

S.234; MISCELLANEOUS JUDICIARY PROCEDURES;  
SECTION BY SECTION SUMMARY; HOUSE JUDICIARY AMENDMENT

S.234 is the annual Judiciary Committee miscellaneous bill. Each year this bill makes technical corrections and assorted minor changes to the statutes related to criminal and civil court and judiciary procedures. During the legislative adjournment the courts and other state agencies send their requests for the miscellaneous bill to Legislative Counsel. These proposals are compiled with other issues noted for technical correction by legislative counsel or brought to the attention of legislators, and then all of the measures are combined into the miscellaneous bill.

Sections 1–6 are requests from the Attorney General's Office and the Court Diversion Programs to change the name of the Youth Substance Abuse Safety Program to the Youth Substance Awareness Safety Program. Apparently some young people have been reluctant to participate because they are concerned that the name of the Program implies that all participants have substance problems when that is not necessarily the case. [No changes to Senate bill].

Section 5 also clarifies that the civil violation for minors in possession of alcohol applies to persons aged 16–21; for under 16's, it will continue to be a delinquency proceeding. Evidently some hearing officers weren't clear on the distinction so they were charging under 16's with civil violations instead of delinquencies. This was contrary to the Legislature's intent because the collateral consequences of a delinquency case, including the opportunity to participate in diversion, are more beneficial for the child than being charge with a civil offense. [No changes to Senate bill].

Sections 6 and 7 make the penalties for minors in possession of marijuana the same as those established in Section 5 for minors in possession of alcohol. For ages 16–21 it will be a civil violation (Section 6), and for under 16's it will now be a delinquency (Section 7) in all cases. Section 7 includes one change to the Senate bill in order to accomplish the same goal by striking the language that permitted possession of marijuana cases against under 16s to avoid diversion if the prosecutor stated that doing so would serve the interests of justice.

Section 8 is another request from the Attorney General's Office that addresses the issue of minors using fake IDs to buy alcohol. The minor should be charged under the Possession of Malt Beverages ("PMB") statute so that the cases go to diversion. However, fake ID cases can also be charged under the fraudulent driver's license statute, 23 VSA § 203, which does not allow for diversion. To remedy this, Section 8 requires the charges to be brought under the PMB statute in appropriate cases. [No changes to Senate bill].

Section 9 was requested by the Court to remedy a problem in the Judicial Bureau. Because of the way the statute is drafted, traffic tickets are written in a way that leads persons who plead "no contest" to think they will still be able to contest the ticket in traffic court. Many people do not realize that pleading "no contest" is an admission of guilt that they will not be able to contest later. So, Section 9 amends the language to make the tickets more clear and notify people how to contest them. [No changes to Senate bill].

Section 10 was requested by Judge Tomasi, who noticed that the mortgage foreclosure statute includes a cross-reference to a

statute that has been repealed. Section 10 corrects the cross-reference. [No changes to Senate bill].

Section 11 was requested by the VBA, which noticed that the attorneys' oath statute contained an outdated gender reference. Section 11 updates this by changing "man" to "person". Section 11 also includes one change to the Senate bill, making the statute consistent with other oaths by providing the person taking the oath with the option to state an affirmation under pains and penalties of perjury. The language is identical to other statutes that permit affirmations as an alternative to oaths.

Section 12 is purely technical and corrects an incorrect cross reference. [No changes to Senate bill].

Sections 13 and 14 clarify that a person's criminal history records cannot be expunged until the person has paid any applicable court surcharges, unless the surcharges have been waived by the court. Current law requires that any restitution ordered in connection with the offense be paid before expungement is permitted. [No changes to Senate bill].

Section 15, which is added at the request of the Probate Judges Association, permits a will to be allowed as valid if there are no objections and one of the witnesses testifies that the will was properly executed. Current law allows the will if both witnesses provide sworn statements sworn before a notary public, so this change provides another option to validate a will if one of the witnesses testifies in court. [No changes to Senate bill].

Section 16 is purely technical; it moves an incorrectly placed "or". [No changes to Senate bill].

Section 17 amends the statute that requires the Superior Court to approve certain monetary court settlements that are entered into on behalf of a minor. Currently the statute requires Court approval of any settlement in excess of \$1500. However, the statute has been unchanged since the 1970s, and requiring court approval of such small settlements is outdated. So, Section 8 increases the threshold, so that court approval will only be required if the amount of the settlement is greater than \$10,000. [No changes to Senate bill].

Section 18 is purely technical; it inserts a missing "and". [No changes to Senate bill].

Section 19 removes a reference to parent-child contact in the child support statute because parent-child contact is a separate matter that is not part of child support proceedings. [No changes to Senate bill].

Section 20 was requested by the Chief Superior Judge to correct an inaccuracy. The existing language provides that mental health proceedings occur in the Criminal Division, but such proceedings often occur in the Family Division as well. So, the language is changed to "Superior Court," which includes both court Divisions. [No changes to Senate bill].

Section 21 repeals a fee that the statute permits the Probate Division to charge in cases that actually are heard in the Civil Division. Since the Probate Division has no jurisdiction to hear these types of cases, the fee is unnecessary and is repealed. [No changes to Senate bill].

Section 22 is purely technical; it removes the term "guardian ad litem" because it already appears in the same statute and is therefore irrelevant. [No changes to Senate bill].

Section 23 is a provision similar to earlier provisions regarding criminal records. This section clarifies that juvenile records cannot be sealed until the any applicable restitution and court surcharges have been paid, unless the court waives the surcharges. [No changes to Senate bill].

Section 24 repeals the chapter that permits voluntary arbitration in medical malpractice cases. The Chief Superior Judge testified that the chapter has never been used since it was enacted in 1975, so it is not needed. [No changes to Senate bill].

Section 25 establishes a Reinstatement Fee Waiver Program that requires the Department of Motor Vehicles to permit persons whose motor vehicle operator's licenses have been suspended for non-criminal reasons for more than one year to have their licenses reinstated without paying the DMV reinstatement fee, provided that the person has satisfied all other reinstatement conditions and requirements. Reinstatement fees are also waived for persons whose licenses were suspended for failure to pay the court fine prior to July 1, 2014, when such suspensions were indefinite. Persons whose licenses are under suspension for accumulating 10 or more points as of the program's effective date are not eligible for the fee waiver. The licenses must be reinstated by April 30, 2021. The version of the Program in the House bill makes a change to the Senate bill, which had waived the operator's court fines and fees in addition to the DMV reinstatement fee.

Section 26 permits the Office of Legislative Council to replace the work “marijuana” with the word “cannabis” in the Vermont statutes. This language already passed the Senate in S.54. [No changes to Senate bill].

Sections 27-29 permit the Probate and Family Divisions to make the findings necessary to allow immigrant children to petition the U.S. Citizenship and Immigration Services (USCIS) for special immigration juvenile status. Special immigration juvenile status (SIJS) allows immigrant children subject to the jurisdiction of a state juvenile court who cannot reunify with their parents due to abuse, abandonment or neglect, and who meet certain other criteria, to obtain lawful permanent immigration status. SIJS is unique among immigration remedies because a state court order is a prerequisite to filing for the petition with (USCIS). A child seeking SIJS must first ask a “juvenile court” in the state where the child is living to make certain findings. These findings involve determinations that, among other things, reunification with one or both parents is not viable for the child due to abuse, neglect, abandonment or similar grounds under state law. In some states, such as Vermont, both the probate court and family court share this jurisdiction and fall under the definition of “juvenile court.” If either the Probate or Family courts to make the findings authorized in sections 30-32, the child may then petition USCIS for special immigration juvenile status. [No changes to Senate bill].

Section 30 reinstates the definition of “performance” for purposes of the sexual exploitation of children chapter that the House Clerk’s Office erroneously deleted from H.936 (Act 132) after both bodies passed the bill but before it was sent to the Governor. This technical correction is an addition to the Senate-passed bill.

Section 31, which passed the Senate in S.294, is an addition to the Senate bill, establishes the process for expunging all misdemeanor marijuana convictions of possession of under two ounces that occur before January 1, 2021. These expungements will be “automatic” in that they do not require the subject of the order to petition the court for the order.

- \* Remember that possession of one ounce has been legal since July 1, 2018 and Sec. 32 makes possession of more than one ounce, but less than two ounces a civil offense.

- \* Expunging just those convictions for one ounce or less isn't possible with automatic expungement because prior to 2013 when once ounce was decriminalized, possession of under two ounces was a violation of 18 V.S.A. § 4230(a)(1). There is no way to tell if the conviction was for one joint or just under two ounces by looking at the charges and convictions. You would have to go into each case file (often paper records kept in various agencies) to locate the information and affidavit that alleges the amount possessed. That process is cumbersome, timely and costly.

The process for expunging these records must be completed by the court and all entities subject to the order no later than January 1, 2022.

- \* Remember that Act 95 established a stay of expungement and sealing which would apply here, as well:  
“Notwithstanding any provision of law to the contrary, for the duration of the time A.O. No. 49 is in effect and 120 days after A.O. No. 49 is terminated, all statutory time frames for issuing orders to seal or expunge criminal history records or

processing petitions to seal or expunge criminal history records pursuant to 13 V.S.A. chapter 230 are suspended.”

Upon entry of an expungement order, the order is 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.

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 existing statutory procedures to seek expungement or sealing of the record prior to the court taking steps to issue an expungement order pursuant to this section.

Section 32, which also passed the Senate in S.294, amends the penalties for marijuana possession. The amendments make it so that as of January 1, 2021 no one will be convicted of a crime or have a criminal record for possession of less than two ounces of marijuana. Possession of one ounce would still be legal, but more than one ounce, but less than two would be a civil offense that goes to judicial bureau but does not show up on your “rap” sheet.



More than one ounce but less than two ounces:

Current: (Criminal) 6 mo. misdemeanor 1<sup>st</sup> offense; 2 yrs 2<sup>nd</sup> or subsequent

S.234: (Civil) \$100 1<sup>st</sup> offense; \$200 2<sup>nd</sup> offense; \$500 3<sup>rd</sup> or subsequent

Two ounces up to and including one pound:

Current: (Criminal) 3 yr felony; \$10,000 fine

S.234: (Criminal) breaks up that amount into two offenses:

(1) Two ounces to less than eight ounces = 6 mo.

misdemeanor 1<sup>st</sup> offense; 2 yrs 2<sup>nd</sup> or subsequent

(2) Eight ounces to one pound = 3 yr felony; \$10,000 fine.

Section 33, which is an addition to the Senate bill, corrects a technical error in the current definition of “qualifying crime” under the sealing and expungement chapter. The chapter lists misdemeanor marijuana possession as a crime for which someone may petition for sealing or expungement. The statute lists the correct statutory citation, but says the statute applies to “possession” when in actuality it applies to “possession and cultivation.” This has caused some confusion, thus the addition of the word “cultivation.”

Section 34 provides that the bill takes effect on passage, except that the section related to marijuana penalties takes effect on January 1, 2021.