

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 533  
3 entitled “An act relating to converting civil forfeiture of property in drug-  
4 related prosecutions into a criminal process” respectfully reports that it has  
5 considered the same and recommends that the Senate propose to the House that  
6 the bill be amended by striking out all after the enacting clause and inserting in  
7 lieu thereof the following:

8 Sec. 1. 18 V.S.A. chapter 84, subchapter 2 is amended to read:

9 Subchapter 2. Forfeiture

10 \* \* \*

11 § 4241. SCOPE

12 (a) The following property shall be subject to this subchapter:

13 \* \* \*

14 (5) Any consideration, including monies, negotiable instruments, and  
15 securities, used or intended for use in the cultivation, manufacture,  
16 compounding, distribution, or delivery of any regulated drug in violation of  
17 subchapter 1 of this chapter and any proceeds or derivative proceeds of any  
18 dispensing or sale of any regulated drug in violation of subchapter 1 of this  
19 chapter, including monies, negotiable instruments, and securities. Such  
20 consideration, proceeds, or derivative proceeds shall be forfeited to the extent  
21 of the interest of an owner or co-owner, only by reason of an action or

1 omission committed or omitted with the knowledge or consent of the owner or  
2 co-owner. As used herein, “derivative proceeds” shall not include real  
3 property which is occupied as the primary residence of a person involved in the  
4 violation and a member or members of that person’s family or domestic  
5 partner.

6 \* \* \*

7 (c) Notwithstanding the provisions of this section, the following property  
8 shall not be subject to seizure and forfeiture under this subchapter:

9 (1) Homestead real property, as defined in 27 V.S.A. § chapter 3.

10 (2) U.S. currency totaling \$2,500.00 or less, excluding any currency  
11 provided by law enforcement to facilitate the controlled purchase of a  
12 regulated drug.

13 (3) A motor vehicle of \$10,000.00 or less in market value.

14 (4) Stolen property and contraband. Stolen property shall be promptly  
15 returned to the rightful owner, and contraband shall be disposed of according  
16 to applicable State law. The Criminal Division of the Superior Court may  
17 impose reasonable conditions, including the use of photographic evidence, to  
18 protect access to the property subject to this subsection and its use in later  
19 proceedings.

20 (d) The Attorney General shall provide advice on the publications that law  
21 enforcement agencies may use to establish the market value of a motor vehicle.

1 § 4242. SEIZURE

2 (a) The court may issue at the request of the State ex parte a preliminary  
3 order or process to seize or secure property for which forfeiture is sought and  
4 to provide for its custody. Process for seizure of such property shall issue only  
5 upon a showing of probable cause that the property is subject to forfeiture.  
6 Application ~~therefor~~ for a preliminary order or process and issuance,  
7 execution, and return of the order or process shall be subject to provisions of  
8 applicable law.

9 (b) Any property subject to forfeiture under this subchapter may be seized  
10 upon process. Seizure without process may be made when:

11 (1) the seizure is incident to an arrest with probable cause or a search  
12 under a valid search warrant;

13 (2) the property subject to seizure has been the subject of a prior  
14 judgment in favor of the State in a forfeiture proceeding under this subchapter;  
15 or

16 (3) the seizure is incident to a valid warrantless search.

17 (c) If property is seized without process under subdivision (b)(1) or (3) of  
18 this section and the State intends to seek forfeiture under this subchapter, the  
19 State shall forthwith petition the court for a preliminary order or process under  
20 subsection (a) of this section.

1 (d) Notwithstanding subsection 4241(b) of this title, all regulated drugs the  
2 possession of which is prohibited under this chapter are contraband and shall  
3 be automatically forfeited to the State and destroyed.

