

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 134
3 entitled “An act relating to court diversion and pretrial services” 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. FINDINGS; INTENT**

8 **(a) The General Assembly finds:**

9 **(1) According to numerous studies over many years, pretrial diversion**
10 **programs result in outcomes for participants that are better than incarceration,**
11 **including reducing the likelihood that participants commit future crimes and**
12 **improving substance abuse and mental health outcomes. For example,**
13 **according to a study of the New York City Jail Diversion Project, 12 months**
14 **after their offense, offenders who go through a diversion program are less**
15 **likely to reoffend, spend less time in prison, have received more treatment, and**
16 **are less likely to suffer drug relapses. In addition, a study in the Journal of the**
17 **American Academy of Psychiatry and the Law indicates that diversion**
18 **programs reduce the amount of time participants spend in jail for future**
19 **offenses from an average of 173 days to an average of 40 days during the year**
20 **after the offense. Research also demonstrates that offenders who have**
21 **participated in diversion programs are better able to find employment.**

1 (2) Diversion programs benefit the criminal justice system by reducing
2 costs and allowing resources to be allocated more efficiently for more serious
3 offenders. According to studies by the Urban Institute and the National
4 Alliance on Mental Illness, diversion programs reduce costs and improve
5 outcomes by allowing offenders with mental illness to receive more
6 appropriate treatment outside the criminal justice system. As reported in the
7 Psychiatric Rehabilitation Journal, diversion programs reduce costs by
8 decreasing the need for and use of hospitalization and crisis services by
9 offenders.

10 (b) It is the intent of the General Assembly that:

11 (1) Sec. 2 of this act result in an increased use of the Diversion Program
12 throughout the State and a more consistent use of the program between
13 different regions of the State;

14 (2) the Office of the Attorney General collect data pursuant to 3 V.S.A.
15 § 164(d) on Diversion Program use, including the effect of this act on use of
16 the Program statewide and in particular regions of the State; and

1 (3) consideration be given to further amending the Diversion Program
2 statutes before Sec. 2 of this act sunsets on July 1, 2020, if it is determined that
3 Sec. 2 of this act did not produce the intended increases in Diversion Program
4 usage.

5 Sec. 2. 3 V.S.A. § 164 is amended to read:

6 § 164. ADULT COURT DIVERSION ~~PROJECT~~ PROGRAM

7 (a) The Attorney General shall develop and administer an adult court
8 diversion ~~project program~~ in all counties. The ~~project program~~ shall be
9 operated through the juvenile diversion project ~~and shall be designed to assist~~
10 ~~adults who have been charged with a first or second misdemeanor or a first~~
11 ~~nonviolent felony.~~ The Attorney General shall adopt only such rules as are
12 necessary to establish an adult court diversion ~~project program~~ for adults, in
13 compliance with this section.

14 (b) The program shall be designed for two purposes:

15 (1) To assist adults who have been charged with a first or a second
16 misdemeanor or a first nonviolent felony.

17 (2) To assist adults with substance abuse or mental health treatment
18 needs regardless of the person's prior criminal history record. Programming
19 for these persons is intended to support access to appropriate treatment or other
20 resources with the aim of improving the person's health and reducing future
21 adverse involvement in the justice system. A person charged with a felony

1 offense that is a listed crime pursuant to 13 V.S.A. § 5301 shall not be eligible
2 under this section.

3 (c) ~~The adult court diversion project administered by the Attorney General~~
4 program shall encourage the development of diversion ~~projects~~ programs in
5 local communities through grants of financial assistance to municipalities,
6 private groups or other local organizations. The Attorney General may require
7 local financial contributions as a condition of receipt of ~~project~~ program grants.

8 (d) The Office of the Attorney General shall develop program outcomes
9 following the designated State of Vermont performance accountability
10 framework and, in consultation with the Department of State's Attorneys and
11 Sheriffs, the Office of the Defender General, **the Center for Crime Victim**
12 **Services**, and the Judiciary, report annually on or before December 1 to the
13 General Assembly on services provided and outcome indicators.

