

House Proposal of Amendment

S. 97

An act relating to miscellaneous judiciary procedures.

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Sunset Repeals and Extension * * *

Sec. 1. SUNSET REPEAL; COURT DIVERSION PROGRAM CHANGES

2017 Acts and Resolves No. 61, Sec. 7, as amended by 2020 Acts and Resolves No. 134, Sec. 1 (July 1, 2020 repeal of changes to the court diversion program), is repealed.

Sec. 2. SUNSET REPEAL; RACIAL DISPARITIES IN THE CRIMINAL AND JUVENILE JUSTICE SYSTEMS ADVISORY PANEL

2017 Acts and Resolves No. 54, Sec. 6a, as amended by 2020 Acts and Resolves No. 134, Sec. 2 (July 1, 2020 repeal of 3 V.S.A. § 168, Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel), is repealed.

Sec. 3. SUNSET REPEAL; SPOUSAL MAINTENANCE AND SUPPORT GUIDELINES

2017 Acts and Resolves No. 60, Sec. 3, as amended by 2018 Acts and Resolves No. 203, Sec. 1 (July 1, 2021 repeal of spousal maintenance and support guidelines), is repealed.

Sec. 4. 2017 Acts and Resolves No. 142, Sec. 5, is amended to read:

Sec. 5. REPEAL

13 V.S.A. §§ 5451 (creation of Vermont Sentencing Commission) and 5452 (creation of Vermont Sentencing Commission) shall be repealed on July 1, ~~2021~~ 2022.

* * * Repeals * * *

Sec. 5. 13 V.S.A. § 2579 is amended to read:

§ 2579. CIVIL RECOVERY FOR RETAIL THEFT

~~(a) Any person over the age of 16 years or any emancipated minor who commits the offense of retail theft against a retail mercantile establishment in violation of section 2575 of this title shall be civilly liable to the retail mercantile establishment in an amount consisting of:~~

~~(1) damages equal to the retail price of the merchandise if the item is not returned in a merchantable condition; and~~

~~(2) a civil penalty of two times the retail price of the merchandise, to be not less than \$25.00 and not more than \$300.00.~~

~~(b) The fact that an action may be brought against an individual as provided in this section shall not limit the right of a retail mercantile establishment to demand, in writing, that a person who is liable for damages and penalties under this section remit the damages and penalties prior to the commencement of any legal action.~~

~~(c) If the person to whom a demand is made complies with the demand, that person shall incur no further civil liability for that specific act of retail theft.~~

~~(d) Any demand made under this section shall be accompanied by a copy of this law.~~

~~(e) A criminal prosecution under section 2575 of this title is not a prerequisite to the applicability of this section and such a criminal prosecution shall not bar an action under this section. An action under this section shall not bar a criminal prosecution under section 2575 of this title.~~

~~(f) The provisions of this section shall not be construed to prohibit or limit any other cause of action that a retail mercantile establishment may have against a person who unlawfully takes merchandise from a retail mercantile establishment, except as provided in subsection (e) of this section.~~

~~(g) Any testimony or statements by the defendant or any evidence derived from an attempt to reach a civil settlement or from a civil proceeding brought under this section shall be inadmissible in any other court proceeding relating to such retail theft.~~

~~(h) If a retail mercantile establishment files suit to recover damages and penalties pursuant to subsection (a) of this section and the mercantile establishment fails to appear at a hearing in such proceedings without excuse from the court, the court shall dismiss the suit with prejudice and award costs to the defendant.~~

~~(i) A person who knowingly uses the provisions of this section to demand or extract money from a person who is not legally obligated to pay a penalty shall be imprisoned not more than one year or fined not more than \$1,000.00, or both. [Repealed.]~~

Sec. 6. 20 V.S.A. § 187 is amended to read:

§ 187. SPECIAL EMERGENCY JUDGES

~~In the event that any district judge is unavailable to exercise the powers and discharge the duties of his or her office, the duties of the office shall be discharged and the powers exercised by one of three special emergency judges residing in the district served by such judge, and designated by him or her~~

