

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

H.645

Introduced by Representatives Dolan of Essex Junction, Arsenault of
Williston, Chapin of East Montpelier, Christie of Hartford,
LaLonde of South Burlington, and Rachelson of Burlington

Referred to Committee on

Date:

Subject: Crimes; criminal procedure; restorative justice

Statement of purpose of bill as introduced: This bill proposes to create pre-charge and post-charge diversion programs under the administration of the Community Justice Unit of the Office of Attorney General, and in consultation with the Department of State’s Attorneys and Sheriffs, for certain eligible offenses and persons. The Department of State’s Attorneys and Sheriffs has the ability to create pre-charge and post-charge diversion policies, provided they contain certain statutorily proscribed minimums and are done in consultation with the Community Justice Unit and others. These statutory standards contain minimum requirements for the administration of the diversion programs, eligibility and referral processes, rights and responsibilities, and confidentiality. The bill also proposes to create a post-adjudication reparative program under the administration of the Department of Corrections, in consultation with the Judiciary, governed by memoranda of understanding that are required to outline eligible offenses, a process to

1 supplement eligible offenses, evidence-based screening procedures, and
2 confidentiality provisions.

3 An act relating to the expansion of approaches to restorative justice

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

5 Sec. 1. 3 V.S.A. chapter 7 is amended to read:

6 CHAPTER 7. ATTORNEY GENERAL

7 Subchapter 1. Election; Authority; Duties

8 § 151. ELECTION AND TERM

9 * * *

10 Subchapter 2. Restorative Justice Approaches

11 § 163. JUVENILE COURT DIVERSION ~~PROJECT~~ PROGRAM

12 (a) Purpose.

13 (1) The Attorney General shall develop and administer a juvenile court
14 diversion ~~project~~ program, for both pre-charge and post-charge referrals, for
15 the purpose of assisting juveniles charged with delinquent acts. In consultation
16 with the diversion programs, the Attorney General shall adopt a policies and
17 procedures manual to promote a uniform system across the State in compliance
18 with this section.

19 (2) The program shall be designed to provide a restorative option for
20 juveniles alleged to have caused harm in violation of a criminal statute or who

1 have been charged with violating a criminal statute as well as for victims or
2 those acting on a victim's behalf who have been allegedly harmed by the
3 responsible party. The diversion program can accept referrals to the program
4 as follows:

5 (A) Pre-charge by law enforcement or prosecutors for the qualifying
6 offenses listed in subdivision (c)(1)(C) of this section. Prosecutors may
7 establish additional criteria under which juveniles are eligible for pre-charge
8 diversion.

9 (B) Post-charge by prosecutors for juveniles charged with a first or a
10 second misdemeanor or a first nonviolent felony, or other offenses as the
11 prosecutor deems appropriate.

12 (C) Post-charge by prosecutors of juveniles who have been charged
13 with an offense and who have substance abuse or mental health treatment
14 needs regardless of the juvenile's prior criminal history record, except a
15 juvenile charged with a felony offense that is a crime listed in 13 V.S.A.
16 § 5301(7) shall not be eligible under this section. Juveniles who have attained
17 18 years of age who are subject to a petition in the Family Division pursuant to
18 33 V.S.A. chapters 52 or 52A shall also be eligible under this section.
19 Programming for these juveniles is intended to support access to appropriate
20 treatment or other resources with the aim of improving the person's health and
21 reducing future adverse involvement in the justice system.

1 (b) ~~The diversion program administered by the Attorney General shall~~
2 ~~support the operation of diversion programs in local communities through~~
3 ~~grants of financial assistance to, or by contracting for services with,~~
4 ~~municipalities, private groups, or other local organizations. The Attorney~~
5 ~~General may require local financial contributions as a condition of receipt of~~
6 ~~project funding.~~ Administration; report.

7 (1) The Attorney General shall support the operation of diversion
8 programs in local communities through grants of financial assistance to, or
9 contracts for services with, municipalities or other local organizations.
10 Municipalities or other local organizations engaged with a similar pre-charge
11 referral program before July 1, 2024 shall be prioritized for grants of financial
12 assistance or contracts for services. The Attorney General may require local
13 financial contributions as a condition of receipt of program funding.

14 (2) The Office of the Attorney General shall develop program outcomes
15 following the designated State of Vermont performance accountability
16 framework and, in consultation with the Department of State's Attorneys and
17 Sheriffs, the Office of the Defender General, the Center for Crime Victim
18 Services, and the Judiciary, report annually on or before December 1 to the
19 General Assembly on services provided and outcome indicators. As
20 components of the report required by this subsection, the Attorney General
21 shall include data on the number of pre-charge and post-charge diversion

1 program referrals in each county, offenses charged and crime types, successful
2 completion rates, and possible causes of any geographical disparities.

3 (3) The Attorney General is authorized to accept grants and gifts for the
4 purposes of this section, such acceptance being pursuant to 32 V.S.A. § 5.

5 ~~(c) All diversion projects receiving financial assistance from the Attorney~~
6 ~~General shall adhere to the following provisions:~~

7 ~~(1) The diversion project shall only accept persons against whom~~
8 ~~charges have been filed and the court has found probable cause but are not yet~~
9 ~~adjudicated.~~

10 ~~(2) Alleged offenders shall be informed of their right to the advice and~~
11 ~~assistance of private counsel or the public defender at all stages of the~~
12 ~~diversion process, including the initial decision to participate, and the decision~~
13 ~~to accept the diversion contract, so that the candidate may give his or her~~
14 ~~informed consent.~~

15 ~~(3) The participant shall be informed that his or her selection of the~~
16 ~~diversion contract is voluntary.~~

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

1 ~~(5) All information gathered in the course of the diversion process shall~~
2 ~~be held strictly confidential and shall not be released without the participant's~~
3 ~~prior consent (except that research and reports that do not require or establish~~
4 ~~the identity of individual participants are allowed).~~

5 ~~(6) Information related to the present offense that is divulged during the~~
6 ~~diversion program shall not be used in the prosecutor's case. However, the~~
7 ~~fact of participation and success, or reasons for failure may become part of the~~
8 ~~prosecutor's records.~~

9 ~~(7) The diversion project shall maintain sufficient records so that the~~
10 ~~reasons for success or failure of the program in particular cases and overall can~~
11 ~~be investigated by program staff.~~

12 ~~(8) Diversion projects shall be set up to respect the rights of participants.~~

13 ~~(9) Each participant shall pay a fee to the local juvenile court diversion~~
14 ~~project. The amount of the fee shall be determined by project officers based~~
15 ~~upon the financial capabilities of the participant. The fee shall not exceed~~
16 ~~\$150.00. The fee shall be a debt due from the participant, and payment of such~~
17 ~~shall be required for successful completion of the Program. Notwithstanding~~
18 ~~32 V.S.A. § 502(a), fees collected under this subdivision shall be retained and~~
19 ~~used solely for the purpose of the Court Diversion Program. Qualifying~~
20 ~~offenses; eligibility and referral process. The Department of State's Attorneys~~
21 ~~and Sheriffs, in cooperation with the Office of the Attorney General and the~~

1 county's juvenile court diversion program, shall develop and adopt clear
2 criteria for deciding which juveniles will be eligible for pre-charge and post-
3 charge diversion. The criteria shall be updated every two years and shared
4 with the Community Justice Unit of the Office of the Attorney General on or
5 before January 15 of each odd-numbered year. The Community Justice Unit
6 shall publicly post the provided criteria. However, a State's Attorney shall
7 retain final discretion over the juveniles who are eligible for diversion and the
8 referral of each case to diversion.

9 (1) Pre-charge diversion. The pre-charge diversion program shall accept
10 juveniles referred by a law enforcement agency or prosecutor before charges
11 are filed.

12 (A) A pre-charge referral shall be accompanied by:

13 (i) the name and contact information of the juvenile alleged to be
14 the responsible party;

15 (ii) the name and contact information of the alleged victim or
16 victims of the offense;

17 (iii) an affidavit of probable cause; and

18 (iv) a citation to the Criminal Division of the Superior Court.

