

1 S.6

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: January 13, 2015

5 Subject: Court procedure; criminal procedure; technical corrections

6 Statement of purpose of bill as introduced: This bill proposes to make several
7 technical corrections related to civil and criminal procedure statutes.

8 An act relating to technical corrections to civil and criminal procedure
9 statutes

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

11 ~~Sec. 1. 13 V.S.A. § 1501 is amended to read:~~

12 § 1501. ESCAPE AND ATTEMPTS TO ESCAPE

13 * * *

14 (b)(1) A person ~~who~~ shall not, while in lawful custody:

15 ~~(1) fails (A) fail~~ to return from work release to the correctional facility
16 at the specified time, or visits other than the specified place, as required by the
17 order issued in accordance with 28 V.S.A. § 753;

18 ~~(2) fails (B) fail~~ to return from furlough to the correctional facility at
19 the specified time, or visits other than the specified place, as required by the
20 order issued in accordance with 28 V.S.A. § 808;

1 ~~(3) escapes or attempts (C) escape or attempt to escape while on release~~
2 from a correctional facility to do work in the service of such facility or of the
3 Department of Corrections in accordance with 28 V.S.A. § 758; or
4 ~~(4) escapes or attempts (D) escape or attempt to escape from the~~
5 Vermont State Hospital, or its successor in interest or a participating hospital,
6 when confined by court order pursuant to chapter 157 of this title, or when
7 transferred there pursuant to 28 V.S.A. § 703 and while still serving a sentence;
8 ~~shall be imprisoned for not more than five years or fined not more than~~
9 ~~\$1,000.00, or both.~~

10 (2) A person who violates this subsection shall be imprisoned for not
11 more than five years or fined not more than \$1,000.00, or both.

12 * * *

13 Sec. 2. 13 V.S.A. § 5321 is amended to read:

14 § 5321. APPEARANCE BY VICTIM

15 * * *

16 (c) In accordance with ~~court~~ Court rules, at the sentencing hearing, the
17 ~~court~~ Court shall ask if the victim is present and, if so, whether the victim
18 would like to be heard regarding sentencing. ~~in~~ In imposing sentence, the ~~court~~
19 Court shall consider any views offered at the hearing by the victim. ~~if~~ If the
20 victim is not present, the ~~court~~ Court shall ask whether the victim has

1 ~~expressed, either orally or in writing, views regarding sentencing and shall take~~
2 those views into consideration in imposing sentence.

3 (d) At or before the sentencing hearing, the prosecutor's office shall
4 instruct the victim of a listed crime, in all cases where the ~~court~~ Court imposes
5 a sentence which includes a period of incarceration, that a sentence of
6 incarceration is to the custody of the ~~commissioner~~ Commissioner of
7 ~~corrections~~ Corrections and that the ~~commissioner~~ Commissioner of
8 ~~corrections~~ Corrections has the authority to affect the actual time the defendant
9 shall serve in incarceration through good time credit, furlough, work-release,
10 and other early release programs. ~~in~~ In addition, the prosecutor's office shall
11 explain the significance of a minimum and maximum sentence to the victim
12 and shall also explain the function of parole and how it may affect the actual
13 amount of time the defendant may be incarcerated.

14 * * *

15 Sec. 3. 13 V.S.A. § 5574 is amended to read:

16 § 5574. BURDEN OF PROOF; JUDGMENT; DAMAGES

17 (a) A claimant shall be entitled to judgment in an action under this
18 subchapter if the claimant establishes each of the following by clear and
19 convincing evidence:

20 * * *

1 ~~(2)(A) The the complainant's conviction was reversed or vacated, the~~
2 complainant's information or indictment was dismissed, or the complainant
3 was acquitted after a second or subsequent trial; or

4 (B) ~~The~~ the complainant was pardoned for the crime for which he or
5 she was sentenced.

6 * * *

7 Sec. 4. 18 V.S.A. § 4230 is amended to read:

8 § 4230. MARIJUANA

9 (a) Possession and cultivation.

10 (1)(A) No person shall knowingly and unlawfully possess more than one
11 ounce of marijuana or more than five grams of hashish or cultivate marijuana.
12 For a first offense under this subdivision (A), a person shall be provided the
13 opportunity to participate in the Court Diversion Program unless the prosecutor
14 states on the record why a referral to the Court Diversion Program would not
15 serve the ends of justice. A person convicted of a first offense under this
16 subdivision shall be imprisoned not more than six months or fined not more
17 than \$500.00, or both.

18 * * *

1 ~~(b) Selling or dispensing.~~

2 (1) A person knowingly and unlawfully selling one ounce or less of
3 marijuana or five grams or less of hashish shall be imprisoned not more than
4 two years or fined not more than \$10,000.00, or both.

5 (2) A person knowingly and unlawfully selling or dispensing ~~one-half~~
6 more than one ounce or more of marijuana or ~~2.5~~ more than five grams or
7 ~~more~~ of hashish shall be imprisoned not more than five years or fined not more
8 than \$100,000.00, or both.

9 (3) A person knowingly and unlawfully selling or dispensing one pound
10 or more of marijuana or 2.8 ounces of hashish shall be imprisoned not more
11 than 15 years or fined not more than \$500,000.00, or both.

12 * * *

13 Sec. 5. 33 V.S.A. § 5308(a)(4) is amended to read:

14 (4) The custodial parent, guardian, or ~~guardian~~ custodian has abandoned
15 the child.

16 Sec. 6. EFFECTIVE DATE

17 ~~This act shall take effect on passage.~~

~~Sec. 1. 13 V.S.A. § 1501 is amended to read:~~

~~§ 1501. ESCAPE AND ATTEMPTS TO ESCAPE~~

~~* * *~~

~~(b)(1) A person ~~who~~ shall not, while in lawful custody:
(1) ~~fails~~ (A) ~~fail~~ to return from work release to the correctional facility
at the specified time, or visits other than the specified place, as required by the
order issued in accordance with 28 V.S.A. § 753;~~

~~(2) fails (B) fail to return from furlough to the correctional facility at the specified time, or visits other than the specified place, as required by the order issued in accordance with 28 V.S.A. § 808, 808a, 808b, or 808c;~~

~~(3) escapes or attempts (C) escape or attempt to escape while on release from a correctional facility to do work in the service of such facility or of the Department of Corrections in accordance with 28 V.S.A. § 758; or~~

~~(4) escapes or attempts (D) escape or attempt to escape from the Vermont State Hospital, or its successor in interest or a participating hospital, when confined by court order pursuant to chapter 157 of this title, or when transferred there pursuant to 28 V.S.A. § 703 and while still serving a sentence, shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.~~

~~(2) A person who violates this subsection shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.~~

~~***~~

~~Sec. 2. 13 V.S.A. § 5321 is amended to read:~~

~~§ 5321. APPEARANCE BY VICTIM~~

~~***~~

~~(c) In accordance with ~~court~~ Court rules, at the sentencing hearing, the ~~court~~ Court shall ask if the victim is present and, if so, whether the victim would like to be heard regarding sentencing. ~~It~~ In imposing sentence, the ~~court~~ Court shall consider any views offered at the hearing by the victim. ~~if~~ If the victim is not present, the ~~court~~ Court shall ask whether the victim has expressed, either orally or in writing, views regarding sentencing and shall take those views into consideration in imposing sentence.~~

~~(d) At or before the sentencing hearing, the prosecutor's office shall instruct the victim of a listed crime, in all cases where the ~~court~~ Court imposes a sentence which includes a period of incarceration, that a sentence of incarceration is to the custody of the ~~commissioner~~ Commissioner of ~~corrections~~ Corrections and that the ~~commissioner~~ Commissioner of ~~corrections~~ Corrections has the authority to affect the actual time the defendant shall serve in incarceration through good time credit, furlough, work-release, and other early release programs. ~~It~~ In addition, the prosecutor's office shall explain the significance of a minimum and maximum sentence to the victim and shall also explain the function of parole and how it may affect the actual amount of time the defendant may be incarcerated.~~

~~***~~

~~Sec. 3. 13 V.S.A. § 5574 is amended to read:~~

~~§ 5574. BURDEN OF PROOF; JUDGMENT; DAMAGES~~

~~(a) A claimant shall be entitled to judgment in an action under this subchapter if the claimant establishes each of the following by clear and convincing evidence:~~

~~* * *~~

~~(2)(A) The the complainant's conviction was reversed or vacated, the complainant's information or indictment was dismissed, or the complainant was acquitted after a second or subsequent trial; or~~

~~(B) The the complainant was pardoned for the crime for which he or she was sentenced.~~

~~* * *~~

~~Sec. 4. 18 V.S.A. § 4230 is amended to read:~~

~~§ 4230. MARIJUANA~~

~~(a) Possession and cultivation~~

~~(1)(A) No person shall knowingly and unlawfully possess more than one ounce of marijuana or more than five grams of hashish or cultivate marijuana. For a first offense under this subdivision (A), a person shall be provided the opportunity to participate in the Court Diversion Program unless the prosecutor states on the record why a referral to the Court Diversion Program would not serve the ends of justice. A person convicted of a first offense under this subdivision shall be imprisoned not more than six months or fined not more than \$500.00, or both.~~

~~* * *~~

~~(b) Selling or dispensing~~

~~(1) A person knowingly and unlawfully selling marijuana or hashish shall be imprisoned not more than two years or fined not more than \$10,000.00, or both.~~

~~(2) A person knowingly and unlawfully selling or dispensing one-half more than one ounce ~~or more~~ of marijuana or 2.5 more than five grams ~~or more~~ of hashish shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.~~

~~(3) A person knowingly and unlawfully selling or dispensing one pound or more of marijuana or 2.8 ounces of hashish shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both.~~

~~* * *~~

~~Sec. 5. 33 V.S.A. § 5308(a)(4) is amended to read:~~

~~(4) The custodial parent, guardian, or guardian custodian has abandoned the child.~~

~~Sec. 6. 2014 Acts and Resolves No. 126, Sec. 7 is amended to read:~~

~~Sec. 7. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2014 and shall apply to restitution orders issued after that date; provided, however, that notwithstanding 1 V.S.A. § 214, Secs. 1, 3, 4, 5, and 6 shall also apply retroactively to restitution orders issued on or before July 1, 2014.~~

~~Sec. 7. 18 V.S.A. § 4230a, 4230b, and 4230c are amended to read:~~

~~§ 4230a. MARIJUANA POSSESSION BY A PERSON 21 YEARS OF AGE OR OLDER; CIVIL VIOLATION~~

~~(a) A person 21 years of age or older who knowingly and unlawfully possesses or dispenses one ounce or less of marijuana or five grams or less of hashish commits a civil violation and shall be assessed a civil penalty as follows:~~

- ~~(1) not more than \$200.00 for a first offense;~~
- ~~(2) not more than \$300.00 for a second offense;~~
- ~~(3) not more than \$500.00 for a third or subsequent offense.~~

~~(b)(1) Except as otherwise provided in this section, a person 21 years of age or older who possesses or dispenses one ounce or less of marijuana or five grams or less of hashish or who possesses paraphernalia for marijuana use shall not be penalized or sanctioned in any manner by the State or any of its political subdivisions or denied any right or privilege under State law.~~

~~(2) A violation of this section shall not result in the creation of a criminal history record of any kind.~~

~~* * *~~

~~§ 4230b. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS OF AGE; FIRST OR SECOND OFFENSE; CIVIL VIOLATION~~

~~(a) Offense. Except as otherwise provided in section 4230c of this title, a person under 21 years of age who knowingly and unlawfully possesses or dispenses one ounce or less of marijuana or five grams or less of hashish commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance Abuse Safety Program. A person who fails to complete the program successfully shall be subject to:~~

~~(1) a civil penalty of \$300.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 90 days, for a first offense; and~~

~~(2) a civil penalty of not more than \$600.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 180 days, for a second offense.~~

~~***~~

~~§ 4230c. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS OF AGE; THIRD OR SUBSEQUENT OFFENSE; CRIME~~

~~No person shall knowingly and unlawfully possess or dispense marijuana. A person under 21 years of age who knowingly and unlawfully possesses one ounce or less of marijuana or five grams or less of hashish commits a crime if the person has been adjudicated at least twice previously in violation of section 4230b of this title and shall be imprisoned not more than 30 days or fined not more than \$600.00, or both.~~

~~Sec. 8. EFFECTIVE DATE~~

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~~Sec. 1. 13 V.S.A. § 1501 is amended to read:~~

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~~(b)(1) A person who shall not, while in lawful custody:~~

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(2) A person who violates this subsection shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.

* * *

(d) As used in this section:

* * *

~~(3) "Successor in interest" shall mean the mental health hospital owned and operated by the State that provides acute inpatient care and replaces the Vermont State Hospital. [Repealed.]~~

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Sec. 6. 33 V.S.A. § 5284 is amended to read:

§ 5284. DETERMINATION AND ORDER

(a) In a hearing on a motion for youthful offender status, the Court shall first consider whether public safety will be protected by treating the youth as a youthful offender. If the Court finds that public safety will not be protected by treating the youth as a youthful offender, the Court shall deny the motion and return the case to the ~~Family~~ Criminal Division of the Superior Court pursuant to subsection 5281(d) of this title. If the Court finds that public safety will be protected by treating the youth as a youthful offender, the Court shall proceed to make a determination under subsection (b) of this section.

* * *

Sec. ~~6~~7. EFFECTIVE DATE

This act shall take effect on passage.