

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 if the referral is not successful, including the:

11           (i) prosecutor’s right to withdraw any juvenile pre-charge referral  
12 from the juvenile pre-charge diversion program and file a petition in family  
13 court;

14           (ii) community-based restorative justice provider’s right to  
15 determine that the matter is not appropriate for juvenile pre-charge  
16 programming and send the referral back to the law enforcement agency and  
17 prosecutor; and

18           (iii) return of the child’s or youth’s referral to the law enforcement  
19 agency and prosecutor when a child or youth does not successfully complete  
20 juvenile pre-charge diversion programming.



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

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

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

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

18           (C) Notwithstanding subdivisions (1) and (2) of this subsection (c),  
19           the diversion program may accept cases pursuant to 33 V.S.A. §§ 5225(c) and  
20           5280(e).

1       (d) ~~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       Confidentiality.

4           (1) 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           (2) 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, or juvenile investigation, prosecution, or case for any purpose,  
11 including impeachment or cross-examination. However, the fact of  
12 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 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           (e) Rights and responsibilities.

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

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

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

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

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

10           ~~(2) The court may expunge any records that were sealed pursuant to this~~  
11           ~~subsection prior to July 1, 2018 unless the State's Attorney's office that~~  
12           ~~prosecuted the case objects. Thirty days prior to expunging a record pursuant~~  
13           ~~to this subdivision, the court shall provide written notice of its intent to~~  
14           ~~expunge the record to the State's Attorney's office that prosecuted the case.~~  
15           Diversion participants shall be informed of their right to the advice, assistance,  
16           and access to 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 juvenile diversion contract, so that the candidate may give  
19           informed consent. Notwithstanding the financial need determination pursuant  
20           to 13 V.S.A. § 5236, a public defender shall be assigned at public expense at  
21           the request of the diversion participant.

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

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

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

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

1           (4) The pre-charge and post-charge diversion programs may charge fees  
2           to its participants, which shall be paid to the local juvenile court diversion  
3           program. If a fee is charged, it shall be determined by program officers or  
4           employees based upon the financial capabilities of the participant. The fee  
5           shall not exceed \$300.00. Any fee charged shall be a debt due from the  
6           participant, and payment of such shall be required for successful completion of  
7           the program. Notwithstanding 32 V.S.A. § 502(a), fees collected pursuant to  
8           this subdivision (4) shall be retained and used solely for the purpose of the  
9           juvenile court diversion program.

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

13           ~~(f) Except as otherwise provided in this section, upon the entry of an order~~  
14           ~~expunging files and records under this section, the proceedings in the matter~~  
15           ~~shall be considered never to have occurred, all index references thereto shall be~~  
16           ~~deleted, and the participant, the court, and law enforcement officers and~~  
17           ~~departments shall reply to any request for information that no record exists~~  
18           ~~with respect to such participant inquiry in any matter. Copies of the order shall~~  
19           ~~be sent to each agency or official named therein. 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 juvenile post-charge diversion, the court shall provide notice to  
9 all parties of record of the court’s intention to order the expungement of all  
10 court files and records, law enforcement records, fingerprints, and photographs  
11 other than entries in the 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 juvenile 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 offense  
13           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) The process of automatically expunging records as provided in this~~  
19 ~~section shall only apply to those persons who completed diversion on or after~~  
20 ~~July 1, 2002. Any person who completed diversion prior to July 1, 2002 must~~

1 ~~apply to the court to have his or her records expunged. Expungement shall~~  
2 ~~occur if the requirements of subsection (c) of this section are met.~~

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

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

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

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

20 (2) Notwithstanding subdivision (1) of this subsection, a law  
21 enforcement agency, State’s Attorney office, court, or community-based

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

8 § 164. ADULT COURT DIVERSION PROGRAM

9 (a) Purpose.

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

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

19 (A) Pre-charge by law enforcement or prosecutors pursuant to a  
20 policy adopted in accordance with subdivisions (c)(1) and (c)(3) of this  
21 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.

