

Journal of the Senate

WEDNESDAY, JUNE 3, 2020

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Roll Call

The roll of the Senate was thereupon called by the Secretary, John H. Bloomer, Jr., and it appeared that the following Senators were present.

Addison District	Senator Christopher A. Bray Senator Ruth Ellen Hardy
Bennington District	Senator Brian A. Campion Senator Richard W. Sears, Jr.
Caledonia District	Senator Joseph C. Benning Senator M. Jane Kitchel
Chittenden District	Senator Timothy R. Ashe Senator Philip E. Baruth Senator Deborah J. Ingram Senator Virginia V. Lyons Senator Christopher A. Pearson Senator Michael D. Sirotkin
Essex-Orleans District	Senator Robert A. Starr
Franklin District	Senator Randolph D. Brock Senator Corey. J. Parent
Grand Isle District	Senator Richard T. Mazza
Lamoille District	Senator Richard A. Westman
Orange District	Senator Mark A. MacDonald
Rutland District	Senator Brian P. Collamore Senator Cheryl Mazzariello Hooker Senator James L. McNeil

Washington District	Senator Ann E. Cummings Senator Andrew J. Perchlik Senator Anthony Pollina
Windham District	Senator Rebecca A. Balint Senator Jeanette K. White
Windsor District	Senator Alison Clarkson Senator Richard J. McCormack Senator Alice W. Nitka

Message from the Governor Appointments Referred

A message was received from the Governor, by Brittney L. Wilson, Secretary of Civil and Military Affairs, submitting the following appointments, which were referred to committees as indicated:

The nomination of

Harrington, Michael A. of Northfield - Commissioner of the Department of Labor, - from June 1, 2020 to February 28, 2021.

To the Committee on Economic Development, Housing and General Affairs.

Consideration Postponed

S. 345.

House proposal of amendment to Senate bill entitled:

An act relating to temporary municipal meeting provisions in response to the COVID-19 outbreak.

Was taken up.

The House proposes to the Senate to amend the bill by striking out Sec. 2 in its entirety and inserting in lieu thereof two new sections to be numbered Sec. 2 and Sec. 3 to read as follows:

Sec. 2. MUNICIPAL PROPERTY TAX; HIGHWAY EXPENDITURES; GENERAL GOVERNMENT EXPENDITURES

(a) Notwithstanding 19 V.S.A. § 312 and any other provision of law to the contrary, during a declared state of emergency under 20 V.S.A. chapter 1 due to COVID-19, the legislative body of a municipality is authorized to:

(1) borrow monies appropriated from property taxes for the highway expenditures of the municipality as part of the budget approved by the legal voters of the municipality to expend on general government expenditures; and

(2) borrow monies appropriated from property taxes for the general government expenditures of the municipality as part of the budget approved by the legal voters of the municipality to expend on highway expenditures.

(b) The acts permitted by subsection (a) of this section may be adopted by majority vote of the legislative body of a municipality and shall expire on January 1, 2021.

(c) This section shall apply only to property taxes collected by a municipality from the taxpayers. This section shall not apply to any State aid for town highways distributed pursuant to 19 V.S.A. § 306.

(d) This section shall not alleviate the municipality of any Title 19 match requirements.

(e) A municipality that borrows and expends monies under this section shall, not later than December 31, 2021, transfer to any such fund from which such borrowing has been made an amount equal to such borrowed amount together with interest on the borrowed amount at such rate as the legislative body of the municipality shall determine.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

And that after passage the title of the bill be amended to read:

An act relating to temporary municipal provisions in response to the COVID-19 outbreak.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator MacDonald moved that consideration be postponed.

Which was agreed to.

Third Reading Ordered

H. 750.

Senator Pollina, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to creating a National Guard provost marshal.

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Bill Amended; Third Reading Ordered**S. 232.**

Senator Sears, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to implementing the expansion of juvenile jurisdiction.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

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

§ 164. ADULT COURT DIVERSION PROJECT

(a) The Attorney General shall develop and administer an adult court diversion program in all counties. In consultation with diversion programs, the Attorney General shall adopt a policies and procedures manual in compliance with this section.

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

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

(2) To assist adults with persons who have been charged with an offense and who have substance abuse or mental health treatment needs regardless of the person's prior criminal history record, except a person charged with a felony offense that is a crime listed in 13 V.S.A. § 5301(7) shall not be eligible under this section. Persons who have attained 18 years of age who are subject to a petition in the Family Division pursuant to 33 V.S.A. chapters 52 or 52A shall also be eligible under this section. Programming for these persons is intended to support access to appropriate treatment or other resources with the aim of improving the person's health and reducing future adverse involvement in the justice system. ~~A person charged with a felony offense that is a listed crime pursuant to 13 V.S.A. § 5301 shall not be eligible under this section.~~

* * *

Sec. 2. 33 V.S.A. § 5103 is amended to read:

§ 5103. JURISDICTION

(a) The Family Division of the Superior Court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

(b) Orders issued under the authority of the juvenile judicial proceedings chapters shall take precedence over orders in other Family Division proceedings and any order of another court of this State, to the extent they are inconsistent. This section shall not apply to child support orders in a divorce, parentage, or relief from abuse proceedings until a child support order has been issued in the juvenile proceeding.

(c)(1) Except as otherwise provided by this title and by subdivision (2) of this subsection, jurisdiction over a child shall not be extended beyond the child's 18th birthday.

(2)(A) Jurisdiction over a child with a pending delinquency may be extended until six months beyond the child's:

(i) 19th birthday if the child was 16 or 17 years of age when he or she committed the offense; or

(ii) 20th birthday if the child was 18 years of age when he or she committed the offense.

(B) ~~In no case shall~~ Except for custody of individuals 18 years of age or older that may be ordered by the court under the authority of chapter 52 of this title, custody of a child or youth 18 years of age or older shall not be retained by or transferred to the Commissioner for Children and Families.

(C) Jurisdiction over a child in need of care or supervision shall not be extended beyond the child's 18th birthday.

(D) Jurisdiction over a youthful offender shall not extend beyond the youth's 22nd birthday.

(d) The court may terminate its jurisdiction over a child prior to the child's 18th birthday by order of the court. If the child is not subject to another juvenile proceeding, jurisdiction shall terminate automatically in the following circumstances:

(1) upon the discharge of a child from juvenile or youthful offender probation, ~~providing~~ provided the child is not in the legal custody of the Commissioner;

(2) upon an order of the court transferring legal custody to a parent, guardian, or custodian without conditions or protective supervision;

(3) upon the adoption of a child following a termination of parental rights proceeding.

Sec. 3. 33 V.S.A. § 5103(c) is amended to read:

(c)(1) Except as otherwise provided by this title and by subdivision (2) of this subsection, jurisdiction over a child shall not be extended beyond the child's 18th birthday.

(2)(A) Jurisdiction over a child with a pending delinquency may be extended until six months beyond the child's:

(i) 19th birthday if the child was 16 or 17 years of age when he or she committed the offense; ~~or~~

(ii) 20th birthday if the child was 18 years of age when he or she committed the offense; or

(iii) 21st birthday if the child was 19 years of age when he or she committed the offense.

* * *

Sec. 4. 33 V.S.A. § 5102 is amended to read:

§ 5102. DEFINITIONS AND PROVISIONS OF GENERAL APPLICATION

As used in the juvenile judicial proceedings chapters:

* * *

(2) "Child" means any of the following:

(A) an individual who is under 18 years of age and is a child in need of care or supervision as defined in subdivision (3)(A), (B), or (D) of this section (abandoned, abused, without proper parental care, or truant);

(B)(i) an individual who is under 18 years of age, is a child in need of care or supervision as defined in subdivision (3)(C) of this section (beyond parental control), and was under 16 years of age at the time the petition was filed; or

(ii) an individual who is between 16 and 17.5 years of age, is a child in need of care or supervision as defined in subdivision (3)(C) of this section (beyond parental control), and who is at high risk of serious harm to himself or herself or others due to problems such as substance abuse, prostitution, or homelessness.

(C) An individual who has been alleged to have committed or has committed an act of delinquency after becoming 10 years of age and prior to becoming 22 years of age, unless otherwise provided in chapter 52 or 52A of this title; provided, however:

(i) that an individual who is alleged to have committed an act before attaining 10 years of age which would be murder as defined in 13 V.S.A. § 2301 if committed by an adult may be subject to delinquency proceedings; and

(ii) that an individual may be considered a child for the period of time the court retains jurisdiction under section 5104 of this title.

* * *

(16)(A) “~~Legal custody~~ Custody” means the legal status created by order of the court under the authority of the juvenile judicial proceedings chapters ~~which for children under 18 years of age that invests in a party to a juvenile proceeding or another person the following rights and responsibilities:~~

(i) the right to routine daily care and control of the child and to determine where and with whom the child shall live;

(ii) the authority to consent to major medical, psychiatric, and surgical treatment for a child;

(iii) the responsibility to protect and supervise a child and to provide the child with food, shelter, education, and ordinary medical care; and

(iv) the authority to make decisions ~~which that~~ that concern the child and are of substantial legal significance, including the authority to consent to civil marriage and enlistment in the U.S. Armed Forces, and the authority to represent the child in legal actions.

(B) If legal custody of a child under 18 years of age is transferred to a person other than a parent, the rights, duties, and responsibilities so transferred are subject to the residual parental rights of the parents.

(C) Custody for individuals who are 18 years of age or older means the status created by order of the court under the authority of chapter 52 of this title that invests in the Commissioner the authority to make decisions regarding placements.

* * *

Sec. 5. 33 V.S.A. § 5204a is amended to read:

§ 5204a. JURISDICTION OVER ADULT DEFENDANT FOR CRIME
COMMITTED WHEN DEFENDANT WAS UNDER ~~AGE~~ 18
YEARS OF AGE

(a) A proceeding may be commenced in the Family Division against a defendant who has attained 18 years of age if:

(1) the petition alleges that the defendant;

(A) before attaining 18 years of age, violated a crime listed in subsection 5204(a) of this title; ~~or~~

(B) after attaining 14 years of age but before attaining 18 years of age, committed an offense listed in 13 V.S.A. § 5301(7) but not listed in subsection 5204(a) of this title; or

(C) after attaining 17 years of age but before attaining 18 years of age, committed any offense not listed in 13 V.S.A. § 5301(7) or subsection 5204(a) of this title, as long as the petition is filed prior to the defendant's 19th birthday;

(2) a juvenile petition was never filed based upon the alleged conduct; and

(3) the statute of limitations has not tolled on the crime which the defendant is alleged to have committed.

(b)(1) The Family Division shall, except as provided in subdivision (2) of this subsection, transfer a petition filed pursuant to subdivision (a)(1)(A) of this section to the Criminal Division if the Family Division finds that:

(A) there is probable cause to believe that while the defendant was less than 18 years of age he or she committed an act listed in subsection 5204(a) of this title;

(B) there was good cause for not filing a delinquency petition in the Family Division when the defendant was less than 18 years of age;

(C) there has not been an unreasonable delay in filing the petition; and

(D) transfer would be in the interest of justice and public safety.

(2)(A) If a petition has been filed pursuant to subdivision (a)(1)(A) of this section, the Family Division may order that the defendant be treated as a youthful offender consistent with the applicable provisions of chapter 52A of this title if the defendant is under 23 years of age and the Family Division:

(i) makes the findings required by subdivisions (1)(A), (B), and (C) of this subsection;

(ii) finds that the youth is amenable to treatment or rehabilitation as a youthful offender; and

(iii) finds that there are sufficient services in the Family Division system and the Department for Children and Families or the Department of Corrections to meet the youth's treatment and rehabilitation needs.

(B) If the Family Division orders that the defendant be treated as a youthful offender, the court shall approve a disposition case plan and impose conditions of probation on the defendant.

(C) If the Family Division finds after hearing that the defendant has violated the terms of his or her probation, the Family Division may:

(i) maintain the defendant's status as a youthful offender, with modified conditions of probation if the court deems it appropriate; or

(ii) revoke the defendant's youthful offender status and transfer the petition to the Criminal Division pursuant to subdivision (1) of this subsection.

(3) The Family Division shall in all respects treat a petition filed pursuant to subdivision (a)(1)(B) of this section in the same manner as a petition filed pursuant to section 5201 of this title, except that the Family Division's jurisdiction shall end on or before the defendant's 22nd birthday, if the Family Division:

(A) finds that there is probable cause to believe that, after attaining 14 years of age but before attaining 18 years of age, the defendant committed an offense listed in 13 V.S.A. § 5301(7) but not listed in subsection 5204(a) of this title; and

(B) makes the findings required by subdivisions (b)(1)(B) and (C) of this section.

(4) In making the determination required by subdivision (1)(D) of this subsection, the court may consider, among other matters:

(A) the maturity of the defendant as determined by consideration of his or her age; home; environment; emotional, psychological, and physical maturity; and relationship with and adjustment to school and the community;

(B) the extent and nature of the defendant's prior criminal record and record of delinquency;

(C) the nature of past treatment efforts and the nature of the defendant's response to them;

(D) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(E) the nature of any personal injuries resulting from or intended to be caused by the alleged act;

(F) whether the protection of the community would be best served by transferring jurisdiction from the Family Division to the Criminal Division of the Superior Court.

(c) If the Family Division does not transfer a petition filed pursuant to subdivision (a)(1)(A) of this section to the Criminal Division or order that the defendant be treated as a youthful offender pursuant to subsection (b) of this section, the petition shall be dismissed.

(d)(1) The Family Division shall treat a petition filed pursuant to subdivision (a)(1)(C) of this section in all respects in the same manner as a petition filed pursuant to section 5201 of this title if the court:

(A) finds that there is probable cause to believe that, after attaining 17 years of age but before attaining 18 years of age, the defendant committed an offense not listed in 13 V.S.A. § 5301(7) or subsection 5204(a) of this title; and

(B) makes the findings required by subdivisions (b)(1)(B) and (C) of this section.

(2) The Family Division's jurisdiction over cases filed pursuant to subdivision (a)(1)(C) of this section shall end on or before the defendant's 20th birthday.

Sec. 6. 33 V.S.A. § 5206 is amended to read:

§ 5206. CITATION OF 16- ~~AND 17- YEAR-OLDS~~ TO 18-YEAR-OLDS

(a)(1) If a child was over 16 years of age and under ~~18~~ 19 years of age at the time the offense was alleged to have been committed and the offense is not specified in subsection (b) of this section, law enforcement shall cite the child to the Family Division of the Superior Court.

