

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 645
3 entitled “An act relating to the expansion of approaches to restorative justice”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

7 Sec. 1. 3 V.S.A. chapter 7 is amended to read:

8 CHAPTER 7. ATTORNEY GENERAL

9 Subchapter 1. Election; Authority; Duties

10 § 151. ELECTION AND TERM

11 * * *

12 Subchapter 2. Restorative Justice Approaches

13 § 162a. DEFINITION

14 As used in this subchapter, pre-charge diversion means a referral of an
15 individual to a community-based restorative justice provider by a law
16 enforcement officer or prosecutor after the referring officer or prosecutor has
17 determined that probable cause exists that the individual has committed a
18 criminal offense and before the individual is criminally charged with the
19 offense or before a petition is filed in family court for the offense.

20 § 163. JUVENILE COURT DIVERSION ~~PROJECT~~ PROGRAM

21 (a) Purpose.

1 (1) The Attorney General shall develop and administer a juvenile court
2 diversion project program, for both pre-charge and post-charge referrals to
3 youth-appropriate community-based restorative justice providers, for the
4 purpose of assisting juveniles children or youth charged with delinquent acts.
5 ~~In consultation with the diversion programs, the Attorney General shall adopt a~~
6 ~~policies and procedures manual in compliance with this section.~~

7 (2) The program shall be designed to provide a restorative option for
8 children or youth alleged to have caused harm in violation of a criminal statute
9 or who have been charged with violating a criminal statute and subject to a
10 delinquency or youthful offender petition filed with the Family Division of the
11 Superior Court, as well as for victims or those acting on a victim’s behalf who
12 have been allegedly harmed by the responsible party. The juvenile diversion
13 program can accept referrals to the program as follows:

14 (A) Pre-charge by law enforcement or prosecutors pursuant to a
15 policy adopted in accordance with subdivision (c)(1)–(2) of this section.

16 (B) Post-charge by prosecutors for children or youth charged with a
17 first or a second misdemeanor or a first nonviolent felony, or other offenses as
18 the prosecutor deems appropriate.

19 (C) Post-charge by prosecutors of children or youth who have been
20 charged with an offense and who have substance abuse or mental health
21 treatment needs regardless of the child’s or youth’s prior delinquency and

1 youthful offender history, except a child or youth charged with a felony
2 offense that is a crime listed in 13 V.S.A. § 5301(7) shall not be eligible under
3 this section. Children or youth who are subject to a delinquency or youthful
4 offender petition in the Family Division pursuant to 33 V.S.A. chapters 52 or
5 52A shall also be eligible under this section. Programming for these children
6 or youth is intended to support access to appropriate treatment or other
7 resources with the aim of improving the person’s health and reducing future
8 adverse involvement in the justice system.

9 ~~(b) The diversion program administered by the Attorney General shall~~
10 ~~support the operation of diversion programs in local communities through~~
11 ~~grants of financial assistance to, or by contracting for services with,~~
12 ~~municipalities, private groups, or other local organizations. The Attorney~~
13 ~~General may require local financial contributions as a condition of receipt of~~
14 ~~project funding- Administration; report.~~

15 (1) The Attorney General shall support the operation of diversion
16 programs in each of the State’s counties through grants of financial assistance
17 to, or contracts for services with, a single municipality or organization to
18 provide programs or services employing restorative justice principles,
19 including a community justice center and the balanced and restorative justice
20 program, in each county.

1 (A) In counties where there is more than one pre-charge or post-
2 charge diversion provider and, based on the records of the Department of
3 Corrections, the pre-charge provider received an average of 25 pre-charge
4 referrals per year during the three preceding fiscal years, the Attorney General
5 shall offer to grant or contract directly with all pre-charge providers in that
6 county or provide for sub-granting or sub-contracting by the current post-
7 charge provider in that county.

8 (B) The Attorney General may require local financial contributions
9 as a condition of receipt of program funding.

10 (2) The Office of the Attorney General shall develop program outcomes
11 following the designated State of Vermont performance accountability
12 framework and, in consultation with the Department of State’s Attorneys and
13 Sheriffs, the Office of the Defender General, the Center for Crime Victim
14 Services, and the Judiciary, report annually on or before December 1 to the
15 General Assembly on services provided and outcome indicators. As
16 components of the report required by this subsection, the Attorney General
17 shall include data on the number of pre-charge and post-charge diversion
18 program referrals in each county, demographic information, offenses charged
19 and crime types, successful completion rates, and possible causes of any
20 geographical disparities.

1 (3) The Attorney General is authorized to accept grants and gifts for the
2 purposes of this section, such acceptance being pursuant to 32 V.S.A. § 5.

3 (4) In consultation with the pre-charge and post-charge diversion
4 programs, the Attorney General shall adopt a policies and procedures manual
5 for community-based restorative justice providers to promote a uniform system
6 across the State in compliance with this section. The manual shall include
7 policies related to victims, including:

8 (A) the timely notification to alleged victims of a referral to pre- and
9 post-charge diversion;

10 (B) an invitation to engage in the restorative process; and

11 (C) how information is shared through restorative agreements
12 concerning any alleged victims.

13 ~~(c) All diversion projects receiving financial assistance from the Attorney~~
14 ~~General shall adhere to the following provisions:~~

15 ~~(1) The diversion project shall only accept persons against whom~~
16 ~~charges have been filed and the court has found probable cause but are not yet~~
17 ~~adjudicated.~~

18 ~~(2) Alleged offenders shall be informed of their right to the advice and~~
19 ~~assistance of private counsel or the public defender at all stages of the~~
20 ~~diversion process, including the initial decision to participate, and the decision~~

1 ~~to accept the diversion contract, so that the candidate may give his or her~~
2 ~~informed consent.~~

3 ~~(3) The participant shall be informed that his or her selection of the~~
4 ~~diversion contract is voluntary.~~

5 ~~(4) Each State's Attorney, in cooperation with the Attorney General and~~
6 ~~the diversion program, shall develop clear criteria for deciding what types of~~
7 ~~offenses and offenders will be eligible for diversion; however, the State's~~
8 ~~Attorney shall retain final discretion over the referral of each case for~~
9 ~~diversion. The provisions of 33 V.S.A. § 5225(e) and § 5280(e) shall apply.~~

10 ~~(5) All information gathered in the course of the diversion process shall~~
11 ~~be held strictly confidential and shall not be released without the participant's~~
12 ~~prior consent (except that research and reports that do not require or establish~~
13 ~~the identity of individual participants are allowed).~~

14 ~~(6) Information related to the present offense that is divulged during the~~
15 ~~diversion program shall not be used in the prosecutor's case. However, the~~
16 ~~fact of participation and success, or reasons for failure may become part of the~~
17 ~~prosecutor's records.~~

18 ~~(7) The diversion project shall maintain sufficient records so that the~~
19 ~~reasons for success or failure of the program in particular cases and overall can~~
20 ~~be investigated by program staff.~~

21 ~~(8) Diversion projects shall be set up to respect the rights of participants.~~

1 ~~(9) Each participant shall pay a fee to the local juvenile court diversion~~
2 ~~project. The amount of the fee shall be determined by project officers based~~
3 ~~upon the financial capabilities of the participant. The fee shall not exceed~~
4 ~~\$150.00. The fee shall be a debt due from the participant, and payment of such~~
5 ~~shall be required for successful completion of the Program. Notwithstanding~~
6 ~~32 V.S.A. § 502(a), fees collected under this subdivision shall be retained and~~
7 ~~used solely for the purpose of the Court Diversion Program. Juvenile diversion~~
8 ~~program eligibility and referral process.~~

9 (1) Policy adoption. In order for a county’s community-based
10 restorative justice provider to be eligible to receive grants or contracts pursuant
11 to this section, each State’s Attorney’s office shall adopt a juvenile pre-charge
12 and juvenile post-charge referral policy. To encourage fair and consistent
13 juvenile pre-charge and post-charge diversion referral policies and methods
14 statewide, the Department of State’s Attorneys and Sheriffs and the
15 Community Justice Unit shall publicly post the policies of each State’s
16 Attorney’s office.

17 (2) Pre-charge juvenile diversion. For a community-based restorative
18 justice provider to be eligible to receive grants or contracts to provide juvenile
19 pre-charge diversion programming, a county’s State’s Attorney’s juvenile pre-
20 charge diversion program policy shall include the following:

1 (A) a list of offenses that presumptively qualify for juvenile pre-
2 charge diversion;

3 (B) additional criteria to determine whether a child or youth is
4 eligible to participate in juvenile pre-charge diversion;

5 (C) appropriate documentation to accompany a referral to juvenile
6 pre-charge diversion, including the name and contact information of the child
7 or youth, the name and contact information of the victim or victims, and a
8 factual statement of the alleged incident.

