

1 H.645

2 Introduced by Representatives Dolan of Essex Junction, Arsenault of

3 Williston, Chapin of East Montpelier, Christie of Hartford,

4 LaLonde of South Burlington, and Rachelson of Burlington

5 Referred to Committee on

6 Date:

7 Subject: Crimes; criminal procedure; restorative justice

8 Statement of purpose of bill as introduced: This bill proposes to create pre-
9 charge and post-charge diversion programs under the administration of the
10 Community Justice Unit of the Office of Attorney General, and in consultation
11 with the Department of State's Attorneys and Sheriffs, for certain eligible
12 offenses and persons. The Department of State's Attorneys and Sheriffs has
13 the ability to create pre-charge and post-charge diversion policies, provided
14 they contain certain statutorily proscribed minimums and are done in
15 consultation with the Community Justice Unit and others. These statutory
16 standards contain minimum requirements for the administration of the
17 diversion programs, eligibility and referral processes, rights and
18 responsibilities, and confidentiality. The bill also proposes to create a post-
19 adjudication reparative program under the administration of the Department of
20 Corrections, in consultation with the Judiciary, governed by memoranda of
21 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
18 compliance with this section.

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

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

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

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

21 Programming for these juveniles is intended to support access to appropriate

1 ~~treatment or other resources with the aim of improving the person's health and~~
2 ~~reducing future adverse involvement in the justice system.~~

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

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

16 (2) ~~The Office of the Attorney General shall develop program outcomes~~
17 ~~following the designated State of Vermont performance accountability~~
18 ~~framework and, in consultation with the Department of State's Attorneys and~~
19 ~~Sheriffs, the Office of the Defender General, the Center for Crime Victim~~
20 ~~Services, and the Judiciary, report annually on or before December 1 to the~~
21 ~~General Assembly on services provided and outcome indicators. As~~

1 ~~components of the report required by this subsection, the Attorney General~~
2 shall include data on the number of pre-charge and post-charge diversion
3 program referrals in each county, offenses charged and crime types, successful
4 completion rates, and possible causes of any geographical disparities.

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

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

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

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

19 (4) ~~Each State's Attorney, in cooperation with the Attorney General and~~
20 ~~the diversion program, shall develop clear criteria for deciding what types of~~
21 ~~offenses and offenders will be eligible for diversion, however, the State's~~

1 ~~Attorney shall retain final discretion over the referral of each case for~~

2 ~~diversion. The provisions of 33 V.S.A. § 5225(e) and § 5280(e) shall apply.~~

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

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

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

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

16 ~~(9) Each participant shall pay a fee to the local juvenile court diversion~~
17 ~~project. The amount of the fee shall be determined by project officers based~~
18 ~~upon the financial capabilities of the participant. The fee shall not exceed~~
19 ~~\$150.00. The fee shall be a debt due from the participant, and payment of~~
20 ~~such shall be required for successful completion of the Program.~~

21 ~~Notwithstanding 32 V.S.A. § 502(a), fees collected under this subdivision shall~~

1 ~~be retained and used solely for the purpose of the Court Diversion Program~~
2 Qualifying offenses; eligibility and referral process. The Department of
3 State's Attorneys and Sheriffs, in cooperation with the Office of the Attorney
4 General and the county's juvenile court diversion program, shall develop and
5 adopt clear criteria for deciding which juveniles will be eligible for pre-charge
6 and post-charge diversion. The criteria shall be updated every two years and
7 shared with the Community Justice Unit of the Office of the Attorney General
8 on or before January 15 of each odd-numbered year. The Community Justice
9 Unit shall publicly post the provided criteria. However, a State's Attorney
10 shall retain final discretion over the juveniles who are eligible for diversion
11 and the referral of each case to diversion.

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

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

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

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

20 (iii) an affidavit of probable cause; and

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

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

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

- 7 (i) a listed crime as defined in 13 V.S.A. § 5301(7);
8 (ii) a violation of 13 V.S.A. chapter 64 related to sexual
9 exploitation of children;
10 (iii) a violation of 13 V.S.A. § 1030 related to a violation of an
11 abuse prevention order, an order against stalking or sexual assault, or a
12 protective order concerning contact with a child;
13 (iv) a violation of 13 V.S.A. chapter 28 related to abuse, neglect,
14 or exploitation of a vulnerable adult;
15 (v) a violation of 13 V.S.A. § 2605 related to voyeurism;
16 (vi) a violation of 13 V.S.A. § 2601 related to lewd and lascivious
17 conduct;
18 (vii) a violation of 13 V.S.A. § 352 related to cruelty to animals;
19 (viii) a violation of 13 V.S.A. § 1026a related to aggravated
20 disorderly conduct,

~~(ix) a violation of 13 V.S.A. § 3006 related to neglect of duty by a~~

public officer;

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

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

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

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

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

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

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

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

1 ~~(E) A juvenile who does not successfully complete pre-charge~~
2 diversion shall have the juvenile'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 juveniles 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 juvenile 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 juvenile 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 juvenile 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 juvenile's criminal record, the views of the alleged victim or
17 victims, 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
2 consultation with the Community Justice Unit of the Office of the Attorney
3 General, the Office of the Defender General, the Center for Crime Victim
4 Services, and the Judiciary, shall develop and establish uniform pre-charge and
5 post-charge juvenile diversion referral policies that outline clear criteria for
6 determining which juveniles will be eligible for pre-charge and post-charge
7 diversion. These policies shall also contemplate how victim perspectives are
8 incorporated into diversion programming. The Department of State's
9 Attorneys and Sheriffs may also establish criteria for qualifying offenses in
10 addition to those offenses mandated pursuant to subdivision (1)(C) of this
11 subsection (c).

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

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

20 (5) To encourage fair and consistent pre-charge and post-charge
21 diversion referral policies and methods statewide, the Department of State's

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

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

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

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

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

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

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

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

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

18 (e) Rights and responsibilities.

19 ~~(1) Within 30 days after the two-year anniversary of a successful~~
20 ~~completion of juvenile diversion, the court shall provide notice to all parties of~~
21 ~~record of the court's intention to order the expungement of all court files and~~

1 ~~records, law enforcement records other than entries in the juvenile court~~
2 ~~diversion program's centralized filing system, fingerprints, and photographs~~
3 ~~applicable to the proceeding. However, the court shall not order expungement~~
4 ~~if the participant does not satisfy each of subdivisions (A)–(D) of this~~
5 ~~subdivision. The court shall give the State's Attorney an opportunity for a~~
6 ~~hearing to contest the expungement of the records. The court shall expunge~~
7 ~~the records if it finds:~~

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

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

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

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

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

1 ~~Diversion participants shall be informed of their right to the advice and~~
2 ~~assistance of legal counsel at all stages of the diversion process, including the~~
3 ~~initial decision to participate and the decision to accept the juvenile diversion~~
4 ~~contract, so that the candidate may give informed consent.~~

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

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

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

19 (D) ~~The Court Administrator shall establish policies for implementing~~
20 ~~this subsection (e). Information related to the present offense that is divulged~~
21 ~~during the juvenile diversion program shall not be used against the juvenile in~~

1 ~~the juvenile's criminal or juvenile case for any purpose, including~~
2 impeachment or cross-examination. However, the fact of participation and
3 success, or reasons for failure, may become part of the prosecutor's records.

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

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

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

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

1 ~~(f) 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~~
7 ~~shall be sent to each agency or official named therein. Records and~~
8 ~~expungement.~~

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

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

1 ~~of this subdivision. The court shall give the State's Attorney an opportunity~~

2 for a hearing to contest the expungement of the records. The court shall

3 expunge the records if it finds:

4 (A) two years have elapsed since the successful completion of the

5 juvenile post-charge diversion program 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.

12 (3) The court may expunge any records that were sealed pursuant to this

13 subsection prior to July 1, 2018 unless the State's Attorney's office that

14 prosecuted the case objects. Thirty days prior to expunging a record pursuant

15 to this subdivision, the court shall provide written notice of its intent to

16 expunge the record to the State's Attorney's office that prosecuted the case.

17 (4)(A) The court shall keep a special index of post-charge diversion

18 cases that have been expunged pursuant to this section together with the

19 expungement order. The index shall list only the name of the person convicted

20 of the offense, the person's date of birth, the docket number, and the criminal

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

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

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

20 ~~(j)(i)~~ Notwithstanding subdivision (c)(1) of this section, the diversion
21 ~~program may accept cases pursuant to 55 V.S.A. §§ 5225-5280.~~

§ 164. ADULT COURT DIVERSION PROGRAM

(a) Purpose.

