

**Special Commission to Study  
Civil Asset Forfeiture Policies and  
Practices in the Commonwealth**

**Final Report**

**July 2021**

### *Commission Membership*

- Representative Claire Cronin, **Co-Chair**
- Senator Jamie Eldridge, **Co-Chair**
- Representative Harold Naughton, replaced by Representative Carlos Gonzalez, House Chair of the Joint Committee on Public Safety and Homeland Security
- Senator Michael Moore, Senate Chair of the Joint Committee on Public Safety and Homeland Security
- Representative Alyson Sullivan, House Minority Leader appointment
- Matthew Connolly, Esq., replaced by Major Pasquale Russolillo, Senate Minority leader appointment
- Megan McLaughlin, Esq., replaced by Cesar Vega, Esq., Attorney General designee
- Susan Terrey, Esq., Secretary of the Executive Office of Public Safety and Security designee
- Commissioner Monserrate Quiñones, Chair of the Massachusetts Commission Against Discrimination designee
- Timothy Maguire, Esq., Chief Justice of the Supreme Judicial Court designee†
- Patrick Lee, Esq., President of Massachusetts Sheriffs designee
- Norfolk District Attorney Michael Morrissey, Massachusetts District Attorneys Association designee
- Lisa Hewitt, Esq., Chief Counsel of Committee for Public Counsel Services (“CPCS”) designee
- Major Steven Fennessy, Colonel of the Massachusetts State Police designee
- Charu Verma, Esq., Representative from Massachusetts Bar Association
- Carol Starkey, Esq., Representative from Boston Bar Association
- Howard Cooper, Esq., Representative from Massachusetts Association of Criminal Defense Lawyers
- \_\_\_\_\_ Representative from the State Police Association of Massachusetts
- Rahsaan Hall, Esq., Representative from the American Civil Liberties Union of Massachusetts
- \_\_\_\_\_ Representative from the Boston branch of the National Association for the Advancement of Colored People
- Chief Mark Dubois, Representative from the Massachusetts Chiefs of Police Association

† The designee for the Supreme Judicial Court limited his involvement in the Commission’s work to discrete matters that have a direct nexus to how courts go about their business. The Supreme Judicial Court, through its designee, takes no position on the Commission’s recommendations included in this report.

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## **I. Charge of the Special Commission**

### SECTION 90 OF CHAPTER 41 OF THE ACTS OF 2019

There shall be a special commission governed by section 2A of chapter 4 of the General Laws to study civil asset forfeiture policies and practices in the commonwealth. The commission shall consist of the following 21 members: the house and senate chairs of the joint committee on the judiciary, who shall serve as co-chairs of the commission; the house and senate chairs of the joint committee on public safety and homeland security; 1 person to be appointed by the minority leader of the house of representatives; 1 person to be appointed by the minority leader of the senate; the attorney general or a designee; the secretary of public safety and security or a designee; the chair of the Massachusetts commission against discrimination or a designee; the chief justice of the supreme judicial court or a designee; the president of the Massachusetts Sheriffs Association, Inc. or a designee; the president of the Massachusetts District Attorney Association or a designee; the chief counsel of the committee for public counsel services or a designee; the colonel of state police or a designee; a representative from the Massachusetts Bar Association; a representative from the Boston Bar Association; a representative from the Massachusetts Association of Criminal Defense Lawyers, Inc.; a representative from the State Police Association of Massachusetts; a representative from the American Civil Liberties Union of Massachusetts, Inc.; a representative from the Boston branch of the National Association for the Advancement of Colored People and a representative from the Massachusetts Chiefs of Police Association.

