

1 SPECIAL SESSION

2 S.4

3 Introduced by Committee on Judiciary

4 Date: June 7, 2018

5 Subject: Court procedure; criminal procedure; miscellaneous amendments

6 Statement of purpose of bill as introduced: This bill proposes to make a
7 number of miscellaneous amendments related to civil and criminal procedure
8 statutes.

9 An act relating to miscellaneous judiciary procedures

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

11 Sec. 1. 10 V.S.A. § 8007(c) is amended to read:

12 (c) An assurance of discontinuance shall be in writing and signed by the
13 respondent and shall specify the statute or regulation alleged to have been
14 violated. The assurance of discontinuance shall be simultaneously filed with
15 the Attorney General and the Environmental Division. The Secretary or the
16 Natural Resources Board shall post a final draft assurance of discontinuance to
17 its website and shall provide a final draft assurance of discontinuance to a
18 person upon request. When signed by the Environmental Division, the
19 assurance shall become a judicial order. Upon motion by the Attorney General

1 made within ~~10~~ 14 days of after the date the assurance is signed by the
2 Division and upon a finding that the order is insufficient to carry out the
3 purposes of this chapter, the Division shall vacate the order.

4 Sec. 2. 12 V.S.A. § 1 is amended to read:

5 § 1. RULES OF PLEADING, PRACTICE, AND PROCEDURE; FORMS

6 The Supreme Court is empowered to prescribe and amend from time to
7 time general rules with respect to pleadings, practice, evidence, procedure, and
8 forms for all actions and proceedings in all courts of this State. The rules thus
9 prescribed or amended shall not abridge, enlarge, or modify any substantive
10 rights of any person provided by law. The rules when initially prescribed or
11 any amendments thereto, including any repeal, modification, or addition, shall
12 take effect on the date provided by the Supreme Court in its order of
13 promulgation, unless objected to by the ~~Joint~~ Legislative Committee on
14 Judicial Rules as provided by this chapter. If objection is made by the ~~Joint~~
15 Legislative Committee on Judicial Rules, the initially prescribed rules in
16 question shall not take effect until they have been reported to the General
17 Assembly by the Chief Justice of the Supreme Court at any regular, adjourned,
18 or special session thereof, and until after the expiration of 45 legislative days
19 of that session, including the date of the filing of the report. The General
20 Assembly may repeal, revise, or modify any rule or amendment thereto, and
21 its action shall not be abridged, enlarged, or modified by subsequent rule.

1 Sec. 3. 12 V.S.A. § 2 is amended to read:

2 § 2. DEFINITIONS

3 As used in sections 3 and 4 of this chapter:

4 (1) “Adopting authority” means the Chief Justice of the Supreme Court
5 or the ~~administrative judge~~ Chief Superior Judge, where appropriate;.

6 (2) “Court” means the Supreme Court, except in those instances where
7 the statutes permit rules to be adopted by the ~~administrative judge~~ Chief
8 Superior Judge, in which case, the word “court” means the ~~administrative~~
9 ~~judge;~~ Chief Superior Judge.

10 * * *

11 Sec. 4. 12 V.S.A. § 701 is amended to read:

12 § 701. SUMMONS

13 (a) Any law enforcement officer authorized to serve criminal process or a
14 State’s Attorney may summon a person who commits an offense to appear
15 before Superior Court by a summons in such form as prescribed by the Court
16 Administrator, stating the time when, and the place where, the person shall
17 appear, signed by the enforcement officer or State’s Attorney and delivered to
18 the person.

19 * * *

20 ~~(d) A person who does not so appear in response to a summons for a traffic~~
21 ~~offense as defined in 23 V.S.A. § 2201 shall be fined not more than \$100.00.~~

22 [Repealed.]

1 Sec. 5. 12 V.S.A. § 3125 is amended to read:

2 § 3125. PAYMENT OF TRUSTEE'S CLAIM BY CREDITOR

3 When it appears that personal property in the hands of a person summoned
4 as a trustee is mortgaged, pledged, or liable for the payment of a debt due to
5 him or her, the court may allow the attaching creditor to pay or tender the
6 amount due to the trustee, and he or she shall thereupon deliver such property,
7 as ~~hereinbefore~~ provided in this subchapter, to the officer holding the
8 execution.

9 Sec. 6. 12 V.S.A. § 3351 is amended to read:

10 § 3351. ATTACHMENT, TAKING IN EXECUTION, AND SALE

11 Personal property not exempt from attachment, subject to a mortgage,
12 pledge, or lien, may be attached, taken in execution, and sold as the property
13 of the mortgagor, pledgor, or general owner, in the same manner as other
14 personal property, except as ~~hereinafter~~ otherwise provided in this subchapter.

15 Sec. 7. 18 V.S.A. § 4245 is amended to read:

16 § 4245. REMISSION OR MITIGATION OF FORFEITURE

17 (a) On petition filed within 90 days of after completion of a forfeiture
18 proceeding, ~~the claims commission established in 32 V.S.A. § 931~~ a court that
19 issued a forfeiture order pursuant to section 4244 of this title may order that
20 the forfeiture be remitted or mitigated. The petition shall be sworn, and shall
21 include all information necessary for its resolution or shall describe where
22 such information can be obtained. Upon receiving a petition, the ~~claims~~

1 ~~commission~~ court shall investigate and may conduct a hearing if in its
2 judgment it would be helpful to the resolution of the petition. The ~~claims~~
3 ~~commission~~ court shall either grant or deny the petition within 90 days.

4 (b) The ~~claims-commission~~ court may remit or mitigate a forfeiture upon
5 finding that relief should be granted to avoid extreme hardship or upon finding
6 that the petitioner has a valid, good faith interest in the property which is not
7 held through a straw purchase, trust, or otherwise for the benefit of another
8 and that the petitioner did not at any time have knowledge or reason to believe
9 that the property was being or would be used in violation of the law.

10 Sec. 8. 18 V.S.A. § 4474g(b) is amended to read:

11 (b) Prior to acting on an application for a Registry identification card, the
12 Department shall obtain with respect to the applicant a Vermont criminal
13 history record, an out-of-state criminal history record, and a criminal history
14 record from the Federal Bureau of Investigation. Each applicant shall consent
15 to the release of criminal history records to the Department on forms
16 developed by the Vermont Crime Information Center. A fingerprint-supported,
17 out-of-state criminal history record and a criminal history record from the
18 Federal Bureau of Investigation shall be required only every three years for
19 renewal of a card for a dispensary owner, principal, and financier.

20 Sec. 9. REPEAL

21 2017 Acts and Resolves No. 11, Sec. 60 (amending 32 V.S.A. § 5412) is

1 repealed.

2 Sec. 10. 3 V.S.A. § 163 is amended to read:

3 § 163. JUVENILE COURT DIVERSION PROJECT

4 (a) The Attorney General shall develop and administer a juvenile court
5 diversion project for the purpose of assisting juveniles charged with delinquent
6 acts. ~~Rules which were adopted by the Vermont Commission on the~~
7 ~~Administration of Justice to implement the juvenile court diversion project~~
8 ~~shall be adapted by the Attorney General to the programs and projects~~
9 ~~established under this section.~~ In consultation with the diversion programs, the
10 Attorney General shall adopt a policies and procedures manual in compliance
11 with this section.

12 (b) The diversion ~~project~~ program administered by the Attorney General
13 shall ~~encourage the development~~ support the operation of diversion projects
14 programs in local communities through grants of financial assistance to, or by
15 contracting for services with, municipalities, private groups, or other local
16 organizations. The Attorney General may require local financial contributions
17 as a condition of receipt of project ~~grants~~ funding.

