

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

5 * * *

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

7 § 701. SUMMONS

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

14 * * *

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

17 [Repealed.]

18 Sec. 5. 12 V.S.A. § 3125 is amended to read:

19 § 3125. PAYMENT OF TRUSTEE'S CLAIM BY CREDITOR

20 When it appears that personal property in the hands of a person summoned
21 as a trustee is mortgaged, pledged, or liable for the payment of a debt due to

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. § 163 is amended to read:

7 § 163. JUVENILE COURT DIVERSION PROJECT

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

16 (b) The diversion ~~project~~ program administered by the Attorney General
17 shall ~~encourage the development~~ support the operation of diversion ~~projects~~
18 programs in local communities through grants of financial assistance to, or by
19 contracting 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 project ~~grants~~ funding.

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Sec. 12. 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 The Attorney General shall adopt ~~only such rules as are necessary to establish an adult court diversion program for adults~~ a policy 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

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

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

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

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

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

21 * * *

1 (7)(A) Irrespective of whether a record was expunged, the ~~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, the Attorney
16 General or a director of an adult court diversion program may shall, upon
17 request, provide to a participant or his or her attorney sufficient documentation
18 to show that the participant successfully completed diversion.

19 * * *

20 (g)(1) Within 30 days of 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. 30 days prior to expunging a record pursuant to
18 this subdivision, the court shall provide written notice of its intent to expunge
19 the record to the State's Attorney's office that prosecuted the case.

20 (3)(A) The court **may 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 interest 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 implementing
15 this subsection.

16 (h) Except as otherwise provided in this section, upon ~~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 be~~
4 ~~permitted by the court only upon petition by the participant who is the subject~~
5 ~~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. 13. 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 V.R.Cr.P. 5, V.R.Cr.P. 10, and chapter 229 of Title 13 shall be in
17 person and on the record, and shall not be performed by video conferencing or
18 other electronic means until the Defender General and the Executive Director
19 of the Department of Sheriffs and State's Attorneys execute a joint certification
20 that the video conferencing program in use by the court at the site where the

1 proceeding occurs adequately ensures attorney-client confidentiality and the
2 client's meaningful participation in the 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. 14. 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 deliberate and premeditated killing, or committed in perpetrating or attempting
10 to perpetrate arson, sexual assault, aggravated sexual assault, kidnapping,
11 robbery or burglary, shall be murder in the first degree. All other kinds of
12 murder shall be murder in the second degree.

13 Sec. 15. 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 Institutions and Corrections 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. 16. EFFECTIVE DATE

2 This act shall take effect on passage.

3

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

6

7 (Committee vote: _____)

8

9

Senator _____

10

FOR THE COMMITTEE