

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. DEFINITIONS

14 As used in this subchapter:

15 (1) “Child” has the same meaning as in 33 V.S.A. § 5102(2).

16 (2) “Pre-charge diversion” means a referral of an individual to a
17 community-based restorative justice provider by a law enforcement officer or
18 prosecutor after the referring officer or prosecutor has determined that
19 probable cause exists that the individual has committed a criminal offense and
20 before the individual is criminally charged with the offense or before a petition
21 is filed in family court for the offense.

1 (3) “Youth” has the same meaning as in 33 V.S.A. § 5102(29).

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

3 (a) Purpose.

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

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

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

19 (B) Post-charge by prosecutors for children or youth charged with a
20 first or a second misdemeanor or a first nonviolent felony, or other offenses as
21 the prosecutor deems appropriate, pursuant to subdivision (c)(3) of this section.

1 (b) ~~The diversion program administered by the Attorney General shall~~
2 ~~support the operation of diversion programs in local communities through~~
3 ~~grants of financial assistance to, or by contracting for services with,~~
4 ~~municipalities, private groups, or other local organizations. The Attorney~~
5 ~~General may require local financial contributions as a condition of receipt of~~
6 ~~project funding.~~ Administration; report.

7 (1) The Attorney General shall support the operation of diversion
8 programs in each of the State’s counties through grants of financial assistance
9 to, or contracts for services with, a single municipality or organization to
10 provide community-based restorative justice programs and services in each
11 county. Upon approval of the Attorney General, the single municipality or
12 organization receiving a grant pursuant to this section may issue subgrants to
13 diversion providers or execute subcontracts for diversion services.

14 (2) The Attorney General may require local financial contributions as a
15 condition of receipt of program funding.

16 (3) In consultation with community-based restorative justice providers,
17 the Office of the Attorney General shall develop program outcomes following
18 the designated State of Vermont performance accountability framework and, in
19 consultation with the Department of State’s Attorneys and Sheriffs, the Office
20 of the Defender General, the Center for Crime Victim Services, the Judiciary,
21 and the Division of Racial Justice Statistics of the Office of Racial Equity,

1 report annually on or before December 1 to the General Assembly on services
2 provided and outcome indicators. As components of the report required by this
3 subsection, the Attorney General shall include data on the number of pre-
4 charge and post-charge diversion program referrals in each county; race,
5 gender, age, and other demographic variables, whenever possible; offenses
6 charged and crime types; successful completion rates; and possible causes of
7 any 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 community-based restorative justice providers,
11 the Center for Crime Victims Services, the Department of State’s Attorneys
12 and Sheriffs’ Victim Advocates, the Division for Racial Justice Statistics of the
13 Office of Racial Equity, and the State Archivist, the Attorney General shall
14 adopt a policies and procedures manual for community-based restorative
15 justice providers to promote a uniform system across the State in compliance
16 with this section. The manual shall include policies and procedures related to:

17 (A) informing victims of their rights and role in pre-charge and post-
18 charge diversion, including that such information is available in writing upon
19 request;

20 (B) the timely notification to victims of a referral to pre- and post-
21 charge diversion;

1 (C) an invitation to victims to engage in the restorative process;

2 (D) how to share information with a victim concerning a restorative
3 agreement’s conditions related to the victim and any progress made on such
4 conditions;

5 (E) best practices for collecting data from all parties that engage with
6 the pre-charge and post-charge diversion programs; and

7 (F) confidentiality expectations for all parties who engage in the
8 restorative process.

9 ~~(c) All diversion projects receiving financial assistance from the Attorney~~
10 ~~General shall adhere to the following provisions:~~ Juvenile diversion program
11 policy and referral requirements.

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

15 ~~(2) Alleged offenders shall be informed of their right to the advice and~~
16 ~~assistance of private counsel or the public defender at all stages of the~~
17 ~~diversion process, including the initial decision to participate, and the decision~~
18 ~~to accept the diversion contract, so that the candidate may give his or her~~
19 ~~informed consent.~~

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

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

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

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

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

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

18 ~~(9) Each participant shall pay a fee to the local juvenile court diversion~~
19 ~~project. The amount of the fee shall be determined by project officers based~~
20 ~~upon the financial capabilities of the participant. The fee shall not exceed~~
21 ~~\$150.00. The fee shall be a debt due from the participant, and payment of such~~

1 ~~shall be required for successful completion of the Program. Notwithstanding~~
2 ~~32 V.S.A. § 502(a), fees collected under this subdivision shall be retained and~~
3 ~~used solely for the purpose of the Court Diversion Program.~~

4 Juvenile pre-charge diversion policy required. In order for a county’s
5 community-based restorative justice provider to be eligible to receive pre-
6 charge diversion referrals pursuant to this section, the county’s State’s
7 Attorney’s office shall adopt a juvenile pre-charge diversion referral policy.
8 To encourage fair and consistent juvenile pre-charge diversion referral policies
9 and methods statewide, the Department of State’s Attorneys and Sheriffs and
10 the Community Justice Unit shall publicly post the policies adopted by each
11 State’s Attorney’s office.

12 (2) Juvenile pre-charge diversion policy contents. A county’s State’s
13 Attorney’s juvenile pre-charge diversion program policy shall include the
14 following:

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

17 (B) Any additional criteria to determine whether a child or youth is
18 eligible to participate in juvenile pre-charge diversion.

