



Civil Asset Forfeiture: Statutes, Practices, and Analysis of Forfeiture Cases

Prepared for the Civil Forfeiture Commission by the

Massachusetts Trial Court
Department of Research and Planning
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Massachusetts
Trial Court



Selected Massachusetts Statutes Authorizing Civil Forfeiture



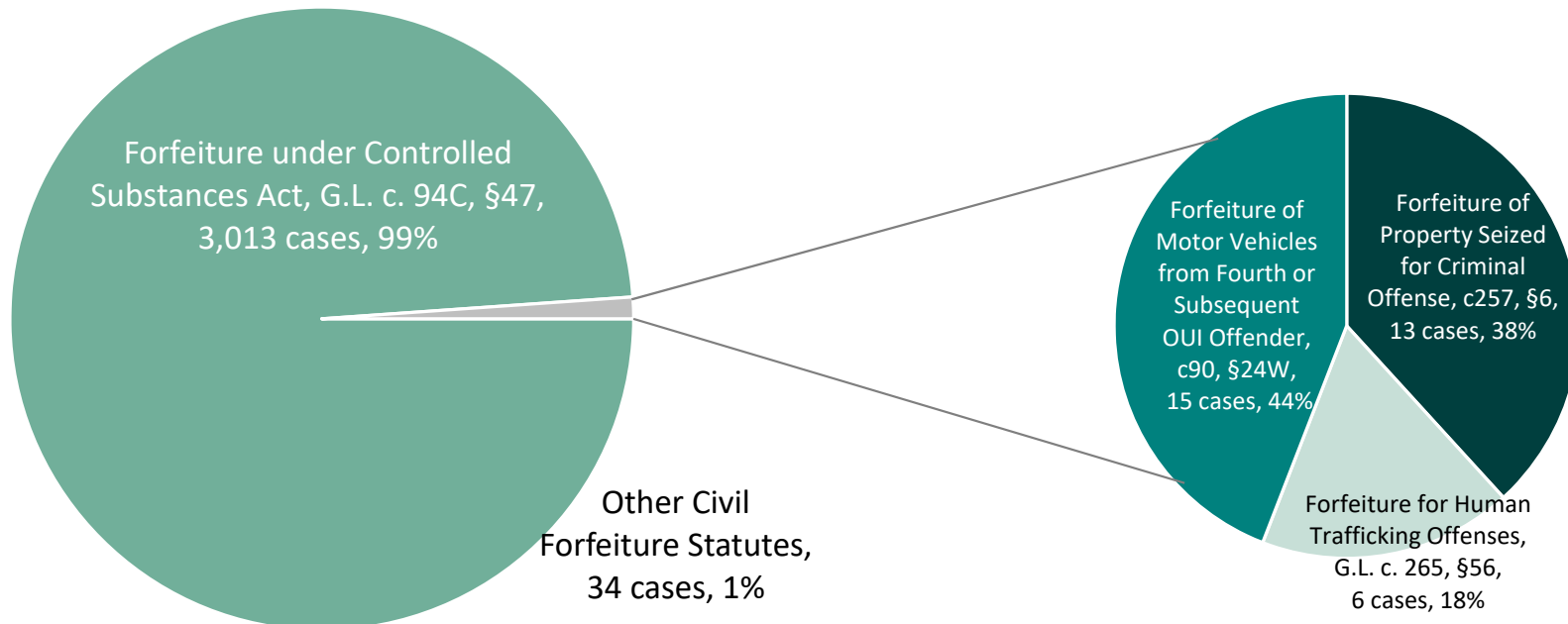
Selected Massachusetts Statutes Authorizing Civil Forfeiture

- G.L. c. 94C, §47, Forfeiture under the Controlled Substances Act (1971)
- G.L. c. 90, §24W, Forfeiture of Motor Vehicles Owned by repeat Drunk Driving Offenders (2005)
- G.L. c. 257, §§1-15, Seizure, Libeling, and Sale of Forfeited Property (1793)
- G.L. c. 265, §56, Forfeiture for Human Trafficking Offenses (2011)



Forfeiture Actions by Statute, 3-Year Total

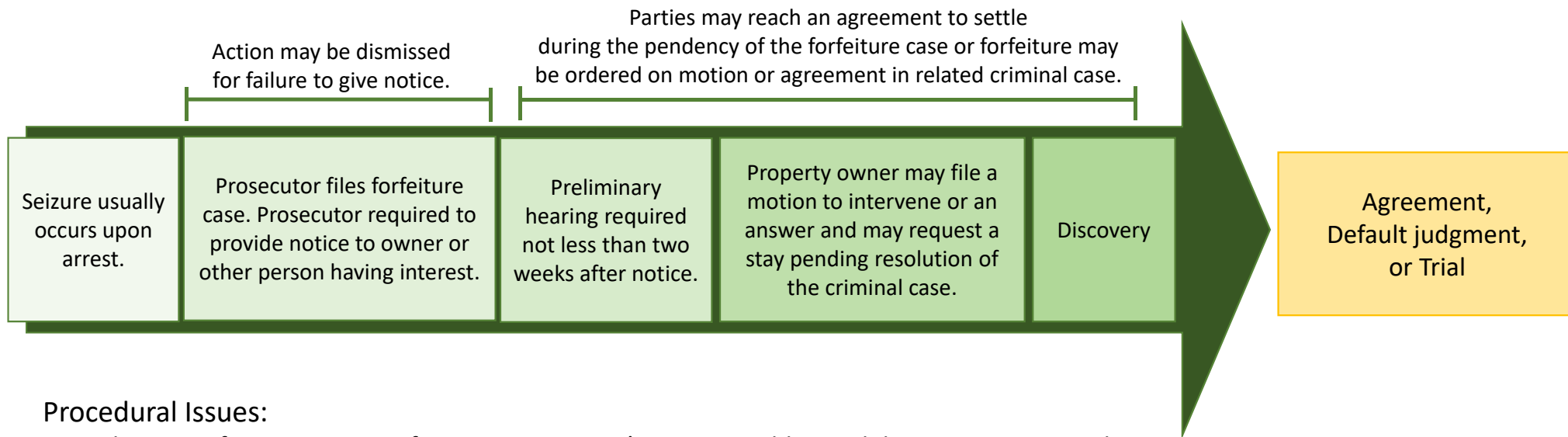
There were 3,047 civil asset forfeiture cases filed in the Massachusetts Trial Court from FY 2017 to FY 2019. Civil forfeiture cases filed in the Superior Court under G.L. c. 94C, §47(d), accounted for 99% of all cases filed.



* Figures reflect civil forfeiture filings entered into MassCourts. Figures exclude forfeiture by motion in a criminal case due to limitations in MassCourts.



General Process of Forfeiture of Seized Assets



Procedural Issues:

1. Adequacy of notice: Notice often given at owner's previous address while owner is in custody.
2. Failure of notice may result in default judgment.
3. Default judgment may be vacated later on motion by owner.
4. Case may languish if notice not given promptly or not actively pursued.



G.L. c. 94C, §47, Forfeitures under the Controlled Substances Act (1971)

§47(a) authorizes forfeiture of:

- controlled substances
- materials, conveyances, equipment, etc., “used or intended for use” in manufacturing, delivering, distributing, transporting, concealing, etc.
- “moneys . . . or other things of value furnished or intended to be furnished . . . in exchange for a controlled substance . . . , all proceeds traceable to such an exchange”
- “real property . . . used in any manner . . . to commit or to facilitate the commission of a violation”

Exception: Conveyances and real property only if owner “knew or should have known” of use. Real property also subject to homestead exemption.

