

SENATE No. 2988

Senate, June 30, 2022 -- Text of the Senate Bill relative to forfeiture reform (being the text of Senate, No. 2944, printed as amended).

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 24W of chapter 90 of the General Laws, as appearing in the 2020
2 Official Edition, is hereby amended by adding the following subsection:-

3 (g) The attorney general, each district attorney and each police department shall file an
4 annual report with the executive office for administration and finance, the senate and house
5 committees on ways and means and the joint committee on the judiciary detailing all assets,
6 money and proceeds from the sale of assets seized pursuant to this section. The report shall
7 provide an itemized accounting for each seizure and forfeiture as required by section 47 of
8 chapter 94C. The report shall be filed not later than January 31 for the preceding calendar year
9 and shall be a public record.

10 SECTION 2. Section 47 of chapter 94C of the General Laws, as so appearing, is hereby
11 amended by striking out subsection (d) and inserting in place thereof the following subsection:-

12 (d) A district attorney or the attorney general may petition the superior court in the name
13 of the commonwealth in the nature of a proceeding in rem to order the forfeiture of a
14 conveyance, real property, money or other things of value exceeding \$250 subject to forfeiture
15 under subparagraphs (3), (5) and (7) of subsection (a). The petition shall be filed in the court
16 having jurisdiction over the conveyance, real property, money or other things of value or having
17 final jurisdiction over any related criminal proceeding brought under this chapter. In any such
18 proceeding in which the property is claimed by a person other than the commonwealth or a
19 subdivision thereof, the commonwealth shall have the burden of proving to the court by a
20 preponderance of the evidence that the property is forfeitable. The owner of the conveyance or
21 real property, or other person claiming thereunder, shall have the burden of proof as to all
22 exceptions set forth in subsections (c) and (i).

23 The court shall order the commonwealth to give notice by certified or registered mail to
24 the owner of the conveyance, real property, money or other things of value and to such other
25 persons as appear to have an interest therein and the court shall promptly, but not less than 2
26 weeks after notice, hold a hearing on the petition. A criminal defendant represented by public
27 counsel in a criminal trial related to the violation of this chapter shall be entitled to continued
28 public counsel representation at the hearing on the petition to order a forfeiture under this
29 section. An owner of the conveyance, real property, money or other things of value who is not a
30 criminal defendant shall be entitled to public counsel if the owner satisfies the requirements for
31 indigency under section 2 of chapter 211D. Upon the motion of the owner of the conveyance,
32 real property, money or other things of value, the court shall continue the hearing on the petition
33 pending the outcome of any criminal trial related to the violation of this chapter. At such hearing,
34 the court shall hear evidence and make conclusions of law and shall thereupon issue a final order

35 from which the parties shall have a right of appeal. In any such proceeding in which a final order
36 results in a forfeiture, the final order shall provide for disposition of the conveyance, real
37 property, money or any other things of value by the commonwealth or any subdivision thereof in
38 any manner not prohibited by law, including sale at public auction or a competitive bidding
39 process. The proceeds of any such sale may be used to pay the reasonable expenses of storage,
40 maintenance of custody, advertising and notice and the balance thereof shall be distributed as
41 provided in this section.

42 The final order of the court shall provide that forfeited money and the proceeds of any
43 sale under this subsection shall be distributed equally between the prosecuting district attorney or
44 attorney general and the city, town or state police department involved in the seizure. If more
45 than 1 police department was substantially involved in the seizure, the court having jurisdiction
46 over the forfeiture proceeding shall distribute the 50 per cent equitably among these departments.

47 There shall be established within the office of the state treasurer separate special law
48 enforcement trust funds for each district attorney and for the attorney general. All forfeited
49 money and the proceeds of sales received by a prosecuting district attorney or the attorney
50 general shall be deposited in the respective trust fund and expended without further appropriation
51 to: (i) support jail diversion programs; (ii) train prosecutors and law enforcement; (iii) support
52 violence prevention programs; (iv) support substance use disorder prevention, education and
53 treatment programs; (v) defray the costs of protracted investigations; (vi) provide additional
54 technical equipment or expertise; (vii) provide matching funds to obtain federal grants; and (viii)
55 use for other law enforcement, diversion or crime prevention purposes. Any program seeking to
56 receive funds from a special law enforcement trust fund shall file an annual audit report with the
57 district attorney or the attorney general who controls the fund. The audit report shall include, but

58 not be limited to, a listing of the assets, liabilities, itemized expenditures and board of directors
59 of the program. Annually, not later than January 31, each district attorney and the attorney
60 general shall file a report with the joint committee on the judiciary and the senate and house
61 committees on ways and means on the use of the money in the trust fund.

