

1 SPECIAL SESSION

2 S.4

3 Introduced by Committee on Judiciary

4 Date:

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  
20 made within ~~10~~ 14 days ~~of~~ after the date the assurance is signed by the

1 Division and upon a finding that the order is insufficient to carry out the  
2 purposes of this chapter, the Division shall vacate the order.

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

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

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

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

3 [Repealed.]

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

5 § 3125. PAYMENT OF TRUSTEE'S CLAIM BY CREDITOR

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

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

13 § 3351. ATTACHMENT, TAKING IN EXECUTION, AND SALE

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

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

19 § 4245. REMISSION OR MITIGATION OF FORFEITURE

20 (a) On petition filed within 90 days ~~of~~ after completion of a forfeiture  
21 proceeding, ~~the claims commission established in 32 V.S.A. § 931~~ a court that

1 issued a forfeiture order pursuant to section 4244 of this title may order that the  
2 forfeiture be remitted or mitigated. The petition shall be sworn, and shall  
3 include all information necessary for its resolution or shall describe where such  
4 information can be obtained. Upon receiving a petition, the ~~claims~~  
5 ~~commission~~ court shall investigate and may conduct a hearing if in its  
6 judgment it would be helpful to the resolution of the petition. The ~~claims~~  
7 ~~commission~~ court shall either grant or deny the petition within 90 days.

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

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

15 (b) Prior to acting on an application for a Registry identification card, the  
16 Department shall obtain with respect to the applicant a Vermont criminal  
17 history record, an out-of-state criminal history record, and a criminal history  
18 record from the Federal Bureau of Investigation. Each applicant shall consent  
19 to the release of criminal history records to the Department on forms  
20 developed by the Vermont Crime Information Center. A fingerprint-  
21 supported, out-of-state criminal history record and a criminal history record

1 from the Federal Bureau of Investigation shall be required only every three  
2 years for renewal of a card for a dispensary owner, principal, and financier.

3 Sec. 9. REPEAL

4 2017 Acts and Resolves No. 11, Sec. 60 (amending 32 V.S.A. § 5412) is  
5 repealed.

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

7 § 163. JUVENILE COURT DIVERSION PROJECT

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

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

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\* \* \*

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

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

§ 164. ADULT COURT DIVERSION PROGRAM

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

\* \* \*

(c) The program shall ~~encourage the development~~ support the operation of diversion programs in local communities through grants of financial assistance ~~to, or contracts for services with,~~ municipalities, private groups, or other local

1 organizations. The Attorney General may require local financial contributions  
2 as a condition of receipt of program ~~grants~~ funding.

3 \* \* \*

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

6 (1) The diversion program shall accept only persons against whom  
7 charges have been filed and the court has found probable cause, but are not yet  
8 adjudicated. The prosecuting attorney may refer a person to diversion either  
9 before or after arraignment and shall notify in writing the diversion program  
10 and the court of his or her intention to refer the person to diversion. The matter  
11 shall become confidential when notice is provided to the court. If a person is  
12 charged with a qualifying crime as defined in 13 V.S.A. § 7601(4)(A) and the  
13 crime is a misdemeanor, the prosecutor shall provide the person with the  
14 opportunity to participate in the court diversion program unless the prosecutor  
15 states on the record at arraignment or a subsequent hearing why a referral to  
16 the program would not serve the ends of justice. If the prosecuting attorney  
17 refers a case to diversion, the prosecuting attorney may release information to  
18 the victim upon a showing of legitimate need and subject to an appropriate  
19 protective agreement defining the purpose for which the information is being  
20 released and in all other respects maintaining the confidentiality of the  
21 information; otherwise files held by the court, the prosecuting attorney, and the



1 law enforcement agency related to the charges shall be confidential and shall  
2 remain confidential unless:

3 (A) the ~~Board~~ diversion program declines to accept the case;

4 (B) the person declines to participate in diversion;

5 (C) the ~~Board~~ diversion program accepts the case, but the person  
6 does not successfully complete diversion; or

7 (D) the prosecuting attorney recalls the referral to diversion.

8 \* \* \*

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

13 \* \* \*

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

20 (i) name and date of birth;

21 (ii) offense charged and date of offense;

- 1 (iii) place of residence;
- 2 (iv) county where diversion process took place; and
- 3 (v) date of completion of diversion process.

4 (B) These records shall not be available to anyone other than the

5 participant and his or her attorney, State's Attorneys, the Attorney General,

6 and directors of adult court diversion programs.

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

8 Attorney General shall, upon request, provide to a participant or his or her

9 attorney sufficient documentation to show that the participant successfully

10 completed diversion.