19 (B) At the time of the pre-charge referral, law enforcement shall
20 submit documentation of the pre-charge diversion referral to the State's

1 Attorney, including the affidavit of probable cause and citation to the Criminal
2 Division.

3 (C) Offenses that qualify for pre-charge referral include all
4 misdemeanors except:

5 (i) a listed crime as defined in 13 V.S.A. § 5301(7);

6 (ii) a violation of 13 V.S.A. chapter 64 related to sexual
7 exploitation of children;

8 (iii) a violation of 13 V.S.A. § 1030 related to a violation of an
9 abuse prevention order, an order against stalking or sexual assault, or a
10 protective order concerning contact with a child;

11 (iv) a violation of 13 V.S.A. chapter 28 related to abuse, neglect,
12 or exploitation of a vulnerable adult;

13 (v) a violation of 13 V.S.A. § 2605 related to voyeurism;

14 (vi) a violation of 13 V.S.A. § 2601 related to lewd and lascivious
15 conduct;

16 (vii) a violation of 13 V.S.A. § 352 related to cruelty to animals;

17 (viii) a violation of 13 V.S.A. § 1026a related to aggravated
18 disorderly conduct;

19 (ix) a violation of 13 V.S.A. § 3006 related to neglect of duty by a
20 public officer;

1 (x) a violation of 13 V.S.A. § 5409 related to failure to comply
2 with sex offender registry requirements;

3 (xi) a violation of 13 V.S.A. § 2802, 2802a, 2803, 2804, or 2804b
4 related to obscenity;

5 (xii) a violation of 13 V.S.A. § 1455 related to hate motivated
6 crimes;

7 (xiii) a violation of 13 V.S.A. § 1456 related to burning of a
8 religious symbol;

9 (xiv) a violation of 23 V.S.A. § 1091 or 1201(a) related to
10 operating under the influences of alcohol or other substance; and

11 (xv) a violation of 13 V.S.A. § 7559 related to violating conditions
12 of release.

13 (D) Prosecutors shall have the right to withdraw any pre-charge
14 referral from the diversion program and file a charge in court.

15 (E) The diversion program shall have the right to determine that the
16 matter is not appropriate for pre-charge programming and send the referral
17 back to the law enforcement agency and prosecutor.

18 (F) A juvenile who does not successfully complete pre-charge
19 diversion shall have the juvenile's referral sent back to the law enforcement
20 agency and prosecutor.

1 (2) Post-charge diversion. The post-charge diversion program shall
2 accept juveniles against whom charges have been filed and the court has found
3 probable cause, but are not adjudicated.

4 (A) A prosecutor may refer a juvenile to diversion either before or
5 after arraignment and shall notify in writing the diversion program and the
6 court of the prosecutor’s intention of the referral to diversion.

7 (B) If a juvenile is charged with a qualifying crime as defined in
8 13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall
9 provide the juvenile with the opportunity to participate in the court diversion
10 program unless the prosecutor states on the record at arraignment or a
11 subsequent hearing why a referral to the post-charge program would not serve
12 the ends of justice. Factors considered in the ends-of-justice determination
13 include the juvenile’s criminal record, the views of the alleged victim or
14 victims, or the need for probationary supervision.

15 (C) Notwithstanding subdivisions (1) and (2) of this subsection (c),
16 the diversion program may accept cases pursuant to 33 V.S.A. §§ 5225 and
17 5280.

18 (3)(A) The Department of State’s Attorneys and Sheriffs, in consultation
19 with the Community Justice Unit of the Office of the Attorney General, the
20 Office of the Defender General, the Center for Crime Victim Services, and the
21 Judiciary, shall develop and establish uniform pre-charge and post-charge

1 juvenile diversion referral policies that outline clear criteria for determining
2 which juveniles will be eligible for pre-charge and post-charge diversion.
3 These policies shall also contemplate how victim perspectives are incorporated
4 into diversion programming. The Department of State's Attorneys and
5 Sheriffs may also establish criteria for qualifying offenses in addition to those
6 offenses mandated pursuant to subdivision (1)(C) of this subsection (c).

7 (B) On or before April 1, 2025, each State's Attorney's office shall
8 adopt and follow a pre-charge and post-charge referral policy.

9 (4) On or before October 1, 2025, and every odd-numbered year
10 thereafter, the Department of State's Attorneys and Sheriffs, in consultation
11 with others, including the Community Justice Unit, the Office of the Defender
12 General, the Center for Crime Victim Services, and the Judiciary, shall review
13 and, if necessary, update the uniform pre-charge and post-charge referral
14 policies.

15 (5) To encourage fair and consistent pre-charge and post-charge
16 diversion referral policies and methods statewide, the Department of State's
17 Attorneys and Sheriffs, in consultation with the Community Justice Unit and
18 the Office of the Defender General, shall review the policies of each State's
19 Attorney's office required to adopt a policy pursuant to subdivision (3) of this
20 subsection (c), to ensure that those policies establish each component of the
21 uniform policy on or before April 15, 2025. If the Department of State's

1 Attorneys and Sheriffs finds that a policy does not meet each component of the
2 uniform policy, it shall work with the State's Attorney to bring the policy into
3 compliance. If, after consultation with Department of State's Attorneys and
4 Sheriffs, the State's Attorney fails to adopt a policy that meets each component
5 of the uniform policy, that State's Attorney shall be deemed to have adopted,
6 and shall follow, the uniform policy established by the Department of State's
7 Attorneys and Sheriffs.

8 ~~(d) The Attorney General is authorized to accept grants and gifts for the~~
9 ~~purposes of this section, such acceptance being pursuant to 32 V.S.A. § 5.~~

10 Confidentiality.

11 (1) The matter shall become confidential when notice of a pre-charge
12 referral is provided to the juvenile diversion program, or when notice of a post-
13 charge referral is provided to the court. However, for juveniles who are
14 subject to conditions of release imposed pursuant to 13 V.S.A. § 7554 and who
15 are referred to diversion pursuant to subdivision (a)(2)(C) of this section, the
16 matter shall become confidential upon the successful completion of diversion.

17 (2) All information gathered in the course of the juvenile diversion
18 process shall be held strictly confidential and shall not be released without the
19 participant's prior consent, except that research and reports that do not
20 establish the identity of individual participants are allowed.

1 (3) If law enforcement or the prosecutor refers a case to diversion, the
2 prosecutor may release information to the victim upon a showing of legitimate
3 need and subject to an appropriate protective agreement defining the purpose
4 for which the information is being released and in all other respects
5 maintaining the confidentiality of the information; otherwise, files held by the
6 court, the prosecutor, law enforcement agency, referring entity, and the
7 diversion program related to the matter shall be confidential and shall remain
8 confidential unless:

9 (A) the diversion program declines to accept the referral;

10 (B) the juvenile declines to participate in diversion;

11 (C) the diversion program accepts the referral, but the juvenile does
12 not successfully complete diversion; or

13 (D) the prosecutor recalls the referral to diversion.

14 (e) Rights and responsibilities.

15 (1) ~~Within 30 days after the two-year anniversary of a successful~~
16 ~~completion of juvenile diversion, the court shall provide notice to all parties of~~
17 ~~record of the court's intention to order the expungement of all court files and~~
18 ~~records, law enforcement records other than entries in the juvenile court~~
19 ~~diversion program's centralized filing system, fingerprints, and photographs~~
20 ~~applicable to the proceeding. However, the court shall not order expungement~~
21 ~~if the participant does not satisfy each of subdivisions (A)–(D) of this~~

1 ~~subdivision. The court shall give the State's Attorney an opportunity for a~~
2 ~~hearing to contest the expungement of the records. The court shall expunge~~
3 ~~the records if it finds:~~

4 ~~(A) two years have elapsed since the successful completion of~~
5 ~~juvenile diversion by the participant;~~

6 ~~(B) the participant has not been convicted of a subsequent felony or~~
7 ~~misdemeanor during the two-year period, and no proceedings are pending~~
8 ~~seeking such conviction;~~

9 ~~(C) rehabilitation of the participant has been attained to the~~
10 ~~satisfaction of the court; and~~

11 ~~(D) the participant does not owe restitution related to the case. Juvenile~~
12 ~~court diversion programs shall be set up to respect the rights of participants.~~

13 (2) ~~The court may expunge any records that were sealed pursuant to this~~
14 ~~subsection prior to July 1, 2018 unless the State's Attorney's office that~~
15 ~~prosecuted the case objects. Thirty days prior to expunging a record pursuant~~
16 ~~to this subdivision, the court shall provide written notice of its intent to~~
17 ~~expunge the record to the State's Attorney's office that prosecuted the case.~~
18 Diversion participants shall be informed of their right to the advice and
19 assistance of legal counsel at all stages of the diversion process, including the
20 initial decision to participate and the decision to accept the juvenile diversion
21 contract, so that the candidate may give informed consent.

1 ~~(3)(A) The court shall keep a special index of cases that have been~~
2 ~~expunged pursuant to this section together with the expungement order. The~~
3 ~~index shall list only the name of the person convicted of the offense, his or her~~
4 ~~date of birth, the docket number, and the criminal offense that was the subject~~
5 ~~of the expungement.~~

6 ~~(B) The special index and related documents specified in subdivision~~
7 ~~(A) of this subdivision (3) shall be confidential and shall be physically and~~
8 ~~electronically segregated in a manner that ensures confidentiality and that~~
9 ~~limits access to authorized persons.~~

10 ~~(C) Inspection of the expungement order and the certificate may be~~
11 ~~permitted only upon petition by the person who is the subject of the case. The~~
12 ~~Chief Superior Judge may permit special access to the index and the~~
13 ~~documents for research purposes pursuant to the rules for public access to~~
14 ~~court records.~~

15 ~~(D) The Court Administrator shall establish policies for implementing~~
16 ~~this subsection (e). Information related to the present offense that is divulged~~
17 ~~during the juvenile diversion program shall not be used against the juvenile in~~
18 ~~the juvenile's criminal or juvenile case for any purpose, including~~
19 ~~impeachment or cross-examination. However, the fact of participation and~~
20 ~~success, or reasons for failure, may become part of the prosecutor's records.~~

1 (4)(A) The pre-charge diversion program may charge fees to its
2 participants, which shall be paid to the local juvenile court diversion program.
3 If a fee is charged, it shall be determined by program officers or employees
4 based upon the financial capabilities of the participant. The fee shall not
5 exceed \$150.00. Any fee charged shall be a debt due from the participant, and
6 payment of such shall be required for successful completion of the program.