62 All such money and proceeds received by a police department shall be deposited in a
63 special law enforcement trust fund and shall be expended without further appropriation to: (i)
64 support jail diversion programs; (ii) train law enforcement; (iii) support violence prevention
65 programs; (iv) support substance use disorder prevention, education and treatment programs; (v)
66 defray the costs of protracted investigations; (vi) provide additional technical equipment or
67 expertise; (vii) provide matching funds to obtain federal grants; or (viii) use for other law
68 enforcement, diversion or crime prevention purposes as the chief of police of the city or town or
69 the colonel of state police deems appropriate. Annually, not later than January 31, a police
70 department that received such money and proceeds in the previous calendar year shall file a
71 report with the joint committee on the judiciary and the senate and house committees on ways
72 and means detailing the use of the money disbursed from the fund. Such funds shall not be
73 considered a source of revenue to meet the operating needs of such department.

74 SECTION 3. Said section 47 of said chapter 94C, as so appearing, is hereby further
75 amended by adding the following 2 subsections:-

76 (1) The executive office for administration and finance shall establish and maintain a case
77 tracking system and searchable public website that shall include the following information about
78 any property seized or forfeited under state law: (i) the name of the law enforcement agency that
79 seized the property; (ii) the date of the seizure; (iii) the type and a description of the property

80 seized, including the make, model and year of any motor vehicle; (iv) the location of the seizure;
81 (v) the estimated value of the property seized; (vi) whether the property seized was transferred to
82 federal government; (vii) the crime charged, if any, related to the property that was seized; (viii)
83 the outcome of any charged crime under clause (vii); (ix) the criminal case number, if charged;
84 (x) the forfeiture case number; (xi) the type of forfeiture proceeding; (xii) whether a property
85 owner who files a claim or counterclaim, if applicable, was suspected of committing a crime,
86 was an owner who was not suspected of committing a crime, was a lienholder or other party or
87 whether there was no such filing by any party; (xiii) whether there was a forfeiture settlement or
88 consent agreement; (xiv) the date of the forfeiture order; (xv) whether the property was returned
89 to the owner, partially returned to the owner, sold, destroyed or retained by a law enforcement
90 agency or is pending disposition; and (xvi) the total value of the property forfeited, including
91 currency and proceeds from the sale of property, excluding the value of contraband. Nothing in
92 this subsection shall require the publication of information in violation of any law or regulation
93 relating to criminal offender record information, personally identifiable information, or any other
94 applicable privacy law or the publication of information that would compromise the identity or
95 location of a confidential informant. If an agency has made no seizures or forfeitures during the
96 previous year, a null report shall be filed by the agency specifying that it did not engage in
97 seizures or forfeitures during the reporting period. The executive office may adopt rules
98 necessary to implement this subsection.

99 (m) Annually, not later than January 31, the committee on public counsel services, in
100 collaboration with the trial court of the commonwealth, shall submit a report to the senate and
101 house committees on ways and means and the joint committee on the judiciary on the provision
102 of public counsel representation under this section including, but not limited to, the: (i) total

103 number of cases involving public counsel representation under this section; (ii) number of such
104 cases where the property owner is a criminal defendant represented by public counsel in a related
105 criminal trial; and (iii) number of such cases where the property owner is not a criminal
106 defendant.

107 SECTION 4. Section 56 of chapter 265 of the General Laws, as so appearing, is hereby
108 amended by adding the following subsection:-

109 (k) The attorney general, each district attorney and each police department shall file an
110 annual report with the executive office for administration and finance, the senate and house
111 committees on ways and means and the joint committee on the judiciary detailing all assets,
112 money and proceeds from the sale of assets seized pursuant to this section. The report shall
113 provide an itemized accounting for each seizure and forfeiture as required by section 47 of
114 chapter 94C. The report shall be filed not later than January 31 for the preceding calendar year
115 and shall be a public record.