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

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

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

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

1 ~~(C) Post charge by prosecutors of persons who have been charged~~
2 ~~with an offense and who have substance abuse or mental health treatment~~
3 ~~needs regardless of the person's prior criminal history record, except a person~~
4 ~~charged with a felony offense that is a crime listed in 13 V.S.A. § 5301(7) shall~~
5 ~~not be eligible under this section. Persons who have attained 18 years of age~~
6 ~~who are subject to a petition in the Family Division pursuant to 33 V.S.A.~~
7 ~~chapters 52 or 52A shall also be eligible under this section. Programming for~~
8 ~~these persons is intended to support access to appropriate treatment or other~~
9 ~~resources with the aim of improving the person's health and reducing future~~
10 ~~adverse involvement in the justice system.~~

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

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

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

1 ~~improving the person's health and reducing future adverse involvement in the~~
2 ~~justice system. Administration; report.~~

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

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

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

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

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

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

19 ~~(i) the name and contact information of the person alleged to be~~
20 ~~the responsible party,~~

1 (ii) the name and contact information of the alleged victim or
2 victims of the offense;

3 (iii) an affidavit of probable cause; and

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

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

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

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

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

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

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

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

20 (vi) a violation of 13 V.S.A. § 2601 related to lewd and lascivious
21 conduct,

- 1 ~~(vii) a violation of 13 V.S.A. § 352 related to cruelty to animals;~~
- 2 (viii) a violation of 13 V.S.A. § 1026a related to aggravated
- 3 disorderly conduct;
- 4 (ix) a violation of 13 V.S.A. § 3006 related to neglect of duty by a
- 5 public officer;
- 6 (x) a violation of 13 V.S.A. § 5409 related to failure to comply
- 7 with sex offender registry requirements;
- 8 (xi) a violation of 13 V.S.A. § 2802, 2802a, 2803, 2804, or 2804b
- 9 related to obscenity;
- 10 (xii) a violation of 13 V.S.A. § 1455 related to hate motivated
- 11 crimes;
- 12 (xiii) a violation of 13 V.S.A. § 1456 related to burning of a
- 13 religious symbol;
- 14 (xiv) a violation of 23 V.S.A. § 1091 or 1201(a) related to
- 15 operating under the influences of alcohol or other substance; and
- 16 (xv) a violation of 13 V.S.A. § 7559 related to violating conditions
- 17 of release.
- 18 (D) Prosecutors shall have the right to withdraw any pre-charge
- 19 referral from the diversion program and file a charge in court.

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

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

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

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

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

1 ~~(C) Notwithstanding subdivisions (1) and (2) of this subsection (c),~~
2 the diversion program may accept cases pursuant to 33 V.S.A. §§ 5225 and
3 5280.

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

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

17 (4) On or before October 1, 2025, and every odd-numbered year
18 thereafter, the Department of State's Attorneys and Sheriffs, in consultation
19 with others, including the Community Justice Unit, the Office of the Defender
20 General, the Center for Crime Victim Services, and the Judiciary, shall review

1 ~~and, if necessary, update the uniform pre-charge and post-charge referral~~
2 ~~policies.~~

3 ~~(2) To encourage fair and consistent pre-charge and post-charge~~
4 ~~diversion referral policies and methods statewide, the Department of State's~~
5 ~~Attorneys and Sheriffs, in consultation with the Community Justice Unit and~~
6 ~~the Office of the Defender General, shall review the policies of each State's~~
7 ~~Attorney's office required to adopt a policy pursuant to subdivision (3) of this~~
8 ~~subsection (c), to ensure that those policies establish each component of the~~
9 ~~uniform policy on or before April 15, 2025. If the Department of State's~~
10 ~~Attorneys and Sheriffs finds that a policy does not meet each component of the~~
11 ~~uniform policy, it shall work with the State's Attorney to bring the policy into~~
12 ~~compliance. If, after consultation with Department of State's Attorneys and~~
13 ~~Sheriffs, the State's Attorney fails to adopt a policy that meets each component~~
14 ~~of the uniform policy, that State's Attorney shall be deemed to have adopted,~~
15 ~~and shall follow, the uniform policy established by the Department of State's~~
16 ~~Attorneys and Sheriffs.~~

17 ~~(d) The Office of the Attorney General shall develop program outcomes~~
18 ~~following the designated State of Vermont performance accountability~~
19 ~~framework and, in consultation with the Department of State's Attorneys and~~
20 ~~Sheriffs, the Office of the Defender General, the Center for Crime Victim~~
21 ~~Services, and the Judiciary, report annually on or before December 1 to the~~

1 ~~General Assembly on services provided and outcome indicators. As a~~
2 ~~component of the report required by this subsection, the Attorney General~~
3 ~~shall include data on diversion program referrals in each county and possible~~
4 ~~causes of any geographical disparities. Confidentiality.~~

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

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

15 (3) If law enforcement or the prosecutor refers a case to diversion, the
16 prosecutor may release information to the victim upon a showing of legitimate
17 need and subject to an appropriate protective agreement defining the purpose
18 for which the information is being released and in all other respects
19 maintaining the confidentiality of the information; otherwise, files held by the
20 court, the prosecutor, law enforcement agency, referring entity, and the

1 ~~diversion program related to the matter shall be confidential and shall remain~~

2 confidential unless:

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

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

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

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

8 (e) All adult court diversion programs receiving financial assistance from
9 the Attorney General shall adhere to the following provisions: Rights and
10 responsibilities.

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

1 ~~prosecutor shall provide the person with the opportunity to participate in the~~
2 ~~court diversion program unless the prosecutor states on the record at~~
3 ~~arraignment or a subsequent hearing why a referral to the program would not~~
4 ~~serve the ends of justice. If the prosecuting attorney prosecutor refers a case to~~
5 ~~diversion, the prosecuting attorney prosecutor may release information to the~~
6 ~~victim upon a showing of legitimate need and subject to an appropriate~~
7 ~~protective agreement defining the purpose for which the information is being~~
8 ~~released and in all other respects maintaining the confidentiality of the~~
9 ~~information; otherwise, files held by the court, the prosecuting attorney~~
10 ~~prosecutor, and the law enforcement agency related to the charges shall be~~
11 ~~confidential and shall remain confidential unless:~~

12 ~~(A) the diversion program declines to accept the case;~~
13 ~~(B) the person declines to participate in diversion;~~
14 ~~(C) the diversion program accepts the case but the person does not~~
15 ~~successfully complete diversion; or~~
16 ~~(D) the prosecuting attorney prosecutor recalls the referral to~~
17 ~~diversion. Adult court diversion programs shall be set up to respect the rights~~
18 ~~of participants.~~

19 ~~(2) Alleged offenders shall be informed of their right to the advice and~~
20 ~~assistance of private counsel or the public defender at all stages of the~~
21 ~~diversion process, including the initial decision to participate, and the decision~~

1 ~~to accept the adult diversion contract, so that the candidate may give informed~~
2 ~~consent.~~ Diversion participants shall be informed of their right to the advice
3 and assistance of legal counsel at all stages of the diversion process, including
4 the initial decision to participate and the decision to accept the adult diversion
5 contract, so that the candidate may give informed consent.

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

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

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

1 ~~(A) The pre-charge diversion program may charge fees to its~~
2 ~~participants, which shall be paid to the local adult court diversion program. If~~
3 ~~a fee is charged, it shall be determined by program officers or employees based~~
4 ~~upon the financial capabilities of the participant. The fee shall not exceed~~
5 ~~\$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 adult court diversion program. The amount of the fee shall be~~
9 ~~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 (5) shall be retained and used solely for the purpose of the~~
15 ~~adult court diversion program.~~

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

1 ~~shall be notified once a person chooses to participate in the pre-charge~~
2 ~~diversion program.~~

3 ~~(7)(A) Irrespective of whether a record was expunged, the adult court~~
4 ~~diversion program shall maintain sufficient records so that the reasons for~~
5 ~~success or failure of the program in particular cases and overall can be~~
6 ~~investigated by program staff. These records shall include a centralized~~
7 ~~statewide filing system that will include the following information about~~
8 ~~individuals who have successfully completed an adult court diversion program:~~

- 9 ~~(i) name and date of birth;~~
10 ~~(ii) offense charged and date of offense;~~
11 ~~(iii) place of residence;~~
12 ~~(iv) county where diversion process took place; and~~
13 ~~(v) date of completion of diversion process.~~

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

17 ~~(C) Notwithstanding subdivision (B) of this subdivision (7), the~~
18 ~~Attorney General shall, upon request, provide to a participant or his or her~~
19 ~~attorney sufficient documentation to show that the participant successfully~~
20 ~~completed diversion.~~

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

3 ~~(9) Each participant shall pay a fee to the local adult court diversion~~
4 ~~program. The amount of the fee shall be determined by program officers or~~
5 ~~employees based upon the financial capabilities of the participant. The fee~~
6 ~~shall not exceed \$300.00. The fee shall be a debt due from the participant, and~~
7 ~~payment of such shall be required for successful completion of the program.~~
8 ~~Notwithstanding 32 V.S.A. § 502(a), fees collected under this subdivision shall~~
9 ~~be retained and used solely for the purpose of the court diversion program.~~

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

12 Records and expungement.

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

19 (2) Within 30 days after the two-year anniversary of a successful
20 completion of adult post-charge diversion, the court shall provide notice to all
21 parties of record of the court's intention to order the expungement of all court

1 ~~files and records, law enforcement records, fingerprints, and photographs other~~
2 than entries in the adult court diversion program's centralized filing system
3 applicable to the proceeding. However, the court shall not order expungement
4 if the participant does not satisfy each of subdivisions (A)–(D) of this
5 subdivision. The court shall give the State's Attorney an opportunity for a
6 hearing to contest the expungement of the records. The court shall expunge
7 the records if it finds:

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

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

13 (C) rehabilitation of the participant has been attained to the
14 satisfaction of the court; and

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

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

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

6 (B) The special index and related documents specified in subdivision
7 (A) of this subdivision (4) 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
16 implementing this subsection (f).

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

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

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

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

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

1 ~~(B) the participant has not been convicted of a subsequent felony or~~
2 ~~misdeemeanor 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 ~~(2) 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 ~~(3)(A) The court shall keep a special index of cases that have been~~
13 ~~expunged pursuant to this section together with the expungement order. The~~
14 ~~index shall list only the name of the person convicted of the offense, his or her~~
15 ~~date of birth, the docket number, and the criminal offense that was the subject~~
16 ~~of the expungement.~~

17 ~~(B) The special index and related documents specified in subdivision~~
18 ~~(A) of this subdivision (3) 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 (g).~~

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

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

16 ~~(j) 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 his or her records expunged. Expungement shall~~
20 ~~occur if the requirements of subsection (g) of this section are met.~~

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

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

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

14 * * *

15 § 165 161. PUBLIC CONTRACT ADVOCATE

16 * * *

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

18 § 656. PERSON 16 YEARS OF AGE OR OLDER AND UNDER 21 YEARS
19 OF AGE MISREPRESENTING AGE, PROCURING, POSSESSING,
20 OR CONSUMING ALCOHOLIC BEVERAGES; CIVIL
21 VIOLATION

* * *

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

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

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

(3) no money should be submitted to pay any penalty until after adjudication; and

(4) the person shall notify the Diversion Program if the person's address changes.

* * *

(d) Registration in Youth Substance Abuse Safety Program. Within 15 days after receiving a notice of violation, the person shall contact the

Diversion Program in the county where the offense occurred and register for

1 ~~the Youth Substance Abuse Safety Program. If the person fails to do so, the~~

2 Diversion Program shall file the summons and complaint with the Judicial
3 Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program
4 shall provide a copy of the summons and complaint to the law enforcement
5 officer who issued the notice of violation and shall provide two copies to the
6 person charged with the violation.

7 (e) Notice to report to Diversion. Upon receipt from a law enforcement
8 officer of a summons and complaint completed under this section, the
9 Diversion Program shall send the person a notice to report to the Diversion
10 Program. The notice to report shall provide that:

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

15 (2) If the person does not satisfactorily complete the substance abuse
16 screening, any required substance abuse assessment or substance abuse
17 counseling, or any other condition related to the offense imposed by the
18 Diversion Program, the case will be referred to the Judicial Bureau, where the
19 person, if found liable for the violation, shall be assessed a civil penalty, the
20 person's driver's license will be suspended, and the person's automobile
21 ~~insurance rates may increase substantially.~~

1 ~~(2) If the person satisfactorily completes the substance abuse screening,~~
2 any required substance abuse assessment or substance abuse counseling, and
3 any other condition related to the offense imposed by the Diversion Program,
4 no penalty shall be imposed and the person's operator's license shall not be
5 suspended.

6 (f) Diversion Program requirements.

7 (1) Upon being contacted by a person who has been issued a notice of
8 violation, the Diversion Program shall register the person in the Youth
9 Substance Abuse Safety Program. Pursuant to the Youth Substance Abuse
10 Safety Program, the Diversion Program shall impose conditions on the person.
11 The conditions imposed shall include only conditions related to the offense and
12 in every case shall include a condition requiring satisfactory completion of
13 substance abuse screening using an evidence-based tool and, if deemed
14 appropriate following the screening, substance abuse assessment and substance
15 abuse education or substance abuse counseling, or both. If the screener
16 recommends substance abuse counseling, the person shall choose a State-
17 certified or State-licensed substance abuse counselor or substance abuse
18 treatment provider to provide the services.

19 (2) Substance abuse screening required under this subsection shall be
20 ~~completed within 60 days after the Diversion Program receives a summons~~

1 ~~and complaint. The person shall complete all conditions at his or her the~~
2 ~~person's own expense.~~

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

7 (A) void the summons and complaint with no penalty due; and

8 (B) send copies of the voided summons and complaint to the Judicial
9 Bureau and to the law enforcement officer who completed them. Before
10 sending copies of the voided summons and complaint to the Judicial Bureau
11 under this subdivision, the Diversion Program shall redact all language
12 containing the person's name, address, Social Security number, and any other
13 information that identifies the person.

14 (4) If a person does not satisfactorily complete substance abuse
15 screening, any required substance abuse education or substance abuse
16 counseling, or any other condition related to the offense imposed by the
17 Diversion Program or if the person fails to pay the Diversion Program any
18 required program fees, the Diversion Program shall file the summons and
19 complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29.

20 ~~The Diversion Program shall provide a copy of the summons and complaint to~~

1 ~~the law enforcement officer who issued the notice of violation and shall~~

2 provide two copies to the person charged with the violation.

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

6 (6) Notwithstanding 3 V.S.A. §§ 163(a)(2)(C) and 164(a)(2)(C), the
7 adult or juvenile diversion programs shall accept cases from the Youth
8 Substance Awareness Safety Program pursuant to this section. The
9 confidentiality provisions of 3 V.S.A. § 163 or 164 shall become effective
10 when a notice of violation is issued pursuant to subsection (b) of this section
11 and shall remain in effect unless the person fails to register with or complete
12 the Youth Substance Awareness Safety Program.

13 * * *

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

15 § 4230b. CANNABIS POSSESSION BY A PERSON 16 YEARS OF AGE
16 OR OLDER AND UNDER 21 YEARS OF AGE, CIVIL
17 VIOLATION

18 * * *

19 (b) Issuance of notice of violation. A law enforcement officer shall issue a
20 person who violates this section with a notice of violation, in a form approved
21 by the Court Administrator. The notice of violation shall require the person to

1 ~~provide his or her the person's name and address and shall explain procedures~~

2 under this section, including that:

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

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

10 (3) no money should be submitted to pay any penalty until after
11 adjudication; and

12 (4) the person shall notify the Diversion Program if the person's address
13 changes.

14 * * *

15 (d) Registration in Youth Substance Awareness Safety Program. Within
16 15 days after receiving a notice of violation, the person shall contact the
17 Diversion Program in the county where the offense occurred and register for
18 the Youth Substance Awareness Safety Program. If the person fails to do so,
19 the Diversion Program shall file the summons and complaint with the Judicial
20 Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program
21 shall provide a copy of the summons and complaint to the law enforcement

1 ~~officer who issued the notice of violation and shall provide two copies to the~~
2 person charged with the violation.

3 (e) Notice to report to Diversion. Upon receipt from a law enforcement
4 officer of a summons and complaint completed under this section, the
5 Diversion Program shall send the person a notice to report to the Diversion
6 Program. The notice to report shall provide that:

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

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

18 (3) If the person satisfactorily completes the substance abuse screening,
19 any required substance abuse assessment or substance abuse counseling, and
20 ~~any other condition related to the offense imposed by the Diversion Program,~~

1 ~~no penalty shall be imposed and the person's operator's license shall not be~~
2 suspended.

3 (f) Diversion Program requirements.

4 (1) Upon being contacted by a person who has been issued a notice of
5 violation, the Diversion Program shall register the person in the Youth
6 Substance Awareness Safety Program. Pursuant to the Youth Substance
7 Awareness Safety Program, the Diversion Program shall impose conditions on
8 the person. The conditions imposed shall include only conditions related to
9 the offense and in every case shall include a condition requiring satisfactory
10 completion of substance abuse screening using an evidence-based tool and, if
11 deemed appropriate following the screening, substance abuse assessment and
12 substance abuse education or substance abuse counseling, or both. If the
13 screener recommends substance abuse counseling, the person shall choose a
14 State-certified or State-licensed substance abuse counselor or substance abuse
15 treatment provider to provide the services.

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

20 (3) When a person has satisfactorily completed substance abuse
21 screening, any required substance abuse education or substance abuse

1 ~~counseling, and any other condition related to the offense that the Diversion~~

2 Program has imposed, the Diversion Program shall:

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

4 (B) Send copies of the voided summons and complaint to the Judicial
5 Bureau and to the law enforcement officer who completed them. Before
6 sending copies of the voided summons and complaint to the Judicial Bureau
7 under this subdivision, the Diversion Program shall redact all language
8 containing the person's name, address, Social Security number, and any other
9 information that identifies the person.

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

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

1 ~~(6) Notwithstanding 3 V.S.A. §§ 163(e)(2)(C) and 164(e)(2)(C), the~~
2 adult or juvenile diversion programs shall accept cases from the Youth
3 Substance Awareness Safety Program pursuant to this section, 18 V.S.A.
4 § 4230f(e)(1), or 18 V.S.A. § 4230f(e)(2). The confidentiality provisions of 3
5 V.S.A. § 163 or 164 shall become effective when a notice of violation is issued
6 pursuant to subsection (b) of this section, 18 V.S.A. § 4230f(e)(1), or 18
7 V.S.A. § 4230f(e)(2), and shall remain in effect unless the person fails to
8 register with or complete the Youth Substance Awareness Safety Program.