19 (C) The appropriate documentation to accompany a referral to
20 juvenile pre-charge diversion, including the name and contact information of
21 the child or youth and the child or youth’s parent or legal guardian; the name

1 and contact information of the victim or victims; and a factual statement or
2 affidavit of probable cause of the alleged incident.

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

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

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

9 (iii) when a child or youth does not successfully complete juvenile
10 pre-charge diversion 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) Juvenile post-charge diversion requirements. Each State’s Attorney,
15 in cooperation with the Office of the Attorney General and the juvenile post-
16 charge diversion program, shall develop clear criteria for deciding what types
17 of offenses and offenders will be eligible for diversion; however, the State’s
18 Attorney shall retain final discretion over the referral of each case for
19 diversion. All juvenile post-charge diversion programs receiving financial
20 assistance from the Attorney General shall adhere to the following:

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

4 (B) 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 referral to diversion.

7 (C) 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 (D) Notwithstanding this subsection (c), the diversion program may
16 accept cases pursuant to 33 V.S.A. §§ 5225(c) and 5280(e).

17 ~~(d) 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 Confidentiality.

1 (1) The matter shall become confidential when notice of a pre-charge
2 referral is provided to the juvenile diversion program, or when notice of a post-
3 charge referral is provided to the court.

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

7 (3) Information related to any offense that a person divulges in
8 preparation for, during, or as a follow-up to the provision of the juvenile
9 diversion programming shall not be used against the person in any criminal,
10 civil, family, juvenile or administrative investigation, prosecution, or case for
11 any purpose, including impeachment or cross-examination. However, the fact
12 of participation and success, or reasons for failure, may become part of the
13 prosecutor’s records. This subsection shall not be construed to prohibit the
14 limited disclosure or use of information to specific persons in the following
15 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
3 33 V.S.A. § 4914 or 33 V.S.A. § 6903 or to comply with any law.

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)(A) Notwithstanding subdivision (2) of this subsection (d), if law
11 enforcement or the prosecutor refers a case to diversion, upon the victim’s
12 request, the juvenile diversion program shall provide information relating to
13 the conditions of the diversion contract regarding the victim, progress made on
14 such conditions, and information that assists with obtaining the victim’s
15 compensation.

16 (B) Victim information that is not part of the public record shall not
17 be released without the victim’s prior consent.

18 (C) Nothing in this section shall be construed to prohibit a victim’s
19 exercise of rights as otherwise provided by law.

20 (e) Rights and responsibilities.

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

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

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

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

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

20 (2) ~~The court may expunge any records that were sealed pursuant to this~~
21 ~~subsection prior to July 1, 2018 unless the State's Attorney's office that~~

1 prosecuted the case objects. Thirty days prior to expunging a record pursuant
2 to this subdivision, the court shall provide written notice of its intent to
3 expunge the record to the State's Attorney's office that prosecuted the case.

4 (A) Diversion candidates shall be informed of their right to the
5 advice, assistance, and access to private counsel or the public defender at all
6 stages of the diversion process, including the initial decision to participate and
7 the decision to accept the juvenile diversion contract, so that the candidate may
8 give informed consent.

9 (B) For the pre-charge diversion program, notwithstanding the
10 financial need determination pursuant to 13 V.S.A. § 5236, the diversion
11 program shall inform the candidate that a public defender is available for
12 consultation at public expense upon the request of the candidate.

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

18 ~~(B) The special index and related documents specified in subdivision~~
19 ~~(A) of this subdivision (3) shall be confidential and shall be physically and~~
20 ~~electronically segregated in a manner that ensures confidentiality and that~~
21 ~~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 implementing~~
7 ~~this subsection (e). Any victims shall be notified of the victim’s rights and role~~
8 ~~in the pre-charge diversion process, including notification of a candidate’s~~
9 ~~referral to the pre-charge diversion program by the pre-charge diversion~~
10 ~~program.~~

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

19 (1) Pre-charge diversion records deletion.

20 (A) 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.

4 (B) Two years after the diversion program notifies the State’s
5 Attorney office of the participant’s successful completion, the Attorney
6 General shall provide a certified notice that all records held by the diversion
7 program shall be deleted.

8 (C) Two years after the diversion program notifies the law
9 enforcement agency and the State’s Attorney office of the participant’s
10 successful completion, the Attorney General shall provide a certified notice
11 that all public records held by the law enforcement agency and the State’s
12 Attorney office shall be deleted. Public records do not include the Valcour
13 database or other similar nonpublic law enforcement databases.

14 (2) Pre-charge diversion case index.

15 (A) The Community Justice Unit shall keep a special index of pre-
16 charge diversion cases that have been deleted pursuant to this section together
17 with the notice of deletion provided by the Attorney General. The index shall
18 list only the name of the diversion participant, the individual’s date of birth, a
19 case number, date of case closure, location of programming, and the offense
20 that was the subject of the deletion.

1 (B) The special index and related documents specified in subdivision
2 (A) of this subdivision (2) shall be confidential and shall be physically and
3 electronically segregated in a manner that ensures confidentiality and that
4 limits access to authorized persons.

