

S.102

Introduced by Senators Sears and Ashe

Referred to Committee on Judiciary

Date: February 20, 2015

Subject: Criminal procedures; animal cruelty; asset forfeiture

Statement of purpose of bill as introduced: This bill proposes to create a process for asset forfeiture for persons convicted of using animals in animal fights.

~~An act relating to forfeiture of property associated with an animal fighting exhibition~~

An act relating to forfeiture of property associated with animal fighting and certain regulated drug possession, sale, and trafficking violations

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 13 V.S.A. § 352 is amended to read:~~

~~§ 352. CRUELTY TO ANIMALS~~

~~A person commits the crime of cruelty to animals if the person:~~

~~* * *~~

~~(5)(A) owns, possesses, keeps, or trains an animal engaged in an exhibition of fighting, or possesses, keeps, or trains any animal with intent that it be engaged in an exhibition of fighting, or permits any such act to be done on premises under his or her charge or control; or~~

1 ~~(B) owns, possesses, ships, transports, delivers, or keeps a device,~~
2 equipment, or implement used to train or condition an animal for participation
3 in animal fighting, or enhance an animal's fighting capability.

4 * * *

5 Sec. 2. 13 V.S.A. § 364 is amended to read:

6 § 364. ANIMAL FIGHTS

7 (a) A person who participates in a fighting exhibition of animals shall be in
8 violation of subdivisions 352(5) and (6) of this title.

9 (b) ~~In~~ Notwithstanding any other provision of law, in addition to seizure of
10 fighting birds or animals involved in a fighting exhibition, a law enforcement
11 officer or humane officer may seize:

12 (1) any equipment associated with that activity;

13 (2) any other property, both real and personal, which is used to engage
14 in a violation or further a violation of subdivisions 352(5) and (6) of this
15 title; and

16 (3) monies, securities, or other things of value furnished or intended to
17 be furnished by a person to engage in or further a violation of subdivisions
18 352(5) and (6) of this title.

19 (c) In addition to the imposition of a penalty under this chapter, conviction
20 under this section shall result in forfeiture of all seized fighting animals ~~and,~~
21 equipment, and other property subject to seizure under this section. The

1 ~~animals may be destroyed humanely or otherwise disposed of as directed by~~
2 the court.

3 (d) Property subject to forfeiture under this subsection may be seized upon
4 process issued by the court having jurisdiction over the property. Seizure
5 without process may be made:

6 (1) incident to a lawful arrest;

7 (2) pursuant to a search warrant; or

8 (3) if there is probable cause to believe that the property was used or is
9 intended to be used in violation of this section.

10 (e) Forfeiture proceedings instituted pursuant to the provisions of this
11 section for property other than animals are subject to the procedures and
12 requirements for forfeiture as set forth in 18 V.S.A. chapter 84, subchapter 2.

13 Sec. 3. 18 V.S.A. § 4241 is amended to read:

14 § 4241. SCOPE

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

16 * * *

17 (7) All real property, including any right, title, and interest in the whole
18 of any lot or tract of land and any appurtenances or improvements thereto,
19 which is used in any manner or part to commit or to facilitate the commission
20 of a violation of any provision of chapter 84, subchapter 1, of this title.

1 ~~(8) Any property seized pursuant to 13 V.S.A. § 364.~~

2 * * *

3 Sec. 4. 18 V.S.A. § 4243 is amended to read:

4 § 4243. ~~PETITION FOR~~ JUDICIAL FORFEITURE PROCEDURE

5 (a) ~~The State~~ Conviction 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 is not charged with a criminal offense related to the action
10 for forfeiture based in whole or in part on the person's agreement to provide
11 information regarding the criminal activity of another person.

12 (b) Evidence. The State may introduce into evidence in the judicial
13 forfeiture case the fact of a conviction in the Criminal Division or any
14 agreement made under (a)(2) of this section.

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

18 (d) Notice. Within 60 days from when the seizure occurs, the State shall
19 notify the owner or possessor of the property of the action, if known or readily
20 ascertainable. Upon motion by the State, a court may extend the time period
21 for sending notice for a period not to exceed 90 days for good cause shown.

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

9 (f) Filing of petition. Except as provided in section 4243a of this title, the
10 State shall file a petition for forfeiture of any property seized under section
11 4242 of this title promptly, but not more than 14 days from the date the
12 preliminary order or process is issued. The petition shall be filed in the
13 ~~superior court~~ Superior Court of the county in which the property is located or
14 in any court with jurisdiction over a criminal proceeding related to the
15 property.