9 * * *

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

11 CHAPTER 12. COMMUNITY REPARATIVE BOARDS PROGRAMS AND
12 SERVICES EMPLOYING RESTORATIVE JUSTICE APPROACHES

13 § 910. RESTORATIVE JUSTICE PROGRAM

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

~~§ 910. REPARATIVE BOARDS; FUNCTIONS~~

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

~~(b) Each board shall elect its chair from its membership. A chair may serve for no more than one year, uninterrupted. All meetings of a board shall comply with open meeting law requirements of 1 V.S.A. chapter 5, subchapter 2, consistent with probationer confidentiality requirements of this title, and as may be imposed by the court.~~

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

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

~~(1) In collaboration with the Department, municipalities, the courts, and other entities of the criminal justice system, implement the Restorative Justice Program of seeking to obtain offender accountability, repair harm and~~

~~compensate a victim or victims and the community, increase an offender's~~

~~awareness of the effect of his or her behavior on a victim or victims and the
community, and identify ways to help an offender comply with the law.~~

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

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

~~(f) When engaged in board activities, a board member shall be considered a
volunteer with regard to any grievance or other matter governed by 3 V.S.A.~~

~~§ 1101. [Repealed.]~~

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

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

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

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

~~(b) The Alternatives to Incarceration Board established under section 912
of this title shall establish procedures and guidelines by which it shall solicit~~

1 ~~and review proposals for grants, award grants, and monitor and evaluate the~~
2 ~~progress of projects funded under this chapter.~~

3 (e) ~~Private, nonprofit organizations which create residential half-way~~
4 ~~houses for former prisoners or offenders on community release status shall~~
5 ~~receive priority funding under this chapter.~~

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

7 § 913. POST-ADJUDICATION REPARATIVE PROGRAM

8 (a) Purpose.

9 (1) The Commissioner shall develop and administer an adult post-
10 adjudication reparative program in all counties. In consultation with the
11 Judiciary, the Commissioner shall adopt a policies and procedures manual to
12 promote a uniform system across the State in compliance with this section.

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

17 (b) Administration; report.

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

1 ~~(2) The program shall support the operation of reparative programs~~
2 ~~through grants of financial assistance to, or contracts for services with, entities~~
3 ~~employing restorative programs and services. Such entities engaged with a~~
4 ~~similar post-adjudication program before July 1, 2024 shall be prioritized for~~
5 ~~grants of financial assistance or contracts for services. The Commissioner may~~
6 ~~require local financial contributions as a condition of receipt of program~~
7 ~~funding.~~

8 (3) The Department of Corrections shall develop program outcomes
9 following the designated State of Vermont performance accountability
10 framework and, in consultation with the Judiciary, report annually on or before
11 December 1 to the General Assembly on services provided and outcome
12 indicators. As components of the report required by this subsection, the
13 Commissioner shall include data on the number of reparative program referrals
14 in each county, convictions and crime types, successful completion rates,
15 evidence of desistence, and possible causes of any geographical disparities.

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

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

§ 914. QUALIFYING OFFENSES; ELIGIBILITY AND REFERRAL

PROCESS

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

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

(1) list mandatory qualifying offenses;

(2) permit the parties to supplement the list of mandatory qualifying

offenses,

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

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

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

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

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

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

17 (9) establish written confidentiality standards that ensure constitutional
18 protections and the privacy of responsible parties and victims participating in
19 the restorative process;

20 (10) create universal data collection standards developed by the
21 Department of Corrections, and

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

3 (c) Compliance.

4 (1) The Department of Corrections shall review each memorandum of
5 understanding annually to ensure compliance with the protocols set forth in
6 subsection (b) of this section and the guidance established by the Department
7 and its consulting entities. The Department may engage other relevant
8 stakeholders to assess any defined restorative approach outlined in a
9 memorandum of understanding that is under review for compliance with the
10 Department's protocols and guidance.

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

15 (d) Confidentiality.

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

20 (2) If a case is referred to the program, the court may release
21 information to the victim upon a showing of legitimate need and subject to an

1 ~~appropriate protective agreement defining the purpose for which the~~
2 information is being released and in all other respects maintaining the
3 confidentiality of the information; otherwise, files held by the court, the
4 prosecutor, law enforcement agency, referring entity, and the reparative
5 program related to the matter shall be confidential and shall remain
6 confidential unless.

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

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

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

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

14 Sec. 5. DEPARTMENT OF CORRECTIONS; MODEL REPARATIVE
15 POLICY

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

20 (b) Policy development. On or before January 1, 2025, the Department of
21 Corrections and the Judiciary, in consultation with the Community Justice Unit

1 ~~of the Office of the Attorney General, the Department of State's Attorneys and~~
2 ~~Sheriffs, the Office of the Defender General, and the Center for Crime Victim~~
3 ~~Services, shall establish a cohesive post-adjudication reparative program~~
4 ~~policy for the Department of Corrections and the Judiciary to adopt and~~
5 ~~follow.~~

6 (c) Policy contents. ~~The post-adjudication reparative program policy~~
7 ~~created pursuant to this section shall outline what types of offenses qualify and~~
8 ~~which persons will be eligible for the post-adjudication reparative program.~~
9 ~~The policy shall include considerations for courts to use in determining the~~
10 ~~persons who are eligible for the post-adjudication reparative program and the~~
11 ~~referral of each case to the reparative program. The policy shall also~~
12 ~~contemplate how victim perspective are included in reparative programming.~~

13 Sec. 6. EFFECTIVE DATES

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

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

CHAPTER 7. ATTORNEY GENERAL

Subchapter 1. Election; Authority; Duties

§ 151. ELECTION AND TERM

* * *

Subchapter 2. Restorative Justice Approaches

§ 162a. DEFINITIONS

As used in this subchapter:

(1) “Child” has the same meaning as in 33 V.S.A. § 5102(2).

(2) “Pre-charge diversion” means a referral of an individual to a community-based restorative justice provider by a law enforcement officer or prosecutor after the referring officer or prosecutor has determined that probable cause exists that the individual has committed a criminal offense and before the individual is criminally charged with the offense or before a petition is filed in family court for the offense.

(3) “Youth” has the same meaning as in 33 V.S.A. § 5102(29).

§ 163. JUVENILE COURT DIVERSION PROJECT PROGRAM

(a) Purpose.

(1) The Attorney General shall develop and administer a juvenile court diversion project program, for both pre-charge and post-charge referrals to youth-appropriate community-based restorative justice providers, for the purpose of assisting juveniles children or youth charged with delinquent acts. In consultation with the diversion programs, the Attorney General shall adopt a policies and procedures manual in compliance with this section.

(2) The program shall be designed to provide a restorative option for children or youth alleged to have caused harm in violation of a criminal statute or who have been charged with violating a criminal statute and subject

to a delinquency or youthful offender petition filed with the Family Division of the Superior Court, as well as for victims or those acting on a victim's behalf who have been allegedly harmed by the responsible party. The juvenile diversion program can accept referrals to the program as follows:

(A) Pre-charge by law enforcement or prosecutors pursuant to a policy adopted in accordance with subdivisions (c)(1)–(2) of this section.

(B) Post-charge by prosecutors for children or youth charged with a first or a second misdemeanor or a first nonviolent felony, or other offenses as the prosecutor deems appropriate, pursuant to subdivision (c)(3) of this section.

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

(1) ~~TH~~ Beginning on July 1, 2025, the Attorney General shall support the operation of diversion programs in each of the State's counties through grants of financial assistance to, or contracts for services with, a single municipality or organization to provide community-based restorative justice programs and services in each county. Upon approval of the Attorney

General, the single municipality or organization receiving a grant pursuant to this section may issue subgrants to diversion providers or execute subcontracts for diversion services.

(2) The Attorney General may require local financial contributions as a condition of receipt of program funding.

(3) In consultation with community-based restorative justice providers, the Office of the Attorney General shall develop program outcomes following the designated State of Vermont performance accountability framework and, in consultation with the Department of State's Attorneys and Sheriffs, the Office of the Defender General, the Center for Crime Victim Services, the Judiciary, and the Division of Racial Justice Statistics of the Office of Racial Equity, report annually on or before December 1 to the General Assembly on services provided and outcome indicators. As components of the report required by this subsection, the Attorney General shall include data on the number of pre-charge and post-charge diversion program referrals in each county; race, gender, age, and other demographic variables, whenever possible; offenses charged and crime types; successful completion rates; and possible causes of any geographical disparities.

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

(5) In consultation with community-based restorative justice providers, the Center for Crime Victims Services, the Department of State's Attorneys and Sheriffs' Victim Advocates, the Division for Racial Justice Statistics of the Office of Racial Equity, and the State Archivist, the Attorney General shall adopt a policies and procedures manual for community-based restorative justice providers to promote a uniform system across the State in compliance with this section. The manual shall include policies and procedures related to:

(A) informing victims of their rights and role in pre-charge and post-charge diversion, including that such information is available in writing upon request;

(B) the timely notification to victims of a referral to pre- and post-charge diversion;

(C) an invitation to victims to engage in the restorative process;

(D) how to share information with a victim concerning a restorative agreement's conditions related to the victim and any progress made on such conditions;

(E) best practices for collecting data from all parties that engage with the pre-charge and post-charge diversion programs; and

(F) confidentiality expectations for all parties who engage in the restorative process.