§47(b) Property subject to forfeiture “shall, upon motion of” AG or DA “be declared forfeit by any court . . . having final jurisdiction over any related criminal proceeding.” So Commonwealth may move for forfeiture upon conviction, by plea or trial, in District Court/BMC or Superior Court.

§47(d) Commonwealth may file separate civil action seeking order of forfeiture.



G.L. c. 94C, §47(d), Forfeitures under the Controlled Substances Act (cont.)

- DA or AG may file proceeding in rem in Superior Court for order of forfeiture.
- Court “shall order” notice by certified or registered mail to owner “and such other persons as appear to have an interest.”
- Court may issue ex parte order to seize or secure, or for custody of, property pending proceeding.
- Court must hold hearing within two weeks of notice; may continue hearing, on request of owner, pending outcome of criminal prosecution.
- At hearing: Commonwealth has burden to show probable cause; then claimant (owner) has burden to prove not subject to forfeiture.



G.L. c. 90, §24W, Forfeiture of Motor Vehicles Owned by repeat Drunk Driving Offenders (2005)

- Can be filed in either District Court/BMC or Superior Court, but are almost exclusively brought in the District Court/BMC.
 - There were 15 forfeiture cases filed under G.L. c. 90, §24W, in the District Court/BMC from FY 2017 to FY 2019.

G.L. c. 257, §§1-15, Seizure, Libeling, and Sale of Forfeited Property (1793)

- Can be filed in either the District Court/BMC or Superior Court, but are almost exclusively brought in the District Court.
 - There were 13 forfeiture cases filed under G.L. c. 257, §6, in the District Court/BMC from FY 2017 to FY 2019.
 - Statute pre-dates more specific forfeiture statutes.

G.L. c. 265, §56, Forfeiture for Human Trafficking Offenses (2011)

- Can only be filed in the Superior Court.
 - There were 6 forfeiture cases filed under G.L. c. 265, §56, in the Superior Court from FY 2017 to FY 2019.

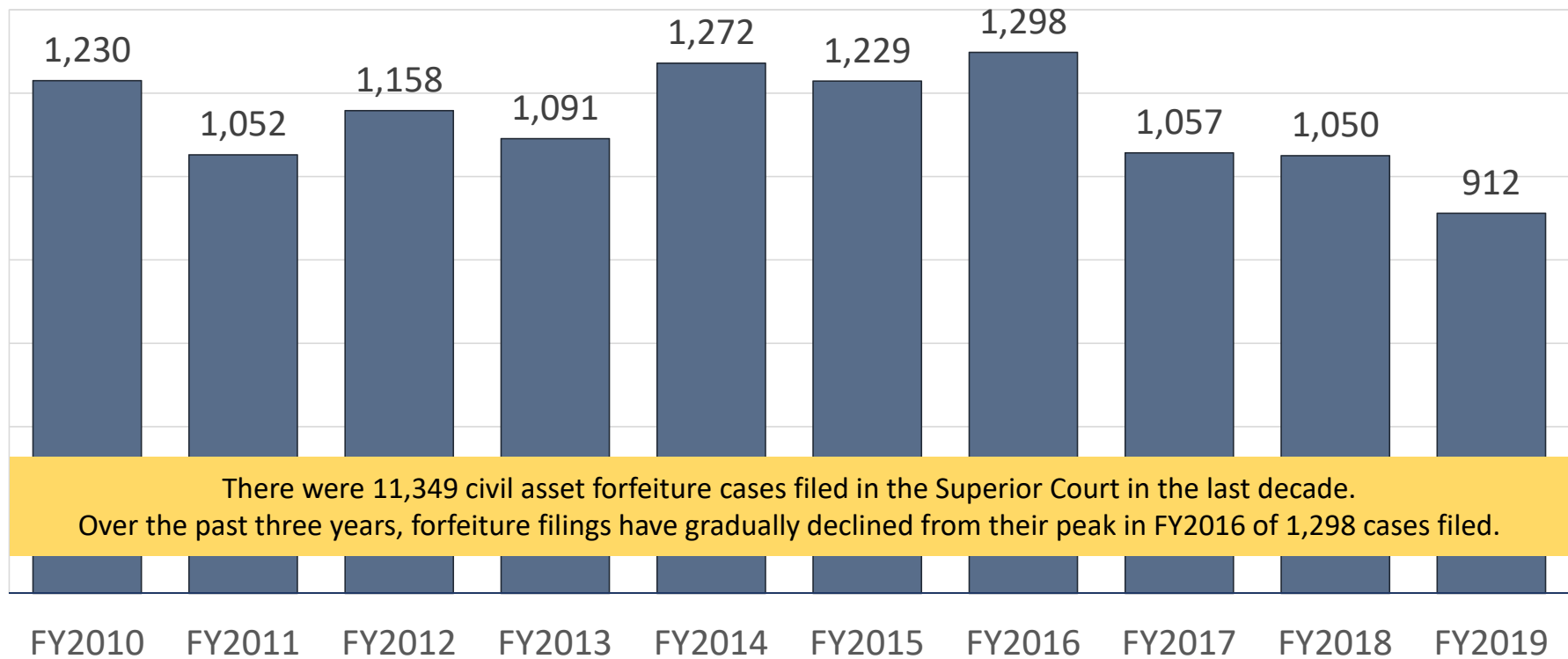
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Analysis of Civil Forfeiture Cases Filed in the Superior Court



Civil Asset Forfeiture Cases Filed by Fiscal Year



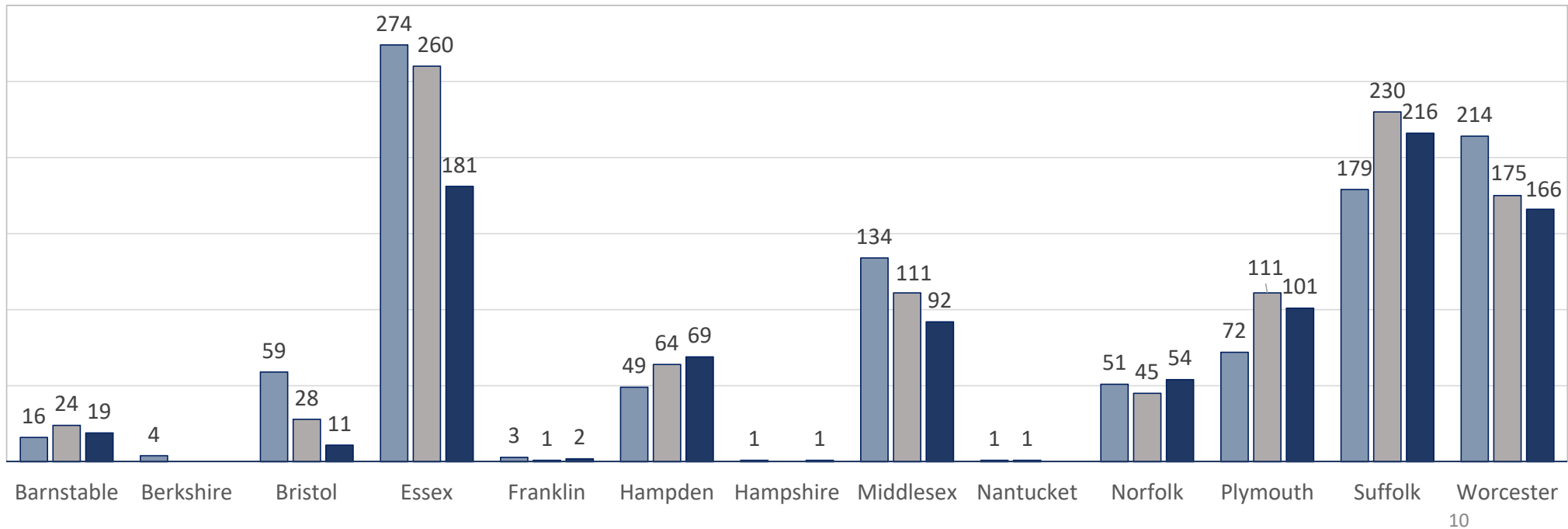
* Figures reflect cases filed under G.L. c. 94C, §47(d), and G.L. c. 265, §56, in MassCourts.



