

1 Introduced by House Committee on Judiciary
2 Referred to Committee on
3 Date:
4 Subject: Court procedure; criminal procedure; miscellaneous amendments
5 Statement of purpose of bill as introduced: This bill proposes to make a
6 number of miscellaneous amendments related to civil and criminal procedure
7 statutes.

8 An act relating to miscellaneous judiciary procedures

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

10 * * * Cross reference corrections * * *

11 Sec. 1. 12 V.S.A. § 4853A is amended to read:

12 § 4853A. PAYMENT OF RENT INTO COURT; EXPEDITED HEARING

13 * * *

14 (c) Any memorandum in opposition filed by the defendant pursuant to ~~Rule~~
15 ~~78(b)~~ Rule (7)(b)(6) of the Vermont Rules of Civil Procedure shall be
16 accompanied by affidavit setting forth particular facts in support of the
17 memorandum.

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Sec. 2. 12 V.S.A. § 4853B is amended to read:

§ 4853B. UNLAWFUL OCCUPANT; EXPEDITED HEARING

* * *

(c) At any time before the hearing, the defendant may oppose the motion pursuant to ~~Rule 78(b)~~ Rule (7)(b)(6) of the Vermont Rules of Civil Procedure by filing an affidavit, a signed written statement, or a memorandum in opposition to the motion. The affidavit, signed written statement, or memorandum shall set forth particular facts to show that a genuine dispute of fact exists in relation to the motion.

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* * * Notarization of Affidavits in Relief from Abuse Proceedings * * *

Sec. 3. 15 V.S.A. § 11104 is amended to read:

§ 1104. EMERGENCY RELIEF

(a) In accordance with the Vermont Rules of Civil Procedure, temporary orders under this chapter may be issued ex parte, without notice to the defendant, upon motion and findings by the court that the defendant has abused the plaintiff or the plaintiff's children, or both. The plaintiff shall submit an affidavit in support of the order which shall be sworn to or affirmed by administration of the oath over the telephone to the applicant by a person authorized to administer oaths, and shall conclude with the following

1 statement: “I declare under the penalty of perjury pursuant to the laws of the
2 State of Vermont that the foregoing is true and accurate. I understand that the
3 penalty for perjury is imprisonment of not more than 15 years or a fine of not
4 more than \$10,000.00, or both.” The authorized person shall note on the
5 affidavit the date and time that the oath was administered. A minor 16 years of
6 age or older, or a minor of any age who is in a dating relationship as defined in
7 subdivision 1101(2) of this chapter, may seek relief on his or her own behalf.
8 Relief under this section shall be limited as follows:

9 * * *

10 * * * Sealing Criminal History Records * * *

11 Sec. 4. 13 V.S.A. § 7607 is amended to read:

12 § 7607. EFFECT OF SEALING

13 (a) Order and notice. Upon entry of an order to seal, the order shall be
14 legally effective immediately and the person whose record is sealed shall be
15 treated in all respects as if ~~he or she~~ the person had never been arrested,
16 convicted, or sentenced for the offense and that its effect is to annul the record
17 of arrest, conviction, and sentence. The court shall provide notice of the sealing
18 to the respondent, Vermont Crime Information Center (VCIC), the arresting
19 agency, the Restitution Unit of the Vermont Center for Crime Victims
20 Services, and any other entity that may have a record related to the order to

1 seal. The VCIC shall provide notice of the sealing to the Federal Bureau of
2 Investigation's National Crime Information Center.

3 * * *

4 Sec. 5. 13 V.S.A. § 7611 is added to read:

5 § 7611. UNAUTHORIZED DISCLOSURE

6 A state or municipal employee or contractor or any agent of the court,
7 including an attorney and an employee or contractor of the attorney, who in the
8 course of their official duties knowingly discloses sealed criminal history
9 record information without authorization shall be assessed a civil penalty of
10 not more than \$1,000.00. Each unauthorized disclosure shall constitute a
11 separate civil violation.

12 Sec. 5a. 4 V.S.A. § 1102 is amended to read:

13 § 1102. JUDICIAL BUREAU; JURISDICTION

14 * * *

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

16 * * *

17 (30) Violations of 13 V.S.A. § 7611, relating to the unauthorized
18 disclosure of sealed criminal history record information.

19 * * *

20 Sec. 6. 32 V.S.A. § 1431 is amended to read:

21 § 1431. FEES IN SUPREME AND SUPERIOR COURTS

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(e) Prior to the filing of any postjudgment motion in the Civil, Criminal, or Environmental Division of the Superior Court, including motions to reopen civil suspensions or motions to reopen existing cases in the Probate Division of the Superior Court, there shall be paid to the clerk of the court for the benefit of the State a fee of \$90.00 except for small claims actions, estates, and motions to confirm the sale of property in foreclosure. A filing fee of \$90.00 shall be paid to the clerk of the court for a civil petition for minor settlements. The \$90.00 filing fee shall only apply for a motion to seal a criminal history record of a violation of 23 V.S.A. § 1201(a) pursuant to 13 V.S.A. § 7602(a)(1)(C), but shall not apply for any other motion to seal or expunge a criminal history record pursuant to 13 V.S.A. § 7602, 33 V.S.A. § 5119(g), or other applicable records clearance provision.

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* * * Correcting Title of Chief Superior Judge * * *

Sec. 7. 4 V.S.A. § 21a is amended to read:

§ 21A. DUTIES OF THE ~~ADMINISTRATIVE~~ CHIEF SUPERIOR JUDGE

(a) The ~~Administrative~~ Chief Superior Judge shall assign and specially assign Superior judges, including himself or herself, and Environmental judges to the Superior Court. All Superior judges except Environmental judges shall be subject to the requirements of rotation as ordered by the Supreme Court.

1 Assignments made pursuant to the rotation schedule shall be subject to the
2 approval of the Supreme Court.

3 (b) In making any assignment under this section, the ~~Administrative~~ Chief
4 Superior Judge shall give consideration to the experience, temperament, and
5 training of a judge and the needs of the court. In making an assignment to the
6 Environmental Division, the ~~Administrative~~ Chief Superior Judge shall give
7 consideration to experience and expertise in environmental and land use law
8 and shall assign or specially assign judges in a manner to provide appropriate
9 attention to all geographic areas of the State.

10 (c) In making any assignments to the Environmental Division under this
11 section, the ~~Administrative~~ Chief Superior Judge shall regularly assign two
12 judges, at least one of whom shall be an Environmental judge. An
13 Environmental judge may be assigned to other divisions in the Superior Court
14 for a period of time not exceeding two years. When assigned to other divisions
15 in the Superior Court, the Environmental judge shall have all the powers and
16 responsibilities of a Superior judge.

17 Sec. 8. 4 V.S.A. § 22 is amended to read:

18 § 22. DESIGNATION AND SPECIAL ASSIGNMENT OF JUDICIAL
19 OFFICERS AND RETIRED JUDICIAL OFFICERS

20 (a)(1) The Chief Justice may appoint and assign a retired Justice or judge
21 with his or her consent or a Superior or Probate judge to a special assignment

1 on the Supreme Court. The Chief Justice may appoint, and the ~~Administrative~~
2 Chief Superior Judge shall assign, an active or retired Justice or a retired judge,
3 with his or her consent, to any special assignment in the Superior Court or the
4 Judicial Bureau.

5 (2) The ~~Administrative~~ Chief Superior Judge may appoint and assign a
6 judge to any special assignment in the Superior Court. As used in this
7 subdivision, a judge shall include a Superior judge, a Probate judge, a Family
8 Division magistrate, or a judicial hearing officer.

9 (b) The ~~Administrative~~ Chief Superior Judge may appoint and assign a
10 member of the Vermont Bar residing within the State of Vermont to serve
11 temporarily as:

- 12 (1) an acting judge in Superior Court;
13 (2) an acting magistrate;
14 (3) an acting Probate judge; or
15 (4) an acting hearing officer to hear cases in the Judicial Bureau.