18 * * *

19 (i) Notwithstanding subdivision (c)(1) of this section, the diversion
20 program may accept cases from the Youth Substance Abuse Safety Program
21 pursuant to 7 V.S.A. § 656 or 18 V.S.A. § 4230b. The confidentiality
22 provisions of this section shall become effective when a notice of violation is

1 issued under 7 V.S.A. § 656(b) or 18 V.S.A. § 4230b(b), and shall remain in
2 effect unless the person fails to register with or complete the Youth Substance
3 Abuse Safety Program.

4 Sec. 11. 3 V.S.A. § 164 is amended to read:

5 § 164. ADULT COURT DIVERSION PROGRAM

6 (a) The Attorney General shall develop and administer an adult court
7 diversion program in all counties. ~~The program shall be operated through the~~
8 ~~juvenile diversion project. The~~ In consultation with diversion programs, the
9 Attorney General shall adopt ~~only such rules as are necessary to establish an~~
10 ~~adult court diversion program for adults~~ a policies and procedures manual, in
11 compliance with this section.

12 * * *

13 (c) The program shall ~~encourage the development~~ support the operation of
14 diversion programs in local communities through grants of financial assistance
15 to, or contracts for services with, municipalities, private groups, or other local
16 organizations. The Attorney General may require local financial contributions
17 as a condition of receipt of program ~~grants~~ funding.

18 * * *

19 (e) All adult court diversion programs receiving financial assistance from
20 the Attorney General shall adhere to the following provisions:

21 (1) The diversion program shall accept only persons against whom
22 charges have been filed and the court has found probable cause, but are not yet

1 adjudicated. The prosecuting attorney may refer a person to diversion either
2 before or after arraignment and shall notify in writing the diversion program
3 and the court of his or her intention to refer the person to diversion. The
4 matter shall become confidential when notice is provided to the court. If a
5 person is charged with a qualifying crime as defined in 13 V.S.A. § 7601(4)(A)
6 and the crime is a misdemeanor, the prosecutor shall provide the person with
7 the opportunity to participate in the court diversion program unless the
8 prosecutor states on the record at arraignment or a subsequent hearing why a
9 referral to the program would not serve the ends of justice. If the prosecuting
10 attorney refers a case to diversion, the prosecuting attorney may release
11 information to the victim upon a showing of legitimate need and subject to an
12 appropriate protective agreement defining the purpose for which the
13 information is being released and in all other respects maintaining the
14 confidentiality of the information; otherwise files held by the court, the
15 prosecuting attorney, and the law enforcement agency related to the charges
16 shall be confidential and shall remain confidential unless:

- 17 (A) the Board diversion program declines to accept the case;
- 18 (B) the person declines to participate in diversion;
- 19 (C) the Board diversion program accepts the case, but the person
20 does not successfully complete diversion; or
- 21 (D) the prosecuting attorney recalls the referral to diversion.

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(5) All information gathered in the course of the adult diversion process shall be held strictly confidential and shall not be released without the participant's prior consent (except that research and reports that do not require or establish the identity of individual participants are allowed).

* * *

(7)(A) The Irrespective of whether a record was expunged, the adult court diversion program shall maintain sufficient records so that the reasons for success or failure of the program in particular cases and overall can be investigated by program staff. These records shall include a centralized statewide filing system that will include the following information about individuals who have successfully completed an adult court diversion program:

- (i) name and date of birth;
- (ii) offense charged and date of offense;
- (iii) place of residence;
- (iv) county where diversion process took place; and
- (v) date of completion of diversion process.

(B) These records shall not be available to anyone other than the participant and his or her attorney, State's Attorneys, the Attorney General, and directors of adult court diversion programs.

(C) Notwithstanding subdivision (B) of this subdivision (e)(7), the

1 Attorney General shall, upon request, provide to a participant or his or her
2 attorney sufficient documentation to show that the participant successfully
3 completed diversion.

