

1 S. XX

2 Introduced by

3 Referred to Committee on

4 Date:

5 Subject: Judiciary; Vermont Statutes Annotated; miscellaneous amendments

6 Statement of purpose of bill as introduced: This bill proposes to make

7 Miscellaneous amendments to the Vermont Statutes Annotated.

8

9 An Act relating to miscellaneous amendments

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

11

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

13 § 21b. JUDICIAL PERFORMANCE EVALUATIONS

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

20 (b)(1) All documents developed and used in connection with the performance evaluation
21 procedures established pursuant to subsection (a) of this section, including survey questions and
22 responses, written reviews, comments or suggestions developed to support performance
23 improvement of a superior judge or magistrate under any judicial mentoring program, peer review
24 program, voluntary request for observation or evaluation, or other support program shall be:

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

27 (B) confidential and not subject to disclosure under the Rules for Public Access to Court
28 Records or the Public Records Act;

29 (C) disclosed only to the Supreme Court, the Chief Superior Judge, judiciary employees
30 designated by the Judiciary to assist the Chief Superior Judge in the conduct and management of
31 the surveys, the respective judge or magistrate, and judicial officers and judiciary employees

1 designated by the Judiciary to assist in the development delivery of any performance improvement
2 program for the respective judge or magistrate.

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

8 (3) Any agency or party engaged to assist the Judiciary in evaluating judicial performance
9 pursuant to this section, including the Vermont Bar Association, shall be subject to the
10 confidentiality requirements of this subsection.

11
12 Sec. 2. 4 V.S.A. § 1105 is amended to read:

13 § 1105. ANSWER TO THE COMPLAINT; DEFAULT

14 (a) A violation shall be charged upon a summons and complaint form approved and
15 distributed by the Court Administrator. The complaint shall be signed by the issuing officer or by
16 the State's Attorney. The original shall be filed with the Judicial Bureau; a copy shall be retained
17 by the issuing officer or State's Attorney and two copies shall be given to the defendant. The
18 Judicial Bureau may, consistent with rules adopted by the Supreme Court pursuant to 12 V.S.A.
19 § 1, accept electronic signatures on any document, including the signatures of issuing officers,
20 State's Attorneys, and notaries public. The complaint shall include a statement of rights,
21 instructions, notice that a defendant may ~~admit, not contest, or deny a violation~~ request a hearing
22 or accept the penalties without a hearing, notice of the fee for failure to answer within ~~20~~ 21
23 days, and other notices as the Court Administrator deems appropriate. The Court Administrator,
24 in consultation with appropriate law enforcement agencies, may approve a single form for
25 charging all violations, or may approve two or more forms as necessary to administer the
26 operations of the Judicial Bureau.

27 (b) A person who is charged with a violation shall have ~~20~~ 21 days from the date the
28 complaint is issued to ~~admit or deny the allegations or to state that he or she does not contest the~~
29 ~~allegations in the complaint~~ request a hearing or to state that he or she will accept the penalties
30 without a hearing. The Judicial Bureau shall assess against a defendant a fee of \$20.00 for failure
31 to answer a complaint within the time allowed. The fee shall be assessed in the default judgment

1 and deposited in the Court Technology Special Fund established pursuant to section 27 of this
2 title.

3 (c) A person who ~~admits or does not contest the allegations~~ accepts the penalties without a
4 hearing may so indicate and sign the complaint. The Bureau shall accept the admission or
5 statement that the allegations are not contested and accept payment of the waiver penalty.

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

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

12 * * *

13
14 Sec. 3. 12 V.S.A. Chapter 215 Subchapter 1 is repealed:

15 Subchapter 1: Voluntary Arbitration

16 § 7001. Lists established

17 The Court Administrator shall select and maintain insofar as obtainable for each Superior
18 Court district a list of 12 laypersons, 12 medical doctors, 12 dentists, 12 osteopaths, 12
19 chiropractors, 12 nurses, and 12 hospital administrators. Members of the lists established by this
20 section need not reside in the Superior Court district for which the lists are maintained, but shall
21 reside in this State. (Added 1975, No. 248 (Adj. Sess.), § 1.)

