

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 105
3 entitled “An act relating to miscellaneous judiciary procedures” respectfully
4 reports that it has considered the same and recommends that the House propose
5 to the Senate that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

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

8 § 163. JUVENILE COURT DIVERSION PROJECT

9 * * *

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

12 * * *

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

18 * * *

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

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

1 § 164. ADULT COURT DIVERSION PROGRAM

2 * * *

3 (d) The Office of the Attorney General shall develop program outcomes
4 following the designated State of Vermont performance accountability
5 framework and, in consultation with the Department of State's Attorneys and
6 Sheriffs, the Office of the Defender General, the Center for Crime Victim
7 Services, and the Judiciary, report annually on or before December 1 to the
8 General Assembly on services provided and outcome indicators. As a
9 component of the report required by this subsection, the Attorney General shall
10 include data on diversion program referrals in each county and possible causes
11 of any geographical disparities.

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

14 (1) The diversion program shall accept only persons against whom
15 charges have been filed and the court has found probable cause, but are not yet
16 adjudicated. The prosecuting attorney may refer a person to diversion either
17 before or after arraignment and shall notify in writing the diversion program
18 and the court of his or her intention to refer the person to diversion. The matter
19 shall become confidential when notice is provided to the court, except that for
20 persons who are subject to conditions of release imposed pursuant to 13 V.S.A.
21 § 7554 and who are referred to diversion pursuant to subdivision (b)(2) of this

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

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

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

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

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

19 * * *

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

1 Sec. 3. 4 V.S.A. § 21b is added to read:

2 § 27b. JUDICIAL PERFORMANCE EVALUATIONS

3 (a) The Judiciary may establish procedures to periodically seek information
4 on the performance of superior judges and magistrates, including the
5 solicitation by survey or otherwise of information about judicial performance
6 from members of the Vermont Bar, pro se litigants, others who attend court
7 proceedings, Judiciary employees, and members of the public. The
8 performance evaluation procedures established pursuant to this subsection
9 shall be subject to the confidentiality provisions of subsection (b) of this
10 section.

11 (b)(1) All documents developed and used in connection with the
12 performance evaluation procedures established pursuant to subsection (a) of
13 this section, including survey questions and responses, written reviews,
14 comments or suggestions developed to support performance improvement of a
15 superior judge or magistrate under any judicial mentoring program, peer

1 review program, voluntary request for observation or evaluation, or other
2 support program, shall be:

3 (A) intended and used solely for the purposes of judicial education
4 and judicial self-improvement;

5 (B) confidential and not subject to disclosure under the Public
6 Records Act; and

7 (C) disclosed only to the Supreme Court, the Chief Superior Judge,
8 judiciary employees designated by the Judiciary to assist the Chief Superior
9 Judge in the conduct and management of the surveys, the respective judge or
10 magistrate, and judicial officers and judiciary employees designated by the
11 Judiciary to assist in the development and delivery of any performance
12 improvement program for the respective judge or magistrate.

13 (2) The Judicial Retention Committee shall not seek access to the survey
14 responses described in subdivision (1) of this section, and shall not consider
15 any survey responses or information about the survey responses that the
16 Committee or its members may receive. A judge or magistrate whose
17 performance is evaluated pursuant to this section shall not disclose the survey
18 responses to the Judicial Retention Committee.

19 (3) Any agency or party engaged to assist the Judiciary in evaluating
20 judicial performance pursuant to this section, including the Vermont Bar

1 Association, shall be subject to the confidentiality requirements of this
2 subsection.

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

4 § 27b. ELECTRONICALLY FILED VERIFIED DOCUMENTS

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

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

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

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

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

18 § 2904. FALSE SWEARING; FALSE DECLARATION

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

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

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

7 ~~§ 11a. VIOLENT CAREER CRIMINALS~~

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

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

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

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

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

- 1 ~~(2) assault and robbery with a dangerous weapon as defined in~~
- 2 ~~subsection 608(b) of this title;~~
- 3 ~~(3) assault and robbery causing bodily injury as defined in subsection~~
- 4 ~~608(e) of this title;~~
- 5 ~~(4) aggravated assault as defined in section 1024 of this title;~~
- 6 ~~(5) murder as defined in section 2301 of this title;~~
- 7 ~~(6) manslaughter as defined in section 2304 of this title;~~
- 8 ~~(7) kidnapping as defined in section 2405 of this title or its predecessor~~
- 9 ~~as it was defined in section 2401 of this title;~~
- 10 ~~(8) maiming as defined in section 2701 of this title;~~
- 11 ~~(9) sexual assault as defined in subdivision 3252(a)(1) or (2) of this title~~
- 12 ~~or its predecessor as it was defined in section 3201 of this title;~~
- 13 ~~(10) aggravated sexual assault as defined in section 3253 of this title;~~
- 14 ~~(11) first degree unlawful restraint as defined in section 2407 of this~~
- 15 ~~title;~~
- 16 ~~(12) first degree aggravated domestic assault as defined in section 1043~~
- 17 ~~of this title where the defendant causes serious bodily injury to another person;~~
- 18 ~~(13) lewd or lascivious conduct with a child as defined in section 2602~~
- 19 ~~of this title where the child is under the age of 13 years and the defendant is 18~~
- 20 ~~years of age or older.~~

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

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

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

9 § 362. EXPOSING POISON ON THE LAND

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

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

18 § 397. ADMINISTRATIVE PENALTY

19 In addition to the forfeiture of any award, premium, or trophy otherwise
20 due, and in addition to other penalties provided by law, a person violating this
21 chapter may be assessed an administrative penalty in an amount not to exceed

1 \$1,000.00 by the Secretary. The Secretary shall utilize the provisions of
2 6 V.S.A. §§ 16 and 17 for purposes of assessing the penalty.

