

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 97
3 entitled “An act relating to miscellaneous judiciary procedures “ respectfully
4 reports that it has considered the same and recommends that the House propose
5 to the Senate that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 * * * Sunset Repeals and Extension * * *

8 Sec. 1. SUNSET REPEAL; COURT DIVERSION PROGRAM CHANGES

9 2017 Acts and Resolves No. 61, Sec. 7, as amended by 2020 Acts and
10 Resolves No. 134, Sec. 1 (July 1, 2020 repeal of changes to the court diversion
11 program), is repealed.

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

14 2017 Acts and Resolves No. 54, Sec. 6a, as amended by 2020 Acts and
15 Resolves No. 134, Sec. 2 (July 1, 2020 repeal of 3 V.S.A. § 168, Racial
16 Disparities in the Criminal and Juvenile Justice System Advisory Panel), is
17 repealed.

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

1 ~~establishment to demand, in writing, that a person who is liable for damages~~
2 ~~and penalties under this section remit the damages and penalties prior to the~~
3 ~~commencement of any legal action.~~

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

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

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

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

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

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

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

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

11 § 187. ~~SPECIAL EMERGENCY JUDGES~~

12 ~~In the event that any district judge is unavailable to exercise the powers and~~
13 ~~discharge the duties of his or her office, the duties of the office shall be~~
14 ~~discharged and the powers exercised by one of three special emergency judges~~
15 ~~residing in the district served by such judge, and designated by him or her~~
16 ~~within 60 days after the approval of this chapter, and thereafter immediately~~
17 ~~after the date that he or she shall have been appointed and qualified as such.~~

18 ~~Such special emergency judges shall, in the order specified, exercise the~~
19 ~~powers and discharge the duties of such office in case of the unavailability of~~
20 ~~the regular judge or persons immediately preceding them in the designation.~~

21 ~~The designating authority shall, each year, review and shall revise, as~~

1 ~~necessary, designations made pursuant to this chapter to insure their current~~
2 ~~status. Forthwith after such designations are made and after a revision thereof~~
3 ~~copies shall be filed in the offices of the governor and the county clerk. Said~~
4 ~~emergency special judges shall discharge the duties and exercise the powers of~~
5 ~~such office until such time as a vacancy which may exist shall be filled in~~
6 ~~accordance with the constitution and statutes or until the regular judge or one~~
7 ~~preceding the designee in the order of designation becomes available to~~
8 ~~exercise the powers and discharge the duties of his or her office. While~~
9 ~~exercising the powers and discharging the duties of the office of a district~~
10 ~~judge a special emergency judge shall receive the pro rata salary and~~
11 ~~perquisites thereof. [Repealed.]~~

12 * * * Probate Fees * * *

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

14 § 1492. ACTION FOR DEATH FROM WRONGFUL ACT; PROCEDURE;
15 DAMAGES

16 (a) The action shall be brought in the name of the personal representative of
17 the deceased person and commenced within two years from the discovery of
18 the death of the person, but if the person against whom the action accrues is
19 out of the State, the action may be commenced within two years after the
20 person comes into the State. After the cause of action accrues and before the
21 two years have run, if the person against whom it accrues is absent from and

1 resides out of the State and has no known property within the State that can by
2 common process of law be attached, the time of his or her absence shall not be
3 taken as part of the time limited for the commencement of the action. If the
4 death of the decedent occurred under circumstances such that probable cause is
5 found to charge a person with homicide, the action shall be commenced within
6 seven years after the discovery of the death of the decedent or not more than
7 two years after the judgment in that criminal action has become final,
8 whichever occurs later.

9 * * *

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

13 Sec. 8. 32 V.S.A. § 1434 is amended to read:

14 § 1434. PROBATE CASES

15 (a) The following entry fees shall be paid to the Probate Division of the
16 Superior Court for the benefit of the State, except for subdivisions (18) and
17 (19) of this subsection, which shall be for the benefit of the county in which
18 the fee was collected:

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

20 * * *

21 (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.]~~

* * *

1 * * * Roadside Safety Technical Correction * * *

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

3 § 1203. ADMINISTRATION OF TESTS; RETENTION OF TEST AND
4 VIDEOTAPE

5 (a) A breath test shall be administered only by a person who has been
6 certified by the Vermont Criminal Justice Council to operate the breath testing
7 equipment being employed. In any proceeding under this subchapter, a
8 person's testimony that he or she is certified to operate the breath testing
9 equipment employed shall be prima facie evidence of that fact.

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

1 the sole purpose of an evidentiary blood sample or when an emergency
2 medical technician or paramedic draws an evidentiary blood sample.

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

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

1 (d) In the case of a breath, saliva, or blood test ~~administered using an~~
2 ~~infrared breath testing instrument~~, the test shall be analyzed in compliance with
3 rules adopted by the Department of Public Safety. The analyses shall be
4 retained by the State. A sample is adequate if the infrared breath testing
5 instrument analyzes the sample and does not indicate the sample is deficient.
6 ~~Analysis~~ An analysis of the person's ~~breath~~ saliva or blood that is available to
7 that person for independent analysis shall be considered valid when performed
8 according to methods approved by the Department of Public Safety. The
9 analysis performed by the State shall be considered valid when performed
10 according to a method or methods selected by the Department of Public Safety.
11 The Department of Public Safety shall use rule making procedures to select its
12 method or methods. Failure of a person to provide an adequate breath or saliva
13 sample constitutes a refusal.

14 (e) [Repealed.]

15 (f) When a law enforcement officer has reason to believe that a person may
16 be violating or has violated section 1201 of this title, the officer may request
17 the person to provide a sample of breath for a preliminary screening test using
18 a device approved by the Commissioner of Public Safety for this purpose. The
19 person shall not have the right to consult an attorney prior to submitting to this
20 preliminary breath alcohol screening ~~test~~. The results of this preliminary
21 screening ~~test~~ may be used for the purpose of deciding whether an arrest

1 should be made and whether to request an evidentiary test and shall not be
2 used in any court proceeding except on those issues. Following the screening,
3 ~~test~~ additional tests may be required of the operator pursuant to the provisions
4 of section 1202 of this title.

5 * * *

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

13 * * *

14 Sec. 11. REPEAL

15 2020 Acts and Resolves No. 164, Sec. 24 (administration of tests; 23 V.S.A.
16 § 1203) is repealed.

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

18 (c) Secs. 10 (implementation of Medical Cannabis Registry),
19 13 (implementation of medical cannabis dispensaries), 18 (income tax
20 deduction), 18c (legislative intent), 21 (definition of evidentiary test),
21 22 (operating vehicle under the influence of alcohol or other substance),

1 23 (consent to taking of tests to determine blood alcohol content or presence of
2 other drug), ~~24 (administration of tests)~~, and 25 (independent testing of
3 evidentiary sample) shall take effect January 1, 2022.

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

5 Sec. 13. 4 V.S.A. § 33 is amended to read:

6 **§ 33. JURISDICTION; FAMILY DIVISION**

7 (a) Notwithstanding any other provision of law to the contrary, the Family
8 Division shall have exclusive jurisdiction to hear and dispose of the following
9 proceedings filed or pending on or after October 1, 1990:

10 * * *

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

18 * * *

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

20 **§ 5103. JURISDICTION**

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

6 * * *

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

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

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

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

16 * * *

17 **Sec. 15. 2020 Acts & Resolves No. 124 Sec. 3, is amended to read:**

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

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

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

4 (C) after attaining 17 years of age but before attaining 18 19 years of
5 age, committed any offense not listed in 13 V.S.A. § 5301(7) or subsection
6 5204(a) of this title, as long as the petition is filed prior to the defendant's 19th
7 birthday;

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

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

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

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

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

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

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

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

13 (b)(1) Notwithstanding the foregoing, inspection of such records and files
14 by, or dissemination of such records and files to the following is not
15 prohibited:

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

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

20 (C) a court in which a person is convicted of a criminal offense for
21 the purpose of imposing sentence upon or supervising the person, or by

1 officials of penal institutions and other penal facilities to which the person is
2 committed, or by a parole board in considering the person's parole or discharge
3 or in exercising supervision over the person;

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

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

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

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

18 (I) the Human Services Board and the Commissioner's Registry
19 Review Unit in processes required under Chapter 49 of this Title; and

20 (J) the Department for Children and Families.

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

4 * * *

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

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

7 § 1455. HATE-MOTIVATED CRIMES

8 * * *

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

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

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

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

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

21 (A) include demographic information about the defendants; and

1 (3) the Attorney General or designee;
2 (4) the Defender General or designee;
3 (5) the Executive Director of the State’s Attorneys and Sheriffs or
4 designee;

5 (6) the Chief Superior Judge or designee;

6 (7) the Commissioner of Corrections or designee;

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

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

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

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

14 * * *

15 **Sec. 20. RACIAL DISPARITIES IN CRIMINAL AND JUVENILE JUSTICE**
16 **SYSTEMS ADVISORY PANEL; REPORT ON BUREAU OF**
17 **RACIAL JUSTICES STATISTICS**

18 (a) On or before November 15, 2021, the Racial Disparities in the Criminal
19 and Juvenile Justice System Advisory Panel shall report to the House and
20 Senate Committees on Judiciary on the creation of a Bureau of Racial Justice
21 Statistics to collect and analyze data related to systemic racial bias and

1 disparities within the criminal and juvenile justice systems.. The report shall
2 address:

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

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

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

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

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

11 (b) For purposes of developing the report required by subsection (a) of this
12 section, the Panel shall:

13 (1) consult with:

14 (A) the Vermont Crime Research Group;

15 (B) the National Center on Restorative Justice;

16 (C) the University of Vermont; and

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

18 (2) consult with and have the assistance of:

19 (A) the Vermont Chief Performance Officer; and

20 (B) the Vermont Chief Data Officer.

1 This act shall take effect on passage, except that Sec. 10 shall take effect on
2 January 1, 2022.

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8 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE