

Submitted notes from Sheriff Roger Marcoux's March 25, 2022 testimony on S533.

MY NAME IS ROGER MARCOUX, JR. AND I'VE BEEN THE LAMOILLE COUNTY SHERIFF FOR 21 YEARS. I WAS ASSIGNED TO THE DRUG ENFORCEMENT ADMINISTRATION FOR 12 YEARS FROM 1984 TO 1996. I HAVE BEEN INVOLVED IN THE SUPERVISION OF NARCOTIC ENFORCEMENT SINCE THE 1980'S, ALL BUT 5 YEARS IN VERMONT. I HAVE SEEN AN ESCALATION OF DRUG TRAFFICKING AND VIOLENCE ASSOCIATED WITH DRUG TRAFFICKING ORGANIZATIONS. (DTO) WHERE VERMONT HAS SEEN OVER 200 PEOPLE LOSE THEIR LIVES TO OPIOID OVERDOSES IN 2021. LAW ENFORCEMENT, ALREADY SHORT HANDED ARE DEALING WITH DRUG RELATED CRIME AND PUBLIC HEALTH ISSUES, STEMMING FROM SUBSTANCE USE DISORDER.

IN 2021, OVERDOSE DEATHS IN MY COUNTY DOUBLED, LEADING THE STATE IN A PER CAPITA BASIS WITH EVERY DEPARTMENT SHORT OFFICERS, DEPUTIES, AND TROOPERS, SOME AGENCIES ARE DOWN TO BARE MINIMUM FOR SHIFT COVERAGE. OVERTIME WORK DRIVES UP THE COST OF ENFORCEMENT AND GIVEN THE ECONOMY THERE WILL BE CONTINUED PRESSURE ON TAXPAYERS.

THE FOCUS ON MY TESTIMONY TODAY IS PRIMARILY ON SECTIONS 42 48 (A) LIMITATION OF FEDERAL ADOPTION OF THE PROPOSED BILL.

THE ABILITY TO ACCESS FEDERAL ADOPTION BY STATE AND LOCAL LAW ENFORCEMENT IS CRITICAL TO DRUG ENFORCEMENT EFFORTS IN VERMONT. IT HELPS MUNICIPALITIES PAY FOR INVESTIGATORS AND OTHER COSTS ASSOCIATED WITH THE INVESTIGATIONS.

I WILL ATTEMPT TO BREAK DOWN HOW A SEIZURE OCCURS AND I HOPE IT WILL BE HELPFUL FOR THE COMMITTEE. WHEN A LAW ENFORCEMENT OFFICER STOPS A VEHICLE FOR A LEGITIMATE REASON, IT IS NOT UNCOMMON TO SEE DRUG PARAPHERNALIA SUCH AS SYRINGES, GLASSINE ENVELOPES USED IN THE PACKAGING OF DRUGS, WEAPONS OR CASH IN PLAIN SIGHT FOR THE OFFICER TO SEE. THE SEIZURE MAY OCCUR AFTER THE PLAIN SIGHT OBSERVATION OR AFTER A SEARCH WARRANT IS EXECUTED. SEIZURES OFTEN OCCUR AFTER A MORE LENGTHY INVESTIGATION. FEDERAL LAW ENFORCEMENT AND THE FEDERAL JUDICIAL SYSTEM BECOME INVOLVED. WHEN MUCH LARGER QUANTITIES OF DRUGS AND ILLEGALLY OBTAINED ASSETS ARE INVOLVED.

THE FEDERAL SYSTEM IN VERMONT DOES ALLOW FOR DUE DILIGENCE. THERE IS AN ADMINISTRATIVE MECHANISM FOR THE SEIZURE OF UNCLAIMED,

SUSPECTED DRUG PROCEEDS WHERE THE OWNER REFUSES TO IDENTIFY THEMSELVES. IT IS NOT UNCOMMON FOR SUSPECTS IN DRUG TRAFFICKING TO DENY OWNERSHIP OF MONEY OR TO ASSIST AUTHORITIES IN IDENTIFYING THE OWNER.

