

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 § 4241. SCOPE

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

12 * * *

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

1 co-owner. ~~As used herein, “derivative proceeds” shall not include real~~
2 ~~property which is occupied as the primary residence of a person involved in the~~
3 ~~violation and a member or members of that person’s family.~~

4 * * *

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

7 (1) Homestead real property, as defined in 27 V.S.A. § 101.

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

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

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

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

19 § 4242. SEIZURE

20 (a) The court may issue at the request of the State ex parte a preliminary
21 order or process to seize or secure property for which forfeiture is sought and

1 to provide for its custody. Process for seizure of such property shall issue only
2 upon a showing of probable cause that the property is subject to forfeiture.
3 Application ~~therefor~~ for a preliminary order or process and issuance,
4 execution, and return of the order or process shall be subject to provisions of
5 applicable law.

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

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

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

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

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

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

1 § 4243. JUDICIAL FORFEITURE PROCEDURE

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

4 (1) a person is convicted of the criminal offense related to the action for
5 forfeiture; ~~or~~

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

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

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

14 (c) Burden of proof. The State bears the burden of proving by clear and
15 convincing evidence that the property is an instrument of or represents the
16 proceeds of the underlying offense subject to forfeiture pursuant to subsection
17 4241(a) of this title.

18 (d) Notice. Within 60 days from when the ~~seizure occurs~~ preliminary order
19 or process is issued, the State shall notify any ~~owners, possessors, and~~
20 ~~lienholders~~ defendant, owner, and lienholder of the ~~property of the action,~~
21 order. Notice shall be provided to any defendant, owner, and lienholder by

1 mail or personal delivery if known or readily ascertainable after a reasonable
2 search of public records. In addition, the State shall cause the notice to be
3 published in a newspaper of general circulation in the State, as ordered by the
4 court. The notice shall inform the person of the right to request a prompt post-
5 seizure hearing as described in subsection 4242(h)(3) of this subchapter. Upon
6 motion by the State, a court may extend the time period for sending notice for
7 a period not to exceed 90 30 days for good cause shown.

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

17 (f) Filing of petition. The State shall file a petition for forfeiture of any
18 property seized under section 4242 of this title promptly, but not more than 44
19 30 days from the date the preliminary order or process is issued. The petition
20 shall be filed in the Criminal Division of the Superior Court of the county in

1 which the property is located or in any court with jurisdiction over a criminal
2 proceeding related to the property.

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

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

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

15 (h) Form of petition.

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

17 The petition shall include:

18 (A) an explanation of rights;

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

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

1 (D) the names of the apparent owner, owners, or lienholders who
2 have properly recorded their interests; and

3 (E) in the case of a conveyance, the name of the person holding title,
4 the registered owner, and the make, model, and year of the conveyance.

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

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

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

12 (B) If you wish to request a hearing before the Criminal Division of
13 the Superior Court, you must mail or deliver your request for a hearing within
14 30 days after (date of petition).

15 (C) If your request for a hearing is not mailed or delivered within 30
16 days after (date of petition), you waive your right to a hearing and your
17 property will be subject to forfeiture.

18 (D) In order to request a hearing, sign the attached form and mail or
19 deliver the form to the Clerk of the Superior Court, Criminal Division, in the
20 county where the petition is filed, at the address shown.

1 (i) Exceptions to the conviction or agreement requirement. Upon motion
2 by the State, the court may waive the conviction or agreement requirement of
3 subsection (a) of this section and grant title of the subject property to the State.
4 The State shall file a motion with the court, not fewer than 90 days after the
5 preliminary order or process is issued, to prove by a preponderance of the
6 evidence that a defendant, owner, or co-owner of the property:

7 (1) fled the jurisdiction; or

8 (2) abandoned the property.

9 (j) Unless a timely demand for judicial determination of forfeiture is filed
10 pursuant to section 4242 of this subchapter, upon motion by the State, the court
11 shall enter a default judgment and grant the State's petition for forfeiture.

12 § 4243a. PROMPT POSTSEIZURE HEARING

13 (a) Right to prompt postseizure hearing. Within 30 days following notice
14 pursuant to subsection 4243(d) of this subchapter or service pursuant to
15 subsection 4243(g) of this subchapter, a defendant, any family member or
16 domestic partner of a defendant who is a regular user of the property; any
17 owner of the property; any family member or domestic partner of an owner
18 who is a regular user of the property; or any lienholder of the property may
19 submit a request for a prompt postseizure hearing seeking return of property
20 seized under section 4242 of this title. The request shall be mailed or delivered

1 to the Clerk of the Superior Court, Criminal Division, in the county in which
2 the seizure occurred, who shall notify the State that a hearing was 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 pursuant to Rule 41(f) of the Vermont
11 Rules of Criminal Procedure.

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

14 (1) the seizure was invalid;

15 (2) no probable cause exists to show that the property is subject to
16 forfeiture pursuant to subsection 4241(a) of this subchapter; or

17 (3) the property is not reasonably required to be held as evidence.

18 (d) Upon determination that property shall be returned, the court may
19 impose reasonable conditions, including the use of photographic evidence, to
20 protect access to the property for use in later proceedings.

21 (e) The provisions of this section do not apply to contraband.

1 § 4244. FORFEITURE ~~HEARING~~ HEARINGS

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

15 (b) Defendant’s forfeiture hearing. The court shall not order the forfeiture
16 of a defendant’s property without a hearing if requested by a defendant in the
17 criminal offense related to the petition for forfeiture. The court shall hold a
18 hearing on the petition as soon as practicable after, and in any event ~~no~~ not
19 later than 90 days following, the conclusion of the criminal prosecution.

20 (c) Lienholder’s forfeiture hearing. The court shall not order the forfeiture
21 of property subject to a lienholder’s interest without a hearing if requested by a

1 lienholder, other than a defendant. A lienholder who has received notice of a
2 forfeiture proceeding may ~~intervene as a party~~ demand judicial determination
3 of the forfeiture. The court shall hear the petition within 90 days of filing or as
4 soon as is practicable. If ~~the court finds~~ a lienholder shows by a preponderance
5 of the evidence that the lienholder has a valid, good faith interest in the subject
6 property ~~which~~ that is not held through a straw purchase, trust, or otherwise for
7 the actual benefit of another and that the lienholder did not at any time have
8 knowledge or reason to believe that the property was being or would be used in
9 violation of the law, the court ~~upon forfeiture~~ shall order return of the property
10 to the lienholder or compensation to the lienholder to the extent of the
11 lienholder's interest, whichever is of less cost or expense to effectuate.

12 (d) Innocent owner hearing. ~~The court shall not order the forfeiture of~~
13 ~~property if an owner, co-owner, or person who regular uses the property, other~~
14 ~~than the defendant, shows by a preponderance of the evidence that the owner,~~
15 ~~co-owner, or regular user did not consent to or have any express or implied~~
16 ~~knowledge that the property was being or was intended to be used in a manner~~
17 ~~that would subject the property to forfeiture, or that the owner, co-owner, or~~
18 ~~regular user had no reasonable opportunity or capacity to prevent the defendant~~
19 ~~from using the property.~~ The court shall not order the forfeiture of property of
20 any family member or domestic partner of a defendant who is a regular user of
21 the property; any owner of the property, other than a defendant; or any family

1 member or domestic partner of an owner who is a regular user of the property
2 without a hearing if requested.

3 (1) The demand shall be heard within 90 days of filing or as soon as is
4 practicable. The court shall hold the hearing in its discretion as a separate
5 hearing or at the same time as a hearing pursuant to Rule 41(f) of the Vermont
6 Rules of Criminal Procedure.

7 (2) The person filing the demand has the burden to prove, by a
8 preponderance of the evidence, the validity of ownership interest or regular use
9 of the property. If the person meets the burden, then the State must prove by
10 clear and convincing evidence that the requestor did consent to, or have
11 express or implied knowledge that, the property was being or was intended to
12 be used in a manner that would subject the property to forfeiture. If the State
13 fails to meet its burden, the court shall order return of the property.

14 (e) Nature of the proceeding. The proceeding shall be against the property
15 and, shall be deemed civil in nature, and shall be conducted without a jury.
16 The State shall have the burden of proving all material facts by clear and
17 convincing evidence.

18 (f) Findings by the court. The court shall make findings of fact and
19 conclusions of law and shall issue a final order. If the State's petition is
20 granted, the court shall order the property held for evidentiary purposes,
21 delivered to the State Treasurer, or, in the case of regulated drugs or property

1 ~~which~~ that is harmful to the public, destroyed. If a demand for judicial
2 determination made pursuant to this section is granted, the court may impose
3 reasonable conditions, including the use of photographic evidence, to protect
4 access to property subject to this section and its use in later proceedings.

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

8 * * *

9 § 4247. DISPOSITION OF PROPERTY

10 (a) Whenever property is forfeited and delivered to the State Treasurer
11 under this subchapter, the State Treasurer shall, ~~no~~ not sooner than 90 days ~~of~~
12 after the date the property is delivered but not later than one year after the
13 property is delivered, sell the property at a public sale held under 27 V.S.A.
14 chapter ~~13~~ 18, subchapter 7.

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

1 (1)(A) 45 **70** percent shall be distributed among:

2 (i) the Office of the Attorney General;

3 (ii) the Department of State's Attorneys and Sheriffs; and

4 (iii) State and local law enforcement agencies.

5 (B) ~~The Governor's Criminal Justice and Substance Abuse Cabinet~~
6 Office of Attorney General is authorized to determine the allocations among
7 the groups listed in subdivision (A) of this subdivision (1), and may only
8 reimburse the prosecutor and law enforcement agencies ~~that participated for~~
9 their proportionate participation in the prosecution or enforcement effort
10 resulting in the forfeiture for expenses incurred, including controlled drug-buy
11 money, investigation costs, salaries, benefits, overtime, and any other actual
12 expenses for involved personnel. The proceeds shall be held by the Treasurer
13 until the Cabinet notifies the Treasurer of the allocation determinations, at
14 which time the Treasurer shall forward promptly distribute the allocated
15 amounts to the appropriate agency's operating funds.

16 (2) The remaining 55 **30** percent shall be deposited in the General Fund.

17 * * *

18 **§ 4248a. LIMITATION ON FEDERAL ADOPTION**

19 (a) A State or local law enforcement agency shall not transfer or offer for
20 adoption currency seized from a defendant, owner, or co-owner of the property
21 pursuant to this subchapter to a federal agency for the purpose of forfeiture

1 under 18 U.S.C. chapter 46 or other federal law unless the seized currency
2 exceeds \$5,000.00. This subsection only applies to seizure by State or local
3 law enforcement agencies pursuant to their own authority under State law and
4 without involvement of the U.S. government. Nothing in this subsection shall
5 be construed to limit State or local agencies from participating in joint task
6 forces with the U.S. government.

7 (b) State and local law enforcement agencies are prohibited from accepting
8 payment of any kind or distribution of forfeiture proceeds from the
9 U.S. government if the State or local law enforcement agency violates
10 subsection (a) of this section. Any payments or forfeiture proceeds that violate
11 subsection (a) of this section shall be directed to the State’s General Fund.

12 Sec. 2. EFFECTIVE DATE

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

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

16
17
18 (Committee vote: _____)

19 _____

20 Senator _____

21 FOR THE COMMITTEE

1