**H.95**
**Section by Section Summary**

***Summary Overview of H.95, Juvenile Jurisdiction Sections***

This bill makes incremental changes in how youth are adjudicated in Vermont. Currently, The Family Division generally has jurisdiction over delinquency proceedings, subject to exceptions, until the child reaches 18. One exception is that prosecutors can bring charges against 16 and 17 year olds in either the Family or the Criminal Court. Also, if a child is charged with a "Big 12" offense, a 14-17 year old is charged in the Criminal Court, while a 10-13 year old is charged in the Family Court, but can be transferred up to the Criminal Court on motion.

Under H.95, the graduated changes are as follows:

- In July 2016 10-11 year olds charged with a Big 12 offense can only be charged and adjudicated in the Family Division.
- In January 2017, 16 year olds who commit a misdemeanor or a felony (not Big 12) must be charged in the Family Division. If it is a felony charge, the case may be transferred to the Criminal Division on motion. Misdemeanors shall be adjudicated in the Family Court.
- In January 2018, 17 year olds are treated the same as 16 year olds.
- In July 2018, the bill extends youthful offender status from 17 year olds to 21 year olds.

In addition, the bill directs the Justice Oversight Committee to study the feasibility of raising the age of the juvenile court jurisdiction to 18-20 year olds who are charged with something other than a Big 12 offense.

***Effective July 1, 2018***

**Sec. 1. 33 V.S.A. § 5280. Commencement of Y.O. Proceedings**
Beginning in July, 2018, this new section of law provides that youthful offender proceedings in the Family Division can begin by a State's Attorney initiating a case there against a 16-21 year old as a youthful offender. Proceeding can also commence as it can under current law by a transfer from the Criminal Division.

**Sec. 2. 33 V.S.A. § 5281. Motion in Criminal Division**
Amends the ages of juveniles who can be move to be treated as youthful offenders in the Family division from 10-17 to 12-21.

Removes the requirement that a juvenile must enter a conditional plea of guilty in Criminal court prior to transferring to Family court for youthful offender status. Provides that if the Family court accepts the case for YO status and the youth is adjudicated YO, the court will create a criminal case that reflects the charge and conviction.

**Sec. 3. 33 V.S.A. § 5282. Report from Department**
**Sec. 4. 33 V.S.A. § 5283. Hearing in Family Division**
**Sec. 5. 33 V.S.A. § 5284. Youthful Offender Determination and Disposition Order**

These three sections of law deal with different stages of a youthful offender adjudication. Each section adds language to YO statutes to reflect the changes made in Sec. 1, providing that a case may commence with the filing of a petition by the State's Attorney.

***Effective January 1, 2018***

**Sec. 6. 33 V.S.A. § 5103. Jurisdiction**

Under current law Family Court jurisdiction over a child adjudicated delinquent can be extended to 6 months past his or her 18th birthday if he or she was 17 years old at the time of the offense and the offense was a nonviolent misdemeanor. This section amends current law to provide that if a child is 16 or 17 when he or she commits any offense for which he or she is adjudicated juvenile delinquent, the jurisdiction of the Family Court may be extended 6 months beyond his or her 19 birthday.

**Sec. 7. 33 V.S.A. § 5201. Commencement of Delinquency Proceedings**

- Provides that youth aged 17 and younger charged with a misdemeanor shall be charged and adjudicated as juvenile delinquents in the Family Division.
- Provides that youth aged 17 and younger charged with a felony (not Big 12) shall be charged as juvenile delinquents in the Family Division, but upon motion the court may transfer the proceeding to the Criminal Division.

*Note: Under current law, we treat 10-15 year olds this way. In 2017 H.95 ups the age to 16.*

**Sec. 8. 33 V.S.A. § 5203. Transfer from Other Courts**

Criminal Division shall transfer any misdemeanor or felony (not Big 12) charge against a 17 year old or younger to the Family Division.
State's Attorney shall file felony (not Big 12) charges against a 17 year old or younger in the Family Division.

***Effective January 1, 2017***

**Sec. 9. 33 V.S.A. § 5201. Commencement of Delinquency Proceedings**

- Provides that youth aged 16 and younger charged with a misdemeanor shall be charged and adjudicated as juvenile delinquents in the Family Division.
- Provides that youth aged 16 and younger charged with a felony (not Big 12) shall be charged as juvenile delinquents in the Family Division, but upon motion the court may transfer the proceeding to the Criminal Division.

*Note: Under current law, we treat 10-15 year olds this way. In 2018 H.95 ups the age to 17.*

**Sec. 10. 33 V.S.A. § 5203. Transfer from other Courts**

- Criminal Division shall transfer any misdemeanor or felony (not Big 12) charge against a 16 year old or younger to the Family Division.
- State's Attorney shall file felony (not Big 12) charges against a 16 year old or younger in the Family Division. *Note: FD may transfer to CD.*

**Sec. 11. 33 V.S.A. § 5204. Transfer from Family Division of the Superior Court**
The Family Court may transfer a juvenile delinquency petition to the Criminal Division of the child is 16 or 17 and is charged with a felony (not Big 12).