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

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

21 **The court may also refer a person to diversion at or after arraignment and shall**

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

14 (A) the Board declines to accept the case;

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

16 (C) the Board accepts the case, but the person does not successfully
17 complete diversion;

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

19 (2) Alleged offenders shall be informed of their right to the advice and
20 assistance of private counsel or the public defender at all stages of the
21 diversion process, including the initial decision to participate, and the decision

1 to accept the adult diversion contract, so that the candidate may give informed
2 consent.

3 (3) The participant shall be informed that his or her selection of the adult
4 diversion contract is voluntary.

5 (4) Each State's Attorney, in cooperation with the Office of the Attorney
6 General and the adult court diversion project program, shall develop clear
7 criteria for deciding what types of offenses and offenders will be eligible for
8 diversion; however, the State's Attorney shall retain final discretion over the
9 referral of each case for diversion.

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

14 (6) Information related to the present offense that is divulged during the
15 adult diversion program shall not be used ~~in the prosecutor's case~~ against the
16 person in the person's criminal or juvenile case for any purpose, including
17 impeachment or cross-examination. However, the fact of participation and
18 success, or reasons for failure may become part of the prosecutor's records.

19 (7)(A) The adult court diversion ~~project~~ program shall maintain
20 sufficient records so that the reasons for success or failure of the program in
21 particular cases and overall can be investigated by program staff. These

1 records shall include a centralized statewide filing system that will include the
2 following information about individuals who have successfully completed an
3 adult court diversion program:

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

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

12 (8) Adult court diversion ~~projects~~ programs shall be set up to respect the
13 rights of participants.

14 (9) Each participant shall pay a fee to the local adult court diversion
15 project. The amount of the fee shall be determined by project officers or
16 employees based upon the financial capabilities of the participant. The fee
17 shall not exceed \$300.00. The fee shall be a debt due from the participant, and
18 payment of such shall be required for successful completion of the program.
19 Notwithstanding 32 V.S.A. § 502(a), fees collected under this subdivision shall
20 be retained and used solely for the purpose of the court diversion program.

1 ~~(f)~~(f) The Attorney General is authorized to accept grants and gifts for the
2 purposes of this section, such acceptance being pursuant to 32 V.S.A. § 5.

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

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

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

17 (3) rehabilitation of the participant has been attained to the satisfaction
18 of the court.

19 ~~(f)~~(h) Upon the entry of an order sealing such files and records under this
20 section, the proceedings in the matter under this section shall be considered
21 never to have occurred, all index references thereto shall be deleted, and the

1 participant, the court, and law enforcement officers and departments shall reply
2 to any request for information that no record exists with respect to such
3 participant inquiry in any matter. Copies of the order shall be sent to each
4 agency or official named therein.

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

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

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

17 Sec. 3. 13 V.S.A. § 7554c is amended to read:

18 § 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

19 (a)(1) The objective of a pretrial risk assessment is to provide information
20 to the ~~Court~~ court for the purpose of determining whether a person presents a
21 risk of nonappearance ~~or a threat to public safety~~ or a risk of re-offense so the

1 ~~Court~~ court can make an appropriate order concerning bail and conditions of
2 pretrial release. The assessment shall not assess victim safety or risk of
3 lethality in domestic assaults.

4 (2) The objective of a pretrial needs screening is to obtain a preliminary
5 indication of whether a person has a substantial substance abuse or mental
6 health issue that would warrant a subsequent court order for a more detailed
7 clinical assessment.

8 (3) Participation in a risk assessment or needs screening pursuant to this
9 section does not create any entitlement for the assessed or screened person.

10 (b)(1) ~~A~~ Except as provided in subdivision (2) of this subsection, a person
11 ~~whose offense or status falls into any of the following categories shall be~~
12 ~~offered a risk assessment and, if deemed appropriate by the pretrial monitor, a~~
13 ~~needs screening prior to arraignment:~~

14 ~~(A) misdemeanors and felonies, excluding listed crimes and drug~~
15 ~~trafficking, cited into court; and~~

16 ~~(B) persons who are arrested and lodged and unable to post bail~~
17 ~~within 24 hours of lodging, excluding persons who are charged with an offense~~
18 ~~for which registration as a sex offender is required upon conviction pursuant to~~
19 ~~subchapter 3 of chapter 167 of this title or an offense punishable by up to life~~
20 ~~imprisonment~~ who is arrested, lodged, and unable to post bail within 24 hours

1 of lodging shall be offered a risk assessment and, if deemed appropriate by the
2 pretrial services coordinator, a needs screening prior to arraignment.

