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H.645

An act relating to the expansion of approaches to restorative justice

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

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) “Community referral” means a referral of an individual to a community-based restorative justice provider that does not involve criminal offenses or delinquencies for which probable cause exists.

(3) “Criminal justice purposes” has the same meaning as in 20 V.S.A. § 2056a(a)(3).

(4) “Precharge 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

1 probable cause exists that the individual has committed a criminal offense and
2 before the individual is criminally charged with the offense or before a petition
3 is filed in family court for the offense. Precharge diversion shall not be
4 construed to include a community referral.

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

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

7 (a) Purpose.

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

14 (2) The program shall be designed to provide a restorative option for
15 children or youth alleged to have caused harm in violation of a criminal statute
16 or who have been charged with violating a criminal statute and subject to a
17 delinquency or youthful offender petition filed with the Family Division of the
18 Superior Court, as well as for victims or those acting on a victim’s behalf who
19 have been allegedly harmed by the responsible party. The juvenile diversion
20 program may accept referrals to the program as follows:

1 (A) Pre-charge by law enforcement or prosecutors where a child or
2 youth has committed any criminal offense or delinquency and pursuant to a
3 policy adopted in accordance with subdivisions (c)(1)–(2) of this section.

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

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

13 (1) Beginning on July 1, 2025, the Attorney General shall support the
14 operation of diversion programs in each of the State’s counties through grants
15 of financial assistance to, or contracts for services with, a single municipality
16 or organization to provide community-based restorative justice programs and
17 services in each county. Upon approval of the Attorney General, the single
18 municipality or organization receiving a grant pursuant to this section may
19 issue subgrants to diversion providers or execute subcontracts for diversion
20 services.

1 (2) The Juvenile Pre-Charge Diversion Program established pursuant to
2 this section shall operate only to the extent funds are appropriated to the Office
3 of the Attorney General, the Department of State’s Attorneys and Sheriffs, and
4 the Office of the Defender General to carry out the Program.

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

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

20 (5) In consultation with community-based restorative justice providers,
21 the Center for Crime Victims Services, the Department of State’s Attorneys

1 and Sheriffs' Victim Advocates, the Division for Racial Justice Statistics of the
2 Office of Racial Equity, and the State Archivist, the Attorney General shall
3 adopt a policies and procedures manual for community-based restorative
4 justice providers to promote a uniform system across the State in compliance
5 with this section. The manual shall include policies and procedures related to:

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

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

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

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

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

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

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

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

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

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

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

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

20 (6) ~~Information related to the present offense that is divulged during the~~
21 ~~diversion program shall not be used in the prosecutor's case. However, the~~

1 ~~fact of participation and success, or reasons for failure may become part of the~~
2 ~~prosecutor's records.~~

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

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

7 ~~(9) Each participant shall pay a fee to the local juvenile court diversion~~
8 ~~project. The amount of the fee shall be determined by project officers based~~
9 ~~upon the financial capabilities of the participant. The fee shall not exceed~~
10 ~~\$150.00. The fee shall be a debt due from the participant, and payment of such~~
11 ~~shall be required for successful completion of the Program. Notwithstanding~~
12 ~~32 V.S.A. § 502(a), fees collected under this subdivision shall be retained and~~
13 ~~used solely for the purpose of the Court Diversion Program.~~

14 Juvenile pre-charge diversion policy required. Each county's State's
15 Attorney's office shall adopt a juvenile pre-charge diversion referral policy.
16 To encourage fair and consistent juvenile pre-charge diversion referral policies
17 and methods statewide, the Department of State's Attorneys and Sheriffs and
18 the Community Justice Unit shall publicly post the policies adopted by each
19 State's Attorney's office.

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

4 (A) Criteria to determine whether a child or youth is eligible to
5 participate in juvenile pre-charge diversion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (3) Information related to any offense that a person divulges in
13 preparation for, during, or as a follow-up to the provision of the juvenile
14 diversion programming shall not be used against the person in any criminal,
15 civil, family, juvenile, or administrative investigation, prosecution, or case for
16 any purpose, including impeachment or cross-examination. However, the fact
17 of participation and success, or reasons for failure, may become part of the
18 prosecutor's records. This subsection shall not be construed to prohibit the
19 limited disclosure or use of information to specific persons in the following
20 circumstances:

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

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

6 (C) When disclosure to other community-based restorative justice
7 providers is necessary to facilitate coordination for an individual who has more
8 than one active referral before different community justice providers.