Civil Forfeiture Filings by County and Fiscal Year

Essex, Suffolk, and Worcester accounted for the majority of civil forfeiture cases filed over the past three fiscal years.

■ FY2017 ■ FY2018 ■ FY2019

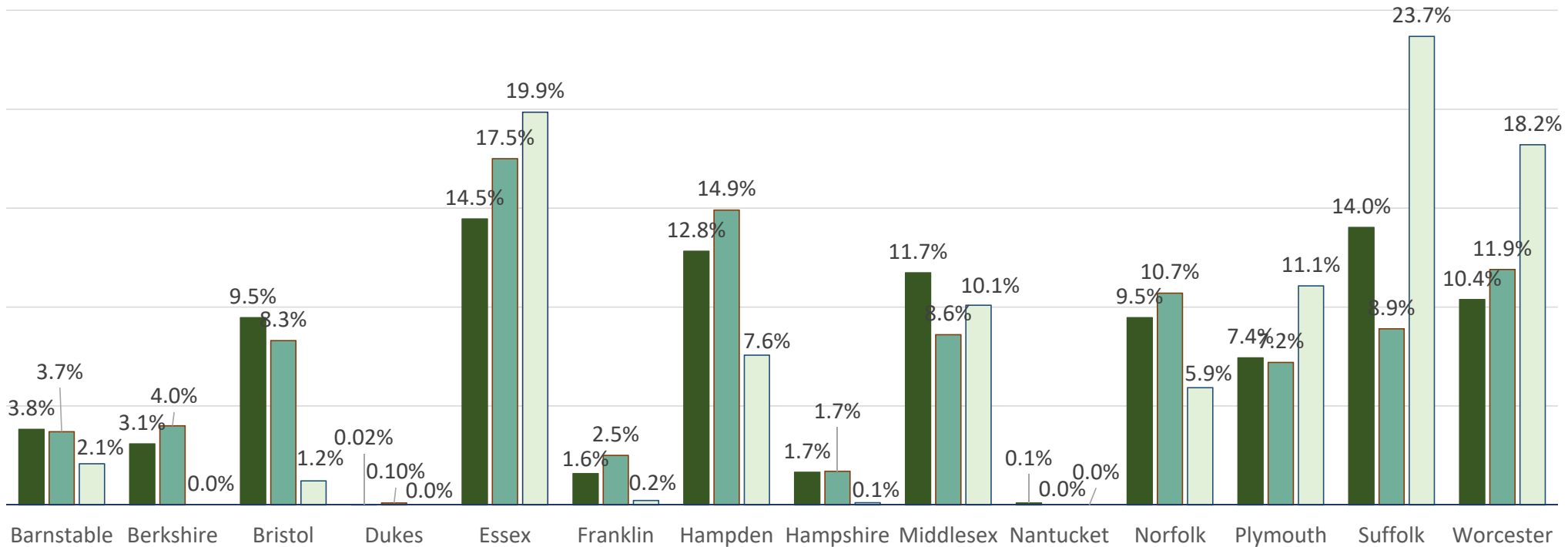


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Forfeiture Cases Filed in relation to Criminal Cases Filed by County, FY2019

■ All Criminal Cases
 ■ Only Criminal 94C Cases
 ■ Civil Forfeiture Cases

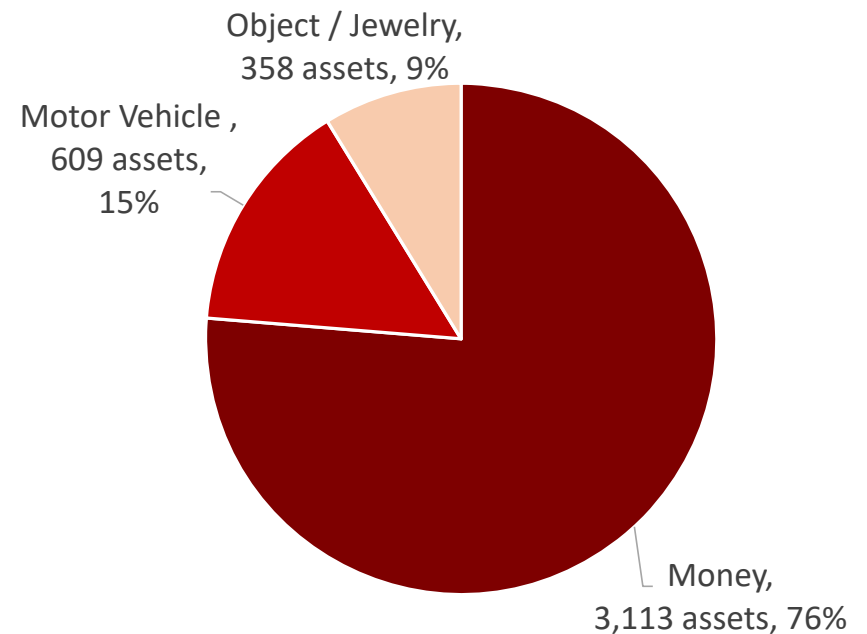


* Figures reflect all criminal cases filed, criminal cases filed with one or more G.L. c. 94C, charge, and civil forfeiture cases filed under G.L. c. 94C, §47(d), and G.L. c. 265, §56, by county, as a percentage of such cases filed statewide in MassCourts.



Type of Assets Identified in Civil Filings, 3-Year Total

- There were various types of assets listed on cases filed in the Superior Court.
- Assets included (but were not limited to): US currency, car vehicles, scooters, Rolex watches, iPhones, shoe collections, tablets, computers, TVs, foreign/international currency, and GPS systems.
- Assets were grouped into three categories: Money, Motor Vehicle, or Object/Jewelry.
- Over the past three fiscal years, there were 4,080 assets identified in civil filings in the Superior Court.
- Money assets represented 76% of all assets.



* Fiscal years include FY 2017-2019.