9 (D) a procedure for returning a case to the law enforcement agency or
10 the prosecutor, including when:

11 (i) the prosecutor withdraws any juvenile pre-charge referral from
12 the juvenile pre-charge diversion program;

13 (ii) the community-based restorative justice provider determines
14 that the matter is not appropriate for juvenile pre-charge programming; and

15 (iii) when a child or youth does not successfully complete juvenile
16 pre-charge diversion programming.

17 (E) A statement reiterating that the State’s Attorney retains final
18 discretion over the cases that are eligible for diversion and may deviate from
19 the adopted policy in accordance with such discretion.

1 (2) Juvenile post-charge diversion. The post-charge diversion program
2 for children or youth against whom a petition has been filed and the court has
3 found probable cause, but are not adjudicated.

4 (A) A prosecutor may refer a child or youth to diversion either before
5 or after a preliminary hearing and shall notify in writing to the diversion
6 program and the court of the prosecutor’s intention of the referral to diversion.

7 (B) If a child or youth is charged with a qualifying crime as defined
8 in 13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor
9 shall provide the child or youth with the opportunity to participate in the court
10 diversion program unless the prosecutor states on the record at the preliminary
11 hearing or a subsequent hearing why a referral to the post-charge program
12 would not serve the ends of justice. Factors considered in the ends-of-justice
13 determination include the child’s or youth’s delinquency record, the views of
14 the alleged victim or victims, and the need for probationary supervision.

15 (C) Notwithstanding subdivisions (1) and (2) of this subsection (c),
16 the diversion program may accept cases pursuant to 33 V.S.A. §§ 5225(c) and
17 5280(e).

18 ~~(d) The Attorney General is authorized to accept grants and gifts for the~~
19 ~~purposes of this section, such acceptance being pursuant to 32 V.S.A. § 5.~~
20 Confidentiality.

1 (1) All information related to any offense gathered in the course of the
2 juvenile diversion process shall be held strictly confidential and shall not be
3 released without the participant’s prior consent.

4 (2) Information related to any offense that a person divulges in
5 preparation for, during, or as a follow-up to the provision of the juvenile
6 diversion programming shall not be used against the person in any criminal,
7 civil, family, or juvenile investigation, prosecution, or case for any purpose,
8 including impeachment or cross-examination. However, the fact of
9 participation and success, or reasons for failure, may become part of the
10 prosecutor’s records. This subsection shall not be construed to prohibit the
11 limited disclosure or use of information to specific persons in the following
12 circumstances:

13 (A) where there is a threat or statement of a plan that a person may
14 reasonably believe is likely to result in death or bodily injury to themselves or
15 others or damage to the property of another person;

16 (B) when disclosure is necessary to report bodily harm any party
17 causes another during restorative justice programming;

18 (C) where there is a reasonable suspicion of abuse or neglect of a
19 child or vulnerable adult and a report is made pursuant to the provisions of 33
20 V.S.A. § 4914 or 33 V.S.A. § 6903 or to comply with any law; or

1 (D) where a court or administrative tribunal determines that the
2 materials were submitted by a participant in the program for the purpose of
3 avoiding discovery of the material in a court or administrative proceeding. If a
4 participant wishes to avail themselves of this provision, the participant may
5 disclose this information in camera to a judicial officer for the purposes of
6 seeking such a ruling.

7 (e) Rights and responsibilities.

8 (1) ~~Within 30 days after the two-year anniversary of a successful~~
9 ~~completion of juvenile diversion, the court shall provide notice to all parties of~~
10 ~~record of the court's intention to order the expungement of all court files and~~
11 ~~records, law enforcement records other than entries in the juvenile court~~
12 ~~diversion program's centralized filing system, fingerprints, and photographs~~
13 ~~applicable to the proceeding. However, the court shall not order expungement~~
14 ~~if the participant does not satisfy each of subdivisions (A)–(D) of this~~
15 ~~subdivision. The court shall give the State's Attorney an opportunity for a~~
16 ~~hearing to contest the expungement of the records. The court shall expunge~~
17 ~~the records if it finds:~~

18 ~~(A) two years have elapsed since the successful completion of~~
19 ~~juvenile diversion by the participant;~~

1 ~~(B) the participant has not been convicted of a subsequent felony or~~
2 ~~misdemeanor during the two-year period, and no proceedings are pending~~
3 ~~seeking such conviction;~~

4 ~~(C) rehabilitation of the participant has been attained to the~~
5 ~~satisfaction of the court; and~~

6 ~~(D) the participant does not owe restitution related to the case. Juvenile~~
7 ~~court diversion programs shall be set up to respect the rights of participants.~~

8 ~~(2) The court may expunge any records that were sealed pursuant to this~~
9 ~~subsection prior to July 1, 2018 unless the State's Attorney's office that~~
10 ~~prosecuted the case objects. Thirty days prior to expunging a record pursuant~~
11 ~~to this subdivision, the court shall provide written notice of its intent to~~
12 ~~expunge the record to the State's Attorney's office that prosecuted the case.~~

13 ~~Diversion participants shall be informed of their right to the advice, assistance,~~
14 ~~and access to private counsel or the public defender at all stages of the~~
15 ~~diversion process, including the initial decision to participate and the decision~~
16 ~~to accept the juvenile diversion contract, so that the candidate may give~~
17 ~~informed consent. Notwithstanding the financial need determination pursuant~~
18 ~~to 13 V.S.A. § 5236, a public defender shall be assigned at public expense at~~
19 ~~the request of the diversion participant.~~

20 ~~(3)(A) The court shall keep a special index of cases that have been~~
21 ~~expunged pursuant to this section together with the expungement order. The~~

1 ~~index shall list only the name of the person convicted of the offense, his or her~~
2 ~~date of birth, the docket number, and the criminal offense that was the subject~~
3 ~~of the expungement.~~

4 ~~(B) The special index and related documents specified in subdivision~~
5 ~~(A) of this subdivision (3) shall be confidential and shall be physically and~~
6 ~~electronically segregated in a manner that ensures confidentiality and that~~
7 ~~limits access to authorized persons.~~

8 ~~(C) Inspection of the expungement order and the certificate may be~~
9 ~~permitted only upon petition by the person who is the subject of the case. The~~
10 ~~Chief Superior Judge may permit special access to the index and the~~
11 ~~documents for research purposes pursuant to the rules for public access to~~
12 ~~court records.~~

13 ~~(D) The Court Administrator shall establish policies for implementing~~
14 ~~this subsection (e). Information related to the present offense that is divulged~~
15 ~~during the juvenile diversion program shall not be used against the child or~~
16 ~~youth in the child's or youth's case for any purpose, including impeachment or~~
17 ~~cross-examination. However, the fact of participation and success, or reasons~~
18 ~~for failure, may become part of the prosecutor's records.~~

19 ~~(4) The pre-charge and post-charge diversion programs may charge fees~~
20 ~~to its participants, which shall be paid to the local juvenile court diversion~~
21 ~~program. If a fee is charged, it shall be determined by program officers or~~

1 employees based upon the financial capabilities of the participant. The fee
2 shall not exceed \$300.00. Any fee charged shall be a debt due from the
3 participant, and payment of such shall be required for successful completion of
4 the program. Notwithstanding 32 V.S.A. § 502(a), fees collected pursuant to
5 this subdivision (4) shall be retained and used solely for the purpose of the
6 juvenile court diversion program.

7 (5) Any alleged victims shall be notified once a juvenile chooses to
8 participate in the pre-charge diversion program by the pre-charge diversion
9 program.

10 ~~(f) Except as otherwise provided in this section, upon the entry of an order~~
11 ~~expunging files and records under this section, the proceedings in the matter~~
12 ~~shall be considered never to have occurred, all index references thereto shall be~~
13 ~~deleted, and the participant, the court, and law enforcement officers and~~
14 ~~departments shall reply to any request for information that no record exists~~
15 ~~with respect to such participant inquiry in any matter. Copies of the order shall~~
16 ~~be sent to each agency or official named therein. Records and expungement.~~

17 (1) Not later than 10 days after the successful completion of the pre-
18 charge diversion program, the juvenile diversion program shall notify the
19 victim, law enforcement agency, and the State's Attorney office of the
20 participant's successful completion. Payment of restitution is required for
21 successful completion. Two years after the diversion program notifies the law

1 enforcement agency and the State’s Attorney office of successful completion,
2 all records held by the diversion program, the law enforcement agency, and the
3 State’s Attorney office shall be expunged.

