

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.

5 * * *

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

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

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

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

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

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

21 § 4242. SEIZURE

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

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

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

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

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

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

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

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

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

17 (c) Burden of proof. The State bears the burden of proving by clear and
18 convincing evidence that the property is an instrument of or represents the
19 proceeds of the underlying offense subject to forfeiture pursuant to section
20 4241(a) of this title.

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. In
5 addition, the State shall cause the notice to be published in a newspaper of
6 general circulation in the State, as ordered by the court. Upon motion by the
7 State, a court may extend the time period for sending notice for a period not to
8 exceed ~~90~~ 30 days for good cause shown.

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

18 (f) Filing of petition. The State shall file a petition for forfeiture of any
19 property seized under section 4242 of this title promptly, but not more than ~~14~~
20 60 days from the date the preliminary order or process is issued. The petition
21 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. **Upon motion by the State, a court may extend the time**
8 **period for sending notice for a period not to exceed 30 days for good cause**
9 **shown.** ~~The petition shall state:~~

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

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

17 (h) Form of petition.

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

19 The petition shall include:

20 (A) an explanation of rights;

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

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

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

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

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

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

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

15 (B) If you wish to request a hearing before the Criminal Division of
16 the Superior Court, you must mail or deliver your request for a hearing within
17 seven **business** days after (date of petition).

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

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

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

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

11 (2) fled the jurisdiction; or

12 (3) abandoned the property.

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

17 § 4243a. PROMPT POSTSEIZURE HEARING

18 (a) Right to prompt postseizure hearing. Within seven business days
19 following notice and publication of the forfeiture pursuant to section 4243 of
20 this title, a defendant, any family member or domestic partner of a defendant
21 who are regular users the property, any owner of the property, any family

1 member or domestic partner of an owner who are regular users the property, or
2 any lienholder of the property may submit a request for a prompt postseizure
3 hearing seeking return of property seized under section 4242 of this title. The
4 request shall be mailed or delivered to the Clerk of the Superior Court,
5 Criminal Division, in the county in which the seizure occurred, who shall
6 notify the State that a hearing was requested.

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

11 (1) as a separate hearing;

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

14 (3) at the same time as a hearing pursuant to Rule 41(f) of the Vermont
15 Rules of Criminal Procedure.

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

18 (1) the seizure was invalid;

19 (2) no probable cause exists to show that the property is subject to
20 forfeiture pursuant to section 4241(a) of this subchapter; or

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

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

20 (b) Defendant's forfeiture hearing. The court shall not order the forfeiture
21 of a defendant's property without a hearing if requested by a defendant in the

1 criminal offense related to the action for forfeiture. The court shall hold a
2 hearing on the petition as soon as practicable after, and in any event no later
3 than 90 days following, the conclusion of the criminal prosecution.

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

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

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

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

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

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

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

1 (e) Nature of the proceeding. The proceeding shall be against the property,
2 ~~and~~ shall be deemed civil in nature, and shall be conducted without a jury. The
3 State shall have the burden of proving all material facts by clear and
4 convincing evidence.

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

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

16 § 4245. REMISSION OR MITIGATION OF FORFEITURE BY THE
17 STATE'S ATTORNEY

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

1 defendant; or any family member or domestic partner of an owner who are
2 regular users the property made at any time before the Criminal Division enters
3 judgment in the criminal offense related to the action for forfeiture, a State's
4 Attorney may ~~order~~ agree that the forfeiture property seized pursuant to section
5 4242 of this title be remitted or mitigated. The ~~petition~~ request shall be sworn
6 and shall include all information necessary for its resolution or shall describe
7 where such information can be obtained. Upon receiving a ~~petition~~ request,
8 the ~~court~~ State's Attorney shall investigate and may conduct a an hearing
9 interview if in ~~its~~ the State's Attorney's judgment it would be helpful to the
10 resolution of the ~~petition~~ request. The ~~court~~ State's Attorney shall either
11 approve or reject the ~~petition~~ request within 90 days.

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

19 (c) If the State's Attorney approves a request to remit or mitigate a seizure,
20 the State's Attorney may file a request for the court to impose reasonable

1 conditions, including the use of photographic evidence, to protect access to
2 property subject to this section and its use in later proceedings.

3 * * *

4 § 4247. DISPOSITION OF PROPERTY

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

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

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

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

1

FOR THE COMMITTEE

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