~~within 60 days after the approval of this chapter, and thereafter immediately after the date that he or she shall have been appointed and qualified as such. Such special emergency judges shall, in the order specified, exercise the powers and discharge the duties of such office in case of the unavailability of the regular judge or persons immediately preceding them in the designation. The designating authority shall, each year, review and shall revise, as necessary, designations made pursuant to this chapter to insure their current status. Forthwith after such designations are made and after a revision thereof copies shall be filed in the offices of the governor and the county clerk. Said emergency special judges shall discharge the duties and exercise the powers of such office until such time as a vacancy which may exist shall be filled in accordance with the constitution and statutes or until the regular judge or one preceding the designee in the order of designation becomes available to exercise the powers and discharge the duties of his or her office. While exercising the powers and discharging the duties of the office of a district judge a special emergency judge shall receive the pro rata salary and perquisites thereof. [Repealed.]~~

* * * Probate Fees * * *

Sec. 7. 14 V.S.A. § 1492 is amended to read:

§ 1492. ACTION FOR DEATH FROM WRONGFUL ACT; PROCEDURE;
DAMAGES

(a) The action shall be brought in the name of the personal representative of the deceased person and commenced within two years from the discovery of the death of the person, but if the person against whom the action accrues is out of the State, the action may be commenced within two years after the person comes into the State. After the cause of action accrues and before the two years have run, if the person against whom it accrues is absent from and resides out of the State and has no known property within the State that can by common process of law be attached, the time of his or her absence shall not be taken as part of the time limited for the commencement of the action. If the death of the decedent occurred under circumstances such that probable cause is found to charge a person with homicide, the action shall be commenced within seven years after the discovery of the death of the decedent or not more than two years after the judgment in that criminal action has become final, whichever occurs later.

* * *

(f) The fee for the appointment of a personal representative to bring an action pursuant to subsection (a) of this section shall be the entry fee established by 32 V.S.A. § 1434(a)(1).

Sec. 8. 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:

(1) Estates of \$10,000.00 or less \$50.00

* * *

(34) Registration of foreign guardianship order \$90.00

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* * * Judicial Bureau; Agricultural Product Identification

Labels Misuse * * *

Sec. 9. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(a) The Judicial Bureau is created within the Judicial Branch under the supervision of the Supreme Court.

(b) The Judicial Bureau shall have jurisdiction of the following matters:

* * *

(7) Violations of 16 V.S.A. chapter 4 9, subchapter 9 5, relating to hazing.

* * *

~~(19) Violations of 6 V.S.A. § 2965, relating to the misuse of identification labels for agricultural products produced in Vermont and meeting standards of quality established by the Secretary of Agriculture, Food and Markets. [Repealed.]~~

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* * * Roadside Safety Technical Correction * * *

Sec. 10. 23 V.S.A. § 1203 is amended to read:

§ 1203. ADMINISTRATION OF TESTS; RETENTION OF TEST AND
VIDEOTAPE

(a) A breath test shall be administered only by a person who has been certified by the Vermont Criminal Justice Council to operate the breath testing equipment being employed. In any proceeding under this subchapter, a

person's testimony that he or she is certified to operate the breath testing equipment employed shall be prima facie evidence of that fact.

(b)(1) Only a physician, licensed nurse, medical technician, physician assistant, medical technologist, laboratory assistant, intermediate or advanced emergency medical technician, or paramedic acting at the request of a law enforcement officer may, at a medical facility, police or fire department, or other safe and clean location as determined by the individual withdrawing blood, withdraw blood for the purpose of determining the presence of alcohol or another drug. A Any withdrawal of blood shall not be taken at roadside, and a law enforcement officer, even if trained to withdraw blood, acting in that official capacity may not withdraw blood for the purpose of determining the presence of alcohol or another drug. These limitations do not apply to the taking of a breath sample. A medical facility or business may not charge more than \$75.00 for services rendered when an individual is brought to a facility for the sole purpose of an evidentiary blood sample or when an emergency medical technician or paramedic draws an evidentiary blood sample.

(2) A saliva sample may be obtained by a person authorized by the Vermont Criminal Justice Council to collect a saliva sample for the purpose of evidentiary testing to determine the presence of a drug. Any saliva sample obtained pursuant to this section shall not be taken at roadside.

(c) ~~When a breath test that is intended to be introduced in evidence is taken with a crimper device or when~~ blood or saliva is withdrawn at an officer's request, a sufficient amount of ~~breath~~ saliva or blood, as the case may be, shall be taken to enable the person to have made an independent analysis of the sample and shall be held for at least 45 days from the date the sample was taken. At any time during that period, the person may direct that the sample be sent to an independent laboratory of the person's choosing for an independent analysis. The Department of Public Safety shall adopt rules providing for the security of the sample. At no time shall the defendant or any agent of the defendant have access to the sample. A preserved sample of breath shall not be required when an infrared breath-testing instrument is used. A person tested with an infrared breath-testing instrument shall have the option of having a second infrared test administered immediately after receiving the results of the first test.

(d) In the case of a breath, saliva, or blood test ~~administered using an infrared breath testing instrument,~~ the test shall be analyzed in compliance with rules adopted by the Department of Public Safety. The analyses shall be retained by the State. A sample is adequate if the infrared breath testing instrument analyzes the sample and does not indicate the sample is deficient. ~~Analysis~~ An analysis of the person's ~~breath~~ saliva or blood that is available to that person for independent analysis shall be considered valid when performed according to methods approved by the Department of Public Safety. The

analysis performed by the State shall be considered valid when performed according to a method or methods selected by the Department of Public Safety. The Department of Public Safety shall use rule making procedures to select its method or methods. Failure of a person to provide an adequate breath or saliva sample constitutes a refusal.

(e) [Repealed.]

(f) When a law enforcement officer has reason to believe that a person may be violating or has violated section 1201 of this title, the officer may request the person to provide a sample of breath for a preliminary screening test using a device approved by the Commissioner of Public Safety for this purpose. The person shall not have the right to consult an attorney prior to submitting to this preliminary breath alcohol screening test. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made and whether to request an evidentiary test and shall not be used in any court proceeding except on those issues. Following the screening, test additional tests may be required of the operator pursuant to the provisions of section 1202 of this title.

* * *

(h) A Vermont law enforcement officer shall have a right to request a breath, saliva, or blood sample in an adjoining state or country under this section unless prohibited by the law of the other state or country. If the law in an adjoining state or country does not prohibit an officer acting under this section from taking a breath, saliva, or blood sample in its jurisdiction, evidence of such sample shall not be excluded in the courts of this State solely on the basis that the test was taken outside the State.

* * *

Sec. 11. REPEAL

2020 Acts and Resolves No. 164, Sec. 24 (administration of tests; 23 V.S.A. § 1203) is repealed.

Sec. 12. 2020 Acts and Resolves No. 164, Sec. 33(c) is amended to read:

(c) Secs. 10 (implementation of Medical Cannabis Registry), 13 (implementation of medical cannabis dispensaries), 18 (income tax deduction), 18c (legislative intent), 21 (definition of evidentiary test), 22 (operating vehicle under the influence of alcohol or other substance), 23 (consent to taking of tests to determine blood alcohol content or presence of other drug), 24 (~~administration of tests~~), and 25 (independent testing of evidentiary sample) shall take effect January 1, 2022.

* * * Juvenile Justice Stakeholders Working Group Recommendations * * *

Sec. 13. 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:

* * *

(8) All juvenile proceedings filed pursuant to 33 V.S.A. chapters 51, 52, and 53, including proceedings involving “youthful offenders” pursuant to 33 V.S.A. § 5281 whether the matter originated in the Criminal or Family Division of the Superior Court, except for a proceeding charging the holder of a commercial driver’s license as defined in 23 V.S.A. § 4103 with an offense or violation listed in 23 V.S.A. § 4116 that would result in the license holder being disqualified from driving a commercial motor vehicle if convicted.

* * *

Sec. 14. 33 V.S.A. § 5103 is amended to read:

§ 5103. JURISDICTION

(a) The Family Division of the Superior Court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

* * *

(c)(1) Except as otherwise provided by this title and by subdivision (2) of this subsection, jurisdiction over a child shall not be extended beyond the child’s 18th birthday.

(2)(A) Jurisdiction over a child with a ~~pending~~ delinquency may be extended until six months beyond the child’s:

(i) 19th birthday if the child was 16 or 17 years of age when he or she committed the offense; or

(ii) 20th birthday if the child was 18 years of age when he or she committed the offense.

* * *

Sec. 15. 2020 Acts and Resolves No. 124, Sec. 3 is amended to read:

Sec. 3. 33 V.S.A. § 5103(c) is amended to read:

(c)(1) Except as otherwise provided by this title and by subdivision (2) of this subsection, jurisdiction over a child shall not be extended beyond the child’s 18th birthday.

(2)(A) Jurisdiction over a child with a ~~pending~~ delinquency may be extended until six months beyond the child's:

(i) 19th birthday if the child was 16 or 17 years of age when he or she committed the offense; ~~or~~

(ii) 20th birthday if the child was 18 years of age when he or she committed the offense; or

(iii) 21st birthday if the child was 19 years of age when he or she committed the offense.

* * *

Sec. 16. 33 V.S.A. § 5204a is amended to read:

§ 5204a. JURISDICTION OVER ADULT DEFENDANT FOR CRIME
COMMITTED WHEN DEFENDANT WAS UNDER ~~18~~ 19
YEARS OF AGE.

(a) A proceeding may be commenced in the Family Division against a defendant who has attained 18 years of age if:

(1) the petition alleges that the defendant:

(A) before attaining ~~18~~ 19 years of age, violated a crime listed in subsection 5204(a) of this title;

(B) after attaining 14 years of age but before attaining ~~18~~ 19 years of age, committed an offense listed in 13 V.S.A. § 5301(7) but not listed in subsection 5204(a) of this title; or

(C) after attaining 17 years of age but before attaining ~~18~~ 19 years of age, committed any offense not listed in 13 V.S.A. § 5301(7) or subsection 5204(a) of this title, ~~as long as~~ provided the petition is filed prior to the defendant's 19th birthday;

(2) a juvenile petition was never filed based upon the alleged conduct; and

(3) the statute of limitations has not tolled on the crime that the defendant is alleged to have committed.

(b)(1) The Family Division shall, except as provided in subdivision (2) of this subsection, transfer a petition filed pursuant to subdivision (a)(1)(A) of this section to the Criminal Division if the Family Division finds that:

(A) there is probable cause to believe that while the defendant was less than ~~18~~ 19 years of age he or she committed an act listed in subsection 5204(a) of this title;

(B) there was good cause for not filing a delinquency petition in the Family Division when the defendant was less than ~~18~~ 19 years of age;

(C) there has not been an unreasonable delay in filing the petition; and

(D) transfer would be in the interest of justice and public safety.

(2)(A) If a petition has been filed pursuant to subdivision (a)(1)(A) of this section, the Family Division may order that the defendant be treated as a youthful offender consistent with the applicable provisions of chapter 52A of this title if the defendant is under ~~23~~ 22 years of age and the Family Division:

* * *

(3) The Family Division shall in all respects treat a petition filed pursuant to subdivision (a)(1)(B) of this section in the same manner as a petition filed pursuant to section 5201 of this title, except that the Family Division's jurisdiction shall end on or before the defendant's 22nd birthday, if the Family Division:

(A) finds that there is probable cause to believe that, after attaining 14 years of age but before attaining ~~18~~ 19 years of age, the defendant committed an offense listed in 13 V.S.A. § 5301(7) but not listed in subsection 5204(a) of this title; and

(B) makes the findings required by subdivisions (b)(1)(B) and (C) of this section.

* * *

* * * Eligibility to Receive Juvenile Proceedings Records * * *

Sec. 17. 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~~ that 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 or dissemination of such records and files to the following is not prohibited:

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

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

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

(D) the parties to the proceeding, 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 may inspect such records and files upon approval of the Family Court judge;

(F) any other person who has a need to know may be designated by order of the Family Division of the Superior Court;

(G) the Commissioner of Corrections if the information would be helpful in preparing a presentence report, in determining placement, or in developing a treatment plan for a person convicted of a sex offense that requires registration pursuant to 13 V.S.A. chapter 167, subchapter 3;

(H) the Human Services Board and the Commissioner's Registry Review Unit in processes required under chapter 49 of this title; and

(I) the Department for Children and Families.

(2) Files inspected under this subsection shall be marked: UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A CRIME PUNISHABLE BY A FINE UP TO \$2,000.00.

* * *

* * * Annual Report on Hate-Motivated Crimes * * *

Sec 18. 13 V.S.A. § 1455 is amended to read:

§ 1455. HATE-MOTIVATED CRIMES

* * *

(d)(1) On or before January 1, 2022 and annually thereafter, the Executive Director of the Department of State's Attorneys and Sheriffs, in consultation with the Office of the Attorney General, shall submit to the House and Senate Committees on Judiciary a report that details for the prior year:

(A) incidents reported to the National Incident-Based Reporting System, with details on both categories of bias motivation and types of offenses that were coded with an offender bias motivation;

(B) any convictions in the Criminal Division of the Superior Court for which the sentence was enhanced pursuant to this section; and

(C) any reported bias incidents that resulted in a final judgement in the Civil Division of the Superior Court.

(2) To the extent feasible, the report required by this subsection shall:

(A) include demographic information about the defendants; and

(B) protect victim confidentiality when statistical information may be identifying.