4 (2) Within 30 days after the two-year anniversary of a successful
5 completion of juvenile post-charge diversion, the court shall provide notice to
6 all parties of record of the court’s intention to order the expungement of all
7 court files and records, law enforcement records, fingerprints, and photographs
8 other than entries in the court diversion program’s centralized filing system
9 applicable to the proceeding. However, the court shall not order expungement
10 if the participant does not satisfy each of subdivisions (A)–(D) of this
11 subdivision. The court shall give the State’s Attorney an opportunity for a
12 hearing to contest the expungement of the records. The court shall expunge
13 the records if it finds:

14 (A) two years have elapsed since the successful completion of the
15 juvenile post-charge diversion program by the participant;

16 (B) the participant has not been convicted of a subsequent felony or
17 misdemeanor during the two-year period, and no proceedings are pending
18 seeking such conviction;

19 (C) rehabilitation of the participant has been attained to the
20 satisfaction of the court; and

21 (D) the participant does not owe restitution related to the case.

1 (3) The court may expunge any records that were sealed pursuant to this
2 subsection prior to July 1, 2018 unless the State’s Attorney’s office that
3 prosecuted the case objects. Thirty days prior to expunging a record pursuant
4 to this subdivision, the court shall provide written notice of its intent to
5 expunge the record to the State’s Attorney’s office that prosecuted the case.

6 (4)(A) The court shall keep a special index of post-charge diversion
7 cases that have been expunged pursuant to this section together with the
8 expungement order. The index shall list only the name of the person convicted
9 of the offense, the person’s date of birth, the docket number, and the offense
10 that was the subject of the expungement.

11 (B) The special index and related documents specified in subdivision
12 (A) of this subdivision (4) shall be confidential and shall be physically and
13 electronically segregated in a manner that ensures confidentiality and that
14 limits access to authorized persons.

15 (C) Inspection of the expungement order and the certificate may be
16 permitted only upon petition by the person who is the subject of the case. The
17 Chief Superior Judge may permit special access to the index and the
18 documents for research purposes pursuant to the rules for public access to
19 court records.

20 (D) The Court Administrator shall establish policies for
21 implementing this subsection (f).

1 (5) Except as otherwise provided in this section, upon the entry of an
2 order expunging files and records under this section, the proceedings in the
3 matter shall be considered never to have occurred; all index references thereto
4 shall be deleted; and the participant, the court, law enforcement officers and
5 departments, prosecutors, the referring entity, and the diversion program shall
6 reply to any request for information that no record exists with respect to such
7 participant inquiry in any matter. Copies of the order shall be sent to each
8 agency, entity, or official named therein.

9 (6) The process of automatically expunging records as provided in this
10 section shall only apply to those persons who completed diversion on or after
11 July 1, 2002. Any person who completed diversion prior to July 1, 2002 must
12 apply to the court to have the person’s records expunged. Expungement shall
13 occur if the requirements of this subsection (f) are met.

14 ~~(g) The process of automatically expunging records as provided in this~~
15 ~~section shall only apply to those persons who completed diversion on or after~~
16 ~~July 1, 2002. Any person who completed diversion prior to July 1, 2002 must~~
17 ~~apply to the court to have his or her records expunged. Expungement shall~~
18 ~~occur if the requirements of subsection (e) of this section are met.~~

19 ~~(h) Subject to the approval of the Attorney General, the Vermont~~
20 ~~Association of Court Diversion Programs may develop and administer~~

1 ~~programs to assist persons under this section charged with delinquent,~~
2 ~~eriminal, and civil offenses~~

3 ~~(i) Notwithstanding subdivision (c)(1) of this section, the diversion~~
4 ~~program may accept cases from the Youth Substance Awareness Safety~~
5 ~~Program pursuant to 7 V.S.A. § 656 or 18 V.S.A. § 4230b. The confidentiality~~
6 ~~provisions of this section shall become effective when a notice of violation is~~
7 ~~issued under 7 V.S.A. § 656(b) or 18 V.S.A. § 4230b(b) and shall remain in~~
8 ~~effect unless the person fails to register with or complete the Youth Substance~~
9 ~~Awareness Safety Program.~~

10 ~~(j) Notwithstanding subdivision (c)(1) of this section, the diversion~~
11 ~~program may accept cases pursuant to 33 V.S.A. §§ 5225–5280. Public~~
12 ~~records act exemption.~~

13 (1) Any records or information produced or acquired pursuant to this
14 section shall be exempt from public inspection or copying under Vermont’s
15 Public Records Act.

16 (2) Notwithstanding subdivision (1) of this subsection, a law
17 enforcement agency, State’s Attorney office, court, or community-based
18 restorative justice provider may disclose information to colleges, universities,
19 public agencies of the State, and nonprofit research organizations that a
20 community-based restorative justice provider has agreements with for use in
21 connection with research projects of a public service nature, but no person

1 associated with those institutions or agencies may disclose that information in
2 any manner that would reveal the identity of an individual who provided the
3 information to the community-based restorative justice provider.

4 § 164. ADULT COURT DIVERSION PROGRAM

5 (a) Purpose.

6 (1) The Attorney General shall develop and administer an adult court
7 diversion program, for both pre-charge and post-charge referrals, in all
8 counties.

9 (2) The program shall be designed to provide a restorative option for
10 persons alleged to have caused harm in violation of a criminal statute or who
11 have been charged with violating a criminal statute as well as for victims or
12 those acting on a victim's behalf who have been allegedly harmed by the
13 responsible party. The diversion program can accept referrals to the program
14 as follows:

15 (A) Pre-charge by law enforcement or prosecutors pursuant to a
16 policy adopted in accordance with subdivisions (c)(1) and (c)(3) of this
17 section.

18 (B) Post-charge by prosecutors for persons charged with a first or a
19 second misdemeanor or a first nonviolent felony, or other offenses as the
20 prosecutor deems appropriate.

1 (C) Post-charge by prosecutors of persons who have been charged
2 with an offense and who have substance abuse or mental health treatment
3 needs regardless of the person’s prior criminal history record, except a person
4 charged with a felony offense that is a crime listed in 13 V.S.A. § 5301(7) shall
5 not be eligible under this section. Persons who have attained 18 years of age
6 who are subject to a petition in the Family Division pursuant to 33 V.S.A.
7 chapters 52 or 52A shall also be eligible under this section. Programming for
8 these persons is intended to support access to appropriate treatment or other
9 resources with the aim of improving the person’s health and reducing future
10 adverse involvement in the justice system.

11 (b) ~~The program shall be designed for two purposes:~~

12 (1) ~~To assist adults who have been charged with a first or a second~~
13 ~~misdemeanor or a first nonviolent felony.~~

14 (2) ~~To assist persons who have been charged with an offense and who have~~
15 ~~substance abuse or mental health treatment needs regardless of the person’s~~
16 ~~prior criminal history record, except a person charged with a felony offense~~
17 ~~that is a crime listed in 13 V.S.A. § 5301(7) shall not be eligible under this~~
18 ~~section. Persons who have attained 18 years of age who are subject to a~~
19 ~~petition in the Family Division pursuant to 33 V.S.A. chapters 52 or 52A shall~~
20 ~~also be eligible under this section. Programming for these persons is intended~~
21 ~~to support access to appropriate treatment or other resources with the aim of~~

1 ~~improving the person's health and reducing future adverse involvement in the~~
2 ~~justice system.~~ Administration; report.

3 (1) The Attorney General shall support the operation of diversion
4 programs in each of the State's counties through grants of financial assistance
5 to, or contracts for services with, a single municipality or organization to
6 provide programs or services employing restorative justice principles,
7 including a community justice center and the balanced and restorative justice
8 program, in each county.

9 (A) In counties where there is more than one pre-charge or post-
10 charge diversion provider, and the pre-charge provider received an average of
11 25 pre-charge referrals, based on the records of the Department of Corrections,
12 per year during the three preceding fiscal years, the Attorney General shall
13 offer to grant or contract directly with all pre-charge providers in that county or
14 provide for sub-granting or sub-contracting by the current post-charge provider
15 in that county.

16 (B) The Attorney General may require local financial contributions
17 as a condition of receipt of program funding.

18 (2) The Office of the Attorney General shall develop program outcomes
19 following the designated State of Vermont performance accountability
20 framework and, in consultation with the Department of State's Attorneys and
21 Sheriffs, the Office of the Defender General, the Center for Crime Victim

1 Services, and the Judiciary, report annually on or before December 1 to the
2 General Assembly on services provided and outcome indicators. As
3 components of the report required by this subsection, the Attorney General
4 shall include data on the number of pre-charge and post-charge diversion
5 program referrals in each county, demographic information, offenses charged
6 and crime types, successful completion rates, and possible causes of any
7 geographical disparities.

8 (3) The Attorney General is authorized to accept grants and gifts for the
9 purposes of this section, such acceptance being pursuant to 32 V.S.A. § 5.