5 (C) Inspection of the certified notice may be permitted only upon
6 request by the person who is the subject of the case. The Attorney General
7 may permit special access to the index and the documents for research
8 purposes pursuant to subdivision (g)(2) of this section.

9 (D) The Community Justice Unit shall establish policies for
10 implementing subsections (1)–(4) of this subsection (f).

11 (3) Effect of Deletion. Except as otherwise provided in this section,
12 upon the certified notice to delete files and records under this section, the
13 matter shall be considered never to have occurred; all index references thereto
14 shall be deleted; and the participant, the Community Justice Unite, law
15 enforcement officers and departments, prosecutors, the referring entity, and the
16 diversion program shall reply to any request for information that no record
17 exists with respect to such participant inquiry in any matter. Copies of the
18 certified notice shall be sent to each agency, entity, or official named therein.

19 (4) Deletion Applicability. The process of automatically deleting
20 records as provided in this section shall only apply to those persons who
21 completed pre-charge diversion on or after July 1, 2025. Any person who

1 completed pre-charge diversion prior to July 1, 2025 must apply to the court to
2 have the person’s records deleted. Deletion shall occur if the requirements of
3 subdivisions (1)–(3) of this subsection (f) are met.

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

19 (C) the participant does not owe restitution related to the case.

20 (6) Expungement of sealed records. The court may expunge any records
21 that were sealed pursuant to this subsection prior to July 1, 2018 unless the

1 State’s Attorney’s office that prosecuted the case objects. Thirty days prior to
2 expunging a record pursuant to this subdivision, the court shall provide written
3 notice of its intent to expunge the record to the State’s Attorney’s office that
4 prosecuted the case.

5 (7) Post-charge diversion case index.

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

12 (B) The special index and related documents specified in subdivision
13 (A) of this subdivision (7) shall be confidential and shall be physically and
14 electronically segregated in a manner that ensures confidentiality and that
15 limits access to authorized persons.

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

1 (D) The Court Administrator shall establish policies for
2 implementing subdivisions (5)–(9) of this subsection (f).

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

11 (9) Expungement Applicability. The process of automatically
12 expunging records as provided in this section shall only apply to those persons
13 who completed diversion on or after July 1, 2002. Any person who completed
14 diversion prior to July 1, 2002 must apply to the court to have the person’s
15 records expunged. Expungement shall occur if the requirements of
16 subdivisions (5)–(8) of this subsection (f) are met.

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

1 ~~(h) Subject to the approval of the Attorney General, the Vermont~~
2 ~~Association of Court Diversion Programs may develop and administer~~
3 ~~programs to assist persons under this section charged with delinquent,~~
4 ~~criminal, and civil offenses~~

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

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

15 (1) Except as otherwise provided by this section, any records or
16 information produced or acquired pursuant to this section shall be exempt from
17 public inspection or copying under Vermont’s Public Records Act.

18 (2) Notwithstanding subdivision (1) of this subsection, a law
19 enforcement agency, State’s Attorney office, court, or community-based
20 restorative justice provider may disclose information to colleges, universities,
21 public agencies of the State, and nonprofit research organizations that a

1 community-based restorative justice provider has agreements with for use in
2 connection with research projects of a public service nature, but no person
3 associated with those institutions or agencies may disclose that information in
4 any manner that would reveal the identity of an individual who provided the
5 information to the community-based restorative justice provider.

6 § 164. ADULT COURT DIVERSION PROGRAM

7 (a) Purpose.

8 (1) The Attorney General shall develop and administer an adult court
9 diversion program, for both pre-charge and post-charge referrals, in all
10 counties. ~~In consultation with diversion programs, the Attorney General shall~~
11 adopt a policies and procedures manual in compliance with this section.

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

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

1 (B) Post-charge by prosecutors for persons charged with a first or a
2 second misdemeanor or a first nonviolent felony, or other offenses as the
3 prosecutor deems appropriate, pursuant to subdivision (c)(3) of this section.

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

14 (b) ~~The program shall be designed for two purposes:~~ Administration;
15 report.

16 (1) ~~To assist adults who have been charged with a first or a second~~
17 ~~misdemeanor or a first nonviolent felony.~~ The Attorney General shall support
18 the operation of diversion programs in each of the State’s counties through
19 grants of financial assistance to, or contracts for services with, a single
20 municipality or organization to provide community-based restorative justice
21 programs and services in each county. Upon approval of the Attorney General,

1 the single municipality or organization receiving a grant pursuant to this
2 section may issue subgrants to diversion providers or execute subcontracts for
3 diversion services.

4 (2) ~~To assist persons who have been charged with an offense and who~~
5 ~~have substance abuse or mental health treatment needs regardless of the~~
6 ~~person's prior criminal history record, except a person charged with a felony~~
7 ~~offense that is a crime listed in 13 V.S.A. § 5301(7) shall not be eligible under~~
8 ~~this section. Persons who have attained 18 years of age who are subject to a~~
9 ~~petition in the Family Division pursuant to 33 V.S.A. chapters 52 or 52A shall~~
10 ~~also be eligible under this section. Programming for these persons is intended~~
11 ~~to support access to appropriate treatment or other resources with the aim of~~
12 ~~improving the person's health and reducing future adverse involvement in the~~
13 ~~justice system. The Attorney General may require local financial contributions~~
14 ~~as a condition of receipt of program funding.~~

15 (3) In consultation with community-based restorative justice providers,
16 the Office of the Attorney General shall develop program outcomes following
17 the designated State of Vermont performance accountability framework and, in
18 consultation with the Department of State's Attorneys and Sheriffs, the Office
19 of the Defender General, the Center for Crime Victim Services, the Judiciary,
20 and the Division of Racial Justice Statistics of the Office of Racial Equity,
21 report annually on or before December 1 to the General Assembly on services

1 provided and outcome indicators. As components of the report required by this
2 subsection, the Attorney General shall include data on the number of pre-
3 charge and post-charge diversion program referrals in each county; race,
4 gender, age, and other demographic variables, whenever possible; offenses
5 charged and crime types; successful completion rates; and possible causes of
6 any geographical disparities.