The study shall include, but not be limited to: (i) an evaluation of the standard of proof required for law enforcement in the commonwealth to establish that property seized is related to a crime, as compared to the standard imposed in other states; (ii) a review of current documentation and

reporting obligations for law enforcement, including the extent to which law enforcement records whether the property's owner was charged with or convicted of a crime, and any recommendations for enhanced or additional reporting requirements; (iii) an analysis of the scope of civil asset forfeiture in the commonwealth, including an estimate of the total value of assets seized annually, the average value of assets seized in a case and a breakdown by percentage of the underlying offenses giving rise to the forfeiture; (iv) an examination of how civil asset forfeiture proceeds are allocated and spent in the commonwealth; (v) an evaluation of the process by which property owners may challenge a seizure, including the percentage of seizure proceedings challenged annually, the percentage of successful challenges and the average cost of bringing a challenge; (vi) an analysis of any racial or socioeconomic disparities in the application of civil asset forfeiture laws in the commonwealth; and (vii) a review of best practices undertaken in other states.

The commission shall hold its first meeting not later than 30 days after the effective date of this act and shall meet at least monthly thereafter. The commission shall submit a report of its study and any recommendations, together with any draft legislation necessary to carry those recommendations into effect, by filing the same with the clerks of the house of representatives and the senate not later than December 31, 2019.

#### SECTION 64 OF CHAPTER 227 OF THE ACTS OF 2020

Section 90 of said chapter 41 is hereby amended by striking out the words "December 31, 2019" and inserting in place thereof the following words:- July 31, 2021.

## II. Introduction

Civil asset forfeiture is the process by which property having some connection to a crime is seized by the authorities and the property rights forfeited to the state. The processes by which this is accomplished vary widely from state to state with myriad different burdens of proof required to support the forfeiture. Massachusetts has the lowest burden of proof in the country, requiring that the prosecutor show probable cause that the property is subject to forfeiture. The Legislature saw the need to analyze this low burden of proof as well as the scope of forfeitures and adequacy of current reporting requirements in Massachusetts.

The Massachusetts Legislature established a special commission to study civil asset forfeiture policies and practices in the commonwealth (“the Commission”) to evaluate the use of civil asset forfeiture in Massachusetts and also examine the practice in other states. Established in a supplementary budget in the summer of 2019<sup>1</sup>, the Commission quickly began its work by conducting its first in-person meeting in September and continued its work into the following spring. The COVID-19 pandemic interrupted its work, after four in-person meetings, in March of 2020. Social gathering restrictions coupled with unsecure virtual meeting options forced a year-long hiatus from March 2020 until March 2021. Advances in virtual security and an extended deadline<sup>2</sup> enabled the Commission to return to work by conducting three virtual meetings to complete its tasks. The Legislature provided the Commission with a seven-part charge centering on the process by which property is seized, the value of that property and how it is allocated after forfeiture, and the sufficiency of reporting requirements. This report will address each of the

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<sup>1</sup> St. 2019, c. 41§ 90

<sup>2</sup> St. 2020, c. 227§ 64

charges in turn based on hundreds of pages of materials submitted to the Commission and the seven in-person and virtual meetings conducted by the members.

### **III. The Standard of Proof in Massachusetts as Compared to Other States (1<sup>st</sup> charge)**

Asset forfeiture in Massachusetts is authorized by a number of statutes dating back over 230 years.<sup>3</sup> The various statutes permit the seizure and forfeiture of money or property found to be connected to crimes relating to drug offenses, drunk driving, human trafficking, and money laundering. In practice, however, the vast majority of civil forfeiture is conducted using the provisions of the Controlled Substance Act, G.L. c. 94C. The Trial Court of Massachusetts presented the Commission with data on civil asset forfeitures for the three years spanning fiscal year 2017 to fiscal year 2019. (See Civil Asset Forfeiture: Statutes, Practices, and Analysis of Forfeiture Cases, November 25, 2019 attached hereto as Exhibit “A”). In the three years spanning 2017 to 2019, there were 3,047 civil asset forfeiture cases filed in the Trial Court and 3,013 of those were filed in the Superior Court under G.L. c. 94C§ 47(d). (Exhibit “A” at 3). Of the remaining 34 cases in that timeframe, 15 were brought under G.L. c. 90§ 24W in the District Court or Boston Municipal Court (“BMC”), 13 were brought under G.L. c. 257§§. 1-15 in the District Court or BMC, and 6 were brought under G.L. c. 265§ 56 in the Superior Court. (Id. at 7). Therefore, around 99% of forfeiture actions in these three years were brought in the Superior Court pursuant to G.L. c. 94C§ 47(d)<sup>4</sup>.

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<sup>3</sup> G.L. c. 90§ 24W (forfeiture of motor vehicle owned by certain drunk driving offenders); G.L. c. 94C§ 47 (controlled substances act); G.L. c. 257 ss. 1-15 (seizure and libelling (*sic*) of forfeited property); G.L. c. 265§ 56 (property subject to seizure for violations of human trafficking offenses); G.L. c. 267A§ 4 (forfeiture of money instruments or other property for violation of money laundering offenses).

<sup>4</sup> While forfeiture actions that remain a part of the criminal proceedings under c. 94C§ 47(b) may be brought in the District Court/BMC or Superior Court, the civil forfeiture actions brought as a proceeding in rem against the property under§ 47(d) must be brought in the Superior Court.

The initial civil forfeiture statute enacted by the Massachusetts Legislature in 1971 required that the Commonwealth had the “burden of proving all material facts by a preponderance of the evidence.” G.L. c. 94C§ 47, inserted by St. 1971, c. 1071,§ 1. This original standard would have been largely in line with current standards around the country. However, in 1989, the Legislature amended the statute to lower the standard and impose on the Commonwealth the “burden of proving to the court the existence of probable cause to institute the action...” G.L. c. 94C§ 47 as amended by St. 1989, c. 653,§ 79. By lowering the standard of proof to probable cause, the Legislature briefly brought Massachusetts in line with federal law at the time. That consistency was short-lived when Congress enacted the Civil Asset Forfeiture Reform Act of 2000 (CAFRA)<sup>5</sup> and raised the federal burden of proof to a preponderance of the evidence. Thus, the federal burden of proof is now higher than the Massachusetts standard.<sup>6</sup>

The Massachusetts standard is not just lower than the federal government. The Commonwealth holds the distinction as having the lowest burden of any other state. To discuss standards of proof across the country, Attorney Dan Alban of the Institute for Justice (IJ) presented the IJ’s findings in its report “Policing for Profit: The Abuse of Civil Asset Forfeiture” attached hereto as Exhibit “B”. The IJ report outlined the various standards of proof across the country with Massachusetts as the lowest standard and Nebraska, New Mexico, and North Carolina with the highest standard of criminal forfeiture. (see Exhibit “B”, Table A.1). The rest of the states fall in between with a plurality of 20 states and the federal government requiring a preponderance of the evidence standard. (Id.)

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<sup>5</sup> Pub. L. 106-185, 114 Stat. 202 (2000)

<sup>6</sup> The Massachusetts Supreme Judicial Court has held that, “...a civil forfeiture complaint under G.L. c. 94C,§ 47(d), will survive a motion to dismiss if the Commonwealth pleads facts sufficient to support a reasonable belief that, at trial, the Commonwealth can show probable cause to believe the property is subject to forfeiture.” *Comm. v. One 2004 Audi Sedan Auto.*, 456 Mass. 34, 43 (2010).



The standards of proof for civil asset forfeiture across the country vary greatly but Massachusetts clearly stands alone with the lowest standard. The majority of states and the federal government require either a preponderance or clear and convincing evidence. (Id.) As mentioned above, Massachusetts has had a preponderance standard in the past but lowered it in 1989 and did not raise it back up to align with a change in the federal law in 2000.

#### **IV. Documentation and Reporting Requirements (2<sup>nd</sup> charge)**

Recent legislative changes undertaken in the broader context of criminal justice reform have improved the documentation and reporting requirements surrounding civil asset forfeiture. As part of An Act Relative to Criminal Justice Reform (St. 2018, c. 69), the Legislature added subsection (k) to G.L. c. 94C§ 47 that requires the attorney general, district attorneys and any police department for whom a special law enforcement trust fund has been established to provide an accounting of the assets and expenditures from the fund. (St. 2018, c. 69,§ 61)<sup>7</sup>. Specifically, the new law requires the covered entities to record “all assets, monies and proceeds from assets seized pursuant to this section” (G.L. c. 94C§ 47(k)(1)) held in the fund as well as “all expenditures therefrom, which shall include, but not be limited to, the following expense categories: personnel, contractors, equipment, training, private-public partnerships, inter-agency collaborations and community grants.” (G.L. c. 94C§ 47(k)(2)).

The Commission received and reviewed the Law Enforcement Trust Fund balances for calendar years 2018, 2019, and 2020 attached hereto as Exhibit “C”. The largest group of assets recorded in the reports was cash with a small proportion of personal and real property also seized. The expenditures portion of the reports complied with the requirements of the law, but

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<sup>7</sup> The Commission recognizes that the Massachusetts District Attorneys Association also provided civil asset forfeiture data prior to the enactment of St. 2018, c. 69 to the House and Senate Committees on Ways and Means. That data, for fiscal years 2013, 2014, and 2015, was required pursuant to St. 2015, c. 46.

the Commission found two areas that the Legislature may want to consider revisiting. First, all district attorneys and the attorney general included expenditures for “Other Law Enforcement Purposes”. This designation is vague and covers a wide range of expenditures that the Legislature may want to clarify. Second, each report contains an asterisk on the category of “Distribution to Police”. According to the report, this asterisk means that those figures exclude forfeited money retained by police which is not deposited into the District Attorney Law Enforcement Trust Fund. The Commission was unable to determine how that money is tracked in the custody of the police if not deposited in the trust fund. Furthermore, the Legislature may want to explore the retention of funds by police departments without depositing them into a trust fund and documenting the spending by the police of funds allocated to them by the district attorneys.

The Commission suggests that the Legislature consider revisiting the reporting requirements imposed in 2018 as discussed in Part X, below, of this report.

#### **V. Scope of Civil Asset Forfeiture in Massachusetts (3<sup>rd</sup> charge)**

Data provided to the Commission provides a glimpse at the scope of civil asset forfeiture in Massachusetts. The Law Enforcement Trust Fund Reports (Exhibit “C”) indicate that the vast majority of assets seized pursuant to c. 94C were in the form of cash. The total value of all assets seized by the 11 district attorneys and the attorney general totaled \$5,439,563.43 in 2018, \$4,039,497.20 in 2019, and \$2,990,046.19 in 2020. The dip in seizures in 2020 is likely due to COVID-19 restrictions being in place for most of the calendar year.

As mentioned above, c. 94C cases account for the majority of all forfeitures in Massachusetts according to the Trial Court (see Exhibit “A”). There have been 11,349 civil asset forfeiture cases filed in the Superior Court in the past decade with cases recently falling from a

high of 1,298 in fiscal year 2016. (Id. at 9). Cases varied by county with Essex, Suffolk, and Worcester accounting for the majority of case filings (Id. at 10) and dollar amounts (Id. at 15) in the last three fiscal years.

The dollar amounts in cases over the last three fiscal years ranged from \$6.20 to \$738,317. (Id. at 16). The highest number of cases filed were between the very modest amounts of \$1,000 and \$4,999 accounting for 1378 cases. There were only 163 cases above \$25,000 but 693 cases under \$1,000. These smaller forfeiture amounts from mostly drug-connected cash form the basis of the multimillion-dollar civil asset forfeiture cases in Massachusetts.

## **VI. Allocation of Proceeds (4<sup>th</sup> charge)**

Data provided to the Commission on how forfeiture proceeds were allocated and spent come from the Law Enforcement Trust Fund Reports generated by the Treasurer's Office attached as Exhibit "C". As discussed in Part IV, above, the Criminal Justice Reform Act of 2018 (St. 2018, Ch. 69) added subsection (k) to the existing G.L. c. 94C to require reports from the attorney general and the 11 district attorneys on their assets and expenditures related to forfeitures each calendar year. The Trust Fund Reports, as required under G.L. c. 94C (k), categorize expenditures by personnel, contractors, equipment, training, private-public partnerships, inter-agency collaborations, and community grants. (See Exhibit "C"). Additional categories of expenditures are also included although not specifically required by the law.

The Treasurer's Reports reveal a trend in expenditures by the district attorneys and attorney general. Other than a very large equipment allocation by the Suffolk County District Attorney in 2020, in each of the years for which data is available, the three top categories of expenditures were other law enforcement purposes, protracted investigations, and distribution to police. Training only accounted for 6% of expenditures in 2018, 4% in 2019, and 1.3% in 2020.

Furthermore, community grants amounted to 8% of spending in 2018, 12% in 2019, and 1.5% in 2020<sup>8</sup>. The total spending by category can obscure the fact that each district attorney spends forfeiture proceeds differently leading to disproportionate spending patterns. For example, in 2018, the Norfolk District Attorney spent \$108,480 (22%) of \$479,544 in total expenditures on training while the Essex District Attorney spent \$0 of \$189,0303 in total spending. As the Legislature considers the recommendations of this Commission, it should also be aware of the discrepancies in spending by the district attorneys since spending patterns vary greatly across the Commonwealth.

The Commission has also found deficiencies in the reporting requirements, discussed in Part IV above and Part X below, that the Legislature may want to address. Beyond vague categorizing, however, the reports reveal interesting information on the allocation of forfeiture proceeds. First, the category of funds distributed to police contains an asterisk indicating that those amounts do not include “money retained by police and not deposited into the District Attorney Law Enforcement Trust Fund” (Exhibit “C”). The Commission was unable to ascertain which police departments have a practice of retaining funds without depositing them with the district attorney or how much money is being retained. The Commission did receive data from local police departments, but those numbers only accounted for funds received as a part of the federal equitable sharing program. (See Exhibit “D”). The Legislature should consider adding all local police departments to those agencies required to provide an accounting of forfeiture proceeds both to track funds not shared with the district attorneys and as a form of double-entry accounting between prosecutors and law enforcement. The Legislature should also consider

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<sup>8</sup> The Commission takes note that the numbers for 2020 are likely due to COVID-19 restrictions and a decreased ability to hold in-person activities.

tracking funds allocated to the police from the district attorneys since, at the moment, it is unclear how local departments are spending their forfeiture proceeds. Second, the Suffolk District Attorney's Office spent \$115,600 in 2018 and \$130,600 in both 2019 and 2020 on the cost of forfeiture collection. The Commission was unable to ascertain what that category encompasses and, as recommended in Part X, suggests that the Legislature consider amending current reporting language to require more detailed accounting of that category.

## **VII. Challenging a Seizure by Property Owner (5<sup>th</sup> charge)**

A property owner or other party with an interest in seized property does have the opportunity to challenge the seizure by filing an appearance and defending against the seizure in the civil case.<sup>9</sup> As mentioned above, under c. 94C§ 47(d), the Commonwealth has the burden to show probable cause and the owner has the burden to prove that the property is not subject to forfeiture.

The Trial Court produced data to the Commission indicating that, from fiscal year 2018 to fiscal year 2019, there were 2,100 forfeiture cases disposed of in the Superior Court. (Exhibit "A" at 20).<sup>10</sup> In those cases, an owner made a claim to the property in only 417 instances. The remaining 1,683, or 80% of these forfeiture cases, had no claim to the property by an owner.

The final dispositions of these cases were, not surprisingly, predominantly default judgments. 1,477, or 72%, resulted in default judgments, 235 ended in a settlement, 151 ended in a judgment by judge or jury, and 184 were dismissed. (Id. at 23). The Commission was unable to

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<sup>9</sup> During the Commission's discussions, the Supreme Judicial Court approved, on June 14, 2021, Superior Court Rule 74 which contains notice and hearing requirements for civil asset forfeiture cases.