16 ~~(b)~~(g) Service of petition. A copy of the petition shall be sent by certified
17 ~~mail to~~ served on all persons named in the petition as provided for in the
18 Vermont Rules of Civil Procedure. ~~In addition, the state shall cause notice of~~
19 ~~the petition to be published in a newspaper of general circulation in the state,~~
20 ~~as ordered by the court.~~ The petition shall state:

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

4 (2) the names of the apparent owner or owners, lienholders who have
5 properly recorded their interests, and any other person appearing to have an
6 interest; and, 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 Sec. 5. 18 V.S.A. § 4243a is added to read:

9 § 4243a. ADMINISTRATIVE FORFEITURE PROCEDURE

10 (a) Scope. Forfeiture of property described in section 4241 of this title and
11 in 13 V.S.A. § 364 that does not exceed \$50,000 in value may be
12 administratively forfeited under this section.

13 (b) Notice. Within 60 days from seizure, all persons known to have an
14 ownership, possessory, or security interest in seized property must be notified
15 of the seizure and the intent to forfeit the property. Notice shall be served as
16 provided for in the Vermont Rules of Civil Procedure. If there is reason to
17 believe that notice may have an adverse result, a supervisory law enforcement
18 official of the seizing agency may extend the period for sending notice for a
19 period not to exceed 30 days. Upon motion to the Superior Court by the State,
20 the Court may extend the period for sending notice for a period not to exceed
21 60 days.

1 ~~(e) Content of notice. The notice shall contain:~~

2 ~~(1) a description of the property;~~

3 ~~(2) the date of the seizure; and~~

4 ~~(3) notice of the right to obtain judicial review of the forfeiture and of~~
5 ~~the procedure for obtaining that judicial review.~~

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

14 ~~(e) Claims.~~

15 ~~(1) Any person claiming property seized under this section may file a~~
16 ~~claim with the Superior Court.~~

17 ~~(2) A claim under this subsection must be filed within 60 days after~~
18 ~~notice is received.~~

19 ~~(3) A claim shall:~~

20 ~~(A) identify the specific property being claimed;~~

21 ~~(B) state the claimant's interest in such property; and~~

1 ~~(C) be made under oath.~~

2 Sec. 6. 18 V.S.A. § 4244 is amended to read:

3 § 4244. FORFEITURE HEARING

4 (a) ~~The court~~ Within 60 days following service of notice of seizure and
5 forfeiture under sections 4243 and 4243a of this title, a claimant may file a
6 demand for judicial determination of the forfeiture. The demand must be in
7 the form of a civil complaint accompanied by a sworn affidavit setting forth
8 the facts upon which the claimant intends to rely, including, if relevant, the
9 noncriminal source of the asset or currency at issue. The demand must be filed
10 with the court administrator in the county in which the seizure occurred.

11 (b) Except as provided in section 4243a, the Court shall hold a hearing on
12 the petition no less than 14 nor more than 30 days after notice. For good cause
13 shown, or on the court's own motion, the court may stay the forfeiture
14 proceedings pending resolution of related criminal proceedings. If a person
15 named in the petition is a defendant in a related criminal proceeding and the
16 proceeding is dismissed or results in a judgment of acquittal, the petition shall
17 be dismissed as to the defendant's interest in the property as soon as
18 practicable after, and in any event no later than 90 days following, the
19 conclusion of the criminal prosecution.

20 ~~(b)(c)~~ A lienholder who has received notice of a forfeiture proceeding may
21 intervene as a party. If the ~~court~~ Court finds that the lienholder has a valid,

1 ~~good faith interest in the subject property which is not held through a straw~~
2 purchase, trust or otherwise for the actual benefit of another and that the
3 lienholder did not at any time have knowledge or reason to believe that the
4 property was being or would be used in violation of the law, the ~~court~~ Court
5 upon forfeiture shall order compensation to the lienholder to the extent of the
6 lienholder's interest.

7 ~~(e)~~(d) The proceeding shall be against the property and shall be deemed
8 civil in nature. The ~~state~~ State shall have the burden of proving all material
9 facts by clear and convincing evidence.

10 ~~(d)~~(e) The ~~court~~ Court shall make findings of fact and conclusions of law
11 and shall issue a final order. If the petition is granted, the ~~court~~ Court shall
12 order the property held for evidentiary purposes, delivered to the ~~state treasurer~~
13 State Treasurer, or, in the case of regulated drugs or property which is harmful
14 to the public, destroyed.