(2) If, after the child is cited to the Family Division, the State's Attorney chooses to file the charge in the Criminal Division of the Superior Court, the State's Attorney shall state in the information the reason why filing in the Criminal Division is in the interest of justice.

(b) Offenses for which a law enforcement officer is not required to cite a child to the Family Division of the Superior Court shall include:

(1) 23 V.S.A. §§ 674 (driving while license suspended or revoked); 1128 (accidents-duty to stop); and 1133 (eluding a police officer).

(2) Fish and wildlife offenses that are not minor violations as defined by 10 V.S.A. § 4572.

(3) ~~A listed crime as defined in 13 V.S.A. § 5301.~~

(4) An offense listed in subsection 5204(a) of this title.

Sec. 7. 33 V.S.A. § 5206 is amended to read:

§ 5206. CITATION OF ~~16- TO 18-YEAR-OLDS~~ 19-YEAR-OLDS

(a)(1) If a child was over 16 years of age and under ~~19~~ 20 years of age at the time the offense was alleged to have been committed and the offense is not specified in subsection (b) of this section, law enforcement shall cite the child to the Family Division of the Superior Court.

* * *

Sec. 8. 33 V.S.A. § 5280 is amended to read:

§ 5280. COMMENCEMENT OF YOUTHFUL OFFENDER
PROCEEDINGS IN THE FAMILY DIVISION

(a) A proceeding under this chapter shall be commenced by:

(1) the filing of a youthful offender petition by a State's Attorney; or

(2) transfer to the Family Court of a proceeding from the Criminal Division of the Superior Court as provided in section 5281 of this title.

(b) A State's Attorney may commence a proceeding in the Family Division of the Superior Court concerning a child who is alleged to have committed an offense after attaining 14 years of age but not 22 years of age that could otherwise be filed in the Criminal Division.

(c) If a State's Attorney files a petition under subdivision (a)(1) of this section, the case shall proceed as provided under subsection 5281(b) of this title.

(d) Within 15 days after the commencement of a youthful offender proceeding pursuant to subsection (a) of this section, the youth shall be offered a risk and needs screening, which shall be conducted by the Department or by a community provider that has contracted with the Department to provide risk and needs screenings. The risk and needs screening shall be completed prior to the youthful offender status hearing held pursuant to section 5283 of this title. Unless the court extends the period for the risk and needs screening for good cause shown, the Family Division shall reject the case for youthful offender treatment if the youth does not complete the risk and needs screening within 15 days of the offer for the risk and needs screening.

(1) The Department or the community provider shall report the risk level result of the screening, the number and source of the collateral contacts made, and the recommendation for charging or other alternatives to the State's Attorney.

(2) Information related to the present alleged offense directly or indirectly derived from the risk and needs screening or other conversation with the Department or community-based provider shall not be used against the youth in the youth's criminal or juvenile case for any purpose, including impeachment or cross-examination. However, the fact of participation in risk and needs screening may be used in subsequent proceedings.

(e) If ~~The State's Attorney shall refer directly to court diversion~~ a youth ~~alleged to have committed any offense other than those specified in subsection 5204(a) of this title who presents a low to moderate risk to reoffend based on the results of the risk and needs screening,~~ ~~the State's Attorney shall refer a youth directly to court diversion~~ unless the State's Attorney states on the record at the hearing held pursuant to section 5283 of this title why a referral would not serve the ends of justice. If the court diversion program does not accept the case or if the youth fails to complete the program in a manner deemed satisfactory and timely by the provider, the youth's case shall return to the State's Attorney for charging consideration.

Sec. 9. 33 V.S.A. § 5287 is amended to read:

§ 5287. TERMINATION OR CONTINUANCE OF PROBATION

(a) A motion or stipulation may be filed at any time in the Family Division requesting that the court terminate the youth's status as a youthful offender and discharge him or her from probation. The motion may be filed by the State's Attorney, the youth, the Department, or the court on its own motion. ~~The court shall set the motion for hearing and provide notice and an opportunity to be heard at the hearing to the State's Attorney, the youth, the Department for Children and Families and the Department of Corrections.~~

(b) In determining whether a youth has successfully completed the terms of probation, the court shall consider:

- (1) the degree to which the youth fulfilled the terms of the case plan and the probation order;
- (2) the youth's performance during treatment;
- (3) reports of treatment personnel; and
- (4) any other relevant facts associated with the youth's behavior.

(c) If the court finds that the youth has successfully completed the terms of the probation order, it shall terminate youthful offender status, discharge the youth from probation, and file a written order dismissing the Family Division case. The Family Division shall provide notice of the dismissal to the Criminal Division, which shall dismiss the criminal case.

(d) Upon discharge and dismissal under subsection (c) of this section, all records relating to the case in the Criminal Division shall be expunged, and all records relating to the case in the Family Court shall be sealed pursuant to section 5119 of this title.

(e) If the court denies the motion to discharge the youth from probation, the court may extend or amend the probation order as it deems necessary.

(f) Upon the termination of the period of probation, the youth shall be discharged from probation.

Sec. 10. 33 V.S.A. subchapter 6 is amended to read:

Subchapter 6. Placement of ~~Minors~~ in Secure Facilities

§ 5291. DETENTION OR TREATMENT OF ~~MINORS~~ INDIVIDUALS CHARGED AS DELINQUENTS IN SECURE FACILITIES FOR THE DETENTION OR TREATMENT OF DELINQUENT CHILDREN

(a) Prior to disposition, the court shall have the sole authority to place a child who is in the custody of the Department in a secure facility used for the detention or treatment of delinquent children until the Commissioner determines that a suitable placement is available for the child. The court shall not order placement in a secure facility without a recommendation from the Department that placement in a secure facility is necessary. The court order shall include a finding that no other suitable placement is available and the child presents a risk of injury to himself or herself, to others, or to property.

* * *

Sec. 11. 28 V.S.A. § 1101 is amended to read:

§ 1101. POWERS AND RESPONSIBILITIES OF THE COMMISSIONER REGARDING JUVENILE SERVICES

The Commissioner is charged with the following powers and responsibilities regarding the administration of juvenile services:

(1) to provide appropriate, ~~separate~~ facilities for the custody and treatment of offenders under 25 years of age committed to his or her custody in accordance with the laws of the State;

* * *

Sec. 12. REDUCTION IN FORCE OF WOODSIDE JUVENILE REHABILITATION CENTER EMPLOYEES

On or before the date of passage of this act, the State of Vermont and the collective bargaining representative of the employees employed at the

Woodside Juvenile Rehabilitation Center facility shall engage in bargaining regarding whether and how to modify any terms of the applicable collective bargaining agreement in relation to permanent status classified employees who are subject to a reduction in force from their positions at the Woodside Juvenile Rehabilitation Center facility.

Sec. 13. POPULATION FUNDING COMMITMENT; AGENCY OF HUMAN SERVICES; WOODSIDE JUVENILE REHABILITATION CENTER; PLAN FOR JUSTICE-INVOLVED YOUTHS

(a) The Fiscal Year 2021 budget as proposed by the Administration:

(1) anticipates closure of the secure Woodside Juvenile Rehabilitation Center facility that provides short and long-term placements and treatment services for justice-involved youths and youths in the custody of the Department for Children and Families; and

(2) allocates in FY21 a total of \$2,500,000.00 in General Funds and any Federal Medicaid matching funds to serve this population in alternative placements approved by the Department for Children and Families.

(b) It is the intent of the General Assembly that the Woodside Juvenile Rehabilitation Center facility remain open until its closure is authorized by the appropriate committees of the General Assembly as provided in this subsection. Upon completion of its plan as provided in subsection (c) of this section, the Agency shall report to the appropriate committees as follows:

(1) prior to the adjournment of the 2020 legislative session, the Agency shall report to the Senate Committee on Judiciary and the House Committee on Human Services; or

(2) after the adjournment of the 2020 legislative session, the Agency shall report to the Joint Fiscal Committee and the Joint Legislative Justice Oversight Committee.

(c) The appropriate committees as set forth in subsection (b) of this section shall authorize the closure of the facility upon approving the Agency's plan to:

(1) adequately fund alternative programs and placements for youths served by Woodside, including those programs and placements that currently accept justice-involved youths who present a risk of injury to themselves, to others, or to property; and

(2) provide placements for all youths under 18 years of age who are in the custody of the Department of Corrections, and who have historically been placed at Woodside Juvenile Rehabilitation Center instead of a Department of Corrections facility pursuant to the memorandum of understanding between

the two departments.

Sec. 14. AGENCY OF HUMAN SERVICES; PLAN FOR YOUTHS WITH MENTAL HEALTH DISORDERS

(a) During the 2020 legislative interim, the Agency of Human Services shall develop a plan to provide comprehensive mental health treatment services to youths, including justice-involved youths, with severe mental health disorders.

(b) On or before January 15, 2021, the Agency shall report to the House and Senate Committees on Judiciary, the House Committee on Corrections and Institutions, the Senate Institutions Committee, the House Human Services Committee, and the Senate Committee on Health and Welfare on its plans pursuant to this subsection and recommendations for repurposing of the Woodside facility.

Sec. 15. APPROPRIATION

In FY21, the amount of \$2,500,000.00, as reflected in the Governor's proposed FY2021 budget, is appropriated from the General Fund to the Agency of Human Services to fund short and long-term residential placements and treatment services for justice-involved youth and youth in the custody of the Department for Children and Families.

Sec. 16. EFFECTIVE DATES

(a) Secs. 3 (33 V.S.A. § 510(c)) and 7 (33 V.S.A. § 5206) shall take effect on July 1, 2022.

(b) This section and Sec. 15 (appropriation) shall take effect on passage.

(c) The rest of this act shall take effect on July 1, 2020.

And that when so amended the bill ought to pass.

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported that they have considered the same and recommend that the bill be amended as recommended by the Committee on Judiciary with the following amendments thereto:

First: By striking out Sec. 15, appropriation, in its entirety and inserting in lieu thereof the following:

Sec. 15. FUNDING INTENT

(a) It is the intent of the General Assembly to appropriate funds in FY21 to the Agency of Human Services in the amount necessary to fund short- and long-term residential placements and treatment services for justice-involved youth and youth in the custody of the Department for Children and Families.

(b) Due to the impact of the COVID-19 pandemic, the General Assembly anticipates that the FY21 budget will be developed in an initial transition phase, followed by a full budget development in a special session. To assist the General Assembly in appropriating the proper funding for short- and long-term residential placements and treatment services pursuant to subsection (a) of this section, on or before August 15, 2020, the Secretary of Administration or designee shall provide to the House and Senate Committees on Appropriations, the House and Senate Committees on Judiciary, the House Committee on Human Services, and the Senate Committee on Health and Welfare:

(1) the status of operations of the Woodside Juvenile Rehabilitation Center facility in FY21, including the projected date for cessation of operations at the facility and the cost and funding sources identified for operation of the facility for any period of time during FY21;

(2) the projected costs and funding sources to provide short- and long-term residential placements and treatment services for justice-involved youth and youth in the custody of the Department for Children and Families for any period of time in FY21 subsequent to the cessation of operations at Woodside; and

(3) the projected annualized cost of providing such placements and treatment services and the proposed funding sources.

Second: In Sec. 16, effective dates, subsection (b), by striking out the word “appropriation” and inserting in lieu thereof the words funding intent

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment of the Committee on Judiciary was amended as recommended by the Committee on Appropriations.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Judiciary, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Bill Amended; Third Reading Ordered

S. 294.

Senator Sears, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to expanding access to expungement and sealing of criminal history records.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 5301 is amended to read:

§ 5301. DEFINITIONS

As used in this chapter:

* * *

(7) "Listed crime" means any of the following offenses:

- (A) stalking as defined in section 1062 of this title;
- (B) aggravated stalking as defined in subdivision 1063(a)(3) or (4)(b) of this title;
- (C) domestic assault as defined in section 1042 of this title;
- (D) first degree aggravated domestic assault as defined in section 1043 of this title;
- (E) second degree aggravated domestic assault as defined in section 1044 of this title;
- (F) sexual assault as defined in section 3252 of this title or its predecessor as it was defined in section 3201 or 3202 of this title;
- (G) aggravated sexual assault as defined in section 3253 of this title;
- (H) lewd or lascivious conduct as defined in section 2601 of this title;
- (I) lewd or lascivious conduct with a child as defined in section 2602 of this title;
- (J) murder as defined in section 2301 of this title;
- (K) aggravated murder as defined in section 2311 of this title;
- (L) manslaughter as defined in section 2304 of this title;
- (M) aggravated assault as defined in section 1024 of this title;
- (N) assault and robbery with a dangerous weapon as defined in subsection 608(b) of this title;
- (O) arson causing death as defined in section 501 of this title;
- (P) assault and robbery causing bodily injury as defined in subsection 608(c) of this title;
- (Q) maiming as defined in section 2701 of this title;

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

(S) unlawful restraint in the second degree as defined in section 2406 of this title;

(T) unlawful restraint in the first degree as defined in section 2407 of this title;

(U) recklessly endangering another person as defined in section 1025 of this title;

(V) violation of abuse prevention order as defined in section 1030 of this title, excluding violation of an abuse prevention order issued pursuant to 15 V.S.A. § 1104 (emergency relief) or 33 V.S.A. § 6936 (emergency relief);

(W) operating vehicle under the influence of alcohol or other substance with either death or serious bodily injury resulting as defined in 23 V.S.A. § 1210(f) and (g);

(X) ~~careless or negligent~~ or grossly negligent operation resulting in serious bodily injury or death as defined in 23 V.S.A. § 1091(b);

(Y) leaving the scene of an accident with serious bodily injury or death as defined in 23 V.S.A. § 1128(b) or (c);

(Z) burglary into an occupied dwelling as defined in subsection 1201(c) of this title;

(AA) the attempt to commit any of the offenses listed in this section;

(BB) abuse (section 1376 of this title), abuse by restraint (section 1377 of this title), neglect (section 1378 of this title), sexual abuse (section 1379 of this title), financial exploitation (section 1380 of this title), and exploitation of services (section 1381 of this title);

(CC) aggravated sexual assault of a child in violation of section 3253a of this title;

(DD) human trafficking in violation of section 2652 of this title; and

(EE) aggravated human trafficking in violation of section 2653 of this title.

Sec. 2. 13 V.S.A. § 7601 is amended to read:

§ 7601. DEFINITIONS

As used in this chapter:

(1) “Court” means the Criminal Division of the Superior Court.