4 § 4243. JUDICIAL FORFEITURE PROCEDURE

5 (a) Conviction or agreement required. An asset is subject to forfeiture by  
6 judicial determination under section 4241 of this title and 13 V.S.A. § 364 if:

7 (1) a person is convicted of the criminal offense related to the action for  
8 forfeiture and the State establishes by clear and convincing evidence that the  
9 property is an instrument of or represents the proceeds of the underlying  
10 offense; or

11 (2) a person enters into ~~an~~ a plea agreement or other agreement with the  
12 prosecutor, including an agreement under which ~~he or she~~ the person is not  
13 charged with a criminal offense related to the action for forfeiture; or

14 (3) a person is granted immunity or a reduced punishment, with or  
15 without the filing of a criminal charge, in exchange for testifying or assisting a  
16 law enforcement investigation or prosecution.

17 (b) Evidence. The State may introduce into evidence in the judicial  
18 forfeiture case the fact of a conviction in the Criminal Division.

19 (c) Burden of proof. The State bears the burden of proving by clear and  
20 convincing evidence that the property is an instrument of or represents the  
21 proceeds of the underlying offense.

1 (d) Notice. Within 60 days from when the ~~seizure occurs~~ preliminary order  
2 or process is issued, the State shall notify any ~~owners, possessors, and~~  
3 ~~lienholders~~ defendant, owner, and lienholder of the property of the action, if  
4 known or readily ascertainable, after a reasonable search of public records.  
5 Upon motion by the State, a court may extend the time period for sending  
6 notice for a period not to exceed ~~90~~ 30 days for good cause shown.

7 (e) Return of property. If notice is not sent in accordance with subsection  
8 (d) of this section, and no time extension is granted or the extension period has  
9 expired, the law enforcement agency shall return the property to the person  
10 from whom the property was seized. ~~An agency's return of property due to~~  
11 ~~lack of proper notice does not restrict the agency's authority to commence a~~  
12 ~~forfeiture proceeding at a later time.~~ Nothing in this subsection shall require  
13 the agency to return contraband, evidence, or other property that the person  
14 from whom the property was seized is not entitled to lawfully possess.

15 (f) Filing of petition. The State shall file a petition for forfeiture of any  
16 property seized under section 4242 of this title promptly, but not more than ~~44~~  
17 90 days from the date the preliminary order or process is issued. The petition  
18 shall be filed in the Criminal Division of the Superior Court of the county in  
19 which the property is located or in any court with jurisdiction over a criminal  
20 proceeding related to the property.

1 (g) Service of petition. A copy of the petition shall be served on all persons  
2 named in the petition as provided for in Rule 4 of the Vermont Rules of Civil  
3 Procedure. In addition, the State shall cause notice of the petition to be  
4 published in a newspaper of general circulation in the State, as ordered by the  
5 court. ~~The petition shall state:~~

6 ~~(1) the facts upon which the forfeiture is requested, including a~~  
7 ~~description of the property subject to forfeiture, and the type and quantity of~~  
8 ~~regulated drug involved;~~

9 ~~(2) the names of the apparent owner or owners, lienholders who have~~  
10 ~~properly recorded their interests, and any other person appearing to have an~~  
11 ~~interest; and, in the case of a conveyance, the name of the person holding title,~~  
12 ~~the registered owner, and the make, model, and year of the conveyance.~~

13 (h) Form of petition.

14 (1) The petition shall be in a form prescribed by the Supreme Court.

15 The petition shall include:

16 (A) an explanation of rights;

17 (B) the facts upon which the forfeiture is requested, including a  
18 description of the property subject to forfeiture;

19 (C) the type and quantity of regulated drug involved;

20 (D) the names of the apparent owner, owners, or lienholders who  
21 have properly recorded their interests;

1           (E) in the case of a conveyance, the name of the person holding title,  
2           the registered owner, and the make, model, and year of the conveyance;

3           (2) The petition shall include a civil complaint form and a form affidavit  
4           for a person to demand judicial determination of the forfeiture.

5           (3) The petition shall also include a form to be used to request a prompt  
6           postseizure hearing. The form to request the hearing shall also contain, in  
7           boldface print, the following:

8           (A) You have a right to ask for a prompt postseizure hearing to seek  
9           return of your property.

10          (B) If you wish to request a hearing before the Criminal Division of  
11          the Superior Court, you must mail or deliver your request for a hearing within  
12          seven days after (date of petition).