7 (B) Each participant in the post-charge diversion program shall pay a
8 fee to the local juvenile court diversion program. The amount of the fee shall
9 be determined by program officers or employees based upon the financial
10 capabilities of the participant. The fee shall not exceed \$300.00. The fee shall
11 be a debt due from the participant, and payment of such shall be required for
12 successful completion of the program.

13 (C) Notwithstanding 32 V.S.A. § 502(a), fees collected pursuant to
14 this subdivision (4) shall be retained and used solely for the purpose of the
15 juvenile court diversion program.

16 (5) Any alleged victims shall be notified once a juvenile chooses to
17 participate in the pre-charge diversion program.

18 ~~(f) Except as otherwise provided in this section, upon the entry of an order~~
19 ~~expunging files and records under this section, the proceedings in the matter~~
20 ~~shall be considered never to have occurred, all index references thereto shall be~~
21 ~~deleted, and the participant, the court, and law enforcement officers and~~

1 ~~departments shall reply to any request for information that no record exists~~
2 ~~with respect to such participant inquiry in any matter. Copies of the order shall~~
3 ~~be sent to each agency or official named therein. Records and expungement.~~

4 (1) Not later than 10 days after the successful completion of the pre-
5 charge diversion program, the juvenile diversion program shall notify the
6 referring entity and the State's Attorney office of the participant's successful
7 completion, after which all related records held by the referring entity, a law
8 enforcement agency, and the prosecutor shall be expunged within two years
9 after successful completion.

10 (2) Within 30 days after the two-year anniversary of a successful
11 completion of juvenile post-charge diversion, the court shall provide notice to
12 all parties of record of the court's intention to order the expungement of all
13 court files and records, law enforcement records, fingerprints, and photographs
14 other than entries in the adult court diversion program's centralized filing
15 system applicable to the proceeding. However, the court shall not order
16 expungement if the participant does not satisfy each of subdivisions (A)–(D) of
17 this subdivision. The court shall give the State's Attorney an opportunity for a
18 hearing to contest the expungement of the records. The court shall expunge
19 the records if it finds:

20 (A) two years have elapsed since the successful completion of the
21 juvenile post-charge diversion program by the participant;

1 (B) the participant has not been convicted of a subsequent felony or
2 misdemeanor during the two-year period, and no proceedings are pending
3 seeking such conviction;

4 (C) rehabilitation of the participant has been attained to the
5 satisfaction of the court; and

6 (D) the participant does not owe restitution related to the case.

7 (3) The court may expunge any records that were sealed pursuant to this
8 subsection prior to July 1, 2018 unless the State's Attorney's office that
9 prosecuted the case objects. Thirty days prior to expunging a record pursuant
10 to this subdivision, the court shall provide written notice of its intent to
11 expunge the record to the State's Attorney's office that prosecuted the case.

12 (4)(A) The court shall keep a special index of post-charge diversion
13 cases that have been expunged pursuant to this section together with the
14 expungement order. The index shall list only the name of the person convicted
15 of the offense, the person's date of birth, the docket number, and the criminal
16 offense that was the subject of the expungement.

17 (B) The special index and related documents specified in subdivision
18 (A) of this subdivision (4) shall be confidential and shall be physically and
19 electronically segregated in a manner that ensures confidentiality and that
20 limits access to authorized persons.

1 (C) Inspection of the expungement order and the certificate may be
2 permitted only upon petition by the person who is the subject of the case. The
3 Chief Superior Judge may permit special access to the index and the
4 documents for research purposes pursuant to the rules for public access to
5 court records.

6 (D) The Court Administrator shall establish policies for
7 implementing this subsection (f).

8 (5) Except as otherwise provided in this section, upon the entry of an
9 order expunging files and records under this section, the proceedings in the
10 matter shall be considered never to have occurred; all index references thereto
11 shall be deleted; and the participant, the court, law enforcement officers and
12 departments, prosecutors, the referring entity, and the diversion program shall
13 reply to any request for information that no record exists with respect to such
14 participant inquiry in any matter. Copies of the order shall be sent to each
15 agency, entity, or official named therein.

16 (6) The process of automatically expunging records as provided in this
17 section shall only apply to those persons who completed diversion on or after
18 July 1, 2002. Any person who completed diversion prior to July 1, 2002 must
19 apply to the court to have the person's records expunged. Expungement shall
20 occur if the requirements of this subsection (f) are met.

1 ~~(g)~~ The process of automatically expunging records as provided in this
2 section shall only apply to those persons who completed diversion on or after
3 July 1, 2002. Any person who completed diversion prior to July 1, 2002 must
4 apply to the court to have his or her records expunged. Expungement shall
5 occur if the requirements of subsection ~~(e)~~ of this section are met.

6 ~~(h)~~(g) Subject to the approval of the Attorney General, the Vermont
7 Association of Court Diversion Programs may develop and administer
8 programs to assist persons under this section charged with delinquent,
9 criminal, and civil offenses.

10 ~~(i)~~(h) Notwithstanding subdivision (c)(1) of this section, the diversion
11 program may accept cases from the Youth Substance Awareness Safety
12 Program pursuant to 7 V.S.A. § 656 or 18 V.S.A. § 4230b. The confidentiality
13 provisions of this section shall become effective when a notice of violation is
14 issued under 7 V.S.A. § 656(b) or 18 V.S.A. § 4230b(b) and shall remain in
15 effect unless the person fails to register with or complete the Youth Substance
16 Awareness Safety Program.

17 ~~(j)~~(i) Notwithstanding subdivision (c)(1) of this section, the diversion
18 program may accept cases pursuant to 33 V.S.A. §§ 5225–5280.

19 § 164. ADULT COURT DIVERSION PROGRAM

20 (a) Purpose.

1 (1) The Attorney General shall develop and administer an adult court
2 diversion program, for both pre-charge and post-charge referrals, in all
3 counties. In consultation with diversion programs, the Attorney General shall
4 adopt a policies and procedures manual to promote a uniform system across
5 the State in compliance with this section.

6 (2) The program shall be designed to provide a restorative option for
7 persons alleged to have caused harm in violation of a criminal statute or who
8 have been charged with violating a criminal statute as well as for victims or
9 those acting on a victim's behalf who have been allegedly harmed by the
10 responsible party. The diversion program can accept referrals to the program
11 as follows:

12 (A) Pre-charge by law enforcement or prosecutors for the qualifying
13 offenses listed in subdivision (c)(1)(C) of this section. Prosecutors may
14 establish additional criteria under which persons are eligible for pre-charge
15 diversion.

16 (B) Post-charge by prosecutors for persons charged with a first or a
17 second misdemeanor or a first nonviolent felony, or other offenses as the
18 prosecutor deems appropriate.

19 (C) Post-charge by prosecutors of persons who have been charged
20 with an offense and who have substance abuse or mental health treatment
21 needs regardless of the person's prior criminal history record, except a person

1 charged with a felony offense that is a crime listed in 13 V.S.A. § 5301(7) shall
2 not be eligible under this section. Persons who have attained 18 years of age
3 who are subject to a petition in the Family Division pursuant to 33 V.S.A.
4 chapters 52 or 52A shall also be eligible under this section. Programming for
5 these persons is intended to support access to appropriate treatment or other
6 resources with the aim of improving the person's health and reducing future
7 adverse involvement in the justice system.

8 (b) ~~The program shall be designed for two purposes:~~

9 (1) ~~To assist adults who have been charged with a first or a second~~
10 ~~misdemeanor or a first nonviolent felony.~~

11 (2) ~~To assist persons who have been charged with an offense and who have~~
12 ~~substance abuse or mental health treatment needs regardless of the person's~~
13 ~~prior criminal history record, except a person charged with a felony offense~~
14 ~~that is a crime listed in 13 V.S.A. § 5301(7) shall not be eligible under this~~
15 ~~section. Persons who have attained 18 years of age who are subject to a~~
16 ~~petition in the Family Division pursuant to 33 V.S.A. chapters 52 or 52A shall~~
17 ~~also be eligible under this section. Programming for these persons is intended~~
18 ~~to support access to appropriate treatment or other resources with the aim of~~
19 ~~improving the person's health and reducing future adverse involvement in the~~
20 ~~justice system. Administration; report.~~

1 (1) The Attorney General shall support the operation of diversion
2 programs in local communities through grants of financial assistance to, or
3 contracts for services with, municipalities or other local organizations.
4 Municipalities or other local organizations engaged with a similar pre-charge
5 referral programs before July 1, 2024 shall be prioritized for grants of financial
6 assistance or contracts for services. The Attorney General may require local
7 financial contributions as a condition of receipt of program funding.

