

1 S.105

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: February 13, 2019

5 Subject: Court procedure; criminal procedure; miscellaneous amendments

6 Statement of purpose of bill as introduced: This bill proposes to make a
7 number of miscellaneous amendments related to civil and criminal procedure
8 statutes.

9 An act relating to miscellaneous judiciary procedures

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 ~~Sec. 1. 13 V.S.A. § 362 is amended to read:~~

12 § 362. EXPOSING POISON ON THE LAND

13 A person who deposits any poison or substance poisonous to animals on his
14 or her premises or on the ~~premise~~ premises or buildings of another, with the
15 intent that it be taken by an animal, shall be in violation of subdivision 352(2)
16 of this title. This section shall not apply to control of wild pests, protection of
17 crops from insects, mice, and plant diseases, or the Department of Fish and
18 Wildlife ~~and employees and agents of the State Forest Service in control of~~
19 ~~destructive wild animals.~~

1 ~~Sec. 2. 13 V.S.A. § 397 is amended to read:~~

2 ~~§ 397. ADMINISTRATIVE PENALTY~~

3 ~~In addition to the forfeiture of any award, premium, or trophy otherwise~~
4 ~~due, and in addition to other penalties provided by law, a person violating this~~
5 ~~chapter may be assessed an administrative penalty in an amount not to exceed~~
6 ~~\$1,000.00 by the Secretary. The Secretary shall utilize the provisions of~~
7 ~~6 V.S.A. §§ 16 and 17 for purposes of assessing the penalty.~~

8 ~~Sec. 3. 13 V.S.A. § 508 is amended to read:~~

9 ~~§ 508. SETTING FIRES~~

10 ~~A person who enters upon lands of another and sets a fire that causes~~
11 ~~damage shall be imprisoned not more than 60 days nor less than 30 days, or~~
12 ~~fined not more than \$100.00 nor less than \$10.00, or both. The provisions of~~
13 ~~this section shall not affect the provisions of sections section 507 and 3906 of~~
14 ~~this title.~~

15 ~~Sec. 4. 13 V.S.A. § 1504 is amended to read:~~

16 ~~§ 1504. PLACE OF CONFINEMENT CONSTRUED~~

17 ~~The words "place of confinement" as used in sections 1502 and 1503 of this~~
18 ~~title shall not be construed to include the Weeks School. [Repealed.]~~

19 ~~Sec. 5. 13 V.S.A. § 2901 is amended to read:~~

20 ~~§ 2901. PUNISHMENT FOR PERJURY~~

21 ~~A person who, being lawfully required to depose the truth in a proceeding~~
22 ~~in a court of justice or in a contested case before a State agency pursuant to~~
23 ~~3 V.S.A. chapter 25, commits perjury shall be imprisoned not more than~~
24 ~~15 years and or fined not more than \$10,000.00, or both.~~

1 ~~Sec. 6. 13 V.S.A. § 2535 is amended to read:~~

2 § 2535. GUARDIAN

3 A guardian who embezzles or fraudulently converts to his or her own use,
4 money, obligations, securities, or other effects or property belonging to the
5 ward person under guardianship or the estate of the ~~ward of whom he or she is~~
6 guardian person under guardianship, shall be guilty of larceny and shall be
7 imprisoned not more than 10 years or fined not more than \$1,000.00, or both.

8 Sec. 7. 13 V.S.A. § 3403 is amended to read:

9 § 3403. MISPRISION OF TREASON

10 A person owing allegiance to this State, knowing such treason to have been
11 committed, or knowing of the intent of a person to commit such treason, who
12 does not, within 14 days from the time of having such knowledge, give
13 information thereof to the Governor of the State, to one of the Justices of the
14 Supreme Court, a Superior or District judge, or a justice of the peace, shall be
15 guilty of misprision of treason and shall be imprisoned not more than 10 years
16 nor less than five years or fined not more than \$2,000.00, or both.

