

1 S.222

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: January 3, 2018

5 Subject: Court procedure; criminal procedure; technical amendments

6 Statement of purpose of bill as introduced: This bill proposes to make several
7 technical amendments related to civil and criminal procedure statutes.

8 ~~An act relating to technical amendments to civil and criminal procedure~~
9 ~~statutes.~~

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 14 days of the date the assurance is signed by the Division and~~

1 ~~upon a finding that the order is insufficient to carry out the purposes of this~~

2 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
6 time 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
20 its action shall not be abridged, enlarged, or modified by subsequent rule.

21 ~~Sec. 3. 12 V.S.A. § 2 is amended to read.~~

1 § 2. DEFINITIONS

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

3 (1) "Adopting authority" means the Chief Justice of the Supreme Court
4 or the ~~administrative judge~~ Chief Superior Judge, where appropriate;

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

9 * * *

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

11 § 701. SUMMONS

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

18 * * *

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

21 [Repealed.]

22 ~~Sec. 5. 12 V.S.A. § 3125 is amended to read.~~

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

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

~~Sec. 6. 12 V.S.A. § 3292 is amended to read:~~

~~§ 3292. RECORDING BY TOWN OR SUPERIOR CLERK~~

~~When a copy of a writ of attachment, on which real estate is attached, is lodged in the office of a town or Superior clerk, such clerk shall enter in a book to be kept for that purpose the names of the parties, the date of the writ, the time when and the court to which the same is returnable, the nature of the action, the sum demanded, and the officer's return thereon.~~

~~Sec. 7. 12 V.S.A. § 3351 is amended to read:~~

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

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

~~Sec. 8. 18 V.S.A. § 4245 is amended to read:~~

~~§ 4245. REMISSION OR MITIGATION OF FORFEITURE~~

~~(a) On petition filed within 90 days of completion of a forfeiture~~

1 ~~proceeding, the claims commission established in 32 V.S.A. § 931 a court that~~
2 ~~issued a forfeiture order pursuant to section 4244 of this title may order that~~
3 ~~the forfeiture be remitted or mitigated. The petition shall be sworn, and shall~~
4 ~~include all information necessary for its resolution or shall describe where~~
5 ~~such information can be obtained. Upon receiving a petition, the claims~~
6 ~~commission court shall investigate and may conduct a hearing if in its~~
7 ~~judgment it would be helpful to resolution of the petition. The claims~~
8 ~~commission court shall either grant or deny the petition within 90 days.~~

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

15 Sec. 9. 18 V.S.A. § 4474g(b) is amended to read:

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

1 ~~out of state criminal history record and a criminal history record from the~~
2 Federal Bureau of Investigation shall be required only every three years for
3 renewal of a card for a dispensary owner, principal, and financier.

4 Sec. 10. REPEAL

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

7 Sec. 11. EFFECTIVE DATE

8 ~~This act shall take effect on passage.~~

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

(c) An assurance of discontinuance shall be in writing and signed by the respondent and shall specify the statute or regulation alleged to have been violated. The assurance of discontinuance shall be simultaneously filed with the Attorney General and the Environmental Division. The Secretary or the Natural Resources Board shall post a final draft assurance of discontinuance to its website and shall provide a final draft assurance of discontinuance to a person upon request. When signed by the Environmental Division, the assurance shall become a judicial order. Upon motion by the Attorney General made within ~~10~~ 14 days of after the date the assurance is signed by the Division and upon a finding that the order is insufficient to carry out the purposes of this chapter, the Division shall vacate the order.

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

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

The Supreme Court is empowered to prescribe and amend from time to time general rules with respect to pleadings, practice, evidence, procedure, and forms for all actions and proceedings in all courts of this State. The rules thus prescribed or amended shall not abridge, enlarge, or modify any substantive rights of any person provided by law. The rules when initially prescribed or any amendments thereto, including any repeal, modification, or addition, shall take effect on the date provided by the Supreme Court in its order of promulgation, unless objected to by the ~~Joint~~ Legislative Committee on Judicial Rules as provided by this chapter. If objection is made by the ~~Joint~~ Legislative Committee on Judicial Rules, the initially prescribed rules in

question shall not take effect until they have been reported to the General Assembly by the Chief Justice of the Supreme Court at any regular, adjourned, or special session thereof, and until after the expiration of 45 legislative days of that session, including the date of the filing of the report. The General Assembly may repeal, revise, or modify any rule or amendment thereto, and its action shall not be abridged, enlarged, or modified by subsequent rule.

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

§ 2. DEFINITIONS

As used in sections 3 and 4 of this chapter:

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

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

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

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

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

§ 4245. REMISSION OR MITIGATION OF FORFEITURE

(a) On petition filed within 90 days ~~of~~ after completion of a forfeiture proceeding, ~~the claims commission established in 32 V.S.A. § 931~~ a court that issued a forfeiture order pursuant to section 4244 of this title may order that the forfeiture be remitted or mitigated. The petition shall be sworn, and shall include all information necessary for its resolution or shall describe where such information can be obtained. Upon receiving a petition, ~~the claims commission~~ court shall investigate and may conduct a hearing if in its judgment it would be helpful to resolution of the petition. ~~The claims commission~~ court shall either grant or deny the petition within 90 days.

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

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

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

Sec. 9. REPEAL

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

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

§ 163. JUVENILE COURT DIVERSION PROJECT

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

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

* * *

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

* * *

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

(1) The diversion program shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. The prosecuting attorney may refer a person to diversion either before or after arraignment and shall notify in writing the diversion

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

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

** * **

(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 subsection (e), the Attorney General shall, upon request, provide to a participant or his or her

attorney sufficient documentation to show that the participant successfully completed diversion.

* * *

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

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

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

~~(3)(C)~~ rehabilitation of the participant has been attained to the satisfaction of the court.

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

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

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

(C) Inspection of the expungement order and the certificate may be permitted only upon petition by the person who is the subject of the case or by the court if the court finds that inspection of the documents is necessary to serve the interests of justice. The Chief Superior Judge may permit special access to the index and the documents for research purposes pursuant to the

rules for public access to court records.

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

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

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

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

* * *

Sec. 12. 13 V.S.A. § 15 is added to read:

§ 15. USE OF VIDEO

(a) Except as provided by subsection (b) of this section, proceedings governed by Rules 5 and 10 of the Vermont Rules of Criminal Procedure and chapter 229 of this title shall be in person and on the record, and shall not be performed by video conferencing or other electronic means until the Defender General and the Executive Director of the Department of Sheriffs and State's Attorneys execute a joint certification that the video conferencing program in use by the court at the site where the proceeding occurs adequately ensures attorney-client confidentiality and the client's meaningful participation in the proceeding.

(b) A proceeding at which subsection (a) of this section applies may be performed by video conferencing if counsel for the defendant or a defendant not represented by counsel consents.

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

§ 2301. MURDER-DEGREES DEFINED

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

Sec. 14. EARNED GOOD TIME; REPORT

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

Sec. 15. EFFECTIVE DATE

This act shall take effect on passage.