

1 S.244

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: January 3, 2012

5 Subject: Motor vehicles; operators' licenses; operation after suspension,
6 revocation, or refusal

7 Statement of purpose: This bill proposes to refer cases of driving with a
8 suspended license to court diversion, rather than the judicial bureau, provided
9 that the reason for the license suspension was for failure to pay fees or fines or
10 for accrual of points for motor vehicle violations, excluding DUI or other
11 serious offenses. A diversion participant would be eligible to reinstate his or
12 her operator's license upon compliance with a fine repayment plan and a driver
13 relicensing program, if appropriate.

14 An act relating to referral to court diversion for driving with a suspended
15 license

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

1 ~~Sec. 1. 23 V.S.A. § 676 is amended to read:~~

2 § 676. OPERATION AFTER SUSPENSION, REVOCATION, OR
3 REFUSAL - CIVIL VIOLATION

4 (a) A person whose license or privilege to operate a motor vehicle has been
5 revoked, suspended or refused by the commissioner of motor vehicles for any
6 reason other than a violation of subsections 1091(b), 1094(b), 1128(b) or (c),
7 or section 1201 or a suspension under section 1205 of this title and who
8 operates or attempts to operate a motor vehicle upon a public highway before
9 the license or privilege of the person to operate a motor vehicle has been
10 reinstated by the commissioner commits a civil traffic violation.

11 (b)(1) A law enforcement officer shall issue a notice of violation, in a form
12 approved by the court administrator, to a person who violates this section if the
13 person has at least one but no more than four prior violations of this section.
14 The notice of violation shall require the person to provide his or her name and
15 address, and shall explain procedure under this section, including that:

16 (A) The person must contact the diversion program in the county
17 where the offense occurred within 15 days.

18 (B) Failure to contact the diversion program within 15 days will
19 result in the case being referred to the judicial bureau, where the person, if
20 found liable for the violation, will be subject to a monetary penalty and a

1 ~~possible extension of the suspension of the person's operator's license, and~~
2 may face substantially increased insurance rates.

3 (C) The diversion program may assist the person in developing a plan
4 to regain his or her operator's license.

5 (D) No money shall be submitted to pay any penalty until after
6 adjudication.

7 (E) The person shall notify the diversion program if the person's
8 address changes.

9 (2) When a person is issued a notice of violation under subdivision (1)
10 of this subsection, the law enforcement officer shall complete a summons and
11 complaint for the offense and send it to the diversion program in the county
12 where the offense occurred. The summons and complaint shall not be filed
13 with the judicial bureau at that time.

14 (3) Within 15 days after receiving a notice of violation issued under
15 subdivision (1) of this subsection, the person shall contact the diversion
16 program in the county where the offense occurred. If the person fails to do so,
17 the diversion program shall file the summons and complaint with the judicial
18 bureau for adjudication under 4 V.S.A. chapter 29. The diversion program
19 shall provide a copy of the summons and complaint to the law enforcement
20 officer who issued the notice of violation, and shall provide two copies to the
21 person charged with the violation.

1 ~~(c)(1) Upon receipt from a law enforcement officer of a summons and~~
2 ~~complaint completed under subdivision (b)(2) of this section or upon~~
3 ~~application of a person pursuant to subsection (c) of this section, the diversion~~
4 ~~program shall send the person a notice to report to the diversion program. The~~
5 ~~notice to report shall provide that:~~

6 ~~(A) The person is required to:~~

7 ~~(i) meet with diversion staff to assess the person's risk for future~~
8 ~~civil violations and to identify factors that contributed to previous violations~~
9 ~~leading to license suspension.~~

10 ~~(ii) complete all conditions related to the offense and indicated by~~
11 ~~the screening process that are imposed by the diversion program, including~~
12 ~~compliance with a plan to pay fines and fees required to reinstate a driver's~~
13 ~~license.~~

14 ~~(B) If the person does not satisfactorily comply with the conditions~~
15 ~~imposed by the diversion program, the case will be referred to the judicial~~
16 ~~bureau, where the person, if found liable for the violation, shall be subject to a~~
17 ~~monetary penalty and a possible extension of the suspension of the person's~~
18 ~~operator's license, and may face substantially increased insurance rates.~~

19 ~~(C) If the person satisfactorily complies with the conditions imposed~~
20 ~~by the diversion program, no penalty shall be imposed and the person's~~
21 ~~operator's license shall be reinstated provided:~~