THE FOLLOWING IS ROUGHLY THE PATH THAT SEIZED ASSETS FOLLOW IN AN ADMINISTRATIVE SEIZURE:

- 1) A LAW ENFORCEMENT AGENCY SEIZES CASH (USUALLY OVER \$1,000.00). (THE FEDERAL GOVNERMENT CONSIDERS THE CIRCUMSTANCES OF THE CASE TO DETERMINE WHAT THE SEIZURE THRESHOLD IS.)
- 2) THE BURLINGTON RESIDENT OFFICE OF THE DEA ARE CONTACTED AND REVIEW CIRCUMSTANCES BEHIND THE SEIZURE, IF IT FITS THEIR CRITERIA THEY TAKE CUSTODY OF THE MONEY. IF THE CASE IS NOT ADOPTED, THE CASH USUALLY IS RETURNED TO THE PERSON FROM WHOM IT WAS TAKEN.
- 3) DEA BURLINGTON CONSULTS WITH DEA'S NEW ENGLAND FIELD DIVISION AND THE SEIZURE IS REVIEWED AT THAT LEVEL. IF IT PASSES THAT

LEVEL OF REVIEW, THE CASE WILL BE SENT TO DEA MAIN OFFICE OF HEAD QUARTERS IN WASHINGTON DC WHERE LEGAL COUNSEL MAKES THE DECISION OF WHETHER OR NOT THE ASSET SHOULD BE FORFEITED.

- 4) UPON DECLARATION OF FORFEITURE THE DEA DETERMINES IF A LOCAL AGENCY MERITS A SHARE OF THE ASSET. REAL PROPERTY CANNOT BE ADMINISTRATIVELY SEIZED.

CRIMINAL CASE PROCEDURE

IF AN ASSET IS SEIZED THROUGH THE CRIMINAL DIVISION OF THE US ATTORNEY'S OFFICE, THE ASSET WOULD GO TO TRIAL JUST LIKE A REAL PERSON WOULD.

- 1) LOCAL AND STATE LAW ENFORCEMENT SEIZURE
- 2) FEDERAL LAW ENFORCMENT AGENCIES ADOPT A CRIMINAL CASE WHICH MAY INCLUDE SUSPECTS OR JUST THE ASSETS.
- 3) US ATTORNEY'S OFFICE REVIEW THE CASE AND IF IT HAS MERIT MAY BRING THE CASE BEFORE A GRAND JURY.
- 4) GRAND JURY INDICTS THE CASE FOR CRIMINAL FORFEITURE.

THE FORFEITURE CASE GOES THROUGH THE REGULAR COURT PROCESS THAT MAY CULMINATE IN A JURY TRIAL.

IF CONVICTED, ANOTHER EXTENSIVE SEARCH TAKES PLACE FOR ANY THIRD PARTY OWNERSHIP OF ASSETS TO INCLUDE PUBLICATION IN SEARCH OF A PERSON WITH OWNERSHIP RIGHTS. IF NONE IS FOUND THEN DOJ MAKES A DECISION AS TO HOW TO SHARE THE ASSETS BASED ON MERIT.

THE POINT OF ALL OF THIS IS TO ILLUSTRATE THE EFFORTS CURRENTLY MADE TO INSURE THAT AN INNOCENT THIRD PARTY DOES NOT LOSE WHAT IS THEIR'S. OUR FEDERAL JUDGES AND OUR MAGISTRATES IN VERMONT HAVE EXTENSIVE EXPERIENCE WITH OUR STATE JUDICIAL SYSTEM. I THINK THAT THEY ARE VERMONTERS AND ARE VERY CONSCIENTIOUS OF THE GREAT POWER THAT THEY HAVE. THE FEDERAL SYSTEM WORKS VERY HARD TO PROTECT THE RIGHTS OF INNOCENT OWNERS OF SEIZED ASSETS. THE STATE SYSTEM IS NOT UTILIZED BY MUNICIPAL LAW ENFORCEMENT BECAUSE IT IS UNWIELDLY AND THE COURTS ARE OVERLOADED WITH WORK. THIS PROPOSED BILL IN MY OPINION WILL ADD TO THE BACKLOG, IF IT BECOMES OUR ONLY OPTION AVAILABLE.

THE STATE AND LOCAL LAW ENFORCEMENT SHOULD BE ALLOWED THE OPTION IN SEIZING CASH WELL LESS THAN \$25,000.00 IN CASH FOR FEDERAL

FORFEITURE. LARGE AMOUNTS OF CASH ARE NOT ENTRUSTED BY OUT OF STATE DTO'S TO DRUG USERS WHO HAVE BEEN ENSLAVED. THESE PEOPLE ARE OFTEN FORCED TO TRANSPORT OPIOIDS AND OTHER ADDICTIVE DANGEROUS DRUGS FROM OUT OF STATE TO LOCATIONS IN OUR LOCAL COMMUNITIES. THE DTO'S MAKE THOSE SUFFERING FROM SUBSTANCE USE DISORDER THE TARGETS OF LAW ENFORCEMENT, BY HAVING THEM TAKE SIGNIFICANT RISK OF TRANSPORTING DRUGS TO VERMONT. THEY ALSO TRANSPORT SMALLER AMOUNTS OF CASH BACK TO THE STATE - PERHAPS ONCE OR TWICE A WEEK TO MINIMIZE DTO BUSINESS LOSSES IN THE EVENT OF A LAW ENFORCEMENT SEIZURE OR THEFT. SEIZING SMALLER AMOUNTS OF CASH WITH DRUGS MAY ALLOW FOR FEDERAL SEIZURE BUT IT WILL NOT ALWAYS RESULT IN AN IMMEDIATE FEDERAL CRIMINAL CASE AGAINST THE DTO. INVESTIGATIONS OF THIS NATURE TAKE TIME AND PATIENCE. WHILE I WAS ASSIGNED TO THE DEA TASK FORCE, AN INVESTIGATION COULD GO ON FOR ONE OR TWO YEARS WITH MANY SMALL SEIZURES - EVENTUALLY LEADING TO THE HIERARCHY OF THE DTO'S. IT IS IMPORTANT TO KNOW THAT MANY OF THE LOWER THAN \$25,000.00 SEIZURES DID NOT NECESSARILY TRIGGER AN IMMEDIATE ARREST. THIS ALLOWED FOR THE CONTINUATION OF THE CASE WHILE SAFE GUARDING THE SOURCES OF INFORMATION AND UNDER COVER PERSONNEL.

I WOULD LIKE TO REINFORCE THE FOLLOWING:

- 1) LAW ENFORCEMENT ABILITY TO LEVERAGE THE FEDERAL ADOPTION SYSTEM WITH SEIZED AMOUNTS UNDER \$25,000 SHOULD BE ALLOWED TO CONTINUE.
- 2) STATE AND LOCAL MUNICIPALITIES SHOULD BE ALLOWED TO PARTICIPATE IN THE FEDERAL ADOPTION PROGRAM FOR SEIZED ASSETS IN AN EFFORT TO HELP SUSTAIN LAW ENFORCEMENT OPERATIONS THROUGHOUT THE STATE. WITH A DEPUTY ASSIGNED TO THE DEA TASK FORCE FOR 2 YEARS, THE LAMOILLE COUNTY SHERIFF'S DEPARTMENT HAS NOT RECEIVED ANY MONEY DURING THAT TIME, THE CURRENT FEDERAL SYSTEM IS NOT BEING ABUSED.
- 3) STATE AND LOCAL LAW ENFORCEMENT SHOULD ADHERE TO FEDERAL LAWS AND RULES CONCERNING ASSET SEIZURE AND FORFEITURE WHILE UNDER THE GUIDANCES AND DIRECTION OF THE DOJ AND OUR FEDERAL COURTS.

THANK YOU –
ROGER M. MARCOUX, JR.
LAMOILLE COUNTY SHERIFF'S
DEPARTMENT