17 Sec. 8. 13 V.S.A. § 3485 is amended to read:

18 § 3485. PENALTY WHEN OFFENSE IS TREASON

19 A person who commits an offense punishable under one of sections 3481-
20 3484 ~~3482-3485~~ of this title, and such offense amounts to treason, shall be
21 punished for treason in lieu of the penalty prescribed in such section.

22 Sec. 9. 13 V.S.A. § 5415 is amended to read:

23 ~~§ 5415. ENFORCEMENT, SPECIAL INVESTIGATION UNITS~~

1 ~~(a) Special investigation units, created pursuant to 24 V.S.A. § 1940, shall~~
2 be responsible for the investigation of violations of this chapter's Registry
3 requirements and are authorized to conduct in-person Registry compliance
4 checks in a time, place, and manner it deems appropriate in furtherance of the
5 purposes of this chapter. This section shall not be construed to prohibit local
6 law enforcement from enforcing the provisions of this chapter.

7 ~~(b) On or before November 1, 2019, and annually thereafter, local law~~
8 ~~enforcement agencies shall report to the Vermont Crime Information Center~~
9 ~~about any in-person Registry compliance checks that the agency has conducted~~
10 ~~during the preceding 12 months. The report shall include the total number of~~
11 ~~in-person compliance checks conducted during the 12-month period, the~~
12 ~~number of offenders who were in compliance, the number of offenders who~~
13 ~~were out of compliance, and the reasons for being out of compliance.~~

14 ~~(c) The department of public safety Department of Public Safety shall~~
15 report to the Senate and House Committees on Judiciary on or before
16 December 15, 2009, and annually thereafter, regarding its efforts under this
17 section.

18 Sec. 10. 14 V.S.A. § 1203 is amended to read:

19 § 1203. LIMITATIONS ON PRESENTATION OF CLAIMS

20 (a) All claims against a decedent's estate ~~which~~ that arose before the death
21 of the decedent, including claims of the State and any subdivision thereof,
22 ~~whether due or to become due, absolute or contingent, liquidated or~~

1 ~~quidated, founded on contract, tort, or other legal basis, except claims for the~~
2 possession of or title to real estate and claims for injury to the person and
3 damage to property suffered by the act or default of the deceased, if not barred
4 earlier by other statute of limitations, are barred against the estate, the executor
5 or administrator, and the heirs and devisees of the decedent, unless presented
6 as follows:

7 (1) within four months after the date of the first publication of notice to
8 creditors if notice is given in compliance with the Rules of Probate Procedure;
9 provided, however, that claims barred by the non-claim statute of the decedent's
10 domicile before the first publication for claims in this State are also barred in
11 this State;

12 * * *

13 Sec. 11. EFFECTIVE DATE

14 ~~This act shall take effect on passage.~~

Sec. 1. 3 V.S.A. § 163 is amended to read:

§ 163. JUVENILE COURT DIVERSION PROJECT

** * **

(c) All diversion projects receiving financial assistance from the Attorney General shall adhere to the following provisions:

** * **

(4) Each State's Attorney, in cooperation with the Attorney General and the diversion project program, shall develop clear criteria for deciding what types of offenses and offenders will be eligible for diversion; however, the State's Attorney shall retain final discretion over the referral of each case for diversion. The provisions of 33 V.S.A. § 5225(c) and § 5280(e) shall apply.

** * **

(j) Notwithstanding subdivision (c)(1) of this section, the diversion program may accept cases pursuant to 33 V.S.A. § 5225 and § 5280.

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

§ 5169. ADULT COURT DIVERSION PROGRAM

* * *

(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, except that for persons who are subject to conditions of release imposed pursuant to 13 V.S.A. § 7554, the matter shall become confidential upon the successful completion of diversion. 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:

(A) the diversion program declines to accept the case;

(B) the person declines to participate in diversion;

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

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

* * *

(m) Notwithstanding subdivision (e)(1) of this section, the diversion program may accept cases pursuant to 33 V.S.A. §§ 5225 and 5280.

Sec. 3. 4 V.S.A. § 27b is added to read:

§ 27b. ELECTRONICALLY FILED VERIFIED DOCUMENTS

(a) A registered electronic filer in the Judiciary's electronic document filing system may file any document that would otherwise require the approval or verification of a notary by filing the document with the following language inserted above the signature and date:

I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I will be subject to the penalty of perjury.

(b) A document filed pursuant to subsection (a) of this section shall not require the approval or verification of a notary.

(c) This section shall not apply to an affidavit in support of a search warrant application or to an application for a nontestimonial identification order.

Sec. 4. 13 V.S.A. § 2904 is amended to read:

§ 2904. FALSE SWEARING; FALSE DECLARATION

(a) A person of whom an oath is required by law, who willfully swears falsely in regard to any matter or thing respecting which such oath is required, shall be guilty of perjury and punished as provided in section 2901 of this title.

(b) A person who declares, certifies, or verifies in a signed writing that a statement is true and is made under the pains and penalties of perjury, and who willfully makes a false statement in the declaration, certification, or verification, shall be guilty of perjury and punished as provided in section 2901 of this title.

Sec. 5. 13 V.S.A. § 11a is amended to read:

§ 11a. ~~VIOLENT CAREER CRIMINALS~~

~~(a) The State may elect to seek the substitute penalty provided for in this section against a person who, after having been two times convicted within this State of a felony crime of violence, or under the law of any other state, government, or country, of a crime which, if committed in this State would be a felony crime of violence, is convicted of a third felony crime of violence within this State.~~

~~(b) If the State seeks a substitute penalty for one of the offenses enumerated in subsection (d) of this section, it shall give notice to the person by filing an information seeking the penalty contained in this section.~~

~~(c) A person charged under this section shall be sentenced upon conviction of such third or subsequent offense to imprisonment up to and including life.~~

~~(d) As used in this section, “felony crime of violence” shall mean the following crimes:~~

~~(1) arson causing death as defined in section 501 of this title;~~

~~(2) assault and robbery with a dangerous weapon as defined in subsection 608(b) of this title;~~

~~(3) assault and robbery causing bodily injury as defined in subsection 608(c) of this title;~~

~~(4) aggravated assault as defined in section 1024 of this title;~~

~~(5) murder as defined in section 2301 of this title;~~

~~(6) manslaughter as defined in section 2304 of this title;~~

~~(7) kidnapping as defined in section 2405 of this title or its predecessor as it was defined in section 2401 of this title;~~

~~(8) maiming as defined in section 2701 of this title;~~

~~(9) sexual assault as defined in subdivision 3252(a)(1) or (2) of this title or its predecessor as it was defined in section 3201 of this title;~~

~~(10) aggravated sexual assault as defined in section 3253 of this title;~~

~~(11) first degree unlawful restraint as defined in section 2407 of this title;~~

~~(12) first degree aggravated domestic assault as defined in section 1043 of this title where the defendant causes serious bodily injury to another person;~~

~~(13) lewd or lascivious conduct with a child as defined in section 2602 of this title where the child is under the age of 13 years and the defendant is 18 years of age or older.~~

~~(e) Notwithstanding any other provision of law to the contrary, the court shall not place on probation or suspend the sentence of any person sentenced under this section. No person who receives a minimum sentence under this section shall be eligible for early release or furlough until the expiration of the minimum sentence.~~

~~(f) For the purposes of this section, multiple convictions that arise out of the same criminal transaction are to be treated as one conviction. [Repealed.]~~

~~Sec. 6. 13 V.S.A. § 362 is amended to read:~~

~~§ 362. EXPOSING POISON ON THE LAND~~

~~A person who deposits any poison or substance poisonous to animals on his or her premises or on the ~~premise~~ premises or buildings of another, with the intent that it be taken by an animal, shall be in violation of subdivision 352(2)~~

of this title. This section shall not apply to control of wild pests, protection of crops from insects, mice, and plant diseases, or the Department of Fish and Wildlife and employees and agents of the State Forest Service in control of destructive wild animals.

