SENATE . . . . . No. 2758

The Commonwealth of Massachusetts

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

SENATE, May 2, 2024.

The committee on The Judiciary, to whom was referred the petitions (accompanied by bill, Senate, No. 1052) of Liz Miranda for legislation relative to criminal forfeiture; (accompanied by bill, Senate, No. 1111) of Rebecca L. Rausch for legislation relative to civil asset forfeiture transparency and data reporting; (accompanied by bill, Senate, No. 2450) (subject to Joint Rule 12) of Cynthia Stone Creem for legislation relative to forfeiture reform; (accompanied by bill, House, No. 1577) of Bradley H. Jones, Jr., and others relative to civil asset forfeiture improvements under the controlled substances law; (accompanied by bill, House, No. 1615) of David Henry Argosky LeBoeuf relative to establishing a right to counsel in civil asset forfeiture cases; (accompanied by bill, House, No. 1642) of Jay D. Livingstone relative to forfeiture reform; (accompanied by bill, House, No. 1732) of David M. Rogers and Carlos González relative to civil asset forfeiture; and (accompanied by bill, House, No. 1762) of Danillo A. Sena, Nicholas A. Boldyga and Rebecca L. Rausch relative to civil asset forfeiture transparency and data reporting, report the accompanying bill (Senate, No. 2758).

For the committee,
James B. Eldridge

FILED ON: 4/30/2024

SENATE . . . . . No. 2758

The Commonwealth of Massachusetts

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

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:

SECTION 1. Section 47 of chapter 94C of the General Laws, as appearing in the 2022 Official Edition, is hereby amended by striking out, in lines 20 and 24, the word “moneys”, each time it appears, and inserting in place thereof, in each instance, the following word:- monies.

SECTION 2. Said section 47, 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 the forfeiture of a conveyance, real property, monies or other things of value exceeding $250 subject to forfeiture under subparagraphs (3), (5) and (7) of subsection (a). The petition shall be filed in the court having jurisdiction over the conveyance, real property, monies or other things of value or having final jurisdiction over any related criminal proceeding brought under this chapter. In any such proceeding in which the property is claimed by a person, other than the commonwealth or a subdivision thereof, the commonwealth shall have the burden of proving to the court by a

preponderance of the evidence that the property is forfeitable. The owner of the 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 the 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 2 weeks after notice, hold a hearing on the petition. 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 under this section. An owner of the conveyance, real property, monies or other things of value who is not a criminal defendant shall be entitled to public counsel if the owner satisfies the requirements for indigency under section 2 of chapter 211D. Upon motion of the owner, the court shall continue the hearing on the petition pending the outcome of any criminal trial related to the violation of this chapter. 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 any such proceeding in which a final order results in forfeiture, the final order shall provide for disposition of the conveyance, real property, monies or other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including sale at public auction or by competitive bidding. The proceeds of any such sale may be used to pay the reasonable expenses of storage, maintenance of custody, advertising and notice, and any balance shall be distributed as provided in this section.

The final order of the court shall provide that forfeited monies and the proceeds of any sale under this subsection shall be deposited in the general fund. Forfeited property received

from another jurisdiction, including the federal government, shall be transferred to the office of the state treasurer, sold by the treasurer or designee, and deposited in the general 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 office of the state treasurer and deposited in the general fund.

SECTION 3. Said section 47, as so appearing, is hereby further amended by striking out, in lines 197-203, the following words:- The office of seized property management may receive initial funding from the special law enforcement trust funds of the attorney general and each district attorney established pursuant to subsection (d) and shall subsequently be funded by a portion of the proceeds of each sale of such managed property to the extent provided as payment of reasonable expenses in subsection (d).

SECTION 4. Said section 47, as so appearing, is hereby further amended by striking out subsection (k) and inserting in place thereof the following 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, the house and senate committees on ways and means and the joint committee on the judiciary detailing all property seized or forfeited pursuant to this section. The report shall provide itemized accounting for all assets, monies and proceeds from the sale of 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.

(l) Annually, not later than January 31, the committee on public counsel services, in collaboration with the trial court of the commonwealth, shall submit a report to the senate and house committees on ways and means and the joint committee on the judiciary on the provision of public counsel representation under this section including, but not limited to, the: (i) total number of cases involving public counsel representation under this section; (ii) number of such cases where the property owner is a criminal defendant represented by public counsel in a related criminal trial; and (iii) number of such cases where the property owner is not a criminal defendant.