

1 H.302

2 Introduced by Representative Rachelson of Burlington

3 Referred to Committee on

4 Date:

5 Subject: Civil Procedure; forfeiture; right to counsel; record keeping

6 Statement of purpose of bill as introduced: This bill proposes to mandate the
7 assignment of a public defender for needy persons in certain civil forfeiture
8 proceedings. The bill also provides for notice of the right to legal counsel in
9 such proceedings, along with mandates for law enforcement and adjudicators
10 to maintain records of forfeited property.

11 An act relating to the appointment of legal counsel and record keeping in
12 civil forfeiture actions

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

14 Sec. 1. 13 V.S.A. § 5232 is amended to read:

15 § 5232. PARTICULAR PROCEEDINGS

16 Counsel shall be assigned under section 5231 of this title to represent needy
17 persons in any of the following:

18 (1) extradition proceedings;

19 (2) habeas corpus and other proceedings wherein the person is confined

20 in a penal or mental institution in this state and seeks release therefrom; ~~or~~

1 (E) to whom the property was delivered; and
2 (F) the date and manner of destruction or disposition of the property.

3 (2) The records shall be submitted to the Superior Court and shall be
4 open to inspection by all federal and State departments and agencies charged
5 with regulation and enforcement of livestock and poultry products. Persons
6 making final disposition or destruction of the property under court order shall
7 report, under oath, to the court the exact circumstances of that disposition or
8 destruction, and a copy of that report shall be maintained by the Superior
9 Court.

10 (c) The provisions of this section shall in no way impair authority for
11 condemnation or seizure conferred by other provisions of this chapter or other
12 laws.

13 Sec. 3. 7 V.S.A. § 604 is added to read:

14 § 604. RECORDS OF FORFEITED PROPERTY

15 (a) Law enforcement departments and agencies, or other State departments
16 and agencies that have custody of any property subject to forfeiture under
17 section 567 or 574 of this title, or that dispose of such property, shall keep and
18 maintain full and complete records, including the following:

19 (1) from whom the property was received;

20 (2) a description of the property;

21 (3) the value of the property;

1 the notice shall be served by personal service or by certified mail, return
2 receipt requested. The notice shall include:

3 (1) a statement of the legal authority and jurisdiction under which the
4 hearing is to be held;

5 (2) a statement of the matter at issue, including reference to the
6 particular statute allegedly violated and a factual description of the alleged
7 violation;

8 (3) the amount of the proposed administrative penalty; ~~and~~

9 (4) a warning that the decision shall become final and the penalty
10 imposed if no hearing is requested within 15 days ~~of~~ following receipt of the
11 notice. The notice shall specify the requirements ~~which~~ that shall be met in
12 order to avoid being deemed to have waived the right to a hearing or the
13 manner of payment if the person elects to pay the penalty and waive a hearing;
14 and

15 (5) the right to the advice and assistance of private counsel or the public
16 defender.

17 (b) Any person who receives notification pursuant to this section shall be
18 deemed to have waived the right to a hearing unless, within 15 days ~~of~~
19 following the receipt of the notice, the person requests a hearing in writing. If
20 the person waives the right to a hearing, the Commissioner shall issue a final
21 order finding the person in default and imposing the penalty. A copy of the

1 final default order shall be sent to the violator by certified mail, return receipt
2 requested.

3 (c) When an alleged violator requests a hearing in a timely fashion, the
4 Commissioner shall hold the hearing pursuant to 3 V.S.A. chapter 25.

5 * * *

6 § 4523. RECORDS OF FORFEITED PROPERTY

7 (a) Law enforcement departments and agencies, or other State departments
8 and agencies that have custody of any property subject to forfeiture under
9 section 4505 or 4511 of this title, or that dispose of such property, shall keep
10 and maintain full and complete records, including the following:

11 (1) from whom the property was received;

12 (2) a description of the property;

13 (3) the value of the property;

14 (4) if the property is deposited in an interest-bearing account, the
15 location of the account and the amount of interest;

16 (5) under what authority the property was held or received or disposed
17 of;

18 (6) to whom the property was delivered; and

19 (7) the date and manner of destruction or disposition of the property.

20 (b) The records shall be submitted to the Commissioner and shall be open
21 to inspection by all federal and State departments and agencies charged with

1 regulation and enforcement of alcohol and alcoholic beverages. Persons
2 making final disposition or destruction of the property under court order shall
3 report, under oath, to the court the exact circumstances of that disposition or
4 destruction, and a copy of that report shall be maintained by the
5 Commissioner.

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

7 § 4243. JUDICIAL FORFEITURE PROCEDURE

8 * * *

9 (d) Notice. Within 60 days from when the seizure occurs, the State shall
10 notify any owners, possessors, and lienholders of the property of the action, if
11 known or readily ascertainable. The notice shall include a statement that the
12 recipient has the right to the advice and assistance of private counsel or the
13 public defender pursuant to 13 V.S.A. § 5232(4). Upon motion by the State, a
14 court may extend the time period for sending notice for a period not to exceed
15 90 days for good cause shown.

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

1 the agency to return contraband, evidence, or other property that the person
2 from whom the property was seized is not entitled to lawfully possess.

3 * * *

4 Sec. 6. 23 V.S.A. § 1213c is amended to read:

5 § 1213c. IMMOBILIZATION AND FORFEITURE PROCEEDINGS

6 * * *

7 (b) Content of notice. The notice shall contain the following:

8 (1) a description of the motor vehicle, including vehicle identification
9 number, make, model, and year;

10 (2) the name of the registered owner or owners, lienholder, and any
11 other person appearing to be an innocent owner or operator as described in
12 subsection (g) of this section;

13 (3) the date, time, and place of the hearing; ~~and~~

14 (4) a statement that any person who is an owner, an innocent owner or
15 operator, or who holds a security interest in or claims any interest in the motor
16 vehicle may appear and be heard at the hearing to protect the person's interest
17 in the motor vehicle; and

18 (5) the right to the advice and assistance of private counsel or the public
19 defender pursuant to 13 V.S.A. § 5232(4).

20 * * *

1 (p) Records.

2 (1) Law enforcement departments and agencies, or other State
3 departments and agencies that have custody of any property subject to
4 forfeiture under this section, or that dispose of such property, shall keep and
5 maintain full and complete records, including the following:

6 (A) from whom the property was received;

7 (B) a description of the property;

8 (C) the value of the property;

9 (D) if the property is deposited in an interest-bearing account, the
10 location of the account and the amount of interest;

11 (E) under what authority the property was held or received or
12 disposed of;

13 (F) to whom the property was delivered; and

14 (G) the date and manner of destruction or disposition of the property.

15 (2) The records shall be submitted to the Superior Court and shall be
16 open to inspection by all federal and State departments and agencies charged
17 with regulation and enforcement of alcohol and alcoholic beverages. Persons
18 making final disposition or destruction of the property under court order shall
19 report, under oath, to the court the exact circumstances of that disposition or
20 destruction, and a copy of that report shall be maintained by the Superior
21 Court.

1 Sec. 7. EFFECTIVE DATE

2 This act shall take effect on July 1, 2023.