8 (2) The Office of the Attorney General shall develop program outcomes
9 following the designated State of Vermont performance accountability
10 framework and, in consultation with the Department of State's Attorneys and
11 Sheriffs, the Office of the Defender General, the Center for Crime Victim
12 Services, and the Judiciary, report annually on or before December 1 to the
13 General Assembly on services provided and outcome indicators. As
14 components of the report required by this subsection, the Attorney General
15 shall include data on the number of pre-charge and post-charge diversion
16 program referrals in each county, offenses charged and crime types, successful
17 completion rates, and possible causes of any geographical disparities.

18 (3) The Attorney General is authorized to accept grants and gifts for the
19 purposes of this section, such acceptance being pursuant to 32 V.S.A. § 5.

20 ~~(c) The program shall support the operation of diversion programs in local~~
21 ~~communities through grants of financial assistance to, or contracts for services~~

1 ~~with, municipalities, private groups, or other local organizations. The Attorney~~
2 ~~General may require local financial contributions as a condition of receipt of~~
3 ~~program funding.~~ Qualifying offenses; eligibility and referral process. The
4 Department of State's Attorneys and Sheriffs, in cooperation with the Office of
5 the Attorney General and the county's adult court diversion program, shall
6 develop and adopt clear criteria for deciding which persons will be eligible for
7 pre-charge and post-charge diversion. The criteria shall be updated every two
8 years and shared with the Community Justice Unit of the Office of the
9 Attorney General on or before January 15 of each odd-numbered year. The
10 Community Justice Unit shall publicly post the provided criteria. However, a
11 State's Attorney shall retain final discretion over the persons who are eligible
12 for diversion and the referral of each case to diversion.

13 (1) Pre-charge diversion. The pre-charge diversion program shall accept
14 persons referred by a law enforcement agency or prosecutor before charges are
15 filed.

16 (A) A pre-charge referral shall be accompanied by:

17 (i) the name and contact information of the person alleged to be
18 the responsible party;

19 (ii) the name and contact information of the alleged victim or
20 victims of the offense;

21 (iii) an affidavit of probable cause; and

1 (iv) a citation to the Criminal Division of the Superior Court.

2 (B) At the time of the pre-charge referral, law enforcement shall
3 submit documentation of the pre-charge diversion referral to the State's
4 Attorney, including the affidavit of probable cause and citation to the Criminal
5 Division.

6 (C) Offenses that qualify for pre-charge referral include all
7 misdemeanors except:

8 (i) a listed crime as defined in 13 V.S.A. § 5301(7);

9 (ii) a violation of 13 V.S.A. chapter 64 related to sexual
10 exploitation of children;

11 (iii) a violation of 13 V.S.A. § 1030 related to a violation of an
12 abuse prevention order, an order against stalking or sexual assault, or a
13 protective order concerning contact with a child;

14 (iv) a violation of 13 V.S.A. chapter 28 related to abuse, neglect,
15 or exploitation of a vulnerable adult;

16 (v) a violation of 13 V.S.A. § 2605 related to voyeurism;

17 (vi) a violation of 13 V.S.A. § 2601 related to lewd and lascivious
18 conduct;

19 (vii) a violation of 13 V.S.A. § 352 related to cruelty to animals;

20 (viii) a violation of 13 V.S.A. § 1026a related to aggravated
21 disorderly conduct;

1 (ix) a violation of 13 V.S.A. § 3006 related to neglect of duty by a
2 public officer;

3 (x) a violation of 13 V.S.A. § 5409 related to failure to comply
4 with sex offender registry requirements;

5 (xi) a violation of 13 V.S.A. § 2802, 2802a, 2803, 2804, or 2804b
6 related to obscenity;

7 (xii) a violation of 13 V.S.A. § 1455 related to hate motivated
8 crimes;

9 (xiii) a violation of 13 V.S.A. § 1456 related to burning of a
10 religious symbol;

11 (xiv) a violation of 23 V.S.A. § 1091 or 1201(a) related to
12 operating under the influences of alcohol or other substance; and

13 (xv) a violation of 13 V.S.A. § 7559 related to violating conditions
14 of release.

15 (D) Prosecutors shall have the right to withdraw any pre-charge
16 referral from the diversion program and file a charge in court.

17 (E) The diversion program shall have the right to determine that the
18 matter is not appropriate for pre-charge programming and send the referral
19 back to the law enforcement agency and prosecutor.

1 (F) A person who does not successfully complete pre-charge
2 diversion shall have the person's referral sent back to the law enforcement
3 agency and prosecutor.

4 (2) Post-charge diversion. The post-charge diversion program shall
5 accept persons against whom charges have been filed and the court has found
6 probable cause, but are not adjudicated.

7 (A) A prosecutor may refer a person to diversion either before or
8 after arraignment and shall notify in writing the diversion program and the
9 court of the prosecutor's intention of the referral to diversion.

10 (B) If a person is charged with a qualifying crime as defined in
11 13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall
12 provide the person with the opportunity to participate in the court diversion
13 program unless the prosecutor states on the record at arraignment or a
14 subsequent hearing why a referral to the post-charge program would not serve
15 the ends of justice. Factors considered in the ends-of-justice determination
16 include the person's criminal record, the views of the alleged victim or victims,
17 or the need for probationary supervision.

18 (C) Notwithstanding subdivisions (1) and (2) of this subsection (c),
19 the diversion program may accept cases pursuant to 33 V.S.A. §§ 5225 and
20 5280.

1 (3)(A) The Department of State’s Attorneys and Sheriffs, in consultation
2 with the Community Justice Unit of the Office of the Attorney General, the
3 Office of the Defender General, the Center for Crime Victim Services, and the
4 Judiciary, shall develop and establish uniform pre-charge and post-charge
5 diversion referral policies that outline clear criteria for determining which
6 persons will be eligible for pre-charge and post-charge diversion. These
7 policies shall also contemplate how victim perspectives are incorporated into
8 diversion programming. The Department of State’s Attorneys and Sheriffs
9 may also establish criteria for qualifying offenses in addition to those offenses
10 mandated pursuant to subdivision (1)(C) of this subsection (c).

11 (B) On or before April 1, 2025, each State’s Attorney’s office shall
12 adopt and follow a pre-charge and post-charge referral policy.

13 (4) On or before October 1, 2025, and every odd-numbered year
14 thereafter, the Department of State’s Attorneys and Sheriffs, in consultation
15 with others, including the Community Justice Unit, the Office of the Defender
16 General, the Center for Crime Victim Services, and the Judiciary, shall review
17 and, if necessary, update the uniform pre-charge and post-charge referral
18 policies.

19 (5) To encourage fair and consistent pre-charge and post-charge
20 diversion referral policies and methods statewide, the Department of State’s
21 Attorneys and Sheriffs, in consultation with the Community Justice Unit and

1 the Office of the Defender General, shall review the policies of each State's
2 Attorney's office required to adopt a policy pursuant to subdivision (3) of this
3 subsection (c), to ensure that those policies establish each component of the
4 uniform policy on or before April 15, 2025. If the Department of State's
5 Attorneys and Sheriffs finds that a policy does not meet each component of the
6 uniform policy, it shall work with the State's Attorney to bring the policy into
7 compliance. If, after consultation with Department of State's Attorneys and
8 Sheriffs, the State's Attorney fails to adopt a policy that meets each component
9 of the uniform policy, that State's Attorney shall be deemed to have adopted,
10 and shall follow, the uniform policy established by the Department of State's
11 Attorneys and Sheriffs.

12 ~~(d) The Office of the Attorney General shall develop program outcomes~~
13 ~~following the designated State of Vermont performance accountability~~
14 ~~framework and, in consultation with the Department of State's Attorneys and~~
15 ~~Sheriffs, the Office of the Defender General, the Center for Crime Victim~~
16 ~~Services, and the Judiciary, report annually on or before December 1 to the~~
17 ~~General Assembly on services provided and outcome indicators. As a~~
18 ~~component of the report required by this subsection, the Attorney General shall~~
19 ~~include data on diversion program referrals in each county and possible causes~~
20 ~~of any geographical disparities. Confidentiality.~~

1 (1) The matter shall become confidential when notice of a pre-charge
2 referral is provided to the diversion program, or when notice of a post-charge
3 referral is provided to the court. However, persons who are subject to
4 conditions of release imposed pursuant to 13 V.S.A. § 7554 and who are
5 referred to diversion pursuant to subdivision (a)(2)(C) of this section, the
6 matter shall become confidential upon the successful completion of diversion.