22 § 7002. Claims; arbitration panels; notification

23 (a) After discovery of an alleged injury, persons asserting a claim based on medical
24 malpractice may submit the claim in writing to arbitration prior to the commencement of any
25 trial as to the claim, but not thereafter, providing that all parties having an interest in the claim
26 agree to arbitration. A patient may not be requested to enter into such an agreement to arbitrate
27 until after the patient is aware of the nature and the existence of the claim. Once a claim has been
28 filed, a party to the proceeding may withdraw and a claim may be withdrawn from arbitration
29 only upon written consent of all the other parties. The arbitration panel shall consist of three
30 persons: a judicial referee selected by the Court Administrator, a layperson selected from the
31 panel of laypersons, and a member of the same profession as the respondent selected insofar as

1 possible from the appropriate list of professionals maintained under section 7001 of this title.

2 The lay and professional members shall be chosen by lot as provided in subsection (c) of this
3 section. If the respondent is not a member of a profession for which a list is established under
4 section 7001 of this title, the professional member of the panel shall be selected from the list of
5 medical doctors. The judicial referee shall preside as chair of the arbitration panel.

6 (b) Claims under the provisions of this chapter shall be made on forms provided by the Court
7 Administrator and shall be filed with a fee of \$25.00 with the Court Administrator, who shall
8 send copies by certified mail, return receipt requested, to all other interested persons.

9 (c) The Court Administrator shall, within 30 days of the filing of a claim, mail to the parties
10 and their counsel, if any and if known, copies of the list of 12 laypersons and 12 applicable
11 professionals. Within 30 days after such mailing, the parties or their counsel shall meet with the
12 Court Administrator and shall draw the lay and professional members of the arbitration panel by
13 lot, except for those disqualified pursuant to chapter 3 of this title. In addition to challenges for
14 cause which shall be decided by the Court Administrator, each party shall have one preemptory
15 challenge with respect to the judicial referee. In addition to challenges for cause, which shall be
16 decided by its judicial referee, each party shall have a total of three preemptory challenges with
17 respect to the lay and professional panel members. The Court Administrator shall then, with the
18 advice and cooperation of the parties or their counsel, fix a date, time, and place for a hearing on
19 the claim before the arbitration panel, and the parties and their counsel shall be notified in
20 writing accordingly. The facilities of the Superior courthouse or other appropriate facility shall
21 be made available, as convenient, for the purposes of such hearing.

22 (d) The panel members, other than State employees, shall be compensated at a rate to be fixed
23 by the Court Administrator. The compensation paid shall approximate that compensation
24 allowed to masters appointed pursuant to Rule 53 of the Vermont Rules of Civil Procedure. The
25 judicial referee shall be any Superior Court judge or attorney at law qualified to practice in
26 Vermont who shall be selected by the Court Administrator and who will consent to participate in
27 the arbitration proceedings. (Added 1975, No. 248 (Adj. Sess.), § 1.)

28 § 7003. Procedures of arbitration panel

29 The claim shall be submitted to the arbitration panel in an informal manner and under such
30 procedural rules as may be laid down by the Supreme Court, provided that strict adherence to the
31 technical rules of procedure and evidence applicable in the case of jury trials shall not be

1 required. Discovery shall be governed by the Vermont Rules of Civil Procedure. All testimony
2 shall be under oath, and the right to subpoena witnesses and evidence shall obtain as in all
3 proceedings conducted in the Superior Court. The right of cross-examination shall obtain as to
4 all witnesses and parties, and such cross-examination shall be conducted in an orderly, dignified
5 manner, subject to the control of the judicial referee. All parties shall be entitled, individually or
6 through counsel, to make opening and closing statements. A transcript of the hearings shall be
7 kept by a court reporter. The judicial referee shall retain custody of any exhibits admitted as
8 evidence. (Added 1975, No. 248 (Adj. Sess.), § 1.)

9 § 7004. Decision of arbitration panel

10 Within 30 days after the completion of any hearing, the arbitration panel shall file a written
11 decision with the Court Administrator, who shall thereupon mail copies thereof to all parties
12 concerned and their counsel. Should additional time be required, it may be extended by the Court
13 Administrator. The decision shall be by at least a majority vote. If the decision is in favor of the
14 claimant, it shall specify the amount of damages deemed to be just compensation based on the
15 claim; where there are multiple claimants or respondents, the award shall specify the allocation
16 of amounts to be paid or received by the parties. The decision of the arbitration panel shall
17 contain findings of fact. Any member of the panel may file a written concurring or dissenting
18 opinion giving his or her reasons therefor. (Added 1975, No. 248 (Adj. Sess.), § 1.)

19 § 7004. Decision of arbitration panel

20 Within 30 days after the completion of any hearing, the arbitration panel shall file a written
21 decision with the Court Administrator, who shall thereupon mail copies thereof to all parties
22 concerned and their counsel. Should additional time be required, it may be extended by the Court
23 Administrator. The decision shall be by at least a majority vote. If the decision is in favor of the
24 claimant, it shall specify the amount of damages deemed to be just compensation based on the
25 claim; where there are multiple claimants or respondents, the award shall specify the allocation
26 of amounts to be paid or received by the parties. The decision of the arbitration panel shall
27 contain findings of fact. Any member of the panel may file a written concurring or dissenting
28 opinion giving his or her reasons therefor. (Added 1975, No. 248 (Adj. Sess.), § 1.)

29 § 7005. Proceedings subsequent to decision of arbitration panel

1 (a) The Superior Court, upon application by any party, shall issue a judgment order in
2 accordance with the decision of the arbitration panel and the judgment order shall have the same
3 effect as any other judgment order issued by the Superior Court.

4 (b) Appeals from the judgment order issued pursuant to subsection (a) of this section shall be
5 to the Supreme Court, in accordance with the Vermont Rules of Appellate Procedure. (Added
6 1975, No. 248 (Adj. Sess.), § 1.)

7 § 7005. Proceedings subsequent to decision of arbitration panel

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9 accordance with the decision of the arbitration panel and the judgment order shall have the same
10 effect as any other judgment order issued by the Superior Court.

11 (b) Appeals from the judgment order issued pursuant to subsection (a) of this section shall be
12 to the Supreme Court, in accordance with the Vermont Rules of Appellate Procedure. (Added
13 1975, No. 248 (Adj. Sess.), § 1.)

14 § 7006. Expert witnesses unnecessary

15 No party in any proceeding in this chapter shall be required to produce expert testimony as a
16 prerequisite to a decision in his or her favor. (Added 1975, No. 248 (Adj. Sess.), § 1.)

17 § 7007. Rules of court

18 The Supreme Court may, from time to time, promulgate, amend, and modify rules to carry
19 out and better implement the purpose of this chapter and proceedings conducted thereunder.
20 (Added 1975, No. 248 (Adj. Sess.), § 1.)

21 § 7008. Statute of limitations

22 The date of filing with the Court Administrator of a claim submitted under the provisions of
23 this chapter shall be considered the date of institution of action for purposes of the applicable
24 statute of limitations. (Added 1975, No. 248 (Adj. Sess.), § 1.)

25 § 7009. Enforcement of awards

26 If an award made by the panel is final and not appealed and the respondent fails to comply
27 with the award, the claimant may proceed to collect all or any part of a past due award in
28 Superior Court. In a proceeding under this section, the claimant shall be awarded costs,
29 reasonable attorney's fees, and interest. (Added 1991, No. 160 (Adj. Sess.), § 48.)

1 Sec. 4. 13 V.S.A. § 7602 is amended to read:
2 § 7602. EXPUNGEMENT AND SEALING OF RECORD; POSTCONVICTION;
3 PROCEDURE

4 * * *

5 (b)(1) The court shall grant the petition and order that the criminal history record be
6 expunged pursuant to section 7606 of this title if the following conditions are met:

7 (A) At least five years have elapsed since the date on which the person successfully
8 completed the terms and conditions of the sentence for the conviction, or if the person has
9 successfully completed the terms and conditions of an indeterminate term of probation that
10 commenced at least five years previously.

11 (B) The person has not been convicted of a crime arising out of a new incident or
12 occurrence since the person was convicted for the qualifying crime.

13 (C) Any restitution ordered by the court **and surcharges have has** been paid in full.

14 (D) The court finds that expungement of the criminal history record serves the
15 interest of justice.

