

S.234

An act relating to miscellaneous judiciary procedures

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

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

§ 163. JUVENILE COURT DIVERSION PROJECT

* * *

(i) Notwithstanding subdivision (c)(1) of this section, the diversion program may accept cases from the Youth Substance ~~Abuse~~ Awareness Safety Program pursuant to 7 V.S.A. § 656 or 18 V.S.A. § 4230b. The confidentiality provisions of this section shall become effective when a notice of violation is issued under 7 V.S.A. § 656(b) or 18 V.S.A. § 4230b(b), and shall remain in effect unless the person fails to register with or complete the Youth Substance ~~Abuse~~ Awareness Safety Program.

* * *

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

§ 164. ADULT COURT DIVERSION PROGRAM

* * *

(l) Notwithstanding subdivision (e)(1) of this section, the diversion program may accept cases from the Youth Substance ~~Abuse~~ Awareness Safety Program pursuant to 7 V.S.A. § 656 or 18 V.S.A. § 4230b. The confidentiality provisions of this section shall become effective when a notice of violation is

issued under 7 V.S.A. § 656(b) or 18 V.S.A. § 4230b(b), and shall remain in effect unless the person fails to register with or complete the Youth Substance ~~Abuse~~ Awareness Safety Program.

* * *

Sec. 3. 18 V.S.A. § 4230a is amended to read:

§ 4230A. ~~MARIJUANA~~ CANNABIS POSSESSION BY A PERSON 21
YEARS OF AGE OR OLDER

* * *

(d) Fifty percent of the civil penalties imposed by the Judicial Bureau for violations of this section shall be deposited in the Drug Task Force Special Fund, hereby created to be managed pursuant to 32 V.S.A. chapter 7, subchapter 5, and available to the Department of Public Safety for the funding of law enforcement officers on the Drug Task Force, except for a \$12.50 administrative charge for each violation, which shall be deposited in the Court Technology Special Fund, in accordance with 13 V.S.A. § 7252. The remaining 50 percent shall be deposited in the Youth Substance ~~Abuse~~ Awareness Safety Program Special Fund, hereby created to be managed pursuant to 32 V.S.A. chapter 7, subchapter 5, and available to the Court Diversion Program for funding of the Youth Substance ~~Abuse~~ Awareness Safety Program as required by section 4230b of this title.

* * *

Sec. 4. 18 V.S.A. § 4230f is amended to read:

§ 4230F. ~~DISPENSING MARIJUANA~~ CANNABIS TO A PERSON UNDER
21 YEARS OF AGE; CRIMINAL OFFENSE

* * *

(e)(1) Subsections (a)–(d) of this section shall not apply to a person under 21 years of age who dispenses ~~marijuana~~ cannabis to a person under 21 years of age or who knowingly enables the consumption of ~~marijuana~~ cannabis by a person under 21 years of age.

(2) A person who is 18, 19, or 20 years of age who knowingly dispenses ~~marijuana~~ cannabis to a person who is 18, 19, or 20 years of age commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance ~~Abuse~~ Awareness Safety Program in accordance with the provisions of section 4230b of this title and shall be subject to the penalties in that section for failure to complete the program successfully.

* * *

Sec. 5. ~~7 V.S.A. § 656 is amended to read:~~

~~§ 656. PERSON 16 YEARS OF AGE OR OLDER AND UNDER 21 YEARS
OF AGE MISREPRESENTING AGE, PROCURING, POSSESSING,
OR CONSUMING ALCOHOLIC BEVERAGES; CIVIL
VIOLATION.~~

~~(a)(1) Prohibited conduct. A person 16 years of age or older and under 21 years of age shall not:~~

~~(A) Falsely represent his or her age for the purpose of procuring or attempting to procure malt or vinous beverages, spirits, or fortified wines from any licensee, State liquor agency, or other person or persons.~~

~~(B) Possess malt or vinous beverages, spirits, or fortified wines for the purpose of consumption by himself or herself or other minors, except in the regular performance of duties as an employee of a licensee licensed to sell alcoholic liquor.~~

~~(C) Consume malt or vinous beverages, spirits, or fortified wines. A violation of this subdivision may be prosecuted in a jurisdiction where the minor has consumed malt or vinous beverages, spirits, or fortified wines or in a jurisdiction where the indicators of consumption are observed.~~

(2) Offense. A person under 21 years of age who knowingly violates subdivision (1) of this subsection commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance Abuse Awareness Safety Program. A person who fails to complete the program successfully shall be subject to:

~~(A) a civil penalty of \$300.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 30 days, for a first offense; and~~

~~(B) a civil penalty of not more than \$600.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 90 days, for a second or subsequent offense.~~

~~(b) Issuance of notice of violation. A law enforcement officer shall issue a person under 21 years of age who violates this section a notice of violation, in a form approved by the Court Administrator. The notice of violation shall require the person to provide his or her name and address and shall explain procedures under this section, including that:~~

~~***~~

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

~~§ 4230b. MARIJUANA CANNABIS POSSESSION BY A PERSON 16~~

~~YEARS OF AGE OR OLDER AND UNDER 21 YEARS OF AGE;~~

~~CIVIL VIOLATION~~

~~(a) Offense. A person 16 years of age or older and under 21 years of age who knowingly and unlawfully possesses one ounce or less of marijuana cannabis or five grams or less of hashish or two mature marijuana cannabis plants or fewer or four immature marijuana cannabis plants or fewer commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance Abuse Safety Program. A person who fails to complete the program successfully shall be subject to:~~

~~(1) a civil penalty of \$300.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 30 days, for a first offense; and~~

~~(2) a civil penalty of not more than \$600.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 90 days, for a second or subsequent offense.~~

~~(b) Issuance of Notice of Violation. A law enforcement officer shall issue a person under 21 years of age who violates this section with a notice of violation, in a form approved by the Court Administrator. The notice of violation shall require the person to provide his or her name and address and shall explain procedures under this section, including that:~~

~~* * *~~

~~(d) Registration in Youth Substance Abuse Awareness Safety Program. Within 15 days after receiving a notice of violation, the person shall contact the Diversion Program in the county where the offense occurred and register for the Youth Substance Abuse Awareness Safety Program. If the person fails to do so, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.~~

~~***~~

~~(f)(1) Diversion Program Requirements. Upon being contacted by a person who has been issued a notice of violation, the Diversion Program shall register the person in the Youth Substance Abuse Awareness Safety Program. Pursuant to the Youth Substance Abuse Awareness Safety Program, the Diversion Program shall impose conditions on the person. The conditions imposed shall include only conditions related to the offense and in every case shall include a condition requiring satisfactory completion of substance abuse screening using an evidence-based tool and, if deemed appropriate following the screening, substance abuse assessment and substance abuse education or substance abuse counseling, or both. If the screener recommends substance abuse counseling, the person shall choose a State-certified or State-licensed substance abuse counselor or substance abuse treatment provider to provide the services.~~

~~***~~

~~Sec. 7. 18 V.S.A. § 4230j is added to read:~~

~~§ 4230j. CANNABIS POSSESSION BY A PERSON UNDER 16 YEARS
OF AGE; DELINQUENCY~~

~~A person under 16 years of age who engages in conduct in violation of subdivision 4230b of this title commits a delinquent act and shall be subject to 33 V.S.A. chapter 52. The 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 Program would not serve the ends of justice.~~

Sec. 8. 23 V.S.A. § 203 is amended to read:

§ 203. COUNTERFEITING, FRAUD, AND MISUSE; PENALTY

(a) A person shall not:

* * *

(2) display or cause or permit to be displayed, or have in his or her possession, any fictitious or fraudulently altered operator license, learner's permit, nondriver identification card, inspection sticker, or registration certificate, or display for any fraudulent purpose an expired or counterfeit insurance identification card or similar document;

* * *

(b)(1) ~~A~~ Except as provided in subdivision (2) of this subsection, a violation of subsection (a) of this section shall be a traffic violation for which there shall be a penalty of not more than \$1,000.00. If a person is found to have committed the violation, the person's privilege to operate motor vehicles shall be suspended for 60 days.

(2) If a person may be charged with a violation of subdivision (a)(2) of this section or with a violation of 7 V.S.A. § 656, the person shall be charged with a violation of 7 V.S.A. § 656 and not with a violation of this section.

Sec. 9. 4 V.S.A. § 1105 is amended to read:

§ 1105. ANSWER TO COMPLAINT; DEFAULT

(a) A violation shall be charged upon a summons and complaint form approved and distributed by the Court Administrator. The complaint shall be signed by the issuing officer or by the State's Attorney. The original shall be filed with the Judicial Bureau; a copy shall be retained by the issuing officer or State's Attorney and two copies shall be given to the defendant. The Judicial Bureau may, consistent with rules adopted by the Supreme Court pursuant to 12 V.S.A. § 1, accept electronic signatures on any document, including the signatures of issuing officers, State's Attorneys, and notaries public. The complaint shall include a statement of rights, instructions, notice that a defendant may ~~admit, not contest, or deny a violation~~ request a hearing or accept the penalties without a hearing, notice of the fee for failure to answer within ~~20~~ 21 days, and other notices as the Court Administrator deems appropriate. The Court Administrator, in consultation with appropriate law enforcement agencies, may approve a single form for charging all violations, or may approve two or more forms as necessary to administer the operations of the Judicial Bureau.