** In some instances, a single asset listed on a case may represent multiple items.

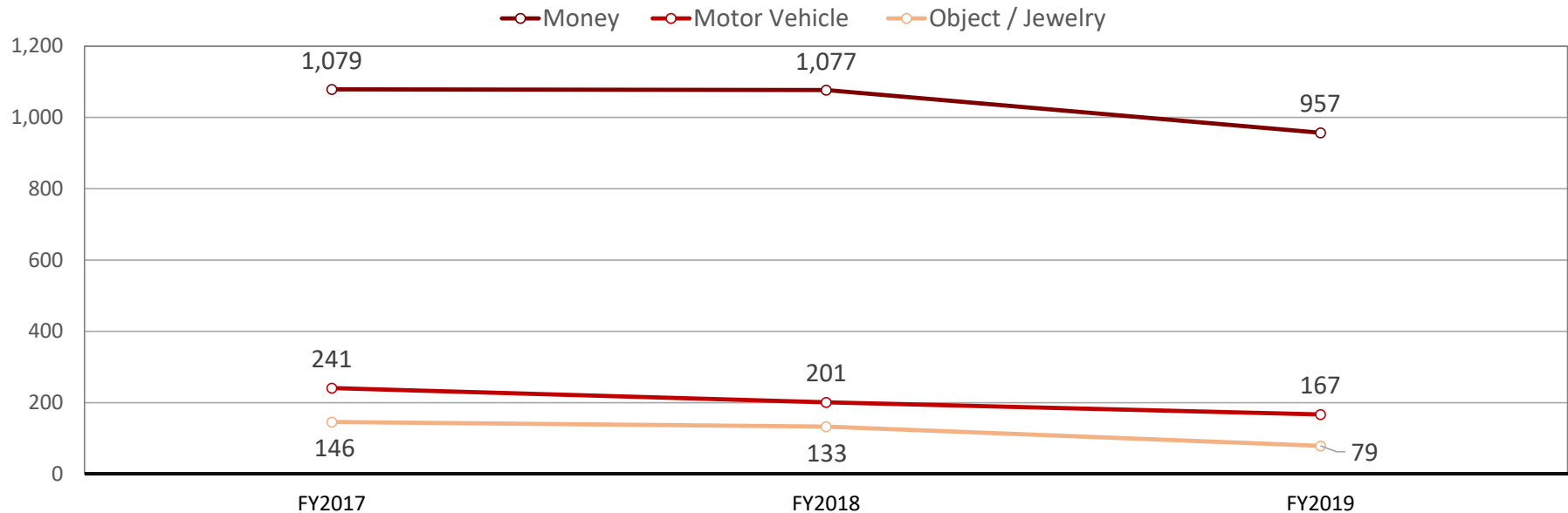
*** There was only one case filed in the time period where one of the assets listed included real estate.

**** There were fourteen (14) cases where the type of asset listed on the case could not be extracted from MassCourts. Figures reflect cases filed under G.L. c. 94C, §47(d), and G.L. c. 265, §56, in MassCourts.



Assets by Type and Fiscal Year

Across all assets, forfeiture filings declined from FY 2017 to FY 2019. Forfeiture filings of objects experienced the largest decrease among all assets at -45%, followed by vehicles at -30%, and money at -11%.



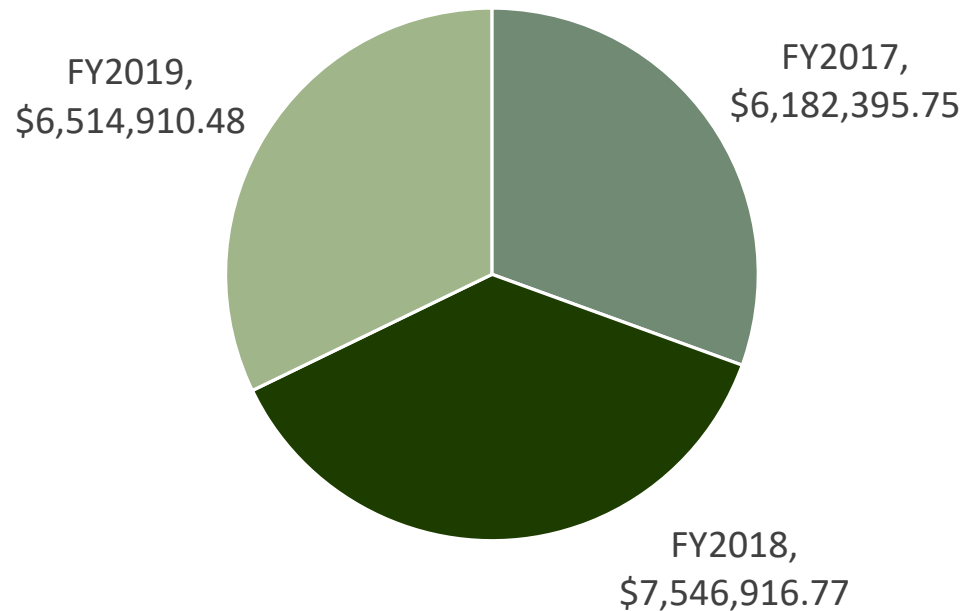
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Money Assets by Fiscal Year (in Dollars)

Money-based assets included: US currency, foreign/international currency, bank accounts, and pre-paid gift cards.
Over the past three fiscal years, \$20,244,223 was identified in 2,792 cases in the Superior Court.



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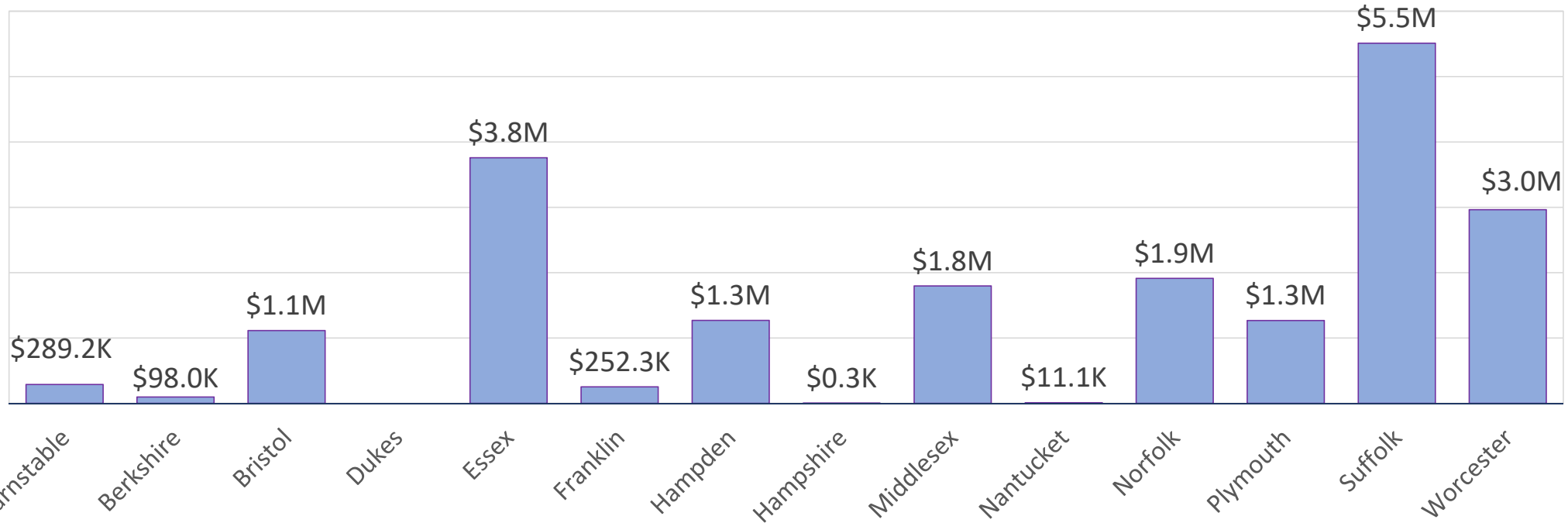
** For cases where there were two or more money-based assets listed on the case, the asset with the highest dollar value was assigned as the dollar value for the case.

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Money Assets by County, 3-Year Total (in dollars)

Across the last three fiscal years, Suffolk accounted for the largest amount followed by Essex, and Worcester.



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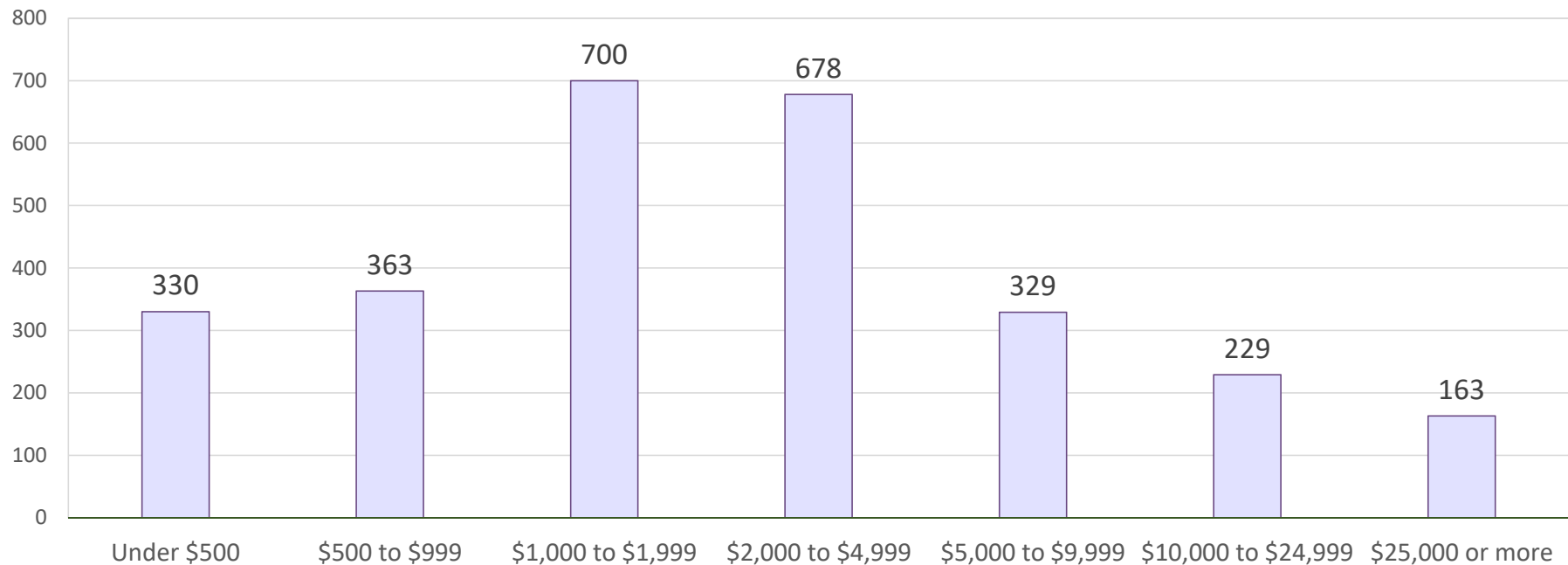
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Distribution of Dollar Amounts, 3-Year Total

Dollar amounts ranged from \$6.20 to \$738,317. Amounts in the range of \$1,000-\$1,999 (25%) and \$2,000-\$4,999 (24%) accounted for the highest number of cases.



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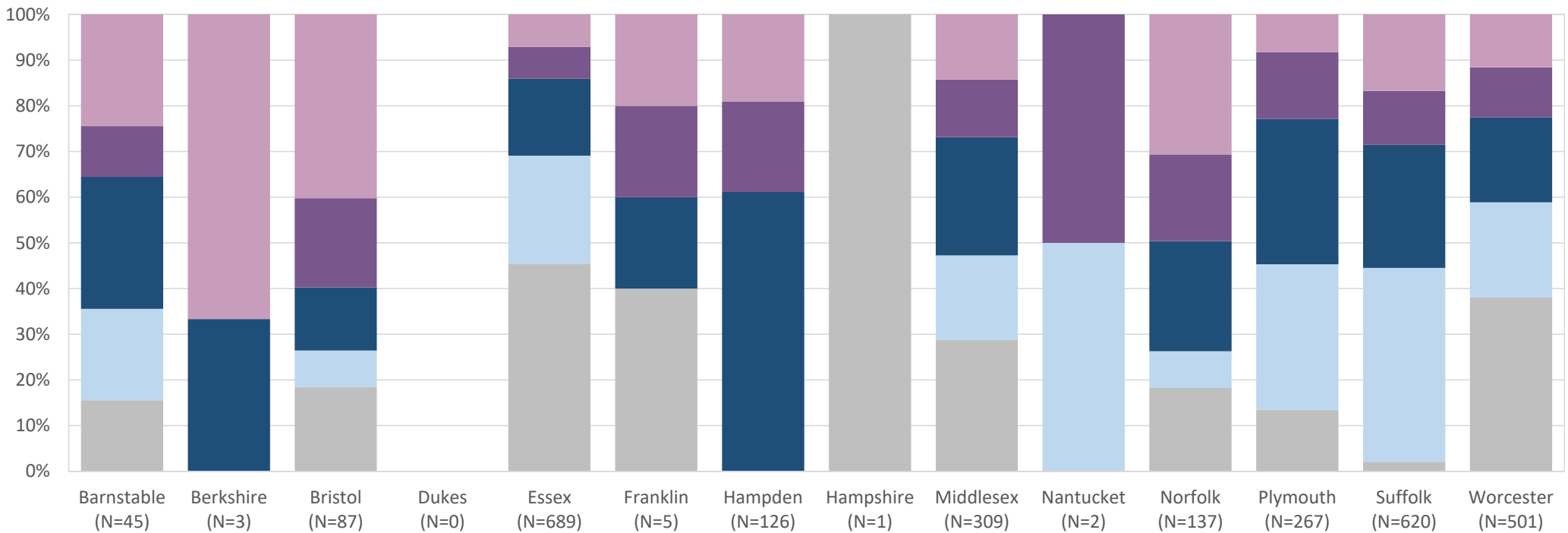
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Distribution of Dollar Amounts by County, 3-Year Total

■ Under \$1,000
 ■ \$1,000 to \$1,999
 ■ \$2,000 to \$4,999
 ■ \$5,000 to \$9,999
 ■ \$10,000 or more