4 * * *

5 (g)(1) Within 30 days ~~of~~ after the two-year anniversary of a successful
6 completion of adult diversion, the court shall provide notice to all parties of
7 record of the court's intention to order the ~~sealing~~ expungement of all court
8 files and records, law enforcement records other than entries in the adult court
9 diversion program's centralized filing system, fingerprints, and photographs
10 applicable to the proceeding. The court shall give the State's Attorney an
11 opportunity for a hearing to contest the ~~sealing~~ expungement of the records.
12 The court shall ~~seal~~ expunge the records if it finds:

13 ~~(1)(A)~~ (A) two years have elapsed since the successful completion of the
14 adult diversion program by the participant and the dismissal of the case by the
15 State's Attorney;

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

19 ~~(3)(C)~~ (C) rehabilitation of the participant has been attained to the
20 satisfaction of the court; and

21 (D) the participant does not owe restitution related to the case under

1 a contract executed with the Restitution Unit.

2 (2) The court may expunge any records that were sealed pursuant to this
3 subsection prior to July 1, 2018 unless the State's Attorney's office that
4 prosecuted the case objects. Thirty days prior to expunging a record pursuant
5 to this subdivision, the court shall provide written notice of its intent to
6 expunge the record to the State's Attorney's office that prosecuted the case.

7 (3)(A) The court shall keep a special index of cases that have been
8 expunged pursuant to this section together with the expungement order. The
9 index shall list only the name of the person convicted of the offense, his or her
10 date of birth, the docket number, and the criminal offense that was the subject
11 of the expungement.

12 (B) The special index and related documents specified in subdivision
13 (A) of this subdivision (3) shall be confidential and shall be physically and
14 electronically segregated in a manner that ensures confidentiality and that
15 limits access to authorized persons.

16 (C) Inspection of the expungement order and the certificate may be
17 permitted only upon petition by the person who is the subject of the case. The
18 Chief Superior Judge may permit special access to the index and the
19 documents for research purposes pursuant to the rules for public access to
20 court records.

21 (D) The Court Administrator shall establish policies for

1 implementing this subsection (g).

2 (h) ~~Upon~~ Except as otherwise provided in this section, upon the entry of an
3 order ~~sealing such~~ expunging files and records under this section, the
4 proceedings in the matter ~~under this section~~ shall be considered never to have
5 occurred, all index references thereto shall be deleted, and the participant, the
6 court, and law enforcement officers and departments shall reply to any request
7 for information that no record exists with respect to such participant inquiry in
8 any matter. Copies of the order shall be sent to each agency or official named
9 therein.

10 (i) ~~Inspection of the files and records included in the order may thereafter~~
11 ~~be permitted by the court only upon petition by the participant who is the~~
12 ~~subject of such records, and only to those persons named therein. [Repealed.]~~

13 (j) The process of automatically ~~sealing~~ expunging records as provided in
14 this section shall only apply to those persons who completed diversion on or
15 after July 1, 2002. Any person who completed diversion prior to July 1, 2002
16 must apply to the court to have his or her records ~~sealed~~ expunged. ~~Sealing~~
17 Expungement shall occur if the requirements of subsection (g) of this section
18 are met.

19 * * *

20 (k) ~~Subject to the approval of the~~ The Attorney General, in consultation
21 with the Vermont Association of Court Diversion Programs, may develop and

1 administer programs to assist persons under this section charged with
2 delinquent, criminal, and civil offenses.

3 (l) Notwithstanding subdivision (e)(1) of this section, the diversion
4 program may accept cases from the Youth Substance Abuse Safety Program
5 pursuant to 7 V.S.A. § 656 or 18 V.S.A. § 4230b. The confidentiality
6 provisions of this section shall become effective when a notice of violation is
7 issued under 7 V.S.A. § 656(b) or 18 V.S.A. § 4230b(b), and shall remain in
8 effect unless the person fails to register with or complete the Youth Substance
9 Abuse Safety Program.

10 Sec. 12. 13 V.S.A. § 2301 is amended to read:

11 § 2301. MURDER-DEGREES DEFINED

12 Murder committed by means of poison, or by lying in wait, or by ~~wilful~~
13 willful, deliberate₂, and premeditated killing, or committed in perpetrating or
14 attempting to perpetrate arson, sexual assault, aggravated sexual assault,
15 kidnapping₂, robbery₂, or burglary₅, shall be murder in the first degree. All other
16 kinds of murder shall be murder in the second degree.