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

9 (5) In consultation with community-based restorative justice providers,
10 the Center for Crime Victims Services, the Department of State’s Attorneys
11 and Sheriffs’ Victim Advocates, the Division for Racial Justice Statistics of the
12 Office of Racial Equity, and the State Archivist, the Attorney General shall
13 adopt a policies and procedures manual for community-based restorative
14 justice providers to promote a uniform system across the State in compliance
15 with this section. The manual shall include the following policies and
16 procedures related to:

17 (A) informing victims of their rights and role in pre-charge and post-
18 charge diversion, including that such information is available in writing upon
19 request;

20 (B) the timely notification victims of a referral to pre-charge and
21 post-charge diversion;

1 (C) an invitation to victims to engage in the restorative process;

2 (D) how to share information with a victim concerning a restorative
3 agreement’s conditions related to the victim and any progress made on such
4 conditions;

5 (E) best practices for collecting data from all parties that engage with
6 the pre-charge and post-charge diversion programs; and

7 (F) confidentiality expectations for all parties who engage in the
8 restorative process.

9 ~~(c) The program shall support the operation of diversion programs in~~
10 ~~local communities through grants of financial assistance to, or contracts for~~
11 ~~services with, municipalities, private groups, or other local organizations. The~~
12 ~~Attorney General may require local financial contributions as a condition of~~
13 ~~receipt of program funding. Adult diversion program policy and referral~~
14 ~~requirements.~~

15 (1) Adult pre-charge diversion policy required. In order for a county’s
16 community-based restorative justice provider to be eligible to receive referrals
17 pursuant to this section, the State’s Attorney’s office shall adopt an adult pre-
18 charge diversion referral policy. To encourage fair and consistent pre-charge
19 and post-charge diversion referral policies and methods statewide, the
20 Department of State’s Attorneys and Sheriffs and the Community Justice Unit
21 shall publicly post the policies adopted by each State’s Attorney’s office.

1 (2) Adult pre-charge diversion policy contents. A county’s State’s
2 Attorney’s pre-charge diversion program policy shall include the following:
3 (A) a list of offenses that presumptively qualify for pre-charge
4 diversion;
5 (B) additional criteria to determine whether a responsible party is
6 eligible to participate in pre-charge diversion;
7 (C) appropriate documentation to accompany a referral to pre-charge
8 diversion, including the name and contact information of the responsible party
9 the name and contact information of the victim or victims, and a factual
10 statement or affidavit of probable cause of the alleged offense;
11 (D) a procedure for returning a case to the law enforcement agency or
12 the prosecutor, including when:
13 (i) the prosecutor withdraws a pre-charge referral from the
14 diversion program;
15 (ii) the community-based restorative justice provider determines
16 that the matter is not appropriate for pre-charge programming; and
17 (iii) a person does not successfully complete pre-charge diversion
18 programming; and
19 (E) a statement reiterating that the State’s Attorney retains final
20 discretion over the cases that are eligible for diversion and may deviate from
21 the adopted policy in accordance with such discretion.

1 (3) Adult post-charge diversion requirements. Each State’s Attorney, in
2 cooperation with the Office of the Attorney General and the adult post-charge
3 diversion program, shall develop clear criteria for deciding what types of
4 offenses and offenders will be eligible for diversion; however, the State’s
5 Attorney shall retain final discretion over the referral of each case for
6 diversion. All adult post-charge diversion programs receiving financial
7 assistance from the Attorney General shall adhere to the following:

8 (A) The post-charge diversion program for adults shall only accept
9 person against whom charges have been filed and the court has found probable
10 cause, but are not adjudicated.

11 (B) A prosecutor may refer a person to diversion either before or
12 after arraignment and shall notify in writing the diversion program and the
13 court of the prosecutor’s of the referral to diversion.

14 (C) 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 post-charge program would not serve
19 the ends of justice. Factors considered in the ends-of-justice determination
20 include the person’s criminal record, the views of any victims, or the need for
21 probationary supervision.

1 (D) Notwithstanding this subsection (c), the diversion program may
2 accept cases pursuant to 33 V.S.A. §§ 5225 and 5280.

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

12 (1) The matter shall become confidential when notice of a pre-charge
13 referral is provided to the diversion program, or when notice of a post-charge
14 referral is provided to the court. However, persons who are subject to
15 conditions of release imposed pursuant to 13 V.S.A. § 7554 and who are
16 referred to diversion pursuant to subdivision (a)(2)(C) of this section, the
17 matter shall become confidential upon the successful completion of diversion.