16 * * *

17 (f) In making an appointment under subsection (b) of this section, the
18 ~~Administrative~~ Chief Superior Judge shall apply the criteria and standards for
19 judicial appointments contained in section 601 of this title.

20 Sec. 9. 4 V.S.A. § 36 is amended to read:

21 § 36. COMPOSITION OF THE COURT

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(C) Use of the term “judicial officer” in subdivisions (A) and (B) of this subdivision (2) shall not be construed to expand a judicial officer’s subject matter jurisdiction or conflict with the authority of the Chief Justice or ~~Administrative~~ Chief Superior Judge to make special assignments pursuant to section 22 of this title.

* * *

Sec. 10. 4 V.S.A. § 38 is amended to read:

§ 38. JUDICIAL MASTERS

(a) The ~~Administrative~~ Chief Superior Judge may appoint a licensed Vermont lawyer who has been engaged in the practice of law in Vermont for at least the last five years to serve as a Judicial Master. The Judicial Master shall be an employee of the Judiciary and be subject to the Code of Judicial Conduct. A Judicial Master shall not engage in the active practice of law for remuneration while serving in this position. In making this appointment, the ~~Administrative~~ Judge shall apply the criteria and standards for judicial appointments contained in section 601 of this title. The Judicial Master may hear and decide the following matters as designated by the ~~Administrative~~ Judge:

* * *

Sec. 11. 4 V.S.A. § 71 is amended to read:

1 § 71. APPOINTMENT AND TERM OF SUPERIOR JUDGES

2 * * *

3 (e) The Supreme Court shall designate one of the Superior judges to serve
4 as ~~Administrative~~ Chief Superior Judge. The ~~Administrative~~ Chief Superior
5 Judge shall serve at the pleasure of the Supreme Court.

6 Sec. 12. 4 V.S.A. § 73 is amended to read:

7 § 73. ASSIGNMENT

8 (a) In accordance with the direction of the Supreme Court, the
9 ~~Administrative~~ Chief Superior Judge shall assign the Superior judges among
10 the units and divisions of the Superior Court. The ~~Administrative~~ Chief
11 Superior Judge shall assign a presiding judge to each unit and may assign a
12 judge to preside in more than one unit. In a case where a Superior judge is
13 disqualified or unable to attend any term of court or part thereof to which he or
14 she has been assigned, the ~~Administrative~~ Chief Superior Judge may assign
15 another Superior judge to act as judge at that term or part thereof for that
16 period during which the assigned judge is disqualified or unable to attend. If
17 during a term of the Superior Court the court in a unit is unable to complete all
18 or part of the work before it in a reasonable time, the ~~Administrative~~ Chief
19 Superior Judge, with the approval of the Supreme Court, may modify judge
20 assignments to reduce delays in that unit. The court shall publish the judicial

1 rotation schedule in electronic format and distribute it electronically to
2 attorneys licensed in Vermont.

3 (b) Pursuant to section 21a of this title, the ~~Administrative~~ Chief Superior
4 Judge shall assign Superior judges to hear and determine Family Court matters.
5 The ~~Administrative~~ Chief Superior Judge shall ensure that such hearings are
6 held promptly. Any contested divorce case which has been pending for more
7 than one year shall be advanced for prompt hearing upon the request of any
8 party.

9 (c) As necessary to ensure the efficient operation of the Superior Court, the
10 presiding judge of the unit may specially assign a Superior judge assigned to a
11 division in the unit, including the presiding judge, to preside over one or more
12 cases in a different division. As the ~~Administrative~~ Chief Superior Judge
13 determines necessary for the operation of the Superior Court throughout the
14 State, and with the approval of the Supreme Court, the ~~Administrative~~ Chief
15 Superior Judge may additionally assign for a specified period of time a
16 Superior judge to preside over a particular type of case, or over a particular
17 type of motion or other judicial proceeding, in all or part of the units in the
18 State.

19 Sec. 13. 4 V.S.A. § 111 is amended to read:

20 § 111. SUPERIOR COURT SESSIONS

1 (a) When the business of a Superior Court cannot otherwise be disposed of
2 with reasonable dispatch, by direction of the ~~Administrative~~ Chief Superior
3 Judge, there may be held additional sessions of that Superior Court
4 simultaneously with the regular session consisting of a presiding judge and one
5 or more assistant judges, if available.

6 (b) A Superior Court may be temporarily recessed or adjourned from the
7 place designated for holding a regular term or session to another place having
8 adequate facilities, when the regular facilities at the designated courthouse are
9 not adequate.

10 (c) The ~~Administrative~~ Chief Superior Judge may assign assistant judges,
11 with their consent, to a special assignment in a court where they have
12 jurisdiction in another county when assistant judges of that county are
13 unavailable or the business of the courts so requires.

14 Sec. 14. 4 V.S.A. § 115 is amended to read:

15 § 115. STATED TERMS OF SUPERIOR COURT

16 The Superior Court shall operate continuously irrespective of the term in
17 which events occur. Terms are designated for purposes of determining the
18 rotation schedule of Superior judges and the responsibility of a Superior judge
19 once a term has expired. When at the expiration of a term a Superior judge is
20 no longer assigned to a specified unit, the judge shall complete any matters that
21 have been heard or taken under advisement for that unit. The ~~Administrative~~

1 Chief Superior Judge, pursuant to rules of the Supreme Court, may specially
2 assign a Superior judge to continue to preside over one or more cases even
3 though the judge is no longer assigned to the unit of origin of the case or cases.

4 In the absence of such a direction or of an assignment made pursuant to
5 subsection 73(c) of this title, a judge who at the end of a term is no longer
6 assigned to a unit shall have no further responsibility for cases in that unit.

7 Sec. 15. 4 V.S.A. § 272 is amended to read:

8 § 272. PROBATE DISTRICTS; PROBATE JUDGES

9 * * *

10 (c) The ~~Administrative~~ Chief Superior Judge may specially assign a Probate
11 judge to hear a case in a geographical district other than the district for which
12 the Probate judge was elected.

13 Sec. 16. 4 V.S.A. § 461a is amended to read:

14 § 461A. ESSEX COUNTY; POWERS OF ASSISTANT JUDGES AND
15 MAGISTRATES IN FAMILY COURT PROCEEDINGS

16 * * *

17 (b) The ~~Administrative~~ Chief Superior Judge may appoint and may
18 specially assign a magistrate to serve as the presiding judge in the Family
19 Division of the Superior Court in Essex County.

20 * * *

21 Sec. 17. 4 V.S.A. § 461c is amended to read:

1 § 461C. POWERS OF ASSISTANT JUDGES IN DIVORCE PROCEEDINGS

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3
4 (c) Prior to hearing an uncontested domestic matter, an assistant judge shall
5 sit with a Superior judge on domestic proceedings for a minimum of 100
6 hours, satisfactorily complete a minimum of 30 hours of training on subjects
7 relevant to domestic proceedings and the Code of Judicial Conduct, and
8 conduct a minimum of three uncontested domestic hearings with a Superior
9 judge who shall, in his or her sole discretion, certify to the ~~Administrative~~
10 Chief Superior Judge that the assistant judge is qualified to preside over
11 matters under this section. Upon application of an assistant judge, some or all
12 of these requirements may be waived by the ~~Administrative~~ Chief Superior
13 Judge based on equivalent experience. The requirements set forth herein shall
14 only apply to assistant judges who elect to conduct uncontested final hearings
15 in domestic cases after July 1, 2010. An assistant judge already conducting
16 hearings under this section as of July 1, 2010 shall be deemed to have
17 complied with these requirements.

18 Sec. 18. 4 V.S.A. § 906 is amended to read:

19 § 906. CONFLICTING APPOINTMENTS, EXCUSE FROM ATTENDING
20 BY ~~ADMINISTRATIVE~~ CHIEF SUPERIOR JUDGE

1 When an attorney is required to attend more than one trial, hearing, or other
2 proceeding before a court or commission having judicial or quasi-judicial
3 functions, or both, at times which conflict so that he or she cannot reasonably
4 attend each appointment, the attorney may request the ~~Administrative Chief~~
5 Superior Judge to designate which appointment he or she shall attend. The
6 ~~Administrative Chief Superior~~ Judge shall designate the appointment the
7 attorney shall attend and shall notify the presiding magistrate of each court and
8 commission of his or her decision. The attorney shall be excused from
9 attending at that time any proceedings other than the one designated by the
10 ~~Administrative Chief Superior~~ Judge, and the other proceedings shall be
11 rescheduled.

12 Sec. 19. 4 V.S.A. § 1001 is amended to read:

13 § 1001. ENVIRONMENTAL DIVISION

14 * * *

15 (b) Two environmental judges shall be appointed to hear matters in the
16 Environmental Division and to hear other matters in the Superior Court when
17 so assigned by the ~~administrative Chief Superior~~ judge pursuant to subsection
18 21a(c) of this title.

19 Sec. 20. 4 V.S.A. § 1104 is amended to read:

20 § 1104. APPOINTMENT OF HEARING OFFICERS

1 The ~~Administrative~~ Chief Superior Judge shall appoint members of the
2 Vermont Bar to serve as hearing officers to hear cases. Hearing officers shall
3 be subject to the Code of Judicial Conduct.

4 Sec. 21. 4 V.S.A. § 1108 is amended to read:

5 § 1108. JUDICIAL BUREAU VIOLATIONS; JURISDICTION OF
6 ASSISTANT JUDGES

7 * * *

8 (c) The ~~Administrative~~ Chief Superior Judge may assign or direct
9 assignment of an assistant judge with his or her consent to hear matters in the
10 Judicial Bureau within the county in which the assistant judge presides or in a
11 county other than the county in which the assistant judge presides if the
12 assistant judge has elected to hear and decide such matters.

13 Sec. 22. 12 V.S.A. § 5538 is amended to read:

14 § 5538. APPEALS

15 Any party may appeal from a small claims judgment to Superior Court. The
16 ~~Administrative~~ Chief Superior Judge shall assign the appeal to a Superior
17 judge who shall not have participated in any way in the decision being
18 appealed. The appeal shall be heard and decided, based on the record made in
19 the small claims procedure. No appeal as of right exists to the Supreme Court.
20 On motion made to the Supreme Court by a party to the action, the Supreme
21 Court may allow an appeal from the Superior Court.

1 Sec. 23. 12 V.S.A. § 5540a is amended to read:

2 § 5540A. JURISDICTION OVER SMALL CLAIMS; ASSISTANT JUDGES

3 * * *

4 (d) An assistant judge upon successful completion of the training under
5 subsection (b) of this section, shall cause the Superior Court clerk to notify the
6 Court Administrator of the assistant judge’s successful completion of training.
7 Upon receipt of such notification, small claims cases which require a hearing
8 shall first be set for hearing before an assistant judge in the Superior Court in
9 the county and shall be heard by the assistant judge. If the assistant judge is
10 unavailable due to illness, vacation, administrative leave, disability, or
11 disqualification, the ~~Administrative~~ Chief Superior Judge pursuant to 4 V.S.A.
12 § 22 may assign a judge, or appoint and assign a member of the Vermont bar
13 to serve temporarily as an acting judge, to hear small claims cases in the
14 county. No action filed or pending shall be heard at or transferred to any other
15 location unless agreed to by the parties. If both assistant judges of the county
16 elect to successfully complete training to hear these matters, the senior
17 assistant judge shall make the assignment of cases to be heard by each assistant
18 judge. The assistant judges, once qualified to preside in these matters, shall
19 work with the Court Administrator’s office and the ~~Administrative~~ Chief
20 Superior Judge such that the scheduling of small claims cases before the

1 assistant judges are at such times as to permit adequate current court personnel
2 to be available when these cases are heard.

3 * * *

4 Sec. 24. 13 V.S.A. § 5451 is amended to read:

5 § 5451. CREATION OF COMMISSION

6 (a) The Vermont Sentencing Commission is established for the purpose of
7 overseeing criminal sentencing practices in the State, reducing geographical
8 disparities in sentencing, and making recommendations regarding criminal
9 sentencing to the General Assembly.

10 (b) The Commission shall consist of the following members:

11 (1) the Chief Justice of the Vermont Supreme Court or designee;

12 (2) the Chief Superior Judge or designee, provided that the designee is a
13 sitting or retired Vermont judge;

14 (3) a ~~District or~~ Superior Court Judge with substantial criminal law
15 experience appointed by the ~~administrative~~ Chief Superior judge;

16 (4) the Chair of the Senate Committee on Judiciary;

17 (5) the Chair of the House Committee on Judiciary;

18 (6) the Attorney General or designee;

19 (7) the Defender General or designee;

20 (8) the Executive Director of the Department of State's Attorneys and
21 Sheriffs or designee;

1 (9) the Appellate Defender;

2 (10) a State’s Attorney appointed by the Executive Director of the
3 Department of State’s Attorneys and Sheriffs;

4 (11) a staff public defender with experience in juvenile defense matters
5 appointed by the Defender General;

6 (12) an attorney with substantial criminal law experience appointed by
7 the Vermont Bar Association;

8 (13) the Commissioner of Corrections or designee;

9 (14) the Commissioner of Public Safety or designee;

10 (15) the Executive Director of the Vermont Center for Crime Victim
11 Services or designee;

12 (16) the Executive Director of the Vermont Crime Research Group; and

13 (17) one member of the public appointed by the Governor.

14 * * *

15 Sec. 25. 24 V.S.A. § 139 is amended to read:

16 § 139. ASSISTANT JUDGE JUDICIAL EDUCATION

17 The assistant judges, either collectively or through a duly authorized
18 committee of assistant judges established by a majority vote of the assistant
19 judges after consultation with the ~~administrative~~ Chief Superior judge, shall,
20 by majority vote:

1 signs such order. Likewise, he or she shall fix the place for hearing, which
2 shall be the county courthouse or any other convenient place within the county
3 in which the land in question is located. If the Superior judge to whom such
4 petition is presented cannot hear the petition at the time set therefore he or she
5 shall call upon the ~~Administrative~~ Chief Superior Judge to assign another
6 Superior judge to hear such cause at the time and place assigned in the order.

7 Sec. 28. 32 V.S.A. § 8361 is amended to read:

8 § 8361. GENERAL RULES FOR APPEALS

9 (a) A party aggrieved, including the State represented by the State
10 Treasurer, on or before February 15 following such an appraisal, may appeal
11 therefrom to a Superior judge designated by the ~~administrative~~ Chief Superior
12 judge, not excluding himself or herself, who shall hear such appeal.

13 * * *

14 Sec. 29. 32 V.S.A. § 9272 is amended to read:

15 § 9272. SUSPENSION AND REVOCATION OF LICENSES; APPEAL

16 * * *

17 (b) Any operator aggrieved by such suspension, revocation, or refusal may
18 appeal therefrom to any Superior judge within 10 days after written notice of
19 such suspension, revocation, or refusal has been mailed or delivered to him or
20 her. Such Superior judge or another Superior judge designated by the
21 ~~administrative~~ Chief Superior judge shall hear such appeal forthwith.

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Sec. 30. 32 V.S.A. § 9816 is amended to read:

§ 9816. SUSPENSION OR REVOCATION OF CERTIFICATES; APPEAL

* * *

(b) Any person required to collect the tax aggrieved by a suspension, revocation, or refusal may appeal therefrom to any Superior judge within 10 days after written notice of the suspension, revocation, or refusal has been mailed or delivered to him or her. The Superior judge or another Superior judge designated by the ~~administrative~~ Chief Superior judge shall hear the appeal forthwith.

* * *

Sec. 31. EFFECTIVE DATE

This act shall take effect on passage.