

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 222  
3 entitled “An act relating to miscellaneous judiciary procedures” respectfully  
4 reports that it has considered the same and recommends that the House propose  
5 to the Senate that the bill be amended by striking out all after the enacting  
6 clause and inserting in lieu thereof the following:

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

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

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

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

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

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

20 § 2. DEFINITIONS

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



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 of  
13 the mortgagor, pledgor, or general owner, in the same manner as other personal  
14 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 the  
20 forfeiture be remitted or mitigated. The petition shall be sworn, and shall  
21 include all information necessary for its resolution or shall describe where such

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

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

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

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



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

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

9            § 164. ADULT COURT DIVERSION PROGRAM

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

16            \* \* \*

17            (c) The program shall ~~encourage the development~~ support the operation of  
18            diversion programs in local communities through grants of financial assistance  
19            to, or contracts 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 program ~~grants~~ funding.

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(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:

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

6 \* \* \*

7 (5) All information gathered in the course of the adult diversion process

8 shall be held strictly confidential and shall not be released without the

9 participant's prior consent (except that research and reports that do not require

10 ~~or~~ establish the identity of individual participants are allowed).

11 \* \* \*

- 12 (7)(A) ~~The~~ Irrespective of whether a record was expunged, the adult
- 13 court diversion program shall maintain sufficient records so that the reasons for
- 14 success or failure of the program in particular cases and overall can be
- 15 investigated by program staff. These records shall include a centralized
- 16 statewide filing system that will include the following information about
- 17 individuals who have successfully completed an adult court diversion program:
- 18 (i) name and date of birth;
- 19 (ii) offense charged and date of offense;
- 20 (iii) place of residence;
- 21 (iv) county where diversion process took place; and

1 (v) date of completion of diversion process.

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

5 (C) Notwithstanding subdivision (B) of this subsection (e), the  
6 Attorney General shall, upon request, provide to a participant or his or her  
7 attorney sufficient documentation to show that the participant successfully  
8 completed diversion.

9 \* \* \*

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

18 ~~(4)(A)~~ two years have elapsed since the successful completion of the  
19 adult diversion program by the participant and the dismissal of the case by the  
20 State’s Attorney;

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

4           ~~(3)~~(C) rehabilitation of the participant has been attained to the  
5 satisfaction of the court; **and**

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

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

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

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

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

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

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

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

20           (j) The process of automatically ~~sealing~~ expunging records as provided in  
21           this section shall only apply to those persons who completed diversion on or

1 after July 1, 2002. Any person who completed diversion prior to July 1, 2002  
2 must apply to the court to have his or her records ~~sealed~~ expunged. ~~Sealing~~  
3 Expungement shall occur if the requirements of subsection (g) of this section  
4 are met.

5 \* \* \*

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

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

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

18 § 15. USE OF VIDEO

19 (a) Except as provided by subsection (b) of this section, proceedings  
20 governed by Rules 5 and 10 of the Vermont Rules of Criminal Procedure and  
21 chapter 229 of this title shall be in person and on the record, and shall not be

1 performed by video conferencing or other electronic means until the Defender  
2 General and the Executive Director of the Department of Sheriffs and State's  
3 Attorneys execute a joint certification that the video conferencing program in  
4 use by the court at the site where the proceeding occurs adequately ensures  
5 attorney-client confidentiality and the client's meaningful participation in the  
6 proceeding.

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

10 Sec. 13. 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, deliberate, and premeditated killing, or committed in perpetrating or  
14 attempting to perpetrate arson, sexual assault, aggravated sexual assault,  
15 kidnapping, robbery, or burglary; shall be murder in the first degree. All other  
16 kinds of murder shall be murder in the second degree.

17 Sec. 14. 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. 15. 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.

1 Sec. 16. 13 V.S.A. § 7554b is amended to read:

2 § 7554b. HOME DETENTION PROGRAM

3 (a) Definition. As used in this section, “home detention” means a program  
4 of confinement and supervision that restricts a defendant to a preapproved  
5 residence continuously, except for authorized absences, and is enforced by  
6 appropriate means of surveillance and electronic monitoring by the Department  
7 of Corrections. The court may authorize scheduled absences such as work,  
8 school, or treatment. Any changes in the schedule shall be solely at the  
9 discretion of the Department of Corrections. A defendant who is on home  
10 detention shall remain in the custody of the Commissioner of Corrections with  
11 conditions set by the court.

12 (b) Procedure. At the request of the court, the Department of Corrections,  
13 or the defendant, the status of a defendant who is detained pretrial in a  
14 correctional facility for ~~lack of~~ inability to pay bail after bail has been set by  
15 the court may be reviewed by the court to determine whether the defendant is  
16 appropriate for home detention. The review shall be scheduled upon the  
17 court’s receipt of a report from the Department determining that the proposed  
18 residence is suitable for electronic monitoring. A defendant charged with an  
19 offense for which he or she may be held without bail pursuant to section 7553  
20 or 7553a of this title shall not be eligible for release to the Home Detention  
21 Program on or after June 1, 2018. At arraignment or after a hearing, the court

1 may order that the defendant be released to the Home Detention Program,  
2 providing that the court finds placing the defendant on home detention will  
3 reasonably assure his or her appearance in court when required and the  
4 proposed residence is appropriate for home detention. In making such a  
5 determination, the court shall consider:

6 (1) the nature of the offense with which the defendant is charged;

7 (2) the defendant's prior convictions, history of violence, medical and  
8 mental health needs, history of supervision, and risk of flight; and

9 (3) any risk or undue burden to other persons who reside at the proposed  
10 residence or risk to third parties or to public safety that may result from such  
11 placement.

12 \* \* \*

13 Sec. 17. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE;  
14 HOME DETENTION PROGRAM REVIEW

15 During the 2018 legislative interim, the Joint Legislative Justice Oversight  
16 Committee shall evaluate the Home Detention Program established under 13  
17 V.S.A. § 7554b and recommend whether to continue the Program in its current  
18 form, continue the Program with modifications, or repeal the Program. Any  
19 resulting legislative recommendations shall be introduced as a bill in the 2019  
20 legislative session.

21 Sec. 18. EARNED GOOD TIME; REPORT

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

9        Sec. 19. EFFECTIVE DATE

10       This act shall take effect on passage, except that Sec. 15 shall take effect on  
11       July 2, 2018.

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15       (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_  
Representative \_\_\_\_\_  
FOR THE COMMITTEE