15 Sec. 7. 18 V.S.A. § 4247 is amended to read:

16 § 4247. DISPOSITION OF PROPERTY

17 (a) Whenever property is forfeited and delivered to the ~~state treasurer~~ State
18 Treasurer under this subchapter, the ~~state treasurer~~ State Treasurer shall, no
19 sooner than 90 days of the date the property is delivered, sell the property at a
20 public sale held under 27 V.S.A. chapter 13.

1 ~~(b) The proceeds from the sale of forfeited property, after payment of~~
2 ~~seizure, storage, forfeiture, and sale expenses, and satisfaction of valid liens~~
3 ~~against the property, shall be distributed as follows:~~

4 ~~(1) Sixty percent of the proceeds shall be forwarded to the State or local~~
5 ~~law enforcement agency which participated directly or indirectly in the seizure~~
6 ~~of the forfeited property in accordance with the provisions of this subchapter~~
7 ~~for deposit into the agency's operating fund. If more than one State or local~~
8 ~~law enforcement agency participated directly or indirectly in the seizure of the~~
9 ~~forfeited property, the Treasurer shall, in consultation with the attorney for the~~
10 ~~State in the case, equitably divide law enforcement's share of the proceeds~~
11 ~~between the cooperating agencies, taking into consideration:~~

12 ~~(A) the degree of direct participation of each agency in the law~~
13 ~~enforcement effort resulting in the forfeiture,~~

14 ~~(B) the value of law enforcement's share of the proceeds of the~~
15 ~~forfeited property;~~

16 ~~(C) the total law enforcement effort with respect to the number of~~
17 ~~hours expended by the agencies, or origination of information or indispensable~~
18 ~~assistance by the agencies leading to the forfeiture when hours devoted do not~~
19 ~~adequately reflect the degree of law enforcement participation; and~~

20 ~~(D) how the distribution of proceeds may encourage further~~
21 ~~cooperation between the law enforcement agencies.~~

1 ~~(2) Twenty percent of the proceeds shall be forwarded to the prosecuting~~
2 ~~authority that handled the forfeiture for deposit into the agency's operating~~
3 ~~fund.~~

4 (3) The remaining 20 percent shall be deposited in the General Fund, to
5 be used exclusively for the creation and implementation of alternative justice
6 programs for which there are written protocol and memoranda of
7 understanding filed with and approved by the Executive Director of the
8 Department of State's Attorneys and Sheriffs' Association.

9 Sec. 8. EFFECTIVE DATE

10 ~~This act shall take effect on passage.~~

~~Sec. 1. 13 V.S.A. § 352 is amended to read.~~

~~§ 352. CRUELTY TO ANIMALS~~

~~A person commits the crime of cruelty to animals if the person:~~

~~* * *~~

~~(5)(A) owns, possesses, keeps, or trains an animal engaged in an
exhibition of fighting, or possesses, keeps, or trains any animal with intent that
it be engaged in an exhibition of fighting, or permits any such act to be done
on premises under his or her charge or control; or~~

~~(B) owns, possesses, ships, transports, delivers, or keeps a device,
equipment, or implement for the purpose of training or conditioning an animal
for participation in animal fighting, or enhancing an animal's fighting
capability.~~

~~* * *~~

~~Sec. 2. 13 V.S.A. § 364 is amended to read:~~

~~§ 364. ANIMAL FIGHTS~~

~~(a) A person who participates in a fighting exhibition of animals shall be in
violation of subdivisions 352(5) and (6) of this title.~~

~~(b) In Notwithstanding any provision of law to the contrary, in addition to seizure of fighting birds or animals involved in a fighting exhibition, a law enforcement officer or humane officer may seize:~~

~~(1) any equipment associated with that activity;~~

~~(2) any other personal property which is used to engage in a violation or further a violation of subdivisions 352(5) and (6) of this title; and~~

~~(3) monies, securities, or other things of value furnished or intended to be furnished by a person to engage in or further a violation of subdivisions 352(5) and (6) of this title.~~

~~(c) In addition to the imposition of a penalty under this chapter, conviction under this section shall result in forfeiture of all seized fighting animals and equipment, and other property subject to seizure under this section. The animals may be destroyed humanely or otherwise disposed of as directed by the court.~~

~~(d) Property subject to forfeiture under this subsection may be seized upon process issued by the court having jurisdiction over the property. Seizure without process may be made:~~

~~(1) incident to a lawful arrest;~~

~~(2) pursuant to a search warrant; or~~

~~(3) if there is probable cause to believe that the property was used or is intended to be used in violation of this section.~~

~~(e) Forfeiture proceedings instituted pursuant to the provisions of this section for property other than animals are subject to the procedures and requirements for forfeiture as set forth in 18 V.S.A. chapter 84, subchapter 2.~~

~~Sec. 3. 18 V.S.A. § 4241 is amended to read:~~

~~§ 4241. SCOPE~~

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

~~* * *~~

~~(7) Any property seized pursuant to 13 V.S.A. § 364.~~

~~(b) This subchapter shall not apply to any property used or intended for use in an offense involving two ounces or less of marijuana or in connection with hemp or hemp products as defined in 6 V.S.A. § 562. This subchapter shall apply to property for which forfeiture is sought in connection with.~~

~~(1) a violation under chapter 84, subchapter 1 of this title that carries by law a maximum penalty of ten years' incarceration or greater; or~~

~~(2) a violation of 13 V.S.A. § 364.~~

~~Sec. 4. 18 V.S.A. § 4242 is amended to read:~~

~~§ 4242. SEIZURE~~

~~* * *~~

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

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

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

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

~~(c) If property is seized without process under subdivision (b)(1) or (3) of this section, the ~~state~~ State shall forthwith petition the court for a preliminary order or process under subsection (a) of this section.~~

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

~~Sec. 5. 18 V.S.A. § 4243 is amended to read:~~

~~§ 4243. PETITION FOR JUDICIAL FORFEITURE PROCEDURE~~

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

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

~~(2) a person is not charged with a criminal offense related to the action for forfeiture based in whole or in part on the person's agreement to provide information regarding the criminal activity of another person.~~

~~(b) Evidence. The State may introduce into evidence in the judicial forfeiture case the fact of a conviction in the Criminal Division or any agreement made under subdivision (a)(2) of this section.~~

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

~~(d) Notice. Within 60 days from when the seizure occurs, the State shall notify any owners, possessors, and lienholders of the property of the action, if~~

~~known or readily ascertainable. Upon motion by the State, a court may extend the time period for sending notice for a period not to exceed 90 days for good cause shown.~~

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

~~(f) Filing of petition. Except as provided in section 4243a of this title, the State shall file a petition for forfeiture of any property seized under section 4242 of this title promptly, but not more than 14 days from the date the preliminary order or process is issued. The petition shall be filed in the ~~superior court~~ Superior Court of the county in which the property is located or in any court with jurisdiction over a criminal proceeding related to the property.~~

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

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

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

Sec. 6. 18 V.S.A. § 4243a is added to read:

§ 4243a. ADMINISTRATIVE FORFEITURE PROCEDURE

(a) Scope. Forfeiture of property described in section 4241 of this title and in 13 V.S.A. § 364 that does not exceed \$25,000 in value may be administratively forfeited under this section.

(b) Notice. Within 60 days from seizure, all persons known to have an ownership, possessory, or security interest in seized property must be notified of the seizure and the intent to forfeit the property. Notice shall be served as provided for in the Vermont Rules of Civil Procedure. If there is reason to

~~believe that notice may have an adverse result, a supervisory law enforcement official of the seizing agency may extend the period for sending notice for a period not to exceed 30 days. Upon motion to the Superior Court by the State, the Court may extend the period for sending notice for a period not to exceed 60 days.~~

~~(c) Content of notice. The notice shall contain:~~

~~(1) a description of the property;~~

~~(2) the date of the seizure; and~~

~~(3) notice of the right to obtain judicial review of the forfeiture and of the procedure for obtaining that judicial review.~~

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

~~(e) Claims.~~

~~(1) Any person claiming property seized under this section may file a claim with the Superior Court.~~

~~(2) A claim under this subsection must be filed within 60 days after notice is received.~~

~~(3) A claim shall:~~

~~(A) identify the specific property being claimed;~~

~~(B) state the claimant's interest in such property; and~~

~~(C) be made under oath.~~

~~Sec. 7. 18 V.S.A. § 4244 is amended to read:~~

~~§ 4244. FORFEITURE HEARING~~

~~(a) ~~The court~~ Within 60 days following service of notice of seizure and forfeiture under sections 4243 and 4243a of this title, a claimant may file a demand for judicial determination of the forfeiture. The demand must be in the form of a civil complaint accompanied by a sworn affidavit setting forth the facts upon which the claimant intends to rely, including, if relevant, the noncriminal source of the asset or currency at issue. The demand must be filed with the court administrator in the county in which the seizure occurred.~~

~~(b) Except as provided in section 4243a, the Court shall hold a hearing on the petition no less than 14 nor more than 30 days after notice. For good cause shown, or on the court's own motion, the court may stay the forfeiture proceedings pending resolution of related criminal proceedings. If a person named in the petition is a defendant in a related criminal proceeding and the proceeding is dismissed or results in a judgment of acquittal, the petition shall be dismissed as to the defendant's interest in the property as soon as practicable after, and in any event no later than 90 days following, the conclusion of the criminal prosecution.~~

