ROBERT L. SAND
SENIOR POLICY AND LEGAL ADVISOR
VERMONT DEPARTMENT OF PUBLIC SAFETY

C/O VERMONT LAW SCHOOL
164 CHELSEA STREET
P.O. BOX 96
SOUTH ROYALTON, VT 05068
robert.sand@state.vt.us
(802) 831-1061 (direct)
(802) 585-6633 (mobile)

MEMORANDUM

To: Senator Richard Sears, Chair Senate Judiciary Committee
From: Robert L. Sand
Date: January 6, 2014
Re: Drug Transportation Offense

Vermont does not have a stand-alone offense, a penalty enhancer, or an aggravating factor for sentencing based on the importation or transportation of illegal drugs into Vermont. We are recommending that the legislature give guidance to the judiciary that people who bring drugs into the state are deserving of enhanced punishment. Toward that end, we propose the following addition to our drug laws:

> 18 VSA Sec 4241 is added to read:
> For purposes of sentencing for a violation of any offense contained within Subchapter 01 of Chapter 84, the court shall consider it an aggravating factor if the person imported or transported the drug into Vermont.

Chapter 84 already has a general sentencing provision for second and subsequent offenses, see 18 VSA 4238, so a general provision of this nature would not be a novel approach. Alternatively, the language could get added to each separate drug statute.

It is also worth noting that in at least one other instance the legislature has given statutory guidance of an aggravating factor the court may consider at sentencing. Section 1047 of Title 13 provides in our domestic assault laws:

> 13 VSA 1047. Offense committed within the presence of a child.
> When imposing sentence for an offense listed in this subchapter, the court may consider whether the offense was committed within the presence of a child.
> (Added 2007, No. 174 (Adj. Sess.), § 8.)

This language does not raise the statutory penalty for domestic assault but gives guidance to the court about an aggravating factor. The legislature could send a similar message to the judiciary and strengthen it by indicating that the court SHALL consider it an aggravating factor for sentencing if the drugs were transported or imported into Vermont.