

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

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

7 * * *

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

9 § 701. SUMMONS

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

16 * * *

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

19 [Repealed.]

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 Sec. 9. REPEAL

2 2017 Acts and Resolves No. 11, Sec. 60 (amending 32 V.S.A. § 5412) is
3 repealed.

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

5 § 163. JUVENILE COURT DIVERSION PROJECT

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

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

20 * * *

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

2 § 164. ADULT COURT DIVERSION PROGRAM

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

9 * * *

10 (c) The program shall ~~encourage the development~~ support the operation of
11 diversion programs in local communities through grants of financial assistance
12 to, or contracts for services with, municipalities, private groups, or other local
13 organizations. The Attorney General may require local financial contributions
14 as a condition of receipt of program ~~grants~~ funding.

15 * * *

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

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

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

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

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

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

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

20 * * *

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

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

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

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

19 * * *

20 (g)(1) Within 30 days ~~of~~ after the two-year anniversary of a successful
21 completion of adult diversion, the court shall provide notice to all parties of

1 record of the court's intention to order the ~~sealing~~ expungement of all court
2 files and records, law enforcement records other than entries in the adult court
3 diversion program's centralized filing system, fingerprints, and photographs
4 applicable to the proceeding. The court shall give the State's Attorney an
5 opportunity for a hearing to contest the ~~sealing~~ expungement of the records.
6 The court shall ~~seal~~ expunge the records if it finds:

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

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

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

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

20 (3)(A) The court shall keep a special index of cases that have been
21 expunged pursuant to this section together with the expungement order. The

1 index shall list only the name of the person convicted of the offense, his or her
2 date of birth, the docket number, and the criminal offense that was the subject
3 of the expungement.

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

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

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

16 ~~Upon~~ Except as otherwise provided in this section, upon the entry of an
17 order sealing such expunging files and records under this section, the
18 proceedings in the matter under this section shall be considered never to have
19 occurred, all index references thereto shall be deleted, and the participant, the
20 court, and law enforcement officers and departments shall reply to any request
21 for information that no record exists with respect to such participant inquiry in

1 any matter. Copies of the order shall be sent to each agency or official named
2 therein.

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

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

12 * * *

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

14 § 15. USE OF VIDEO

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

1 attorney-client confidentiality and the client's meaningful participation in the
2 proceeding.

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

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

7 § 2301. MURDER-DEGREES DEFINED

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

13 Sec. 14. EARNED GOOD TIME; REPORT

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

1 Sec. 15. EFFECTIVE DATE

2 This act shall take effect on passage.

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

5

6

7 (Committee vote: _____)

8

9

Senator _____

10

FOR THE COMMITTEE