* * * Racial Disparities in Criminal and Juvenile Justice System Advisory Panel Membership and Report * * *

Sec. 19. 3 V.S.A. § 168 is amended to read:

§ 168. RACIAL DISPARITIES IN THE CRIMINAL AND JUVENILE JUSTICE SYSTEM ADVISORY PANEL

(a) The Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel is established. The Panel shall be organized and have the duties and responsibilities as provided in this section. The Panel shall be organized within the Office of the Attorney General and shall consult with the Vermont Human Rights Commission, the Vermont chapter of the ACLU, the Vermont Police Association, the Vermont Sheriffs' Association, the Vermont Association of Chiefs of Police, and others.

(b) The Panel shall comprise the following ~~13~~ 16 members:

(1) five members, drawn from diverse backgrounds to represent the interests of communities of color throughout the State, who have had experience working to implement racial justice reform, appointed by the Attorney General;

(2) the Executive Director of the Vermont Criminal Justice Council or designee;

(3) the Attorney General or designee;

(4) the Defender General or designee;

(5) the Executive Director of the State's Attorneys and Sheriffs or designee;

(6) the Chief Superior Judge or designee;

(7) the Commissioner of Corrections or designee;

(8) the Commissioner of Public Safety or designee; and

(9) the Commissioner for Children and Families or designee;

(10) the Executive Director of Racial Equity or designee; and

(11) two members, drawn from diverse backgrounds to represent the interests of communities of color throughout the State, who have had experience working in information technology or data collection systems, appointed by the Executive Director of Racial Equity.

* * *

Sec. 20. RACIAL DISPARITIES IN CRIMINAL AND JUVENILE JUSTICE SYSTEM ADVISORY PANEL; REPORT ON BUREAU OF RACIAL JUSTICE STATISTICS

(a) On or before November 15, 2021, the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel shall report to the House and Senate Committees on Judiciary on the creation of the Bureau of Racial Justice Statistics to collect and analyze data related to systemic racial bias and disparities within the criminal and juvenile justice systems. The report shall address:

(1) where the Bureau should be situated, taking into account the necessity for independence and the advantages and disadvantages of being a stand-alone body or being housed in State government;

(2) how and to what extent the Bureau should be staffed;

(3) what should be the scope of the Bureau's mission;

(4) how the Bureau should conduct data collection and analysis; and

(5) the best methods for the Bureau to enforce its data collection and analysis responsibilities.

(b) For purposes of developing the report required by subsection (a) of this section, the Panel shall create a subcommittee working group that shall:

(1) consult with:

(A) the Vermont Crime Research Group;

(B) the National Center on Restorative Justice;

(C) the University of Vermont; and

(D) any other entity that would be of assistance to the Bureau; and

(2) consult with and have the assistance of:

(A) the Vermont Chief Performance Officer; and

(B) the Vermont Chief Data Officer.

(c) The report required by subsection (a) of this section shall include proposed draft legislation.

(d) Members of the Panel who are neither State employees nor otherwise paid to participate in the working group in their professional capacity shall be entitled to per diem compensation and reimbursement of expenses for attending meetings as permitted under 32 V.S.A. § 1010.

(e) In fiscal year 2022, \$50,000.00 is appropriated to the Office of the Attorney General from the General Fund to complete the work described in this section, portions of which may be used to establish performance-based contracts with:

(1) other entities and individuals to research and provide:

(A) other models of data collection entities and determine how they are typically organized, structured, and located;

(B) methodologies for how data can be gathered from disparate locations and organizations;

(C) best practices for collection and organization of data to permit ease of accessibility and development of policy recommendations;

(D) how to use the data to create a public-facing dashboard that is user-friendly and permits public transparency;

(E) technical assistance and customized consulting to support new data-sharing collaborations and partnerships on a range of topics, including:

(i) legal frameworks for data sharing;

(ii) data governance;

(iii) procedures for data access;

(iv) data management and analytics;

(v) staffing data infrastructure; and

(vi) community engagement and agenda setting; and

(2) the University of Vermont Legislative Internship Program for the purposes of providing support to the Panel for the report required by this

section. Interns for the Panel shall be drawn from diverse backgrounds to represent the interests of communities of color throughout the State.

* * * Effective Dates * * *

Sec. 21. EFFECTIVE DATES

This act shall take effect on passage, except that Sec. 10 (23 V.S.A. § 1203) shall take effect on January 1, 2022.