10 (4) In consultation with the diversion programs, the Attorney General
11 shall adopt a policies and procedures manual for community-based restorative
12 justice providers to promote a uniform system across the State in compliance
13 with this section. The manual shall include policies related to victims,
14 including:

15 (A) the timely notification to alleged victims of a referral to pre-
16 charge and post-charge diversion;

17 (B) an invitation to engage in the restorative process; and

18 (C) how information is shared through restorative agreements
19 concerning any alleged victims.

20 ~~(c) The program shall support the operation of diversion programs in local~~
21 ~~communities through grants of financial assistance to, or contracts for services~~

1 ~~with, municipalities, private groups, or other local organizations. The Attorney~~
2 ~~General may require local financial contributions as a condition of receipt of~~
3 ~~program funding.~~ Diversion program eligibility and referral process.

4 (1) Policy adoption. In order for a county's community-based
5 restorative justice provider to be eligible to receive grants or contracts pursuant
6 to this section, each State's Attorney's office shall adopt a pre-charge and post-
7 charge referral policy. To encourage fair and consistent pre-charge and post-
8 charge diversion referral policies and methods statewide, the Department of
9 State's Attorneys and Sheriffs and the Community Justice Unit shall publicly
10 post the policies of each State's Attorney's office.

11 (2) Pre-charge diversion. For a community-based restorative justice
12 provider to be eligible to receive grants or contracts to provide pre-charge
13 diversion programming, a county's State's Attorney's pre-charge diversion
14 program policy shall include:

15 (A) A list of offenses that presumptively qualify for pre-charge
16 diversion.

17 (B) Additional criteria to determine whether a responsible party is
18 eligible to participate in pre-charge diversion.

19 (C) Appropriate documentation to accompany a referral to pre-charge
20 diversion, including the name and contact information of the responsible party

1 the name and contact information of the victim or victims, and a factual
2 statement of the alleged offense.

3 (D) A procedure for returning a case to the law enforcement agency
4 or the prosecutor, including when:

5 (i) the prosecutor withdraws a pre-charge referral from the
6 diversion program;

7 (ii) the community-based restorative justice provider determines
8 that the matter is not appropriate for pre-charge programming; and

9 (iii) a person does not successfully complete pre-charge diversion
10 programming.

11 (E) A statement reiterating that the State’s Attorney retains final
12 discretion over the cases that are eligible for diversion and may deviate from
13 the adopted policy in accordance with such discretion.

14 (3) Post-charge diversion. The post-charge diversion program shall
15 accept only persons against whom charges have been filed and the court has
16 found probable cause, but are not adjudicated.

17 (A) A prosecutor may refer a person to diversion either before or
18 after arraignment and shall notify in writing the diversion program and the
19 court of the prosecutor’s intention of the referral to diversion.

20 (B) If a person is charged with a qualifying crime as defined in
21 13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall

1 provide the person with the opportunity to participate in the court diversion
2 program unless the prosecutor states on the record at arraignment or a
3 subsequent hearing why a referral to the post-charge program would not serve
4 the ends of justice. Factors considered in the ends-of-justice determination
5 include the person’s criminal record, the views of the alleged victim or victims,
6 or the need for probationary supervision.

7 (C) Notwithstanding subdivisions (1) and (2) of this subsection (c),
8 the diversion program may accept cases pursuant to 33 V.S.A. §§ 5225 and
9 5280.

10 ~~(d) The Office of the Attorney General shall develop program outcomes~~
11 ~~following the designated State of Vermont performance accountability~~
12 ~~framework and, in consultation with the Department of State’s Attorneys and~~
13 ~~Sheriffs, the Office of the Defender General, the Center for Crime Victim~~
14 ~~Services, and the Judiciary, report annually on or before December 1 to the~~
15 ~~General Assembly on services provided and outcome indicators. As a~~
16 ~~component of the report required by this subsection, the Attorney General shall~~
17 ~~include data on diversion program referrals in each county and possible causes~~
18 ~~of any geographical disparities. Confidentiality.~~

19 (1) The matter shall become confidential when notice of a pre-charge
20 referral is provided to the diversion program, or when notice of a post-charge
21 referral is provided to the court. However, persons who are subject to

1 conditions of release imposed pursuant to 13 V.S.A. § 7554 and who are
2 referred to diversion pursuant to subdivision (a)(2)(C) of this section, the
3 matter shall become confidential upon the successful completion of diversion.

4 (2) All information gathered in the course of the adult diversion process
5 shall be held strictly confidential and shall not be released without the
6 participant’s prior consent, except that research and reports that do not
7 establish the identity of individual participants are allowed.

8 (3) Information related to any offense that a person divulges in
9 preparation for, during, or as a follow-up to the provision of the adult diversion
10 programming shall not be used against the person in any criminal, civil, family,
11 or juvenile investigation, prosecution, or case for any purpose, including
12 impeachment or cross-examination. However, the fact of participation and
13 success, or reasons for failure, may become part of the prosecutor’s records.
14 This subsection shall not be construed to prohibit the limited disclosure or use
15 of information to specific persons in the following circumstances:

16 (A) where there is a threat or statement of a plan that a person may
17 reasonably believe is likely to result in death or bodily injury to themselves or
18 others or damage to the property of another person;

19 (B) when disclosure is necessary to report bodily harm any party
20 causes another during restorative justice programming;

1 (C) where there is a reasonable suspicion of abuse or neglect of a
2 child or vulnerable adult and a report is made pursuant to the provisions of 33
3 V.S.A. § 4914 or 33 V.S.A. § 6903 or to comply with any law; or

4 (D) where a court or administrative tribunal determines that the
5 materials were submitted by a participant in the program for the purpose of
6 avoiding discovery of the material in a court or administrative proceeding. If a
7 participant wishes to avail themselves of this provision, the participant may
8 disclose this information in camera to a judicial officer for the purposes of
9 seeking such a ruling.

10 (4) If law enforcement or the prosecutor refers a case to diversion, the
11 prosecutor may release information to the victim upon a showing of legitimate
12 need and subject to an appropriate protective agreement defining the purpose
13 for which the information is being released and in all other respects
14 maintaining the confidentiality of the information; otherwise, files held by the
15 court, the prosecutor, law enforcement agency, referring entity, and the
16 diversion program related to the matter shall be confidential and shall remain
17 confidential unless:

18 (A) the diversion program declines to accept the referral;

19 (B) the person declines to participate in diversion;

20 (C) the diversion program accepts the referral, but the person does
21 not successfully complete diversion; or

1 (D) the prosecutor recalls the referral to diversion.

2 ~~(e) All adult court diversion programs receiving financial assistance from~~
3 ~~the Attorney General shall adhere to the following provisions: Rights and~~
4 ~~responsibilities.~~

5 ~~(1) The diversion program shall accept only persons against whom~~
6 ~~charges have been filed and the court has found probable cause, but are not yet~~
7 ~~adjudicated. The prosecuting attorney may refer a person to diversion either~~
8 ~~before or after arraignment and shall notify in writing the diversion program~~
9 ~~and the court of his or her intention to refer the person to diversion. The matter~~
10 ~~shall become confidential when notice is provided to the court, except that for~~
11 ~~persons who are subject to conditions of release imposed pursuant to 13 V.S.A.~~
12 ~~§ 7554 and who are referred to diversion pursuant to subdivision (b)(2) of this~~
13 ~~section, the matter shall become confidential upon the successful completion of~~
14 ~~diversion. If a person is charged with a qualifying crime as defined in~~
15 ~~13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall~~
16 ~~provide the person with the opportunity to participate in the court diversion~~
17 ~~program unless the prosecutor states on the record at arraignment or a~~
18 ~~subsequent hearing why a referral to the program would not serve the ends of~~
19 ~~justice. If the prosecuting attorney prosecutor refers a case to diversion, the~~
20 ~~prosecuting attorney prosecutor may release information to the victim upon a~~
21 ~~showing of legitimate need and subject to an appropriate protective agreement~~

1 defining the purpose for which the information is being released and in all
2 other respects ~~maintaining the confidentiality of the information; otherwise,~~
3 files held by the court, the prosecuting attorney prosecutor, and the law
4 enforcement agency related to the charges shall be confidential and shall
5 remain confidential unless:

6 (A) ~~the diversion program declines to accept the case;~~

7 (B) ~~the person declines to participate in diversion;~~

8 (C) ~~the diversion program accepts the case, but the person does not~~
9 ~~successfully complete diversion; or~~

10 (D) ~~the prosecuting attorney prosecutor recalls the referral to~~
11 ~~diversion.~~ Adult court diversion programs shall be set up to respect the rights
12 of participants.