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

4 § 508. SETTING FIRES

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

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

11 § 1501. ESCAPE AND ATTEMPTS TO ESCAPE

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

13 (1) escapes or attempts to escape from any correctional facility or a local
14 lockup shall be imprisoned for not more than 10 years or fined not more than
15 \$5,000.00, or both; or

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

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

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

4 (B) fail to return from furlough to the correctional facility at the
5 specified time, or visits other than the specified place, as required by the order
6 issued in accordance with ~~28 V.S.A. § 808, 808a, 808b, or 808c~~ 28 V.S.A.
7 § 808(a)(1)–(5);

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

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

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

17 (3) It shall not be a violation of subdivision **of** (1)(A), (1)(B), or (1)(C)
18 of this subsection (b) if the person is on furlough status pursuant to 28 V.S.A.
19 §§ 808(a)(6), 808(e), 808(f), 808a, 808b, or 808c.

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

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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

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

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

7 § 3403. MISPRISION OF TREASON

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

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

16 § 3485. PENALTY WHEN OFFENSE IS TREASON

17 A person who commits an offense punishable under one of sections ~~3481-~~
18 ~~3484~~ 3482-3485 of this title, and such offense amounts to treason, shall be
19 punished for treason in lieu of the penalty prescribed in such section.

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

21 § 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. 17. 13 V.S.A. § 7041 is amended to read:

19 § 7041. DEFERRED SENTENCE

20 (a) Upon an adjudication of guilt and after the filing of a presentence
21 investigation report, the court may defer sentencing and place the respondent

1 on probation upon such terms and conditions as it may require if a written
2 agreement concerning the deferring of sentence is entered into between the
3 State’s Attorney and the respondent and filed with the clerk of the court.

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

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

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

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

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

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

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

20 * * *

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

1 § 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

2 * * *

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

7 * * *

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

9 § 1203. LIMITATIONS ON PRESENTATION OF CLAIMS

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

19 (1) within four months after the date of the first publication of notice to
20 creditors if notice is given in compliance with the Rules of Probate Procedure;
21 provided, however, that claims barred by the nonclaim statute of the decedent's

1 domicile before the first publication for claims in this State are also barred in
2 this State;

3 * * *

4 Sec. 20. 18 V.S.A. § 8840 is amended to read:

5 § 8840. JURISDICTION AND VENUE

6 Proceedings brought under this subchapter for commitment to the
7 Commissioner for custody, care, and habilitation shall be commenced by
8 petition in the ~~Criminal~~ Family Division of the Superior Court for the unit in
9 which the respondent resides.

10 Sec. 21. 24 V.S.A. § 1981 is amended to read:

11 § 1981. ENFORCEMENT OF ORDER FROM JUDICIAL BUREAU

12 (a) Upon the filing of the complaint and entry of a judgment after hearing or
13 entry of default by the hearing officer, subject to any appeal pursuant to 4
14 V.S.A. § 1107, the person found in violation shall have up to 30 days to pay
15 the penalty to the Judicial Bureau. Upon the expiration of the period to pay the
16 penalty, the person found in violation shall be assessed a surcharge of \$10.00
17 for the benefit of the municipality. All the civil remedies for collection of
18 judgments shall be available to enforce the final judgment of the Judicial
19 Bureau.

20 * * *

21 Sec. 22. 3 V.S.A. § 164 is amended to read:

1 * * *

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

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

1 ~~(A)~~(i) the diversion program declines to accept the case;

2 ~~(B)~~(ii) the person declines to participate in diversion;

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

5 ~~(D)~~(iv) the prosecuting attorney recalls the referral to diversion.

6 (B)(i) The prosecuting attorney shall refer to a post-plea adult drug or
7 DUI treatment docket an offender:

8 (I) charged with a new criminal offense or a violation of
9 conditions of a probationary sentence if the offense is associated with a
10 substance use disorder; and

11 (II) screened with a validated instrument by a treatment docket
12 coordinator as having a high prognostic risk and high criminogenic needs.

13 (ii) An offender charged with a crime pursuant to subdivision
14 (1)(B)(i) of this subsection (e) shall be presumed eligible for participation in a
15 treatment docket unless the prosecutor, after consultation with the victim,
16 states on the record why a referral to the program would not serve the ends of
17 justice because:

18 (I) evidence demonstrates that the offender cannot be managed
19 safely or effectively in a treatment docket; or

20 (II) adequate treatment is not available to the offender in the
21 treatment docket's jurisdiction.

1 (iii) Referrals to determine eligibility for a treatment docket may
2 be made by the court, the defense counsel, or the State within 90 days of
3 arraignment, but a person will not be deemed ineligible if a referral is made
4 after 90 days from arraignment.

5 * * *

6 **Sec. 23. REPEAL; EXTENSION**

7 Sec. 2 of 2016 Acts and Resolves No. 167, as amended by Sec. E.204 of
8 2017 Acts and Resolves No. 185, is amended to read:

9 **Sec. 2. REPEAL**

10 4 V.S.A. § 38 (Judicial Masters) shall be repealed on July 1, ~~2020~~ 2025.

11 **Sec. 24. EFFECTIVE DATE**

12 This act shall take effect on passage, except that Secs. 9 and 10 shall take
13 effect on July 1, 2019.

14
15
16 (Committee vote: _____)

17 _____

18 Representative _____

19 FOR THE COMMITTEE