<sup>10</sup> The data produced by the Trial Court only contains cases disposed under c. 94C and c. 265§ 56 due to limitations in MassCourts. Furthermore, forfeiture cases that are initiated by motion by the district attorney in a criminal case are difficult to track since the forfeiture remains a part of the criminal matter rather than a separate proceeding, in rem, against the property.

definitively determine the cause of such a high proportion of defaults but discussed the possibility of the added costs and attention necessary to deal with the separate forfeiture action while criminal charges were pending.

#### **VIII. Racial or Socioeconomic Disparities (6<sup>th</sup> charge)**

Any racial or socioeconomic disparities in civil asset forfeiture proved difficult to analyze due to current data collection practices by the courts and the district attorneys. Unfortunately, the Commission was unable to determine a suitable way to improve this data collection to provide a racial or economic profile of those whose property was subject to forfeiture proceedings.

The problem tracking the data is twofold. First, the civil forfeiture proceedings are, predominantly, conducted in rem against the property seized in connection to the criminal matter. Proceeding against the property itself obscures the racial and economic characteristics of the criminal defendant to which it is tied. Second, collecting data on racial and socioeconomic characteristics will rely on the self-identity of each individual criminal defendant. Collecting such data in each case, although not impossible, may prove difficult to aggregate from criminal defendants facing charges as well as incidental interest holders in property who may not know of their potential involvement in the forfeiture proceedings.

The Commission would encourage the Trial Court and other organizations, such as the district attorneys and law enforcement agencies, to collect this information, to the extent permissible, in order to provide data that may be properly analyzed.

#### **IX. Best Practices in Other States (7<sup>th</sup> charge)**

The Commission's review of asset forfeiture practices from around the country revealed several ways that other states handle seizures and forfeitures. The presentation by Attorney

Alban of the Institute for Justice on that organization's 2020 report (Exhibit "B") fostered a productive discussion among the members on practices that the Legislature may explore for implementation in Massachusetts.

### **1. Reporting requirements**

Robust and detailed reporting on civil asset forfeiture, as with any issue sought to be reviewed, is essential to determine how the process is carried out. Attorney Alban noted that while the recent updates to c. 94C are improvements, the reports lack detail and do not provide for an audit of the data. Stronger reporting requirements from states around the country have revealed problems with civil asset forfeiture that can only begin to be addressed once realized.

### **2. Burdens of Proof**

As mentioned in Part III, above, the probable cause standard of proof for civil asset forfeiture in Massachusetts is the lowest in the nation. Other states have heightened burdens of proof with most set at a preponderance of the evidence which coincides with the burden in a civil case. There are also three states, Nebraska, New Mexico, and North Carolina, that have raised the bar the highest to require criminal forfeiture. Best practices from other states on the burden of proof, therefore, all lie higher than the current standard in Massachusetts.

### **3. Minimum value of assets that may be seized**

A practice from other states is setting procedural barriers to initiate forfeiture proceedings. For example, Florida requires a \$1,000 filing fee and a \$1,500 bond, payable to the defendant if they get their property back, to pursue forfeiture. Another practice from other states would be to set a minimum value that may be subject to forfeiture to avoid the temporary loss of the property during a costly, secondary action to the main criminal case.

#### **4. Stay of proceedings during pendency of criminal case**

Imposing a mandatory stay on the civil forfeiture proceedings while the underlying criminal case proceeds could give the property owner more of a chance to contest the forfeiture case. The MDAA has informed the Commission that it is the practice of most district attorneys to stay the forfeiture action until the completion of the criminal matter. Most is not all, however, and current practice is not mandatory. The frequency of defaults in forfeiture actions may be reduced by giving the property owner a chance to address each separate action in turn rather than simultaneously.