13 (2) ~~Alleged offenders shall be informed of their right to the advice and~~
14 ~~assistance of private counsel or the public defender at all stages of the~~
15 ~~diversion process, including the initial decision to participate, and the decision~~
16 ~~to accept the adult diversion contract, so that the candidate may give informed~~
17 ~~consent.~~ Diversion participants shall be informed of their right to the advice,
18 assistance, and access to private counsel or the public defender at all stages of
19 the diversion process, including the initial decision to participate and the
20 decision to accept the diversion contract, so that the candidate may give
21 informed consent. Notwithstanding the financial need determination pursuant

1 to 13 V.S.A. § 5236, a public defender shall be assigned at public expense at
2 the request of the diversion participant.

3 ~~(3) The participant shall be informed that his or her selection of the adult~~
4 ~~diversion contract is voluntary.~~ The participant shall be informed that
5 participation in the diversion program is voluntary.

6 ~~(4) Each State’s Attorney, in cooperation with the Office of the Attorney~~
7 ~~General and the adult court diversion program, shall develop clear criteria for~~
8 ~~deciding what types of offenses and offenders will be eligible for diversion;~~
9 ~~however, the State’s Attorney shall retain final discretion over the referral of~~
10 ~~each case for diversion.~~

11 ~~(5) All information gathered in the course of the adult diversion process~~
12 ~~shall be held strictly confidential and shall not be released without the~~
13 ~~participant’s prior consent (except that research and reports that do not~~
14 ~~establish the identity of individual participants are allowed).~~

15 ~~(A)~~ The pre-charge and post-charge diversion programs may charge
16 fees to its participants, which shall be paid to the local adult court diversion
17 program. If a fee is charged, it shall be determined by program officers or
18 employees based upon the financial capabilities of the participant. The fee
19 shall not exceed \$300.00. Any fee charged shall be a debt due from the
20 participant, and payment of such shall be required for successful completion of
21 the program.

1 (C) Notwithstanding 32 V.S.A. § 502(a), fees collected pursuant to
2 this subdivision (5) shall be retained and used solely for the purpose of the
3 adult court diversion program.

4 ~~(6) Information related to the present offense that is divulged during the~~
5 ~~adult diversion program shall not be used against the person in the person's~~
6 ~~criminal or juvenile case for any purpose, including impeachment or cross-~~
7 ~~examination. However, the fact of participation and success, or reasons for~~
8 ~~failure, may become part of the prosecutor's records. Any alleged victims~~
9 ~~shall be notified once a person chooses to participate in the pre-charge~~
10 ~~diversion program by the pre-charge diversion program.~~

11 ~~(7)(A) Irrespective of whether a record was expunged, the adult court~~
12 ~~diversion program shall maintain sufficient records so that the reasons for~~
13 ~~success or failure of the program in particular cases and overall can be~~
14 ~~investigated by program staff. These records shall include a centralized~~
15 ~~statewide filing system that will include the following information about~~
16 ~~individuals who have successfully completed an adult court diversion program:~~

17 ~~(i) name and date of birth;~~

18 ~~(ii) offense charged and date of offense;~~

19 ~~(iii) place of residence;~~

20 ~~(iv) county where diversion process took place; and~~

21 ~~(v) date of completion of diversion process.~~

1 ~~(B) These records shall not be available to anyone other than the~~
2 ~~participant and his or her attorney, State's Attorneys, the Attorney General,~~
3 ~~and directors of adult court diversion programs.~~

4 ~~(C) Notwithstanding subdivision (B) of this subdivision (e)(7), the~~
5 ~~Attorney General shall, upon request, provide to a participant or his or her~~
6 ~~attorney sufficient documentation to show that the participant successfully~~
7 ~~completed diversion.~~

8 ~~(8) Adult court diversion programs shall be set up to respect the rights of~~
9 ~~participants.~~

10 ~~(9) Each participant shall pay a fee to the local adult court diversion~~
11 ~~program. The amount of the fee shall be determined by program officers or~~
12 ~~employees based upon the financial capabilities of the participant. The fee~~
13 ~~shall not exceed \$300.00. The fee shall be a debt due from the participant, and~~
14 ~~payment of such shall be required for successful completion of the program.~~
15 ~~Notwithstanding 32 V.S.A. § 502(a), fees collected under this subdivision shall~~
16 ~~be retained and used solely for the purpose of the court diversion program.~~

17 ~~(f) The Attorney General is authorized to accept grants and gifts for the~~
18 ~~purposes of this section, such acceptance being pursuant to 32 V.S.A. § 5.~~

19 Records and expungement.

20 (1) Not later than 10 days after the successful completion of the pre-
21 charge diversion program, the juvenile diversion program shall notify the

1 victim, law enforcement agency, and the State’s Attorney office of the
2 participant’s successful completion. Payment of restitution is required for
3 successful completion. Two years after the diversion program notifies the law
4 enforcement agency and the State’s Attorney office of successful completion,
5 all records held by the diversion program, the law enforcement agency, and the
6 State’s Attorney office shall be expunged.

7 (2) Within 30 days after the two-year anniversary of a successful
8 completion of adult post-charge diversion, the court shall provide notice to all
9 parties of record of the court’s intention to order the expungement of all court
10 files and records, law enforcement records, fingerprints, and photographs other
11 than entries in the adult court diversion program’s centralized filing system
12 applicable to the proceeding. However, the court shall not order expungement
13 if the participant does not satisfy each of subdivisions (A)–(D) of this
14 subdivision. The court shall give the State’s Attorney an opportunity for a
15 hearing to contest the expungement of the records. The court shall expunge
16 the records if it finds:

17 (A) two years have elapsed since the successful completion of the
18 adult post-charge diversion program by the participant;

19 (B) the participant has not been convicted of a subsequent felony or
20 misdemeanor during the two-year period, and no proceedings are pending
21 seeking such conviction;

1 (C) rehabilitation of the participant has been attained to the
2 satisfaction of the court; and

3 (D) the participant does not owe restitution related to the case.

4 (3) The court may expunge any records that were sealed pursuant to this
5 subsection prior to July 1, 2018 unless the State’s Attorney’s office that
6 prosecuted the case objects. Thirty days prior to expunging a record pursuant
7 to this subdivision, the court shall provide written notice of its intent to
8 expunge the record to the State’s Attorney’s office that prosecuted the case.

9 (4)(A) The court shall keep a special index of post-charge diversion
10 cases that have been expunged pursuant to this section together with the
11 expungement order. The index shall list only the name of the person convicted
12 of the offense, the person’s date of birth, the docket number, and the criminal
13 offense that was the subject of the expungement.

14 (B) The special index and related documents specified in subdivision
15 (A) of this subdivision (4) shall be confidential and shall be physically and
16 electronically segregated in a manner that ensures confidentiality and that
17 limits access to authorized persons.

18 (C) Inspection of the expungement order and the certificate may be
19 permitted only upon petition by the person who is the subject of the case. The
20 Chief Superior Judge may permit special access to the index and the

1 documents for research purposes pursuant to the rules for public access to
2 court records.

3 (D) The Court Administrator shall establish policies for
4 implementing this subsection (f).

5 (5) Except as otherwise provided in this section, upon the entry of an
6 order expunging files and records under this section, the proceedings in the
7 matter shall be considered never to have occurred; all index references thereto
8 shall be deleted; and the participant, the court, law enforcement officers and
9 departments, prosecutors, the referring entity, and the diversion program shall
10 reply to any request for information that no record exists with respect to such
11 participant inquiry in any matter. Copies of the order shall be sent to each
12 agency, entity, or official named therein.

13 (6) The process of automatically expunging records as provided in this
14 section shall only apply to those persons who completed diversion on or after
15 July 1, 2002. Any person who completed diversion prior to July 1, 2002 must
16 apply to the court to have the person's records expunged. Expungement shall
17 occur if the requirements of this subsection (f) are met.

18 (g) Public records act exemption.

19 ~~(1) Within 30 days after the two-year anniversary of a successful~~
20 ~~completion of adult diversion, the court shall provide notice to all parties of~~
21 ~~record of the court's intention to order the expungement of all court files and~~

1 ~~records, law enforcement records other than entries in the adult court diversion~~
2 ~~program's centralized filing system, fingerprints, and photographs applicable~~
3 ~~to the proceeding. However, the court shall not order expungement if the~~
4 ~~participant does not satisfy each of subdivisions (A)–(D) of this subdivision.~~
5 ~~The court shall give the State's Attorney an opportunity for a hearing to contest~~
6 ~~the expungement of the records. The court shall expunge the records if it~~
7 ~~finds:~~

8 ~~(A) two years have elapsed since the successful completion of the~~
9 ~~adult diversion program by the participant;~~

10 ~~(B) the participant has not been convicted of a subsequent felony or~~
11 ~~misdemeanor during the two-year period, and no proceedings are pending~~
12 ~~seeking such conviction;~~

13 ~~(C) rehabilitation of the participant has been attained to the~~
14 ~~satisfaction of the court; and~~

15 ~~(D) the participant does not owe restitution related to the case. Any~~
16 ~~records or information produced or acquired pursuant to this section shall be~~
17 ~~exempt from public inspection or copying under Vermont's Public Records~~
18 ~~Act and shall be kept confidential.~~

19 (2) ~~The court may expunge any records that were sealed pursuant to this~~
20 ~~subsection prior to July 1, 2018 unless the State's Attorney's office that~~
21 ~~prosecuted the case objects. Thirty days prior to expunging a record pursuant~~

1 ~~to this subdivision, the court shall provide written notice of its intent to~~
2 ~~expunge the record to the State's Attorney's office that prosecuted the case.~~
3 Notwithstanding subdivision (1) of this subsection, a law enforcement agency,
4 State's Attorney office, court, or community-based restorative justice provider
5 may disclose information to colleges, universities, public agencies of the State,
6 and nonprofit research organizations that a community-based restorative
7 justice provider has agreements with for use in connection with research
8 projects of a public service nature, but no person associated with those
9 institutions or agencies may disclose that information in any manner that
10 would reveal the identity of an individual who provided the information to the
11 community-based restorative justice provider.

