Fund. Not more than 90 days after
62 the close of each fiscal year, an entity that received money from the fund during the previous
63 fiscal year shall file a report with the senate and house committees on ways and means detailing
64 the use of the money disbursed from the fund.