17 Sec. 13. 15 V.S.A. § 554 is amended to read:

18 § 554. DECREES NISI

19 (a) A decree of divorce from the bonds of matrimony in the first instance,
20 shall be a decree nisi and shall become absolute at the expiration of ~~three~~
21 ~~months~~ 90 days from the entry thereof but, in its discretion, the court ~~which~~

1 that grants the divorce may fix an earlier date upon which the decree shall
2 become absolute. If one of the parties dies prior to the expiration of the nisi
3 period, the decree shall be deemed absolute immediately prior to death.

4 (b) Either party may file any post-trial motions under the Vermont Rules of
5 Civil Procedure. The time within which any such motion shall be filed shall
6 run from the date of entry of the decree of divorce and not from the date the
7 nisi period expires. The court shall retain jurisdiction to hear and decide the
8 motion after expiration of the nisi period. A decree of divorce shall constitute
9 a civil judgment under the Vermont Rules of Civil Procedure.

10 (c) If the stated term at which the decree nisi was entered has adjourned
11 when a motion is filed, the presiding judge of the stated term shall have power
12 to hear and determine the matter and make new decree therein as fully as the
13 court might have done in term time; but, in the judge's discretion, the judge
14 may strike off the decree and continue the cause to the next stated term.

15 Sec. 14. 18 V.S.A. § 4230f(f) is amended to read:

16 (f) This section shall not apply to a dispensary that lawfully provides
17 marijuana to a registered patient or caregiver or to a registered caregiver who
18 provides marijuana to a registered patient pursuant to chapter 86 of this title.

19 Sec. 15. 20 V.S.A. § 3903 is amended to read:

20 § 3903. ANIMAL SHELTERS AND RESCUE ORGANIZATIONS

21 (a) [Repealed.]

1 (b) Animal intake. An animal shelter or rescue organization ~~under this~~
2 ~~chapter shall not accept an animal unless the person transferring the animal to~~
3 ~~the shelter provides~~ as defined by section 3901 of this title shall make every
4 effort to collect the following information about an animal it accepts: the
5 name and address of the person transferring the animal and, if known, the
6 name of the animal, its vaccination history, and other information concerning
7 the background, temperament, and health of the animal.

8 (c) Nonprofit status. A rescue organization under this chapter shall be
9 recognized and approved as a nonprofit organization under 26 U.S.C.
10 § 501(c)(3).

11 (d) Immunity from liability. Notwithstanding section 3901a of this title,
12 any animal shelter or rescue organization assisting law enforcement in an
13 animal cruelty investigation or seizure that, in good faith, provides care and
14 treatment to an animal involved in the investigation or seizure shall not be held
15 liable for civil damages by the owner of the animal unless the actions of the
16 shelter or organization constitute gross negligence.

17 Sec. 16. EARNED GOOD TIME; REPORT

18 On or before November 15, 2018, the Commissioner of Corrections, in
19 consultation with the Chief Superior Judge, the Attorney General, the
20 Executive Director of the Department of Sheriffs and State's Attorneys, and
21 the Defender General, shall report to the Senate and House Committees on

1 Judiciary, the Senate Committee on Institutions, and the House Committee on
2 Corrections and Institutions on the advisability and feasibility of reinstating a
3 system of earned good time for persons under the supervision of the
4 Department of Corrections.

5 Sec. 17. 18 V.S.A. § 4474c is amended to read:

6 § 4474c. PROHIBITIONS, RESTRICTIONS, AND LIMITATIONS

7 REGARDING THE USE OF MARIJUANA FOR SYMPTOM

8 RELIEF

9 * * *

10 (d) ~~A registered patient or registered caregiver may not transport marijuana~~
11 ~~in public unless it is secured in a locked container.~~ [Repealed.]