12 ~~(3)(A) The court shall keep a special index of cases that have been~~
13 ~~expunged pursuant to this section together with the expungement order. The~~
14 ~~index shall list only the name of the person convicted of the offense, his or her~~
15 ~~date of birth, the docket number, and the criminal offense that was the subject~~
16 ~~of the expungement.~~

17 ~~(B) The special index and related documents specified in subdivision~~
18 ~~(A) of this subdivision (3) shall be confidential and shall be physically and~~
19 ~~electronically segregated in a manner that ensures confidentiality and that~~
20 ~~limits access to authorized persons.~~

1 ~~(C) Inspection of the expungement order and the certificate may be~~
2 ~~permitted only upon petition by the person who is the subject of the case. The~~
3 ~~Chief Superior Judge may permit special access to the index and the~~
4 ~~documents for research purposes pursuant to the rules for public access to~~
5 ~~court records.~~

6 ~~(D) The Court Administrator shall establish policies for~~
7 ~~implementing this subsection (g).~~

8 ~~(h) Except as otherwise provided in this section, upon the entry of an order~~
9 ~~expunging files and records under this section, the proceedings in the matter~~
10 ~~shall be considered never to have occurred, all index references thereto shall be~~
11 ~~deleted, and the participant, the court, and law enforcement officers and~~
12 ~~departments shall reply to any request for information that no record exists~~
13 ~~with respect to such participant inquiry in any matter. Copies of the order shall~~
14 ~~be sent to each agency or official named therein.~~

15 ~~(i) [Repealed.]~~

16 ~~(j) The process of automatically expunging records as provided in this~~
17 ~~section shall only apply to those persons who completed diversion on or after~~
18 ~~July 1, 2002. Any person who completed diversion prior to July 1, 2002 must~~
19 ~~apply to the court to have his or her records expunged. Expungement shall~~
20 ~~occur if the requirements of subsection (g) of this section are met.~~

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* * *

(b) Issuance of notice of violation. A law enforcement officer shall issue a person who violates this section a notice of violation, in a form approved by the Court Administrator. The notice of violation shall require the person to provide ~~his or her~~ the person's name and address and shall explain procedures under this section, including that:

(1) the person shall contact the Diversion Program in the county where the offense occurred within 15 days;

(2) failure to contact the Diversion Program within 15 days will result in the case being referred to the Judicial Bureau, where the person, if found liable for the violation, will be subject to a civil penalty and a suspension of the person's operator's license and may face substantially increased insurance rates;

(3) no money should be submitted to pay any penalty until after adjudication; and

(4) the person shall notify the Diversion Program if the person's address changes.

* * *

(d) Registration in Youth Substance Abuse Safety Program. Within 15 days after receiving a notice of violation, the person shall contact the Diversion Program in the county where the offense occurred and register for

1 the Youth Substance Abuse Safety Program. If the person fails to do so, the
2 Diversion Program shall file the summons and complaint with the Judicial
3 Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program
4 shall provide a copy of the summons and complaint to the law enforcement
5 officer who issued the notice of violation and shall provide two copies to the
6 person charged with the violation.

7 (e) Notice to report to Diversion. Upon receipt from a law enforcement
8 officer of a summons and complaint completed under this section, the
9 Diversion Program shall send the person a notice to report to the Diversion
10 Program. The notice to report shall provide that:

11 (1) The person is required to complete all conditions related to the
12 offense imposed by the Diversion Program, including substance abuse
13 screening and, if deemed appropriate following the screening, substance abuse
14 assessment or substance abuse counseling, or both.

15 (2) If the person does not satisfactorily complete the substance abuse
16 screening, any required substance abuse assessment or substance abuse
17 counseling, or any other condition related to the offense imposed by the
18 Diversion Program, the case will be referred to the Judicial Bureau, where the
19 person, if found liable for the violation, shall be assessed a civil penalty, the
20 person's driver's license will be suspended, and the person's automobile
21 insurance rates may increase substantially.

1 (3) If the person satisfactorily completes the substance abuse screening,
2 any required substance abuse assessment or substance abuse counseling, and
3 any other condition related to the offense imposed by the Diversion Program,
4 no penalty shall be imposed and the person’s operator’s license shall not be
5 suspended.

6 (f) Diversion Program requirements.

7 (1) Upon being contacted by a person who has been issued a notice of
8 violation, the Diversion Program shall register the person in the Youth
9 Substance Abuse Safety Program. Pursuant to the Youth Substance Abuse
10 Safety Program, the Diversion Program shall impose conditions on the person.
11 The conditions imposed shall include only conditions related to the offense and
12 in every case shall include a condition requiring satisfactory completion of
13 substance abuse screening using an evidence-based tool and, if deemed
14 appropriate following the screening, substance abuse assessment and substance
15 abuse education or substance abuse counseling, or both. If the screener
16 recommends substance abuse counseling, the person shall choose a State-
17 certified or State-licensed substance abuse counselor or substance abuse
18 treatment provider to provide the services.

19 (2) Substance abuse screening required under this subsection shall be
20 completed within 60 days after the Diversion Program receives a summons and

1 complaint. The person shall complete all conditions at ~~his or her~~ the person's
2 own expense.

3 (3) When a person has satisfactorily completed substance abuse
4 screening, any required substance abuse education or substance abuse
5 counseling, and any other condition related to the offense that the Diversion
6 Program has imposed, the Diversion Program shall:

7 (A) void the summons and complaint with no penalty due; and

8 (B) send copies of the voided summons and complaint to the Judicial
9 Bureau and to the law enforcement officer who completed them. Before
10 sending copies of the voided summons and complaint to the Judicial Bureau
11 under this subdivision, the Diversion Program shall redact all language
12 containing the person's name, address, Social Security number, and any other
13 information that identifies the person.

14 (4) If a person does not satisfactorily complete substance abuse
15 screening, any required substance abuse education or substance abuse
16 counseling, or any other condition related to the offense imposed by the
17 Diversion Program or if the person fails to pay the Diversion Program any
18 required program fees, the Diversion Program shall file the summons and
19 complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29.
20 The Diversion Program shall provide a copy of the summons and complaint to

1 the law enforcement officer who issued the notice of violation and shall
2 provide two copies to the person charged with the violation.

3 (5) A person aggrieved by a decision of the Diversion Program or
4 alcohol counselor may seek review of that decision pursuant to Rule 75 of the
5 Vermont Rules of Civil Procedure.

6 (6) Notwithstanding 3 V.S.A. §§ 163(a)(2)(C) and 164(a)(2)(C), the
7 adult or juvenile diversion programs shall accept cases from the Youth
8 Substance Awareness Safety Program pursuant to this section. The
9 confidentiality provisions of 3 V.S.A. § 163 or 164 shall become effective
10 when a notice of violation is issued pursuant to subsection (b) of this section
11 and shall remain in effect unless the person fails to register with or complete
12 the Youth Substance Awareness Safety Program.

13 * * *

14 Sec. 3. 18 V.S.A. § 4230b is amended to read:

15 § 4230b. CANNABIS POSSESSION BY A PERSON 16 YEARS OF AGE
16 OR OLDER AND UNDER 21 YEARS OF AGE; CIVIL
17 VIOLATION

18 * * *

19 (b) Issuance of notice of violation. A law enforcement officer shall issue a
20 person who violates this section with a notice of violation, in a form approved
21 by the Court Administrator. The notice of violation shall require the person to

1 provide ~~his or her~~ the person's name and address and shall explain procedures
2 under this section, including that:

3 (1) the person shall contact the Diversion Program in the county where
4 the offense occurred within 15 days;

5 (2) failure to contact the Diversion Program within 15 days will result in
6 the case being referred to the Judicial Bureau, where the person, if found liable
7 for the violation, will be subject to a civil penalty and a suspension of the
8 person's operator's license and may face substantially increased insurance
9 rates;

10 (3) no money should be submitted to pay any penalty until after
11 adjudication; and

12 (4) the person shall notify the Diversion Program if the person's address
13 changes.