11 \* \* \*

12 (g)(1) Within 30 days ~~of~~ after the two-year anniversary of a successful

13 completion of adult diversion, the court shall provide notice to all parties of

14 record of the court's intention to order the ~~sealing~~ expungement of all court

15 files and records, law enforcement records other than entries in the adult court

16 diversion program's centralized filing system, fingerprints, and photographs

17 applicable to the proceeding. The court shall give the State's Attorney an

18 opportunity for a hearing to contest the ~~sealing~~ expungement of the records.

19 The court shall ~~seal~~ expunge the records if it finds:

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

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

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

9           (D) the participant does not owe restitution related to the case under a  
10          contract executed with the Restitution Unit.

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

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

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

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

10           (D) The Court Administrator shall establish policies for  
11           implementing this subsection (g).

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

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

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

10 \* \* \*

11 (k) ~~Subject to the approval of the~~ The Attorney General, in consultation  
12 with the Vermont Association of Court Diversion Programs, may develop and  
13 administer programs to assist persons under this section charged with  
14 delinquent, criminal, and civil offenses.

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

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

2 § 2301. MURDER-DEGREES DEFINED

3 Murder committed by means of poison, or by lying in wait, or by ~~wilful~~  
4 willful, deliberate, and premeditated killing, or committed in perpetrating or  
5 attempting to perpetrate arson, sexual assault, aggravated sexual assault,  
6 kidnapping, robbery, or burglary, shall be murder in the first degree. All other  
7 kinds of murder shall be murder in the second degree.

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

9 § 554. DECREES NISI

10 (a) A decree of divorce from the bonds of matrimony in the first instance,  
11 shall be a decree nisi and shall become absolute at the expiration of ~~three~~  
12 ~~months~~ 90 days from the entry thereof but, in its discretion, the court ~~which~~  
13 that grants the divorce may fix an earlier date upon which the decree shall  
14 become absolute. If one of the parties dies prior to the expiration of the nisi  
15 period, the decree shall be deemed absolute immediately prior to death.

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

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

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

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

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

11 § 3903. ANIMAL SHELTERS AND RESCUE ORGANIZATIONS

12 (a) [Repealed.]

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

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

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

10       Sec. 16. EARNED GOOD TIME; REPORT

11           On or before November 15, 2018, the Commissioner of Corrections, in  
12 consultation with the Chief Superior Judge, the Attorney General, the  
13 Executive Director of the Department of Sheriffs and State's Attorneys, and  
14 the Defender General, shall report to the Senate and House Committees on  
15 Judiciary, the Senate Committee on Institutions, and the House Committee on  
16 Corrections and Institutions on the advisability and feasibility of reinstating a  
17 system of earned good time for persons under the supervision of the  
18 Department of Corrections.



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

2 § 4474c. PROHIBITIONS, RESTRICTIONS, AND LIMITATIONS  
3 REGARDING THE USE OF MARIJUANA FOR SYMPTOM  
4 RELIEF

5 \* \* \*

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

8 \* \* \*

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

10 § 4474e. DISPENSARIES; CONDITIONS OF OPERATION

11 \* \* \*

12 (d)(1) A dispensary shall implement appropriate security measures to deter  
13 and prevent the unauthorized entrance into areas containing marijuana and the  
14 theft of marijuana and shall ensure that each location has an operational  
15 security alarm system. All cultivation of marijuana shall take place in a secure,  
16 locked facility which is either indoors or outdoors, but not visible to the public  
17 and that can only be accessed by the owners, principals, financiers, and  
18 employees of the dispensary who have valid Registry identification cards. An  
19 outdoor facility is not required to have a roof, provided all other requirements  
20 are met. The Department shall perform an annual on-site assessment of each  
21 dispensary and may perform on-site assessments of a dispensary without

1 limitation for the purpose of determining compliance with this subchapter and  
2 any rules adopted pursuant to this subchapter and may enter a dispensary at  
3 any time for such purpose. During an inspection, the Department may review  
4 the dispensary's confidential records, including its dispensing records, which  
5 shall track transactions according to registered patients' Registry identification  
6 numbers to protect their confidentiality.

7 \* \* \*

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

15 \* \* \*

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

17 § 4474g. DISPENSARY REGISTRY IDENTIFICATION CARD;

18 CRIMINAL BACKGROUND CHECK

19 (a) ~~Except as provided in subsection (b) of this section, the~~ The Department  
20 shall issue each owner, principal, financier, and employee of a dispensary a  
21 Registry identification card or renewal card within 30 days ~~of~~ after receipt of

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

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

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

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

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

13 identification card; and

14 (5) a photograph of the person.

15 (b)(1) Prior to acting on an application for a Registry identification card,  
16 the Department shall obtain with respect to the applicant a Vermont criminal  
17 history record, an out-of-state criminal history record, and a criminal history  
18 record from the Federal Bureau of Investigation. Each applicant shall consent  
19 to the release of criminal history records to the Department on forms  
20 developed by the Vermont Crime Information Center.