*Note: Under current law the State's Attorney may choose which Division to file charges in.*

Provides that if a youth age 16 or older adjudicated as an adult was charged with a felony (not Big 12) but is convicted of a lesser included misdemeanor, the case shall be transferred to the Family Division for disposition and the conviction shall be treated as an adjudication of delinquency.

***Effective July 1, 2016***

**Sec. 12. 33 V.S.A. § 5204. Transfer from Family Division of the Superior Court**
This section raises the age that we can treat juveniles as adults for Big 12 offenses from 10 to 12.

*Note: Under current law, a 10-13 year old who commits a Big 12 offense is charged in the Family Division but upon motion the court may transfer the proceeding to the Criminal Division. The effect of this change is that 10 and 11 year olds must be treated as juvenile delinquents, even for Big 12 offenses.*

**Sec. 13. 33 V.S.A. § 5106. Powers and Duties of Commissioner**
Broadens the authority of the Commissioner of DCF to include the ability to administer graduated sanctions as established by Department policy.

**Sec. 14. 33 V.S.A. § 5225. Preliminary Hearing**
Provides that the State's Attorney may, instead of filing a charge, refer a child to a community-based provider approved by DCF, like a justice center or restorative justice center. If the provider does not accept the case or the child doesn't complete the program, the case returns to the State's Attorney for charging.

**Sec. 15. 33 V.S.A. § 5285. Modification or Revocation of Disposition**
If juvenile violates the terms of probation, the Family Court may transfer supervision of the youth to the DOC with all the powers and authority of the DOC, including graduated sanctions and electronic monitoring.

**Sec. 16. 28 V.S.A. § 1101. Powers and Responsibilities of the Commissioner**
Provides that DOC must provide separate facilities for custody of offenders under 25.

*Note: under current VT law and under PREA (federal Prison Rape Elimination Act) DOC must keep youth under 18 separate.*

**Sec. 17. 33 V.S.A. § 5206. Citation of 16 and 17 Year Olds**
House added this section. Provides that law enforcement shall cite 16-17 year olds to the Family Division, except for certain offenses: driving with license suspended, eluding a police officer, duty to stop at an accident, certain fish & wildlife offenses, listed crimes, and Big 12 crimes

**Sec. 18. 13 V.S.A. § 7554. Release Prior to Trial**
Provides that 14-16 year olds who are charged with listed crimes must be arraigned within 24 hours of arrest.

**Sec. 19. 4 V.S.A. § 33. Jurisdiction; Family Division**
Expands the Family Division's jurisdiction to include proceedings involving misdemeanor motor vehicle offenses. Provides that the Court shall forward motor vehicle offense conviction records to the DMV.

*Sec. 20-24: Victims Rights*

**Sec. 20. 33 V.S.A. § 5102. Definitions**
Provides that "victim" is defined the same as it is in title 13.

*(A person who sustains physical, emotional, or financial injury or death as a direct result of the commission or attempted commission of a crime or act of delinquency and shall also include the family members of a minor, a person who has been found to be incompetent, or a homicide victim).*

**Sec. 21. 33 V.S.A. § 5234. Rights of Victims in Delinquency Proceeding (Listed Crime)**
Provides that the victim has the right to be notified of the name of the delinquent child and any conditions of release that are related to the victim or member of victim's family or household. Also provides that the victim may file an impact statement with the court, attend the disposition hearing and provide a statement, and that the court shall consider the statement at the disposition stage. Victim shall not be present at the hearing unless court finds the victim's presence is necessary.

**Sec. 22. 33 V.S.A. § 5234a. Rights of Victims in Delinquency Proceeding (Nonlisted crime)**
Same as for listed crimes, but provides that the victim is notified of the name of the child only if the court imposes probation conditions related to the victim, the victim's family or household members.

***Sec. 23-30 are from H.400***

**Sec. 23. 14 V.S.A. § 2666. Modification, Termination of Guardianship**
Provides that when a permanent guardian dies or when permanent guardianship is terminated by the Probate Division, the court shall issue an order placing the child in the custody of the Commissioner of DCF and immediately notify DCF, the State's Attorney, and the Family Division immediately of that order. Currently DCF does not receive notification when custody of a child reverts to the Commissioner under these circumstances.

**Sec. 24. 14 V.S.A. § 2667. Order for Visitation or Contact**
Provides that upon a showing of immediate harm to the child, the Probate Court can stay an order of permanent guardianship and transfer legal custody to the Commissioner of DCF. Upon issuing the order transferring legal custody to the Commissioner, the court shall immediately

notify DCF. Currently DCF does not receive notification when custody of a child is transferred to the Commissioner under these circumstances.

**Sec. 25. 33 V.S.A. § 5223. Filing of Petition in Delinquency Proceedings**
Provides that the Family Division shall give a copy of the juvenile delinquency petition to the Commissioner of DCF, and a copy shall be made available at the State's Attorney's office. Currently DCF does not receive notification of a petition for juvenile delinquency.