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           chapters 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:~~

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

17                 ~~(2) To assist persons who have been charged with an offense and who have~~  
18                 ~~substance abuse or mental health treatment needs regardless of the person’s~~  
19                 ~~prior criminal history record, except a person charged with a felony offense~~  
20                 ~~that is a crime listed in 13 V.S.A. § 5301(7) shall not be eligible under this~~  
21                 ~~section. Persons who have attained 18 years of age who are subject to a~~

1 ~~petition in the Family Division pursuant to 33 V.S.A. chapters 52 or 52A shall~~  
2 ~~also be eligible under this section. Programming for these persons is intended~~  
3 ~~to support access to appropriate treatment or other resources with the aim of~~  
4 ~~improving the person's health and reducing future adverse involvement in the~~  
5 ~~justice system. Administration; report.~~

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

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

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

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

12           (3) 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           (4) In consultation with the diversion programs, the Attorney General  
15           shall adopt a policies and procedures manual for community-based restorative  
16           justice providers to promote a uniform system across the State in compliance  
17           with this section. The manual shall include policies related to victims,  
18           including:

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

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

1           (C) how information is shared through restorative agreements  
2           concerning any alleged victims.

3           (c) ~~The program shall support the operation of diversion programs in local~~  
4           ~~communities through grants of financial assistance to, or contracts for services~~  
5           ~~with, municipalities, private groups, or other local organizations. The Attorney~~  
6           ~~General may require local financial contributions as a condition of receipt of~~  
7           ~~program funding.~~ Diversion program eligibility and referral process.

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

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

19           (A) A list of offenses that presumptively qualify for pre-charge  
20           diversion.

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

3           (C) Appropriate documentation to accompany a referral to pre-charge  
4           diversion, including the name and contact information of the responsible party  
5           the name and contact information of the victim or victims, and a factual  
6           statement of the alleged offense.

7           (D) A procedure for returning a case to the law enforcement agency  
8           or the prosecutor if the referral is not successful, including the:

9                   (i) prosecutor’s right to withdraw any pre-charge referral from the  
10                  diversion program and file a charge in court;

11                   (ii) community-based restorative justice provider’s right to  
12                  determine that the matter is not appropriate for pre-charge programming and  
13                  send the referral back to the law enforcement agency and prosecutor; and

14                   (iii) return of a person’s referral to the law enforcement agency  
15                  and prosecutor when a person does not successfully complete pre-charge  
16                  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           (3) Post-charge diversion. The post-charge diversion program shall  
2           accept only persons against whom charges have been filed and the court has  
3           found probable cause, but are not adjudicated.

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

7           (B) If a person is charged with a qualifying crime as defined in  
8           13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall  
9           provide the person with the opportunity to participate in the court diversion  
10           program unless the prosecutor states on the record at arraignment or a  
11           subsequent hearing why a referral to the post-charge program would not serve  
12           the ends of justice. Factors considered in the ends-of-justice determination  
13           include the person’s criminal record, the views of the alleged victim or victims,  
14           or 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 and  
17           5280.

18           ~~(d) 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 a~~  
3 ~~component of the report required by this subsection, the Attorney General shall~~  
4 ~~include data on diversion program referrals in each county and possible causes~~  
5 ~~of any geographical disparities. Confidentiality.~~

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

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

16 (3) Information related to any offense that a person divulges in  
17 preparation for, during, or as a follow-up to the provision of the adult diversion  
18 programming shall not be used against the person in any criminal, civil, family,  
19 or juvenile investigation, prosecution, or case for any purpose, including  
20 impeachment or cross-examination. However, the fact of participation and  
21 success, or reasons for failure, may become part of the prosecutor's records.

1 This subsection shall not be construed to prohibit the limited disclosure or use  
2 of information to specific persons in the following circumstances:

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

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

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

11 (D) where a court or administrative tribunal determines that the  
12 materials were submitted by a participant in the program for the purpose of  
13 avoiding discovery of the material in a court or administrative proceeding. If a  
14 participant wishes to avail themselves of this provision, the participant may  
15 disclose this information in camera to a judicial officer for the purposes of  
16 seeking such a ruling.

