



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued July 10, 2014

Berkshire County District Attorney's Office

For the period July 1, 2012 through September 30, 2013





Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

July 10, 2014

District Attorney David Capeless
Berkshire County District Attorney's Office
7 North Street
Pittsfield, MA 01201

Dear District Attorney Capeless:

I am pleased to provide this performance audit of the Berkshire County District Attorney's Office. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2012 through September 30, 2013. My audit staff discussed the contents of this report with management of the agency, and their comments are reflected in this report.

I would also like to express my appreciation to the Berkshire County District Attorney's Office for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written in a cursive style.

Suzanne M. Bump
Auditor of the Commonwealth

TABLE OF CONTENTS

EXECUTIVE SUMMARY 1

OVERVIEW OF AUDITED AGENCY 3

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY 4

DETAILED AUDIT RESULTS AND FINDINGS WITH AUDITEE’S RESPONSE 7

1. The Berkshire County District Attorney's Office did not conduct an annual inventory of its assets for fiscal year 2013, and not all assets were noted on an inventory list or in correct locations. 7

2. BCDA was not always aware of forfeited funds that it had the right to receive, and forfeited funds were not always received on time from local police departments..... 9

3. Leave time was not posted in a timely fashion. 11

APPENDIX 14

EXECUTIVE SUMMARY

The Berkshire County District Attorney's Office (BCDA) was established under the provisions of Chapter 12, Sections 12 and 13, of the Massachusetts General Laws. It is one of 11 District Attorneys' Offices located throughout the Commonwealth, serving the cities of Pittsfield and North Adams and 30 towns in western Massachusetts.

The objectives of our audit were to determine whether BCDA's financial records are accurate, up to date, and maintained in accordance with established criteria; its office costs and expenditures, including payroll, program, and administrative costs, are appropriate and reasonable; its advanced expenses are processed properly and supporting documentation is on file; its controls over revenue, including forfeited funds and grants, are proper and adequate; its expenditures of forfeited funds are appropriate and comply with Chapter 94C, Section 47, of the General Laws; its inventory control systems are adequate to safeguard furniture and equipment, including forfeited property; its procurement of goods and services complies with state purchasing laws and regulations; and its internal control structure is suitably designed and implemented to safeguard Commonwealth assets and complies with the Office of the State Comptroller's (OSC's) Internal Control Guide and Chapter 647 of the Acts of 1989.

Based on our audit, we have concluded that for the period July 1, 2012 through September 30, 2013, BCDA maintained adequate internal controls over its financial records; its office costs and expenditures, including program and administrative costs, were appropriate and reasonable; its advanced expenses were properly processed and supported; its expenditures of forfeited funds were appropriate and complied with Chapter 94C, Section 47, of the General Laws; and its internal control structure was suitably designed and implemented to safeguard Commonwealth assets and complied with OSC's Internal Control Guide and Chapter 647 of the Acts of 1989. However, BCDA needs to improve its controls over safeguarding assets in its inventory, reconciling and collecting forfeited funds, and processing employee leave time in a timely fashion.

Summary of Findings

- BCDA did not perform an annual inventory of its assets during our audit period, and some items were either not listed on the inventory or not found in the location given on the inventory list. Without an up-to-date inventory, assets might not be adequately safeguarded against loss, theft, or misuse because BCDA cannot verify that the inventory is accurate and complete.

- Forfeited funds were not remitted to BCDA by local city and town police departments until up to 232 days after the case was disposed of. In addition, BCDA was not reconciling closed cases with forfeited funds to the District Attorney Management Information Office Network (DAMION) database and did not collect all the forfeited funds that it was due. Because of these weaknesses, funds that could be used by BCDA, local police, and state police may not be available to them when needed, and balances in the OSC State Forfeiture Account may not be accurately reflected and reported to the Commonwealth.
- During our audit period, the processing of leave time (sick, vacation, bereavement, and compensatory) was not completed in a timely fashion. Specifically, for 2 of the 10 employees tested, delays from 14 to 100 days were seen from the time the leave was taken until the time it was recorded. Because this recording is not timely, employees may be compensated for leave time to which they are not entitled. In addition, this practice creates the potential for improper paid leave benefits to be paid out when an employee separates from service with BCDA.