7 (2) All information gathered in the course of the adult diversion process
8 shall be held strictly confidential and shall not be released without the
9 participant's prior consent, except that research and reports that do not
10 establish the identity of individual participants are allowed.

11 (3) If law enforcement or the prosecutor refers a case to diversion, the
12 prosecutor may release information to the victim upon a showing of legitimate
13 need and subject to an appropriate protective agreement defining the purpose
14 for which the information is being released and in all other respects
15 maintaining the confidentiality of the information; otherwise, files held by the
16 court, the prosecutor, law enforcement agency, referring entity, and the
17 diversion program related to the matter shall be confidential and shall remain
18 confidential unless:

19 (A) the diversion program declines to accept the referral;

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

1 (C) the diversion program accepts the referral, but the person does
2 not successfully complete diversion; or

3 (D) the prosecutor recalls the referral to diversion.

4 ~~(e) All adult court diversion programs receiving financial assistance from~~
5 ~~the Attorney General shall adhere to the following provisions: Rights and~~
6 ~~responsibilities.~~

7 ~~(1) The diversion program shall accept only persons against whom~~
8 ~~charges have been filed and the court has found probable cause, but are not yet~~
9 ~~adjudicated. The prosecuting attorney may refer a person to diversion either~~
10 ~~before or after arraignment and shall notify in writing the diversion program~~
11 ~~and the court of his or her intention to refer the person to diversion. The matter~~
12 ~~shall become confidential when notice is provided to the court, except that for~~
13 ~~persons who are subject to conditions of release imposed pursuant to 13 V.S.A.~~
14 ~~§ 7554 and who are referred to diversion pursuant to subdivision (b)(2) of this~~
15 ~~section, the matter shall become confidential upon the successful completion of~~
16 ~~diversion. If a person is charged with a qualifying crime as defined in~~
17 ~~13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall~~
18 ~~provide the person with the opportunity to participate in the court diversion~~
19 ~~program unless the prosecutor states on the record at arraignment or a~~
20 ~~subsequent hearing why a referral to the program would not serve the ends of~~
21 ~~justice. If the prosecuting attorney prosecutor refers a case to diversion, the~~

1 ~~prosecuting attorney prosecutor may release information to the victim upon a~~
2 ~~showing of legitimate need and subject to an appropriate protective agreement~~
3 ~~defining the purpose for which the information is being released and in all~~
4 ~~other respects maintaining the confidentiality of the information; otherwise,~~
5 ~~files held by the court, the prosecuting attorney prosecutor, and the law~~
6 ~~enforcement agency related to the charges shall be confidential and shall~~
7 ~~remain confidential unless:~~

8 ~~(A) the diversion program declines to accept the case;~~

9 ~~(B) the person declines to participate in diversion;~~

10 ~~(C) the diversion program accepts the case, but the person does not~~
11 ~~successfully complete diversion; or~~

12 ~~(D) the prosecuting attorney prosecutor recalls the referral to~~
13 ~~diversion. Adult court diversion programs shall be set up to respect the rights~~
14 ~~of participants.~~

15 (2) ~~Alleged offenders shall be informed of their right to the advice and~~
16 ~~assistance of private counsel or the public defender at all stages of the~~
17 ~~diversion process, including the initial decision to participate, and the decision~~
18 ~~to accept the adult diversion contract, so that the candidate may give informed~~
19 ~~consent. Diversion participants shall be informed of their right to the advice~~
20 ~~and assistance of legal counsel at all stages of the diversion process, including~~

1 the initial decision to participate and the decision to accept the adult diversion
2 contract, so that the candidate may give informed consent.

3 ~~(3) The participant shall be informed that his or her selection of the adult~~
4 ~~diversion contract is voluntary.~~ The participant shall be informed that
5 participation in the diversion program is voluntary.

6 ~~(4) Each State's Attorney, in cooperation with the Office of the Attorney~~
7 ~~General and the adult court diversion program, shall develop clear criteria for~~
8 ~~deciding what types of offenses and offenders will be eligible for diversion;~~
9 ~~however, the State's Attorney shall retain final discretion over the referral of~~
10 ~~each case for diversion.~~ Information related to the present offense that is
11 divulged during the adult diversion program shall not be used against the
12 person in the person's criminal case for any purpose, including impeachment
13 or cross-examination. However, the fact of participation and success, or
14 reasons for failure, may become part of the prosecutor's records.

15 ~~(5) All information gathered in the course of the adult diversion process~~
16 ~~shall be held strictly confidential and shall not be released without the~~
17 ~~participant's prior consent (except that research and reports that do not~~
18 ~~establish the identity of individual participants are allowed).~~

19 (A) The pre-charge diversion program may charge fees to its
20 participants, which shall be paid to the local adult court diversion program. If
21 a fee is charged, it shall be determined by program officers or employees based

1 upon the financial capabilities of the participant. The fee shall not exceed
2 \$150.00. Any fee charged shall be a debt due from the participant, and
3 payment of such shall be required for successful completion of the program.

4 (B) Each participant in the post-charge diversion program shall pay a
5 fee to the local adult court diversion program. The amount of the fee shall be
6 determined by program officers or employees based upon the financial
7 capabilities of the participant. The fee shall not exceed \$300.00. The fee shall
8 be a debt due from the participant, and payment of such shall be required for
9 successful completion of the program.

10 (C) Notwithstanding 32 V.S.A. § 502(a), fees collected pursuant to
11 this subdivision (5) shall be retained and used solely for the purpose of the
12 adult court diversion program.

13 ~~(6) Information related to the present offense that is divulged during the~~
14 ~~adult diversion program shall not be used against the person in the person's~~
15 ~~criminal or juvenile case for any purpose, including impeachment or cross-~~
16 ~~examination. However, the fact of participation and success, or reasons for~~
17 ~~failure, may become part of the prosecutor's records. Any alleged victims~~
18 ~~shall be notified once a person chooses to participate in the pre-charge~~
19 ~~diversion program.~~

20 ~~(7)(A) Irrespective of whether a record was expunged, the adult court~~
21 ~~diversion program shall maintain sufficient records so that the reasons for~~

1 ~~success or failure of the program in particular cases and overall can be~~
2 ~~investigated by program staff. These records shall include a centralized~~
3 ~~statewide filing system that will include the following information about~~
4 ~~individuals who have successfully completed an adult court diversion program:~~

5 ~~(i) name and date of birth;~~

6 ~~(ii) offense charged and date of offense;~~

7 ~~(iii) place of residence;~~

8 ~~(iv) county where diversion process took place; and~~

9 ~~(v) date of completion of diversion process.~~

10 ~~(B) These records shall not be available to anyone other than the~~
11 ~~participant and his or her attorney, State's Attorneys, the Attorney General,~~
12 ~~and directors of adult court diversion programs.~~

13 ~~(C) Notwithstanding subdivision (B) of this subdivision (e)(7), the~~
14 ~~Attorney General shall, upon request, provide to a participant or his or her~~
15 ~~attorney sufficient documentation to show that the participant successfully~~
16 ~~completed diversion.~~

17 ~~(8) Adult court diversion programs shall be set up to respect the rights of~~
18 ~~participants.~~

19 ~~(9) Each participant shall pay a fee to the local adult court diversion~~
20 ~~program. The amount of the fee shall be determined by program officers or~~
21 ~~employees based upon the financial capabilities of the participant. The fee~~

1 ~~shall not exceed \$300.00. The fee shall be a debt due from the participant, and~~
2 ~~payment of such shall be required for successful completion of the program.~~
3 ~~Notwithstanding 32 V.S.A. § 502(a), fees collected under this subdivision shall~~
4 ~~be retained and used solely for the purpose of the court diversion program.~~

5 (f) ~~The Attorney General is authorized to accept grants and gifts for the~~
6 ~~purposes of this section, such acceptance being pursuant to 32 V.S.A. § 5.~~

7 Records and expungement.

8 (1) Not later than 10 days after the successful completion of the pre-
9 charge diversion program, the diversion program shall notify the referring
10 entity and the State's Attorney office of the participant's successful
11 completion, after which all related records held by the referring entity, a law
12 enforcement agency, and the prosecutor shall be expunged within two years
13 after successful completion.

14 (2) Within 30 days after the two-year anniversary of a successful
15 completion of adult post-charge diversion, the court shall provide notice to all
16 parties of record of the court's intention to order the expungement of all court
17 files and records, law enforcement records, fingerprints, and photographs other
18 than entries in the adult court diversion program's centralized filing system
19 applicable to the proceeding. However, the court shall not order expungement
20 if the participant does not satisfy each of subdivisions (A)–(D) of this
21 subdivision. The court shall give the State's Attorney an opportunity for a

1 hearing to contest the expungement of the records. The court shall expunge
2 the records if it finds:

3 (A) two years have elapsed since the successful completion of the
4 adult post-charge diversion program by the participant;

5 (B) the participant has not been convicted of a subsequent felony or
6 misdemeanor during the two-year period, and no proceedings are pending
7 seeking such conviction;

8 (C) rehabilitation of the participant has been attained to the
9 satisfaction of the court; and

10 (D) the participant does not owe restitution related to the case.