17 (4) If law enforcement or the prosecutor refers a case to diversion, the  
18 prosecutor may release information to the victim upon a showing of legitimate  
19 need and subject to an appropriate protective agreement defining the purpose  
20 for which the information is being released and in all other respects  
21 maintaining the confidentiality of the information; otherwise, files held by the

1 court, the prosecutor, law enforcement agency, referring entity, and the  
2 diversion program related to the matter shall be confidential and shall remain  
3 confidential unless:

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

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

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

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

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

12 ~~(1) The diversion program shall accept only persons against whom~~  
13 ~~charges have been filed and the court has found probable cause, but are not yet~~  
14 ~~adjudicated. The prosecuting attorney may refer a person to diversion either~~  
15 ~~before or after arraignment and shall notify in writing the diversion program~~  
16 ~~and the court of his or her intention to refer the person to diversion. The matter~~  
17 ~~shall become confidential when notice is provided to the court, except that for~~  
18 ~~persons who are subject to conditions of release imposed pursuant to 13 V.S.A.~~  
19 ~~§ 7554 and who are referred to diversion pursuant to subdivision (b)(2) of this~~  
20 ~~section, the matter shall become confidential upon the successful completion of~~  
21 ~~diversion. If a person is charged with a qualifying crime as defined in~~

1 ~~13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall~~  
2 ~~provide the person with the opportunity to participate in the court diversion~~  
3 ~~program unless the prosecutor states on the record at arraignment or a~~  
4 ~~subsequent hearing why a referral to the program would not serve the ends of~~  
5 ~~justice. If the prosecuting attorney prosecutor refers a case to diversion, the~~  
6 ~~prosecuting attorney prosecutor may release information to the victim upon a~~  
7 ~~showing of legitimate need and subject to an appropriate protective agreement~~  
8 ~~defining the purpose for which the information is being released and in all~~  
9 ~~other respects maintaining the confidentiality of the information; otherwise,~~  
10 ~~files held by the court, the prosecuting attorney prosecutor, and the law~~  
11 ~~enforcement agency related to the charges shall be confidential and shall~~  
12 ~~remain confidential unless:~~

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

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

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

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

20 ~~(2) Alleged offenders shall be informed of their right to the advice and~~  
21 ~~assistance of private counsel or the public defender at all stages of the~~

1 ~~diversion process, including the initial decision to participate, and the decision~~  
2 ~~to accept the adult diversion contract, so that the candidate may give informed~~  
3 ~~consent. Diversion participants shall be informed of their right to the advice,~~  
4 ~~assistance, and access to private counsel or the public defender at all stages of~~  
5 ~~the diversion process, including the initial decision to participate and the~~  
6 ~~decision to accept the diversion contract, so that the candidate may give~~  
7 ~~informed consent. Notwithstanding the financial need determination pursuant~~  
8 ~~to 13 V.S.A. § 5236, a public defender shall be assigned at public expense at~~  
9 ~~the request of the diversion participant.~~

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

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

18 (5) ~~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 (except that research and reports that do not~~  
21 ~~establish the identity of individual participants are allowed).~~

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

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

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

18           ~~(7)(A)~~ Irrespective of whether a record was expunged, the adult court  
19           diversion program shall maintain sufficient records so that the reasons for  
20           success or failure of the program in particular cases and overall can be  
21           investigated by program staff. These records shall include a centralized

1 ~~statewide filing system that will include the following information about~~  
2 ~~individuals who have successfully completed an adult court diversion program:~~

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

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

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

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

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

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

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

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

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



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

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

5 Records and expungement.

6 (1) Not later than 10 days after the successful completion of the pre-  
7 charge diversion program, the juvenile diversion program shall notify the  
8 victim, law enforcement agency, and the State’s Attorney office of the  
9 participant’s successful completion. Payment of restitution is required for  
10 successful completion. Two years after the diversion program notifies the law  
11 enforcement agency and the State’s Attorney office of successful completion,  
12 all records held by the diversion program, the law enforcement agency, and the  
13 State’s Attorney office shall be expunged.