18 (2) All information gathered in the course of the adult diversion process
19 shall be held strictly confidential and shall not be released without the
20 participant's prior consent.

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

10 (A) Where there is a threat or statement of a plan that a person may
11 reasonably believe is likely to result in death or bodily injury to themselves or
12 others or damage to the property of another person.

13 (B) when disclosure is necessary to report bodily harm any party
14 causes another during restorative justice programming.

15 (C) Where there is a reasonable suspicion of abuse or neglect of a
16 child or vulnerable adult and a report is made pursuant to the provisions of
17 33 V.S.A. § 4914 or 33 V.S.A. § 6903 or to comply with any law.

18 (D) Where a court or administrative tribunal determines that the
19 materials were submitted by a participant in the program for the purpose of
20 avoiding discovery of the material in a court or administrative proceeding. If a
21 participant wishes to avail themselves of this provision, the participant may

1 disclose this information in camera to a judicial officer for the purposes of
2 seeking such a ruling.

3 (4)(A) Notwithstanding subdivision (2) of this subsection (d), if law
4 enforcement or the prosecutor refers a case to diversion, upon the victim's
5 request, the adult diversion program shall provide information relating to the
6 conditions of the diversion contract regarding the victim, progress made on
7 such conditions, and information that assists with obtaining the victim's
8 compensation.

9 (B) Victim information that is not part of the public record shall not
10 be released without the victim's prior consent.

11 (C) Nothing in this section shall be construed to prohibit a victim's
12 exercise of rights as otherwise provided by law.

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

16 ~~(1) The diversion program shall accept only persons against whom~~
17 ~~charges have been filed and the court has found probable cause, but are not yet~~
18 ~~adjudicated. The prosecuting attorney may refer a person to diversion either~~
19 ~~before or after arraignment and shall notify in writing the diversion program~~
20 ~~and the court of his or her intention to refer the person to diversion. The matter~~
21 ~~shall become confidential when notice is provided to the court, except that for~~

1 ~~persons who are subject to conditions of release imposed pursuant to 13 V.S.A.~~
2 ~~§ 7554 and who are referred to diversion pursuant to subdivision (b)(2) of this~~
3 ~~section, the matter shall become confidential upon the successful completion of~~
4 ~~diversion. If a person is charged with a qualifying crime as defined in~~
5 ~~13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall~~
6 ~~provide the person with the opportunity to participate in the court diversion~~
7 ~~program unless the prosecutor states on the record at arraignment or a~~
8 ~~subsequent hearing why a referral to the program would not serve the ends of~~
9 ~~justice. If the prosecuting attorney prosecutor refers a case to diversion, the~~
10 ~~prosecuting attorney prosecutor may release information to the victim upon a~~
11 ~~showing of legitimate need and subject to an appropriate protective agreement~~
12 ~~defining the purpose for which the information is being released and in all~~
13 ~~other respects maintaining the confidentiality of the information; otherwise,~~
14 ~~files held by the court, the prosecuting attorney prosecutor, and the law~~
15 ~~enforcement agency related to the charges shall be confidential and shall~~
16 ~~remain confidential unless:~~
17 ~~(A) the diversion program declines to accept the case;~~
18 ~~(B) the person declines to participate in diversion;~~
19 ~~(C) the diversion program accepts the case, but the person does not~~
20 ~~successfully complete diversion; or~~

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

4 (2) ~~Alleged offenders shall be informed of their right to the advice and~~
5 ~~assistance of private counsel or the public defender at all stages of the~~
6 ~~diversion process, including the initial decision to participate, and the decision~~
7 ~~to accept the adult diversion contract, so that the candidate may give informed~~
8 ~~consent.~~

9 (A) Diversion candidates shall be informed of their right to the
10 advice, assistance, and access to private counsel or the public defender at all
11 stages of the diversion process, including the initial decision to participate and
12 the decision to accept the diversion contract, so that the candidate may give
13 informed consent.

14 (B) For the pre-charge diversion program, notwithstanding the
15 financial need determination pursuant to 13 V.S.A. § 5236, the diversion
16 program shall inform the candidate that a public defender is available for
17 consultation at public expense upon the request of the diversion candidate.

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

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

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

10 (A) The pre-charge and post-charge diversion programs may charge
11 fees to its participants, which shall be paid to the local adult court diversion
12 program. If a fee is charged, it shall be determined by program officers or
13 employees based upon the financial capabilities of the participant. The fee
14 shall not exceed \$300.00. Any fee charged shall be a debt due from the
15 participant.

16 (B) Notwithstanding 32 V.S.A. § 502(a), fees collected pursuant to
17 this subdivision (4) shall be retained and used solely for the purpose of the
18 adult court diversion program.

19 ~~(6)(5) Information related to the present offense that is divulged during~~
20 ~~the adult diversion program shall not be used against the person in the person’s~~
21 ~~criminal or juvenile case for any purpose, including impeachment or cross-~~

1 ~~examination. However, the fact of participation and success, or reasons for~~
2 ~~failure, may become part of the prosecutor's records. Any victims shall be~~
3 ~~notified of the victim's rights and role in the pre-charge diversion process,~~
4 ~~including notification of a candidate's referral to the pre-charge diversion~~
5 ~~program by the pre-charge diversion program.~~

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

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

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

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

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

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

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

20 ~~(C) Notwithstanding subdivision (B) of this subdivision (e)(7), the~~
21 ~~Attorney General shall, upon request, provide to a participant or his or her~~

1 ~~attorney sufficient documentation to show that the participant successfully~~
2 ~~completed diversion.~~

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

5 ~~(9) Each participant shall pay a fee to the local adult court diversion~~
6 ~~program. The amount of the fee shall be determined by program officers or~~
7 ~~employees based upon the financial capabilities of the participant. The fee~~
8 ~~shall not exceed \$300.00. The fee shall be a debt due from the participant, and~~
9 ~~payment of such shall be required for successful completion of the program.~~

10 ~~Notwithstanding 32 V.S.A. § 502(a), fees collected under this subdivision shall~~
11 ~~be retained and used solely for the purpose of the court diversion program.~~

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

14 Records; deletion and expungement.

15 (1) Pre-charge diversion records deletion.

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

1 (B) Two years after the diversion program notifies the State’s
2 Attorney office of the participant’s successful completion, the Attorney
3 General shall provide a certified notice that all records held by the diversion
4 program shall be deleted.

5 (C) Two years after the diversion program notifies the law
6 enforcement agency and the State’s Attorney office of the participant’s
7 successful completion, the Attorney General shall provide a certified notice
8 that all public records held by the law enforcement agency and the State’s
9 Attorney office shall be deleted. Public records do not include the Valcour
10 database or other similar nonpublic law enforcement databases.

11 (2) Pre-charge diversion case index.

12 (A) The Community Justice Unit shall keep a special index of pre-
13 charge diversion cases that have been deleted pursuant to this section together
14 with the notice of deletion provided by the Attorney General. The index shall
15 list only the name of the diversion participant, the individual’s date of birth, a
16 case number, date of case closure, location of programming, and the offense
17 that was the subject of the deletion.

18 (B) The special index and related documents specified in subdivision
19 (A) of this subdivision (2) shall be confidential and shall be physically and
20 electronically segregated in a manner that ensures confidentiality and that
21 limits access to authorized persons.

1 (C) Inspection of the certified notice may be permitted only upon
2 request by the person who is the subject of the case. The Attorney General
3 may permit special access to the index and the documents for research
4 purposes pursuant to subdivision (g)(2) of this section.

5 (D) The Community Justice Unit shall establish policies for
6 implementing subsections (1)–(4) of this subsection (f).

7 (3) Effect of Deletion. Except as otherwise provided in this section,
8 upon the certified notice to delete files and records under this section, the
9 matter shall be considered never to have occurred; all index references thereto
10 shall be deleted; and the participant, the Community Justice Unit, law
11 enforcement officers and departments, prosecutors, the referring entity, and the
12 diversion program shall reply to any request for information that no record
13 exists with respect to such participant inquiry in any matter. Copies of the
14 certified notice shall be sent to each agency, entity, or official named therein.

15 (4) Deletion Applicability. The process of automatically deleting
16 records as provided in this section shall only apply to those persons who
17 completed pre-charge diversion on or after July 1, 2025. Any person who
18 completed pre-charge diversion prior to July 1, 2025 must apply to the court to
19 have the person’s records deleted. Deletion shall occur if the requirements of
20 subdivisions (1)–(3) of this subsection (f) are met.

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

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

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

16 (C) the participant does not owe restitution related to the case.

17 (6) Expungement of sealed records. The court may expunge any records
18 that were sealed pursuant to this subsection prior to July 1, 2018 unless the
19 State’s Attorney’s office that prosecuted the case objects. Thirty days prior to
20 expunging a record pursuant to this subdivision, the court shall provide written

1 notice of its intent to expunge the record to the State’s Attorney’s office that
2 prosecuted the case.

3 (7) Post-charge diversion case index.

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

10 (B) The special index and related documents specified in subdivision
11 (A) of this subdivision (7) shall be confidential and shall be physically and
12 electronically segregated in a manner that ensures confidentiality and that
13 limits access to authorized persons.

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

19 (D) The Court Administrator shall establish policies for
20 implementing subdivisions (5)–(9) of this subsection (f).

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

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

15 (g) Public records act exemption.

16 ~~(1) Within 30 days after the two-year anniversary of a successful~~
17 ~~completion of adult diversion, the court shall provide notice to all parties of~~
18 ~~record of the court's intention to order the expungement of all court files and~~
19 ~~records, law enforcement records other than entries in the adult court diversion~~
20 ~~program's centralized filing system, fingerprints, and photographs applicable~~
21 ~~to the proceeding. However, the court shall not order expungement if the~~

1 ~~participant does not satisfy each of subdivisions (A)–(D) of this subdivision.~~

2 ~~The court shall give the State’s Attorney an opportunity for a hearing to contest~~
3 ~~the expungement of the records. The court shall expunge the records if it~~
4 ~~finds:~~

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

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

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

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

13 Except as otherwise provided in this section, any records or information
14 produced or acquired pursuant to this section shall be exempt from public
15 inspection or copying under Vermont’s Public Records Act and shall be kept
16 confidential.

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

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

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

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

19 ~~(C) Inspection of the expungement order and the certificate may be~~
20 ~~permitted only upon petition by the person who is the subject of the case. The~~
21 ~~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 (g).~~

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

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

13 ~~(j) 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 his or her records expunged. Expungement shall~~
17 ~~occur if the requirements of subsection (g) of this section are met.~~

18 ~~(k) The Attorney General, in consultation with the Vermont Association of~~
19 ~~Court Diversion Programs, may develop and administer programs to assist~~
20 ~~persons under this section charged with delinquent, criminal, and civil~~
21 ~~offenses.~~

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 Abuse 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 Abuse Safety Program. If the person fails to do so, the
19 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 Abuse Safety Program. Pursuant to the Youth Substance Abuse
7 Safety Program, the Diversion Program shall impose conditions on the person.
8 The conditions imposed shall include only conditions related to the offense and
9 in every case shall include a condition requiring satisfactory completion of
10 substance abuse screening using an evidence-based tool and, if deemed
11 appropriate following the screening, substance abuse assessment and substance
12 abuse education or substance abuse counseling, or both. If the screener
13 recommends substance abuse counseling, the person shall choose a State-
14 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~~ Void the summons and complaint with no penalty due; ~~and~~.

4 (B) ~~send~~ Send copies of the voided summons and complaint to the
5 Judicial Bureau and to the law enforcement officer who completed them.

6 Before sending copies of the voided summons and complaint to the Judicial
7 Bureau 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 Diversion Program shall send the person a notice to report to the Diversion
2 Program. The notice to report shall provide that:

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

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

14 (3) If the person satisfactorily completes the substance abuse screening,
15 any required substance abuse assessment or substance abuse counseling, and
16 any other condition related to the offense imposed by the Diversion Program,
17 no penalty shall be imposed and the person's operator's license shall not be
18 suspended.

19 (f) Diversion Program requirements.

20 (1) Upon being contacted by a person who has been issued a notice of
21 violation, the Diversion Program shall register the person in the Youth

1 Substance Awareness Safety Program. Pursuant to the Youth Substance
2 Awareness Safety Program, the Diversion Program shall impose conditions on
3 the person. The conditions imposed shall include only conditions related to the
4 offense and in every case shall include a condition requiring satisfactory
5 completion of substance abuse screening using an evidence-based tool and, if
6 deemed appropriate following the screening, substance abuse assessment and
7 substance abuse education or substance abuse counseling, or both. If the
8 screener recommends substance abuse counseling, the person shall choose a
9 State-certified or State-licensed substance abuse counselor or substance abuse
10 treatment provider to provide the services.

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

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

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

20 (B) Send copies of the voided summons and complaint to the Judicial
21 Bureau and to the law enforcement officer who completed them. Before

1 sending copies of the voided summons and complaint to the Judicial Bureau
2 under this subdivision, the Diversion Program shall redact all language
3 containing the person’s name, address, Social Security number, and any other
4 information that identifies the person.

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

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

17 (6) Notwithstanding 3 V.S.A. §§ 163(a)(2)(C) and 164(a)(2)(C), the
18 adult or juvenile diversion programs shall accept cases from the Youth
19 Substance Awareness Safety Program pursuant to this section, 18 V.S.A.
20 § 4230f(e)(1), or 18 V.S.A. § 4230f(e)(2). The confidentiality provisions of
21 3 V.S.A. § 163 or 164 shall become effective when a notice of violation is

1 issued pursuant to subsection (b) of this section, 18 V.S.A. § 4230f(e)(1), or
2 18 V.S.A. § 4230f(e)(2) and shall remain in effect unless the person fails to
3 register with or complete the Youth Substance Awareness Safety Program.

4 * * *

5 Sec. 4. RESTORATIVE JUSTICE; POST-ADJUDICATION REPARATIVE
6 PROGRAM WORKING GROUP; REPORT

7 (a) Creation. There is created the Post-Adjudication Reparative Program
8 Working Group to create a Post-Adjudication Reparative Program (the
9 “Program”) that promotes uniform access to the appropriate community-based
10 service providers for individuals sentenced to reparative boards and probation
11 pursuant to 13 V.S.A. § 7030(a)(2) and (a)(3). The Working Group shall also
12 study establishing a stable and reliable funding structure to support the
13 operation of the appropriate community-based service providers.

14 (b) Membership. The Working Group shall be composed of the following
15 members:

16 (1) the Commissioner of Corrections or designee;

17 (2) the Chief Judge of the Vermont Superior Court or designee; and

18 (3) five representatives selected from different geographic regions of the
19 State to represent the State’s community-based restorative justice providers
20 currently receiving reparative board funding from the Department of
21 Corrections appointed by the providers.

1 (c) Powers and duties. The Working Group shall study the following
2 issues:

3 (1) defining the Program and its scope;

4 (2) determining the offenses that presumptively qualify for referral to
5 the Program;

6 (3) establishing any eligibility requirements for individuals sentenced to
7 a reparative board or probation to be referred to the Program;

8 (4) designing uniform operational procedures for Program referrals from
9 the courts, intake, data collection, participant success standards, and case
10 closures;

11 (5) assessing the necessary capacity and resources of the Judiciary, the
12 Department of Corrections, and the community-based restorative justice
13 providers to operate the Program;

14 (6) exploring an approach to achieve greater stability and reliability for
15 the community-based restorative justice providers, including the Designated
16 Agency model; and

17 (7) consulting with the Office of the Attorney General, the Department
18 of State’s Attorneys and Sheriffs, the Office of the Defender General, the
19 Center for Crime Victim Services, and other stakeholders as necessary, on
20 considerations to incorporate into the Program.

1 (d) Assistance. The Working Group shall have the administrative,
2 technical, and legal assistance of the Department of Corrections.

3 (e) Report and updates.

4 (1) On or before January 15, 2025, the Working Group shall provide an
5 update to the Senate Committee on Judiciary and House Committees on
6 Corrections and Institutions and on Judiciary concerning any progress.

7 (2) On or before July 15, 2025, the Working Group shall provide an
8 update to the Joint Legislatives Justice Oversight Committee concerning any
9 progress.

10 (3) On or before November 15, 2025, the Working Group shall submit a
11 written report in the form of proposed legislation to the Joint Legislative
12 Justice Oversight Committee, the Senate Committee on Judiciary, and the
13 House Committees on Corrections and Institutions and on Judiciary.

14 (f) Meetings.

15 (1) The Chief Judge of the Vermont Superior Court or designee shall
16 call the first meeting of the Working Group to occur on or before August 1,
17 2024.

18 (2) The Working Group shall meet not more than six times per year.

19 (3) The Chief Judge of the Vermont Superior Court or designee shall
20 serve as the Chair of the Working Group.

21 (4) A majority of the membership shall constitute a quorum.

1 (5) The Working Group shall cease to exist on January 15, 2026.

2 (g) Compensation and reimbursement. Members of the Working Group
3 who are not employees of the State of Vermont and who are not otherwise
4 compensated or reimbursed for their attendance shall be entitled to
5 compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010
6 for not more than six meetings per year.

7 Sec. 5. DEPARTMENT OF STATE’S ATTORNEYS AND SHERIFFS;
8 POSITION; APPROPRIATION

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

14 (b) The position of Director of Policy established in subsection (a) of this
15 section shall be subject to a General Fund appropriation in FY 2025.

16 Sec. 6. OFFICE OF THE ATTORNEY GENERAL; DIVERSION
17 PROGRAM POSITION; APPROPRIATION

18 (a) On July 1, 2024, a new, permanent, classified Diversion Program
19 Coordinator position is created in the Office of the Attorney General. In
20 addition to any other duties deemed appropriate by the Attorney General, the

1 Diversion Program Coordinator shall assist in the administration of the
2 diversion programs governed by the Office of the Attorney General.

3 (b) The position of Diversion Program Coordinator established in
4 subsection (a) of this section shall be subject to a General Fund appropriation
5 in FY 2025.

6 Sec. 7. COMMUNITY JUSTICE UNIT; DIVERSION PROGRAM

7 ADMINISTRATION PLAN; REPORT

8 In counties where there is more than one pre-charge and post-charge
9 diversion provider, the Community Justice Unit of the Office of the Attorney
10 General shall collaborate with each county’s juvenile and adult pre-charge and
11 post-charge providers and each county’s State’s Attorney or designee to
12 develop a plan to streamline the administration and provision of juvenile and
13 adult pre-charge and post-charge diversion programs on or before July 1, 2027.

14 The Community Justice Unit shall report on such plan in the 2027 annual
15 report required pursuant to 3 V.S.A. §§ 163(b)(2) and 164(b)(2).

16 Sec. 8. OFFICE OF THE ATTORNEY GENERAL; PRE-CHARGE

17 DIVERSION PROVIDERS; GRANTS

18 Notwithstanding 3 V.S.A. §§ 163(b)(1) and 164(b)(1), in counties where
19 there is more than one pre-charge or post-charge diversion provider, the
20 Attorney General shall offer to grant or contract directly with all pre-charge

1 providers in that county or provide for subgranting or subcontracting by the
2 current post-charge provider in that county.

3 Sec. 9. OFFICE OF THE ATTORNEY GENERAL; COMMUNITY
4 REFERRALS; FUNDING ALTERNATIVES; REPORT

5 (a) On or before December 1, 2024, the Office of the Attorney General, in
6 consultation with community-based restorative justice providers, the
7 Department of Public Safety, the Vermont Association of Chiefs of Police, the
8 Office of Racial Equity, and other stakeholders as needed, shall submit a
9 written report outlining funding alternatives for community referrals to the
10 Senate and House Committees on Judiciary. The report shall include funding
11 alternatives considering:

12 (1) state and local funding options;

13 (2) entities through which funding could be provided; and

14 (3) oversight requirements.

15 (b) As used in this section, “community referrals” mean referrals to
16 community-based restorative justice providers that do not involve criminal
17 offenses for which probable cause has been established.

18 Sec. 10. REDESIGNATION

19 24 V.S.A. §§ 1961–1969 are redesignated at 28 V.S.A. §§ 915–923.

20 Sec. 11. REPEALS

21 Section 8 of this act is repealed on July 1, 2029.

1 Sec. 12. EFFECTIVE DATES

2 This act shall take effect on July 1, 2024 except that Sec. 1 (juvenile and
3 adult pre-charge and post-charge diversion) and Sec. 8 (Attorney General pre-
4 charge diversion grants) shall take effect on July 1, 2025.

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9 (Committee vote: _____)

10

11

Representative _____

12

FOR THE COMMITTEE

13