11 (3) The court may expunge any records that were sealed pursuant to this
12 subsection prior to July 1, 2018 unless the State's Attorney's office that
13 prosecuted the case objects. Thirty days prior to expunging a record pursuant
14 to this subdivision, the court shall provide written notice of its intent to
15 expunge the record to the State's Attorney's office that prosecuted the case.

16 (4)(A) The court shall keep a special index of post-charge diversion
17 cases that have been expunged pursuant to this section together with the
18 expungement order. The index shall list only the name of the person convicted
19 of the offense, the person's date of birth, the docket number, and the criminal
20 offense that was the subject of the expungement.

1 (B) The special index and related documents specified in subdivision
2 (A) of this subdivision (4) shall be confidential and shall be physically and
3 electronically segregated in a manner that ensures confidentiality and that
4 limits access to authorized persons.

5 (C) Inspection of the expungement order and the certificate may be
6 permitted only upon petition by the person who is the subject of the case. The
7 Chief Superior Judge may permit special access to the index and the
8 documents for research purposes pursuant to the rules for public access to
9 court records.

10 (D) The Court Administrator shall establish policies for
11 implementing this subsection (f).

12 (5) Except as otherwise provided in this section, upon the entry of an
13 order expunging files and records under this section, the proceedings in the
14 matter shall be considered never to have occurred; all index references thereto
15 shall be deleted; and the participant, the court, law enforcement officers and
16 departments, prosecutors, the referring entity, and the diversion program shall
17 reply to any request for information that no record exists with respect to such
18 participant inquiry in any matter. Copies of the order shall be sent to each
19 agency, entity, or official named therein.

20 (6) The process of automatically expunging records as provided in this
21 section shall only apply to those persons who completed diversion on or after

1 July 1, 2002. Any person who completed diversion prior to July 1, 2002 must
2 apply to the court to have the person's records expunged. Expungement shall
3 occur if the requirements of this subsection (f) are met.

4 ~~(g)(1) Within 30 days after the two-year anniversary of a successful~~
5 ~~completion of adult diversion, the court shall provide notice to all parties of~~
6 ~~record of the court's intention to order the expungement of all court files and~~
7 ~~records, law enforcement records other than entries in the adult court diversion~~
8 ~~program's centralized filing system, fingerprints, and photographs applicable~~
9 ~~to the proceeding. However, the court shall not order expungement if the~~
10 ~~participant does not satisfy each of subdivisions (A)–(D) of this subdivision.~~
11 ~~The court shall give the State's Attorney an opportunity for a hearing to contest~~
12 ~~the expungement of the records. The court shall expunge the records if it~~
13 ~~finds:~~

14 ~~(A) two years have elapsed since the successful completion of the~~
15 ~~adult diversion program by the participant;~~

16 ~~(B) the participant has not been convicted of a subsequent felony or~~
17 ~~misdemeanor during the two-year period, and no proceedings are pending~~
18 ~~seeking such conviction;~~

19 ~~(C) rehabilitation of the participant has been attained to the~~
20 ~~satisfaction of the court; and~~

21 ~~(D) the participant does not owe restitution related to the case.~~

1 ~~(2) The court may expunge any records that were sealed pursuant to this~~
2 ~~subsection prior to July 1, 2018 unless the State's Attorney's office that~~
3 ~~prosecuted the case objects. Thirty days prior to expunging a record pursuant~~
4 ~~to this subdivision, the court shall provide written notice of its intent to~~
5 ~~expunge the record to the State's Attorney's office that prosecuted the case.~~

6 ~~(3)(A) The court shall keep a special index of cases that have been~~
7 ~~expunged pursuant to this section together with the expungement order. The~~
8 ~~index shall list only the name of the person convicted of the offense, his or her~~
9 ~~date of birth, the docket number, and the criminal offense that was the subject~~
10 ~~of the expungement.~~

11 ~~(B) The special index and related documents specified in subdivision~~
12 ~~(A) of this subdivision (3) shall be confidential and shall be physically and~~
13 ~~electronically segregated in a manner that ensures confidentiality and that~~
14 ~~limits access to authorized persons.~~

15 ~~(C) Inspection of the expungement order and the certificate may be~~
16 ~~permitted only upon petition by the person who is the subject of the case. The~~
17 ~~Chief Superior Judge may permit special access to the index and the~~
18 ~~documents for research purposes pursuant to the rules for public access to~~
19 ~~court records.~~

20 ~~(D) The Court Administrator shall establish policies for~~
21 ~~implementing this subsection (g).~~

1 ~~(h) Except as otherwise provided in this section, upon the entry of an order~~
2 ~~expunging files and records under this section, the proceedings in the matter~~
3 ~~shall be considered never to have occurred, all index references thereto shall be~~
4 ~~deleted, and the participant, the court, and law enforcement officers and~~
5 ~~departments shall reply to any request for information that no record exists~~
6 ~~with respect to such participant inquiry in any matter. Copies of the order shall~~
7 ~~be sent to each agency or official named therein.~~

8 ~~(i) [Repealed.]~~

9 ~~(j) The process of automatically expunging records as provided in this~~
10 ~~section shall only apply to those persons who completed diversion on or after~~
11 ~~July 1, 2002. Any person who completed diversion prior to July 1, 2002 must~~
12 ~~apply to the court to have his or her records expunged. Expungement shall~~
13 ~~occur if the requirements of subsection (g) of this section are met.~~

14 ~~(k) The Attorney General, in consultation with the Vermont Association of~~
15 ~~Court Diversion Programs, may develop and administer programs to assist~~
16 ~~persons under this section charged with delinquent, criminal, and civil~~
17 ~~offenses.~~

18 ~~(l) Notwithstanding subdivision (e)(1) of this section, the diversion~~
19 ~~program may accept cases from the Youth Substance Awareness Safety~~
20 ~~Program pursuant to 7 V.S.A. § 656 or 18 V.S.A. § 4230b. The confidentiality~~
21 ~~provisions of this section shall become effective when a notice of violation is~~

1 ~~issued under 7 V.S.A. § 656(b) or 18 V.S.A. § 4230b(b) and shall remain in~~
2 ~~effect unless the person fails to register with or complete the Youth Substance~~
3 ~~Awareness Safety Program.~~

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

6 * * *

7 § ~~165~~ 161. PUBLIC CONTRACT ADVOCATE

8 * * *

9 Sec. 2. 7 V.S.A. § 656 is amended to read:

10 § 656. PERSON 16 YEARS OF AGE OR OLDER AND UNDER 21 YEARS
11 OF AGE MISREPRESENTING AGE, PROCURING, POSSESSING,
12 OR CONSUMING ALCOHOLIC BEVERAGES; CIVIL
13 VIOLATION

14 * * *

15 (b) Issuance of notice of violation. A law enforcement officer shall issue a
16 person who violates this section a notice of violation, in a form approved by
17 the Court Administrator. The notice of violation shall require the person to
18 provide ~~his or her~~ the person's name and address and shall explain procedures
19 under this section, including that:

20 (1) the person shall contact the Diversion Program in the county where
21 the offense occurred within 15 days;

1 Diversion Program shall send the person a notice to report to the Diversion
2 Program. The notice to report shall provide that:

3 (1) The person is required to complete all conditions related to the
4 offense imposed by the Diversion Program, including substance abuse
5 screening and, if deemed appropriate following the screening, substance abuse
6 assessment or substance abuse counseling, or both.

7 (2) If the person does not satisfactorily complete the substance abuse
8 screening, any required substance abuse assessment or substance abuse
9 counseling, or any other condition related to the offense imposed by the
10 Diversion Program, the case will be referred to the Judicial Bureau, where the
11 person, if found liable for the violation, shall be assessed a civil penalty, the
12 person's driver's license will be suspended, and the person's automobile
13 insurance rates may increase substantially.

14 (3) If the person satisfactorily completes the substance abuse screening,
15 any required substance abuse assessment or substance abuse counseling, and
16 any other condition related to the offense imposed by the Diversion Program,
17 no penalty shall be imposed and the person's operator's license shall not be
18 suspended.

19 (f) Diversion Program requirements.

20 (1) Upon being contacted by a person who has been issued a notice of
21 violation, the Diversion Program shall register the person in the Youth

1 Substance Abuse Safety Program. Pursuant to the Youth Substance Abuse
2 Safety Program, the Diversion Program shall impose conditions on the person.
3 The conditions imposed shall include only conditions related to the offense and
4 in every case shall include a condition requiring satisfactory completion of
5 substance abuse screening using an evidence-based tool and, if deemed
6 appropriate following the screening, substance abuse assessment and substance
7 abuse education or substance abuse counseling, or both. If the screener
8 recommends substance abuse counseling, the person shall choose a State-
9 certified or State-licensed substance abuse counselor or substance abuse
10 treatment provider to provide the services.

11 (2) Substance abuse screening required under this subsection shall be
12 completed within 60 days after the Diversion Program receives a summons and
13 complaint. The person shall complete all conditions at ~~his or her~~ the person's
14 own expense.

15 (3) When a person has satisfactorily completed substance abuse
16 screening, any required substance abuse education or substance abuse
17 counseling, and any other condition related to the offense that the Diversion
18 Program has imposed, the Diversion Program shall:

- 19 (A) void the summons and complaint with no penalty due; and
20 (B) send copies of the voided summons and complaint to the Judicial
21 Bureau and to the law enforcement officer who completed them. Before

1 sending copies of the voided summons and complaint to the Judicial Bureau
2 under this subdivision, the Diversion Program shall redact all language
3 containing the person's name, address, Social Security number, and any other
4 information that identifies the person.

5 (4) If a person does not satisfactorily complete substance abuse
6 screening, any required substance abuse education or substance abuse
7 counseling, or any other condition related to the offense imposed by the
8 Diversion Program or if the person fails to pay the Diversion Program any
9 required program fees, the Diversion Program shall file the summons and
10 complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29.
11 The Diversion Program shall provide a copy of the summons and complaint to
12 the law enforcement officer who issued the notice of violation and shall
13 provide two copies to the person charged with the violation.

14 (5) A person aggrieved by a decision of the Diversion Program or
15 alcohol counselor may seek review of that decision pursuant to Rule 75 of the
16 Vermont Rules of Civil Procedure.

17 (6) Notwithstanding 3 V.S.A. §§ 163(a)(2)(C) and 164(a)(2)(C), the
18 adult or juvenile diversion programs shall accept cases from the Youth
19 Substance Awareness Safety Program pursuant to this section. The
20 confidentiality provisions of 3 V.S.A. § 163 or 164 shall become effective
21 when a notice of violation is issued pursuant to subsection (b) of this section

1 and shall remain in effect unless the person fails to register with or complete
2 the Youth Substance Awareness Safety Program.

3 * * *

4 Sec. 3. 18 V.S.A. § 4230b is amended to read:

5 § 4230b. CANNABIS POSSESSION BY A PERSON 16 YEARS OF AGE
6 OR OLDER AND UNDER 21 YEARS OF AGE; CIVIL
7 VIOLATION

8 * * *

9 (b) Issuance of notice of violation. A law enforcement officer shall issue a
10 person who violates this section with a notice of violation, in a form approved
11 by the Court Administrator. The notice of violation shall require the person to
12 provide ~~his or her~~ the person's name and address and shall explain procedures
13 under this section, including that:

14 (1) the person shall contact the Diversion Program in the county where
15 the offense occurred within 15 days;

16 (2) failure to contact the Diversion Program within 15 days will result in
17 the case being referred to the Judicial Bureau, where the person, if found liable
18 for the violation, will be subject to a civil penalty and a suspension of the
19 person's operator's license and may face substantially increased insurance
20 rates;

1 screening and, if deemed appropriate following the screening, substance abuse
2 assessment or substance abuse counseling, or both.

3 (2) If the person does not satisfactorily complete the substance abuse
4 screening, any required substance abuse assessment or substance abuse
5 counseling, or any other condition related to the offense imposed by the
6 Diversion Program, the case will be referred to the Judicial Bureau, where the
7 person, if found liable for the violation, shall be assessed a civil penalty, the
8 person's driver's license will be suspended, and the person's automobile
9 insurance rates may increase substantially.

10 (3) If the person satisfactorily completes the substance abuse screening,
11 any required substance abuse assessment or substance abuse counseling, and
12 any other condition related to the offense imposed by the Diversion Program,
13 no penalty shall be imposed and the person's operator's license shall not be
14 suspended.

15 (f) Diversion Program requirements.

16 (1) Upon being contacted by a person who has been issued a notice of
17 violation, the Diversion Program shall register the person in the Youth
18 Substance Awareness Safety Program. Pursuant to the Youth Substance
19 Awareness Safety Program, the Diversion Program shall impose conditions on
20 the person. The conditions imposed shall include only conditions related to the
21 offense and in every case shall include a condition requiring satisfactory

1 completion of substance abuse screening using an evidence-based tool and, if
2 deemed appropriate following the screening, substance abuse assessment and
3 substance abuse education or substance abuse counseling, or both. If the
4 screener recommends substance abuse counseling, the person shall choose a
5 State-certified or State-licensed substance abuse counselor or substance abuse
6 treatment provider to provide the services.

7 (2) Substance abuse screening required under this subsection shall be
8 completed within 60 days after the Diversion Program receives a summons and
9 complaint. The person shall complete all conditions at ~~his or her~~ the person's
10 own expense.

11 (3) When a person has satisfactorily completed substance abuse
12 screening, any required substance abuse education or substance abuse
13 counseling, and any other condition related to the offense that the Diversion
14 Program has imposed, the Diversion Program shall:

15 (A) Void the summons and complaint with no penalty due.

16 (B) Send copies of the voided summons and complaint to the Judicial
17 Bureau and to the law enforcement officer who completed them. Before
18 sending copies of the voided summons and complaint to the Judicial Bureau
19 under this subdivision, the Diversion Program shall redact all language
20 containing the person's name, address, Social Security number, and any other
21 information that identifies the person.

1 (4) If a person does not satisfactorily complete substance abuse
2 screening, any required substance abuse education or substance abuse
3 counseling, or any other condition related to the offense imposed by the
4 Diversion Program or if the person fails to pay the Diversion Program any
5 required Program fees, the Diversion Program shall file the summons and
6 complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29.
7 The Diversion Program shall provide a copy of the summons and complaint to
8 the law enforcement officer who issued the notice of violation and shall
9 provide two copies to the person charged with the violation.

10 (5) A person aggrieved by a decision of the Diversion Program or
11 alcohol counselor may seek review of that decision pursuant to Rule 75 of the
12 Vermont Rules of Civil Procedure.

13 (6) Notwithstanding 3 V.S.A. §§ 163(a)(2)(C) and 164(a)(2)(C), the
14 adult or juvenile diversion programs shall accept cases from the Youth
15 Substance Awareness Safety Program pursuant to this section, 18 V.S.A.
16 § 4230f(e)(1), or 18 V.S.A. § 4230f(e)(2). The confidentiality provisions of 3
17 V.S.A. § 163 or 164 shall become effective when a notice of violation is issued
18 pursuant to subsection (b) of this section, 18 V.S.A. § 4230f(e)(1), or 18
19 V.S.A. § 4230f(e)(2), and shall remain in effect unless the person fails to
20 register with or complete the Youth Substance Awareness Safety Program.

21 * * *

1 Sec. 4. 28 V.S.A. chapter 12 is amended to read:

2 CHAPTER 12. ~~COMMUNITY REPARATIVE BOARDS~~ PROGRAMS AND
3 SERVICES EMPLOYING RESTORATIVE JUSTICE APPROACHES

4 § 910. RESTORATIVE JUSTICE PROGRAM

5 This chapter establishes a program of restorative justice for use with
6 ~~offenders~~ individuals required to participate in such a program as a reparative
7 ~~condition of a sentence of probation or as ordered for civil contempt of a child~~
8 ~~support order under 15 V.S.A. § 603~~ an individual's sentence. The Program
9 shall be carried out by ~~community reparative boards~~ community-based
10 grantees under the ~~supervision~~ administration of the Commissioner, as
11 provided by this chapter.

12 § 910a. ~~REPARATIVE BOARDS; FUNCTIONS~~

13 ~~(a) The Commissioner shall establish reparative boards and appoint to them~~
14 ~~members of the community with the advice and recommendation of nonprofit~~
15 ~~organizations or municipal entities in the localities concerned. The~~
16 ~~Commissioner shall appoint each board member to a term of one to three~~
17 ~~years, may reappoint a member to consecutive terms, and may remove a~~
18 ~~member for good cause.~~

19 ~~(b) Each board shall elect its chair from its membership. A chair may serve~~
20 ~~for no more than one year uninterrupted. All meetings of a board shall comply~~
21 ~~with open meeting law requirements of 1 V.S.A. chapter 5, subchapter 2,~~

1 ~~consistent with probationer confidentiality requirements of this title, and as~~
2 ~~may be imposed by the court.~~

3 ~~(c) Each board shall adopt bylaws approved by the Commissioner. Such~~
4 ~~bylaws may authorize each board to establish panels to conduct reparative~~
5 ~~board activities.~~

6 ~~(d) Each board shall conduct its meetings in a manner that promotes safe~~
7 ~~interactions among an offender, victim or victims, and community members,~~
8 ~~and shall:~~

9 ~~(1) In collaboration with the Department, municipalities, the courts, and~~
10 ~~other entities of the criminal justice system, implement the Restorative Justice~~
11 ~~Program of seeking to obtain offender accountability, repair harm and~~
12 ~~compensate a victim or victims and the community, increase an offender's~~
13 ~~awareness of the effect of his or her behavior on a victim or victims and the~~
14 ~~community, and identify ways to help an offender comply with the law.~~

15 ~~(2) Educate the public about, and promote community support for, the~~
16 ~~Restorative Justice Program.~~

17 ~~(e) Each board shall have access to the central file of any offender required~~
18 ~~to participate with that board in the Restorative Justice Program.~~

19 ~~(f) When engaged in board activities, a board member shall be considered a~~
20 ~~volunteer with regard to any grievance or other matter governed by 3 V.S.A.~~
21 ~~§ 1101. [Repealed.]~~

1 ~~§ 911. GRANT PROGRAM FOR COMMUNITY-BASED HALF-WAY~~
2 ~~HOUSES AND PROGRAMS~~

3 ~~(a) A grant program for community-based alternatives to incarceration is~~
4 ~~established to assist:~~

5 ~~(1) private nonprofit community organizations establish half-way houses~~
6 ~~and programs to help adult ex-offenders and offenders on probation, parole, or~~
7 ~~furlough reintegrate into the community; and~~

8 ~~(2) existing half-way houses and programs for adult ex-offenders and~~
9 ~~offenders on probation, parole, or furlough.~~

10 ~~(b) The Alternatives to Incarceration Board established under section 912~~
11 ~~of this title shall establish procedures and guidelines by which it shall solicit~~
12 ~~and review proposals for grants, award grants, and monitor and evaluate the~~
13 ~~progress of projects funded under this chapter.~~

14 ~~(c) Private, nonprofit organizations which create residential half-way~~
15 ~~houses for former prisoners or offenders on community release status shall~~
16 ~~receive priority funding under this chapter.~~

17 ~~(d) [Repealed.] [Repealed.]~~

18 § 913. POST-ADJUDICATION REPARATIVE PROGRAM

19 (a) Purpose.

20 (1) The Commissioner shall develop and administer an adult post-
21 adjudication reparative program in all counties. In consultation with the

1 Judiciary, the Commissioner shall adopt a policies and procedures manual to
2 promote a uniform system across the State in compliance with this section.

3 (2) The program shall be designed to provide a restorative option for
4 persons who have been convicted of violating a criminal statute, as well as for
5 victims or those acting on a victim's behalf who have been harmed by the
6 responsible party.

7 (b) Administration; report.

8 (1) The Department of Corrections and its grantees, in consultation with
9 the Vermont Judiciary, shall develop and administer a post-adjudication
10 reparative program in all counties throughout the State.

11 (2) The program shall support the operation of reparative programs
12 through grants of financial assistance to, or contracts for services with, entities
13 employing restorative programs and services. Such entities engaged with a
14 similar post-adjudication program before July 1, 2024 shall be prioritized for
15 grants of financial assistance or contracts for services. The Commissioner may
16 require local financial contributions as a condition of receipt of program
17 funding.

18 (3) The Department of Corrections shall develop program outcomes
19 following the designated State of Vermont performance accountability
20 framework and, in consultation with the Judiciary, report annually on or before
21 December 1 to the General Assembly on services provided and outcome

1 indicators. As components of the report required by this subsection, the
2 Commissioner shall include data on the number of reparative program referrals
3 in each county, convictions and crime types, successful completion rates,
4 evidence of desistence, and possible causes of any geographical disparities.

5 (4) All programs or services that receive financial assistance from the
6 Department of Corrections for the program shall adhere to the requirements
7 pursuant to sections 914 and 915 of this title.

8 (5) The Commissioner is authorized to accept grants and gifts for the
9 purposes of this section, such acceptance being pursuant to 32 V.S.A. § 5.

10 § 914. QUALIFYING OFFENSES; ELIGIBILITY AND REFERRAL

11 PROCESS

12 (a) Memoranda of understanding required. The post-adjudication
13 reparative program shall accept individuals who are adjudicated of a qualifying
14 offense as determined by a current and executed memorandum of
15 understanding between a community program or service employing restorative
16 approaches and the Vermont Judiciary. Such memoranda of understanding
17 shall include protocols set forth in subsection (b) of this section. If the
18 restorative justice approach set forth in the memorandum of understanding
19 includes referrals from a court, the court having jurisdiction shall be party to
20 the memorandum of understanding.

1 (b) Guidance and protocols. On or before July 1, 2025, the Department of
2 Corrections, in consultation with the Community Justice Unit of the Office of
3 the Attorney General, the Department for Children and Families, the
4 Department of State's Attorneys and Sheriffs, the Office of the Defender
5 General, the Center for Crime Victim Services, and the Vermont Judiciary
6 shall create guidance for memoranda of understanding. Memoranda of
7 understanding shall include protocols that:

8 (1) list mandatory qualifying offenses;

9 (2) permit the parties to supplement the list of mandatory qualifying
10 offenses;

11 (3) establish an evidence-based screening process to assess referral
12 eligibility for responsible parties who have been adjudicated of offenses that
13 are not mandatory qualifying offenses;

14 (4) set timelines to complete the restorative process for responsible
15 parties;

16 (5) contemplate the procedure for responsible parties who fail to
17 complete the restorative process;

18 (6) The reparative program shall have the right to determine that the
19 matter is not appropriate for post-adjudication programming and send the
20 referral back to the court.

1 (7) require initial and annual training for staff, facilitators, and
2 volunteers of programs or services employing restorative justice approaches, as
3 well as judges on the dynamics and principles of restorative justice.

4 (8) outline roles and participation of the programs or services employing
5 restorative justice approaches and other community partners, as needed;

6 (9) establish written confidentiality standards that ensure constitutional
7 protections and the privacy of responsible parties and victims participating in
8 the restorative process;

9 (10) create universal data collection standards developed by the
10 Department of Corrections; and

11 (11) implement written annual evaluation and quality improvement
12 plans and processes that engage community and system stakeholders.

13 (c) Compliance.

14 (1) The Department of Corrections shall review each memorandum of
15 understanding annually to ensure compliance with the protocols set forth in
16 subsection (b) of this section and the guidance established by the Department
17 and its consulting entities. The Department may engage other relevant
18 stakeholders to assess any defined restorative approach outlined in a
19 memorandum of understanding that is under review for compliance with the
20 Department's protocols and guidance.

1 (2) Once a memorandum of understanding is verified for compliance by
2 the Department of Corrections and is executed by the parties, the program or
3 service employing restorative justice approaches that is a party to the
4 memorandum may begin accepting referrals.

5 (d) Confidentiality.

6 (1) All information gathered in the course of the post-adjudication
7 reparative program shall be held strictly confidential and shall not be released
8 without the participant's prior consent, except that research and reports that do
9 not establish the identity of individual participants are allowed.

10 (2) If a case is referred to the program, the court may release
11 information to the victim upon a showing of legitimate need and subject to an
12 appropriate protective agreement defining the purpose for which the
13 information is being released and in all other respects maintaining the
14 confidentiality of the information; otherwise, files held by the court, the
15 prosecutor, law enforcement agency, referring entity, and the reparative
16 program related to the matter shall be confidential and shall remain
17 confidential unless:

18 (A) the reparative program declines to accept the referral;

19 (B) the reparative program accepts the referral, but the person does
20 not successfully complete the program; or

21 (D) the court recalls the referral from the reparative program.

1 (e) Reparative boards. When engaged in board activities, a board member
2 shall be considered a volunteer with regard to any grievance or other matter
3 governed by 3 V.S.A. § 1101.

4 Sec. 5. DEPARTMENT OF CORRECTIONS; MODEL REPARATIVE
5 POLICY

6 (a) Intent. It is the intent of the General Assembly that Department of
7 Corrections and Judiciary create a model post-adjudication reparative program
8 policy that promotes desistence and decrease recidivism of responsible parties
9 and seeks restorative justice for both responsible parties and victims alike.

10 (b) Policy development. On or before January 1, 2025, the Department of
11 Corrections and the Judiciary, in consultation with the Community Justice Unit
12 of the Office of the Attorney General, the Department of State's Attorneys and
13 Sheriffs, the Office of the Defender General, and the Center for Crime Victim
14 Services, shall establish a cohesive post-adjudication reparative program policy
15 for the Department of Corrections and the Judiciary to adopt and follow.

16 (c) Policy contents. The post-adjudication reparative program policy
17 created pursuant to this section shall outline what types of offenses qualify and
18 which persons will be eligible for the post-adjudication reparative program.
19 The policy shall include considerations for courts to use in determining the
20 persons who are eligible for the post-adjudication reparative program and the

1 referral of each case to the reparative program. The policy shall also
2 contemplate how victim perspective are included in reparative programming.

3 Sec. 6. EFFECTIVE DATES

4 This act shall take effect on July 1, 2024 except that Sec. 1 (juvenile and
5 adult pre-charge and post-charge diversion) shall take effect on April 1, 2025.