16 (2) The court shall grant the petition and order that all or part of the criminal history
17 record be sealed pursuant to section 7607 of this title if the conditions of subdivisions (1)(A),
18 (B), and (C) of this subsection are met and the court finds that:

19 (A) sealing the criminal history record better serves the interest of justice than
20 expungement; and

21 (B) the person committed the qualifying crime after reaching 19 years of age.

22 (c)(1) The court shall grant the petition and order that the criminal history record be
23 expunged pursuant to section 7606 of this title if the following conditions are met:

24 (A) At least 10 years have elapsed since the date on which the person successfully
25 completed the terms and conditions of the sentence for the conviction.

26 (B) The person has not been convicted of a felony arising out of a new incident or
27 occurrence since the person was convicted of the qualifying crime.

28 (C) The person has not been convicted of a misdemeanor during the past five years.

29 (D) Any restitution ordered by the court for any crime of which the person has been
30 convicted **and surcharges have has** been paid in full.

1 (E) After considering the particular nature of any subsequent offense, the court finds that
2 expungement of the criminal history record for the qualifying crime serves the interest of justice.

3 (2) The court shall grant the petition and order that all or part of the criminal history
4 record be sealed pursuant to section 7607 of this title if the conditions of subdivisions (1)(A),
5 (B), (C), and (D) of this subsection are met and the court finds that:

6 (A) sealing the criminal history record better serves the interest of justice than
7 expungement; and

8 (B) the person committed the qualifying crime after reaching 19 years of age.

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

13 (1) The petitioner has completed any sentence or supervision for the offense.

14 (2) Any restitution ordered by the court **and surcharges have** ~~has~~ been paid in full.

15 * * *

16
17 Sec. 5. 13 V.S.A. § 7609 is amended to read:

18 § 7609. EXPUNGEMENT OF CRIMINAL HISTORY RECORDS OF AN INDIVIDUAL 18-
19 21 YEARS OF AGE

20 (a) Procedure. Except as provided in subsection (b) of this section, the record of the criminal
21 proceedings for an individual who was 18-21 years of age at the time the individual committed a
22 qualifying crime shall be expunged within 30 days after the date on which the individual
23 successfully completed the terms and conditions of the sentence for the conviction of the
24 qualifying crime, absent a finding of good cause by the court. The court shall issue an order to
25 expunge all records and files related to the arrest, citation, investigation, charge, adjudication of
26 guilt, criminal proceedings, and probation related to the sentence. A copy of the order shall be
27 sent to each agency, department, or official named in the order. Thereafter, the court, law
28 enforcement officers, agencies, and departments shall reply to any request for information that
29 no record exists with respect to such individual. Notwithstanding this subsection, the record shall
30 not be expunged until restitution **and surcharges have** ~~has~~ been paid in full.

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Sec. 6. 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. 7. 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. 8. 33 V.S.A. § 5117 is amended to read:

§ 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

(a) Except as otherwise provided, court and law enforcement reports and files concerning a person subject to the jurisdiction of the Court shall be maintained separate from the records and files of other persons. Unless a charge of delinquency is transferred for criminal prosecution under chapter 52 of this title or the Court otherwise orders in the interests of the child, such records and files shall not be open to public inspection nor their contents disclosed to the public by any person. However, upon a finding that a child is a delinquent child by reason of commission of a delinquent act which would have been a felony if committed by an adult, the Court, upon request of the victim, shall make the child's name available to the victim of the delinquent act. If the victim is incompetent or deceased, the child's name shall be released, upon request, to the victim's guardian or next of kin.

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

(A) a court having the child before it in any juvenile judicial proceeding;

1 (B) the officers of public institutions or agencies to whom the child is committed as a
2 delinquent child;

3 (C) a court in which a person is convicted of a criminal offense for the purpose of
4 imposing sentence upon or supervising the person, or by officials of penal institutions and other
5 penal facilities to which the person is committed, or by a parole board in considering the person's
6 parole or discharge or in exercising supervision over the person;

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

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

14 ***

15

16 Sec. 9. 33 V.S.A. § 5119 is amended to read:

17 § 5119 SEALING OF RECORDS

18 * * *

19 (m) Notwithstanding the above provisions, a criminal record may not be sealed if restitution and
20 surcharges are owed.

21

22 Sec. 10. EFFECTIVE DATE

23 This act shall take effect on July 1, 2020.