(b) A person who is charged with a violation shall have ~~20~~ 21 days from the date the complaint is issued to ~~admit or deny the allegations or to state that he or she does not contest the allegations in the complaint~~ request a hearing or

to state that he or she will accept the penalties without a hearing. The Judicial Bureau shall assess against a defendant a fee of \$20.00 for failure to answer a complaint within the time allowed. The fee shall be assessed in the default judgment and deposited in the Court Technology Special Fund established pursuant to section 27 of this title.

(c) A person who ~~admits or does not contest the allegations~~ accepts the penalties may so indicate and sign the complaint. The Bureau shall accept the admission or statement that the allegations are not contested and accept payment of the waiver penalty.

(d) If the person sends in the amount of the waiver penalty without signing the complaint, the Bureau shall accept the payment indicating that payment was made and that the allegations were not contested.

(e) A person who denies the allegations or who wishes to have a hearing on the complaint for any other reason may so indicate and sign the complaint. Upon receipt, the Bureau shall schedule a hearing.

* * *

Sec. 10. 12 V.S.A. § 2903(d) is amended to read:

(d) If a judgment lien is not satisfied within 30 days of recording, it may be foreclosed and redeemed as provided in this title and V.R.C.P. 80.1. Unless the court finds that as of the date of foreclosure the amount of the outstanding

debt exceeds the value of the real property being foreclosed, ~~section 4531~~
chapter 172 of this title shall apply to foreclosure of a judgment lien.

Sec. 11. 12 V.S.A. § 5812 is amended to read:

§ 5812. OATH TO BE ADMINISTERED TO ATTORNEYS

You solemnly swear (affirm) that you will do no falsehood, nor consent that any be done in court, and if you know of any, you will give knowledge thereof to the judges of the court or some of them, that it may be reformed; that you will not wittingly, willingly, or knowingly promote, sue, or procure to be sued, any false or unlawful suit, or give aid or consent to the same; that you will delay no ~~man~~ person for lucre or malice, but will act in the office of attorney within the court, according to your best learning and discretion, with all good fidelity as well to the court as to your client. So help you God (or, "under the pains and penalties of perjury").

Sec. 12. 13 V.S.A. § 1029 is amended to read:

§ 1029. ALCOHOLISM, LIMITATIONS, EXCEPTIONS

(a) No political subdivision of the State may adopt or enforce a law or rule having the force of law that includes being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty. No political subdivision may interpret or apply any law of general application to circumvent this provision.

(b) Nothing in this section affects any law or rule against operating a motor vehicle or other machinery under the influence of alcohol or possession or use of alcoholic beverages at stated times and places or by a particular class of persons.

(c) This section does not make intoxication or incapacitation as defined in ~~18 V.S.A. § 9142~~ 18 V.S.A. § 4802 an excuse or defense for any criminal act. Nothing contained herein shall change current law relative to insanity as a defense for any criminal act.

(d) This section does not relieve any person from civil liability for any injury to persons or property caused by that person while intoxicated or incapacitated.

~~Sec. 13. 13 V.S.A. § 3256 is amended to read:~~

~~§ 3256. TESTING FOR INFECTIOUS DISEASES~~

~~(a)(1)(A) The victim of an offense involving a sexual act may obtain an order from the Criminal or Family Division of the Superior Court in which the offender was convicted of the offense, or was adjudicated delinquent, requiring that the offender be tested for the presence of the etiologic agent for acquired immune deficiency syndrome (AIDS) and other sexually transmitted diseases, including gonorrhea, herpes, chlamydia, and syphilis.~~

~~(B) The victim of an offense involving a sexual act may, if a judicial officer finds there is probable cause to believe the offender committed the~~

~~offense, obtain an order from the Criminal or Family Division of the Superior Court in which the offender was charged with the offense requiring that the offender be tested for the presence of immunodeficiency virus (HIV) within 48 hours after the offender was charged.~~

~~(2) If requested by the victim, the State's Attorney shall petition the court on behalf of the victim for an order under this section. For the purposes of this section, "offender" includes a juvenile adjudicated a delinquent.~~

~~(b) For purposes of As used in this section, "sexual act" means a criminal offense:~~

~~(1) where the underlying conduct of the offender constitutes a sexual act as defined in section 3251 of this title; and~~

~~(2) that creates a risk of transmission of the etiologic agent for AIDS to the victim as determined by the federal Centers for Disease Control and Prevention.~~

~~(c) If the court determines pursuant to subdivision (a)(1)(A) of this section that the offender was convicted or adjudicated of a crime involving a sexual act with the victim, or that pursuant to subdivision (a)(1)(B) of this section that the offender was charged with a crime involving a sexual act with the victim and there is probable cause to believe the offender committed the offense, the court shall order the test to be administered by the Department of Health in accordance with applicable law. If appropriate under the circumstances, the~~

~~court may include in its order a requirement for follow-up testing of the offender. An order for follow-up testing shall be terminated if the offender's conviction is overturned. A sample taken pursuant to this section shall be used solely for purposes of this section. All costs of testing the offender shall, if not otherwise funded, be paid by the Department of Public Safety.~~

~~(d) The results of the offender's test shall be disclosed only to the offender and the victim.~~

~~(e) If an offender who is subject to an order pursuant to subsection (c) of this section refuses to comply with the order, the victim, or State's Attorney on behalf of the victim, may seek a civil contempt order pursuant to 12 V.S.A. chapter 5.~~

~~(f) After arraignment, a defendant who is charged with an offense involving a sexual act may offer to be tested for the presence of the etiologic agent for acquired immune deficiency syndrome (AIDS) and other sexually transmitted diseases, including gonorrhea, herpes, chlamydia, and syphilis. Such testing shall follow the same procedures set forth for testing an offender who is subject to an order pursuant to subsection (c) of this section. The defendant's offer to be tested after arraignment shall not be used as evidence at the defendant's trial. If the defendant is subsequently convicted of an offense involving a sexual act, the court may consider the offender's offer for testing as a mitigating factor.~~

~~(g) Upon request of the victim at any time after the commission of a crime involving a sexual act under subsection (b) of this section, the State shall provide any of the following services to the victim:~~

~~(1) counseling regarding human immunodeficiency virus (HIV);~~

~~(2) testing, which shall remain confidential unless otherwise provided by law, for HIV and other sexually transmitted diseases, including gonorrhea, herpes, chlamydia, and syphilis;~~

~~(3) counseling by a medically trained professional on the accuracy of the testing, and the risk of transmitting HIV and other sexually transmitted diseases to the victim as a result of the crime involving a sexual act; and~~

~~(4) prophylaxis treatment, crisis counseling, and support services.~~

~~(h) A victim who so requests shall receive monthly follow-up HIV testing for six months after the initial test.~~

~~(i) The State shall provide funding for HIV or AIDS, or both, and sexual assault cross-training between sexual assault programs and HIV and AIDS service organizations.~~

~~(j) The record of the court proceedings and test results pursuant to this section shall be sealed.~~

~~(k) The Court Administrator's Office shall develop and distribute forms to implement this section in connection with a criminal conviction or adjudication of delinquency.~~

~~(l) The Center for Crime Victim Services shall be the primary coordinating agent for the services to be provided in subsections (g), (h), and (i) of this section.~~

Sec. 14. 13 V.S.A. § 7602 is amended to read:

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

* * *

(b)(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:

* * *

(C) Any restitution and surcharges ordered by the court ~~has~~ have been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court pursuant to section 7282 of this title.

* * *

(c)(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:

* * *

(D) Any restitution and surcharges ordered by the court for any crime of which the person has been convicted has been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court pursuant to section 7282 of this title.

* * *

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

* * *

(2) Any restitution and surcharges ordered by the court ~~has~~ have been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court pursuant to section 7282 of this title.

* * *

Sec. 15. 13 V.S.A. § 7609 is amended to read:

§ 7609. EXPUNGEMENT OF CRIMINAL HISTORY RECORDS OF AN
INDIVIDUAL 18–21 YEARS OF AGE

(a) Procedure. Except as provided in subsection (b) of this section, the record of the criminal proceedings for an individual who was 18–21 years of age at the time the individual committed a qualifying crime shall be expunged

within 30 days after the date on which the individual successfully completed the terms and conditions of the sentence for the conviction of the qualifying crime, absent a finding of good cause by the court. 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. A copy of the order shall be sent to each agency, department, or official named in the order. Thereafter, the court, law enforcement officers, agencies, and departments shall reply to any request for information that no record exists with respect to such individual.

Notwithstanding this subsection, the record shall not be expunged until restitution ~~has~~ and surcharges have been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court pursuant to section 7282 of this title.

* * *

Sec. 16. 14 V.S.A. § 107 is amended to read:

§ 107. ALLOWANCE OF WILL; CUSTODY OF PROPERTY

(a) If consents are filed by all the heirs at law and surviving spouse, a will may be allowed without hearing. If consents are not obtained, the court shall schedule a hearing and notice shall be given as provided by the Rules of Probate Procedure.

(b) Objections to allowance of the will must be filed in writing not less than seven days prior to the hearing. In the event that no timely objections are filed, ~~the will may be allowed without hearing if it meets criteria set out in section 108 of this title~~ the court may:

(1) allow the will on the testimony of only one of the subscribing witnesses if the witness testifies that the will was executed as provided in chapter 1 of this title; or

(2) allow the will without hearing if it meets criteria set out in section 108 of this title.

* * *

Sec. 17. 14 V.S.A. § 1203 is amended to read:

§ 1203. LIMITATIONS ON PRESENTATION OF CLAIMS

* * *

(c) Nothing in this section affects or prevents:

(1) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; ~~or~~

(2) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the executor or administrator for which he or she is protected by liability insurance; or

(3) the enforcement of any tax liability.

Sec. 18. 14 V.S.A. § 2643 is amended to read:

§ 2643. RELEASE BY COURT AND PARENT ON BEHALF OF MINOR

(a) The Superior judge of the Superior Court within and for the county where the minor resides, on behalf of a minor, must approve of and consent to a release to be executed by a parent in the settlement of any claim that does not exceed the sum of ~~\$1,500.00~~ \$10,000.00. A release so furnished shall be binding on the minor and both parents, their heirs, executors, administrators, or assigns, respectively.

(b) Any claim settled for a sum in excess of ~~\$1,500.00~~ \$10,000.00 shall require the approval of a court-appointed guardian.

Sec. 19. 15 V.S.A. § 663 is amended to read:

§ 663. SUPPORT ORDERS; REQUIRED CONTENTS

* * *

(c) Every order for child support made or modified under this chapter on or after July 1, 1990, shall:

(1) include an order for immediate wage withholding or, if not subject to immediate wage withholding, include a statement that wage withholding will take effect under the expedited procedure set forth in section 782 of this title;

(2) require payments to be made to the Registry in the Office of Child Support unless subject to an exception under 33 V.S.A. § 4103;

(3) require that every party to the order must notify the Registry in writing of their current mailing address and current residence address and of any change in either address within seven business days of the change, until all obligations to pay support or support arrearages or to provide for visitation are satisfied;

(4) include in bold letters notification of remedies available under section 798 of this title; and

(5) include in bold letters notification that the parent may seek a modification of his or her support obligation if there has been a showing of a real, substantial, and unanticipated change of circumstances.

* * *

Sec. 20. 15 V.S.A. § 664 is amended to read:

§ 664. DEFINITIONS

As used in this subchapter:

(1) “Parental rights and responsibilities” means the rights and responsibilities related to a child’s physical living arrangements, ~~parent-child contact,~~ education, medical and dental care, religion, travel, and any other matter involving a child’s welfare and upbringing.

* * *

Sec. 21. 18 V.S.A. § 7510 is amended to read:

§ 7510. PRELIMINARY HEARING

(a) Within five days after a person is admitted to a designated hospital for emergency examination, he or she may request the ~~Criminal Division of the~~ Superior Court to conduct a preliminary hearing to determine whether there is probable cause to believe that he or she was a person in need of treatment at the time of his or her admission.

* * *

Sec. 22. 32 V.S.A. § 1434 is amended to read:

§ 1434. PROBATE CASES

(a) The following entry fees shall be paid to the Probate Division of the Superior Court for the benefit of the State, except for subdivisions (18) and (19) of this subsection, which shall be for the benefit of the county in which the fee was collected:

* * *

(28) ~~Petitions for minor settlement pursuant to 14 V.S.A. § 2643 \$90.00~~

[Repealed.]

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Sec. 23. 33 V.S.A. § 5117 is amended to read:

§ 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

* * *

(b)(1) Notwithstanding the foregoing, inspection of such records and files by the following is not prohibited:

* * *

(D) court personnel, the State's Attorney or other prosecutor authorized to prosecute criminal or juvenile cases under State law, the child's guardian ad litem, the attorneys for the parties, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the child;

(E) the child who is the subject of the proceeding, the child's parents, guardian, and custodian, ~~and guardian ad litem~~ may inspect such records and files upon approval of the Family Court judge;

* * *

Sec. 24. 33 V.S.A. § 5119 is amended to read:

§ 5119. SEALING OF RECORDS

* * *

(m) Notwithstanding the provisions of this section, a criminal record may not be sealed if restitution and surcharges are owed, provided that payment of surcharges shall not be required if the surcharges have been waived by the court pursuant to 13 V.S.A. § 7282.

~~Sec. 25. SUNSET REPEAL~~

~~2017 Acts and Resolves No. 61, Sec. 7 (July 1, 2020 sunset of changes to Court Diversion Program) is repealed.~~

Sec. 26. REPEAL

12 V.S.A. chapter 215, subchapter 1 (voluntary arbitration for medical malpractice cases) is repealed.

~~Sec. 27. SUNSET REPEAL~~

~~2017 Acts and Resolves No. 54, Sec. 6a (July 1, 2020 repeal of 3 V.S.A. § 168, Racial Disparities in Criminal and Juvenile Justice System Advisory Panel) is repealed.~~

~~Sec. 28. PERSONS WITH SUSPENDED DRIVER'S LICENSES;~~

~~AMNESTY PROGRAM~~

~~(a) There is established an Amnesty Program to permit the Judicial Bureau and the Department of Motor Vehicles to waive all traffic tickets, fees, and surcharges associated with motor vehicle operators whose licenses have been suspended for noncriminal reasons if the suspension has lasted for one year or longer. The Amnesty Program shall comply with the guidelines set forth in this section.~~

~~(b) On or before September 1, 2020, the Department of Motor Vehicles shall provide to the Office of the Attorney General a list of persons whose operator's licenses have been suspended for noncriminal reasons for one year~~

~~or longer. On or before September 30, 2020, the Office of the Attorney General shall submit the entire list to the Judicial Bureau and file a single motion requesting that the traffic tickets, Judicial Bureau fees, and surcharges for all persons on the list be waived.~~

~~(c)(1) Upon filing of the motion from the Attorney's General's Office required by subsection (b) of this section, the Judicial Bureau shall waive the tickets, fees, and surcharges identified in the motion.~~

~~(2) The Judicial Bureau shall provide notice of its action under subdivision (1) of this subsection to the Department of Motor Vehicles.~~

~~(d) After receiving notice from the Judicial Bureau pursuant to subdivision (c)(2) of this section, the Department of Motor Vehicles shall:~~

~~(1) waive any fees, including those associated with reinstatement, for all persons included on the list submitted to the Judicial Bureau pursuant to subsection (b) or this section;~~

~~(2) reinstate the operator's licenses of each person on the list, unless the person is otherwise ineligible for reinstatement; and~~

~~(3) notify persons that their licenses have been reinstated, or that their licenses are ineligible for reinstatement and the reason for ineligibility.~~

Sec. 28. PERSONS WITH SUSPENDED DRIVER'S LICENSES;

REINSTATEMENT FEE WAIVER PROGRAM

(a) There is established a Reinstatement Fee Waiver Program to permit the Department of Motor Vehicles to waive all license reinstatement fees for motor vehicle operators whose licenses have been suspended under certain circumstances. The Reinstatement Fee Waiver Program shall comply with the guidelines set forth in this section.

(b) On or before **April 30, 2021**, the Department of Motor Vehicles shall:

(1) waive all license reinstatement fees for any person whose operator's license has been:

(A) suspended for noncriminal reasons for one year or longer and who has satisfied all other reinstatement conditions and requirements; or

(B) suspended prior to July 1, 2014 for failure to pay the amount due in a judicial bureau judgment and who has satisfied all other reinstatement conditions and requirements;

(2) reinstate the operator's licenses of each person whose reinstatement fees are waived pursuant to subdivision (b)(1) of this section; and

(3) notify each person whose reinstatement fees are waived pursuant to subdivision (b)(1) of this section that the person's license has been reinstated, or that the person's license is ineligible for reinstatement and the reason for ineligibility.

(c) As used in this section:

(1) “Amount due” means the same as in 4 V.S.A. § 1109(a).

(2) “Reinstatement conditions and requirements” shall not include the amount due in a judicial bureau judgment.

(3) “Suspended for noncriminal reasons shall not include a license that is under suspension on December 15, 2020 for the accumulation of 10 or more points.

Sec. 29. CONFORMING REVISIONS; “MARIJUANA” AND
“CANNABIS”

When preparing the Vermont Statutes Annotated for publication, the Office of Legislative Council shall replace “marijuana” with “cannabis” throughout the statutes as needed for consistency with this act, provided the revisions have no other effect on the meaning of the affected statutes.

Sec. 30. 4 V.S.A. § 33 is amended to read:

§ 33. JURISDICTION; FAMILY DIVISION

(a) Notwithstanding any other provision of law to the contrary, the Family Division shall have exclusive jurisdiction to hear and dispose of the following proceedings filed or pending on or after October 1, 1990:

* * *

(18) Concurrent with the Probate Division, special immigration judicial determinations regarding the custody and care of children within the meaning of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101(a)(27)(J)

and 8 C.F.R. Sec. 204.11) issued pursuant to 14 V.S.A. chapter 111,
subchapter 14.

* * *

Sec. 31. 4 V.S.A. § 35 is amended to read:

§ 35. JURISDICTION; PROBATE DIVISION

The Probate Division shall have jurisdiction of:

* * *

(25) grandparent visitation proceedings under 15 V.S.A. chapter 18; ~~and~~

(26) other matters as provided by law; and

(27) concurrent with the Family Division, special immigration judicial
determinations regarding the custody and care of children within the meaning
of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101(a)(27)(J)
and 8 C.F.R. Sec. 204.11) issued pursuant to 14 V.S.A. chapter 111,
subchapter 14.

Sec. 32. 14 V.S.A. chapter 111, subchapter 14 is added to read:

Subchapter 14. Special Immigration Status

§ 3098. SPECIAL IMMIGRATION JUVENILE STATUS; JURISDICTION

AND FINDINGS

(a) Jurisdiction and Findings. The court has jurisdiction under Vermont
law to make judicial determinations regarding the custody and care of children
within the meaning of the federal Immigration and Nationality Act (8 U.S.C.

Sec. 1101(a)(27)(J) and 8 C.F.R. Sec. 204.11). The court is authorized to make the findings necessary to enable a child to petition the U.S. Citizenship and Immigration Service for classification as a special immigrant juvenile pursuant to 8 U.S.C. Sec. 1101(a)(27)(J).

(b)(1) If an order is requested from the court making the necessary findings regarding special immigrant juvenile status as described in subsection (a) of this section, the court shall issue an order if there is evidence to support those findings, which may include a declaration by the child who is the subject of the petition. The order issued by the court shall include all of the following findings:

(A) The child was either of the following:

(i) Declared a dependent of the court.

(ii) Legally committed to or placed under the custody of a State agency or department or an individual or entity appointed by the court. The court shall indicate the date on which the dependency, commitment, or custody was ordered.

(B) That reunification of the child with one or both of the child's parents was determined not to be viable because of abuse, neglect, abandonment, or a similar basis pursuant to Vermont law. The court shall indicate the date on which reunification was determined not to be viable.

(C) That it is not in the best interests of the child to be returned to the child's or his or her parent's previous country of nationality or country of last habitual residence.

(2) If requested by a party, the court may make additional findings that are supported by evidence.

(c) In any judicial proceedings in response to a request that the court make the findings necessary to support a petition for classification as a special immigrant juvenile, information regarding the child's immigration status that is not otherwise protected by State laws shall remain confidential. This information shall also be exempt from public inspection and copying under the Public Records Act and shall be kept confidential, except that the information shall be available for inspection by the court, the child who is the subject of the proceeding, the parties, the attorneys for the parties, the child's counsel, and the child's guardian.

(d) As used in this section, "court" means the Probate Division and the Family Division of the Superior Court.

Sec. 33. 13 V.S.A. § 7554c is amended to read:

§ 7554C. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

(a)(1) The objective of a pretrial risk assessment is to provide information to the court for the purpose of determining whether a person presents a risk of nonappearance or a risk of re-offense so the court can make an appropriate

~~order concerning bail and conditions of pretrial release. The assessment shall not assess victim safety or risk of lethality in domestic assaults.~~

~~(2) The objective of a pretrial needs screening is to obtain a preliminary indication of whether a person has a substantial substance abuse or mental health issue that would warrant a subsequent court order for a more detailed clinical assessment.~~

~~(3) Participation in a risk assessment or needs screening pursuant to this section does not create any entitlement for the assessed or screened person.~~

~~(b)(1) Except as provided in subdivision (2) of this subsection, a person who is arrested, lodged, and unable to post bail within 24 hours of lodging shall may be offered a risk assessment and, if deemed appropriate by the pretrial services coordinator, a needs screening prior to arraignment.~~

~~(2) A person charged with an offense for which registration as a sex offender is required pursuant to chapter 167, subchapter 3 of this title or an offense punishable by a term of life imprisonment shall not be eligible under this section.~~

~~(3) Participation in risk assessment or needs screening shall be voluntary and a person's refusal to participate shall not result in any criminal legal liability to the person.~~

~~(4) In the event an assessment or screening cannot be obtained prior to arraignment, the risk assessment and needs screening shall be conducted as soon as practicable.~~

~~(5) A person who qualifies pursuant to subdivision (1) of this subsection and who has an additional pending charge or a violation of probation shall not be excluded from being offered a risk assessment or needs screening unless the other charge is a listed crime.~~

~~(6) Any person charged with a criminal offense or, a person who is the subject of a youthful offender petition pursuant to 33 V.S.A. § 5280, or a person 18 years of age or older who is the subject of a delinquency petition pursuant to 33 V.S.A. § 5201, except those persons identified in subdivision (2) of this subsection, may choose to engage with a pretrial services coordinator.~~

~~(c) The results of the risk assessment and needs screening shall be provided to the person and his or her attorney, the prosecutor, and the court. Pretrial services coordinators may share information only within the limitations of subsection (e) of this section.~~

~~(d)(1) At arraignment, the court may order a person who is eligible to engage with a pretrial services coordinator under subdivision (b)(6) of this section to do the following:~~

~~(A) meet with a pretrial services coordinator on a schedule set by the court;~~

~~(B) participate in a needs screening with a pretrial services coordinator; and~~

~~(C) participate in a clinical assessment by a substance abuse or mental health treatment provider and follow the recommendations of the provider.~~

~~(2) The court may order the person to engage in pretrial services. Pretrial services may include the pretrial services coordinator;~~

~~(A) supporting the person in meeting conditions of release imposed by the court, including the condition to appear for judicial proceedings; and~~

~~(B) connecting the person with community-based treatment programs, rehabilitative services, recovery supports, and restorative justice programs.~~

~~(3) If possible, the court shall set the date and time for the clinical assessment at arraignment. In the alternative, the pretrial services coordinator shall coordinate the date, time, and location of the clinical assessment and advise the court, the person and his or her attorney, and the prosecutor.~~

~~(4) An order authorized in subdivision (1) or (2) of this subsection shall be in addition to any conditions of release permitted by law and shall not limit the court in any way. Failure to comply with a court order authorized by subdivision (1) or (2) of this subsection shall not constitute a violation of section 7559 of this title.~~

~~(5) This section shall not be construed to limit a court's authority to impose conditions pursuant to section 7554 of this title.~~

* * *

Sec. 34. 13 V.S.A. § 2821 is amended to read:

§ 2821. DEFINITIONS

As used in this chapter:

* * *

(3) "Performance" means:

(A) an event that is photographed, filmed, or visually recorded; or

(B) a play, dance, or other visual presentation or exhibition before an audience.

* * *

Sec. 35. 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 January 1, 2021. The process for expunging these records shall be completed by the court and all entities subject to the order not later than January 1, 2022.

(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 person who is the subject of the record **at the person's last known address**, the 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) On and after January 1, 2021, a person who was arrested or convicted of a violation of 18 V.S.A. § 4230(a)(1) prior to such date:

(1) shall not be required to acknowledge the existence of such a criminal history record or answer questions about the record in any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing:

(2) may deny the existence of the record regardless of whether the person has received notice from the court that an expungement order has been issued on the person's behalf; and

(3) may utilize the procedures in chapter 230 of Title 13 to seek expungement or sealing of the record prior to the court taking steps to issue an expungement order pursuant to this section.

(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 Chief Superior 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. 36. 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 two ounces or more of marijuana or ten grams or more of hashish or more than three mature marijuana plants or six 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 violating subdivision (a)(2)(A) of this section 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.

~~(2)~~(3) A person knowingly and unlawfully possessing ~~two~~ eight ounces of marijuana or ~~40 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.

~~(3)~~(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.

~~(4)~~(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.

~~(5)~~(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.

~~(6)~~(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. 37. 13 V.S.A. § 7601 is amended to read:

§ 7601. DEFINITIONS

As used in this chapter:

* * *

(4) "Qualifying crime" means:

* * *

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

* * *

Sec. 38. EFFECTIVE DATES

This act shall take effect on July passage, except that Sec. 36 (marijuana penalties) shall take effect on January 1, 2021.