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

1 hearing to contest the expungement of the records. The court shall expunge  
2 the records if it finds:

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

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

8 (C) rehabilitation of the participant has been attained to the  
9 satisfaction of the court; and

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

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

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

1           (B) The special index and related documents specified in subdivision  
2           (A) of this subdivision (4) 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 expungement order and the certificate may be  
6           permitted only upon petition by the person who is the subject of the case. The  
7           Chief Superior Judge may permit special access to the index and the  
8           documents for research purposes pursuant to the rules for public access to  
9           court records.

10           (D) The Court Administrator shall establish policies for  
11           implementing this subsection (f).

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

20           (6) The process of automatically expunging records as provided in this  
21           section shall only apply to those persons who completed diversion on or after

1 July 1, 2002. Any person who completed diversion prior to July 1, 2002 must  
2 apply to the court to have the person's records expunged. Expungement shall  
3 occur if the requirements of this subsection (f) are met.

4 (g) Public records act exemption.

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

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

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

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

1           ~~(D) the participant does not owe restitution related to the case. Any~~  
2           records or information produced or acquired pursuant to this section shall be  
3           exempt from public inspection or copying under Vermont’s Public Records  
4           Act and shall be kept confidential.

5           ~~(2) The court may expunge any records that were sealed pursuant to this~~  
6           ~~subsection prior to July 1, 2018 unless the State’s Attorney’s office that~~  
7           ~~prosecuted the case objects. Thirty days prior to expunging a record pursuant~~  
8           ~~to this subdivision, the court shall provide written notice of its intent to~~  
9           ~~expunge the record to the State’s Attorney’s office that prosecuted the case.~~  
10          Notwithstanding subdivision (1) of this subsection, a law enforcement agency,  
11          State’s Attorney office, court, or community-based restorative justice provider  
12          may disclose information to colleges, universities, public agencies of the State,  
13          and nonprofit research organizations that a community-based restorative  
14          justice provider has agreements with for use in connection with research  
15          projects of a public service nature, but no person associated with those  
16          institutions or agencies may disclose that information in any manner that  
17          would reveal the identity of an individual who provided the information to the  
18          community-based restorative justice provider.

19          ~~(3)(A) The court shall keep a special index of cases that have been~~  
20          ~~expunged pursuant to this section together with the expungement order. The~~  
21          ~~index shall list only the name of the person convicted of the offense, his or her~~

1 ~~date of birth, the docket number, and the criminal offense that was the subject~~  
2 ~~of the expungement.~~

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

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

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

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

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



1 Sec. 2. 7 V.S.A. § 656 is amended to read:

2 § 656. PERSON 16 YEARS OF AGE OR OLDER AND UNDER 21 YEARS  
3 OF AGE MISREPRESENTING AGE, PROCURING, POSSESSING,  
4 OR CONSUMING ALCOHOLIC BEVERAGES; CIVIL  
5 VIOLATION

6 \* \* \*

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

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

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

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





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

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

13           (f) Diversion Program requirements.

14           (1) Upon being contacted by a person who has been issued a notice of  
15 violation, the Diversion Program shall register the person in the Youth  
16 Substance Abuse Safety Program. Pursuant to the Youth Substance Abuse  
17 Safety Program, the Diversion Program shall impose conditions on the person.  
18 The conditions imposed shall include only conditions related to the offense and  
19 in every case shall include a condition requiring satisfactory completion of  
20 substance abuse screening using an evidence-based tool and, if deemed  
21 appropriate following the screening, substance abuse assessment and substance

1 abuse education or substance abuse counseling, or both. If the screener  
2 recommends substance abuse counseling, the person shall choose a State-  
3 certified or State-licensed substance abuse counselor or substance abuse  
4 treatment provider to provide the services.

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

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

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

14 (B) send copies of the voided summons and complaint to the Judicial  
15 Bureau and to the law enforcement officer who completed them. Before  
16 sending copies of the voided summons and complaint to the Judicial Bureau  
17 under this subdivision, the Diversion Program shall redact all language  
18 containing the person's name, address, Social Security number, and any other  
19 information that identifies the person.