14 * * *

15 (d) Registration in Youth Substance Awareness Safety Program. Within
16 15 days after receiving a notice of violation, the person shall contact the
17 Diversion Program in the county where the offense occurred and register for
18 the Youth Substance Awareness Safety Program. If the person fails to do so,
19 the Diversion Program shall file the summons and complaint with the Judicial
20 Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program
21 shall provide a copy of the summons and complaint to the law enforcement

1 officer who issued the notice of violation and shall provide two copies to the
2 person charged with the violation.

3 (e) Notice to report to Diversion. Upon receipt from a law enforcement
4 officer of a summons and complaint completed under this section, the
5 Diversion Program shall send the person a notice to report to the Diversion
6 Program. The notice to report shall provide that:

7 (1) The person is required to complete all conditions related to the
8 offense imposed by the Diversion Program, including substance abuse
9 screening and, if deemed appropriate following the screening, substance abuse
10 assessment or substance abuse counseling, or both.

11 (2) If the person does not satisfactorily complete the substance abuse
12 screening, any required substance abuse assessment or substance abuse
13 counseling, or any other condition related to the offense imposed by the
14 Diversion Program, the case will be referred to the Judicial Bureau, where the
15 person, if found liable for the violation, shall be assessed a civil penalty, the
16 person's driver's license will be suspended, and the person's automobile
17 insurance rates may increase substantially.

18 (3) If the person satisfactorily completes the substance abuse screening,
19 any required substance abuse assessment or substance abuse counseling, and
20 any other condition related to the offense imposed by the Diversion Program,

1 no penalty shall be imposed and the person's operator's license shall not be
2 suspended.

3 (f) Diversion Program requirements.

4 (1) Upon being contacted by a person who has been issued a notice of
5 violation, the Diversion Program shall register the person in the Youth
6 Substance Awareness Safety Program. Pursuant to the Youth Substance
7 Awareness Safety Program, the Diversion Program shall impose conditions on
8 the person. The conditions imposed shall include only conditions related to the
9 offense and in every case shall include a condition requiring satisfactory
10 completion of substance abuse screening using an evidence-based tool and, if
11 deemed appropriate following the screening, substance abuse assessment and
12 substance abuse education or substance abuse counseling, or both. If the
13 screener recommends substance abuse counseling, the person shall choose a
14 State-certified or State-licensed substance abuse counselor or substance abuse
15 treatment provider to provide the services.

16 (2) Substance abuse screening required under this subsection shall be
17 completed within 60 days after the Diversion Program receives a summons and
18 complaint. The person shall complete all conditions at ~~his or her~~ the person's
19 own expense.

20 (3) When a person has satisfactorily completed substance abuse
21 screening, any required substance abuse education or substance abuse

1 counseling, and any other condition related to the offense that the Diversion
2 Program has imposed, the Diversion Program shall:

3 (A) Void the summons and complaint with no penalty due.

4 (B) Send copies of the voided summons and complaint to the Judicial
5 Bureau and to the law enforcement officer who completed them. Before
6 sending copies of the voided summons and complaint to the Judicial Bureau
7 under this subdivision, the Diversion Program shall redact all language
8 containing the person's name, address, Social Security number, and any other
9 information that identifies the person.

10 (4) If a person does not satisfactorily complete substance abuse
11 screening, any required substance abuse education or substance abuse
12 counseling, or any other condition related to the offense imposed by the
13 Diversion Program or if the person fails to pay the Diversion Program any
14 required Program fees, the Diversion Program shall file the summons and
15 complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29.
16 The Diversion Program shall provide a copy of the summons and complaint to
17 the law enforcement officer who issued the notice of violation and shall
18 provide two copies to the person charged with the violation.

19 (5) A person aggrieved by a decision of the Diversion Program or
20 alcohol counselor may seek review of that decision pursuant to Rule 75 of the
21 Vermont Rules of Civil Procedure.

1 Sec. 5. 28 V.S.A. chapter 12 is amended to read:

2 CHAPTER 12. ~~COMMUNITY REPARATIVE BOARDS~~ POST-
3 ADJUDICATION RESTORATIVE JUSTICE APPROACHES

4 § 910. ~~RESTORATIVE JUSTICE PROGRAM~~

5 This chapter establishes a program of restorative justice for use with
6 offenders required to participate in such a program as a condition of a sentence
7 of probation or as ordered for civil contempt of a child support order under 15
8 V.S.A. § 603. The Program shall be carried out by community reparative
9 boards under the supervision of the Commissioner, as provided by this chapter.

10 [Repealed.]

11 § 910a. ~~REPARATIVE BOARDS; FUNCTIONS~~

12 (a) ~~The Commissioner shall establish reparative boards and appoint to them~~
13 ~~members of the community with the advice and recommendation of nonprofit~~
14 ~~organizations or municipal entities in the localities concerned. The~~
15 ~~Commissioner shall appoint each board member to a term of one to three~~
16 ~~years, may reappoint a member to consecutive terms, and may remove a~~
17 ~~member for good cause.~~

18 (b) ~~Each board shall elect its chair from its membership. A chair may serve~~
19 ~~for no more than one year uninterrupted. All meetings of a board shall comply~~
20 ~~with open meeting law requirements of 1 V.S.A. chapter 5, subchapter 2,~~

1 ~~consistent with probationer confidentiality requirements of this title, and as~~
2 ~~may be imposed by the court.~~

3 ~~(e) Each board shall adopt bylaws approved by the Commissioner. Such~~
4 ~~bylaws may authorize each board to establish panels to conduct reparative~~
5 ~~board activities.~~

6 ~~(d) Each board shall conduct its meetings in a manner that promotes safe~~
7 ~~interactions among an offender, victim or victims, and community members,~~
8 ~~and shall:~~

9 ~~(1) In collaboration with the Department, municipalities, the courts, and~~
10 ~~other entities of the criminal justice system, implement the Restorative Justice~~
11 ~~Program of seeking to obtain offender accountability, repair harm and~~
12 ~~compensate a victim or victims and the community, increase an offender's~~
13 ~~awareness of the effect of his or her behavior on a victim or victims and the~~
14 ~~community, and identify ways to help an offender comply with the law.~~

15 ~~(2) Educate the public about, and promote community support for, the~~
16 ~~Restorative Justice Program.~~

17 ~~(e) Each board shall have access to the central file of any offender required~~
18 ~~to participate with that board in the Restorative Justice Program.~~

19 ~~(f) When engaged in board activities, a board member shall be considered a~~
20 ~~volunteer with regard to any grievance or other matter governed by 3 V.S.A.~~
21 ~~§ 1101. [Repealed.]~~

1 § 911. ~~GRANT PROGRAM FOR COMMUNITY-BASED HALF-WAY~~
2 ~~HOUSES AND PROGRAMS~~

3 ~~(a) A grant program for community-based alternatives to incarceration is~~
4 ~~established to assist:~~

5 ~~(1) private nonprofit community organizations establish half-way houses~~
6 ~~and programs to help adult ex-offenders and offenders on probation, parole, or~~
7 ~~furlough reintegrate into the community; and~~

8 ~~(2) existing half-way houses and programs for adult ex-offenders and~~
9 ~~offenders on probation, parole, or furlough.~~

10 ~~(b) The Alternatives to Incarceration Board established under section 912~~
11 ~~of this title shall establish procedures and guidelines by which it shall solicit~~
12 ~~and review proposals for grants, award grants, and monitor and evaluate the~~
13 ~~progress of projects funded under this chapter.~~

14 ~~(c) Private, nonprofit organizations which create residential half-way~~
15 ~~houses for former prisoners or offenders on community release status shall~~
16 ~~receive priority funding under this chapter.~~

17 ~~(d) [Repealed.] [Repealed.]~~

18 § 913. POST-ADJUDICATION REPARATIVE PROGRAM

19 (a) Purpose. This chapter leverages programs and services employing
20 restorative justice approaches as a reparative condition of individuals who are
21 referred to a community reparative board pursuant to 13 V.S.A. § 7030(a)(2) or

1 sentenced to probation pursuant to 13 V.S.A. § 7030(a)(3). The programs and
2 services used for such individuals shall be designed to provide a restorative
3 option for those who have been convicted of violating a criminal statute, as
4 well as for victims or those acting on a victim’s behalf who have been harmed
5 by the responsible party.

6 (b) Administration.

7 (1) The Court Administrator of the Judiciary shall develop an adult post-
8 adjudication reparative program in all counties throughout the State that is
9 administered by the Commissioner of Corrections.