(2) “Criminal history record” means all information documenting an individual’s contact with the criminal justice system, including data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

(3) “Predicate offense” means a criminal offense that can be used to enhance a sentence levied for a later conviction, and includes operating a vehicle under the influence of alcohol or other substance in violation of 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and stalking in violation of section 1062 of this title. “Predicate offense” shall not include misdemeanor possession of marijuana, a disorderly conduct offense under section 1026 of this title, or possession of a controlled substance in violation of 18 V.S.A. § 4230(a), 4231(a), 4232(a), 4233(a), 4234(a), 4234a(a), 4234b(a), 4235(b), or 4235a(a).

(4) “Qualifying crime” means: any criminal offense that is not an offense listed in subdivision 5301(7) of this title or a violation of 18 V.S.A. § 4231(c), 4233(c), 4233a(b), 4234a(c), or 4230(c), or any offense for which a person has been granted an unconditional pardon from the Governor.

~~(A) a misdemeanor offense that is not:~~

~~(i) a listed crime as defined in subdivision 5301(7) of this title;~~

~~(ii) an offense involving sexual exploitation of children in violation of chapter 64 of this title;~~

~~(iii) an offense involving violation of a protection order in violation of section 1030 of this title;~~

~~(iv) prostitution as defined in section 2632 of this title, or prohibited conduct under section 2601a of this title; or~~

~~(v) a predicate offense;~~

~~(B) a violation of subsection 3701(a) of this title related to criminal mischief;~~

~~(C) a violation of section 2501 of this title related to grand larceny;~~

~~(D) a violation of section 1201 of this title related to burglary, excluding any burglary into an occupied dwelling, as defined in subdivision 1201(b)(2) of this title;~~

~~(E) a violation of 18 V.S.A. § 4223 related to fraud or deceit;~~

~~(F) a violation of section 1802 of this title related to uttering a forged or counterfeited instrument;~~

~~(G) a violation of 18 V.S.A. § 4230(a) related to possession of marijuana;~~

~~(H) a violation of 18 V.S.A. § 4231(a) related to possession of cocaine;~~

~~(I) a violation of 18 V.S.A. § 4232(a) related to possession of LSD;~~

~~(J) a violation of 18 V.S.A. § 4233(a) related to possession of heroin;~~

~~(K) a violation of 18 V.S.A. § 4234(a) related to possession of depressant, stimulant, and narcotic drugs;~~

~~(L) a violation of 18 V.S.A. § 4234a(a) related to possession of methamphetamine;~~

~~(M) a violation of 18 V.S.A. § 4234b(a) related to possession of ephedrine and pseudoephedrine;~~

~~(N) a violation of 18 V.S.A. § 4235(b) related to possession of hallucinogenic drugs;~~

~~(O) a violation of 18 V.S.A. § 4235a(a) related to possession of ecstasy; or~~

~~(P) any offense for which a person has been granted an unconditional pardon from the Governor.~~

(5) "Qualifying felony property offense" means a felony level violation of 9 V.S.A. § 4043 related to fraudulent use, 13 V.S.A. § 1801 related to forgery and counterfeiting, 13 V.S.A. § 1802 related to uttering forged or counterfeited instrument, 13 V.S.A. § 1804 related to counterfeiting paper money, 13 V.S.A. § 1816 related to possession or use of credit card skimming devices, 13 V.S.A. § 2001 related to false personation, 13 V.S.A. § 2002 related to false pretenses or tokens, 13 V.S.A. § 2029 related to home improvement fraud, 13 V.S.A. § 2030 related to identity theft, 13 V.S.A. § 2501 related to grand larceny, 13 V.S.A. § 2502 related to petit larceny, 13 V.S.A. § 2503 related to larceny from the person, 13 V.S.A. § 2531 related to embezzlement, 13 V.S.A. § 2532 related to officers or servants of incorporated bank, 13 V.S.A. § 2533 related to receiver or trustee, 13 V.S.A. § 2537 related to holding property in official capacity or belonging to the State or a municipality, 13 V.S.A. § 2561 related to receiving stolen property, 13 V.S.A. § 2575a related to organized retail theft, 13 V.S.A. § 2577 related to retail theft, 13 V.S.A. § 2582 related to theft of services, 13 V.S.A. § 2591 related to theft of rented property, 13 V.S.A. § 2592 related to failure to return a rented or leased motor vehicle, 13 V.S.A. § 3016 related to false claims, 13 V.S.A. § 3701 related to unlawful mischief, 13 V.S.A. § 3705 related to unlawful trespass, 13 V.S.A. § 3733 related to mills, dams or bridges,

13 V.S.A. § 3761 related to unauthorized removal of human remains, 13 V.S.A. § 3767 related to grave markers and ornaments, 13 V.S.A. § 4103 related to access to computer for fraudulent purposes, 13 V.S.A. § 4104 related to alteration, damage, or interference, or 13 V.S.A. § 4105 related to theft or destruction.

(6) “Subsequent offense” means a crime committed by the person who is the subject of a petition to expunge or seal a criminal history record that arose out of a new incident or occurrence after the person was convicted of the crime to be expunged or sealed.

Sec. 3. 13 V.S.A. § 7602 is amended to read:

§ 7602. EXPUNGEMENT AND SEALING OF RECORD,
POSTCONVICTION; PROCEDURE

(a)(1) A person may file a petition with the court requesting expungement or sealing of the criminal history record related to the conviction if:

(A) the person was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence;

(B) the person was convicted of an offense for which the underlying conduct is no longer prohibited by law or designated as a criminal offense;

(C) pursuant to the conditions set forth in subsection (g) of this section, the person was convicted of a violation of 23 V.S.A. § 1201(a) related to operating under the influence of alcohol or other substance, excluding a violation of that section resulting in serious bodily injury or death to any person other than the operator, or related to operating a school bus with a blood alcohol concentration of 0.02 or more or operating a commercial vehicle with a blood alcohol concentration of 0.04 or more; or

(D) pursuant to the conditions set forth in subsection (h) of this section, the person was convicted under 1201(c)(3)(A) of a violation of subdivision 1201(a) of this title related to burglary when the person was 25 years of age or younger, and the person did not carry a dangerous or deadly weapon during commission of the offense.

(2) The State’s Attorney or Attorney General shall be the respondent in the matter.

(3) The court shall grant the petition without hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the court, and the court shall issue the petitioner an order of expungement and provide notice of the order in accordance with this section.

(4) This section shall not apply to an individual licensed as a commercial driver pursuant to 23 V.S.A. chapter 39 seeking to seal or expunge a record of a conviction for a felony offense committed in a motor vehicle as defined in 23 V.S.A. § 4.

(b) Qualifying nonpredicate misdemeanors and possession of a controlled substance offenses. For petitions filed to expunge or seal a criminal history record of a nonpredicate misdemeanor offense or a violation of 18 V.S.A. § 4230(a), 4231(a), 4232(a), 4233(a), 4234(a), 4234a(a), 4234b(a), 4235(b), or 4235a(a):

(1) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if the following conditions are met:

(A) At least five years have elapsed since:

(i) ~~the date on which the person successfully completed the terms and conditions of the sentence for the conviction satisfied the judgement, or if the person has successfully completed the terms and conditions of an indeterminate term of probation that commenced at least five years previously;~~
or

(ii) if the person committed a subsequent offense, the date on which the person satisfied the judgment for the subsequent offense, whichever is later.

(B) ~~The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted for the qualifying crime.~~ [Repealed.]

(C) Any restitution ordered by the court has been paid in full.

(D) The court finds that expungement of the criminal history record serves the interests of justice.

(2) The court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if the conditions of subdivisions (1)(A), ~~(B)~~, and (C) of this subsection are met and the court finds that:

(A) sealing the criminal history record better serves the interests of justice than expungement; and

(B) the person committed the qualifying crime after reaching 19 years of age.

(3) If the respondent stipulates to a petition filed prior to, on, or after the date the offense is eligible for expungement or sealing as set forth in this subsection, the court may grant the petition without a hearing.

(c) Qualifying predicate misdemeanors. For petitions filed to expunge or seal a criminal history record of a qualifying predicate misdemeanor offense:

(1) The court shall grant the petition and order that the criminal history record be ~~expunged~~ sealed pursuant to section ~~7606~~ 7607 of this title if the following conditions are met:

(A) At least ~~10~~ five years have elapsed since:

(i) the date on which the person successfully completed the terms and conditions of the sentence for the conviction satisfied the judgement; or

(ii) if the person committed a subsequent offense, the date on which the person satisfied the judgement for the subsequent offense, whichever is later.

~~(B) The person has not been convicted of a felony arising out of a new incident or occurrence in the last seven years. [Repealed.]~~

~~(C) The person has not been convicted of a misdemeanor during the past five years. [Repealed.]~~

(D) Any restitution ordered by the court for any crime of which the person has been convicted has been paid in full.

(E) After considering the particular nature of any subsequent offense, the court finds that expungement of the criminal history record for the qualifying crime serves the interests of justice.

~~(2) The court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if the conditions of subdivisions (1)(A), (B), (C), and (D) of this subsection are met and the court finds that:~~

~~(A) sealing the criminal history record better serves the interests of justice than expungement; and~~

~~(B) the person committed the qualifying crime after reaching 19 years of age. A criminal history record sealed pursuant to this subsection (c) shall be eligible for expungement pursuant to section 7606 of this title five years after the date on which sealing order is issued if the person does not commit any criminal offense subsequent to the sealed.~~

(3) If the respondent stipulates to a petition filed prior to, on, or after the date the offense is eligible for expungement or sealing as set forth in this subsection, the court may grant the petition without a hearing.

* * *

(g) For petitions filed pursuant to subdivision (a)(1)(C) of this section, only petitions to seal may be considered or granted by the court. This subsection shall not apply to an individual licensed as a commercial driver pursuant to 23 V.S.A. chapter 39. Unless the court finds that sealing would not be in the interests of justice, the court shall grant the petition and order that the criminal history record be sealed in accordance with section 7607 of this title if the following conditions are met:

(1) ~~At least 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence satisfied the judgment for the conviction, or if the person has successfully completed the terms and conditions of an indeterminate term of probation that commenced at least 10 years previously.~~

(2) At the time of the filing of the petition:

(A) the person has only one conviction of a violation of 23 V.S.A. § 1201, which shall be construed in accordance with 23 V.S.A. § 1211; and

(B) ~~the person has not been convicted of a crime arising out of a new incident or occurrence subsequent offense~~ since the person was convicted of a violation of 23 V.S.A. § 1201(a).

(3) Any restitution ordered by the court has been paid in full.

(4) The court finds that sealing of the criminal history record serves the interests of justice.

(h) For petitions filed pursuant to subdivision (a)(1)(D) of this section, unless the court finds that expungement or sealing would not be in the interests of justice, the court shall grant the petition and order that the criminal history record be expunged or sealed in accordance with section 7606 or 7607 of this title if the following conditions are met:

(1) ~~At least 15 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence satisfied the judgment for the conviction, or the person has successfully completed the terms and conditions of an indeterminate term of probation that commenced at least 15 years previously.~~

(2) ~~The person has not been convicted of a crime arising out of a new incident or occurrence~~ subsequent offense since the person was convicted of a violation of subdivision 1201(c)(3)(A) of this title.

(3) Any restitution ordered by the court has been paid in full.

(4) The court finds that expungement or sealing of the criminal history record serves the interests of justice.

(i) Qualifying felony property offenses and selling, dispensing, or transporting regulated substances offenses. For petitions filed to expunge or seal a criminal history record of a qualifying felony property offense or a violation of 18 V.S.A. § 4230(b), 4231(b), 4232(b), 4233(b), 4234(b), 4234a(b), 4234b(b), 4235(c), or 4235a(b):

(1) The court shall grant the petition and order that the criminal history record be sealed pursuant to section 7607 of this title if the following conditions are met:

(A) At least eight years have elapsed since:

(i) the date on which the person satisfied the judgment for the conviction; or

(ii) if the person committed a subsequent offense, the date on which the person satisfied the judgment for the subsequent offense, whichever is later.

(B) Any restitution ordered by the court for any crime of which the person has been convicted has been paid in full.

(C) After considering the particular nature of any subsequent offense, the court finds that expungement of the criminal history record for the qualifying crime serves the interests of justice.

(2) A criminal history record sealed pursuant to this subsection (i) shall be eligible for expungement pursuant to section 7606 of this title eight years after the date on which sealing order is issued if the person does not commit any criminal offense subsequent to the sealed offense.

(3) If the respondent stipulates to a petition filed prior to, on, or after the date the offense is eligible for sealing as provided in this subsection, the court may grant the petition to seal without a hearing.

(j) Qualifying felonies. For petitions filed to expunge or seal a criminal history record of any other qualifying felony offense not specified in subsection (f), (h), or (i) of this section:

(1) The court shall grant the petition and order that the criminal history record be sealed pursuant to section 7607 of this title if the following conditions are met:

(A) At least 10 years have elapsed since the date on which the person satisfied the judgment for the conviction or, if the person committed a subsequent offense, 10 years from the date on which the person satisfied the judgment for the subsequent offense, whichever is later.

(B) Any restitution ordered by the court for any crime of which the person has been convicted has been paid in full.

(2) A criminal history record sealed pursuant to this subsection (j) shall not be eligible for expungement pursuant to section 7606 of this title unless the respondent stipulates to the expungement.

(3) If the respondent stipulates to a petition to seal filed prior to, on, or after the date the offense is eligible for sealing as provided in this subsection, the court may grant the petition to seal without a hearing.

Sec. 4. 33 V.S.A. § 5119 is amended to read:

§ 5119. SEALING OF RECORDS

* * *

(g) On application of a person who has pleaded guilty to or has been convicted of the commission of a crime under the laws of this State which the person committed prior to attaining the age of ~~24~~ 25, or on the motion of the court having jurisdiction over such a person, after notice to all parties of record and hearing, the court shall order the sealing of all files and records related to the proceeding if it finds:

(1) two years have elapsed since the final discharge of the person;

(2) the person has not been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent for such an offense ~~after the initial conviction~~ for 10 years prior to the application or motion, and no new proceeding is pending seeking such conviction or adjudication; and

(3) the person's rehabilitation has been attained to the satisfaction of the court.

* * *

Sec. 5. 23 V.S.A. § 2303 is added to read:

§ 2303. EXPUNGEMENT OF VIOLATION RECORDS

(a) Automatic expungement. The Judicial Bureau shall automatically enter an expungement order for convictions or adjudications of the following violations on the two-year anniversary of the satisfaction of the judgment:

- (1) section 301 of this title (operating an unregistered vehicle);
- (2) subsection 307(a) of this title (failing to possess registration);
- (3) section 611 of this title (failing to possess license);
- (4) subsection 676(a) of this title (operating after suspension);
- (5) section 601 of this title (operating without a license);
- (6) section 800 of this title (operating without insurance); and
- (7) subsection 1222(c) of this title (operating an uninspected vehicle).

(b) Effect of expungement.

(1) Upon entry of an expungement order, the order shall be legally effective immediately and the individual whose record is expunged shall be treated in all respects as if he or she had never been convicted or adjudicated of the violation. This includes the expungement of any points accumulated pursuant to chapter 25 of this title.

(2) The Judicial Bureau shall report the expungement to the Department of Motor Vehicles within 14 days.

(3) The Judicial Bureau shall keep a special index of cases that have been expunged together with the expungement order. The index shall list only the name of the individual convicted or adjudicated of the violation, his or her date of birth, the docket number, and the violation that was the subject of the expungement. All other court documents and records that are subject to an expungement order, whether held by the Judicial Bureau or the Department of Motor Vehicles, shall be destroyed.

(4) Upon receiving an inquiry from any person regarding an expunged record, the Judicial Bureau and Department of Motor Vehicles shall respond that "NO RECORD EXISTS."

(c) Policies for implementation. The Court Administrator shall establish policies for implementing this section.

Sec. 6. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

(a) Possession and cultivation.

~~(1)(A)~~ No person shall knowingly and unlawfully possess more than one ounce of marijuana or more than five grams of hashish or cultivate more than two mature marijuana plants or four immature marijuana plants. A person who violates this subdivision shall be assessed a civil penalty as follows:

(A) not more than \$100.00 for a first offense;

(B) not more than \$200.00 for a second offense; and

(C) not more than \$500.00 for a third or subsequent offense.

(2)(A) No person shall knowingly and unlawfully possess more than two ounces of marijuana or more than ten grams of hashish or more than four mature marijuana plants or eight immature marijuana plants. For a first offense under this subdivision ~~(A)(2)~~, a person shall be provided the opportunity to participate in the Court Diversion Program unless the prosecutor states on the record why a referral to the Court Diversion Program would not serve the ends of justice. A person convicted of a first offense under this subdivision shall be imprisoned not more than six months or fined not more than \$500.00, or both.

(B) A person convicted of a second or subsequent offense of knowingly and unlawfully possessing more than ~~one ounce of marijuana or more than five grams of hashish or cultivating more than two mature marijuana plants or four immature marijuana plants~~ two ounces of marijuana or more than ten grams of hashish or more than four mature marijuana plants or eight immature marijuana plants shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

(C) Upon an adjudication of guilt for a first or second offense under this subdivision, the court may defer sentencing as provided in 13 V.S.A. § 7041, except that the court may in its discretion defer sentence without the filing of a presentence investigation report and except that sentence may be imposed at any time within two years from and after the date of entry of deferment. The court may, prior to sentencing, order that the defendant submit to a drug assessment screening, which may be considered at sentencing in the same manner as a presentence report.

(3) A person knowingly and unlawfully possessing ~~two~~ eight ounces of marijuana or ~~10 grams~~ 1.4 ounces of hashish or knowingly and unlawfully cultivating more than four mature marijuana plants or eight immature

marijuana plants shall be imprisoned not more than three years or fined not more than \$10,000.00, or both.

(4) A person knowingly and unlawfully possessing more than one pound of marijuana or more than 2.8 ounces of hashish or knowingly and unlawfully cultivating more than six mature marijuana plants or 12 immature marijuana plants shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(5) A person knowingly and unlawfully possessing more than 10 pounds of marijuana or more than one pound of hashish or knowingly and unlawfully cultivating more than 12 mature marijuana plants or 24 immature marijuana plants shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both.

(6) If a court fails to provide the defendant with notice of collateral consequences in accordance with 13 V.S.A. § 8005(b) and the defendant later at any time shows that the plea and conviction for a violation of this subsection may have or has had a negative consequence, the court, upon the defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea or admission and enter a plea of not guilty. Failure of the court to advise the defendant of a particular collateral consequence shall not support a motion to vacate.

(7) The amounts of marijuana in this subsection shall not include marijuana cultivated, harvested, and stored in accordance with section 4230e of this title.

* * *

Sec. 7. EXPUNGEMENT OF MARIJUANA CRIMINAL HISTORY RECORDS

(a) As used in this section:

(1) "Court" means the Criminal Division of the Superior Court.

(2) "Criminal history record" means all information documenting an individual's contact with the criminal justice system, including data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

(b) The court shall order the expungement of criminal history records of violations of 18 V.S.A. § 4230(a)(1) that occurred prior to July 1, 2020. The process for expunging these records shall be completed not later than July 1, 2021.

(c) Upon entry of an expungement order, the order shall be legally effective immediately and the person whose record is expunged shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. The court shall issue an order to expunge all records and files related to the arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation related to the sentence. The court shall issue the person a certificate stating that the offense for which the person was convicted has been decriminalized and therefore warrants issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence. The court shall provide notice of the expungement to the respondent, Vermont Crime Information Center (VCIC), the arresting agency, and any other entity that may have a record related to the order to expunge. The VCIC shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

(d) In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous criminal history record only with respect to arrests or convictions that have not been expunged.

(e) Nothing in this section shall affect any right of the person whose record has been expunged to rely on it as a bar to any subsequent proceedings for the same offense.

(f)(1) The court shall keep a special index of cases that have been expunged together with the expungement order and the certificate issued pursuant to this chapter. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the expungement.

(2) The special index and related documents specified in subdivision (1) of this subsection shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons.

(3) Inspection of the expungement order and the certificate may be permitted only upon petition by the person who is the subject of the case. The Administrative Judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.

(4) All other court documents in a case that are subject to an expungement order shall be destroyed.

(5) The court shall follow policies adopted pursuant to 13 V.S.A. § 7606 in implementing this section.

(g) Upon receiving an inquiry from any person regarding an expunged record, an entity shall respond that "NO RECORD EXISTS."

Sec. 8. VERMONT SENTENCING COMMISSION; EXPUNGEMENT OR SEALING OF LISTED CRIMES REPORT

During the 2020 legislative interim, the Vermont Sentencing Commission shall consider whether a comprehensive policy that provides an avenue for expungement or sealing of all offenses will serve the interests of justice. On or before October 15, 2020, the Commission shall report to the Joint Legislative Justice Oversight Committee regarding any policy recommendations regarding the expungement and sealing of criminal history records, including a recommendation for whether and how to provide an avenue to seal or expunge all offenses, including the crimes listed in 13 V.S.A. § 5301(7) and 18 V.S.A. chapter 84 drug trafficking offenses.

Sec. 9. APPROPRIATION

In FY21, \$1,075,000.00 is appropriated on a one-time basis from the General Fund, based on availability, to the judiciary to fund additional positions and other itemized costs to assist with compliance with the requirements of this act.

Sec. 10. EFFECTIVE DATES

(a) Sec. 7 (expungement of marijuana criminal history records) and this section shall take effect on passage.

(b) The rest of this act shall take effect on July 1, 2020.

And that when so amended the bill ought to pass.

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported that they have considered the same and recommend that the bill be amended as recommended by the Committee on Judiciary with the following amendment thereto:

By striking out Sec. 9, appropriation, in its entirety and by renumbering the remaining section to be numerically correct.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment of the Committee on Judiciary was amended as recommended by the Committee on Appropriations.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Judiciary, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Bill Amended; Bill Passed

S. 348.

Senate bill entitled:

An act relating to temporary elections procedures in the year 2020.