9 (D) Where there is a reasonable suspicion of abuse or neglect of a
10 child or vulnerable adult and a report is made pursuant to the provisions of
11 33 V.S.A. § 4914 or 33 V.S.A. § 6903 or to comply with any law.

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

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

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

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

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

7 (e) Rights and responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

17 ~~(D) The Court Administrator shall establish policies for implementing~~
18 ~~this subsection (e). Any victims shall be notified of the victim's rights and role~~
19 ~~in the pre-charge diversion process, including notification of a candidate's~~
20 ~~referral to the pre-charge diversion program by the pre-charge diversion~~
21 ~~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 shall~~
7 ~~be sent to each agency or official named therein. Records; deletion and~~
8 ~~expungement.~~

9 (1) Pre-charge diversion records deletion.

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

15 (B) Within 30 days after the two-year anniversary notifying the
16 State's Attorney's office of the participant's successful completion, the
17 Attorney General shall provide notice that all records held by the diversion
18 program shall be deleted.

19 (C) Within 30 days after the two-year anniversary notifying the law
20 enforcement agency and the State's Attorney's office of the participant's
21 successful completion, the Attorney General shall provide notice that all public

1 records held by the law enforcement agency and the State's Attorney's office
2 shall be deleted, including any held by the Attorney General. Records
3 maintained on the Valcour database or other similar nonpublic databases
4 maintained by a law enforcement agency, a State's Attorney's office, or the
5 Department of State's Attorneys and Sheriffs shall be exempt from deletion
6 and shall only be used for criminal justice purposes.

7 (2) Pre-charge diversion case index.

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

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

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

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

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

11 (4) Deletion Applicability. The process of automatically deleting
12 records as provided in this section shall only apply to those persons who
13 completed pre-charge diversion on or after July 1, 2025.

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

1 Attorney an opportunity for a hearing to contest the expungement of the
2 records. The court shall expunge the records if it finds:

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

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

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

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

15 (7) Post-charge diversion case index.

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

1 (B) The special index and related documents specified in subdivision
2 (A) of this subdivision (7) 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 subdivisions (5)–(9) of this subsection (f).

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

20 (9) Expungement Applicability. The process of automatically
21 expunging records as provided in this section shall only apply to those persons

1 who completed diversion on or after July 1, 2002. Any person who completed
2 diversion prior to July 1, 2002 must apply to the court to have the person's
3 records expunged. Expungement shall occur if the requirements of
4 subdivisions (5)–(8) of this subsection (f) are met.

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

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

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

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

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

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

16 § 164. ADULT COURT DIVERSION PROGRAM

17 (a) Purpose.

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

1 (2) The program shall be designed to provide a restorative option for
2 persons 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 pursuant to a
8 policy adopted in accordance with subdivisions (c)(1)–(2) of this section.

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

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

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

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

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

1 to this section shall operate only to the extent funds are appropriated to the
2 Office of the Attorney General, the Department of State's Attorneys and
3 Sheriffs, and the Office of the Defender General to carry out the Program.

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

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

19 (5) In consultation with community-based restorative justice providers,
20 the Center for Crime Victims Services, the Department of State's Attorneys
21 and Sheriffs' Victim Advocates, the Division for Racial Justice Statistics of the

1 Office of Racial Equity, and the State Archivist, the Attorney General shall
2 adopt a policies and procedures manual for community-based restorative
3 justice providers to promote a uniform system across the State in compliance
4 with this section. The manual shall include the following policies and
5 procedures related to:

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

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

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

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

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

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

19 ~~(c) The program shall support the operation of diversion programs in local~~
20 ~~communities through grants of financial assistance to, or contracts for services~~
21 ~~with, municipalities, private groups, or other local organizations. The Attorney~~

1 ~~General may require local financial contributions as a condition of receipt of~~
2 ~~program funding.~~ Adult diversion program policy and referral requirements.

3 (1) Adult pre-charge diversion policy required. Each State's Attorney's
4 office shall adopt an adult pre-charge diversion referral policy. To encourage
5 fair and consistent pre-charge and post-charge diversion referral policies and
6 methods statewide, the Department of State's Attorneys and Sheriffs and the
7 Community Justice Unit shall publicly post the policies adopted by each
8 State's Attorney's office.

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

11 (A) Criteria to determine whether a responsible party is eligible to
12 participate in pre-charge diversion;

13 (B) Any appropriate documentation to accompany a referral to pre-
14 charge diversion, including the name and contact information of the
15 responsible party, the name and contact information of the victim or victims,
16 and a factual statement or affidavit of probable cause of the alleged offense;

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

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

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

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

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

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

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

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

1 (C) If a person is charged with a qualifying crime as defined in
2 13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall
3 provide the person with the opportunity to participate in the court diversion
4 program unless the prosecutor states on the record at arraignment or a
5 subsequent hearing why a referral to the post-charge program would not serve
6 the ends of justice. Factors considered in the ends-of-justice determination
7 include the person’s criminal record, the views of any victims, or the need for
8 probationary supervision.

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

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

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

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

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

8 (3) Information related to any offense that a person divulges in
9 preparation for, during, or as a follow-up to the provision of the adult diversion
10 programming shall not be used against the person in any criminal, civil, family,
11 juvenile, or administrative investigation, prosecution, or case for any purpose,
12 including impeachment or cross-examination. However, the fact of
13 participation and success, or reasons for failure, may become part of the
14 prosecutor's records. This subsection shall not be construed to prohibit the
15 limited disclosure or use of information to specific persons in the following
16 circumstances:

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

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

1 (C) When disclosure to other community-based restorative justice
2 providers is necessary to facilitate coordination where an individual has more
3 than one active referral before different restorative justice providers.

4 (D) Where there is a reasonable suspicion of abuse or neglect of a
5 child or vulnerable adult and a report is made pursuant to the provisions of
6 33 V.S.A. § 4914 or 33 V.S.A. § 6903 or to comply with any law.

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

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

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

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

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

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

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

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

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

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

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

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

19 (A) Diversion candidates shall be informed of their right to the
20 advice, assistance, and access to private counsel or the public defender at all
21 stages of the diversion process, including the initial decision to participate and

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

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

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

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

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

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

1 employees based upon the financial capabilities of the participant. The fee
2 shall not exceed \$300.00. Any fee charged shall be a debt due from the
3 participant.

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

7 ~~(6)(5) Information related to the present offense that is divulged during~~
8 ~~the adult diversion program shall not be used against the person in the person's~~
9 ~~criminal or juvenile case for any purpose, including impeachment or cross-~~
10 ~~examination. However, the fact of participation and success, or reasons for~~
11 ~~failure, may become part of the prosecutor's records. Any victims shall be~~
12 ~~notified of the victim's rights and role in the pre-charge diversion process,~~
13 ~~including notification of a candidate's referral to the pre-charge diversion~~
14 ~~program by the pre-charge diversion program.~~

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

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

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

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

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

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

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

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

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

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

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

4 (1) Pre-charge diversion records deletion.

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

10 (B) Within 30 days after the two-year anniversary notifying the
11 State's Attorney's office of the participant's successful completion, the
12 Attorney General shall provide notice that all records held by the diversion
13 program shall be deleted.

14 (C) Within 30 days after the two-year anniversary notifying the law
15 enforcement agency and the State's Attorney's office of the participant's
16 successful completion, the Attorney General shall provide notice that all public
17 records held by the law enforcement agency and the State's Attorney's office
18 shall be deleted, including any held by the Attorney General. Records
19 maintained on the Valcour database or other similar nonpublic databases
20 maintained by a law enforcement agency, a State's Attorney's office, or the

1 Department of State's Attorneys and Sheriffs shall be exempt from deletion
2 and shall only be used for criminal justice purposes.

3 (2) Pre-charge diversion case index.

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

10 (B) The special index and related documents specified in subdivision
11 (A) of this subdivision (2) 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 notice may be permitted only upon request by
15 the person who is the subject of the case. The Attorney General may permit
16 special access to the index and the documents for research purposes pursuant
17 to subdivision (g)(2) of this section.

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

20 (3) Effect of Deletion. Except as otherwise provided in this section,
21 upon the notice to delete files and records under this section, the matter shall

1 be considered never to have occurred; all index references thereto shall be
2 deleted; and the participant, the Community Justice Unit, law enforcement
3 officers and departments, prosecutors, the referring entity, and the diversion
4 program shall reply to any request for information that no record exists with
5 respect to such participant inquiry in any matter. Copies of the notice shall be
6 sent to each agency, entity, or official named therein.

7 (4) Deletion Applicability. The process of automatically deleting
8 records as provided in this section shall only apply to those persons who
9 completed pre-charge diversion on or after July 1, 2025.

