HOUSE DOCKET, NO. 2128 FILED ON: 1/19/2023

HOUSE . . . . . No. 1732

The Commonwealth of Massachusetts

PRESENTED BY:

David M. Rogers and Carlos González

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:
David M. Rogers	*24th Middlesex*	*1/19/2023*
Carlos González	*10th Hampden*	*1/19/2023*

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HOUSE . . . . . No. 1732

By Representatives Rogers of Cambridge and González of Springfield, a petition (accompanied by bill, House, No. 1732) of David M. Rogers and Carlos González relative to civil asset forfeiture. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *4279* OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

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:

SECTION 1. Section 2BBBB of chapter 29 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after the figure "10", in line 4, the following words:-

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

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

(10) No monies, negotiable instruments, securities, proceeds or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in

violation of this chapter shall be subject to forfeiture to the commonwealth unless they exceed $250 in value.

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

(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, monies or other things of value subject to forfeiture under the provisions of subparagraphs (3), (5), and (7) of subsection (a). 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 this chapter. In all such suits where the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving all material facts by clear and convincing evidence, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subparagraph (3), (5), or (7) of said subsection (a). The owner of said conveyance or real property, or other person claiming thereunder shall have the burden of proof as to all exceptions set forth in subsections (c) and (i).

The court shall order the commonwealth to give notice by certified or registered mail to the owner of said conveyance, real property, monies or other things of value and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than two weeks after notice, hold a hearing on the petition. The court shall continue the hearing on the petition pending the outcome of any criminal trial related to the violation of this chapter. A

criminal defendant represented by public counsel in any criminal trial related to the violation of this chapter shall be entitled to continued public counsel representation at the hearing on the petition to order a forfeiture. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order, from which the parties shall have a right of appeal. In all such suits where a final order results in a forfeiture, said final order shall provide for disposition of said conveyance, real property, monies or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale may be used to pay the reasonable expenses of the storage, maintenance of custody, advertising, and notice, and the balance thereof shall be distributed as further provided in this section.

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

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

(k)(1) The attorney general, each district attorney and each police department shall file an annual report with the executive office of administration and finance and the house and senate

committees on ways and means detailing all assets, monies and proceeds from assets seized pursuant to this section. The report shall provide itemized accounting for all assets, monies and proceeds from assets within the following asset categories: 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.

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