Was taken up.

Thereupon, pending third reading of the bill, Senator Benning moved to amend the bill as follows:

First: In Sec. 1 (amending 2020 Acts and Resolves No. 92, Sec. 3), by striking out the subsection (a) introductory paragraph and inserting in lieu thereof a new subsection (a) introductory paragraph to read:

(a) In the year 2020, the Secretary of State is authorized, ~~in consultation and agreement with the Governor,~~ to order or permit, as applicable, appropriate elections procedures for the purpose of protecting the health, safety, and welfare of voters, elections workers, and candidates in carrying out elections, including:

Second: In Sec. 1 (amending 2020 Acts and Resolves No. 92, Sec. 3), by adding a new subsection (c) to read as follows:

(c) If the Secretary of State orders or permits the mailing of 2020 General Election ballots to all registered voters pursuant to subsection (a) of this section, the Secretary shall:

(1) inform the Governor as soon as reasonably practicable following the Secretary's decision to do so; and

(2) require the return of those ballots to be in the manner prescribed by 17 V.S.A. § 2543 (return of ballots) as set forth in Sec. 1a of this act, the provisions of which shall apply to that return.

Third: By adding a new Sec. 1a to read as follows:

Sec. 1a. 17 V.S.A. § 2543 is amended to read:

§ 2543. RETURN OF BALLOTS

(a) After marking the ballots and signing the certificate on the envelope, the early or absentee voter to whom the same are addressed shall return the ballots to the clerk of the town in which he or she is a voter, in the manner prescribed, except that in the case of a voter to whom ballots are delivered by justices, the ballots shall be returned to the justices calling upon him or her, and they shall deliver them to the town clerk.

(b) Once an early voter absentee ballot has been returned to the clerk in the envelope with the signed certificate, it shall be stored in a secure place and shall not be returned to the voter for any reason.

(c) If a ballot includes more than one page, the early or absentee voter need only return the page upon which the voter has marked his or her vote.

(d)(1) All early voter absentee ballots returned as follows shall be counted:

(A) by any means, to the town clerk's office before the close of business on the day preceding the election;

(B) by mail, to the town clerk's office before the close of the polls on the day of the election; and

(C) by hand delivery to the presiding officer at the voter's polling place.

(2) An early voter absentee ballot returned in a manner other than those set forth in subdivision (1) of this subsection shall not be counted.

(3)(A) An early voter absentee ballot may be returned only by the voter; the justices of the peace who delivered the ballot, if applicable; or an authorized family member or caregiver acting in the voter's behalf.

(B)(i) Any person who returns an early voter absentee ballot knowing the person is without authorization from the voter shall be fined not more than \$100.00 per violation for the first three violations, not more than \$500.00 per violation for the fourth through ninth violations, and not more than \$1,000.00 per violation for the tenth and subsequent violations.

(ii) The Attorney General or a State's Attorney, whenever he or she has reason to believe any person to be or to have been in violation of this subdivision (3), shall conduct a civil investigation in accordance with the procedures set forth in section 2904 of this title.

(C) As used in this subdivision (3):

(i) "Family member" means a voter's spouse, child, sibling, parent, spouse's parent, grandparent, or spouse's grandparent.

(ii) "Caregiver" means an individual providing care, including medical care, custodial care, personal care, mental health services, rehabilitative services, or any other kind of care provided that is required because of the voter's age or disability.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Benning?, Senator Benning requested that the question be divided.

Thereupon, the *first* proposal of amendment was disagreed to on a roll call, Yeas 7, Nays 22.

Senator Balint having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Benning, Brock, Collamore, McNeil, Sears, Starr, Westman.

Those Senators who voted in the negative were: Ashe, Balint, Baruth, Bray, Champion, Clarkson, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Parent, Pearson, Perchlik, Pollina, Sirotkin, White.

The Senator absent and not voting was: Rodgers.

Thereupon, the *second* recommendation of amendment was agreed to on a roll call, Yeas 18, Nays 10.

Senator Collamore having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Benning, Brock, Champion, Collamore, Hardy, Hooker, Kitchel, Mazza, McCormack, McNeil, Nitka, Parent, Pearson, Perchlik, Sears, Sirotkin, Starr, Westman.

Those Senators who voted in the negative were: Balint, Baruth, Bray, Clarkson, Cummings, Ingram, Lyons, MacDonald, Pollina, White.

Those Senators absent and not voting were: Ashe, Rodgers.

Thereupon, the *third* recommendation of amendment was disagreed to on a roll call, Yeas 5, Nays 24.

Senator Benning having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Benning, Brock, Collamore, McNeil, Parent.

Those Senators who voted in the negative were: Ashe, Balint, Baruth, Bray, Champion, Clarkson, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Pearson, Perchlik, Pollina, Sears, Sirotkin, Starr, Westman, White.

The Senator absent and not voting was: Rodgers.

Thereupon, the bill was read the third time and passed.

Bill Passed in Concurrence with Proposal of Amendment**H. 438.**

House bill of the following title was read the third time and passed in concurrence with proposal of amendment:

An act relating to the Board of Medical Practice and the licensure of physicians and podiatrists.

Third Reading Ordered**S. 349.**

Senate committee bill entitled:

An act relating to emergency funding for local government.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Third Reading Ordered**H. 950.**

Senator Lyons, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to allowing remote witnesses for advance directives for a limited time.

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Rules Suspended; Bills Messaged

On motion of Senator Ashe, the rules were suspended, and the following bills were ordered messaged to the House forthwith:

S. 348, S. 438.

During announcements Senator Bray addressed the Chair and on motion of Senator Champion his remarks were entered into the Journal and are as follows:

“I rise on a point of personal privilege, June 3, 2020.

I rise today in our Senate Chamber, a beautiful sacred space for democracy, to bear witness.

Yesterday, I watched a carefully reported *New York Times* video, using multiple cameras, that showed the timeline and events around the death of an American at the hands of his government.

Over a period of 8 minutes and 43 seconds, a Minneapolis policeman literally crushed the life out of man in his custody.

It was sickening to watch. It was sickeningly brutal—not in some loud, noisy, and violent way, but in its quiet, steady, manner of treating a person as an object that could simply be murdered slowly and surely before a group of onlookers, on a public street, in broad daylight.

The government that exists to ensure our inalienable right to life, liberty, and happiness was instead operating at that moment in a manner that blasphemes our democratic ideals.

Mr. President, we here,—though more than a thousand miles from Minnesota—are part of that government—and we work in the People’s House on behalf of our neighbors and our communities.

There are fewer than two thousand senators in this country, and while we tend to be modest about our positions, we are in fact cloaked in great power and authority when we are sworn into office. In the days ahead, we must use that power and authority to further address issues of racism and justice in Vermont. It is proper and necessary that we do so.

But today, here, now, I rise to bear witness. To speak aloud in our place of work the name of GEORGE PERRY FLOYD, American, born 1973, Fayetteville, North Carolina.

I pray for the repose of his soul, for comfort for his family, and for a just and meaningful process of introspection, reconciliation, and genuine healing for our state and country through timely, tangible action.”

Adjournment

On motion of Senator Ashe, the Senate adjourned until one o’clock in the afternoon on Thursday, June 4, 2020.