1 ~~(i) the initial period of license suspension has run if the suspension~~
2 ~~was for a motor vehicle violation, rather than an indefinite suspension for~~
3 ~~failure to pay a fine; and~~

4 ~~(ii) the person is in compliance with any payment plan for fines~~
5 ~~and fees required to reinstate a driver's license.~~

6 ~~(2) Upon being contacted by a person who has been issued a notice of~~
7 ~~violation under subdivision (b)(1) of this section, the diversion program shall~~
8 ~~register the person in the driver relicensing program, if appropriate. Pursuant~~
9 ~~to the driver relicensing program, the diversion program shall impose~~
10 ~~conditions on the person. The conditions imposed shall include only~~
11 ~~conditions related to requirements for obtaining a driver's license.~~

12 ~~(3) When a person has satisfactorily completed conditions related to the~~
13 ~~offense which the diversion program has imposed, the diversion program shall:~~

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

15 ~~(B) send copies of the voided summons and complaint to the judicial~~
16 ~~bureau and to the law enforcement officer who completed them. Before~~
17 ~~sending copies of the voided summons and complaint to the judicial bureau~~
18 ~~under this subdivision, the diversion program shall redact all language~~
19 ~~containing the person's name, address, Social Security number, or any other~~
20 ~~information which identifies the person.~~

1 ~~(4) If a person does not satisfactorily comply with the conditions related~~
2 ~~to the offense imposed by the diversion program or if the person fails to pay~~
3 ~~the diversion program any required program fees, the diversion program shall~~
4 ~~file the summons and complaint with the judicial bureau for adjudication under~~
5 ~~4 V.S.A. chapter 29. The diversion program shall provide a copy of the~~
6 ~~summons and complaint to the law enforcement officer who issued the notice~~
7 ~~of violation, and shall provide two copies to the person charged with the~~
8 ~~violation.~~

9 (5) A person aggrieved by a decision of the diversion program may seek
10 review of that decision pursuant to Rule 75 of the Vermont Rules of Civil
11 Procedure.

12 (d) A diversion program may contact the judicial bureau to request a
13 waiver of the reinstatement fee required by section 675 of this title or to reduce
14 the amount due on the basis of mitigating factors as set forth in section 2307 of
15 this title.

16 (e) A person with fewer than five violations of subsection (a) of this section
17 may apply to the diversion relicensing program. Upon receipt of an
18 application, the diversion program shall send the person a notice to report to
19 the diversion program. The notice to report shall provide that the person is
20 required to:

1 ~~(1) meet with diversion staff to assess the person's risk for future civil~~
2 ~~violations and to identify factors that contributed to previous violations leading~~
3 ~~to license suspension.~~

4 ~~(2) complete all conditions related to the offense and indicated by the~~
5 ~~screening process that are imposed by the diversion program, including~~
6 ~~compliance with a plan to pay fines and fees required to reinstate a driver's~~
7 ~~license.~~

8 (f) In establishing a prima facie case against a person accused of violating
9 this section, the judicial bureau shall accept as evidence, a printout attested to
10 by the law enforcement officer as the person's motor vehicle record showing
11 convictions and resulting license suspensions. The admitted motor vehicle
12 record shall establish a permissive inference that the person was under
13 suspension or had his or her license revoked on the dates and time periods set
14 forth in the record. The judicial bureau shall not require a certified copy of the
15 person's motor vehicle record from the department of motor vehicles to
16 establish the permissive inference.

17 (g) The state's attorney may dismiss without prejudice a violation brought
18 under this section.

19 (h) The court diversion project shall adopt standards for determining
20 whether a person is in compliance with conditions as set forth in this section.
21 Such standards shall be applicable in all county diversion programs.

1 ~~Sec. 2. 23 V.S.A. § 2307 is amended to read:~~

2 § 2307. REMEDIES FOR FAILURE TO PAY TRAFFIC VIOLATIONS

3 (a) As used in this section,

4 ~~(a) Amount~~ “amount due” means all financial assessments contained in
5 a judicial bureau judgment, including penalties, fines, surcharges, court costs,
6 and any other assessment authorized by law.

7 (b) Notice of risk of suspension. A judgment for a traffic violation shall
8 contain a notice that failure to pay or otherwise satisfy the amount due within
9 30 days of the notice will result in suspension of the person’s operator’s license
10 or privilege to operate, and the denial, if the person is the sole registrant, of the
11 person’s application for renewal of a motor vehicle registration, until the
12 amount due is paid or otherwise satisfied. If the defendant fails to pay the
13 amount due within 30 days of the notice and the case is not pending on appeal,
14 the judicial bureau shall provide electronic notice thereof to the commissioner
15 of motor vehicles who, after 20 days from the date of receiving the electronic
16 notice, shall suspend the person’s operator’s license or privilege to operate and
17 deny, if the person is the sole registrant, the person’s application for renewal of
18 a motor vehicle registration until the amount due is paid or otherwise satisfied.

19 (c) During proceedings conducted pursuant to 4 V.S.A. § 1109, the
20 hearing officer may apply the following mitigation remedies when the
21 judgment is based upon a traffic violation:

1 ~~(1) The hearing officer may waive the reinstatement fee required by~~
2 section 675 of this title or reduce the amount due on the basis of:

3 (A) the defendant's driving history, ability to pay, or service to the
4 community;

5 (B) the collateral consequences of the violation; or

6 (C) the interests of justice.

7 (2) The hearing officer may specify a date by which the defendant
8 shall pay the amount due and may notify the commissioner of motor vehicles
9 to reinstate the defendant's operator's license or privilege subject to payment
10 of the amount due by the specified date or compliance with a payment plan to
11 discharge the debt. If the defendant fails to pay the amount due by the
12 specified date or to comply with an agreed-upon payment plan, the judicial
13 bureau may notify the commissioner to suspend the defendant's operator's
14 license or privilege. A license may be reinstated under this subdivision only if
15 the defendant's license is suspended solely for failure to pay a judicial bureau
16 judgment.

17 (3) The judicial officer shall have sole discretion to determine
18 mitigation remedies pursuant to this subdivision, and the judicial officer's
19 determination shall not be subject to review or appeal in any court, tribunal, or
20 administrative office.

1 ~~Sec. 3. EFFECTIVE DATE~~

2 ~~This act shall take effect on July 1, 2012.~~

Sec. 1. LEGISLATIVE PURPOSE

(a) The Vermont General Assembly established the Nonviolent Misdemeanor Review Committee (committee) in No. 41 of the Acts of 2011, an act relating to effective strategies to reduce criminal recidivism, to propose alternatives to incarceration for nonviolent, low-risk misdemeanor offenses. The committee began its work by looking at the most common nonviolent misdemeanors. Driving without a license (DLS), both criminal and civil, was cited by witnesses as a significant driver of costs to the justice system.

(b) Currently, over 38,000 motor vehicle licenses are suspended in Vermont. There are a number of reasons that a person's motor vehicle operator's license can be suspended, including failure to pay civil fines, accumulation of points for moving violations, failure to pay child support, procurement of alcohol by a minor, and automatic suspensions for serious violations such as driving while intoxicated. The majority of licenses (60 percent) are suspended for failure to pay a traffic ticket, followed by accumulation of points for moving violations (24 percent).

(c) The committee determined that many otherwise law-abiding citizens become caught in a cycle of suspensions due to an inability to meet the financial obligations of fees, fines, and subsequent increases to insurance rates. The committee believes it is in the public interest to assist people under civil license suspension to regain their license and avoid the spiral that may eventually result in a criminal suspension.

(d) Court diversion is an existing preadjudication option for many people who have been charged with a crime. The diversion program offers willing offenders the opportunity to take responsibility for their actions and make amends to victims and the community.

Sec. 2. DIVERSION PROGRAM FOR DRIVING WITH A SUSPENDED LICENSE

(a) The court administrator, the court diversion program, and the department of motor vehicles shall work cooperatively in an effort to assist Vermonters who have a suspended motor vehicle operator's license to regain their license through participation in the DLS diversion program, as provided in this section.

(b)(1) Except as provided in subdivision (2) of this subsection, the court administrator shall notify a person who has had his or her operator's license

suspended pursuant to 23 V.S.A. §§ 674 or 676 that he or she is eligible to participate in the DLS diversion program, which is intended to assist people in regaining their operator's license. A person shall be eligible to participate in the DLS diversion program if the person completes all the requirements of the underlying violation and the suspension and if, as a result, the person would otherwise be eligible to regain his or her license if not for unmet financial obligations.

(2) A person whose operator's license is suspended for a violation of 23 V.S.A. §§ 1091(b), 1094(b), 1128(b) or (c), or 1201 or 1205 shall not be eligible to participate in the DLS diversion program with respect to the suspension for such violation.

(3) The notice shall provide that:

(A) The program is designed to assist the person to get his or her driver's license reinstated prior to completion of payment of any debt related to the suspension.

(B) The person may be eligible for a reduction in the amount of the person's financial obligation to the state or may be permitted to establish a reasonable payment plan to discharge the debt.

(C) The program is voluntary but agreeing to participate would include certain requirements including:

(i) meeting with diversion staff to assess the person's risks and to identify factors that contributed to previous violations leading to license suspension.

(ii) completing all conditions related to the offense and indicated by the screening process that are imposed by the diversion program.

(4) The court administrator may charge the cost of preparing and sending the notice against revenues collected pursuant to this subsection.

(c) Upon receiving a request from a person who has been issued a notice pursuant to subsection (b) of this section, the diversion program shall register the person in the DLS diversion program. The program staff shall meet with the person to assess the person's risks and to identify factors that contributed to previous violations leading to license suspension. Based upon the assessment, the program shall develop a contract with the person that may include:

(1) Adherence to a plan to pay fines and fees required to reinstate a driver's license.

(2) Acquiring and showing proof of auto insurance.

(3) Performance of community service.

(4) Completion of a driving education program.

(5) Any other conditions related to the reasons for the violation that led to license suspension.

(d) A person with fewer than five violations of 23 V.S.A. § 676 may apply to the DLS diversion program. Upon receipt of an application and determination of eligibility, the diversion program shall send the person a notice to report to the diversion program. The notice to report shall provide that the person is required to meet with diversion staff for the purposes of assessment and to complete all conditions of the diversion contract as provided in subsection (c) of this section.

(e) The diversion program shall notify the judicial bureau of acceptance of a person into the DLS diversion program and that a contract has been agreed to by the parties. Upon approval of the contract and any related payment plan, the judicial bureau shall notify the department of motor vehicles of compliance with the contract and the department shall reinstate the person's operator's license provided the person remains in compliance with the diversion contract. The department of motor vehicles may suspend a person's license for failure to comply with the diversion contract.

(f) The DLS diversion program shall work cooperatively with the judicial bureau to establish a reasonable payment plan for fines and fees owed by a person enrolled in the program. In addition to any remedies already provided, the judicial bureau may do the following in cases involving a person enrolled in the DLS diversion program:

(1) Reduce the amount of fines or fees owed in exchange for community service or education, or both, as provided in a diversion contract.

(2) Withdraw any debt placed for collection with a collection agency or the department of taxes.

(g) The court diversion program, in cooperation with the judiciary, shall adopt standards for operating the DLS diversion program, including determining whether a person is in compliance with conditions as set forth in this section. The standards shall specifically identify circumstances, such as additional violations or accumulation of points, which shall require additional contract conditions and circumstances that will result in dismissal from the program. Such standards shall be applicable in all county diversion programs.

(h) Each participant shall pay a fee to the local adult court diversion project. The amount of the fee shall be determined by the program using a sliding-scale fee based on financial means of the participant. The fee shall not

exceed \$300.00. Notwithstanding 32 V.S.A. § 502(a), fees collected under this subsection shall be retained and used solely for the purpose of the DLS diversion program.

(i) The court administrator shall begin notification as provided in subsection (b) by January 15, 2013, at which time the DLS diversion program shall be operational. Priority shall be given to persons determined to be at highest risk of acquiring a criminal DLS pursuant to 23 V.S.A. § 674 due to an accumulation of civil suspensions violation pursuant to 23 V.S.A. § 674.

(j) The department of motor vehicles and the court administrator shall coordinate a method for determining the appropriate mechanism to inform people about the DLS diversion program.

(k) The court administrator, the director of the court diversion program, and the commissioner of motor vehicles shall jointly report to the general assembly on or before April 1, 2013 and again on or before January 15, 2014 on the implementation of the DLS diversion program and the advisability of implementing the program through roadside stops for driving without a license and extending the program to persons who are currently prohibited from participation pursuant to subdivision (b)(2) of this section.

Sec. 3. DLS DIVERSION SPECIAL FUND

There is established the DLS diversion program special fund to be administered by the attorney general. The fund shall be used to fund the requirements of this act. Administrative fees collected pursuant to subsection (h) of Sec. 2 of this act shall be deposited and credited to this fund. The fund shall be available to the attorney general to enter into memorandums of understanding with diversion programs to pay for contractual and operating expenses and project-related staffing related to the implementation and continuing operations of the DLS diversion program.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2012.