

1 H.447

2 Introduced by Representative Wizowaty of Burlington

3 Referred to Committee on

4 Date:

5 Subject: Executive; Attorney General; adult court diversion

6 Statement of purpose of bill as introduced: This bill proposes to allow a
7 prosecuting attorney to refer a case to adult court diversion before or after
8 filing charges; require automatic adult court diversion for all first and second
9 misdemeanor offenses; allow additional contract requirements to be imposed in
10 lieu of the fee for participation in adult court diversion; and remove the
11 two-year waiting period for a participant in court diversion to become eligible
12 to have his or her record sealed.

13 An act relating to increased use of adult court diversion

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

15 Sec. 1. 3 V.S.A. § 164 is amended to read:

16 § 164. ADULT COURT DIVERSION PROJECT

17 * * *

18 (c) All adult court diversion projects receiving financial assistance from the
19 ~~attorney general~~ Attorney General shall adhere to the following provisions:

1 ~~(1) The diversion project shall accept only persons against whom~~
2 ~~charges have been filed and the court has found probable cause, but are not yet~~
3 ~~adjudicated. The prosecuting attorney shall notify in writing the diversion~~
4 ~~program and the court of his or her intention to refer the person to diversion. If~~
5 ~~the prosecuting attorney refers a case to diversion, the prosecuting attorney~~
6 ~~may release information to the victim upon a showing of legitimate need and~~
7 ~~subject to an appropriate protective agreement defining the purpose for which~~
8 ~~the information is being released and in all other respects maintaining the~~
9 ~~confidentiality of the information; otherwise files held by the court, the~~
10 ~~prosecuting attorney, and the law enforcement agency~~ The prosecuting
11 attorney may refer a case to diversion before or after filing charges. If the
12 prosecuting attorney refers a case to diversion, the information and affidavit
13 related to the charges shall be confidential and shall remain confidential unless:

14 (A) the board declines to accept the case;

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

16 (C) the board accepts the case, but the person does not successfully
17 complete diversion; or

18 (D) the prosecuting attorney recalls the referral to diversion.

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

1 to accept the adult diversion contract, so that the candidate may give informed
2 consent.

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

5 (4) All first and second misdemeanor offenses shall be automatically
6 diverted. Each state's attorney, in cooperation with the adult court diversion
7 project, shall develop clear criteria for deciding what other types of offenses
8 and offenders will be eligible for diversion; however, the state's attorney shall
9 retain final discretion over the referral of each case for diversion that is not a
10 first or second misdemeanor offense.

11 * * *

12 (9) Each participant shall pay a fee to the local adult court diversion
13 project, unless it is determined that no fee is appropriate. The amount of the
14 fee shall be determined by project officers or employees based upon the
15 financial capabilities of the participant. The fee shall not exceed \$300.00. The
16 fee shall be a debt due from the participant, ~~and payment of such shall be~~
17 ~~required for successful completion of the program.~~ Notwithstanding 32 V.S.A.
18 § 502(a), fees collected under this subdivision shall be retained and used solely
19 for the purpose of the court diversion program. Additional contract
20 requirements may be imposed in lieu of payment if the participant
21 demonstrates an inability to pay the amount assessed.

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

4 (e) Within 30 days of the ~~two-year anniversary of a successful completion~~
5 of adult diversion, the court shall provide notice to all parties of record of the
6 court's intention to order the sealing of all court files and records, law
7 enforcement records other than entries in the adult court diversion project's
8 centralized filing system, fingerprints, and photographs applicable to the
9 proceeding. The court shall give the state's attorney an opportunity for a
10 hearing to contest the sealing of the records. The court shall seal the records if
11 it finds:

12 (1) ~~two years have elapsed since the successful completion of the adult~~
13 ~~diversion program by the participant and the dismissal of the case by the state's~~
14 ~~attorney~~ the participant successfully completed the adult diversion program
15 and the state's attorney dismissed the case; and

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

19 (3) rehabilitation of the participant has been attained to the satisfaction
20 of the court.

21 * * *

1 Sec. 2. EFFECTIVE DATE

2 This act shall take effect on July 1, 2013.