~~(c) All diversion projects receiving financial assistance from the Attorney General shall adhere to the following provisions: Juvenile diversion program policy and referral requirements.~~

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

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

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

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

~~(5) All information gathered in the course of the diversion process shall be held strictly confidential and shall not be released without the participant's~~

~~prior consent (except that research and reports that do not require or establish the identity of individual participants are allowed).~~

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

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

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

~~(9) Each participant shall pay a fee to the local juvenile court diversion project. The amount of the fee shall be determined by project officers based upon the financial capabilities of the participant. The fee shall not exceed \$150.00. The fee shall be a debt due from the participant, and payment of such shall be required for successful completion of the Program. Notwithstanding 32 V.S.A. § 502(a), fees collected under this subdivision shall be retained and used solely for the purpose of the Court Diversion Program.~~

Juvenile pre-charge diversion policy required. In order for a county's community-based restorative justice provider to be eligible to receive pre-charge diversion referrals pursuant to this section, the county's State's

Attorney's office shall adopt a juvenile pre-charge diversion referral policy. To encourage fair and consistent juvenile pre-charge diversion referral policies and methods statewide, the Department of State's Attorneys and Sheriffs and the Community Justice Unit shall publicly post the policies adopted by each State's Attorney's office.

(2) Juvenile pre-charge diversion policy contents. A county's State's Attorney's juvenile pre-charge diversion program policy shall include the following:

(A) A list of offenses that presumptively qualify for juvenile pre-charge diversion.

(B) Any additional criteria to determine whether a child or youth is eligible to participate in juvenile pre-charge diversion.

(C) The appropriate documentation to accompany a referral to juvenile pre-charge diversion, including the name and contact information of the child or youth and the child or youth's parent or legal guardian; the name and contact information of the victim or victims; and a factual statement or affidavit of probable cause of the alleged incident.

(D) A procedure for returning a case to the law enforcement agency or the prosecutor, including when:

(i) the prosecutor withdraws any juvenile pre-charge referral from the juvenile pre-charge diversion program;

(ii) the community-based restorative justice provider determines that the matter is not appropriate for juvenile pre-charge programming; and

(iii) when a child or youth does not successfully complete juvenile pre-charge diversion programming.

(E) A statement reiterating that the State's Attorney retains final discretion over the cases that are eligible for diversion and may deviate from the adopted policy in accordance with such discretion.

(3) Juvenile post-charge diversion requirements. Each State's Attorney, in cooperation with the Office of the Attorney General and the juvenile post-charge diversion program, shall develop clear criteria for deciding what types of offenses and offenders will be eligible for diversion; however, the State's Attorney shall retain final discretion over the referral of each case for diversion. All juvenile post-charge diversion programs receiving financial assistance from the Attorney General shall adhere to the following:

(A) The juvenile post-charge diversion program for children or youth shall only accept individuals against whom a petition has been filed and the court has found probable cause, but are not adjudicated.

(B) A prosecutor may refer a child or youth to diversion either before or after a preliminary hearing and shall notify in writing to the diversion program and the court of the prosecutor's referral to diversion.

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

(D) Notwithstanding this subsection (c), the diversion program may accept cases pursuant to 33 V.S.A. §§ 5225(c) and 5280(e).

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

(1) The matter shall become confidential when notice of a pre-charge referral is provided to the juvenile diversion program, or when notice of a post-charge referral is provided to the court.

(2) All information related to any offense gathered in the course of the juvenile diversion process shall be held strictly confidential and shall not be released without the participant's prior consent.

(3) Information related to any offense that a person divulges in preparation for, during, or as a follow-up to the provision of the juvenile

diversion programming shall not be used against the person in any criminal, civil, family, juvenile, or administrative investigation, prosecution, or case for any purpose, including impeachment or cross-examination. However, the fact of participation and success, or reasons for failure, may become part of the prosecutor's records. This subsection shall not be construed to prohibit the limited disclosure or use of information to specific persons in the following circumstances:

(A) Where there is a threat or statement of a plan that a person may reasonably believe is likely to result in death or bodily injury to themselves or others or damage to the property of another person.

(B) When disclosure is necessary to report bodily harm any party causes another during restorative justice programming.

(C) Where there is a reasonable suspicion of abuse or neglect of a child or vulnerable adult and a report is made pursuant to the provisions of 33 V.S.A. § 4914 or 33 V.S.A. § 6903 or to comply with any law.

(D) Where a court or administrative tribunal determines that the materials were submitted by a participant in the program for the purpose of avoiding discovery of the material in a court or administrative proceeding. If a participant wishes to avail themselves of this provision, the participant may disclose this information in camera to a judicial officer for the purposes of seeking such a ruling.

(4)(A) Notwithstanding subdivision (2) of this subsection (d), if law enforcement or the prosecutor refers a case to diversion, upon the victim's request, the juvenile diversion program shall provide information relating to the conditions of the diversion contract regarding the victim, progress made on such conditions, and information that assists with obtaining the victim's compensation.

(B) Victim information that is not part of the public record shall not be released without the victim's prior consent.

(C) Nothing in this section shall be construed to prohibit a victim's exercise of rights as otherwise provided by law.

(e) Rights and responsibilities.

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

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

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

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

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

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

~~(A) Diversion candidates shall be informed of their right to the advice, assistance, and access to private counsel or the public defender at all stages of the diversion process, including the initial decision to participate and the decision to accept the juvenile diversion contract, so that the candidate may give informed consent.~~

~~(B) For the pre-charge diversion program, notwithstanding the financial need determination pursuant to 13 V.S.A. § 5236, the diversion~~

program shall inform the candidate that a public defender is available for consultation at public expense upon the request of the candidate.

(C) The candidate shall be informed that participation in the diversion program is voluntary.

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

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

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

~~(D) The Court Administrator shall establish policies for implementing this subsection (e).~~ Any victims shall be notified of the victim's rights and role in the pre-charge diversion process, including notification of a candidate's

referral to the pre-charge diversion program by the pre-charge diversion program.

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

(1) Pre-charge diversion records deletion.

(A) Not later than 10 days after the successful completion of the pre-charge diversion program, the juvenile diversion program shall notify the victim, law enforcement agency, and the State's Attorney's office of the participant's successful completion. Payment of restitution is required for successful completion.

(B) ~~Two years after the diversion program notifies~~ Within 30 days after the two-year anniversary notifying the State's Attorney's office of the participant's successful completion, the Attorney General shall provide a certified notice that all records held by the diversion program shall be deleted.

(C) ~~Two years after the diversion program notifies~~ Within 30 days after the two-year anniversary notifying the law enforcement agency and the State's Attorney's office of the participant's successful completion, the Attorney General shall provide a certified notice that all public records held by the law enforcement agency and the State's Attorney's office shall be deleted. Public records do not include the Valcour database or other similar nonpublic law enforcement databases.

(2) Pre-charge diversion case index.

(A) The Community Justice Unit shall keep a special index of pre-charge diversion cases that have been deleted pursuant to this section together with the notice of deletion provided by the Attorney General. The index shall list only the name of the diversion participant, the individual's date of birth, a case number, date of case closure, location of programming, and the offense that was the subject of the deletion.

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

(C) Inspection of the certified notice may be permitted only upon request by the person who is the subject of the case. The Attorney General

may permit special access to the index and the documents for research purposes pursuant to subdivision (g)(2) of this section.

(D) The Community Justice Unit shall establish policies for implementing subsections (1)–(4) of this subsection (f).

(3) Effect of Deletion. Except as otherwise provided in this section, upon the certified notice to delete files and records under this section, the matter shall be considered never to have occurred; all index references thereto shall be deleted; and the participant, the Community Justice Unit, law enforcement officers and departments, prosecutors, the referring entity, and the diversion program shall reply to any request for information that no record exists with respect to such participant inquiry in any matter. Copies of the certified notice shall be sent to each agency, entity, or official named therein.

(4) Deletion Applicability. The process of automatically deleting records as provided in this section shall only apply to those persons who completed pre-charge diversion on or after July 1, 2025. ~~Any person who completed pre-charge diversion prior to July 1, 2025 must apply to the court to have the person's records deleted. Deletion shall occur if the requirements of subdivisions (1)–(3) of this subsection (f) are met.~~

(5) Post-charge diversion records expungement. Within 30 days after the two-year anniversary of a successful completion of juvenile post-charge diversion, the court shall provide notice to all parties of record of the court's

intention to order the expungement of all court files and records, law enforcement records, fingerprints, and photographs other than entries in the court diversion program's centralized filing system applicable to the proceeding. However, the court shall not order expungement if the participant does not satisfy each of subdivisions (A)–(C) of this subdivision. The court shall give the State's Attorney an opportunity for a hearing to contest the expungement of the records. The court shall expunge the records if it finds:

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

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

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

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

(7) Post-charge diversion case index.

(A) The court and the Office of the Attorney General shall keep a special index of post-charge diversion cases that have been expunged pursuant to this section together with the expungement order. The index shall list only the name of the person convicted of the offense, the person's date of birth, the docket number, date of case closure, the court of jurisdiction, and the offense that was the subject of the expungement.