Recommendations

- To prevent potential loss, theft, or misuse of assets, BCDA should perform an annual inventory to ensure that all assets are accounted for. In addition, BCDA should develop and use an asset transfer form to properly control the movement of assets. For any items that cannot be located, BCDA should file a Chapter 647 report with the Office of the State Auditor.
- BCDA should establish a reconciliation policy that includes reconciling final judgment orders received in the office to the DAMION database at least quarterly to ensure that all forfeited funds due BCDA and other agencies (local and state police) are received in a timely fashion and reported accurately. This should be reviewed annually and updated as necessary.
- BCDA and the fiscal unit should ensure that all paid leave time is accurately recorded in the weeks when it is used before certifying each biweekly payroll cycle.

Post-Audit Action

After audit completion, BCDA amended its internal control policies regarding administration of forfeited funds. As of April 2014, BCDA reconciles final judgment orders and funds to the DAMION database to ensure that funds are received in a timely fashion and reported accurately on a quarterly basis.

OVERVIEW OF AUDITED AGENCY

Background

The Berkshire County District Attorney's Office (BCDA) was established under the provisions of Chapter 12, Sections 12 and 13, of the Massachusetts General Laws, which provides for the administration of criminal law and the defense of civil actions brought against the Commonwealth in accordance with Chapter 258 of the General Laws.

BCDA is one of 11 District Attorneys' Offices located throughout the Commonwealth. District Attorneys' Offices represent the Commonwealth in most criminal proceedings brought by complaint in the district courts, as well as indictment in the superior courts. District Attorneys' Offices also represent the Commonwealth before grand juries and assist with the investigation of a variety of criminal activities as well as victim/witness assistance services. Further, District Attorneys' Offices provide outreach services to local communities and schools, discussing topics such as bullying/harassment, Internet and cyber-safety programs, drug and alcohol use, identity theft, and domestic violence.

BCDA serves the cities of Pittsfield and North Adams and 30 towns in western Massachusetts, representing the Commonwealth in criminal and civil proceedings (including bail hearings, commitment proceedings related to criminal matters, and the presentation of evidence in all inquests and rendition proceedings) and assisting with the investigation of a variety of criminal activities. BCDA maintains its main administrative office in Pittsfield and has a satellite location in North Adams.

For the fiscal years ended June 30, 2013 and June 30, 2014, BCDA received state maintenance appropriations totaling \$4,191,872 and \$4,091,355, respectively, to fund its administrative operations. In addition, during these two periods, BCDA received \$314,891 and \$335,862, respectively, in state appropriations and funding from other sources to support various programs. For the period from July 1, 2013 through the end of our audit period, September 30, 2013, BCDA expended \$912,582 of its state maintenance appropriation and \$27,332 in other appropriation funding.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Berkshire County District Attorney's Office (BCDA) for the period July 1, 2012 through September 30, 2013.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objectives of our audit were to determine whether BCDA's financial records are accurate, up to date, and maintained in accordance with established criteria; its office costs and expenditures, including payroll, program, and administrative costs, are appropriate and reasonable; its advanced expenses are processed properly and supporting documentation is on file; its controls over revenue, including forfeited funds and grants, are proper and adequate; its expenditures of forfeited funds are appropriate and comply with Chapter 94C, Section 47, of the General Laws; its inventory control systems are adequate to safeguard furniture and equipment, including forfeited property; its procurement of goods and services complies with state purchasing laws and regulations; and its internal control structure is suitably designed and implemented to safeguard Commonwealth assets and complies with the Office of the State Comptroller's (OSC's) Internal Control Guide and Chapter 647 of the Acts of 1989.

To achieve our audit objectives, we conducted interviews with BCDA officials and reviewed the following:

- Applicable General Laws, OSC's Internal Control Guide, and Chapter 647 of the Acts of 1989.
- Documentation relevant to BCDA's budgetary process and the spending plan.
- BCDA's internal control plan, risk assessment, internal control structure, and written administrative and accounting policies and procedures.
- BCDA's financial records to determine whether they were accurate and up to date, and a sampling of BCDA's revenue, expenditures, inventory, and payroll transactions.

- Selected BCDA revenue, expenditures, advances, and payroll transactions to verify that these transactions were appropriately accounted for, recorded, and safeguarded in accordance with established criteria.
- BCDA's inventory control system for furnishings and equipment.

In addition, we gained an understanding of the internal controls we deemed significant to our audit objectives and evaluated the design and effectiveness of those controls. Specifically, we performed procedures such as interviewing BCDA employees and reviewing relevant documents, statutes, and regulations as well as BCDA policies, procedures, and accounting records.

To obtain audit evidence, we used non-statistical, judgmental sampling in the testing of inventory, bank reconciliations, payroll, advances, and expenditures. We selected a cross-section of samples from throughout the audit period and accounted for the likelihood of an error based on the details of the transactions. The results of these tests cannot be projected to those populations. In addition, based on the relatively small population of forfeited funds, we selected the entire population covered by our audit period.

We obtained information on appropriations, grant awards, and expenditures from information systems maintained by the Commonwealth, as well as forfeited fund case activity from systems maintained by the District Attorney Management Information Office Network. We compared this information with other source documents and interviewed knowledgeable BCDA officials about these data. We determined that the data were sufficiently reliable for the purposes of this report. Information system controls were not an integral part of BCDA's internal controls. Therefore, we did not consider it necessary to evaluate information system controls. When performing our audit, we relied on hardcopy source documents, which we tested for accuracy and completeness.

Based on our audit, we have concluded that for the period July 1, 2012 through September 30, 2013, BCDA maintained adequate internal controls over its financial records; its office costs and expenditures, including program and administrative costs, were appropriate and reasonable; its advanced expenses were properly processed and supported; its expenditures of forfeited funds were appropriate and complied with Chapter 94C, Section 47, of the General Laws; and its internal control structure was suitably designed and implemented to safeguard Commonwealth assets and complied with OSC's Internal Control Guide and Chapter 647 of the Acts of 1989. However,

BCDA needs to improve its controls over safeguarding assets in its inventory, reconciling and collecting forfeited funds, and processing employee leave time in a timely fashion.

DETAILED AUDIT RESULTS AND FINDINGS WITH AUDITEE'S RESPONSE

1. **The Berkshire County District Attorney's Office did not conduct an annual inventory of its assets for fiscal year 2013, and not all assets were noted on an inventory list or in correct locations.**

The Berkshire County District Attorney's Office (BCDA) did not perform an annual inventory of its assets during our audit period. We tested a non-statistical, judgmental sample of 40 out of 162 information technology (IT) assets, (desktop computers, laptops, etc.) and 12 out of 41 non-IT assets (desk, chairs, copiers, etc.) and found that some items were either not listed on the inventory or not found in the location given on the inventory list. Without an up-to-date inventory, assets might not be adequately safeguarded against loss, theft, or misuse because BCDA cannot verify that the inventory is accurate and complete.

- a. **BCDA did not conduct an annual inventory.**

During our audit period, BCDA did not perform an annual inventory of its assets for fiscal year 2013 as required by the Office of the State Comptroller (OSC) and BCDA's internal control plan (ICP). The last record of a physical inventory was June 30, 2012, before the period under review.

- b. **The inventory list needs to be updated to reflect the status of current inventory.**

For the sample of 40 IT inventory items tested, 8 exceptions were noted: 7 items were not in the location that was noted on the inventory list, and 1 item was not on the inventory list.

For the sample of 12 non-IT inventory items tested, 2 exceptions were noted: 1 item was not in the location that was noted on the inventory list, and 1 item was not on the inventory list.

Authoritative Guidance

OSC's Fixed Assets: Accounting and Management policy, revised November 1, 2006, states,

*There shall be an **annual inventory** taken of fixed assets owned by every Department. This inventory shall include, at a minimum, a verification of the existence and location of fixed assets owned by a Department. This inventory shall be done on or about June 30th of each year for [generally accepted accounting principles, or GAAP] and non-GAAP assets. All changes needed to assets shall be entered in [the state's Massachusetts Management Accounting and Recording System] no later than seven (7) business days after June 30th of each year.*

BCDA's ICP states,

The inventory must be reconciled at least annually and a physical review of the inventoried items conducted by those responsible . . . and the results reported [to] the Director of Fiscal Affairs.

Additionally, Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, states,

All unaccounted for variances, losses, shortages or thefts of funds or property shall be immediately reported to the state auditor's office, who shall review the matter to determine the amount involved which shall be reported to appropriate management and law enforcement officials.

Reasons for Inventory Deficiencies

BCDA stated that it had not performed a physical inventory for fiscal year 2013 because it was busy relocating the state police detectives assigned to it and because it was occupied with reducing the inventory list to have only items valued at over \$1,000 listed as OSC requires. Additionally, BCDA does not use an asset transfer form identifying the asset, the individual moving the asset, and its location.

Recommendations

To prevent potential loss, theft, or misuse of assets, BCDA should perform an annual inventory to ensure that all assets are accounted for. In addition, BCDA should develop and use an asset transfer form to properly control the movement of assets. For any items that cannot be located, BCDA should file a Chapter 647 report with the Office of the State Auditor.

Auditee's Response

As we discussed at the entrance conference and during the audit, this Office decided in FY2013 to completely revamp its inventory system. The prior system not only separated IT and non-IT into two separate systems (a standard at the time the systems were developed), but also contained outdated and incomplete information, not consistent with modern inventory management. For example, (a) entries on very old purchases did not have information with costs or serial numbers as it was not required at the time the entries were made into the system and, (b) the old system contained all equipment and furnishings to be listed, rather than the accepted practice of listing only those items costing \$1,000 or more. We made the decision to research various inventory systems and finally decided on the system we would use and made the appropriate changes to our Internal Control policies to reflect the policy changes.

We acknowledge that we did not conduct the annual inventory for FY2013. This was a conscious decision on our part as we knew we were investigating a new system that would require us to do a full physical inventory and chose to not do this twice within a short period of time. We maintained all documentation for all items acquired since the previous physical inventory so it

could be entered into the new system, rather than further complicating matters by entering the items on a system we had deemed inefficient for both our internal purposes and for external audit purposes.

A changeover such as this is very time-consuming and the new system was not complete at the time of the audit. Part of the change was to completely re-tag all items to reflect that they were included in the new system and subject to new guidelines and to determine current location of each item. Also, we needed to perform a full physical review of the new system to determine the accuracy of the information entered, with comparisons to the last physical inventory and review of documentation for new items. The physical inventory that should have been done for June 2013 was in progress and not complete at the time of the audit. . . .

We believe we now have a better, more comprehensive and less cumbersome inventory system that has been checked for accuracy with all office areas appropriately tagged to match up to inventory locations. In FY2014, we will return to our annual reconciliation as required in our own Internal Controls and by the Office of the State Comptroller's Fixed Assets policy. We currently use email communication for the movement of assets, rather than a specific form, and will continue with this method. We will also report any items that cannot be located as required in our Internal Controls and by the Office of the State Auditor.

2. BCDA was not always aware of forfeited funds that it had the right to receive, and forfeited funds were not always received on time from local police departments.

Forfeited funds were not remitted to BCDA by local city and town police departments until up to 232 days after the case was disposed of. In addition, BCDA was not reconciling closed cases with forfeited funds to the District Attorney Management Information Office Network (DAMION) database and did not collect all the forfeited funds that it was due. Because of these weaknesses, funds that could be used by BCDA, local police, and state police may not be available to them when needed, and balances in the OSC State Forfeiture Account may not be accurately reflected and reported to the Commonwealth.

We reviewed the internal controls BCDA had established over the receipt, expenditure, and reporting of the forfeited funds and tested all cases that were closed during our audit period. We traced 30 cases, totaling \$133,433 in forfeited funds, from the DAMION database to the fiscal unit's database and found that in nine instances, forfeited funds, totaling \$85,236, were not remitted to BCDA by local city and town police departments until 126 to 232 days after the case was disposed of because BCDA was not following up after disposal. In addition, during our audit period, BCDA was not reconciling closed cases with forfeited funds to the DAMION database and did not collect \$3,952 in forfeited funds that it was due.

Forfeiture Process

Chapter 94C, Section 47, of the Massachusetts General Laws (see Appendix) identifies property subject to forfeiture to the Commonwealth and the procedure used by the district attorney to obtain this property. All funds used to purchase, and all proceeds from the illegal sale of, a controlled substance are subject to seizure, as detailed in Section 47(a)(5). When funds are seized from a defendant, the local police department holds the funds in escrow until the forfeiture process is completed. At BCDA, the chief of appeals is responsible for monitoring all pending forfeiture orders. He is to be given copies of all orders filed and/or received by assistant district attorneys or other office employees in order to verify that all deposits were made. Unresolved discrepancies and funds and orders that have not been sufficiently accounted for are to be reported to the district attorney or the first assistant district attorney for further review.

Authoritative Guidance

The Forfeited Property Procedures section of BCDA's ICP states,

We will have a field on files that can be entered into DAMION that indicates there has been a forfeiture. [Assistant district attorneys] must check the field and support staff must make the entry into DAMION when closing files. This will allow tracking of cases in which forfeiture was ordered but order or funds were never received. If support staff does not see the order of forfeiture in the file, she should bring this to [the assistant district attorney's] attention.

Reasons for Deficiencies with Forfeited Funds

BCDA was relying on reconciling its collections by reviewing whether all hardcopy final judgment orders regarding forfeited property turned in to the office by assistant district attorneys had been collected. However, it was not reviewing and reconciling to the DAMION database for cases disposed of with forfeited funds during the same period to ensure that all money owed was collected in a timely fashion.

Recommendations

BCDA should establish a reconciliation policy that includes reconciling final judgment orders received in the office to the DAMION database at least quarterly to ensure that all forfeited funds due BCDA and other agencies (local and state police) are received in a timely fashion and reported accurately. This should be reviewed annually and updated as necessary.

Post-Audit Action

After audit completion, BCDA amended its internal control policies regarding administration of forfeited funds. As of April 2014, BCDA reconciles final judgment orders and funds to the DAMION database to ensure that funds are received in a timely fashion and reported accurately on a quarterly basis.

Auditee's Response

We acknowledge that the collection of forfeited funds has been an on-going problem. Because of the size of our office, we do not have a full time forfeiture unit devoted to this one issue and the responsibility for obtaining orders fell to the fiscal staff. Prior to the audit, we had started to research the problem to come up with better procedures. The most significant change was to have our Chief of Appeals assume responsibility for all forfeiture matters. We determined that many forfeiture matters involved post-conviction issues or needed to have separate civil proceedings and the Appeals Unit was in a better position to oversee the cases and their timelines and, more importantly, to track missing orders.

One issue noted in the audit findings is the length of time it takes from disposition of a case until the actual deposit of funds. It appears that we did not fully explain the multiple reasons that might cause such delays. Often, an order will issue on a case which is then appealed and we cannot take the funds during the pendency of the appeal. There have been times when there were multiple appeals and it took years until we could actually take the funds, despite a pending court order. Additionally, there are often co-defendants involved who may also lay claim to the funds or the funds are still considered evidence and cannot be taken until the co-defendants' cases are resolved. The information is noted on the pending forfeiture order or through copies of email regarding the status of the case and we regularly check on the status of such pending orders to see when we can obtain the funds for deposit.

There are times when delays are simply related to the coordination of schedules of the representative from the police department who needs to bring in the funds and the Director of Fiscal Affairs who takes them. Going forward, we not only [will] attempt to limit the amount of time between disposition and deposit, but will insure that all explanations are physically attached to the forfeiture orders so auditors can readily review the explanations.

As noted in the Audit Report, we have updated our Internal Control policies and our Employee Handbook to insure that all staff is aware of the requirements for timely acquisition of forfeited property. We have notified all police departments of the need to provide accurate and timely information to us so we might request the forfeiture. We are using our case management system as another tool to regularly run reports for orders that may not have been received. We believe that having the Chief of Appeals oversee all forfeiture matters will insure better coordination of the cases and eliminate many of the past problems.

3. Leave time was not posted in a timely fashion.

BCDA uses an exception-based system to record the time and attendance of its employees. Under this system, an employee is assumed to be working his or her scheduled hours unless notification of an exception is reported to the administrative staff. We selected a non-statistical, judgmental sample

of 10 employees for two different payroll periods and reviewed the information associated with their salary, deductions, leave time, and accompanying certifications. During our audit period, the processing of leave time (sick, vacation, bereavement, and compensatory) was not completed in a timely fashion. Specifically, for 2 of the 10 employees tested, delays from 14 to 100 days were seen from the time the leave was taken until the time it was recorded in the Human Resource Compensation Management System (HR/CMS).¹ Because this recording is not timely, employees may be compensated for leave time to which they are not entitled. In addition, this practice creates the potential for improper paid leave benefits to be paid out when an employee separates from service with BCDA.

Authoritative Guidance

OSC's Payroll Approval: Payroll Expenditure Approval policy states,

Once an employee's time is recorded, his/her manager must confirm that services have been delivered in accordance with this record. Time and attendance can then be recorded in the payroll system.

Managers were reviewing the information, but the information presented was not up to date.

Reasons for Payroll Processing Deficiencies

BCDA indicated that, because of limited staff, sicknesses, and vacations, some office payroll paperwork was behind.

Recommendations

BCDA and the fiscal unit should ensure that all paid leave time is accurately recorded in the weeks when it is used before certifying each biweekly payroll cycle.

Auditee's Response

We believe this was an anomaly that happened to occur during the audit period and was due to other pressing needs during the time period requiring a reallocation of resources. The task of entering leave time was unfortunately affected by the reallocation of resources. Normally, leave time is captured in a timely manner and priority is given to leave requests by people with low leave balances to insure they cannot take time to which they are not entitled and they are regularly notified of their balances. When a staff member is leaving the employ of the Office, a

¹ HR/CMS is the official payroll system of the Commonwealth. Payroll policy is managed by OSC as authorized in Chapter 7A of the General Laws. HR/CMS was designed to meet the human-resource needs of the three branches of government in addition to payroll operations.

specific check is done to be sure all leave requests have been entered and balances are up to date before processing any buyouts. The staff noted in the Audit Report with delayed entries happened to be those with substantial leave balances and would not have been overpaid.

Going forward, we will check that all leave balances are entered timely. We will check the appropriate payroll reports for prior period adjustments and note the reasons for any delays in entering the information.

APPENDIX**CHAPTER 94C, SECTION 47, OF THE MASSACHUSETTS GENERAL LAWS**

- (a) *The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:*
- (1) *All controlled substances which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.*
 - (2) *All materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, dispensing, distributing, importing, or exporting any controlled substance in violation of this chapter.*
 - (3) *All conveyances, including aircraft, vehicles or vessels used, or intended for use, to transport, conceal, or otherwise facilitate the manufacture, dispensing, distribution of or possession with intent to manufacture, dispense or distribute, a controlled substance in violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J, or forty.*
 - (4) *All books, records, and research, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this chapter.*
 - (5) *All moneys, negotiable instruments, securities 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, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J, or forty.*
 - (6) *All drug paraphernalia.*
 - (7) *All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto, which is used in any manner or part, to commit or to facilitate the commission of a violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J or forty.*
 - (8) *All property which is used, or intended for use, as a container for property described in subparagraph (1) or (2).*
 - (9) *No forfeiture under this section shall extinguish a perfected security interest held by a creditor in a conveyance or in any real property at the time of the filing of the forfeiture action.*
- (b) *Property subject to forfeiture under subparagraphs (1), (2), (4), (5), (6), (7) and (8) of subsection (a) shall, upon motion of the attorney general or district attorney, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Property subject to forfeiture under subparagraph (1) of subsection (a) shall be destroyed,*

regardless of the final disposition of such related criminal proceeding, if any, unless the court for good cause shown orders otherwise.

(c) *The court shall order forfeiture of all conveyances subject to the provisions of subparagraph (3) and of all real property subject to the provisions of subparagraph (7) of subsection (a) of this section, except as follows:*

(1) *No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party of privity to a violation of this chapter.*

(2) *No conveyance shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of the commonwealth, or of any state.*

(3) *No conveyance or real property shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance or real property was used in and for the business of unlawfully manufacturing, dispensing, or distributing controlled substances. Proof that the conveyance or real property was used to facilitate the unlawful dispensing, manufacturing, or distribution of, or possession with intent unlawfully to manufacture, dispense or distribute, controlled substances on three or more different dates shall be prima facie evidence that the conveyance or real property was used in and for the business of unlawfully manufacturing, dispensing, or distributing controlled substances.*

(4) *No conveyance or real property used to facilitate the unlawful manufacturing, dispensing, or distribution of, or the possession with intent unlawfully to manufacture, dispense, or distribute marihuana or a substance, not itself a controlled substance, containing any marihuana shall be forfeited if the net weight of the substance so manufactured, dispensed, or distributed or possessed with intent to manufacture, dispense or distribute, is less than ten pounds in the aggregate.*

(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, moneys 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 to the court the existence of probable cause to institute the action, 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, moneys 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. Upon the motion of the owner of said conveyance, real property, moneys or other things of value, the court may 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 all such suits where a final order results in a forfeiture, said final order shall provide for disposition of said conveyance, real property, moneys 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 shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, 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 moneys and the proceeds of any such sale shall be distributed equally between the prosecuting district attorney or attorney general and the city, town or state police department involved in the seizure. If more than one department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the fifty percent equitably among these departments.

There shall be established within the office of the state treasurer separate special law enforcement trust funds for each district attorney and for the attorney general. All such monies and proceeds received by any prosecuting district attorney or attorney general shall be deposited in such a trust fund and shall then be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or such other law enforcement purposes as the district attorney or attorney general deems appropriate. The district attorney or attorney general may expend up to ten percent of the monies and proceeds for drug rehabilitation, drug education and other anti-drug or neighborhood crime watch programs which further law enforcement purposes. Any program seeking to be an eligible recipient of said funds shall file an annual audit report with the local district attorney and attorney general. Such report shall include, but not be limited to, a listing of the assets, liabilities, itemized expenditures, and board of directors of such program. Within ninety days of the close of the fiscal year, each district attorney and the attorney general shall file an annual report with the house and senate committees on ways and means on the use of the monies in the trust fund for the purposes of drug rehabilitation, drug education, and other anti-drug or neighborhood crime watch programs.

All such moneys and proceeds received by any police department shall be deposited in a special law enforcement trust fund and shall be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish such other law enforcement purposes as the chief of police of such city or town, or the colonel of state police deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.

- (e) *Any officer, department, or agency having custody of any property subject to forfeiture under this chapter or having disposed of said property shall keep and maintain full and complete records showing from whom it received said property, under what authority it held or received or disposed of said property, to whom it delivered said property, the date and manner of destruction or disposition of said property, and the exact kinds, quantities and forms of said property. Said records shall be open to inspection by all federal and state officers charged with enforcement of federal and state drug control*

laws. Persons making final disposition or destruction of said property under court order shall report, under oath, to the court the exact circumstances of said disposition or destruction.

- (f) (1) *During the pendency of the proceedings the court may issue at the request of the commonwealth ex parte any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody, including but not limited to an order that the commonwealth remove the property if possible, and safeguard it in a secure location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account; and, that a substitute custodian be appointed to manage such property or a business enterprise. Property taken or detained under this section shall not be repleviable, but once seized shall be deemed to be lawfully in the custody of the commonwealth pending forfeiture, subject only to the orders and decrees of the court having jurisdiction thereof. Process for seizure of said property shall issue only upon a showing of probable cause, and the application therefor and the issuance, execution, and return thereof shall be subject to the provisions of chapter two hundred and seventy-six, so far as applicable.*
- (2) *There shall be created within the division of capital asset management and maintenance an office of seized property management to which a district attorney or the attorney general may refer any real property, and any furnishings, equipment and related personal property located therein, for which seizure is sought. The office of seized property management shall be authorized to preserve and manage such property in a reasonable fashion and to dispose of such property upon a judgment ordering forfeiture issued pursuant to the provisions of subsection (d), and to enter into contracts to preserve, manage and dispose of such property. 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).*
- (g) *Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths may be seized by any police officer and summarily forfeited to the commonwealth.*
- (h) *The failure, upon demand by a police officer of the person in occupancy or in control of land or premises upon which the species of plants are growing to produce an appropriate registration, or proof that he is a holder thereof, constitutes authority for the seizure and forfeiture of the plants.*
- (i) *The owner of any real property which is the principal domicile of the immediate family of the owner and which is subject to forfeiture under this section may file a petition for homestead exemption with the court having jurisdiction over such forfeiture. The court may, in its discretion, allow the petition exempting from forfeiture an amount allowed under section one of chapter one hundred and eighty-eight. The value of the balance of said principal domicile, if any, shall be forfeited as provided in this section. Such homestead exemption may be acquired on only one principal domicile for the benefit of the immediate family of the owner.*
- (j) *A forfeiture proceeding affecting the title to real property or the use and occupation thereof or the buildings thereon shall not have any effect except against the parties*

thereto and persons having actual notice thereof, until a memorandum containing the names of the parties to such proceeding, the name of the town where the affected real property lies, and a description of such real property sufficiently accurate for identification is recorded in the registry of deeds for the county or district where the real property lies. At any time after a judgment on the merits, or after the discontinuance, dismissal or other final disposition is recorded by the court having jurisdiction over such matter, the clerk of such court shall issue a certificate of the fact of such judgment, discontinuance, dismissal or other final disposition, and such certificate shall be recorded in the registry in which the original memorandum recorded pursuant to this section was filed.