**Secs. 26, 27, 28, and 29**
Ties the deadline for DCF to file a disposition case plan to the date of the disposition hearing instead of the merits hearing. Under current law, the disposition hearing shall be held 35 days after the merits hearing and the disposition case plan shall be filed 28 days after the merits, giving DCF 7 days prior to the disposition hearing to file the case plan. These sections change the deadline for filing the case plan to seven days prior to the disposition hearing instead of 28 days after the merits hearing.

*Background information:*
*The hearings at play in these sections of the bill are the merits hearing and the disposition hearing, two stages in the CHINS process. 33 V.S.A. § 5102 defines a "child in need of care and supervision" as a child that has been abandoned or abused by the parent or guardian, is "without proper parental care or subsistence, education, medical, or other care necessary for his or her well-being," is beyond the control of the parent, or is habitually truant.*

**Sec. 28. 33 V.S.A. § 3515. Merits Adjudication**
This section and the next section were drafted in response to the recommendations of the CHINS Working Group, a group established by last year's Act 60 (S.9). The CHINS Working Group was established to recommend ways to improve the efficiency, timeliness, and process of CHINS proceedings. The Working Group is chaired by the Attorney General and composed of the Chief Administrative Judge, the Defender General, the Commissioner for Children and Families, the Executive Director of State's Attorneys and Sheriffs, and a guardian ad litem appointed by the Chief Superior Judge. One of the duties the Working Group was tasked with is to study and make recommendations concerning how to ensure that statutory time frames are met in 90 percent of proceedings.

Sec. 28 provides that a decision on the merits can only be appealed after the disposition order is entered. Under current law as interpreted by the Vermont Supreme Court, a decision on the merits that a child is CHINS must be appealed immediately or the appeal is deemed waived. See generally In re D.D., 194 Vt. 508 (2013). In a single case, this can result in multiple appeals that strain attorney and court resources and delay permanency for the child.

**Sec. 29. 33 V.S.A. § 5315a. Merits Stipulation**
Recommendation from the CHINS Working Group. This section expressly authorizes parties to stipulate to a finding of CHINS and a case plan under certain circumstances. In order for the Family Division to approve of a stipulation, it must find that the parties to the petition agree to the terms of the stipulation voluntarily, they understand the nature of the allegation, and they understand the rights they are waiving. The CHINS Working Group report indicated that

allowing the parties to stipulate to a finding of CHINS under these circumstances could help resolve cases more quickly and protect the child's best interests because stipulations would require DCF agreement and court approval.

**Sec. 30. 33 V.S.A. § 5316. Disposition Case Plan**
Same change made in earlier sections: deadline for DCF to file a disposition case plan changed to seven days before the disposition hearing instead of 28 days after the merits hearing.

**Sec. 31. 15 V.S.A. § 1103. Requests for Relief and Sec. 32. 15 V.S.A. § 1104. Emergency Relief**
Provides that a minor 16 or older may file a request for relief on his or her own behalf.

**Sec. 33. DCF; DOC; Youthful Offenders**
Directs DOC and DCF Commissioners to consider the implications of raising the age for youthful offender status to 18-20 year olds who haven't been charged with a Big 12 offense. Report to Justice oversight Nov. 2016.

**Sec. 34. Justice Oversight**
Directs Justice Oversight to study the following over 2016 interim:

- Fiscal implications of raising age to 20 (not Big 12) for juvenile delinquency
- Office of Youth Justice
- Expanding youthful offender status to 24 year olds, including resources necessary
- Allowing State's Attorneys discretion to charge 14 and 15 year olds who commit a Big 12 offense in either juvenile or adult court
- Housing options for 16 and 17 year old Big 12 offenders
- Resources necessary to expand juvenile jurisdiction to 21 year olds

**Sec. 35. Agency of Education; Restorative Justice**
Directs Agency of Education to explore the use of restorative justice practices regarding school climate, including truancy, bullying, harassment, and school discipline.

**Sec. 36. Repeal**
We replace these sections with the two Victim's Rights provisions in Sec. 20-21 of this bill.

## H.858
## Miscellaneous Criminal Procedures

The next 8 sections make several minor and technical changes to various criminal procedure statutes.

**Sec. 37.** This section simply corrects an inaccurate cross reference to federal law in the human trafficking statute.

**Sec. 38.** This section removes language from the public defender statute that prosecutors, public defenders, and the court all agree is unconstitutional. The language requires that a person who is assigned a public defender must pay the required co-payment before the defendant is provided

with the attorney. Since this requirement violates the constitutional right to an attorney, the language is struck in Section 2 of the bill. Section 2 also permits the co-payment to be included in the reimbursement order the court issues that contains the expenses the defendant will be responsible for later.