3 (2) ~~As used in this section, “listed crime” shall have the same meaning~~
4 ~~as provided in section 5301 of this title and “drug trafficking” means offenses~~
5 ~~listed as such in Title 18~~ A person charged with an offense for which
6 registration as a sex offender is required pursuant to subchapter 3 of chapter
7 167 of this title or an offense punishable by a term of life imprisonment shall
8 not be eligible under this section.

9 (3) ~~Unless ordered as a condition of release under section 7554 of this~~
10 ~~title, participation~~ Participation in risk assessment or needs screening shall be
11 voluntary and a person’s refusal to participate shall not result in any criminal
12 legal liability to the person.

13 (4) In the event an assessment or screening cannot be obtained prior to
14 arraignment, the risk assessment and needs screening shall be conducted as
15 soon as practicable.

16 (5) A person who qualifies pursuant to ~~subdivisions (1)(A)–(D)~~
17 subdivision (1) of this subsection and who has an additional pending charge or
18 a violation of probation shall not be excluded from being offered a risk
19 assessment or needs screening unless the other charge is a listed crime.

20 (6)(A) ~~The Administrative Judge and Court Administrator, in~~
21 ~~consultation with the Secretary of Human Services and the Commissioner of~~

1 ~~Corrections, shall develop a statewide plan for the phased, consistent rollout of~~
2 ~~the categories identified in subdivisions (1)(A) through (D) of this subsection,~~
3 ~~in the order in which they appear in this subsection. The Administrative Judge~~
4 ~~and Court Administrator shall present the plan to the Joint Legislative~~
5 ~~Corrections Oversight Committee on or before October 15, 2014~~ Any person
6 charged with a criminal offense, except those persons identified in subdivision
7 (b)(2) of this section, may choose to engage with a pretrial services
8 coordinator.

9 ~~(B) All persons whose offense or status falls into one of the~~
10 ~~categories shall be eligible for a risk assessment or needs screening on or after~~
11 ~~October 15, 2015. Prior to that date, a person shall not be guaranteed the offer~~
12 ~~of a risk assessment or needs screening solely because the person's offense or~~
13 ~~status falls into one of the categories. Criminal justice professionals charged~~
14 ~~with implementation shall adhere to the plan.~~

15 (c) The results of the risk assessment and needs screening shall be provided
16 to the person and his or her attorney, the prosecutor, and the ~~Court~~ court.
17 Pretrial services coordinators may share information only within the limitations
18 of subsection (e) of this section.

19 (d)(1) At arraignment, ~~in consideration of the risk assessment and needs~~
20 ~~screening, the Court~~ court may order ~~the~~ a person to ~~comply with~~ do the
21 following conditions:

1 (A) meet with a pretrial ~~monitor~~ services coordinator on a schedule
2 set by the ~~Court~~ court; and

3 (B) participate in a needs screening with a pretrial services
4 coordinator; and

5 (C) participate in a clinical assessment by a substance abuse or
6 mental health treatment provider and follow the recommendations of the
7 provider.

8 (2) The ~~Court~~ court may order the person to ~~follow the recommendation~~
9 ~~of the pretrial monitor if the person has completed a risk assessment or needs~~
10 ~~screening~~ engage in pretrial services. Pretrial services may include the pretrial
11 services coordinator:

12 (A) supporting the person in meeting conditions of release imposed
13 by the court, including the condition to appear for judicial proceedings; and

14 (B) connecting the person with community-based treatment
15 programs, rehabilitative services, recovery supports, and restorative justice
16 programs.

17 (3) If possible, the ~~Court~~ court shall set the date and time for the clinical
18 assessment at arraignment. In the alternative, the pretrial ~~monitor~~ services
19 coordinator shall coordinate the date, time, and location of the clinical
20 assessment and advise the ~~Court~~ court, the person and his or her attorney, and
21 the prosecutor.

1 (4) ~~The conditions~~ An order authorized in subdivision (1) or (2) of this
2 subsection shall be in addition to any ~~other~~ conditions of release permitted by
3 law and shall not limit the ~~Court~~ court in any way. Failure to comply with a
4 court order authorized by subdivision (1) or (2) of this subsection shall not
5 constitute a violation of section 7559 of this title.

6 (5) This section shall not be construed to limit a court's authority to
7 impose conditions pursuant to section 7554 of this title.

8 (e)(1) Information obtained from the person during the risk assessment or
9 needs screening shall be exempt from public inspection and copying under the
10 Public Records Act and, except as provided in subdivision (2) of this
11 subsection, only may be used for determining bail, conditions of release, and
12 appropriate programming for the person in the pending case. The information
13 a pretrial services coordinator may report is limited to whether a risk
14 assessment indicates risk of nonappearance, whether further substance use
15 assessment or treatment is indicated, whether mental health assessment or
16 treatment is indicated, whether a person participated in a clinical assessment,
17 and whether further engagement with pretrial services is recommended unless
18 the person provides written permission to release additional information.
19 Information related to the present offense directly or indirectly derived from
20 the risk assessment, needs screening, or other conversation with the pretrial
21 services coordinator shall not be used against the person in the person's

1 criminal or juvenile case for any purpose, including impeachment or cross-
2 examination. However, the fact of participation or nonparticipation in risk
3 assessment or needs screening may be used in subsequent proceedings. The
4 immunity provisions of this subsection apply only to the use and derivative use
5 of information gained as a proximate result of the risk assessment or needs
6 screening, or other conversation with the pretrial services coordinator.

7 (2) The person shall retain all of his or her due process rights throughout
8 the risk assessment and needs screening process and may release his or her
9 records at his or her discretion.

10 (3) ~~The Vermont Supreme Court in accordance with judicial rulemaking~~
11 ~~as provided in 12 V.S.A. § 1 shall promulgate and the Department of~~
12 ~~Corrections in accordance with the Vermont Administrative Procedure Act~~
13 ~~pursuant to 3 V.S.A. chapter 25 shall adopt rules related to the custody,~~
14 ~~control, and preservation of information consistent with the confidentiality~~
15 ~~requirements of this section. Emergency rules adopted prior to January 1, 2015~~
16 ~~pursuant to this section shall be considered to meet the “imminent peril”~~
17 ~~standard under 3 V.S.A. § 844(a)~~ All records of information obtained during
18 risk assessment or needs screening shall be stored in a manner making them
19 accessible only to the Director of Pretrial Services and Pretrial Service
20 Coordinators for a period of three years, after which the records shall be
21 maintained as required by sections 117 and 218 of this title and any other State

1 law. The Director of Pretrial Services shall be responsible for the destruction
2 of records when ordered by the court.

3 (f) The Attorney General's Office shall:

4 (1) contract for or otherwise provide the pretrial services described in
5 this section, including performance of risk assessments, needs screenings, and
6 pretrial monitoring services, and

7 (2) develop pretrial services outcomes following the designated State of
8 Vermont performance accountability framework and, in consultation with the
9 Department of State's Attorneys and Sheriffs, the Office of the Defender
10 General, the Center for Crime Victim Services, and the Judiciary, report
11 annually on or before December 1 to the General Assembly on services
12 provided and outcome indicators.

13 Sec. 4. MISDEMEANOR POSSESSION OF DRUGS; PRETRIAL
14 SERVICES

15 (a) It is the intent of the General Assembly to encourage persons cited or
16 arrested for a misdemeanor drug possession charge the opportunity to engage
17 with pretrial services, and, if appropriate, enter treatment, and that, in turn, a
18 person who complies with such conditions will be eligible for dismissal of the
19 charge.

20 (b) The Attorney General, the Defender General, and the Executive
21 Director of the Department of State's Attorneys and Sheriffs shall work

1 collaboratively to develop a specific legislative proposal to accomplish this
2 intent with an implementation date of July 1, 2018 and report to the Senate and
3 House Committees on Judiciary and on Appropriations, the Senate Committee
4 on Health and Welfare, and the House Committee on Human Services on or
5 before November 1, 2017.

6 Sec. 5. 13 V.S.A. § 7041 is amended to read:

7 § 7041. DEFERRED SENTENCE

8 (a) Upon an adjudication of guilt and after the filing of a presentence
9 investigation report, the court may defer sentencing and place the respondent
10 on probation upon such terms and conditions as it may require if a written
11 agreement concerning the deferring of sentence is entered into between the
12 state's attorney State's Attorney and the respondent and filed with the clerk of
13 the court.