Sec. 7. 13 V.S.A. § 397 is amended to read:

§ 397. ADMINISTRATIVE PENALTY

In addition to the forfeiture of any award, premium, or trophy otherwise due, and in addition to other penalties provided by law, a person violating this chapter may be assessed an administrative penalty in an amount not to exceed \$1,000.00 by the Secretary. The Secretary shall utilize the provisions of 6 V.S.A. §§ 16 and 17 for purposes of assessing the penalty.

Sec. 8. 13 V.S.A. § 508 is amended to read:

§ 508. SETTING FIRES

A person who enters upon lands of another and sets a fire that causes damage shall be imprisoned not more than 60 days nor less than 30 days, or fined not more than \$100.00 nor less than \$10.00, or both. The provisions of this section shall not affect the provisions of ~~sections~~ section 507 and 3906 of this title.

Sec. 9. 13 V.S.A. § 1501 is amended to read:

§ 1501. ESCAPE AND ATTEMPTS TO ESCAPE

(a) A person who, while in lawful custody:

(1) escapes or attempts to escape from any correctional facility or a local lockup shall be imprisoned for not more than 10 years or fined not more than \$5,000.00, or both; or

(2) escapes or attempts to escape from an officer, if the person was in custody as a result of a felony, shall be imprisoned for not more than 10 years or fined not more than \$5,000.00, or both; or if the person was in custody as a result of a misdemeanor, shall be imprisoned for not more than two years, or fined not more than \$1,000.00, or both.

(b)(1) A person shall not, while in lawful custody:

(A) fail to return from work release to the correctional facility at the specified time, or visits other than the specified place, as required by the order issued in accordance with 28 V.S.A. § 753;

(B) fail to return from furlough to the correctional facility at the specified time, or visits other than the specified place, as required by the order issued in accordance with ~~28 V.S.A. § 808, 808a, 808b, or 808c~~ 28 V.S.A. § 808(a)(1)–(5);

(C) escape or attempt to escape while on release from a correctional facility to do work in the service of such facility or of the Department of Corrections in accordance with 28 V.S.A. § 758; or

(D) elope or attempt to elope from the Vermont Psychiatric Care Hospital or a participating hospital, when confined by court order pursuant to chapter 157 of this title, or when transferred there pursuant to 28 V.S.A. § 703 and while still serving a sentence.

(2) A person who violates this subsection shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.

(3) It shall not be a violation of subdivision of (1)(A), (1)(B), or (1)(C) of this subsection (b) if the person is on furlough status pursuant to 28 V.S.A. §§ 808(a)(6), 808(e), 808(f), 808a, 808b, or 808c.

(c) All sentences imposed under subsection (a) of this section shall be consecutive to any term or sentence being served at the time of the offense.

* * *

Sec. 10. 28 V.S.A. § 808e is added to read:

§ 808e. ABSCONDING FROM FURLOUGH; WARRANT

The Commissioner of Corrections may issue a warrant for the arrest of a person who has absconded from furlough status in violation of 28 V.S.A. §§ 808(a)(6), 808(e), 808(f), 808a, 808b, or 808c, requiring the person to be returned to a correctional facility. A person for whom an arrest warrant is issued pursuant to this section shall not earn credit toward service of his or her sentence for any days that the warrant is outstanding.

Sec. 11. 13 V.S.A. § 1504 is amended to read:

§ 1504. ~~PLACE OF CONFINEMENT CONSTRUED~~

~~The words “place of confinement” as used in sections 1502 and 1503 of this title shall not be construed to include the Weeks School. [Repealed.]~~

Sec. 12. 13 V.S.A. § 2901 is amended to read:

§ 2901. PUNISHMENT FOR PERJURY

A person who, being lawfully required to depose the truth in a proceeding in a court of justice or in a contested case before a State agency pursuant to 3 V.S.A. chapter 25, commits perjury shall be imprisoned not more than 15 years ~~and~~ or fined not more than \$10,000.00, or both.

