

S.138

Introduced by Senators Illuzzi, Sears and Doyle

Referred to Committee on Judiciary

Date: January 3, 2012

Subject: Search warrants; record keeping; public records

Statement of purpose: This bill proposes to establish a record keeping system for search warrants. The bill proposes that warrants be indexed and maintained in a searchable database by the clerk of the court to which the warrant is returned. After the return is filed, the search warrant and related papers are public records. If the request for a search warrant is denied, the application is sealed and treated as a confidential record.

~~An act relating to the record keeping of search warrants.~~ *An act relating to calculation of criminal sentences and record keeping for search warrants*

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

~~Sec. 1. Vermont Rules of Criminal Procedure, Rule 41 is amended to read:~~

~~RULE 41. SEARCH AND SEIZURE~~

~~* * *~~

~~(h) Record keeping; searchable database. The clerk of the court to whom the warrant was returned shall attach to the warrant a copy of the application, the return, the inventory, and all other related papers. The clerk shall file and index the warrant and the attached papers in a searchable database.~~

~~(i) Public records; sealing.~~

1 (1) If a request for a search warrant is granted, the application and
2 warrant shall be confidential records until the return is filed. After the return is
3 filed, the granted search warrant application, the resulting warrant, and the
4 return shall be public records. For good cause shown, the court may order that
5 a granted search warrant application, the resulting warrant, and the return be
6 sealed and treated as confidential records.

7 (2) If a request for a search warrant is denied, the application shall be
8 sealed and treated as a confidential record.

9 Sec. 2. EFFECTIVE DATE

10 This act shall take effect on July 1, 2012.

Sec. 1. Vermont Rules of Criminal Procedure, Rule 41 is amended to read:

RULE 41. SEARCH AND SEIZURE

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(h) Record keeping. Upon the filing of a warrant and affidavit, the clerk of the court shall assign a standardized warrant identification number to the warrant and enter the warrant, its identifying details, and subsequent activity into a warrant log and standardized database maintained by the court. The warrant log and database shall be such as to permit monitoring of timely execution of warrants issued and timely filing of return and inventory following a search. A return shall be required for every warrant issued.

Sec. 2. 7 V.S.A. § 61 is amended to read:

§ 61. RESTRICTIONS; EXCEPTIONS

A person, partnership, association, or corporation shall not furnish or sell, or expose or keep with intent to sell, any malt or vinous beverage, or spirits, or manufacture, sell, barter, transport, import, export, deliver, prescribe, furnish, or possess any alcohol, except as authorized by this title. However, this chapter shall not apply to the furnishing of such beverages or spirits by a person in his or her private dwelling, ~~unless to an habitual drunkard, or unless~~ such dwelling becomes a place of public resort, nor to the sale of fermented cider by the barrel or cask of not less than 32 liquid gallons capacity, provided

the same is delivered and removed from the vendor's premises in such barrel or cask at the time of such sale, nor to the use of sacramental wine, nor to the furnishing, purchase, sale, barter, transportation, importation, exportation, delivery, prescription, or possession of alcohol for manufacturing, mechanical, medicinal, and scientific purposes, provided the same is done under and in accordance with rules and regulations made and permits issued by the liquor control board as hereinafter provided, nor to the furnishing of such beverages or spirits by the Vermont criminal justice training council to drinking subjects during DUI enforcement courses of instruction at the Vermont police academy.

Sec. 3. 13 V.S.A. § 7031 is amended to read:

§ 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

(a) When a respondent is sentenced to any term of imprisonment, other than for life, the court imposing the sentence shall not fix the term of imprisonment, unless such term is definitely fixed by statute, but shall establish a maximum and may establish a minimum term for which such respondent may be held in imprisonment. The maximum term shall not be more than the longest term fixed by law for the offense of which the respondent is convicted and the minimum term shall be not less than the shortest term fixed by law for such offense. If the court suspends a portion of said sentence, the unsuspended portion of such sentence shall be the minimum term of sentence solely for the purpose of any reductions of term for good behavior as provided for in 28 V.S.A. § 811. A sentence shall not be considered fixed as long as the maximum and minimum terms are not identical.

(b) The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which the person is received at the correctional facility for service of the sentence. The court shall give the person credit toward service of his or her sentence for any days spent in custody ~~in connection with the offense for which sentence was imposed~~ as follows:

(1) The period of credit shall include all days served from the date of arraignment or the date of the earliest detention for the offense, whichever occurs first, and ending on the date of the sentencing. Only a single credit shall be awarded in cases of consecutive sentences, and no credit for one period of time shall be applied to a later period.

(2) In sentencing a violation of probation, the court shall give the person credit for any days spent in custody from the time the violation is filed or the person is detained on the violation, whichever occurs first, until the violation is sentenced. In a case in which probation is revoked and the person is ordered to serve the underlying sentence, the person shall receive credit for all time previously served in connection with the offense.

(c) If any such person is committed to a jail or other place of detention to await transportation to the place at which his or her sentence is to be served, his or her sentence shall commence to run from the date on which he or she is received at such jail or such place of detention.

(d) A person who receives a zero minimum sentence for a conviction of a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301 shall begin to serve the sentence in the community immediately, unless the person is serving a prior sentence at such time.

Sec. 4. 13 V.S.A. § 7032(c) is amended to read:

(c) In all cases where multiple or additional sentences have been or are imposed, the term or terms of imprisonment under those sentences shall be determined in accordance with the following definitions.

(1) When terms run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum and the shorter maximum terms merge in and are satisfied by discharge of the longest maximum term.

(2) When terms run consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms. No person shall serve more time on consecutive minimum sentences than the sum of the minimum terms, regardless of whether the sentences are imposed on the same or different dates. If a person serves a minimum term, and subsequently incurs another criminal charge, the time the person spends in custody awaiting disposition of the new charge shall count toward the minimum term of the new sentence, if one is imposed. This subdivision shall not require the department of corrections to release a person from incarceration to community supervision at the person's minimum term.

Sec. 5. 18 V.S.A. § 4216 is amended to read:

§ 4216. AUTHORIZED POSSESSION BY INDIVIDUALS

(a) A person to whom or for whose use any regulated drug has been prescribed, sold or dispensed, and the owner of any animal for which any such drug has been prescribed, sold or dispensed, may lawfully possess the same on the condition that such drug was prescribed, sold or dispensed by a physician, dentist, pharmacist, or veterinarian licensed under this chapter or under the laws of another state or country wherein such person has his or her practice; and further that all.

(b)(1) Except as otherwise provided in subdivision (2) of this subsection, all amounts of the drug ~~are~~ shall be retained in the lawful container in which it was delivered to ~~him~~ the patient by the person selling or dispensing the same;

~~provided however, that for the purposes of this section an amount of regulated drugs of not more than two days' individual prescribed dosage may be possessed by a patient for his personal use.~~

(2) A patient may possess an amount of regulated drugs of not more than seven days' individual prescribed dosage, for personal use, which shall not be required to be retained in its lawful container.

Sec. 6. 18 V.S.A. § 4230(b)(2) is amended to read:

~~(2) A person knowingly and unlawfully selling or dispensing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances; of an aggregate weight of one-half ounce two ounces or more containing any marijuana shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.~~

Sec. 7. 28 V.S.A. § 808a(a) is amended to read:

~~(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on treatment furlough with recommendation of the department to participate in such programs administered by the department in the community that reduce the offender's risk to reoffend or that provide reparation to the community in the form of supervised work activities.~~

Sec. 8. **FEASIBILITY STUDY FOR A STATEWIDE ONLINE
SENTENCING TOOL**

~~(a) The 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. In its report, the committee expressed concern regarding "the varying degrees of justice meted out by the different counties in Vermont," and concluded that "any efforts to reduce recidivism and increase alternatives to incarceration must foster statewide equity in treatment of those charged or convicted with a criminal offense."~~

~~(b) The committee believes that judicial discretion is the cornerstone of sentencing in Vermont courts, and sentencing is at its best when the decision-makers have accurate and timely information about the offender, the offenses, and the options available for sentencing.~~

~~(c) Evidence-based practice research suggests that sentencing of criminal defendants should be based on the seriousness of the offense, risk, and probability of recidivism. Criminal sentencing that is based on these three principles is more likely to protect the public, reduce recidivism, and reduce costs than sentencing practices that are based on anecdotal experience.~~

(d) The committee took testimony on a new sentencing tool developed by the Missouri Sentencing Advisory Commission which employs these principles, and which is available electronically to judges, attorneys, and other people involved in Missouri's criminal justice system. According to the commission, the "goal of the system is to ensure sentencing that is fair, protects the public, uses corrections resources wisely, and reduces sentence disparity."

(e) There is created a sentencing task force for the purpose of conducting a feasibility study to determine whether a set of sentencing data based on the seriousness of the offense, risk, and probability of recidivism can be developed and implemented in Vermont. The task force shall comprise the following members:

(1) A member of the committee on judiciary appointed by the committee on committees.

(2) A member of the committee on judiciary appointed the speaker of the house.

(3) A judge appointed by the chief justice of the Vermont supreme court.

(4) The commissioner of corrections.

(5) A state's attorney appointed by the executive committee of the department of state's attorneys and sheriffs.

(6) The defender general.

(f) The Vermont Center for Justice Research, the state's Criminal Justice Statistical Analysis Center, has been involved with the analysis of criminal sentencing data in Vermont for the past 20 years. At the direction of the task force, the center shall undertake the statistical analysis necessary to develop the policy decisions required for the sentencing matrixes which are the foundation of the project. The pilot analysis shall focus on five to ten felony or misdemeanor crimes prosecuted in Vermont during a two-year period. The center shall evaluate the availability and quality of data which would be required to generate sentencing information similar to those used in the Missouri model.

(g) The task force shall report the sentencing information for the crimes selected for the feasibility study along with a report with recommendations regarding the feasibility of a Vermont online sentencing tool to the senate and house committees on judiciary by March 15, 2013.

(h) The secretary of administration shall seek sources of grants and funding in fiscal year 2013 for the purpose of aiding the sentencing task force with a feasibility study to determine whether a set of sentencing data based on the seriousness of the offense, risk, and probability of recidivism can be

developed and implemented in Vermont. The cost is currently estimated to be \$33,600.00.

Sec. 9. Sec. 4 of No. 41 of the Acts of 2011 is amended to read:

**Sec. 4. NONVIOLENT MISDEMEANOR SENTENCE REVIEW
COMMITTEE**

(a) Creation of committee. There is created a nonviolent misdemeanor sentence review committee to propose alternatives to incarceration for nonviolent, low-risk misdemeanor offenses and to study whether records produced by public agencies in the course of the detection and investigation of crime should be open to public inspection or confidential.

* * *

(c) Powers and duties.

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(2) The committee shall study whether records produced by public agencies in the course of the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by law enforcement, should be open to public inspection or confidential. The committee's study shall include:

(A) A determination of which records dealing with the detection and investigation of a crime should be public records and which records should be confidential.

(B) Consideration of the need to balance public safety and privacy when determining which criminal investigation records should be public and which records should be confidential.

(C) Legislation to implement the policy recommended by the committee.

(2)(3) The committee shall consult with stakeholders ~~while engaging in its mission~~, including the following:

(A) The secretary of human services or designee.

(B) The secretary of state or designee.

(C) The executive director of the American Civil Liberties Union of Vermont or designee.

(D) A representative of the Vermont Press Association.

(E) The defender general or designee.

(F) The attorney general or designee.

(G) The executive director of the Vermont association of chiefs of police or designee.

(H) The executive director of the Vermont Bar Association or designee.

(I) A representative from the department of public safety.

(J) The executive director of the state's attorneys and sheriffs' association or designee.

(K) A member of the supreme court public access to court records advisory rules committee appointed by the chief justice.

(L) The executive director of the Vermont Center for Crime Victims Services or designee.

~~(3)~~(4) For purposes of its study of these issues, the committee shall have the legal and administrative assistance of the office of legislative council and the department of corrections.

(d) Report. ~~By December 1, 2011, the~~ The committee shall report annually to the general assembly on its findings and any recommendations for legislative action.

(e) Number of meetings; term of committee; reimbursement. The committee may meet no more than ~~five~~ seven times annually and shall cease to exist on January 1, ~~2012~~ 2014.

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~~Sec. 10. APPROPRIATION~~

~~The amount of \$33,600.00 is appropriated from the general fund to the Vermont Center for Justice Research in fiscal year 2013 for the purpose of aiding the sentencing task force with a feasibility study to determine whether a set of sentencing data based on the seriousness of the offense, risk, and probability of recidivism can be developed and implemented in Vermont.~~