**Sec. 39 and Sec. 40.** These sections provide that the legal effect of an expungement order shall occur immediately.

**Sec. 41.** This section corrects an inaccurate cross reference in the definition of "listed crime."

**Sec. 42.** This section corrects an unintended consequence of the Internet Sex Offender Registry statute. The language currently provides that an offender's name is posted on the Registry upon the offender's "release from confinement." However, some offenders serve sentences that do not involve Department of Corrections confinement, such as probation. As a result, at least one court decision ruled that an offender's name was not required to be placed on the Registry because he was never incarcerated, even though the offense would otherwise have required it. Section 1 corrects this situation by making clear that an offender's name must be placed on the Registry if there is a conviction of a registrable offense, regardless of whether the offender is incarcerated. If the offender is subject to DOC confinement, his or her name is placed on the Registry upon the offender's release; if the offender is not subject to confinement, his or her name is placed on the Registry upon the offender's conviction.

**Secs. 43 and 44.** These sections relate to the Innocence Protection Act. Section 41 provides that a person exonerated after being incarcerated on account of a wrongful conviction may bring a claim for compensation, so long as the person shows that he or she was actually innocent. There has been some confusion over whether compensation is available only for exonerations based on DNA evidence, and this section makes clear that a person is entitled to compensation whether his or her innocence is demonstrated by DNA evidence or by some other means. Section 6 applies this compensation remedy retroactively, so that a person may file for compensation for any covered exoneration that occurs on or after July 1, 2007 (which is the date that the Innocence Protection Act was originally enacted).

**Sec. 45.** This section adds 2 items for the Joint Legislative Justice Oversight Committee to study during the 2016 interim: (1) how a criminal defendant's credit for time served is determined with respect to time that the defendant was in Department of Corrections custody on nonincarcerative status or conditions of release; and (2) when the name of an offender who has committed a qualifying offense is posted on the Internet Sex Offender Registry if the offender was in Department of Corrections custody on nonincarcerative status.

# H. 571
# DLS BILL

## BACKGROUND

- According to the Vermont Department of Motor Vehicles, as of January 2016, the licenses or privileges to operate[1] a motor vehicle of 56,459 Vermonters were suspended.
- A person's license may be suspended under Vermont law for numerous reasons. In recent years, approximately 2/3 of suspensions have been imposed for one reason: nonpayment of a traffic violation judgment.
- Traffic violations include many offenses relating to driving a motor vehicle, but also numerous other offenses that have nothing to do with driving a motor vehicle.[2]
- In addition, some license suspensions are imposed pursuant to other laws that are not traffic violations and are totally unrelated to operation of a motor vehicle.
- Under Vermont law, prior to termination of a license suspension, a person must apply to the Department of Motor Vehicles and pay a reinstatement fee that is currently $71.

## GENERAL TOPICS ADDRESSED IN THE BILL

- addresses suspensions imposed for conduct that occurred before July 1, 1990.
- creates a Statewide Driver Restoration Program (Program) for persons under suspension as of the effective date of the bill.
- provides for the termination of suspensions pending on the effective date of the bill if the suspension was imposed under a statute or provision that is repealed in the bill.
- repeal or amend laws that require license suspensions or refusal to renew motor vehicle registrations for various nondriving activities, and repeal or amend laws related to criminal penalties for third or subsequent underage alcohol and marijuana offenses.
- amends the law that authorizes criminal penalties for driving with a suspended license.
- amend various laws related to the assessment of points against a person's driving record for motor vehicle moving violations.
- requires the Judicial Bureau to consider during a hearing a person's ability to pay a judgment if evidence of ability to pay is presented.
- repeals the DLS Diversion Program on July 1, 2016.
- consists of recommended measures to increase awareness of traffic violation judgment payment and hearing options.
- Secs. 26–28 require the reporting of statistics related to the bill.
- amends the definition of "moving violation" in Title 23 to include the child restraint system law within its scope.

[1] If a person does not have a Vermont license to suspend, the Commissioner of DMV may suspend the person's "privilege to operate" in Vermont. For brevity, this summary will refer in most instances to "license" suspensions.
[2] Examples of nondriving offenses include failure to register a motor vehicle, failure to have a motor vehicle inspected, pedestrian violations, bicycle violations, and violations by operators of snowmobiles.

## I. SUSPENSIONS AND JUDGMENTS PENDING ON THE BILL'S EFFECTIVE DATE

**Sec. 46**

- Directs the Commissioner of Motor Vehicles to terminate suspensions imposed because of a person's failure to appear on a criminal traffic offense charged before July 1, 1990, where the charge arose from conduct that is a civil traffic violation under current Vermont law.
- The Commissioner is directed to terminate these suspensions "as soon as possible" after the bill takes effect.