14 (b) Notwithstanding subsection (a) of this section, the court may defer
15 sentencing and place the respondent on probation without a written agreement
16 between the state's attorney State's Attorney and the respondent if the
17 following conditions are met:

18 (1)(A) the respondent is 28 years ~~old~~ of age or younger; or

19 (B) the respondent is 29 years of age or older and has not previously
20 been convicted of a crime;

1 (2) the crime for which the respondent is being sentenced is not a listed
2 crime as defined in subdivision 5301(7) of this title;

3 (3) the court orders, unless waived by the State's Attorney:

4 (A) a presentence investigation in accordance with the procedures set
5 forth in Rule 32 of the Vermont Rules of Criminal Procedure, unless the state's
6 attorney agrees to waive the presentence investigation; or

7 (B) an abbreviated presentence investigation in a form approved by
8 the Commissioner of Corrections;

9 (4) the court permits the victim to submit a written or oral statement
10 concerning the consideration of deferment of sentence;

11 (5) the court reviews the presentence investigation and the victim's
12 impact statement with the parties; and

13 (6) the court determines that deferring sentence is in the interest of
14 justice.

15 (c) Notwithstanding subsections (a) and (b) of this section, the court may
16 not defer a sentence for a violation of section 3253a (aggravated sexual assault
17 of a child), section 2602 (lewd and lascivious conduct with a child unless the
18 victim and the defendant were within five years of age and the act was
19 consensual), 3252(c) (sexual assault of a child under 16 years of age unless the
20 victim and the defendant were within five years of age and the act was

1 consensual), 3252(d) or (e) (sexual assault of a child), 3253(a)(8) (aggravated
2 sexual assault), or 3253a (aggravated sexual assault of a child) of this title.

3 * * *

4 Sec. 6. 13 V.S.A. § 5231 is amended to read:

5 § 5231. RIGHT TO REPRESENTATION, SERVICES AND FACILITIES

6 (a) A needy person who is being detained by a law enforcement officer
7 without charge or judicial process, ~~or~~ who is charged with having committed or
8 is being detained under a conviction of a serious crime, or who is charged with
9 having committed or is being detained under a conviction of any criminal
10 offense if the person was 25 years of age or less at the time the alleged offense
11 was committed, is entitled:

12 (1) To be represented by an attorney to the same extent as a person
13 having his or her own counsel; ~~and~~.

14 (2) To be provided with the necessary services and facilities of
15 representation. Any such necessary services and facilities of representation
16 that exceed \$1,500.00 per item must receive prior approval from the court after
17 a hearing involving the parties. The court may conduct the hearing outside the
18 presence of the ~~state~~ State, but only to the extent necessary to preserve
19 privileged or confidential information. This obligation and requirement to
20 obtain prior court approval shall also be imposed in like manner upon the

1 ~~attorney general~~ Attorney General or a ~~state's attorney~~ State's Attorney
2 prosecuting a violation of the law.

3 (b) The attorney, services and facilities, and court costs shall be provided at
4 public expense to the extent that the person, at the time the court determines
5 need, is unable to provide for the person's payment without undue hardship.

6 Sec. 7. 13 V.S.A. § 5232 is amended to read:

7 § 5232. PARTICULAR PROCEEDINGS

8 Counsel shall be assigned under section 5231 of this title to represent needy
9 persons in any of the following:

10 * * *

11 (3) ~~Proceedings~~ For proceedings arising out of a petition brought in a
12 juvenile court, including any subsequent proceedings arising from an order
13 issued in the juvenile proceeding:

14 (A) the child; and

15 (B) when the court deems the interests of justice require
16 representation, of either the child or his or her the child's parents or guardian,
17 or both, including any subsequent proceedings arising from an order therein.