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

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

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

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

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

11 (7) Post-charge diversion case index.

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

18 (B) The special index and related documents specified in subdivision
19 (A) of this subdivision (7) shall be confidential and shall be physically and
20 electronically segregated in a manner that ensures confidentiality and that
21 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 subdivisions (5)–(9) of this subsection (f).

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

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

1 (g) Public records act exemption.

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

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

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

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

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

20 Except as otherwise provided in this section, any records or information
21 produced or acquired pursuant to this section shall be exempt from public

1 inspection or copying under Vermont's Public Records Act and shall be kept
2 confidential.

3 ~~(2) The court may expunge any records that were sealed pursuant to this~~
4 ~~subsection prior to July 1, 2018 unless the State's Attorney's office that~~
5 ~~prosecuted the case objects. Thirty days prior to expunging a record pursuant~~
6 ~~to this subdivision, the court shall provide written notice of its intent to~~
7 ~~expunge the record to the State's Attorney's office that prosecuted the case.~~
8 Notwithstanding subdivision (1) of this subsection, a law enforcement agency,
9 State's Attorney's office, court, or community-based restorative justice
10 provider may disclose information to colleges, universities, public agencies of
11 the State, and nonprofit research organizations that a community-based
12 restorative justice provider has agreements with for use in connection with
13 research projects of a public service nature, but no person associated with those
14 institutions or agencies shall disclose that information in any manner that
15 would reveal the identity of an individual who provided the information to the
16 community-based restorative justice provider.

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

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

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

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

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

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

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

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

17 * * *

18 § 465 161. PUBLIC CONTRACT ADVOCATE

19 * * *

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

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

6 * * *

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

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

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

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

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

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

13 (f) Diversion Program requirements.

14 (1) Upon being contacted by a person who has been issued a notice of
15 violation, the Diversion Program shall register the person in the Youth
16 Substance Abuse Safety Program. Pursuant to the Youth Substance Abuse
17 Safety Program, the Diversion Program shall impose conditions on the person.
18 The conditions imposed shall include only conditions related to the offense and
19 in every case shall include a condition requiring satisfactory completion of
20 substance abuse screening using an evidence-based tool and, if deemed
21 appropriate following the screening, substance abuse assessment and substance

1 abuse education or substance abuse counseling, or both. If the screener
2 recommends substance abuse counseling, the person shall choose a State-
3 certified or State-licensed substance abuse counselor or substance abuse
4 treatment provider to provide the services.

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

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

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

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

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

20 (4) If a person does not satisfactorily complete substance abuse
21 screening, any required substance abuse education or substance abuse

1 counseling, or any other condition related to the offense imposed by the
2 Diversion Program ~~or if the person fails to pay the Diversion Program any~~
3 ~~required program fees~~, the Diversion Program shall file the summons and
4 complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29.
5 The Diversion Program shall provide a copy of the summons and complaint to
6 the law enforcement officer who issued the notice of violation and shall
7 provide two copies to the person charged with the violation.

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

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

18 * * *

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

2 § 4230b. CANNABIS POSSESSION BY A PERSON 16 YEARS OF AGE
3 OR OLDER AND UNDER 21 YEARS OF AGE; CIVIL
4 VIOLATION

5 * * *

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

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

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

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

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

1

* * *

2 (d) Registration in Youth Substance Awareness Safety Program. Within
3 15 days after receiving a notice of violation, the person shall contact the
4 Diversion Program in the county where the offense occurred and register for
5 the Youth Substance Awareness Safety Program. If the person fails to do so,
6 the Diversion Program shall file the summons and complaint with the Judicial
7 Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program
8 shall provide a copy of the summons and complaint to the law enforcement
9 officer who issued the notice of violation and shall provide two copies to the
10 person charged with the violation.

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

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

19 (2) If the person does not satisfactorily complete the substance abuse
20 screening, any required substance abuse assessment or substance abuse
21 counseling, or any other condition related to the offense imposed by the

1 Diversion Program, the case will be referred to the Judicial Bureau, where the
2 person, if found liable for the violation, shall be assessed a civil penalty, the
3 person's driver's license will be suspended, and the person's automobile
4 insurance rates may increase substantially.

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

10 (f) Diversion Program requirements.

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

1 State-certified or State-licensed substance abuse counselor or substance abuse
2 treatment provider to provide the services.