Sec. 13. 13 V.S.A. § 2535 is amended to read:

§ 2535. GUARDIAN

A guardian who embezzles or fraudulently converts to his or her own use, money, obligations, securities, or other effects or property belonging to the ~~ward~~ person under guardianship or the estate of the ~~ward of whom he or she is guardian~~ person under guardianship, shall be guilty of larceny and shall be imprisoned not more than 10 years or fined not more than \$1,000.00, or both.

Sec. 14. 13 V.S.A. § 3403 is amended to read:

§ 3403. MISPRISION OF TREASON

A person owing allegiance to this State, knowing such treason to have been committed, or knowing of the intent of a person to commit such treason, who does not, within 14 days from the time of having such knowledge, give information thereof to the Governor of the State, to one of the Justices of the Supreme Court, a Superior ~~or District~~ judge, or a justice of the peace, shall be guilty of misprision of treason and shall be imprisoned not more than 10 years nor less than five years or fined not more than \$2,000.00, or both.

Sec. 15. 13 V.S.A. § 3485 is amended to read:

§ 3485. PENALTY WHEN OFFENSE IS TREASON

A person who commits an offense punishable under one of sections ~~3481-3484~~ 3482-3485 of this title, and such offense amounts to treason, shall be punished for treason in lieu of the penalty prescribed in such section.

Sec. 16. 13 V.S.A. § 5415 is amended to read:

§ 5415. ENFORCEMENT; SPECIAL INVESTIGATION UNITS

(a) Special investigation units, created pursuant to 24 V.S.A. § 1940, shall be responsible for the investigation of violations of this chapter's Registry requirements and are authorized to conduct in-person Registry compliance checks in a time, place, and manner it deems appropriate in furtherance of the purposes of this chapter. This section shall not be construed to prohibit local law enforcement from enforcing the provisions of this chapter.

(b) On or before November 1, 2019, and annually thereafter, local law enforcement agencies shall report to the Vermont Crime Information Center about any in-person Registry compliance checks that the agency has conducted during the preceding 12 months. The report shall include the total number of in-person compliance checks conducted during the 12-month period, the number of offenders who were in compliance, the number of offenders who were out of compliance, and the reasons for being out of compliance.

(c) ~~The department of public safety~~ Department of Public Safety shall report to the Senate and House Committees on Judiciary on or before December 15, 2009, and annually thereafter, regarding its efforts under this section.

Sec. 17. 13 V.S.A. § 7041 is amended to read:

§ 7041. DEFERRED SENTENCE

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

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

(1) ~~the respondent is 28 years old or younger;~~ [Repealed.]

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

(3) the court orders a presentence investigation in accordance with the procedures set forth in V.R.C.P. Rule 32, unless the State's Attorney agrees to waive the presentence investigation;

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

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

(6) the court determines that deferring sentence is in the interests of justice.

** * **

Sec. 18. 13 V.S.A. § 7554c is amended to read:

§ 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

** * **

(b)(6) Any person charged with a criminal offense or who is the subject of a youthful offender petition pursuant to 33 V.S.A. § 5280, except those persons identified in subdivision (2) of this subsection, may choose to engage with a pretrial services coordinator.

** * **

Sec. 19. 14 V.S.A. § 1203 is amended to read:

§ 1203. LIMITATIONS ON PRESENTATION OF CLAIMS

(a) All claims against a decedent's estate ~~which~~ that arose before the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, except claims for the possession of or title to real estate and claims for injury to the person and damage to property suffered by the act or default of the deceased, if not barred earlier by other statute of limitations, are barred against the estate, the executor or administrator, and the heirs and devisees of the decedent, unless presented as follows:

(1) within four months after the date of the first publication of notice to creditors if notice is given in compliance with the Rules of Probate Procedure; provided, however, that claims barred by the nonclaim statute of the decedent's domicile before the first publication for claims in this State are also barred in this State;

** * **

Sec. 20. EFFECTIVE DATE

This act shall take effect on passage.