**Sec. 47**

- Subsec. (a) creates a Statewide Driver Restoration Program (Program) to be carried out by the Department of Motor Vehicles and the Judicial Bureau from September 1, 2016–November 30, 2016.
- Subsec. (b) provides that under the Program, a person who has not paid in full the amount due on a traffic violation judgment entered prior to January 1, 2015 may apply to the Judicial Bureau to have the amount due reduced to $30. (However, judgments for commercial motor vehicle violations are not eligible for reduction.)
- Subsec. (c) addresses options for people with judgments that are not eligible for reduction under subsec. (b).
  → Subdiv. (c)(1) allows a person with an outstanding traffic violation judgment entered on or after January 1, 2015 and before July 1, 2016 to file a postjudgment motion to amend the judgment based on the person's ability to pay.
  → Subdiv. (c)(2) allows a person with outstanding traffic violation judgments to pay off the judgments under a payment plan that requires payment of no more than $100 per month, regardless of when the judgments were entered.
- Subsec. (d) addresses restoration of driving privileges.
  → Subdiv. (d)(1) directs the Judicial Bureau to notify DMV of compliance if a person has paid all traffic violation judgments reduced to $30 under the Program and is on a payment plan for any other judgment.
  → Subdiv. (d)(2)(A) directs the Commissioner of DMV, upon receipt of this notification, to terminate the person's pending suspensions arising from nonpayment of traffic violation judgments, without requiring the person to apply or pay a reinstatement fee.
  → Subdiv. (d)(2)(B) also directs the Commissioner during the Program time period to terminate suspensions related to nonpayment of traffic violation judgments without requiring a reinstatement fee, in the case of individuals who have paid all outstanding traffic violation judgments in full or are in compliance with a payment plan prior to Dec. 1, 2016.
- Subsec. (e) directs the Agency of Transportation to conduct a public awareness campaign about the Program.
- Subsec. (f) provides for monies collected on traffic violation judgments reduced to $30 or on judgments reduced through a postjudgment motion to amend to be allocated in accordance with a Process Review of the Court Administrator's Office.
- Subsec. (g) requires the Court Administrator and the Commissioner of Motor Vehicles to report to the House and Senate Committees on Transportation and on Judiciary various statistics related to use of the Program.

**Sec. 48**

- Directs the Commissioner of DMV to terminate driver's license suspensions pending on the effective date of the bill that were imposed pursuant to five (5) laws that authorize driver's license suspensions as a penalty for nondriving conduct, but that will no longer authorize license suspensions as a penalty after the bill takes effect.[3]
- The Commissioner is directed to terminate these suspensions without requiring an application or payment of a fee.

## II. GOING FORWARD

### A. Repeal (or Amendment) of Laws Requiring License Suspensions for Various Nondriving Activities and Refusal of Registrations; Repeal of Criminal Underage Alcohol and Marijuana Offenses and Related Conforming Changes

**Sec. 49**

- Repeals a law (23 V.S.A. § 305a) that directs the Commissioner of DMV not to renew a person's motor vehicle registration if the person is the sole registrant after the Commissioner receives notice from the Judicial Bureau that the person has not paid a traffic violation judgment.

- Repeals a law (23 V.S.A. § 2307) that addresses remedies the State may pursue if a person has not paid a traffic violation judgment.
  → Under this law, a person against whom a traffic violation judgment is entered has 30 days to pay the judgment (unless this 30-day period has been extended by a judicial officer). If the judgment is not paid within the 30 days, the Judicial Bureau sends electronic notice to DMV. DMV then suspends the person's license after another 20 days, unless the person pays the judgment or becomes current under a payment plan within the 20 days. The suspension is for a 120-day period or until the judgment is satisfied, whichever is shorter. Even if a person who is suspended under this provision pays the judgment in full, the person must apply to DMV to terminate the suspension and pay a reinstatement fee (currently $71).
  → ***Much of the substance this law is reenacted in Sec. 4 of the bill, with amendments***.

**Sec. 50**

- Reenacts **as amended** the traffic violation judgment enforcement language repealed in Sec. 3 of the bill.
  → Under the reenacted language, the Judicial Bureau will notify DMV if a person fails to pay a traffic violation judgment within 30 days only if the judgment arises from a traffic violation for which imposition of points against a person's driving record is authorized by law. After another 20 days, DMV is directed to suspend the person's license for a 30-day period or until the amount due is satisfied, whichever is earlier.

[3] Secs. 5, 9, 10, 11, and 15 of the bill amend these laws to eliminate driver's license suspensions as a penalty.

- Directs the Judicial Bureau, at a minimum, to offer a payment plan option that allows a person to avoid suspension of his or her license by paying no more than $30 per traffic violation judgment per month, not to exceed $100 per month regardless of the number of outstanding judgments.
- Eliminates license suspensions as a contempt tool that the Judicial Bureau may use to enforce its judgments. *See* subdivs. (c)(3)(C) and (c)(5)(B)(iii).

**Sec. 51**

- Raises from $300 to $400 the potential fine for a first underage alcohol offense, and establishes a range of $400 to $600 for a second or subsequent offense.
- Repeals a provision that directs the Commissioner of DMV to suspend the license or privilege to operate a motor vehicle of an underage alcohol offender who fails to successfully complete Diversion or who fails to pay a fine.
- Repeals a provision that requires the Judicial Bureau to notify DMV of an adjudication of a violation of this law and that requires DMV to maintain a record of all such adjudications.