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

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

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

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

18 (4) If a person does not satisfactorily complete substance abuse
19 screening, any required substance abuse education or substance abuse
20 counseling, or any other condition related to the offense imposed by the
21 Diversion Program or if the person fails to pay the Diversion Program any

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

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

9 (6) Notwithstanding 3 V.S.A. §§ 163(a)(2)(C) and 164(a)(2)(C), the
10 adult or juvenile diversion programs shall accept cases from the Youth
11 Substance Awareness Safety Program pursuant to this section, 18 V.S.A.
12 § 4230f(e)(1), or 18 V.S.A. § 4230f(e)(2). The confidentiality provisions of
13 3 V.S.A. § 163 or 164 shall become effective when a notice of violation is
14 issued pursuant to subsection (b) of this section, 18 V.S.A. § 4230f(e)(1), or
15 18 V.S.A. § 4230f(e)(2) and shall remain in effect unless the person fails to
16 register with or complete the Youth Substance Awareness Safety Program.

17 * * *

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

20 (a) Creation. There is created the Post-Adjudication Reparative Program
21 Working Group to create a Post-Adjudication Reparative Program (the

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

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

8 (1) the Commissioner of Corrections or designee;

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

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

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

16 (1) defining the Program and its scope;

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

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

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

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

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

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

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

16 (e) Report and updates.

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

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

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

8 (f) Meetings.

9 (1) The Chief Judge of the Vermont Superior Court or designee shall
10 call the first meeting of the Working Group to occur on or before August 1,
11 2024.

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

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

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

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

17 (g) Compensation and reimbursement. Members of the Working Group
18 who are not employees of the State of Vermont and who are not otherwise
19 compensated or reimbursed for their attendance shall be entitled to
20 compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010
21 for not more than six meetings per year.

1 Sec. 5. [Deleted.]

2 Sec. 6. [Deleted.]

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

5 In counties where there is more than one pre-charge and post-charge
6 diversion provider, the Community Justice Unit of the Office of the Attorney
7 General shall collaborate with each county's juvenile and adult pre-charge and
8 post-charge providers and each county's State's Attorney or designee to
9 develop a plan to streamline the administration and provision of juvenile and
10 adult pre-charge and post-charge diversion programs on or before April 1,
11 2025. The Community Justice Unit shall report on such plan to the Senate and
12 House Committees on Judiciary on or before April 1, 2025.

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

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

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

3 (a) On or before December 1, 2024, the Office of the Attorney General, in
4 consultation with community-based restorative justice providers, the
5 Department of Public Safety, the Vermont Association of Chiefs of Police, the
6 Office of Racial Equity, and other stakeholders as needed, shall submit a
7 written report outlining funding alternatives for community referrals to the
8 Senate and House Committees on Judiciary. The report shall include funding
9 alternatives considering:

- 10 (1) federal, state, and local funding options;
11 (2) entities through which funding could be provided; and
12 (3) oversight requirements.

13 (b) As used in this section, “community referrals” has the same meaning as
14 defined in 13 V.S.A. § 162a(4).

15 Sec. 9a. VERMONT SENTENCING COMMISSION; PRECHARGE
16 DIVERSION RECORD RETENTION; REPORT

17 On or before November 15, 2024, the Vermont Sentencing Commission
18 shall submit a written report to the Joint Legislative Justice Oversight
19 Committee and the Senate and House Committees on Judiciary reviewing
20 current precharge diversion record retention practices within law enforcement

1 agencies and State’s Attorneys’ offices. The report shall provide

2 recommendations of the following:

3 (1) whether precharge diversion records are retained, sealed, made

4 available on a limited basis to law enforcement or prosecutors, or deleted

5 altogether;

6 (2) if it is recommended that records be retained, a determination of any

7 time limits or other restrictions related to retention;

8 (3) if it is recommended that records be sealed, a determination of the

9 circumstances that permit sealing, if any;

10 (4) if it is recommended that records be made available on a limited

11 basis, a determination of the circumstances under which records be made

12 available; and

13 (5) if it is recommended that records be deleted, a determination of any

14 time to elapse or other considerations prior to deletion.

15 Sec. 10. REPEALS

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

17 Sec. 11. EFFECTIVE DATES

18 This act shall take effect on July 1, 2024 except that Sec. 1 (juvenile and

19 adult pre-charge and post-charge diversion) and Sec. 8 (Attorney General pre-

20 charge diversion grants) shall take effect on July 1, 2025.