20 (4) If a person does not satisfactorily complete substance abuse  
21 screening, any required substance abuse education or substance abuse

1 counseling, or any other condition related to the offense imposed by the  
2 Diversion Program or if the person fails to pay the Diversion Program any  
3 required program fees, the Diversion Program shall file the summons and  
4 complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29.  
5 The Diversion Program shall provide a copy of the summons and complaint to  
6 the law enforcement officer who issued the notice of violation and shall  
7 provide two copies to the person charged with the violation.

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

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

18 \* \* \*

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

2 § 4230b. CANNABIS POSSESSION BY A PERSON 16 YEARS OF AGE  
3 OR OLDER AND UNDER 21 YEARS OF AGE; CIVIL  
4 VIOLATION

5 \* \* \*

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

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

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

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

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

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\* \* \*

(d) Registration in Youth Substance Awareness 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 the Youth Substance Awareness Safety Program. If the person fails to do so, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.

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

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

(2) If the person does not satisfactorily complete the substance abuse screening, any required substance abuse assessment or substance abuse counseling, or any other condition related to the offense imposed by the

1 Diversion Program, the case will be referred to the Judicial Bureau, where the  
2 person, if found liable for the violation, shall be assessed a civil penalty, the  
3 person's driver's license will be suspended, and the person's automobile  
4 insurance rates may increase substantially.

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

10 (f) Diversion Program requirements.

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

1 State-certified or State-licensed substance abuse counselor or substance abuse  
2 treatment provider to provide the services.

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

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

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

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

18 (4) If a person does not satisfactorily complete substance abuse  
19 screening, any required substance abuse education or substance abuse  
20 counseling, or any other condition related to the offense imposed by the  
21 Diversion Program or if the person fails to pay the Diversion Program any



1 required Program fees, the Diversion Program shall file the summons and  
2 complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29.  
3 The Diversion Program shall provide a copy of the summons and complaint to  
4 the law enforcement officer who issued the notice of violation and shall  
5 provide two copies to the person charged with the violation.

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

9 (6) Notwithstanding 3 V.S.A. §§ 163(a)(2)(C) and 164(a)(2)(C), the  
10 adult or juvenile diversion programs shall accept cases from the Youth  
11 Substance Awareness Safety Program pursuant to this section, 18 V.S.A.  
12 § 4230f(e)(1), or 18 V.S.A. § 4230f(e)(2). The confidentiality provisions of 3  
13 V.S.A. § 163 or 164 shall become effective when a notice of violation is issued  
14 pursuant to subsection (b) of this section, 18 V.S.A. § 4230f(e)(1), or 18  
15 V.S.A. § 4230f(e)(2), and shall remain in effect unless the person fails to  
16 register with or complete the Youth Substance Awareness Safety Program.

17 \* \* \*

18 Sec. 4. 28 V.S.A. § 101 is amended to read:

19 § 101. POWERS OF THE DEPARTMENT

20 The Department is charged with the following powers:

21 \* \* \*

1           (10) to charter, establish, and fund through grants, contracts, and  
2 agreements such municipal entities or nonprofit organizations as may be  
3 required for providing crime prevention and restorative justice programs for  
4 offenders, victims of crime, and the public.

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

6           CHAPTER 12. ~~COMMUNITY REPARATIVE BOARDS~~ POST-  
7 ADJUDICATION RESTORATIVE JUSTICE APPROACHES

8 § 910. ~~RESTORATIVE JUSTICE PROGRAM~~

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

14 [Repealed.]