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

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

(D) The Court Administrator shall establish policies for implementing subdivisions (5)–(9) of this subsection (f).

(8) Effect of Expungement. Except as otherwise provided in this section, upon the entry of an order expunging files and records under this section, the proceedings in the matter shall be considered never to have occurred; all index references thereto shall be deleted; and the participant, the court, law

enforcement officers and departments, prosecutors, the referring entity, and the diversion program shall reply to any request for information that no record exists with respect to such participant inquiry in any matter. Copies of the order shall be sent to each agency, entity, or official named therein.

(9) Expungement Applicability. The process of automatically expunging records as provided in this section shall only apply to those persons who completed diversion on or after July 1, 2002. Any person who completed diversion prior to July 1, 2002 must apply to the court to have the person's records expunged. Expungement shall occur if the requirements of subdivisions (5)–(8) of this subsection (f) are met.

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

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

~~(i) Notwithstanding subdivision (c)(1) of this section, the diversion program may accept cases from the Youth Substance Awareness Safety~~

~~Program pursuant to 7 V.S.A. § 656 or 18 V.S.A. § 4230b. The confidentiality provisions of this section shall become effective when a notice of violation is issued under 7 V.S.A. § 656(b) or 18 V.S.A. § 4230b(b) and shall remain in effect unless the person fails to register with or complete the Youth Substance Awareness Safety Program.~~

~~(j) Notwithstanding subdivision (c)(1) of this section, the diversion program may accept cases pursuant to 33 V.S.A. §§ 5225-5280. Public records act exemption.~~

~~(1) Except as otherwise provided by this section, any records or information produced or acquired pursuant to this section shall be exempt from public inspection or copying under Vermont's Public Records Act.~~

~~(2) Notwithstanding subdivision (1) of this subsection, a law enforcement agency, State's Attorney's office, court, or community-based restorative justice provider may disclose information to colleges, universities, public agencies of the State, and nonprofit research organizations that a community-based restorative justice provider has agreements with for use in connection with research projects of a public service nature, but no person associated with those institutions or agencies shall disclose that information in any manner that would reveal the identity of an individual who provided the information to the community-based restorative justice provider.~~

§ 164. ADULT COURT DIVERSION PROGRAM

(a) Purpose.

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

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

(A) Pre-charge by law enforcement or prosecutors pursuant to a policy adopted in accordance with subdivisions (c)(1)–(2) of this section.

(B) Post-charge by prosecutors for persons charged with a first or a second misdemeanor or a first nonviolent felony, or other offenses as the prosecutor deems appropriate, pursuant to subdivision (c)(3) of this section.

(C) Post-charge by prosecutors of persons who have been charged with an offense and who have substance abuse or mental health treatment needs regardless of the person's prior criminal history record, except a person charged with a felony offense that is a crime listed in 13 V.S.A. § 5301(7) shall not be eligible under this section. Persons who have attained 18 years of age

who are subject to a petition in the Family Division pursuant to 33 V.S.A. chapter 52 or 52A shall also be eligible under this section. Programming for these persons is intended to support access to appropriate treatment or other resources with the aim of improving the person's health and reducing future adverse involvement in the justice system.

(b) ~~The program shall be designed for two purposes: Administration; report.~~

(1) ~~To assist adults who have been charged with a first or a second misdemeanor or a first nonviolent felony. The~~ Beginning on July 1, 2025, the Attorney General shall support the operation of diversion programs in each of the State's counties through grants of financial assistance to, or contracts for services with, a single municipality or organization to provide community-based restorative justice programs and services in each county. Upon approval of the Attorney General, the single municipality or organization receiving a grant pursuant to this section may issue subgrants to diversion providers or execute subcontracts for diversion services.

(2) ~~To assist persons who have been charged with an offense and who have substance abuse or mental health treatment needs regardless of the person's prior criminal history record, except a person charged with a felony offense that is a crime listed in 13 V.S.A. § 5301(7) shall not be eligible under this section. Persons who have attained 18 years of age who are subject to a~~

~~petition in the Family Division pursuant to 33 V.S.A. chapters 52 or 52A shall also be eligible under this section. Programming for these persons is intended to support access to appropriate treatment or other resources with the aim of improving the person's health and reducing future adverse involvement in the justice system. The Attorney General may require local financial contributions as a condition of receipt of program funding.~~

~~(3) In consultation with community-based restorative justice providers, the Office of the Attorney General shall develop program outcomes following the designated State of Vermont performance accountability framework and, in consultation with the Department of State's Attorneys and Sheriffs, the Office of the Defender General, the Center for Crime Victim Services, the Judiciary, and the Division of Racial Justice Statistics of the Office of Racial Equity, report annually on or before December 1 to the General Assembly on services provided and outcome indicators. As components of the report required by this subsection, the Attorney General shall include data on the number of pre-charge and post-charge diversion program referrals in each county; race, gender, age, and other demographic variables, whenever possible; offenses charged and crime types; successful completion rates; and possible causes of any geographical disparities.~~

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

(5) In consultation with community-based restorative justice providers, the Center for Crime Victims Services, the Department of State's Attorneys and Sheriffs' Victim Advocates, the Division for Racial Justice Statistics of the Office of Racial Equity, and the State Archivist, the Attorney General shall adopt a policies and procedures manual for community-based restorative justice providers to promote a uniform system across the State in compliance with this section. The manual shall include the following policies and procedures related to:

(A) informing victims of their rights and role in pre-charge and post-charge diversion, including that such information is available in writing upon request;

(B) the timely notification victims of a referral to pre-charge and post-charge diversion;

(C) an invitation to victims to engage in the restorative process;

(D) how to share information with a victim concerning a restorative agreement's conditions related to the victim and any progress made on such conditions;

(E) best practices for collecting data from all parties that engage with the pre-charge and post-charge diversion programs; and

(F) confidentiality expectations for all parties who engage in the restorative process.

~~(c) The program shall support the operation of diversion programs in local communities through grants of financial assistance to, or contracts for services with, municipalities, private groups, or other local organizations. The Attorney General may require local financial contributions as a condition of receipt of program funding.~~ Adult diversion program policy and referral requirements.

(1) Adult pre-charge diversion policy required. In order for a county's community-based restorative justice provider to be eligible to receive referrals pursuant to this section, the State's Attorney's office shall adopt an adult pre-charge diversion referral policy. To encourage fair and consistent pre-charge and post-charge diversion referral policies and methods statewide, the Department of State's Attorneys and Sheriffs and the Community Justice Unit shall publicly post the policies adopted by each State's Attorney's office.

(2) Adult pre-charge diversion policy contents. A county's State's Attorney's pre-charge diversion program policy shall include the following:

(A) a list of offenses that presumptively qualify for pre-charge diversion;

(B) additional criteria to determine whether a responsible party is eligible to participate in pre-charge diversion;

(C) appropriate documentation to accompany a referral to pre-charge diversion, including the name and contact information of the

responsible party, the name and contact information of the victim or victims,
and a factual statement or affidavit of probable cause of the alleged offense;

(D) a procedure for returning a case to the law enforcement agency
or the prosecutor, including when:

(i) the prosecutor withdraws a pre-charge referral from the
diversion program;

(ii) the community-based restorative justice provider determines
that the matter is not appropriate for pre-charge programming; and

(iii) a person does not successfully complete pre-charge diversion
programming; and

(E) a statement reiterating that the State's Attorney retains final
discretion over the cases that are eligible for diversion and may deviate from
the adopted policy in accordance with such discretion.

(3) Adult post-charge diversion requirements. Each State's Attorney, in
cooperation with the Office of the Attorney General and the adult post-charge
diversion program, shall develop clear criteria for deciding what types of
offenses and offenders will be eligible for diversion; however, the State's
Attorney shall retain final discretion over the referral of each case for
diversion. All adult post-charge diversion programs receiving financial
assistance from the Attorney General shall adhere to the following:

(A) The post-charge diversion program for adults shall only accept person against whom charges have been filed and the court has found probable cause, but are not adjudicated.

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

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

(D) Notwithstanding this subsection (c), the diversion program may accept cases pursuant to 33 V.S.A. §§ 5225 and 5280.

~~(d) The Office of the Attorney General shall develop program outcomes following the designated State of Vermont performance accountability framework and, in consultation with the Department of State's Attorneys and Sheriffs, the Office of the Defender General, the Center for Crime Victim Services, and the Judiciary, report annually on or before December 1 to the~~

~~General Assembly on services provided and outcome indicators. As a component of the report required by this subsection, the Attorney General shall include data on diversion program referrals in each county and possible causes of any geographical disparities. Confidentiality.~~

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

~~(2) All information gathered in the course of the adult diversion process shall be held strictly confidential and shall not be released without the participant's prior consent.~~

~~(3) Information related to any offense that a person divulges in preparation for, during, or as a follow-up to the provision of the adult diversion programming shall not be used against the person in any criminal, civil, family, juvenile, or administrative investigation, prosecution, or case for any purpose, including impeachment or cross-examination. However, the fact of participation and success, or reasons for failure, may become part of the prosecutor's records. This subsection shall not be construed to prohibit the~~

limited disclosure or use of information to specific persons in the following circumstances:

(A) Where there is a threat or statement of a plan that a person may reasonably believe is likely to result in death or bodily injury to themselves or others or damage to the property of another person.

(B) When disclosure is necessary to report bodily harm any party causes another during restorative justice programming.

(C) Where there is a reasonable suspicion of abuse or neglect of a child or vulnerable adult and a report is made pursuant to the provisions of 33 V.S.A. § 4914 or 33 V.S.A. § 6903 or to comply with any law.

(D) Where a court or administrative tribunal determines that the materials were submitted by a participant in the program for the purpose of avoiding discovery of the material in a court or administrative proceeding. If a participant wishes to avail themselves of this provision, the participant may disclose this information in camera to a judicial officer for the purposes of seeking such a ruling.

(4)(A) Notwithstanding subdivision (2) of this subsection (d), if law enforcement or the prosecutor refers a case to diversion, upon the victim's request, the adult diversion program shall provide information relating to the conditions of the diversion contract regarding the victim, progress made on

such conditions, and information that assists with obtaining the victim's compensation.

(B) Victim information that is not part of the public record shall not be released without the victim's prior consent.

(C) Nothing in this section shall be construed to prohibit a victim's exercise of rights as otherwise provided by law.

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

(1) The diversion program shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. The prosecuting attorney may refer a person to diversion either before or after arraignment and shall notify in writing the diversion program and the court of his or her intention to refer the person to diversion. The matter shall become confidential when notice is provided to the court, except that for persons who are subject to conditions of release imposed pursuant to 13 V.S.A. § 7554 and who are referred to diversion pursuant to subdivision (b)(2) of this section, the matter shall become confidential upon the successful completion of diversion. If a person is charged with a qualifying crime as defined in 13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall provide the person with the opportunity to participate in the

~~court diversion program unless the prosecutor states on the record at arraignment or a subsequent hearing why a referral to the program would not serve the ends of justice. If the prosecuting attorney prosecutor refers a case to diversion, the prosecuting attorney prosecutor may release information to the victim upon a showing of legitimate need and subject to an appropriate protective agreement defining the purpose for which the information is being released and in all other respects maintaining the confidentiality of the information; otherwise, files held by the court, the prosecuting attorney prosecutor, and the law enforcement agency related to the charges shall be confidential and shall remain confidential unless:~~

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

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

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

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

~~(2) Alleged offenders shall be informed of their right to the advice and assistance of private counsel or the public defender at all stages of the diversion process, including the initial decision to participate, and the decision~~

~~to accept the adult diversion contract, so that the candidate may give informed consent.~~

(A) Diversion candidates shall be informed of their right to the advice, assistance, and access to private counsel or the public defender at all stages of the diversion process, including the initial decision to participate and the decision to accept the diversion contract, so that the candidate may give informed consent.

(B) For the pre-charge diversion program, notwithstanding the financial need determination pursuant to 13 V.S.A. § 5236, the diversion program shall inform the candidate that a public defender is available for consultation at public expense upon the request of the diversion candidate.

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

~~(4) Each State's Attorney, in cooperation with the Office of the Attorney General and the adult court diversion program, shall develop clear criteria for deciding what types of offenses and offenders will be eligible for diversion; however, the State's Attorney shall retain final discretion over the referral of each case for diversion.~~

~~(5) All information gathered in the course of the adult diversion process shall be held strictly confidential and shall not be released without the~~

~~participant's prior consent (except that research and reports that do not establish the identity of individual participants are allowed).~~

(A) The pre-charge and post-charge diversion programs may charge fees to its participants, which shall be paid to the local adult court diversion program. If a fee is charged, it shall be determined by program officers or employees based upon the financial capabilities of the participant. The fee shall not exceed \$300.00. Any fee charged shall be a debt due from the participant.

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

~~(6)(5) Information related to the present offense that is divulged during the adult diversion program shall not be used against the person in the person's criminal or juvenile case for any purpose, including impeachment or cross-examination. However, the fact of participation and success, or reasons for failure, may become part of the prosecutor's records. Any victims shall be notified of the victim's rights and role in the pre-charge diversion process, including notification of a candidate's referral to the pre-charge diversion program by the pre-charge diversion program.~~

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

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

- ~~(i) name and date of birth;~~
- ~~(ii) offense charged and date of offense;~~
- ~~(iii) place of residence;~~
- ~~(iv) county where diversion process took place; and~~
- ~~(v) date of completion of diversion process.~~

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

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

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

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

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

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

Records; deletion and expungement.

(1) Pre-charge diversion records deletion.

(A) Not later than 10 days after the successful completion of the pre-charge diversion program, the juvenile diversion program shall notify the victim, law enforcement agency, and the State's Attorney's office of the participant's successful completion. Payment of restitution is required for successful completion.

(B) ~~Two years after the diversion program notifies~~ Within 30 days after the two-year anniversary notifying the State's Attorney's office of the participant's successful completion, the Attorney General shall provide a certified notice that all records held by the diversion program shall be deleted.

(C) ~~Two years after the diversion program notifies~~ Within 30 days after the two-year anniversary notifying the law enforcement agency and the State's Attorney's office of the participant's successful completion, the Attorney General shall provide a certified notice that all public records held by

the law enforcement agency and the State's Attorney's office shall be deleted.
Public records do not include the Valcour database or other similar nonpublic
law enforcement databases.

(2) Pre-charge diversion case index.

(A) The Community Justice Unit shall keep a special index of pre-
charge diversion cases that have been deleted pursuant to this section together
with the notice of deletion provided by the Attorney General. The index shall
list only the name of the diversion participant, the individual's date of birth, a
case number, date of case closure, location of programming, and the offense
that was the subject of the deletion.

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

(C) Inspection of the certified notice may be permitted only upon
request by the person who is the subject of the case. The Attorney General
may permit special access to the index and the documents for research
purposes pursuant to subdivision (g)(2) of this section.

(D) The Community Justice Unit shall establish policies for
implementing subsections (1)–(4) of this subsection (f).

(3) Effect of Deletion. Except as otherwise provided in this section, upon the certified notice to delete files and records under this section, the matter shall be considered never to have occurred; all index references thereto shall be deleted; and the participant, the Community Justice Unit, law enforcement officers and departments, prosecutors, the referring entity, and the diversion program shall reply to any request for information that no record exists with respect to such participant inquiry in any matter. Copies of the certified notice shall be sent to each agency, entity, or official named therein.

(4) Deletion Applicability. The process of automatically deleting records as provided in this section shall only apply to those persons who completed pre-charge diversion on or after July 1, 2025. ~~Any person who completed pre-charge diversion prior to July 1, 2025 must apply to the court to have the person's records deleted. Deletion shall occur if the requirements of subdivisions (1) (3) of this subsection (f) are met.~~

(5) Post-charge diversion records expungement. Within 30 days after the two-year anniversary of a successful completion of adult post-charge diversion, the court shall provide notice to all parties of record of the court's intention to order the expungement of all court files and records, law enforcement records, fingerprints, and photographs other than entries in the adult court diversion program's centralized filing system applicable to the proceeding. However, the court shall not order expungement if the participant

does not satisfy each of subdivisions (A)–(C) of this subdivision. The court shall give the State’s Attorney an opportunity for a hearing to contest the expungement of the records. The court shall expunge the records if it finds:

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

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

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

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

(7) Post-charge diversion case index.

(A) The court and the Office of the Attorney General shall keep a special index of post-charge diversion cases that have been expunged pursuant to this section together with the expungement order. The index shall list only the name of the person convicted of the offense, the person’s date of birth, the

docket number, date of case closure, location of programming, and the criminal offense that was the subject of the expungement.

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

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

(D) The Court Administrator shall establish policies for implementing subdivisions (5)–(9) of this subsection (f).

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

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

(g) Public records act exemption.

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

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

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

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

~~(D) the participant does not owe restitution related to the case.~~
Except as otherwise provided in this section, any records or information produced or acquired pursuant to this section shall be exempt from public inspection or copying under Vermont's Public Records Act and shall be kept confidential.

~~(2) The court may expunge any records that were sealed pursuant to this subsection prior to July 1, 2018 unless the State's Attorney's office that prosecuted the case objects. Thirty days prior to expunging a record pursuant to this subdivision, the court shall provide written notice of its intent to expunge the record to the State's Attorney's office that prosecuted the case.~~
Notwithstanding subdivision (1) of this subsection, a law enforcement agency, State's Attorney's office, court, or community-based restorative justice provider may disclose information to colleges, universities, public agencies of the State, and nonprofit research organizations that a community-based restorative justice provider has agreements with for use in connection with research projects of a public service nature, but no person associated with

those institutions or agencies shall disclose that information in any manner that would reveal the identity of an individual who provided the information to the community-based restorative justice provider.

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

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

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

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

~~(h) Except as otherwise provided in this section, upon the entry of an order expunging files and records under this section, the proceedings in the matter~~

~~shall be considered never to have occurred, all index references thereto shall be deleted, and the participant, the court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to such participant inquiry in any matter. Copies of the order shall be sent to each agency or official named therein.~~

~~(i) [Repealed.]~~

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

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

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

~~effect unless the person fails to register with or complete the Youth Substance Awareness Safety Program.~~

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

* * *

~~§ 165 161. PUBLIC CONTRACT ADVOCATE~~

* * *

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

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

* * *

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

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

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

(3) no money should be submitted to pay any penalty until after adjudication; and

(4) the person shall notify the Diversion Program if the person's address changes.

** * **

(d) Registration in Youth Substance Abuse Safety Program. Within 15 days after receiving a notice of violation, the person shall contact the Diversion Program in the county where the offense occurred and register for the Youth Substance Abuse Safety Program. If the person fails to do so, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.

(e) Notice to report to Diversion. Upon receipt from a law enforcement officer of a summons and complaint completed under this section, the

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

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

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

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

(f) Diversion Program requirements.

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

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

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

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

(A) ~~void~~ Void the summons and complaint with no penalty due; ~~and~~.

(B) ~~send~~ Send copies of the voided summons and complaint to the Judicial Bureau and to the law enforcement officer who completed them.

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

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

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

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

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

* * *

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

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

* * *

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

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

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

(3) no money should be submitted to pay any penalty until after adjudication; and

(4) the person shall notify the Diversion Program if the person's address changes.

** * **

(d) Registration in Youth Substance Awareness Safety Program. Within 15 days after receiving a notice of violation, the person shall contact the Diversion Program in the county where the offense occurred and register for the Youth Substance Awareness Safety Program. If the person fails to do so, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.

(e) Notice to report to Diversion. Upon receipt from a law enforcement officer of a summons and complaint completed under this section, the Diversion Program shall send the person a notice to report to the Diversion Program. The notice to report shall provide that:

(1) The person is required to complete all conditions related to the offense imposed by the Diversion Program, including substance abuse

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

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

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

(f) Diversion Program requirements.

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

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

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

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

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

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

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

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

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

* * *

*Sec. 4. RESTORATIVE JUSTICE; POST-ADJUDICATION REPARATIVE
PROGRAM WORKING GROUP; REPORT*

(a) Creation. There is created the Post-Adjudication Reparative Program Working Group to create a Post-Adjudication Reparative Program (the “Program”) that promotes uniform access to the appropriate community-based service providers for individuals sentenced to reparative boards and probation pursuant to 13 V.S.A. § 7030(a)(2) and (a)(3). The Working Group shall also study establishing a stable and reliable funding structure to support the operation of the appropriate community-based service providers.

(b) Membership. The Working Group shall be composed of the following members:

(1) the Commissioner of Corrections or designee;

(2) the Chief Judge of the Vermont Superior Court or designee; and

(3) five representatives selected from different geographic regions of the State to represent the State’s community-based restorative justice providers currently receiving reparative board funding from the Department of Corrections appointed by the providers.

(c) Powers and duties. The Working Group shall study the following issues:

(1) defining the Program and its scope;

(2) determining the offenses that presumptively qualify for referral to the Program;

(3) establishing any eligibility requirements for individuals sentenced to a reparative board or probation to be referred to the Program;

(4) designing uniform operational procedures for Program referrals from the courts, intake, data collection, participant success standards, and case closures;

(5) assessing the necessary capacity and resources of the Judiciary, the Department of Corrections, and the community-based restorative justice providers to operate the Program;

(6) exploring an approach to achieve greater stability and reliability for the community-based restorative justice providers, including the Designated Agency model; and

(7) consulting with the Office of the Attorney General, the Department of State's Attorneys and Sheriffs, the Office of the Defender General, the Center for Crime Victim Services, and other stakeholders as necessary, on considerations to incorporate into the Program.

(d) Assistance. The Working Group shall have the administrative, technical, and legal assistance of the Department of Corrections.

(e) Report and updates.

(1) On or before January 15, 2025, the Working Group shall provide an update to the Senate Committee on Judiciary and House Committees on Corrections and Institutions and on Judiciary concerning any progress.

(2) On or before July 15, 2025, the Working Group shall provide an update to the Joint Legislatures Justice Oversight Committee concerning any progress.

(3) On or before November 15, 2025, the Working Group shall submit a written report in the form of proposed legislation to the Joint Legislative Justice Oversight Committee, the Senate Committee on Judiciary, and the House Committees on Corrections and Institutions and on Judiciary.

(f) Meetings.

(1) The Chief Judge of the Vermont Superior Court or designee shall call the first meeting of the Working Group to occur on or before August 1, 2024.

(2) The Working Group shall meet not more than six times per year.

(3) The Chief Judge of the Vermont Superior Court or designee shall serve as the Chair of the Working Group.

(4) A majority of the membership shall constitute a quorum.

(5) The Working Group shall cease to exist on January 15, 2026.

(g) Compensation and reimbursement. Members of the Working Group who are not employees of the State of Vermont and who are not otherwise

compensated or reimbursed for their attendance shall be entitled to compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than six meetings per year.

~~Sec. 5. DEPARTMENT OF STATE'S ATTORNEYS AND SHERIFFS;
POSITION; APPROPRIATION~~

~~(a) On July 1, 2024, a new, permanent, exempt Director of Policy position is created in the Department of State's Attorneys and Sheriffs. In addition to any other duties deemed appropriate by the Department, the Director of Policy shall supervise the development, oversight, and compliance work related to the Department's internal, external, and State-mandated policies.~~

~~(b) The position of Director of Policy established in subsection (a) of this section shall be subject to a General Fund appropriation in FY 2025.~~

Sec. 5. DEPARTMENT OF STATE'S ATTORNEYS AND SHERIFFS;
POSITION; APPROPRIATION

To the extent funds are available, a new, permanent, exempt Director of Policy position is created in fiscal year 2025 within the Department of State's Attorneys and Sheriffs. In addition to any other duties deemed appropriate by the Department, the Director of Policy shall supervise the development, oversight, and compliance work related to the Department's internal, external, and State-mandated policies.

~~Sec. 6. OFFICE OF THE ATTORNEY GENERAL, DIVERSION~~

~~PROGRAM POSITION; APPROPRIATION~~

~~(a) On July 1, 2024, a new, permanent, classified Diversion Program Coordinator position is created in the Office of the Attorney General. In addition to any other duties deemed appropriate by the Attorney General, the Diversion Program Coordinator shall assist in the administration of the diversion programs governed by the Office of the Attorney General.~~

~~(b) The position of Diversion Program Coordinator established in subsection (a) of this section shall be subject to a General Fund appropriation in FY 2025.~~

Sec. 6. OFFICE OF THE ATTORNEY GENERAL; POSITION;
APPROPRIATION

To the extent funds are available, a new, permanent, classified Diversion Program Coordinator position is created in fiscal year 2025 within the Office of the Attorney General. In addition to any other duties deemed appropriate by the Attorney General, the Diversion Program Coordinator shall assist in the administration of the diversion programs governed by the Office of the Attorney General.

Sec. 7. COMMUNITY JUSTICE UNIT; DIVERSION PROGRAM
ADMINISTRATION PLAN; REPORT

In counties where there is more than one pre-charge and post-charge diversion provider, the Community Justice Unit of the Office of the Attorney

General shall collaborate with each county's juvenile and adult pre-charge and post-charge providers and each county's State's Attorney or designee to develop a plan to streamline the administration and provision of juvenile and adult pre-charge and post-charge diversion programs on or before July 1, 2027. The Community Justice Unit shall report on such plan in the 2027 annual report required pursuant to 3 V.S.A. §§ 163(b)(2) and 164(b)(2).

*Sec. 8. OFFICE OF THE ATTORNEY GENERAL; PRE-CHARGE
DIVERSION PROVIDERS; GRANTS*

Notwithstanding 3 V.S.A. §§ 163(b)(1) and 164(b)(1), in counties where there is more than one pre-charge or post-charge diversion provider, the Attorney General shall offer to grant or contract directly with all pre-charge providers in that county or provide for subgranting or subcontracting by the current post-charge provider in that county.

*Sec. 9. OFFICE OF THE ATTORNEY GENERAL; COMMUNITY
REFERRALS; FUNDING ALTERNATIVES; REPORT*

(a) On or before December 1, 2024, the Office of the Attorney General, in consultation with community-based restorative justice providers, the Department of Public Safety, the Vermont Association of Chiefs of Police, the Office of Racial Equity, and other stakeholders as needed, shall submit a written report outlining funding alternatives for community referrals to the

Senate and House Committees on Judiciary. The report shall include funding alternatives considering:

(1) state and local funding options;

(2) entities through which funding could be provided; and

(3) oversight requirements.

(b) As used in this section, “community referrals” mean referrals to community-based restorative justice providers that do not involve criminal offenses for which probable cause has been established.

Sec. 10. REDESIGNATION

24 V.S.A. §§ 1961–1969 are redesignated at 28 V.S.A. §§ 915–923.

Sec. 11. REPEALS

Sec. 8 of this act is repealed on July 1, 2029.

Sec. 12. EFFECTIVE DATES

This act shall take effect on July 1, 2024 except that Sec. 1 (juvenile and adult pre-charge and post-charge diversion) and Sec. 8 (Attorney General pre-charge diversion grants) shall take effect on July 1, 2025.