#### **5. Allocation of funds**

An element of civil asset forfeiture that the Commission explored was the extent to which law enforcement and prosecutorial entities who carry out the seizures benefit from the proceeds. Law enforcement and prosecutors have a monetary incentive to seize property to partially fund their operations. Other states deposit forfeiture funds into the state's general fund or otherwise earmark them for specific expenditures like education funding in Missouri. Allocating forfeiture funds to specific programs would remove an incentive to seize property in the budgetary self-interest of law enforcement.

### **X. Conclusions of the Commission**

The Commission has the following recommendations based on its work evaluating civil asset forfeiture in the Commonwealth.

#### **1. Raising the burden of proof**

The Commission recommends that the Legislature consider raising the burden of proof necessary to seize property to, at a minimum, a preponderance of the evidence standard. As



discussed above, Massachusetts is an outlier in only requiring the lowest evidentiary burden to effectuate a forfeiture. The Legislature could bring Massachusetts in line with the federal government and the plurality of 20 other states, including Maine, Rhode Island, Texas, and Alabama, by raising the standard to a preponderance of the evidence.

## **2. Improving reporting requirements**

The Commission recommends that the Legislature improve the reporting requirements in c. 94C§ 47(k) to provide better information on how forfeiture proceeds are allocated. Pursuant to § 47(k), the Attorney General, district attorneys and police departments for whom there is a law enforcement trust shall file a report with the Treasurer detailing assets and expenditures. However, some of the data contained in the Treasurer's report is not clear as to how the property is actually allocated. The Legislature should consider requiring more detailed accounting on categories such as "other law enforcement purposes" and "cost of forfeiture collection" for example. Detailed accounting without catch-all provisions like "other" should provide more accurate data for consideration.

Furthermore, the Legislature should consider broader and more robust requirements for reporting by law enforcement agencies. Current reporting requirements do not capture all funds seized unless they are turned over to a trust fund administered by the Treasurer. Furthermore, spending of those funds allocated by the district attorneys to police departments is not tracked. Documenting all funds is essential for the fair administration of justice.

## **3. Stay of proceedings during the pendency of the criminal case**

The Commission recommends that the Legislature consider requiring a stay of a civil forfeiture action during the pendency of the criminal matter to which the property is connected.

Anecdotally, the Commission heard from the DA representative on the Commission that most DAs stay the civil forfeiture case during the pendency of the criminal case. The Commission is encouraged by the language of the recently promulgated Rule 74 of the Rules of the Superior Court (2021). Rule 74 institutes a rigorous notification scheme to ensure all interested parties to the property are properly notified of a seizure and provided a timely opportunity to declare their interest and request a stay. Furthermore, the tight timeline for an initial hearing and opportunity to request a stay pending the criminal matter provide heightened protections for the owners. The Legislature should consider these Superior Court protections as a basis for codification in statute across all courts.

#### **4. Minimum threshold value of property subject to seizure**

The Commission recommends that the Legislature consider imposing a minimum threshold limit to the value of property eligible for seizure and forfeiture. Setting such a minimum threshold would keep relatively low-value cash amounts or items out of forfeiture proceedings to minimize the impact on further court proceedings. Furthermore, such a threshold would be in line with recent Massachusetts legislation related to criminal justice reform where the Legislature eliminated certain fines and fees and raised the felony threshold for theft crimes.

#### **5. CPCS representation**

The Commission recommends that the Legislature consider providing public counsel for the asset forfeiture action if the criminal defendant qualifies for and is already represented by public counsel. Providing access to public counsel for the related civil forfeiture case would be one way to address the high default rates seen in those proceedings. However, the Legislature should anticipate that providing public counsel in these circumstances would require increased funding for CPCS.

**6. Divert forfeiture funds to the general fund or specific funding areas rather than law enforcement and prosecutors**

The Commission recommends that the Legislature consider re-allocating seized funds from law enforcement and prosecutors to either the General Fund or specific programs to combat substance abuse or assist victims of crime. By relieving law enforcement of their reliance on seized funds, the Legislature would need to replace those expenditures through increased budget allocations. However, the policy of divesting the powers to seize property from those who financially benefit from the forfeiture is a public policy the Legislature should consider.