15 § 910a. ~~REPARATIVE BOARDS; FUNCTIONS~~

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

1       ~~(b) Each board shall elect its chair from its membership. A chair may serve~~  
2       ~~for no more than one year uninterrupted. All meetings of a board shall comply~~  
3       ~~with open meeting law requirements of 1 V.S.A. chapter 5, subchapter 2,~~  
4       ~~consistent with probationer confidentiality requirements of this title, and as~~  
5       ~~may be imposed by the court.~~

6       ~~(c) Each board shall adopt bylaws approved by the Commissioner. Such~~  
7       ~~bylaws may authorize each board to establish panels to conduct reparative~~  
8       ~~board activities.~~

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

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

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

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

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

4       ~~§ 911. GRANT PROGRAM FOR COMMUNITY-BASED HALF-WAY~~  
5       ~~HOUSES AND PROGRAMS~~

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

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

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

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

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

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

21       § 913. POST-ADJUDICATION REPARATIVE PROGRAM

1        (a) Purpose. This chapter leverages programs and services employing  
2        restorative justice approaches as a reparative condition of individuals 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). The programs and  
5        services used for such individuals shall be designed to provide a restorative  
6        option for those who have been convicted of violating a criminal statute, as  
7        well as for victims or those acting on a victim’s behalf who have been harmed  
8        by the responsible party.

9        (b) Administration.

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

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

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

20

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

4           (c) Operational support.

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

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

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

15           (d) Report. The Commissioner shall develop post-adjudication reparative  
16           program outcomes following the designated State of Vermont performance  
17           accountability framework and, in consultation with the Judiciary, report  
18           annually on or before December 1 to the General Assembly on services  
19           provided and outcome indicators. As components of the report required by this  
20           subsection, the Commissioner shall include data on the number of program  
21           referrals in each county, demographic information, convictions and crime

1 types, successful completion rates, evidence of desistence, and possible causes  
2 of any geographical disparities.

3 § 914. MEMORANDUM OF UNDERSTANDING; GUIDANCE AND  
4 PROTOCOLS

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

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

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

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

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

11          (4) set timeframes to complete the restorative process for responsible  
12          parties;

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

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

19          (7) establish written confidentiality standards that ensure constitutional  
20          protections and the privacy of responsible parties and victims participating in  
21          the restorative process;



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

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

6           (c) Public records act exception; confidentiality.

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

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

1           (3) Notwithstanding subdivision (1), if a case is referred to the program,  
2           the court may release information to the victim upon a showing of legitimate  
3           need and subject to an appropriate protective agreement defining the purpose  
4           for which the information is being released and in all other respects  
5           maintaining the confidentiality of the information; otherwise, files held by a  
6           court, a prosecutor, a law enforcement agency, and a community-based  
7           restorative justice provider related to the matter shall be confidential and shall  
8           remain confidential unless:

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

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

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

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

14                   REPARATIVE PROGRAM CREATION

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

20           (b) Memorandum of understanding development. On or before January 1,  
21           2025, the Department of Corrections and the Judiciary, in consultation with the

1 Community Justice Unit of the Office of the Attorney General, the Department  
2 of State’s Attorneys and Sheriffs, the Office of the Defender General, and the  
3 Center for Crime Victim Services, shall establish a cohesive post-adjudication  
4 reparative program memorialized in a memorandum of understanding for the  
5 Department of Corrections and the Judiciary to adopt and follow.

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

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

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

14 POSITION; APPROPRIATION

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

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

1       Sec. 8. COMMUNITY JUSTICE UNIT; DIVERSION PROGRAM

2                   ADMINISTRATION PLAN; REPORT

3           In counties where there is more than one pre-charge and post-charge  
4           diversion provider, the Community Justice Unit of the Office of the Attorney  
5           General shall collaborate with each county’s juvenile and adult pre-charge and  
6           post-charge providers and each county’s State’s Attorney or designee to  
7           develop a plan to streamline the administration and provision of juvenile and  
8           adult pre-charge and post-charge diversion programs on or before July 1, 2026.

9           The Community Justice Unit shall report on such plan in the 2026 annual  
10          report required pursuant to 3 V.S.A. §§ 163(b)(2) and 164(b)(2).

11       Sec. 10. REDESIGNATION

12           24 V.S.A. §§ 1961–1969 are redesignated at 28 V.S.A. §§ 915–923.

13       Sec. 9. REPEALS

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

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

16       Sec. 11. EFFECTIVE DATES

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

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(Committee vote: \_\_\_\_\_)

\_\_\_\_\_

Representative \_\_\_\_\_

FOR THE COMMITTEE