**Secs. 52–54**

- **Sec. 52** repeals a law that criminalizes third or subsequent underage alcohol-related offenses.
- **Secs. 53-54** are conforming changes related to the repeal in Sec. 52 of the bill.

**Sec. 55**

- Repeals a provision that directs the Commissioner of DMV to suspend the license or privilege to operate a motor vehicle of a person who fails to pay a fine in connection with an underage tobacco offense.

**Sec. 56**

- Repeals a provision that directs the Commissioner of DMV to suspend the license or privilege to operate a motor vehicle of a person under 18 years of age (or enrolled in school) who is convicted of a false public alarm offense.

**Sec. 57**

- Raises from $300 to $400 the potential fine for a first underage civil marijuana offense, and establishes a range of $400 to $600 for a second or subsequent offense.
- Repeals a provision that directs the Commissioner of DMV to suspend the license or privilege to operate a motor vehicle of an underage marijuana civil offender who fails to successfully complete Diversion or who fails to pay a fine.
- Repeals a provision that requires the Judicial Bureau to notify DMV of an adjudication of a violation of this law and that requires DMV to maintain a record of all such adjudications.

**Sec. 58**

- Expresses legislative intent that any copies of the registries of underage alcohol and marijuana adjudications that DMV was required to maintain be destroyed.

→ Requirements that DMV maintain these registries are repealed in Secs. 5 & 11 of the bill.

**Secs. 59–60**

- **Sec. 59** repeals a law that criminalizes a third or subsequent offense by a person under 21 years of age for possession of one ounce or less of marijuana or five grams or less of hashish.
- **Sec. 60** is a conforming change related to the repeal in Sec. 13 of the bill.

**Sec. 61**

- Repeals language that directs the Commissioner of DMV to suspend a person's privilege to operate a motor vehicle as a result of nonpayment of the motor vehicle purchase and use tax.

## B. Amending the Criminal DLS Statute

**Sec. 62**

- Criminalizes a 3rd offense for driving with a license suspended (DLS) when the underlying suspensions have resulted from the accumulation of points against a person's driving record, in connection with DLS offenses that occur on or after July 1, 2016.

- Resets from July 1, 2003 to December 1, 2016 the date for a civil DLS offense to count as a prior offense. Except for DLS offenses arising from major motor vehicle crimes and points-related DLS offenses, a person who has 5 prior civil DLS offenses is subject to criminal penalties for a 6th DLS offense.
  →The rationale for resetting the clock on these prior civil DLS offenses is that many of them relate to suspensions for nonpayment of traffic violation judgments, and one of the goals of this bill is to enable people to clear their records related to unpaid traffic violation judgments.

- Repeals a provision that requires civil DLS offenses arising from suspensions for unpaid traffic violation judgments that have since been paid to not count as prior offenses. The Judiciary Committee heard testimony that this provision is administratively unenforceable.

## C. Assessment of Points Against a Person's Driving Record

**Sec. 63**

- Doubles the assessment of points against a person's driving record for worksite speed violations where the Traffic Committee[4] has established special temporary speed limits. This provision addresses violations on State highways, including interstate highways.

[4] The Traffic Committee is a three-member committee comprising the Secretary of Transportation, the Commissioner of Motor Vehicles, and the Commissioner of Public Safety or their designees. *See* 19 V.S.A. § 1(24).

**Sec. 64**

- Doubles the assessment of points against a person's driving record for worksite speed violations where a municipality has established special temporary speed limits.

**Sec. 65**

- Makes a technical correction to Vermont's basic speed limit law.

**Sec. 66**

- Amends Vermont's law prohibiting the handheld use of a portable electronic device while driving to provide for a person to be assessed:
  → Five (5) points for a violation in a work zone or school zone.[5] *See* § 1095a(c)(2).
  → Two (2) points for a violation outside a work zone or school zone.[6] *See* § 1095a(c)(3)

**Sec. 67**

- Amends Vermont's law prohibiting texting while driving to provide for a person to be assessed:
  → Seven (7) points for a texting violation in a work zone or school zone.[7]
  → Five (5) for a texting violation outside a work zone or school zone.[8]

**Sec. 68**

- Amends Vermont's schedule for the assessment of points against a person's driving record for consistency with the changes in Secs. 20–21 and Sec. 29 of the bill and to make consistent the assessment of points for speeding offenses when a person is cited under Vermont's default speed limit law[9] or is charged under Vermont's criminal speeding law.[10]

**D. Consideration of Ability to Pay in Judicial Bureau Hearings**

**Sec. 69**

- Requires a Judicial Bureau hearing officer to consider evidence of ability to pay if offered by a defendant during a hearing on a matter under the Judicial Bureau's jurisdiction.

**E. DLS Diversion Program**

**Sec. 70**

- Repeals the DLS Diversion Program effective July 1, 2016.

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[5] Under the current handheld law, a person is assessed 2 points for a first work zone offense, and 5 points for a second or subsequent work zone offense. This section expands the points enhancement to apply also in school zones, and provides for the assessment of 5 points for all offenses, including first offenses.
[6] Under current law, zero (0) points are assessed for a violation of the handheld law outside a work zone.
[7] The current points schedule does not distinguish between texting while driving in a work or school zone and texting while driving outside these areas.
[8] The 5 points assessed outside of work zones and school zones is the same as the amount of points assessed for a texting violation under current law (see the points schedule at 23 V.S.A. § 2502).
[9] 23 V.S.A. § 1081.
[10] 23 V.S.A. § 1097.

- The General Assembly established the DLS Diversion Program in 2012[11] in response to the number of persons "caught in a cycle of [license] suspensions due to an inability to meet the financial obligations of fees, fines, and subsequent increases to insurance rates" and to "avoid the spiral that may eventually result in a criminal suspension."[12]
- The Statewide Driver Restoration Program established in Sec. 2 of the bill and the changes to the law going forward made in the bill obviates the need for the DLS Diversion Program.

**F. Awareness of Traffic Violation Judgment Payment and Hearing Options**

**Sec. 71**

- Subsec. (a) encourages the Criminal Justice Training Council to train enforcement officers about the existence of payment plan options for traffic violation judgments and encourages enforcement officers to mention these options to motorists when issuing a ticket.
- Subsec. (b) encourages the Judicial Bureau to update the standard materials that enforcement officers provide to motorists who have been ticketed to notify them of payment plan options and of the right to request a hearing on ability to pay.
- Subsec. (c) encourages the Judicial Bureau to prominently display this information on its website.
- Subsec. (d) directs the Agency of Transportation to carry out a campaign to raise awareness of traffic violation judgment payment plan options and of a person's right to request a hearing on ability to pay.

**G. Statistics**

**Sec. 72**

- Directs the Court Administrator to submit statistics to the Committees on Judiciary to enable the committees to assess the before and after effects of the bill on the number of criminal DLS charges filed statewide.

**Sec. 73**

- Directs the Court Administrator to submit statistics to the Committees on Judiciary and on Transportation related to collections on traffic violation judgments before and after the bill takes effect, as well as statistics related to usage of payment plans, hearings on ability to pay, and postjudgment motions to amend after the bill takes effect.

**Sec. 74**

- Directs the Diversion Program to submit statistics to the House and Senate Committees on Judiciary, the House Committee on Human Services, and the Senate Committee on Health and Welfare to enable the committees to assess the before and after effects of the bill on the completion of Diversion Programs by youths cited for underage alcohol and marijuana violations.

[11] *See* Act 147 of 2012, available at: http://www.leg.state.vt.us/docs/2012/Acts/ACT147.pdf
[12] *See* Act 147 of 2012, Sec. 1(c).

## H. Moving Violation Definition

**Sec. 75**

- Amends the definition of "moving violation" to eliminate an exception from the definition for child restraint system/child safety belt violations.
- Coupled with a change to the points schedule in **Sec. 22** of the bill, the effect of this change is that a person who violates the law requiring children to be properly restrained in a motor vehicle is subject to an assessment of 2 points against his or her driving record.

## H.743
## FAIR AND IMPARTIAL POLICING

**Sec. 76**

- Requires that the Criminal Justice Training Council's minimum training standards for law enforcement officers include training on the fair and impartial policing policy of the enforcement agency that employs the officer.
- Requires that all law enforcement officers receive initial training on the fair and impartial policing policy on or before 12/31/18 and that enforcement officers receive refresher training every two years.
- Provides that the list of law enforcement who have completed the training shall be public on the Council's website.

**Sec. 77**

- Provides that if a law enforcement agency or constable required to adopt a fair and impartial policing policy before July 1, 2016 fails to do so, the agency or constable will be deemed to have adopted and must enforce the model policy issued by the Criminal Justice Training Council (Council).
- Requires law enforcement agencies to work with the Council to collect uniform roadside stop data and adopt uniform storage methods and periods for such data.
- Requires that on or before Sept. 1, 2016 and annually thereafter, law enforcement agencies provide the roadside stop data to the vendor chose by the Council, and that such data be posted on the receiving agency's website in a manner that is capable of being accessed and analyzed by the public.
- Requires that the list of law enforcement that have and have not provided the data shall be public.

## H.533
## VICTIM NOTIFICATION

**Sec. 78. Notice to victims**

- 13 V.S.A. § 5305 sets out the information victims are entitled to request from agencies having the custody of a defendant.
- Sec. 1 changes the title of the section from Information Concerning Release from Confinement to Information Concerning Release from Custody to more accurately reflect when victims are entitled to information about an offender's status. *Confinement occurs*

*once a person has been convicted of a crime and sentenced to a term of confinement; custody is a broader term referring to the care or control of a person.*

- Adds "upon termination or discharge of probation" to the list of circumstances triggering the right of a victim to request notification before the defendant is released.

**Sec. 79. Information from law enforcement agency**

- 13 V.S.A § 5314 sets out the information law enforcement is obligated to provide for victims of all crimes and of listed crimes specifically.
- New subsection (b)(6) directs law enforcement to provide victims of listed crimes with information concerning bail or conditions of release imposed on the defendant prior to arraignment. Typically, bail or conditions are imposed on a defendant pre-arraginment if it is a weekend or another time the judge is unavailable, and they are imposed by a clerk of the court prior to an initial court appearance.

**Sec. 80. Appearance by victim**

- 13 V.S.A. § 5321 sets forth the rights of the victim to be notified and to appear and be heard at a sentencing proceeding involving the defendant.
- Sec. 3 adds a provision to the statute requiring notice and the opportunity to appear and be heard at a change of plea hearing in which the court is considering a deferred sentence. The court shall consider the victim's views (if offered) in determining whether to defer the sentence.
- Subsection (e) adds a provision requiring the prosecutor to instruct victims of listed crimes about the significance of a deferred sentence and the potential consequences of violation of any conditions imposed by the court prior to the change of plea hearing.

## H.560
## (an act relating to traffic safety)

### I. GENERAL OVERVIEW

- **Sec. 81** amends Vermont's law related to the civil DUI suspension process.
- **Sec. 82** amends a DUI permissive inference provision.
- **Sec. 83** amends the fine structure for criminal DUI offenses.
- **Sec. 84** addresses alcohol screening devices in Vermont's dram shop law.
  **Sec. 85** requires a study related to the availability of alcohol screening devices in Vermont.
- **Sec. 86** adds a definition of "serious bodily injury" to the motor vehicle title of law, a definition that is used elsewhere in the bill.
- **Sec. 87** creates an enhanced criminal penalty for negligent operation of a motor vehicle if the negligent operation results in death or serious bodily injury to another person.
- **Sec. 88** creates a criminal penalty for a violation of the vulnerable user safe passing law when a violation results in death or serious bodily injury to another person.

## II. BRIEF SECTION BY SECTION SUMMARY

**Sec. 81**

Amends the DUI law's civil suspension provision to:

- Require the Court at or before the preliminary hearing to determine whether there is a sufficient factual basis for the civil suspension matter to proceed to a final hearing.
- Require the Court to set the date for the final hearing at the preliminary hearing, and make related conforming changes.
- Require the defendant to file an answer at least 7 days prior to the final hearing setting forth a list of issues the defendant intends to raise and a brief statement of facts and law upon which the defendant intends to rely.
- Authorize a rebuttable presumption of a DUI violation where the defendant tests at or above the legal limit at any time while in the continuous custody of an enforcement officer following a traffic stop.
- Allow a party's chemist to testify by videoconferencing.

**Sec. 82**

- Updates a provision in the DUI law that allows a permissive inference to be drawn in the trial of a civil or criminal action if a person's BAC is above the current applicable legal limits within 2 hours of the alleged offense (instead of above 0.10).

**Sec. 83**

Adjusts maximum criminal penalties for DUI offenses that do not involved death or serious bodily injury as follows:

- From $750 to $1,000 for a 1st offense.
- From $1,500 to $2,000 for a 2d offense.
- From $2,500 to $3,000 for a 3d offense.
- From $5,000 to $4,000 for a 4th offense.
- Keeps the maximum fine at $5,000 for a fifth offense, and raises fines from a maximum of $5,000 for sixth and subsequent offenses to ($1,000) x (# of offenses).

**Sec. 84**

- Amends Vermont's Dram Shop Law to provide that in a Dram Shop action, evidence that a person has made an alcohol screening device available is admissible as a responsible action taken (if the evidence is otherwise relevant).

**Sec. 85**

- Requires the Commission or Liquor control (or designee), in consultation with the Commissioner of Health, to study whether and how the State should promote the availability and use of alcohol screening devices in the State, and to report back on his or her findings and any proposed recommendations on or before January 15, 2017.

**Sec. 86**

- Creates a definition of "serious bodily injury" that will apply throughout Title 23, that is the same as a definition of the phrase in the criminal title of Vermont statute, Title 13.[13]

**Sec. 87**

- Enhances the criminal penalty for negligent operation of a motor vehicle if the negligent operation results in death or serious bodily injury.
- The penalty is enhanced from a maximum fine of $1,000 to $3,000, and from a maximum term of imprisonment of 1 year to 2 years.

**Sec. 88**

- Creates a criminal penalty for violating the motor vehicle law that requires safe passing of vulnerable users if the violation results in death or serious bodily injury to a person other than the operator.
- The criminal penalty is a maximum fine of $3,000 or a maximum term of imprisonment of 2 years, or both.

[13] 13 V.S.A. § 1021(2) provides:

(2) "Serious bodily injury" means:

(A) bodily injury which creates any of the following:

(i) a substantial risk of death;

(ii) a substantial loss or impairment of the function of any bodily member or organ;

(iii) a substantial impairment of health; or

(iv) substantial disfigurement; or

(B) strangulation by intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.