S.105: An Act Relating to Miscellaneous Judiciary Procedures

House Judiciary Amendment Section by Section Summary

S. 105 makes a number of minor and technical miscellaneous changes related to the courts and the Judiciary.

Sections 1 and 2 contain minor adjustments to the court diversion statutes requested by the Attorney General's Office.

Section 1 makes the juvenile court diversion statute consistent with the juvenile proceedings statute, which already provides that there is a presumption that low to moderate risk juveniles are transferred to diversion, and that referrals to the diversion program can come from juvenile and youthful offender proceedings in the family court. This section simply repeats that same language in the juvenile court diversion statute. The House Judiciary Committee's amendment adds a requirement that the existing annual report include data on diversion rates in each county, and also adds language proposed by the Attorney General to make the expungement and sealing provisions of the juvenile diversion program identical to the adult diversion program's expungement provisions.

Section 2 makes the same change for adult court diversion that Section 1 made for juvenile diversion, making clear that referrals to the diversion program can come from juvenile and youthful offender proceedings in the family court. Section 2 also provides that, when conditions of release are imposed on a person in diversion, the case does not become confidential until the program is completed.

Section 3, which was added by the Judiciary Committee, was proposed by the Office of the Court Administrator and authorizes the Supreme Court to conduct performance evaluations of judges and magistrates, and to keep confidential any records related to the evaluations.

Sections 4 and 5 have been requested by the Supreme Court to accommodate its new electronic court filing system that is soon to be up and running. Some court documents need to be notarized before they are filed, which means that a notary public must be present to verify the document. Such a requirement would substantially limit the cost savings and efficiency benefits of an electronic filing system. So, Section 3 permits a registered electronic filer in the Judiciary's electronic document filing system to file a document that would otherwise need to be notarized so long as the document includes language stating that the filer

declares the contents to be true and accurate, subject to the penalty of perjury. If this language is included, the document does not have to be notarized.

In conjunction with this change, Section 5 amends the perjury statute (also known as "false swearing") to make it consistent with the new electronic filing process in Section 3 by providing the same criminal penalty for making a false statement under the penalties of perjury as there already is for making a false sworn statement.

Section 6 repeals Vermont's violent career criminals statute and leaves in place the habitual criminals statute. This change removes confusion by ensuring that there is a single statute governing habitual criminals, and prosecutors testified that the repealed statute is never used anyway.

Section 7 removes an outdated statutory reference to the State Forest Service, which no longer exists.

Section 8 corrects a grammatical error by inserting missing language to make a complete sentence.

Section 9 removes a cross reference that had referred to 13 VSA section 3906, a statute that has been repealed.

Sections 10 and 11 addresses a request made by the Department of Corrections regarding persons on furlough. Under current law, furloughees are often charged with felony escape when they simply fail to return or otherwise make unauthorized departures from furlough. While such conduct is not permitted, it often does not rise to the level of felony escape, yet such charges are nevertheless brought and the offender is sentenced to a longer jail term. Section 10 makes clear that a furloughee will not be charge with a felony for failing to return from medical furlough, treatment furlough, reintegration furlough, community re-entry furlough, or home confinement furlough. Section 11 provides that these persons may still be returned to the correctional facility pursuant to a warrant issued by the Department, which can then impose its own administrative penalties for the person's conduct.

Section 12 repeals a statute concerning the Weeks School, which no longer exists.

Section 13 corrects an error in the perjury statute. Vermont criminal statutes always provide for a term of imprisonment or a fine, or both. The perjury statute

incorrectly provides for a term of imprisonment and a fine, so the language is fixed.

Section 14 updates an archaic term in the fraud statute. Instead of using the term "ward," the Vermont statutes now use the term "person under guardianship." When this change was made to the guardianship statutes, it was inadvertently omitted in the fraud statute, so Section 14 makes that change now.

Section 15 removes a reference to a District Judge, a position that no longer exists in the court system, where all trial court judges are now called Superior Judges.

Section 16 simply fixes an incorrect cross reference.

Section 17 concerns sex offender registry compliance checks, which the special investigative units of the State Police conduct to determine if offenders are living at their stated addresses and are otherwise in compliance with the registry. The Department of Public Safety is required to provide an annual report on these compliance checks, but they were unable to provide complete data because, while the Department knows about the checks it conducts, there is no way for the Department to know about the checks conducted by local law enforcement agencies. Section 16 closes this gap by requiring local law enforcement agencies that conduct sex offender registry compliance checks to report data on them to DPS, which can then incorporate the data into its report to the legislature.

Section 18 makes an adjustment to the deferred sentence statute recommended by the Vermont Sentencing Commission. Under current law, a deferred sentence may generally be imposed only if the prosecutor agrees. However, if a person is charged with a non-listed crime, the court can enter a deferred sentence without the consent of the prosecutor if the offender is less than 28 years old. Section 17 removes the age restriction, so that a court can impose a deferred sentence for a non-listed crime whether or not the prosecutor consents. For listed crimes, which are more serious, the consent of the prosecutor will still be required for a deferred sentence.

Section 19 clarifies that a person charged as a youthful offender may chooses to engage with a pretrial services coordinator just as any other criminal defendant can.

Section 20 corrects two grammatical errors.

Sec 21, which was added by the Committee at the request of the Court, provides that commitment proceedings for persons with intellectual disabilities take place in the Family Division rather than the Criminal Division, just as other commitment proceedings do.

Sec. 22, which was also added by the Committee at the request of the Court, clarifies that the 30-day period allowed for payment of Judicial Bureau penalties starts running upon the filing of the complaint and the entry of judgment.

Sec. 23, which was also added by the Committee at the request of the Department of State's Attorneys, closes a gap in juvenile law that occurs when a person commits a crime while under age 18 but is not charged until after turning 18. Under current law, the Criminal Division does not have jurisdiction over the person because the crime was committed when he or she was a minor, but the Family Division doesn't have jurisdiction either because the person is now an adult. So, Section 23 closes the gap by permitting the Family Division to retain jurisdiction over the person until he or she reaches age 22 if the offense was a listed crime.

Sec. 24, which creates the Task Force on Campus Sexual Harm, was added by the Committee and already passed the Senate in S.164. The Task Force is created to examine issues relating to responses to sexual harm, dating and intimate partner violence, and stalking, on campuses of postsecondary educational institutions in Vermont. The Task Force is composed of 19 members designed to represent a variety of perspectives on the campus sexual adjudication process and the consequences of sexual assault.

The specific duties of the Task Force include studying: (1) the pathways for survivors of sexual harm in postsecondary educational institutional settings to seek healing and justice; (2) issues with Vermont's campus adjudication processes, including the interface with law enforcement, improving survivor safety, and issues relating to transparency, safety, affordability, accountability of outcomes, and due process; (3) any State policy changes that should be made in response to Title IX changes at the federal level; and (4) how to enhance ties between postsecondary educational institutions and community organizations that focus on domestic and sexual violence. The Task Force's report is due on or before March 15, 2020, and $14,168.00 is appropriated from the General Fund to support it.

Sec. 25, which was also added by the Committee at the request of the Court, extends the sunset on judicial masters from 2020 to 2025. Judicial masters preside

over certain types of proceedings specified in statute, such as treatment court and case management proceedings.

Section 26 provides that the bill takes effect on passage.