~~(b)(c) A lienholder who has received notice of a forfeiture proceeding may intervene as a party. If the ~~court~~ Court finds that the lienholder has a valid, good faith interest in the subject property which is not held through a straw purchase, trust or otherwise for the actual benefit of another and that the lienholder did not at any time have knowledge or reason to believe that the property was being or would be used in violation of the law, the ~~court~~ Court upon forfeiture shall order compensation to the lienholder to the extent of the lienholder's interest.~~

~~(d) The Court shall not order the forfeiture of property if an owner, co-owner, or person who regularly uses the property, other than the defendant, shows by a preponderance of the evidence that the owner, co-owner, or regular user did not consent to or have any express or implied knowledge that the property was being or was intended to be used in a manner that would subject the property to forfeiture, or that the owner, co-owner, or regular user had no reasonable opportunity or capacity to prevent the defendant from using the property.~~

~~(e)(e) The proceeding shall be against the property and shall be deemed civil in nature. The ~~state~~ State shall have the burden of proving all material facts by clear and convincing evidence.~~

~~(d)(f) The ~~court~~ Court shall make findings of fact and conclusions of law and shall issue a final order. If the petition is granted, the ~~court~~ Court shall order the property held for evidentiary purposes, delivered to the ~~state treasurer~~ State Treasurer, or, in the case of regulated drugs or property which is harmful to the public, destroyed.~~

~~Sec. 8. 18 V.S.A. § 4247 is amended to read:~~

~~§ 4247. DISPOSITION OF PROPERTY~~

~~(a) Whenever property is forfeited and delivered to the ~~state treasurer~~ State Treasurer under this subchapter, the ~~state treasurer~~ State Treasurer shall, no sooner than 90 days of the date the property is delivered, sell the property at a public sale held under 27 V.S.A. chapter 13.~~

~~(b) The proceeds from the sale of forfeited property shall first be used to offset any costs of selling the property, and then, after any liens on the property have been paid in full, applied to payment of seizure, storage, and forfeiture expenses. Remaining proceeds shall be distributed as follows:~~

~~(1)(A) Fifty percent shall be distributed among the:~~

~~(i) Office of the Attorney General;~~

~~(ii) Office of the Defender General;~~

~~(iii) Department of State's Attorneys and Sheriffs; and~~

~~(iv) State and local law enforcement agencies.~~

~~(B) The Governor's Criminal Justice and Substance Abuse Cabinet is authorized to determine the allocations among the groups listed in subdivision (A) of this subdivision (1), and may allocate proceeds to the prosecutor and law enforcement agency or agencies that participated in the enforcement effort resulting in the forfeiture. The proceeds shall be held by the Treasurer until the Cabinet notifies the Treasurer of the allocation determinations, at which time the Treasurer shall forward the allocated amounts to the appropriate agency operating funds.~~

~~Sec. 8. 18 V.S.A. § 4247 is amended to read:~~

~~§ 4247. DISPOSITION OF PROPERTY~~

~~(a) Whenever property is forfeited and delivered to the ~~state treasurer~~ State Treasurer under this subchapter, the ~~state treasurer~~ State Treasurer shall, no sooner than 90 days of the date the property is delivered, sell the property at a public sale held under 27 V.S.A. chapter 13.~~

~~(b) The proceeds from the sale of forfeited property shall be used first to offset any costs of selling the property, and then, after any liens on the property have been paid in full, applied to payment of seizure, storage, and forfeiture expenses, including animal care expenses related to the underlying violation. Remaining proceeds shall be distributed as follows:~~

~~(1)(A) Fifty percent shall be distributed among:~~

~~(i) the Office of the Attorney General;~~

~~(ii) the Office of the Defender General;~~

~~(iii) the Department of State's Attorneys and Sheriffs; and~~

~~(iv) State and local law enforcement agencies.~~

~~(B) The Governor's Criminal Justice and Substance Abuse Cabinet is authorized to determine the allocations among the groups listed in subdivision (A) of this subdivision (1), and may only reimburse the prosecutor and law~~

~~enforcement agencies that participated in the enforcement effort resulting in the forfeiture for expenses incurred, including actual expenses for involved personnel. The proceeds shall be held by the Treasurer until the Cabinet notifies the Treasurer of the allocation determinations, at which time the Treasurer shall forward the allocated amounts to the appropriate agency's operating funds.~~

~~(2) The remaining 50 percent shall be deposited in the General Fund.~~

~~Sec. 9. ANIMAL CRUELTY RESPONSE TASK FORCE~~

~~(a) Creation. There is created a task force to evaluate the state of animal cruelty investigation and response in Vermont, including the resources devoted to animal investigation and response services and to recommend ways to consolidate, collaborate, or reorganize to use more effectively limited resources while improving the response to animal cruelty.~~

~~(b) Membership. The Task Force shall be composed of the following members:~~

~~(1) a representative from the Governor's office;~~

~~(2) a member of the Vermont State Police;~~

~~(3) a member of the VT Police Chiefs Association;~~

~~(4) a representative of the VT Animal Control Association;~~

~~(5) a Humane Officer from a VT humane society focusing on domestic animals;~~

~~(6) a Humane Officer of a VT humane society focusing on large animals (livestock);~~

~~(7) a representative of the Vermont Humane Federation;~~

~~(8) a representative of the Vermont Federation of Dog Clubs;~~

~~(9) the Executive Director of the Department of State's Attorneys and Sheriffs or designee;~~

~~(10) a representative of the Vermont Veterinary Medical Association;~~

~~(11) a representative of the Vermont Agency of Agriculture, Food and Markets;~~

~~(12) a representative of the VT Constables Association;~~

~~(13) a representative of the VT Town Clerks Association; and~~

~~(14) a representative of the Department for Children and Families.~~

~~(c) Powers and duties. The Task Force, in consultation with the Office of the Defender General, shall study and make recommendations concerning:~~

~~(1) training for humane agents, animal control officers, law enforcement officers, and prosecutors;~~

~~(2) the development of uniform response protocols for receiving, investigating, and following up on complaints of animal cruelty, including sentencing recommendations;~~

~~(3) the development of a centralized data collection system capable of sharing data collected from both the public and private sectors on animal cruelty complaints and outcomes;~~

~~(4) funding the various responsibilities that are involved with an animal cruelty investigation, including which State agencies should be responsible for any State level authority and oversight; and~~

~~(5) any other issue the Task Force determines is relevant to improve the efficiency, process, and results of animal cruelty response actions in Vermont.~~

~~(d) Report. On or before January 15, 2016, the Task Force shall report its findings and recommendations to the House and Senate Committees on Judiciary.~~

~~(e) Meetings and sunset.~~

~~(1) The representative from the Governor's office shall call the first meeting of the Task Force.~~

~~(2) The Task Force shall select a chair from among its members at the first meeting.~~

~~(3) The Task Force shall hold its first meeting no later than August 15, 2015.~~

~~(4) Meetings of the Task Force shall be public meetings.~~

~~(5) The Task Force shall cease to exist on January 16, 2016.~~

~~Sec. 10. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2015.~~

~~Sec. 1. 13 V.S.A. § 352 is amended to read:~~

~~§ 352. CRUELTY TO ANIMALS~~

~~A person commits the crime of cruelty to animals if the person:~~

~~* * *~~

(5)(A) owns, possesses, keeps, or trains an animal engaged in an exhibition of fighting, or possesses, keeps, or trains any animal with intent that it be engaged in an exhibition of fighting, or permits any such act to be done on premises under his or her charge or control; or

(B) owns, possesses, ships, transports, delivers, or keeps a device, equipment, or implement for the purpose of training or conditioning an animal for participation in animal fighting, or enhancing an animal's fighting capability.

* * *

Sec. 2. 13 V.S.A. § 364 is amended to read:

§ 364. ANIMAL FIGHTS

(a) A person who participates in a fighting exhibition of animals shall be in violation of subdivisions 352(5) and (6) of this title.

(b) ~~It~~ Notwithstanding any provision of law to the contrary, in addition to seizure of fighting birds or animals involved in a fighting exhibition, a law enforcement officer or humane officer may seize:

(1) any equipment associated with that activity;

(2) any other personal property which is used to engage in a violation or further a violation of subdivisions 352(5) and (6) of this title; and

(3) monies, securities, or other things of value furnished or intended to be furnished by a person to engage in or further a violation of subdivisions 352(5) and (6) of this title.

(c) In addition to the imposition of a penalty under this chapter, conviction under this section shall result in forfeiture of all seized fighting animals ~~and~~, equipment, and other property subject to seizure under this section. The animals may be destroyed humanely or otherwise disposed of as directed by the court.

(d) Property subject to forfeiture under this subsection may be seized upon process issued by the court having jurisdiction over the property. Seizure without process may be made:

(1) incident to a lawful arrest;

(2) pursuant to a search warrant; or

(3) if there is probable cause to believe that the property was used or is intended to be used in violation of this section.

(e) Forfeiture proceedings instituted pursuant to the provisions of this section for property other than animals are subject to the procedures and requirements for forfeiture as set forth in 18 V.S.A. chapter 84, subchapter 2.

Sec. 3. 18 V.S.A. § 4241 is amended to read:

§ 4241. SCOPE

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

* * *

(7) Any property seized pursuant to 13 V.S.A. § 364.

~~(b) This subchapter shall not apply to any property used or intended for use in an offense involving two ounces or less of marijuana or in connection with hemp or hemp products as defined in 6 V.S.A. § 562. This subchapter shall apply to property for which forfeiture is sought in connection with:~~

(1) a violation under chapter 84, subchapter 1 of this title that carries by law a maximum penalty of ten years' incarceration or greater; or

(2) a violation of 13 V.S.A. § 364.

Sec. 4. 18 V.S.A. § 4242 is amended to read:

§ 4242. SEIZURE

* * *

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

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

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

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

(c) If property is seized without process under subdivision (b)(1) or (3) of this section, the ~~state~~ State shall forthwith petition the court for a preliminary order or process under subsection (a) of this section.

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

Sec. 5. 18 V.S.A. § 4243 is amended to read:

§ 4243. PETITION FOR JUDICIAL FORFEITURE PROCEDURE

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

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

(2) a person enters into an agreement with the prosecutor under which he or she is not charged with a criminal offense related to the action for forfeiture.

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

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

(d) Notice. Within 60 days from when the seizure occurs, the State shall notify any owners, possessors, and lienholders of the property of the action, if known or readily ascertainable. Upon motion by the State, a court may extend the time period for sending notice for a period not to exceed 90 days for good cause shown.

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

(f) Filing of petition. Except as provided in section 4243a of this title, the State shall file a petition for forfeiture of any property seized under section 4242 of this title promptly, but not more than 14 days from the date the preliminary order or process is issued. The petition shall be filed in the ~~superior court~~ Superior Court of the county in which the property is located or in any court with jurisdiction over a criminal proceeding related to the property.

(b)(g) Service of petition. A copy of the petition shall be ~~sent by certified mail to~~ served on all persons named in the petition as provided for in Rule 4 of the Vermont Rules of Civil Procedure. In addition, the ~~state~~ State shall cause

notice of the petition to be published in a newspaper of general circulation in the ~~state~~ State, as ordered by the court. The petition shall state:

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

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

Sec. 6. 18 V.S.A. § 4244 is amended to read:

§ 4244. FORFEITURE HEARING

(a) ~~The court~~ Within 60 days following service of notice of seizure and forfeiture under sections 4243 of this title, a claimant may file a demand for judicial determination of the forfeiture. The demand must be in the form of a civil complaint accompanied by a sworn affidavit setting forth the facts upon which the claimant intends to rely, including, if relevant, the noncriminal source of the asset or currency at issue. The demand must be filed with the court administrator in the county in which the seizure occurred.

(b) ~~The Court shall hold a hearing on the petition no less than 14 nor more than 30 days after notice. For good cause shown, or on the court's own motion, the court may stay the forfeiture proceedings pending resolution of related criminal proceedings. If a person named in the petition is a defendant in a related criminal proceeding and the proceeding is dismissed or results in a judgment of acquittal, the petition shall be dismissed as to the defendant's interest in the property as soon as practicable after, and in any event no later than 90 days following, the conclusion of the criminal prosecution.~~

(~~b~~)(c) A lienholder who has received notice of a forfeiture proceeding may intervene as a party. If the ~~court~~ Court finds that the lienholder has a valid, good faith interest in the subject property which is not held through a straw purchase, trust or otherwise for the actual benefit of another and that the lienholder did not at any time have knowledge or reason to believe that the property was being or would be used in violation of the law, the ~~court~~ Court upon forfeiture shall order compensation to the lienholder to the extent of the lienholder's interest.

(d) The Court shall not order the forfeiture of property if an owner, co-owner, or person who regularly uses the property, other than the defendant, shows by a preponderance of the evidence that the owner, co-owner, or regular user did not consent to or have any express or implied knowledge that the property was being or was intended to be used in a manner that would

subject the property to forfeiture, or that the owner, co-owner, or regular user had no reasonable opportunity or capacity to prevent the defendant from using the property.

~~(e)~~(e) *The proceeding shall be against the property and shall be deemed civil in nature. The ~~state~~ State shall have the burden of proving all material facts by clear and convincing evidence.*

~~(d)~~(f) *The ~~court~~ Court shall make findings of fact and conclusions of law and shall issue a final order. If the petition is granted, the ~~court~~ Court shall order the property held for evidentiary purposes, delivered to the ~~state treasurer~~ State Treasurer, or, in the case of regulated drugs or property which is harmful to the public, destroyed.*

Sec. 7. 18 V.S.A. § 4247 is amended to read:

§ 4247. DISPOSITION OF PROPERTY

(a) Whenever property is forfeited and delivered to the ~~state treasurer~~ State Treasurer under this subchapter, the ~~state treasurer~~ State Treasurer shall, no sooner than 90 days of the date the property is delivered, sell the property at a public sale held under 27 V.S.A. chapter 13.

(b) The proceeds from the sale of forfeited property shall be used first to offset any costs of selling the property, and then, after any liens on the property have been paid in full, applied to payment of seizure, storage, and forfeiture expenses, including animal care expenses related to the underlying violation. Remaining proceeds shall be distributed as follows:

(1)(A) Forty-five percent shall be distributed among:

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

(B) The Governor's Criminal Justice and Substance Abuse Cabinet is authorized to determine the allocations among the groups listed in subdivision (A) of this subdivision (1), and may only reimburse the prosecutor and law enforcement agencies that participated in the enforcement effort resulting in the forfeiture for expenses incurred, including actual expenses for involved personnel. The proceeds shall be held by the Treasurer until the Cabinet notifies the Treasurer of the allocation determinations, at which time the Treasurer shall forward the allocated amounts to the appropriate agency's operating funds.

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

Sec. 8. 23 V.S.A. § 1213c is amended to read:

§ 1213c. IMMOBILIZATION AND FORFEITURE PROCEEDINGS

* * *

(o) A law enforcement or prosecution agency conducting forfeitures under this section may accept, receive, and disburse in furtherance of its duties and functions under this section any appropriations, grants, and donations made available by the State of Vermont and its agencies, the federal government and its agencies, any municipality or other unit of local government, or private or civil sources.

Sec. 9. ANIMAL CRUELTY RESPONSE TASK FORCE

(a) Creation. There is created a task force to evaluate the state of animal cruelty investigation and response in Vermont, including the resources devoted to animal investigation and response services and to recommend ways to consolidate, collaborate, or reorganize to use more effectively limited resources while improving the response to animal cruelty.

(b) Membership. The Task Force shall be composed of the following members:

- (1) a representative from the Governor's office;
- (2) a member of the Vermont State Police;
- (3) a member of the VT Police Chiefs Association;
- (4) a representative of the VT Animal Control Association;
- (5) a Humane Officer from a VT humane society focusing on domestic animals;
- (6) a Humane Officer of a VT humane society focusing on large animals (livestock);
- (7) a representative of the Vermont Humane Federation;
- (8) a representative of the Vermont Federation of Dog Clubs;
- (9) the Executive Director of the Department of State's Attorneys and Sheriffs or designee;
- (10) a representative of the Vermont Veterinary Medical Association;
- (11) a representative of the Vermont Agency of Agriculture, Food and Markets;
- (12) a representative of the VT Constables Association;
- (13) a representative of the VT Town Clerks Association;

(14) a representative of the Department for Children and Families; and

(15) a representative of the VT Federation of Sportsmens' Clubs.

(c) Powers and duties. The Task Force, in consultation with the Office of the Defender General, shall study and make recommendations concerning:

(1) training for humane agents, animal control officers, law enforcement officers, and prosecutors;

(2) the development of uniform response protocols for receiving, investigating, and following up on complaints of animal cruelty, including sentencing recommendations;

(3) the development of a centralized data collection system capable of sharing data collected from both the public and private sectors on substantiated complaints of animal cruelty and outcomes;

(4) funding the various responsibilities that are involved with an animal cruelty investigation, including which State agencies should be responsible for any State level authority and oversight; and

(5) any other issue the Task Force determines is relevant to improve the efficiency, process, and results of animal cruelty response actions in Vermont.

(d) Report. On or before January 15, 2016, the Task Force shall report its findings and recommendations to the House and Senate Committees on Judiciary.

(e) Meetings and sunset.

(1) The representative from the Governor's office shall call the first meeting of the Task Force.

(2) The Task Force shall select a chair from among its members at the first meeting.

(3) The Task Force shall hold its first meeting no later than August 15, 2015.

(4) Meetings of the Task Force shall be public meetings.

(5) The Task Force shall cease to exist on January 16, 2016.

Sec. 10. EFFECTIVE DATE

This act shall take effect on July 1, 2015.