13          (C) If your request for a hearing is not mailed or delivered within  
14          seven days after (date of petition), you waive your right to a hearing and your  
15          property will be subject to forfeiture.

16          (D) In order to request a hearing, sign the attached form and mail or  
17          deliver the form to the court administrator at the address shown.

18          (i) Exceptions to the conviction or agreement requirement. Upon motion  
19          by the State, the court may waive the conviction or agreement requirement of  
20          subsection (a) of this section and grant title of the subject property to the State.  
21          The State shall file a motion with the court, not fewer than 90 days after the

1 preliminary order or process is issued, to prove by a preponderance of the  
2 evidence that, before conviction, a defendant, owner, or co-owner of the  
3 property:

4 (1) was deported by the U.S. government;

5 (2) fled the jurisdiction; or

6 (3) abandoned the property.

7 (j) Unless a timely request for a prompt postseizure hearing is made  
8 pursuant to section 4243a of this subchapter or a timely demand for judicial  
9 determination of forfeiture is filed pursuant to section 42422 of this  
10 subchapter, the court shall enter a default judgment and grant the State's  
11 petition for forfeiture not sooner than 90 days after the petition is filed.

12 § 4243a. PROMPT POSTSEIZURE HEARING

13 (a) Right to prompt postseizure hearing. Within seven days following  
14 service of the notice of seizure and forfeiture under section 4243 of this title, a  
15 defendant, any family member or domestic partner of a defendant who are  
16 regular users the property, any owner of the property, any family member or  
17 domestic partner of an owner who are regular users the property, or any  
18 lienholder of the property may submit a request for a prompt postseizure  
19 hearing seeking return of property seized under section 4242 of this title. The  
20 request shall be mailed or delivered to the court administrator of the county in

1 which the seizure occurred, who shall notify the State that a hearing was  
2 requested.

3 (b) Prompt postseizure hearing procedure. The prompt postseizure hearing  
4 shall be held in accordance with procedures prescribed by the Supreme Court.  
5 The hearing shall be conducted without a jury. Unless impracticable, for good  
6 cause shown, or upon agreement of the parties, the court shall hold the hearing:

7 (1) as a separate hearing;

8 (2) at the same time as a probable cause determination, a post-  
9 arraignment hearing, or other pretrial hearing; or

10 (3) at the same time as a hearing held in the criminal offense related to  
11 the action for forfeiture pursuant to Rule 41(f) of the Vermont Rules of  
12 Criminal Procedure.

13 (2) The court shall order the return of the seized property to the  
14 requestor if it finds:

15 (A) the seizure was invalid;

16 (B) a criminal charge has not been filed;

17 (C) no probable cause exists to show that the property is subject to  
18 forfeiture pursuant to section 4241(a) of this subchapter; or

19 (D) the property is not reasonably required to be held as evidence.

1           (3) Upon determination that property shall be returned, the court may  
2           impose reasonable conditions, including the use of photographic evidence, to  
3           protect access to the property for use in criminal proceedings.

4           (d) The provisions of this section do not apply to contraband.

5           § 4244. FORFEITURE ~~HEARING~~ HEARINGS

6           (a) Right to forfeiture hearing. Within 60 days following service of notice  
7           of seizure and forfeiture under section 4243 of this title, a ~~claimant~~ defendant,  
8           any family member or domestic partner of a defendant who are regular users  
9           the property, any owner of the property, any family member or domestic  
10           partner of an owner who are regular users the property, or any lienholder of the  
11           property may file a demand for judicial determination of the forfeiture. The  
12           demand must be in the form of a civil complaint accompanied by a sworn  
13           affidavit setting forth the right, title, or interest in the property; a request for  
14           the return of the property or compensation equal to the interest in the property;  
15           and the facts upon which the claimant intends to rely, including, if relevant, the  
16           noncriminal source of the asset or currency at issue. The demand must be filed  
17           with the court administrator in the county in which the seizure occurred.

