

1 H.592
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 would also provide for notice of the right to legal
9 counsel in such proceedings, along with mandates for law enforcement and
10 adjudicators 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;

13 Sec. 2. 6 V.S.A. § 3315 is amended to read:

14 § 3315. FORFEITURE

15 * * *

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

20 (A) from whom the property was received;
21 (B) a description of the property;

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

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

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

17 § 604. RECORDS OF FORFEITED PROPERTY

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

1 (1) from whom the property was received;
2 (2) a description of the property;
3 (3) the value of the property;
4 (4) if the property is deposited in an interest-bearing account, the
5 location of the account and the amount of interest;
6 (5) under what authority the property was held or received or disposed
7 of;
8 (6) to whom the property was delivered; and
9 (7) the date and manner of destruction or disposition of the property.
10 (b) The records shall be submitted to the Superior Court and shall be open
11 to inspection by all federal and State departments and agencies charged with
12 regulation and enforcement of alcoholic beverages. Persons making final
13 disposition or destruction of the property under court order shall report, under
14 oath, to the court the exact circumstances of that disposition or destruction, and
15 a copy of that report shall be maintained by the Superior Court.

16 Sec. 4. 10 V.S.A. chapter 109, subchapter 1 is amended to read:

17 Subchapter 1. General Provisions

18 * * *

19 § 4520a. NOTICE AND HEARING REQUIREMENTS

20 (a) The Commissioner shall use the following procedures in assessing the
21 penalty under section 4520 of this title: the Attorney General or an alleged

1 violator shall be given an opportunity for a hearing after reasonable notice;,
2 and the notice shall be served by personal service or by certified mail, return
3 receipt requested. The notice shall include:

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

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

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

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

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

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

1 order finding the person in default and imposing the penalty. A copy of the
2 final default order shall be sent to the violator by certified mail, return receipt
3 requested.

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

6 * * *

7 § 4523. RECORDS OF FORFEITED PROPERTY

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

12 (1) from whom the property was received;
13 (2) a description of the property;
14 (3) the value of the property;
15 (4) if the property is deposited in an interest-bearing account, the

16 location of the account and the amount of interest;

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

19 (6) to whom the property was delivered; and
20 (7) the date and manner of destruction or disposition of the property.

1 (b) The records shall be submitted to the Commissioner and shall be open
2 to inspection by all federal and State departments and agencies charged with
3 regulation and enforcement of alcoholic beverages. Persons making final
4 disposition or destruction of the property under court order shall report, under
5 oath, to the court the exact circumstances of that disposition or destruction, and
6 a copy of that report shall be maintained by the Commissioner.

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

8 § 4243. JUDICIAL FORFEITURE PROCEDURE

9 * * *

10 (d) Notice. Within 60 days from when the seizure occurs, the State shall
11 notify any owners, possessors, and lienholders of the property of the action, if
12 known or readily ascertainable. The notice shall include a statement that the
13 recipient has the right to the advice and assistance of private counsel or the
14 public defender pursuant to 13 V.S.A. § 5232(4). Upon motion by the State, a
15 court may extend the time period for sending notice for a period not to exceed
16 90 days for good cause shown.

17 (e) Return of property. If notice is not sent in accordance with subsection
18 (d) of this section, and no time extension is granted or the extension period has
19 expired, the law enforcement agency shall return the property to the person
20 from whom the property was seized. An agency's return of property due to
21 lack of proper notice does not restrict the agency's authority to commence a

1 forfeiture proceeding at a later time. Nothing in this subsection shall require
2 the agency to return contraband, evidence, or other property that the person
3 from whom the property was seized is not entitled to lawfully possess.

4 * * *

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

6 § 1213c. IMMOBILIZATION AND FORFEITURE PROCEEDINGS

7 * * *

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

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

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

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

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

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

21 * * *

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 alcoholic beverages. Persons making final
18 disposition or destruction of the property under court order shall report, under
19 oath, to the court the exact circumstances of that disposition or destruction, and
20 a copy of that report shall be maintained by the Superior Court.

1 Sec. 7. EFFECTIVE DATE

2 This act shall take effect on July 1, 2026.