

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 222
3 entitled “An act relating to technical amendments to civil and criminal
4 procedure statutes “ respectfully reports that it has considered the same and
5 recommends 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 the date the assurance is signed by the Division and
17 upon a finding that the order is insufficient to carry out the purposes of this
18 chapter, the Division shall vacate the order.

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

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

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

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

18 § 2. DEFINITIONS

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

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

1 him or her, the court may allow the attaching creditor to pay or tender the
2 amount due to the trustee, and he or she shall thereupon deliver such property,
3 as ~~hereinbefore~~ provided in this subchapter, to the officer holding the
4 execution.

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

6 § 3292. RECORDING BY TOWN OR ~~COUNTY~~ SUPERIOR CLERK

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

12 Sec. 7. 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. 8. 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 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 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. 9. 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. 10. REPEAL

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

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

7 § 164. ADULT COURT DIVERSION PROGRAM

8 * * *

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

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

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

1 ~~ensures attorney-client confidentiality and the client’s meaningful participation~~
2 ~~in the proceeding.~~

3 **OPTION B (Video permitted if agreement executed by interested parties)**

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

5 § 15. USE OF VIDEO

6 Proceedings governed by V.R.Cr.P. 5, V.R.Cr.P. 10, and chapter 229 of
7 Title 13 shall be in person and on the record, and shall not be performed by
8 video conferencing or other electronic means until the Attorney General, the
9 Defender General, and the Executive Director of the Department of Sheriffs
10 and State’s Attorneys execute a joint certification that the video conferencing
11 program in use by the court at the site where the proceeding occurs adequately
12 ensures attorney-client confidentiality and the client’s meaningful participation
13 in the proceeding.

14 **OPTION C (Video permitted if defense counsel consents)**

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

16 § 15. USE OF VIDEO

17 Proceedings governed by V.R.Cr.P. 5, V.R.Cr.P. 10, and Chapter 229 of
18 this title shall be in person and on the record, and shall not be performed by
19 video conferencing or other electronic means unless counsel for the defendant
20 consents. This section shall not be construed to limit the use of video
21 conferencing to effect the appearance of the defendant at status conferences.

1 calendar calls, and other proceedings where the presence of the defendant is
2 not required by V.R.Cr.P. 43.

3 **OPTION D (combination of options B and C)**

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

5 § 15. USE OF VIDEO

6 (a) Except as provided by subsection (b) of this section, proceedings
7 governed by V.R.Cr.P. 5, V.R.Cr.P. 10, and chapter 229 of Title 13 shall be in
8 person and on the record, and shall not be performed by video conferencing or
9 other electronic means until the Attorney General, the Defender General, and
10 the Executive Director of the Department of Sheriffs and State's Attorneys
11 execute a joint certification that the video conferencing program in use by the
12 court at the site where the proceeding occurs adequately ensures attorney-client
13 confidentiality and the client's meaningful participation in the proceeding.

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

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

18 § 2301. MURDER-DEGREES DEFINED

19 Murder committed by means of poison, or by lying in wait, or by wilful,
20 deliberate and premeditated killing, or committed in perpetrating or attempting
21 to perpetrate arson, sexual assault, aggravated sexual assault, kidnapping,

1 robbery or burglary, shall be murder in the first degree. All other kinds of
2 murder shall be murder in the second degree.

3 Sec. 14. EARNED GOOD TIME; REPORT

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

12 Sec. 15. EFFECTIVE DATE

13 This act shall take effect on passage.

14
15 and that after passage the title of the bill be amended to read: “An act relating
16 to miscellaneous judiciary procedures”

17
18 (Committee vote: _____)

19 _____

20 Senator _____

21 FOR THE COMMITTEE