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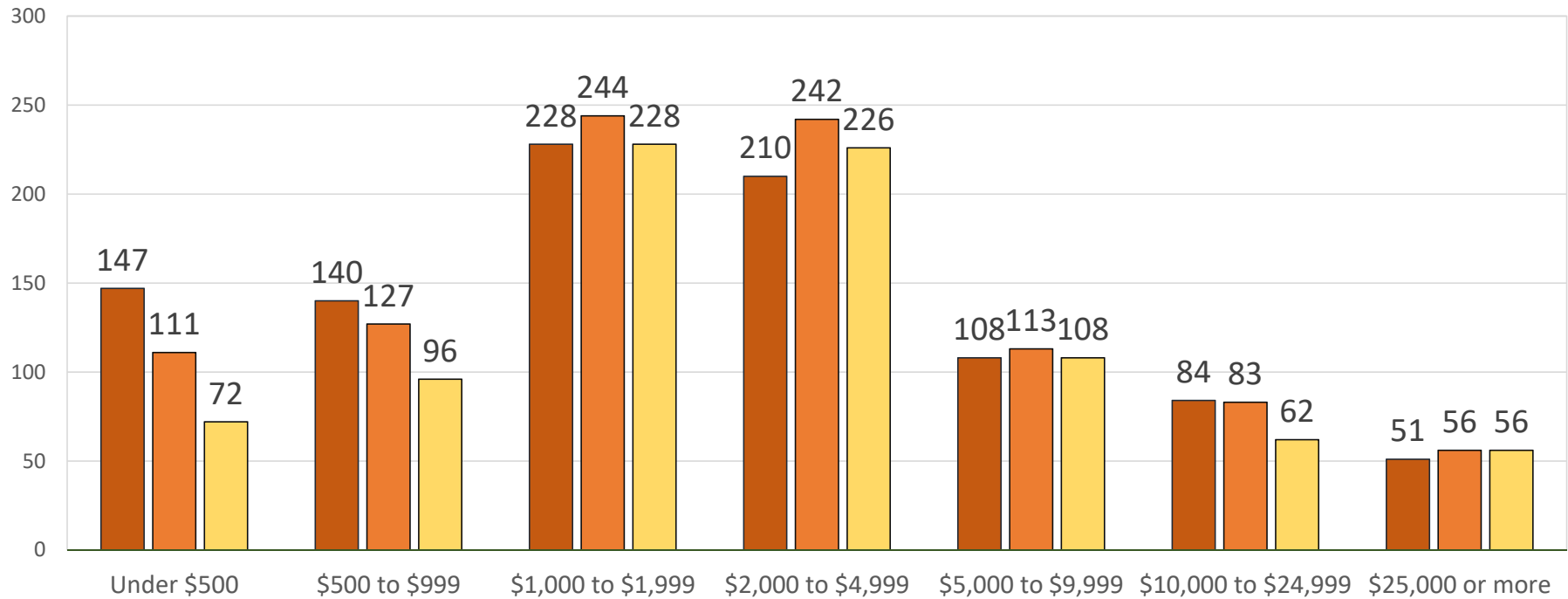
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Distribution of Dollar Amounts by Fiscal Year

FY2017 FY2018 FY2019



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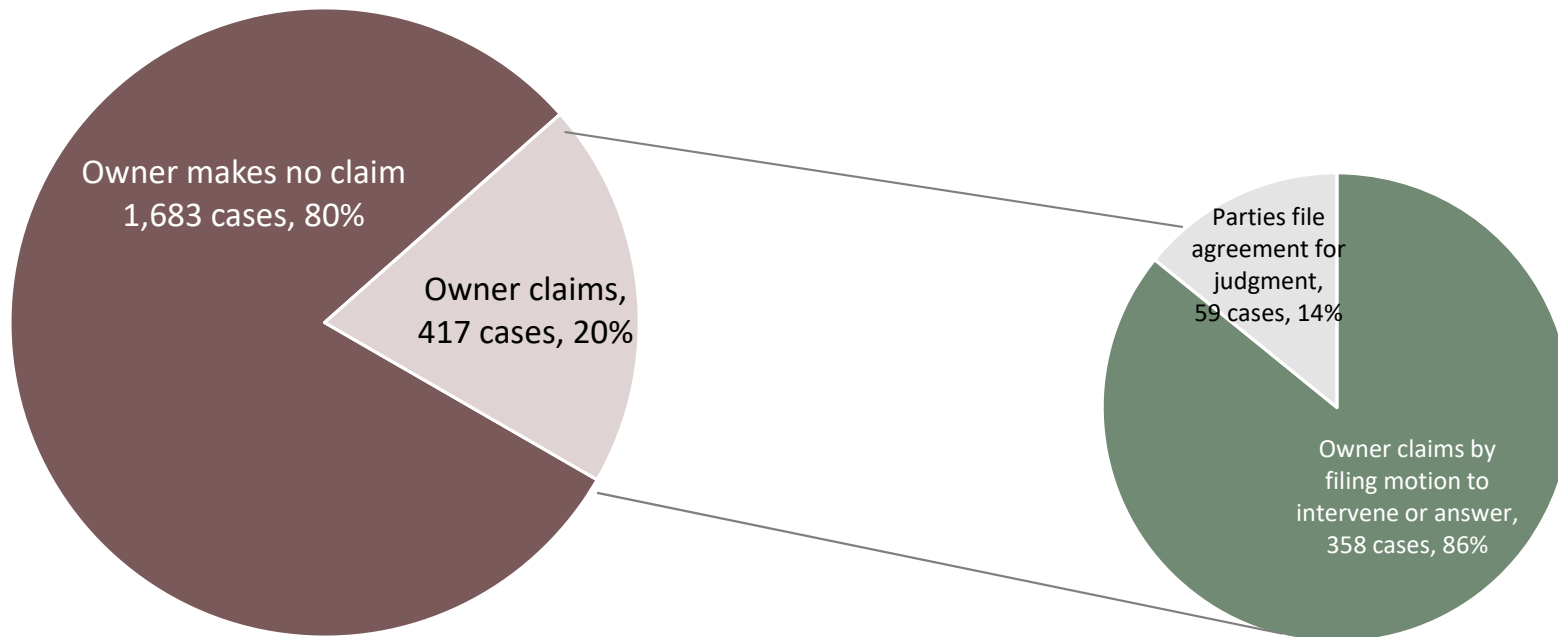


Analysis of Disposed Forfeiture Cases in the Superior Court



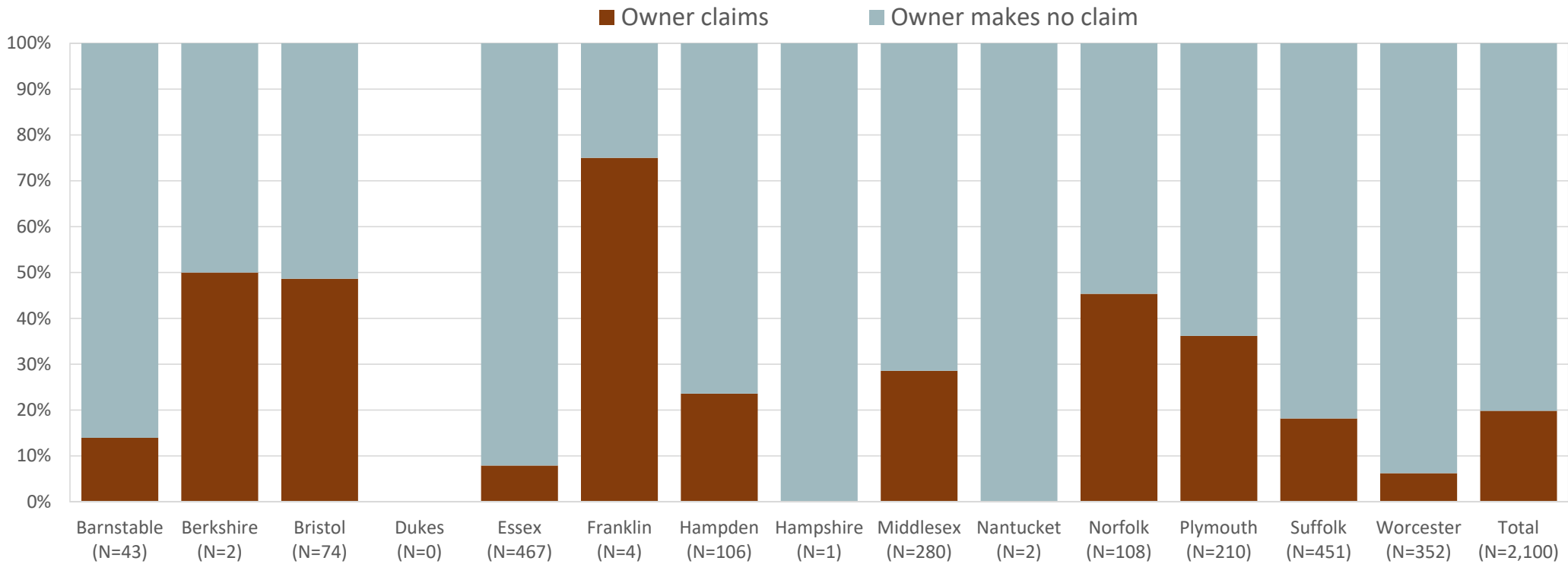
Disposed Forfeiture Cases by Claim of Property, 2-Year Total

There were 2,100 forfeiture cases disposed in the Superior Court from FY 2018 to FY 2019.
In 1,683 or 80% of cases, the property owner made no claim to the property.





Disposed Forfeiture Cases by Claim of Property and County, 2-Year Total

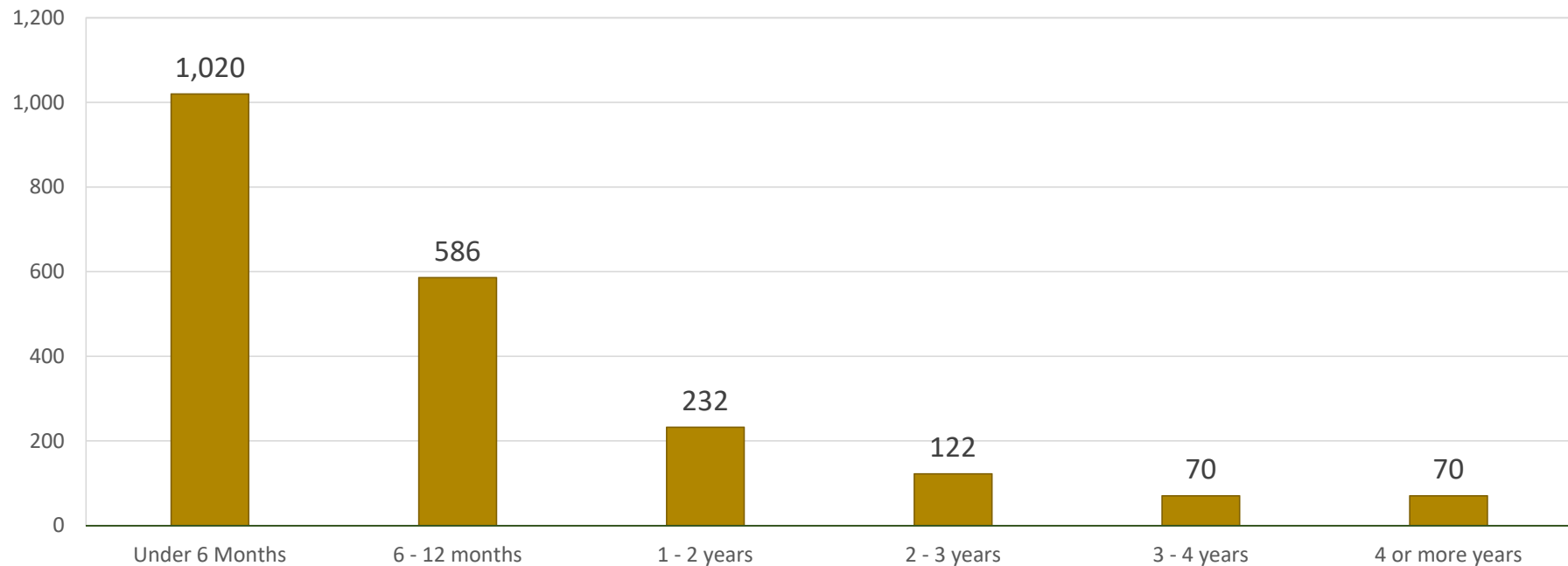


* Figures reflect cases filed and disposed under G.L. c. 94C, §47(d), and G.L. c. 265, §56, in MassCourts as of November 12, 2019.



Disposed Forfeiture Cases: Time to Disposition, 2-Year Total

Seventy-six percent of disposed forfeiture cases were resolved in one year or less.



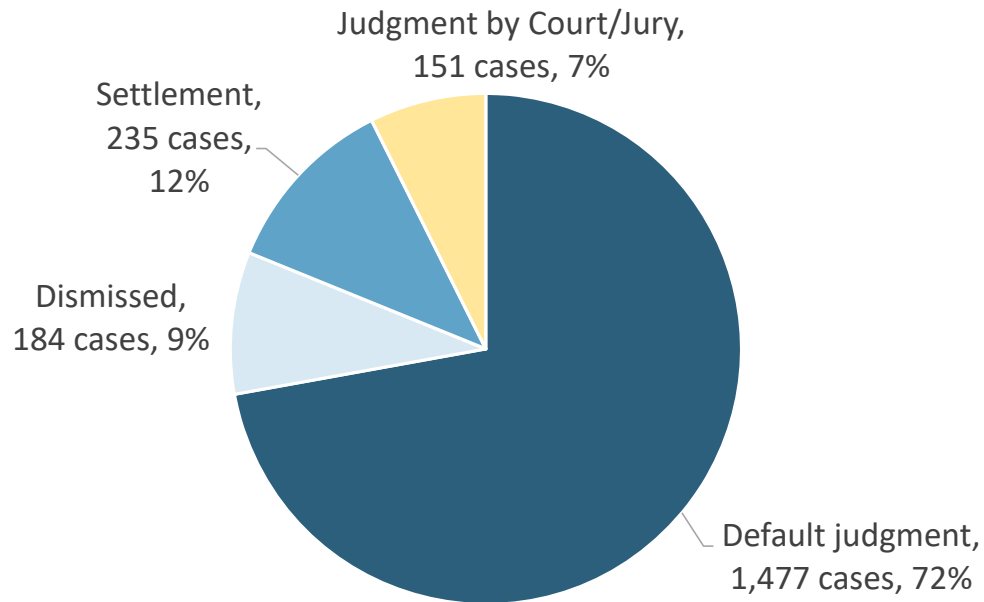
* Time to disposition is computed by subtracting the date the case was filed from the date the forfeiture case was disposed.