10 (2) The post-adjudication reparative program shall be carried out by
11 community-based restorative justice provider grantees under the administration
12 of the Commissioner, as provided by this chapter.

13 (3) In consultation with the Commissioner, the Court Administrator
14 shall adopt a policies and procedures manual to be used by judges, the
15 Department of Corrections, and community-based restorative justice providers
16 to promote a uniform system across the State in compliance with this chapter.

17
18 (4) Nothing in this chapter shall be construed to limit the funding or
19 referrals to community-based restorative justice providers for programs or
20 services not contemplated by this chapter.

21 (c) Operational support.

1 (1) The Commissioner shall support the operation of the post-
2 adjudication reparative program through grants of financial assistance to, or
3 contracts for services with, community-based restorative justice providers.
4 The Commissioner may require local financial contributions as a condition of
5 receipt of program funding.

6 (2) All programs or services that receive financial assistance from the
7 Department for the post-adjudication reparative program shall adhere to the
8 requirements pursuant to section 914 of this title.

9 (3) The Commissioner is authorized to accept grants and gifts for the
10 purposes of this chapter, such acceptance being pursuant to 32 V.S.A. § 5.

11 (d) Report. The Commissioner shall develop post-adjudication reparative
12 program outcomes following the designated State of Vermont performance
13 accountability framework and, in consultation with the Judiciary, report
14 annually on or before December 1 to the General Assembly on services
15 provided and outcome indicators. As components of the report required by this
16 subsection, the Commissioner shall include data on the number of program
17 referrals in each county, demographic information, convictions and crime
18 types, successful completion rates, evidence of desistance, and possible causes
19 of any geographical disparities.

1 § 914. MEMORANDUM OF UNDERSTANDING; GUIDANCE AND
2 PROTOCOLS

3 (a) Memorandum of understanding required. The post-adjudication
4 reparative program shall receive individuals who are referred to a community
5 reparative board pursuant to 13 V.S.A. § 7030(a)(2) or sentenced to probation
6 pursuant to 13 V.S.A. § 7030(a)(3) as determined by a current and executed
7 memorandum of understanding between the Department of Corrections and the
8 Vermont Judiciary. The memorandum of understanding shall include the
9 guidance and protocols set forth in subsection (b) of this section. The
10 Department and the Judiciary shall publicly post the current and executed
11 memorandum of understanding.

12 (b) Guidance and protocols. On or before July 1, 2025, the Department of
13 Corrections, in consultation with the Community Justice Unit of the Office of
14 the Attorney General, the Department for Children and Families, the
15 Department of State's Attorneys and Sheriffs, the Office of the Defender
16 General, the Center for Crime Victim Services, and the Vermont Judiciary
17 shall create guidance for memoranda of understanding. Memoranda of
18 understanding shall include protocols that:

19 (1) outline the roles and participation of the courts, the Department, and
20 community-based restorative justice providers in the post-adjudication
21 reparative program.

1 (2) create an evidence-based screening process by which a court or the
2 Department uses to assess referral eligibility for responsible parties who are
3 referred to a community reparative board pursuant to 13 V.S.A. § 7030(a)(2) or
4 sentenced to probation pursuant to 13 V.S.A. § 7030(a)(3);

5 (3) establish the criteria and procedure by which a community-based
6 restorative justice provider may determine that an individual is ineligible for
7 the post-adjudication reparative program;

8 (4) set timeframes to complete the restorative process for responsible
9 parties;

10 (5) contemplate the procedure for cases in which the individual fails to
11 complete the restorative process;

12 (6) require initial and annual training for judges, Department staff, and
13 the staff and volunteers of community-based restorative justice providers on
14 the dynamics and principles of restorative justice inherent to the post-
15 adjudication reparative program;

16 (7) establish written confidentiality standards that ensure constitutional
17 protections and the privacy of responsible parties and victims participating in
18 the restorative process;

19 (8) create universal data collection standards developed by the
20 Department of Corrections; and

1 (9) implement written annual evaluation processes and quality
2 improvement plans that engage involved parties on the individual, community,
3 and State levels.

4 (c) Public records act exception; confidentiality.

5 (1) Any records or information produced or acquired in the course of the
6 post-adjudication reparative program shall be exempt from public inspection or
7 copying under Vermont’s Public Records Act and shall be kept confidential.
8 However, any records or information may be released upon the participant’s
9 prior consent.

10 (2) Notwithstanding subdivision (1) of this subsection, a law
11 enforcement agency, State’s Attorney office, court, or community-based
12 restorative justice provider may disclose information to colleges, universities,
13 public agencies of the State, and nonprofit research organizations that a
14 community-based restorative justice provider has agreements with for use in
15 connection with research projects of a public service nature, but no person
16 associated with those institutions or agencies may disclose information in any
17 manner that would reveal the identity of an individual who provided the
18 information to the community-based restorative justice provider.

19 (3) Notwithstanding subdivision (1), if a case is referred to the program,
20 the court may release information to the victim upon a showing of legitimate
21 need and subject to an appropriate protective agreement defining the purpose

1 for which the information is being released and in all other respects
2 maintaining the confidentiality of the information; otherwise, files held by a
3 court, a prosecutor, a law enforcement agency, and a community-based
4 restorative justice provider related to the matter shall be confidential and shall
5 remain confidential unless:

6 (A) the reparative program declines to accept the referral;

7 (B) the reparative program accepts the referral, but the person does
8 not successfully complete the program; or

9 (C) the court recalls the referral from the reparative program.

10 Sec. 6. DEPARTMENT OF CORRECTIONS; POST-ADJUDICATION

11 REPARATIVE PROGRAM CREATION

12 (a) Intent. It is the intent of the General Assembly that Department of
13 Corrections and the Judiciary create a post-adjudication reparative program
14 that promotes desistence and decreases recidivism of responsible parties and
15 seeks restorative justice for both responsible parties and victims alike. The
16 program shall be memorialized in a memorandum of understanding.

17 (b) Memorandum of understanding development. On or before January 1,
18 2025, the Department of Corrections and the Judiciary, in consultation with the
19 Community Justice Unit of the Office of the Attorney General, the Department
20 of State's Attorneys and Sheriffs, the Office of the Defender General, and the
21 Center for Crime Victim Services, shall establish a cohesive post-adjudication

1 reparative program memorialized in a memorandum of understanding for the
2 Department of Corrections and the Judiciary to adopt and follow.

3 (c) Policy contents. The post-adjudication reparative program policy
4 created pursuant to this section shall detail the guidelines and protocols listed
5 in 28 V.S.A. § 914(b).

6 (d) Legislative review. On or before January 1, 2025, the Department of
7 Corrections and the Judiciary shall submit the memorandum of understanding
8 created pursuant to this section to the Senate Committee on Judiciary and the
9 House Committees on Corrections and Institutions and on Judiciary for review.

10 Sec. 7. DEPARTMENT OF STATE’S ATTORNEYS AND SHERIFFS;

11 POSITION; APPROPRIATION

12 (a) On July 1, 2024, a new, permanent, exempt Director of Policy position
13 is created in the Department of State’s Attorneys and Sheriffs. In addition to
14 any other duties deemed appropriate by the Department, the Director of Policy
15 shall supervise the development, oversight, and compliance work related to the
16 Council’s internal, external, and State-mandated policies.

17 (b) The position of Director of Policy established in subsection (a) of this
18 section shall be subject to a General Fund appropriation in FY 2024.

19 Sec. 8. COMMUNITY JUSTICE UNIT; DIVERSION PROGRAM

20 ADMINISTRATION PLAN; REPORT

1 In counties where there is more than one pre-charge and post-charge
2 diversion provider, the Community Justice Unit of the Office of the Attorney
3 General shall collaborate with each county’s juvenile and adult pre-charge and
4 post-charge providers and each county’s State’s Attorney or designee to
5 develop a plan to streamline the administration and provision of juvenile and
6 adult pre-charge and post-charge diversion programs on or before July 1, 2026.
7 The Community Justice Unit shall report on such plan in the 2026 annual
8 report required pursuant to 3 V.S.A. §§ 163(b)(2) and 164(b)(2).

9 Sec. 10. REDESIGNATION

10 24 V.S.A. §§ 1961–1969 are redesignated at 28 V.S.A. §§ 915–923.

11 Sec. 9. REPEALS

12 (a) 3 V.S.A. § 163(b)(1)(A) is repealed on July 1, 2029.

13 (b) 3 V.S.A. § 164(b)(1)(A) is repealed on July 1, 2029.

14 Sec. 11. EFFECTIVE DATES

15 This act shall take effect on July 1, 2024 except that Sec. 1 (juvenile and
16 adult pre-charge and post-charge diversion) and Sec. 5 (post-adjudication
17 reparative program) shall take effect on July 1, 2025.

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE