

1 TO THE HONORABLE SENATE:

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 bill be
5 amended by striking out all after the enacting clause and inserting in lieu
6 thereof the following:

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

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

9 **§ 163. JUVENILE COURT DIVERSION PROJECT**

10 * * *

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

13 * * *

14 **(4) Each State's Attorney, in cooperation with the diversion project, shall**
15 **develop clear criteria for deciding what types of offenses and offenders will be**
16 **eligible for diversion; however, the State's Attorney shall retain final discretion**
17 **over the referral of each case for diversion. The provisions of 33 V.S.A.**
18 **§ 5225(c) and § 5280(e) shall apply.**

19 * * *

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

1 for which the information is being released and in all other respects
2 maintaining the confidentiality of the information; otherwise files held by the
3 court, the prosecuting attorney, and the law enforcement agency related to the
4 charges shall be confidential and shall remain confidential unless:

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

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

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

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

10 * * *

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

13 Sec. 3. 13 V.S.A. § 11a is amended to read:

14 ~~§ 11a. VIOLENT CAREER CRIMINALS~~

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

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

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

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

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

9 ~~(2) assault and robbery with a dangerous weapon as defined in~~
10 ~~subsection 608(b) of this title;~~

11 ~~(3) assault and robbery causing bodily injury as defined in subsection~~
12 ~~608(e) of this title;~~

13 ~~(4) aggravated assault as defined in section 1024 of this title;~~

14 ~~(5) murder as defined in section 2301 of this title;~~

15 ~~(6) manslaughter as defined in section 2304 of this title;~~

16 ~~(7) kidnapping as defined in section 2405 of this title or its predecessor~~
17 ~~as it was defined in section 2401 of this title;~~

18 ~~(8) maiming as defined in section 2701 of this title;~~

19 ~~(9) sexual assault as defined in subdivision 3252(a)(1) or (2) of this title~~
20 ~~or its predecessor as it was defined in section 3201 of this title;~~

21 ~~(10) aggravated sexual assault as defined in section 3253 of this title;~~

1 ~~(11) first degree unlawful restraint as defined in section 2407 of this~~
2 ~~title;~~

3 ~~(12) first degree aggravated domestic assault as defined in section 1043~~
4 ~~of this title where the defendant causes serious bodily injury to another person;~~

5 ~~(13) lewd or lascivious conduct with a child as defined in section 2602~~
6 ~~of this title where the child is under the age of 13 years and the defendant is 18~~
7 ~~years of age or older.~~

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

13 ~~(f) For the purposes of this section, multiple convictions that arise out of~~
14 ~~the same criminal transaction are to be treated as one conviction.~~

15 Sec. 4. 13 V.S.A. § 362 is amended to read:

16 § 362. EXPOSING POISON ON THE LAND

17 A person who deposits any poison or substance poisonous to animals on his
18 or her premises or on the ~~premise~~ premises or buildings of another, with the
19 intent that it be taken by an animal, shall be in violation of subdivision 352(2)
20 of this title. This section shall not apply to control of wild pests, protection of
21 crops from insects, mice, and plant diseases, or the Department of Fish and

1 Wildlife ~~and employees and agents of the State Forest Service~~ in control of
2 destructive wild animals.

3 Sec. 5. 13 V.S.A. § 397 is amended to read:

4 § 397. ADMINISTRATIVE PENALTY

5 In addition to the forfeiture of any award, premium, or trophy otherwise
6 due, and in addition to other penalties provided by law, a person violating this
7 chapter may be assessed an administrative penalty in an amount not to exceed
8 \$1,000.00 by the Secretary. The Secretary shall utilize the provisions of
9 6 V.S.A. §§ 16 and 17 for purposes of assessing the penalty.

10 Sec. 6. 13 V.S.A. § 508 is amended to read:

11 § 508. SETTING FIRES

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

17 **Sec. 7. 13 V.S.A. § 1501 is amended to read:**

18 **§ 1501. ESCAPE AND ATTEMPTS TO ESCAPE**

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

1 (1) escapes or attempts to escape from any correctional facility or a local
2 lockup shall be imprisoned for not more than 10 years or fined not more than
3 \$5,000.00, or both; or

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

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

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

13 (B) fail to return from furlough to the correctional facility at the
14 specified time, or visits other than the specified place, as required by the order
15 issued in accordance with 28 V.S.A. § 808, 808a, 808b, or 808c;

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

19 (D) elope or attempt to elope from the Vermont Psychiatric Care
20 Hospital or a participating hospital, when confined by court order pursuant to

1 chapter 157 of this title, or when transferred there pursuant to 28 V.S.A. § 703
2 and while still serving a sentence.

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

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

7 * * *

8 Sec. 8. 13 V.S.A. § 1504 is amended to read:

9 § 1504. ~~PLACE OF CONFINEMENT CONSTRUED~~

10 ~~The words “place of confinement” as used in sections 1502 and 1503 of this~~
11 ~~title shall not be construed to include the Weeks School. [Repealed.]~~

12 Sec. 9. 13 V.S.A. § 2901 is amended to read:

13 § 2901. PUNISHMENT FOR PERJURY

14 A person who, being lawfully required to depose the truth in a proceeding
15 in a court of justice or in a contested case before a State agency pursuant to
16 3 V.S.A. chapter 25, commits perjury shall be imprisoned not more than
17 15 years ~~and~~ or fined not more than \$10,000.00, or both.

18 Sec. 10. 13 V.S.A. § 2535 is amended to read;

19 § 2535. GUARDIAN

20 A guardian who embezzles or fraudulently converts to his or her own use,
21 money, obligations, securities, or other effects or property belonging to the

1 ~~ward~~ person under guardianship or the estate of the ~~ward of whom he or she is~~
2 ~~guardian~~ person under guardianship, shall be guilty of larceny and shall be
3 imprisoned not more than 10 years or fined not more than \$1,000.00, or both.

4 Sec. 11. 13 V.S.A. § 3403 is amended to read:

5 § 3403. MISPRISION OF TREASON

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

13 Sec. 12. 13 V.S.A. § 3485 is amended to read:

14 § 3485. PENALTY WHEN OFFENSE IS TREASON

15 A person who commits an offense punishable under one of sections ~~3481-~~
16 ~~3484~~ 3482–3485 of this title, and such offense amounts to treason, shall be
17 punished for treason in lieu of the penalty prescribed in such section.

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

19 § 5415. ENFORCEMENT; SPECIAL INVESTIGATION UNITS

20 (a) Special investigation units, created pursuant to 24 V.S.A. § 1940, shall
21 be responsible for the investigation of violations of this chapter's Registry

1 requirements and are authorized to conduct in-person Registry compliance
2 checks in a time, place, and manner it deems appropriate in furtherance of the
3 purposes of this chapter. This section shall not be construed to prohibit local
4 law enforcement from enforcing the provisions of this chapter.

5 (b) On or before November 1, 2019, and annually thereafter, local law
6 enforcement agencies shall report to the Vermont Crime Information Center
7 about any in-person Registry compliance checks that the agency has conducted
8 during the preceding 12 months. The report shall include the total number of
9 in-person compliance checks conducted during the 12-month period, the
10 number of offenders who were in compliance, the number of offenders who
11 were out of compliance, and the reasons for being out of compliance.

12 (c) ~~The department of public safety~~ Department of Public Safety shall
13 report to the Senate and House Committees on Judiciary on or before
14 December 15, 2009, and annually thereafter, regarding its efforts under this
15 section.

16 **Sec. 14. 13 V.S.A. § 7041 is amended to read:**

17 **§ 7041. DEFERRED SENTENCE**

18 (a) **Upon an adjudication of guilt and after the filing of a presentence**
19 **investigation report, the court may defer sentencing and place the respondent**
20 **on probation upon such terms and conditions as it may require if a written**

1 agreement concerning the deferring of sentence is entered into between the
2 State's Attorney and the respondent and filed with the clerk of the court.

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

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

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

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

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

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

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

19 * * *

20 (h)(1) The Vermont Crime Information Center shall retain a special index of
21 deferred sentences for sex offenses that require registration pursuant to

1 subchapter 3 of chapter 167 of this title. This index shall only list the name and
2 date of birth of the subject of the expunged files and records, the offense for
3 which the subject was convicted, and the docket number of the proceeding that
4 was the subject of the expungement. The special index shall be confidential
5 and may be accessed only by the director of the Vermont Crime Information
6 Center and a designated clerical staffperson for the purpose of providing
7 information to the Department of Corrections in the preparation of a
8 presentence investigation in accordance with 28 V.S.A. §§ 204 and 204a.

9 (2) The Vermont Crime Information Center shall retain a special index
10 of deferred sentences entered into pursuant to subsection (b) of this section.
11 This index shall only list the name and date of birth of the subject of the
12 expunged files and records, the offense for which the subject was convicted,
13 and the docket number of the proceeding that was the subject of the
14 expungement. The special index shall be confidential and, for the sole purpose
15 of determining if the offender has previously had a deferred sentence, may be
16 accessed by the director of the Vermont Crime Information Center, a state's
17 attorney or deputy state's attorney, or a person certified as a law enforcement
18 officer under the provisions of 20 V.S.A. chapter 151.

19 Sec. 15. 13 V.S.A. § 7554c is amended to read:

20 § 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

21 * * *

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

5 * * *

6 Sec. 16. 14 V.S.A. § 1203 is amended to read:

7 § 1203. LIMITATIONS ON PRESENTATION OF CLAIMS

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

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

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Sec. 17. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: _____)

Senator _____

FOR THE COMMITTEE