18           (b) Defendant's forfeiture hearing. The court shall not order the forfeiture  
19           of a defendant's property without a hearing if requested by a defendant in the  
20           criminal offense related to the action for forfeiture. The court shall hold a

1 hearing on the petition as soon as practicable after, and in any event no later  
2 than 90 days following, the conclusion of the criminal prosecution.

3 (c) Lienholder's forfeiture hearing. The court shall not order the forfeiture  
4 of property subject to a lienholder's interest without a hearing if requested by a  
5 lienholder, other than a defendant in the criminal offense related to the action  
6 for forfeiture. A lienholder who has received notice of a forfeiture proceeding  
7 may ~~intervene as a party~~ petition the court for judicial determination of the  
8 forfeiture. The court shall hear the petition within 90 days of filing or as soon  
9 as is practicable. If ~~the court finds~~ a lienholder shows by a preponderance of  
10 the evidence that the lienholder has a valid, good faith interest in the subject  
11 property ~~which~~ that is not held through a straw purchase, trust, or otherwise for  
12 the actual benefit of another and that the lienholder did not at any time have  
13 knowledge or reason to believe that the property was being or would be used in  
14 violation of the law, the court ~~upon forfeiture~~ shall order return of the property  
15 to the lienholder or compensation to the lienholder to the extent of the  
16 lienholder's interest, whichever is of less cost or expense to effectuate.

17 (d) Innocent owner hearing. ~~The court shall not order the forfeiture of~~  
18 ~~property if an owner, co-owner, or person who regular uses the property, other~~  
19 ~~than the defendant, shows by a preponderance of the evidence that the owner,~~  
20 ~~co-owner, or regular user did not consent to or have any express or implied~~  
21 ~~knowledge that the property was being or was intended to be used in a manner~~

1 ~~that would subject the property to forfeiture, or that the owner, co-owner, or~~  
2 ~~regular user had no reasonable opportunity or capacity to prevent the defendant~~  
3 ~~from using the property.~~ The court shall not order the forfeiture of property of  
4 any family member or domestic partner of a defendant who are regular users of  
5 the property; any owner of the property, other than the defendant; or any  
6 family member or domestic partner of an owner who are regular users of the  
7 property without a hearing if requested.

8 (1) The petition shall be heard within 90 days of filing or as soon as is  
9 practicable. The court shall hold the hearing in its discretion as a separate  
10 hearing or at the same time as a hearing pursuant to Rule 41(f) of the Vermont  
11 Rules of Criminal Procedure.

12 (2) The court shall order the return of the property if the requestor  
13 shows, by a preponderance of the evidence, the validity of ownership interest  
14 or regular use and that:

15 (A) the requestor did not consent to, or have any express or implied  
16 knowledge that, the property was being used or was intended to be used in a  
17 manner that would subject the property to forfeiture; or

18 (B) the requestor had no reasonable opportunity or capacity to prevent  
19 the defendant from using the property.

20 (e) Nature of the proceeding. The proceeding shall be against the property,  
21 ~~and~~ shall be deemed civil in nature, and shall be conducted without a jury. The

1 State shall have the burden of proving all material facts by clear and  
2 convincing evidence.

3 (f) Findings by the court. The court shall make findings of fact and  
4 conclusions of law and shall issue a final order. If the State's petition is  
5 granted, the court shall order the property held for evidentiary purposes,  
6 delivered to the State Treasurer, or, in the case of regulated drugs or property  
7 which is harmful to the public, destroyed. If a demand for judicial  
8 determination made pursuant to this section is granted, the court may impose  
9 reasonable conditions, including the use of photographic evidence, to protect  
10 access to property subject to this section and its use in later proceedings.

11 (g) Appeal. A decision of the Criminal Division under this section may be  
12 appealed as a matter of right to the Supreme Court. The forfeiture shall be  
13 stayed pending appeal.

14 § 4245. REMISSION OR MITIGATION ~~OF FORFEITURE~~ BY THE  
15 STATE'S ATTORNEY

16 (a) ~~On petition filed within 90 days after completion of a forfeiture~~  
17 ~~proceeding, a court that issued a forfeiture order pursuant to section 4244 of~~  
18 ~~this title~~ request by any family member or domestic partner of a defendant who  
19 are regular users of the property; any owner of the property, other than the  
20 defendant; or any family member or domestic partner of an owner who are  
21 regular users the property made at any time before the Criminal Division enters

1 judgment in the criminal offense related to the action for forfeiture, a State's  
2 Attorney may order agree that the forfeiture property seized pursuant to section  
3 4242 of this title be remitted or mitigated. The petition request shall be sworn  
4 and shall include all information necessary for its resolution or shall describe  
5 where such information can be obtained. Upon receiving a petition request,  
6 the court State's Attorney shall investigate and may conduct a hearing  
7 interview if in its the State's Attorney's judgment it would be helpful to the  
8 resolution of the petition request. The court State's Attorney shall either  
9 approve or reject the petition request within 90 30 days.

10 (b) The court State's Attorney may remit or mitigate a forfeiture seizure  
11 made pursuant to this subchapter upon finding that relief should be granted to  
12 avoid extreme hardship or upon finding that the petitioner requestor has a  
13 valid, good faith interest in the property which that is not held through a straw  
14 purchase, trust, or otherwise for the benefit of another and that the petitioner  
15 did not at any time have knowledge or reason to believe that the property was  
16 being or would be used in violation of the law.

17 (c) If the State's Attorney approves a request to remit or mitigate a seizure,  
18 the State's Attorney may file a request for the court to impose reasonable  
19 conditions, including the use of photographic evidence, to protect access to  
20 property subject to this section and its use in later proceedings.

21 \* \* \*

1 § 4247. DISPOSITION OF PROPERTY

2 (a) Whenever property is forfeited and delivered to the State Treasurer  
3 under this subchapter, the State Treasurer shall, ~~not~~ not sooner than 90 days ~~of~~  
4 after the date the property is delivered but not later than one year after the  
5 property is delivered, sell the property at a public sale held under 27 V.S.A.  
6 chapter ~~13~~ 18, subchapter 7.

7 (b) The proceeds from the sale of forfeited property, upon exhaustion of all  
8 appeals or at the court's discretion, shall be used first to pay restitution to any  
9 victim of the underlying crime, then to offset any costs of selling the property,  
10 and then, after any liens on the property have been paid in full, applied to  
11 payment of seizure, storage, and forfeiture expenses, including animal care  
12 expenses related to the underlying violation. Remaining proceeds shall be  
13 distributed as follows:

14 (1)(A) ~~45~~ 80 percent shall be distributed among:

- 15 (i) the Office of the Attorney General;
- 16 (ii) the Department of State's Attorneys and Sheriffs; and
- 17 (iii) State and local law enforcement agencies.

18 (B) ~~The Governor's Criminal Justice and Substance Abuse Cabinet~~  
19 Office of Attorney General is authorized to determine the allocations among  
20 the groups listed in subdivision (A) of this subdivision (1), and may only  
21 reimburse the prosecutor and law enforcement agencies ~~that participated for~~ for

1 their proportionate participation in the prosecution or enforcement effort  
2 resulting in the forfeiture for expenses incurred, including controlled drug-buy  
3 money, investigation costs, salaries, benefits, overtime, and any other actual  
4 expenses for involved personnel. The proceeds shall be held by the Treasurer  
5 until the Cabinet notifies the Treasurer of the allocation determinations, at  
6 which time the Treasurer shall forward promptly distribute the allocated  
7 amounts to the appropriate agency’s operating funds.

8 (2) The remaining ~~55~~ 20 percent shall be deposited in the General Fund.

9 \* \* \*

10 Sec. 3. EFFECTIVE DATE

11 This act shall take effect on July 1, 2022.

12 and that after passage the title of the bill be amended to read: “An act  
13 relating to civil seizure and forfeiture in drug-related offenses”

14

15 (Committee vote: \_\_\_\_\_)

16

\_\_\_\_\_

17

Senator \_\_\_\_\_

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FOR THE COMMITTEE

19