

H.869

Introduced by Committee on Judiciary

Date:

Subject: Judiciary; court organization and operations

Statement of purpose of bill as introduced: This bill proposes a number of measures related to the organization and operation of courts and the Judiciary.

An act relating to judicial organization and operations

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

~~*** Judicial Masters ***~~

Sec. 1. 4 V.S.A. § 38 is added to read:

§ 38. JUDICIAL MASTERS

(a) The Administrative Judge may appoint a licensed Vermont lawyer who has been engaged in the practice of law in Vermont for at least the last five years to serve as a Judicial Master. The Judicial Master shall be an employee of the Judiciary and be subject to the Code of Judicial Conduct. A Judicial Master shall not engage in the active practice of law for remuneration while serving in this position. In making this appointment, the Administrative Judge shall apply the criteria and standards for judicial appointments contained in section 601 of this title. The Judicial Master may hear and decide matters as

~~designated by the Administrative Judge in the Civil, Criminal, and Family~~

Divisions as described herein:

(1) In the Civil Division of the Superior Court, pre- and post-trial matters, as approved by the presiding judge, including rent escrow orders, discovery orders, sanctions not including requests for dismissal, and financial disclosure hearings; the Master shall not hear requests for injunctive relief, motions for summary judgment, a motion to dismiss for failure to state a claim, or an involuntary dismissal.

(2) In the Criminal Division of the Superior Court, proceedings in treatment court dockets, as approved by the presiding judge, to assure compliance with court orders, including attendance and participation with a treatment plan, imposition of sanctions and incentives, including incarceration in the course of the program and dismissal from the program due to noncompliance; the Master shall not have authority to accept pleas or to impose sentences, to hear motions to suppress, or to dismiss for lack of a prima facie case.

(3) In the Family Division of the Superior Court, in juvenile proceedings, as approved by the presiding judge, to assure compliance with existing court orders, including attendance and participation in substance abuse, mental health, and other court-ordered counseling; compliance with and modification of parent-child contact; to act as the administrative body to

1 ~~conduct permanency hearings pursuant to 33 V.S.A. § 5321(g) unless a~~
2 contested permanency hearing becomes necessary; and to provide case
3 management of juvenile proceedings; the Master shall not have the authority to
4 hear temporary care hearings, requests for juvenile protective orders, hearings
5 on the merits, or to conduct disposition hearings.

6 (4) In the Family Division of the Superior Court, proceedings, with the
7 approval of the presiding judge, to assure compliance with existing court
8 orders relating to parent-child contact; to act as a Master pursuant to V.R.C.P.
9 53 where no order has been made pursuant to 32 V.S.A. § 1758(b); and to
10 provide case management of proceedings with 15 V.S.A. chapters 5, 11, 15,
11 and 18; the Master shall not have authority to determine divorce or parentage
12 actions, parental rights and responsibilities, or spousal maintenance or
13 modifications of such orders.

14 (b) The Judicial Master may be appointed to serve as an acting judge
15 pursuant to subsection 22(b) of this title.

16 (c) The decision of a Judicial Master under this section shall have the same
17 effect as a decision of a Superior judge, except when acting as a Master
18 pursuant to subdivision (a)(4) of this section.

~~*** Petition and Affidavit in Delinquency Proceedings ***~~

Sec. 2. 33 V.S.A. § 5223 is amended to read:

§ 5223. FILING OF PETITION

(a) When notice to the child is provided by citation, the State's Attorney shall file the petition and supporting affidavit at least 10 days prior to the date for the preliminary hearing specified in the citation.

(b) ~~The Court shall send or deliver a~~ A copy of the petition and affidavit shall be made available at the State's Attorney's office to all persons required to receive notice, including the noncustodial parent, as soon as possible after the petition is filed and at least five days prior to the date set for the preliminary hearing.

~~*** Appeals of Judicial Bureau Decisions ***~~

Sec. 3. 4 V.S.A. § 1107 is amended to read:

§ 1107. APPEALS

(a) A decision of the hearing officer may be appealed to the Criminal Division of the Superior Court. The proceeding before the Criminal Division of the Superior Court shall be on the record, ~~or at the option of the defendant,~~ de novo. ~~The defendant shall have the right to trial by jury.~~ An appeal shall stay payment of a penalty and the imposition of points.

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~~*** Licensing Board Appeals ***~~

Sec. 4. 3 V.S.A. § 130a is amended to read:

§ 130a. APPEALS FROM BOARD DECISIONS

(a) A party aggrieved by a final decision of a board may, within 30 days of the decision, appeal that decision by filing a notice of appeal with the director who shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on that issue may be taken by the appellate officer.

* * *

(c) A party aggrieved by a decision of the appellate officer may appeal to the ~~superior court in Washington County~~ Supreme Court, which shall review the matter on the basis of the records created before the board and the appellate officer.

~~*** Transportation Board Appeals ***~~

Sec. 5. 19 V.S.A. § 5 is amended to read:

§ 5. TRANSPORTATION BOARD; POWERS AND DUTIES

* * *

(c) The Board may delegate the responsibility to hear quasi-judicial matters, and other matters as it may deem appropriate, to a hearing examiner or a single Board member, to hear a case and make findings in accordance with

1 ~~2 V.S.A. chapter 25, except that highway condemnation proceedings shall be~~
2 conducted pursuant to the provisions of chapter 5 of this title. A hearing
3 examiner or single Board member so appointed shall report his or her findings
4 of fact in writing to the Board. Any order resulting therefrom shall be rendered
5 only by a majority of the Board. Final orders of the Board issued pursuant to
6 section 20 of this title may be reviewed on the record by a Superior Court
7 pursuant to Rule 74 of the Vermont Rules of Civil Procedure. All other final
8 orders of the Board may be reviewed on the record by the Supreme Court.

9 * * *

10 * * * Accessibility and Efficiency of Court System * * *

11 Sec. 6. ACCESS TO JUSTICE; COLLABORATIVE PROCESS

12 The Supreme Court shall coordinate a collaborative process with its justice
13 partners, including the Vermont Bar Association, the Department of State's
14 Attorneys and Sheriffs, the Defender General, the Attorney General, the
15 Department for Children and Families, and the Vermont Association for
16 Justice, in an effort to identify court system reforms that promote efficient use
17 of judicial resources and allocation of costs while preserving access to justice
18 and maintaining the quality of court services. The Court shall report the
19 proposals developed in the collaborative process to the House and Senate
20 Committees on Judiciary on or before December 15, 2016.

~~*** Effective Dates ***~~

Sec. 7. EFFECTIVE DATES

~~(a) Secs. 1 and 6 and this section shall take effect on passage.~~

~~(b) Sec. 2 shall take effect on July 1, 2016.~~

~~(c) Secs. 3–5 shall take effect on July 1, 2016 and shall apply to appeals
filed on or after that date.~~

**** Judicial Masters ****

Sec. 1. 4 V.S.A. § 38 is added to read:

§ 38. JUDICIAL MASTERS

(a) The Administrative Judge may appoint a licensed Vermont lawyer who has been engaged in the practice of law in Vermont for at least the last five years to serve as a Judicial Master. The Judicial Master shall be an employee of the Judiciary and be subject to the Code of Judicial Conduct. A Judicial Master shall not engage in the active practice of law for remuneration while serving in this position. In making this appointment, the Administrative Judge shall apply the criteria and standards for judicial appointments contained in section 601 of this title. The Judicial Master may hear and decide the following matters as designated by the Administrative Judge:

(1) In the Criminal Division of the Superior Court, proceedings in treatment court dockets, as approved by the presiding judge, to assure compliance with court orders, including attendance and participation with a

treatment plan, imposition of sanctions and incentives, including incarceration in the course of the program and dismissal from the program due to noncompliance; the Master shall not have authority to accept pleas or to impose sentences, to hear motions to suppress, or to dismiss for lack of a prima facie case.

(2) In the Family Division of the Superior Court, in juvenile proceedings, as approved by the presiding judge, to assure compliance with existing court orders, including attendance and participation in substance abuse, mental health, and other court-ordered counseling; compliance with and modification of parent-child contact; to act as the administrative body to conduct permanency hearings pursuant to 33 V.S.A. § 5321(g) unless a contested permanency hearing becomes necessary; and to provide case management of juvenile proceedings; the Master shall not have the authority to hear temporary care hearings, requests for juvenile protective orders, or hearings on the merits, or to conduct disposition hearings.

(3) In the Family Division of the Superior Court, proceedings, with the approval of the presiding judge, to assure compliance with existing court orders relating to parent-child contact; to act as a Master pursuant to Rule 53 of the Vermont Rules of Civil Procedure; where no order has been made pursuant to 32 V.S.A. § 1758(b); and to provide case management of proceedings with 15 V.S.A. chapters 5, 11, 15, and 18; the Master shall not

have authority to determine divorce or parentage actions, parental rights and responsibilities, or spousal maintenance or modifications of such orders.

(b) The Judicial Master may be appointed to serve as an acting judge pursuant to subsection 22(b) of this title in any matter in which he or she has not previously acted as a Judicial Master.

(c) The decision of a Judicial Master under this section shall have the same effect as a decision of a Superior judge, except when acting as a Master pursuant to subdivision ~~(a)(4)~~ (a)(3) of this section.

Sec. 2. REPEAL

4 V.S.A. § 38 (Judicial Masters) shall be repealed on July 1, 2019.

* * * Venue in TPR Cases * * *

Sec. 3. LEGISLATIVE INTENT

The General Assembly does not intend Sec. 4 of this act, which amends 4 V.S.A. § 37 to permit regional venue in proceedings involving the termination of parental rights (TPR), to result in the closure of any Vermont courts. Sec. 4 is intended to permit greater flexibility in the TPR process, in response to the findings and recommendations made by the Committee on Child Protection in 2014, and it may, in fact, result in an increase rather than a decrease in court proceedings for some jurisdictions.

Sec. 4. 4 V.S.A. § 37 is amended to read:

§ 37. VENUE

(a) *The venue for all actions filed in the ~~superior court~~ Superior Court, whether heard in the ~~civil, criminal, family, environmental, or probate division~~ Civil, Criminal, Family, Environmental, or Probate Division, shall be as provided in law.*

(b) *Notwithstanding any other provision of law, the ~~supreme court~~ Supreme Court may promulgate venue rules, subject to review by the legislative committee on judicial rules under 12 V.S.A. chapter 1 ~~of Title 12~~, which are consistent with the following policies:*

(1) *Proceedings involving a case shall be heard in the unit in which the case was brought, subject to the following exceptions:*

(A) *when the parties have agreed otherwise;*

(B) *status conferences, minor hearings, or other nonevidentiary proceedings; or*

(C) *when a change in venue is necessary to ensure access to justice for the parties or required for the fair and efficient administration of justice.*

(2) *The electronic filing of cases on a statewide basis should be facilitated, and the ~~court~~ Court is authorized to promulgate rules establishing an electronic case-filing system.*

(3) *The use of technology to ease travel burdens on citizens and the courts should be promoted. For example, venue requirements should be deemed satisfied for some court proceedings when a person, including a judge,*

makes an appearance via video technology, even if the judge is not physically present in the same location as the person making the appearance.

(4)(A) Subject to subdivision (B) of this subdivision (4), in proceedings involving the termination of parental rights, the Supreme Court is authorized to designate a region of no more than four counties in which the venue for specified types of cases in the region shall be the region as a whole, irrespective of the county in which the venue would lie for the case under the governing statute. A designation under this subdivision shall be made by rule and shall be reviewed by the Legislative Committee on Judicial Rules pursuant to 12 V.S.A. § 1.

(B) A region designated pursuant to subdivision (A) of this subdivision (4) shall not include Grand Isle or Essex County for purposes of permitting termination of parental rights proceedings originating in Grand Isle or Essex County to be heard in other counties or regions unless all parties consent. This subdivision shall not preclude termination of parental rights proceedings originating in other county from being heard in Grand Isle or Essex County.

** * * Licensing Board Appeals * * **

Sec. 5. 3 V.S.A. § 130a is amended to read:

§ 130a. APPEALS FROM BOARD DECISIONS

(a) A party aggrieved by a final decision of a board may, within 30 days of the decision, appeal that decision by filing a notice of appeal with the Director who shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on that issue may be taken by the appellate officer.

** * **

(c) A party aggrieved by a decision of the appellate officer may appeal to the ~~Superior Court in Washington County~~ Supreme Court, which shall review the matter on the basis of the records created before the board and the appellate officer.

** * * Transportation Board Appeals * * **

Sec. 6. 19 V.S.A. § 5 is amended to read:

§ 5. TRANSPORTATION BOARD; POWERS AND DUTIES

** * **

(c) The Board may delegate the responsibility to hear quasi-judicial matters, and other matters as it may deem appropriate, to a hearing examiner or a single Board member, to hear a case and make findings in accordance with 3 V.S.A. chapter 25, except that highway condemnation proceedings shall be conducted pursuant to the provisions of chapter 5 of this title. A hearing examiner or single Board member so appointed shall report his or her findings

of fact in writing to the Board. Any order resulting therefrom shall be rendered only by a majority of the Board. Final orders of the Board issued pursuant to section 20 of this title may be reviewed on the record by a Superior Court pursuant to Rule 74 of the Vermont Rules of Civil Procedure. All other final orders of the Board may be reviewed on the record by the Supreme Court.

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Sec. 7. [Deleted]

* * * *Judiciary Service Center* * * *

Sec. 8. DISCONTINUATION OF JUDICIARY SERVICE CENTER

On or before June 30, 2016, the Vermont Supreme Court shall discontinue use of the Judiciary Service Center to respond to communications from Vermont attorneys.

~~*Sec. 8a. SPOUSAL SUPPORT AND MAINTENANCE TASK FORCE*~~

~~*(a) Creation. There is created a Spousal Support and Maintenance Task Force for the purpose of reviewing and making legislative recommendations to Vermont's law concerning spousal support and maintenance.*~~

~~*(b) Membership. The Task Force shall be composed of the following seven members:*~~

~~*(1) a current member of the House of Representatives who shall be appointed by the Speaker of the House;*~~

~~(2) a current member of the Senate who shall be appointed by the
Committee on Committees;~~

~~(3) a Superior Court judge who has significant experience in the Family
Division of Superior Court appointed by the Chief Justice;~~

~~(4) the Chief Superior Court Judge;~~

~~(5) two experienced family law attorneys appointed by the Family Law
Section of the Vermont Bar Association; and~~

~~(6) a representative of Vermont Alimony Reform who is a resident of
Vermont.~~

~~(c) Powers and duties. The Task Force shall make legislative
recommendations to Vermont's spousal support and maintenance laws aimed
to improve clarity, fairness, and predictability in recognition of changes to the
family structure in recent decades. The Task Force may hold public hearings
and shall endeavor to hear a wide variety of perspectives from stakeholders
and interested parties.~~

~~(d) Assistance. The Task Force shall have the administrative, technical,
and legal assistance of the Office of Legislative Council.~~

~~(e) Recommendation. On or before January 15, 2017, the Task Force shall
submit its recommendations for any legislative action to the Senate and House
Committees on Judiciary.~~

~~(f) Meetings.~~

~~(1) The Superior Court judge appointed in accordance with subdivision (b)(3) of this section shall serve as chair.~~

~~(2) A majority of the membership shall constitute a quorum.~~

~~(3) The Task Force shall cease to exist on March 1, 2017.~~

~~(g) Reimbursement.~~

~~(1) For attendance at meetings during adjournment of the General Assembly, legislative members of the Task Force shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for no more than four regular meetings and two public hearings.~~

~~(2) Other members of the Task Force who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for no more than four regular meetings and two public hearings.~~

Sec. 8a. SPOUSAL SUPPORT AND MAINTENANCE TASK FORCE

On or before January 15, 2017, the Family Division Oversight Committee of the Supreme Court shall report to the Senate and House Committees on Judiciary on its study of spousal support and maintenance guidelines in Vermont. The report shall include any legislative recommendations for changes to Vermont's law concerning spousal support and maintenance.

** * * Effective Dates * * **

Sec. 9. EFFECTIVE DATES

(a) Secs. 1, 2, 3, 4, 7, 8, 8a, and this section shall take effect on passage.

*(b) Secs. 5 and 6 shall take effect on July 1, 2016 and shall apply to
appeals filed on or after that date.*