12 * * *

13 Sec. 18. 18 V.S.A. § 4474e is amended to read:

14 § 4474e. DISPENSARIES; CONDITIONS OF OPERATION

15 * * *

16 (d)(1) A dispensary shall implement appropriate security measures to deter
17 and prevent the unauthorized entrance into areas containing marijuana and the
18 theft of marijuana and shall ensure that each location has an operational
19 security alarm system. All cultivation of marijuana shall take place in a
20 secure, locked facility which is either indoors or outdoors, but not visible to
21 the public and that can only be accessed by the owners, principals, financiers,

1 and employees of the dispensary who have valid Registry identification cards.

2 An outdoor facility is not required to have a roof, provided all other
3 requirements are met. The Department shall perform an annual on-site
4 assessment of each dispensary and may perform on-site assessments of a
5 dispensary without limitation for the purpose of determining compliance with
6 this subchapter and any rules adopted pursuant to this subchapter and may
7 enter a dispensary at any time for such purpose. During an inspection, the
8 Department may review the dispensary's confidential records, including its
9 dispensing records, which shall track transactions according to registered
10 patients' Registry identification numbers to protect their confidentiality.

11 * * *

12 (4) A dispensary shall submit the results of a financial audit to the
13 Department of Public Safety ~~no~~ not later than ~~60~~ 90 days after the end of the
14 dispensary's first fiscal year, and every other year thereafter. The audit shall
15 be conducted by an independent certified public accountant, and the costs of
16 any such audit shall be borne by the dispensary. The Department may also
17 periodically require, within its discretion, the audit of a dispensary's financial
18 records by the Department.

19 * * *

20 Sec. 19. 18 V.S.A. § 4474g is amended to read:

21

1 § 4474g. DISPENSARY REGISTRY IDENTIFICATION CARD;

2 CRIMINAL BACKGROUND CHECK

3 (a) ~~Except as provided in subsection (b) of this section, the~~ The
4 Department shall issue each owner, principal, financier, and employee of a
5 dispensary a Registry identification card or renewal card within 30 days ~~of~~
6 after receipt of the person's name, address, and date of birth and a fee of
7 \$50.00. The fee shall be paid by the dispensary and the cost shall not be
8 passed on to an owner, principal, financier, or employee. ~~A~~ Except as
9 provided in subdivision (b)(2) of this section, a person shall not serve as an
10 owner, principal, financier, or employee of a dispensary until that person has
11 received a Registry identification card issued under this section. Each card
12 shall specify whether the cardholder is an owner, principal, financier, or
13 employee of a dispensary and shall contain the following:

14 (1) the name, address, and date of birth of the person;

15 (2) the legal name of the dispensary with which the person is affiliated;

16 (3) a random identification number that is unique to the person;

17 (4) the date of issuance and the expiration date of the Registry

18 identification card; and

19 (5) a photograph of the person.

20 (b)(1) Prior to acting on an application for a Registry identification card,
21 the Department shall obtain with respect to the applicant a Vermont criminal

1 history record, an out-of-state criminal history record, and a criminal history
2 record from the Federal Bureau of Investigation. Each applicant shall consent
3 to the release of criminal history records to the Department on forms
4 developed by the Vermont Crime Information Center.

5 (2) Once a Registry card application has been submitted, a person may
6 serve as an employee of a dispensary pending the background check, provided
7 the person is supervised in his or her duties by someone who is a cardholder.
8 The Department shall issue a temporary permit to the person for this purpose,
9 which shall expire upon the issuance of the Registry card or disqualification of
10 the person in accordance with this section.

11 * * *

12 Sec. 20. AUTOMOBILE FINANCIAL RESPONSIBILITY; STUDY

13 The Commissioner of Financial Regulation shall review the minimum
14 automobile insurance requirements in each of the states located in the
15 northeastern region of the United States and shall report his or her findings and
16 recommendations with respect to Vermont's minimum automobile insurance
17 requirements to the General Assembly on or before November 1, 2018.

Sec. 21. EFFECTIVE DATES

1 This act shall take effect on passage, except that Sec. 14 shall take effect on
2 July 2, 2018.