18 Sec. 8. 13 V.S.A. § 5234 is amended to read:

19 § 5234. NOTICE OF RIGHTS; REPRESENTATION PROVIDED

20 (a) If a person who is being detained by a law enforcement officer without
21 charge or judicial process, or who is charged with having committed or is

1 being detained under a conviction of a serious crime, or who is charged with
2 having committed or is being detained under a conviction of any criminal
3 offense if the person was 25 years of age or less at the time the alleged offense
4 was committed, is not represented by an attorney under conditions in which a
5 person having his or her own counsel would be entitled to be so represented,
6 the law enforcement officer, magistrate, or court concerned shall:

7 (1) Clearly inform him or her of the right of a person to be represented
8 by an attorney and of a needy person to be represented at public expense; ~~and~~.

9 (2) If the person detained or charged does not have an attorney and does
10 not knowingly, voluntarily and intelligently waive his or her right to have an
11 attorney when detained or charged, notify the appropriate public defender that
12 he or she is not so represented. This shall be done upon commencement of
13 detention, formal charge, or post-conviction proceeding, as the case may be.

14 As used in this subsection, the term “commencement of detention” includes the
15 taking into custody of a probationer or parolee.

16 (b) Upon commencement of any later judicial proceeding relating to the
17 same matter, the presiding officer shall clearly inform the person so detained or
18 charged of the right of a needy person to be represented by an attorney at
19 public expense.

20 (c) Information given to a person by a law enforcement officer under this
21 section is effective only if it is communicated to a person in a manner meeting

1 standards under the ~~constitution~~ Constitution of the United States relating to
2 admissibility in evidence against him or her of statements of a detained person.

3 (d) Information meeting the standards of subsection (c) of this section and
4 given to a person by a law enforcement officer under this section gives rise to a
5 rebuttable presumption that the information was effectively communicated if:

6 (1) ~~It~~ it is in writing or otherwise recorded;

7 (2) ~~The~~ the recipient records his or her acknowledgment of receipt and
8 time of receipt of the information; and

9 (3) ~~The~~ the material so recorded under subdivisions (1) and (2) of this
10 subsection is filed with the court next concerned.

11 Sec. 9. LEGISLATIVE FINDINGS

12 The General Assembly finds:

13 (1) According to Michael Botticelli, former Director of the Office of
14 National Drug Control Policy, the National Drug Control Strategy
15 recommends treating “addiction as a public health issue, not a crime.” Further,
16 the strategy “rejects the notion that we can arrest and incarcerate our way out
17 of the nation’s drug problem.”

18 (2) Vermont Chief Justice Paul Reiber has declared that “the classic
19 approach of ‘tough on crime’ is not working in [the] area of drug policy” and
20 that treatment-based models are proving to be a more effective approach for
21 dealing with crime associated with substance abuse.

1 (3) A felony conviction record is a significant impediment to gaining
2 and maintaining employment and housing, yet we know that stable
3 employment and housing are an essential element to recovery from substance
4 abuse and desistance of criminal activity that often accompanies addiction.

5 (4) In a 2014 study by the PEW Research Center, 67 percent of people
6 polled said government should focus more on providing treatment to people
7 who use illicit drugs and less on punishment. The Center later reported that
8 states are leading the way in reforming drug laws to reflect this opinion: State-
9 level actions have included lowering penalties for possession and use of illegal
10 drugs, shortening mandatory minimums or curbing their applicability,
11 removing automatic sentence enhancements, and establishing or extending the
12 jurisdiction of drug courts and other alternatives to the regular criminal justice
13 system.

14 (5) Vermont must look at alternative approaches to the traditional
15 criminal justice model for addressing low-level illicit drug use if it is going to
16 reduce the effects of addiction and addiction-related crime in this State.

17 Sec. 10. STUDY

18 (a) The Office of Legislative Council shall examine the issue of a public
19 health approach to low-level possession and use of illicit drugs in Vermont as
20 an alternative to the traditional criminal justice model, looking to trends both

1 nationally and internationally, with a goal of providing policymakers a range
2 of approaches to consider during the 2018 legislative session.

3 (b) The Office of Legislative Council shall report its findings to the
4 General Assembly on or before November 15, 2017.

5 **Sec. 11. SUNSET**

6 Sec. 2 of this Act shall be repealed on July 1, 2020.

7 Sec. 12. EFFECTIVE DATE

8 This act shall take effect on July 1, 2017.

9

10

11

12 (Committee vote: _____)

13

14

Representative _____

15

FOR THE COMMITTEE