** Figures reflect cases filed and disposed under G.L. c. 94C, §47(d), and G.L. c. 265, §56, in MassCourts as of November 12, 2019.



Disposed Forfeiture Cases by Type of Disposition, 2-Year Total

There were 2,047 cases with a disposition of default judgment, dismissed, or settlement/judgment.
Default judgments accounted for 72% of all dispositions in forfeiture cases disposed.



* There were fifty-three (53) cases where the disposition could not be extracted from MassCourts.

** Type of disposition was computed from the case disposition and docket entries.

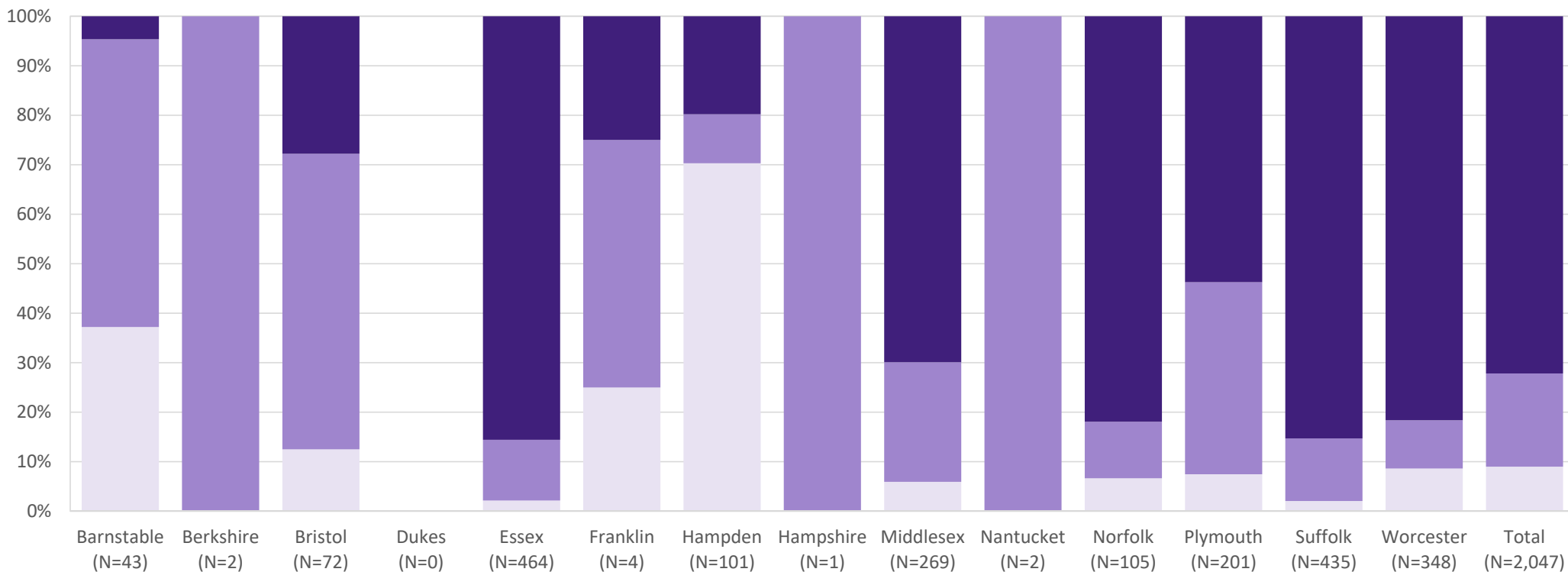
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Massachusetts Trial Court



Disposed Forfeiture Cases: Distribution of Dispositions by County, 2-Year Total

Dismissed Settlement/ Judgment Default judgment



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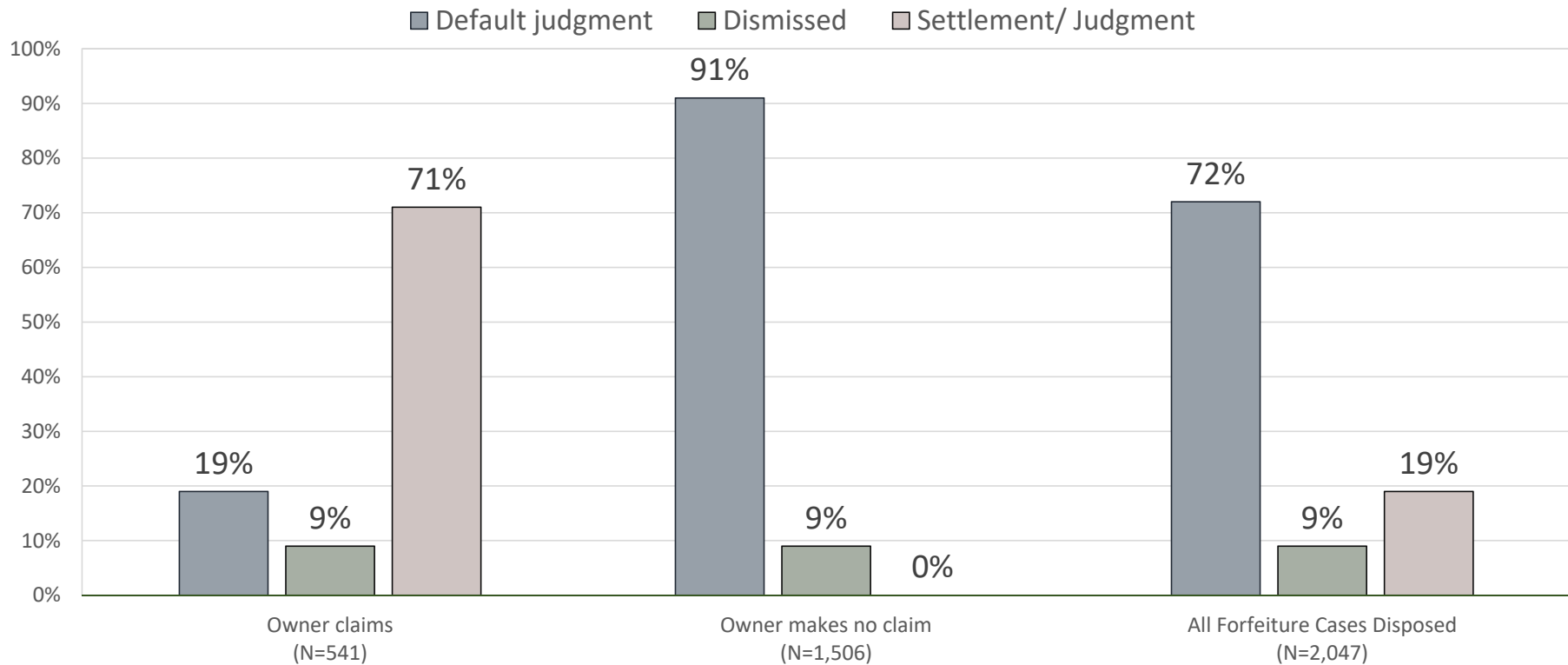
** In this chart, the case dispositions Settlement and Judgment by Court/Jury were combined into one category.

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Disposed Forfeiture Cases by Claim of Property and Disposition, 2-Year Total



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