

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

20 \* \* \*

1                    (B) If the State’s Attorney declines to refer a case to diversion, the  
2                    court may refer the case to diversion without the consent of the State’s  
3                    Attorney if the court finds, after hearing, that the referral is in the interests of  
4                    justice and that the case is otherwise eligible for diversion under this section.

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

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

8                    § 5169. ADULT COURT DIVERSION PROGRAM

9   \* \* \*

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

12                   (1) The diversion program shall accept only persons against whom  
13                   charges have been filed and the court has found probable cause, but are not yet  
14                   adjudicated. The prosecuting attorney may refer a person to diversion either  
15                   before or after arraignment and shall notify in writing the diversion program  
16                   and the court of his or her intention to refer the person to diversion. The matter  
17                   shall become confidential when notice is provided to the court, except that for  
18                   persons who are subject to conditions of release imposed pursuant to 13 V.S.A.  
19                   § 7554 the matter shall become confidential upon the successful completion of  
20                   diversion. If a person is charged with a qualifying crime as defined in 13  
21                   V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall

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

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

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

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

15 (D) the prosecuting attorney recalls the referral to case is recalled  
16 from diversion.

17 \* \* \*

18 (4)(A) Each State's Attorney, in cooperation with the Office of the  
19 Attorney General and the adult court diversion program, shall develop clear  
20 criteria for deciding what types of offenses and offenders will be eligible for  
21 diversion; however, except as provided in subdivision (B) of this subdivision

1 (4), the State's Attorney shall retain final discretion over the referral of each  
2 case for diversion.

3 (B) If the State's Attorney declines to refer a case to diversion, the  
4 court may refer the case to diversion without the consent of the State's  
5 Attorney if the court finds, after hearing, that the referral is in the interests of  
6 justice and that the case is otherwise eligible for diversion under this section.

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

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

10 ~~§ 11a. VIOLENT CAREER CRIMINALS~~

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

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

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

- 1       ~~(d) As used in this section, “felony crime of violence” shall mean the~~  
2       ~~following crimes:~~
- 3               ~~(1) arson causing death as defined in section 501 of this title;~~  
4               ~~(2) assault and robbery with a dangerous weapon as defined in~~  
5       ~~subsection 608(b) of this title;~~
- 6               ~~(3) assault and robbery causing bodily injury as defined in subsection~~  
7       ~~608(e) of this title;~~
- 8               ~~(4) aggravated assault as defined in section 1024 of this title;~~  
9               ~~(5) murder as defined in section 2301 of this title;~~  
10              ~~(6) manslaughter as defined in section 2304 of this title;~~  
11              ~~(7) kidnapping as defined in section 2405 of this title or its predecessor~~  
12       ~~as it was defined in section 2401 of this title;~~
- 13              ~~(8) maiming as defined in section 2701 of this title;~~  
14              ~~(9) sexual assault as defined in subdivision 3252(a)(1) or (2) of this title~~  
15       ~~or its predecessor as it was defined in section 3201 of this title;~~
- 16              ~~(10) aggravated sexual assault as defined in section 3253 of this title;~~  
17              ~~(11) first degree unlawful restraint as defined in section 2407 of this~~  
18       ~~title;~~
- 19              ~~(12) first degree aggravated domestic assault as defined in section 1043~~  
20       ~~of this title where the defendant causes serious bodily injury to another person;~~

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

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

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

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

12           § 362. EXPOSING POISON ON THE LAND

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

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

2 § 397. ADMINISTRATIVE PENALTY

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

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

9 § 508. SETTING FIRES

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

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

16 **§ 1501. ESCAPE AND ATTEMPTS TO ESCAPE**

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

18 **(1) escapes or attempts to escape from any correctional facility or a local**  
19 **lockup shall be imprisoned for not more than 10 years or fined not more than**  
20 **\$5,000.00, or both; or**

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

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

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

10 (B) fail to return from furlough 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. § 808, 808a, 808b, or 808c;

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

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

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





1 ~~guardian~~ person under guardianship, shall be guilty of larceny and shall be  
2 imprisoned not more than 10 years or fined not more than \$1,000.00, or both.

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

4 § 3403. MISPRISION OF TREASON

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

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

13 § 3485. PENALTY WHEN OFFENSE IS TREASON

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

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

18 § 5415. ENFORCEMENT; SPECIAL INVESTIGATION UNITS

19 (a) Special investigation units, created pursuant to 24 V.S.A. § 1940, shall  
20 be responsible for the investigation of violations of this chapter's Registry  
21 requirements and are authorized to conduct in-person Registry compliance

1 checks in a time, place, and manner it deems appropriate in furtherance of the  
2 purposes of this chapter. This section shall not be construed to prohibit local  
3 law enforcement from enforcing the provisions of this chapter.

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

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

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

16 § 7041. DEFERRED SENTENCE

17 (a) Upon an adjudication of guilt and after the filing of a presentence  
18 investigation report, the court may defer sentencing and place the respondent  
19 on probation upon such terms and conditions as it may require if a written  
20 agreement concerning the deferring of sentence is entered into between the  
21 State's Attorney and the respondent and filed with the clerk of the court.

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

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

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

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

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

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

15 (6) the court determines that deferring sentence is in the interests of  
16 justice.

17 \* \* \*

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

19 § 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

20 \* \* \*

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