

1 S.33

2 Introduced by Senator Sears

3 Referred to Committee on

4 Date:

5 Subject: Court procedure; criminal procedure; miscellaneous amendments

6 Statement of purpose of bill as introduced: This bill proposes to make a
7 number of miscellaneous amendments related to civil and criminal procedure
8 statutes.

9 An act relating to miscellaneous judiciary procedures

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

11 Sec. 1. 3 V.S.A. § 5014(f) is amended to read:

12 (f) Repeal. This section shall be repealed on June 30, 2027.

13 Sec. 2. 4 V.S.A. § 22 is amended to read:

14 § 22. DESIGNATION AND SPECIAL ASSIGNMENT OF JUDICIAL
15 OFFICERS AND RETIRED JUDICIAL OFFICERS

16 (a)(1) The Chief Justice may appoint and assign a retired Justice or judge
17 with the Justice's or judge's consent or a Superior or Probate judge to a special
18 assignment on the Supreme Court. The Chief Justice may appoint, and the
19 Chief Superior Judge shall assign, an active or retired Justice or a retired judge,

1 with the Justice's or judge's consent, to any special assignment in the Superior
2 Court or the Judicial Bureau.

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

7 * * *

8 Sec. 3. 4 V.S.A. § 27 is amended to read:

9 § 27. COURT TECHNOLOGY SPECIAL FUND

10 There is established the Court Technology Special Fund ~~which~~ that shall be
11 managed in accordance with 32 V.S.A. chapter 7, subchapter 5.

12 Administrative fees collected pursuant to 13 V.S.A. § 7252 and revenue
13 collected pursuant to fees established pursuant to sections 1105 and 1109 of
14 this title shall be deposited and credited to this Fund. The Fund shall be
15 available to the Judicial Branch to pay for contractual and operating expenses
16 and project-related staffing not covered by the General Fund related to the
17 following:

18 (1) ~~The~~ the acquisition and maintenance of software and hardware
19 needed for case management, electronic filing, an electronic document
20 management system, and the expense of implementation, including training;

1 (2) ~~The~~ the acquisition and maintenance of electronic audio and video
2 court recording and conferencing equipment; and

3 (3) ~~The~~ the acquisition, maintenance, and support of the Judiciary's
4 information technology network, including training.

5 Sec. 4. 4 V.S.A. § 27b is amended to read:

6 § 27b. ~~ELECTRONICALLY FILED VERIFIED DOCUMENTS~~ SELF-
7 ATTESTED DECLARATION IN LIEU OF NOTARIZATION

8 (a) ~~A registered electronic filer in the Judiciary's electronic document filing~~
9 ~~system may file any~~ Any document that would otherwise require the approval
10 or verification of a notary ~~by filing the document~~ may be filed with the
11 following language inserted above the signature and date:

12 "I declare that the above statement is true and accurate to the best of my
13 knowledge and belief. I understand that if the above statement is false, I will be
14 subject to the penalty of perjury or to other sanctions in the discretion of the
15 court."

16 (b) A document filed pursuant to subsection (a) of this section shall not
17 require the approval or verification of a notary.

18 (c) This section shall not apply to an affidavit in support of a search
19 warrant application, ~~or to~~ an application for a nontestimonial identification
20 order, an oath required by 14 V.S.A. §108, or consents and relinquishments in
21 adoption proceedings governed by Title 15A.

1 (b) This section shall not be construed to prohibit the Court from providing
2 electronic access to:

3 (1) court schedules of the Superior Court, or opinions of the Criminal
4 Division of the Superior Court;

5 (2) State agencies in accordance with data dissemination contracts
6 entered into under ~~Rule 6 of the Vermont Rules of Electronic Access to Court~~
7 ~~Records~~ Rule 12 of the Vermont Rules for Public Access to Court Records; or

8 (3) decisions, recordings of oral arguments, briefs, and printed cases of
9 the Supreme Court.

10 Sec. 8. 12 V.S.A. § 4853a is amended to read:

11 § 4853a. PAYMENT OF RENT INTO COURT; EXPEDITED HEARING

12 * * *

13 (h) If the tenant fails to pay rent into court in the amount and on the dates
14 ordered by the court, the landlord shall be entitled to judgment for immediate
15 possession of the premises. The court shall forthwith issue a writ of possession
16 directing the sheriff of the county in which the property or a portion thereof is
17 located to serve the writ upon the defendant and, not earlier than ~~five business~~
18 seven days after the writ is served, or, in the case of an eviction brought
19 pursuant to 10 V.S.A. chapter 153, 30 days after the writ is served, to put the
20 plaintiff into possession.

1 Sec. 9. 12 V.S.A. § 5531 is amended to read:

2 § 5531. RULES GOVERNING PROCEDURE

3 (a) The Supreme Court, pursuant to section 1 of this title, shall make rules
4 under this chapter applicable to such Court providing for a simple, informal,
5 and inexpensive procedure for the determination, according to the rules of
6 substantive law, of actions of a civil nature of which they have jurisdiction,
7 other than actions for slander or libel and in which the plaintiff does not claim
8 as debt or damage more than ~~\$5,000.00~~ \$10,000.00. Small claims proceedings
9 shall be limited in accord with this chapter and the procedures made available
10 under those rules. The procedure shall not be exclusive, but shall be
11 alternative to the formal procedure begun by the filing of a complaint.

12 (b) Parties may not request claims for relief other than money damages
13 under this chapter. Nor may parties split a claim in excess of ~~\$5,000.00~~
14 \$10,000.00 into two or more claims under this chapter.

15 (c) In small claims actions where the plaintiff makes a claim for relief
16 greater than \$3,500.00, the defendant shall have the right to request a special
17 assignment of a judicial officer. Upon making this request, a Superior judge or
18 a member of the Vermont bar appointed pursuant to 4 V.S.A. § 22(b) shall be
19 assigned to hear the action.

20 (d) Venue in small claims actions shall be governed by section 402 of this
21 title.

1 Sec. 10. 12 V.S.A. § 5804 is amended to read:

2 § 5804. OATH TO BE ADMINISTERED TO PETIT JURORS IN
3 CRIMINAL CAUSES

4 You solemnly swear that, without respect to persons or favor of any ~~man~~
5 person, you will well and truly try and true deliverance make, between the
6 State of Vermont and the ~~prisoner at the bar~~ defendant, whom you shall have in
7 charge, according to the evidence given you in court and the laws of the State.
8 So help you God.

9 Sec. 11. 13 V.S.A. § 3016(c) is amended to read:

10 (c) A person who commits an act punishable under ~~33 V.S.A. § 2581(a) or~~
11 ~~(b)~~ 33 V.S.A. § 141(a) or (b) may not be prosecuted under this section.

12 Sec. 12. 13 V.S.A. § 7403 is amended to read:

13 § 7403. APPEAL BY THE STATE

14 (a) In a prosecution for a misdemeanor, questions of law decided against
15 the State shall be allowed and placed upon the record before final judgment.
16 The court may pass the same to the Supreme Court before final judgment. The
17 Supreme Court shall hear and determine the questions and render final
18 judgment thereon, or remand the cause for further trial or other proceedings, as
19 justice and the State of the cause may require.

1 (b) In a prosecution for a felony, the State shall be allowed to appeal to the
2 Supreme Court any decision, judgment, or order dismissing an indictment or
3 information as to one or more counts.

4 (c) In a prosecution for a felony, the State shall be allowed to appeal to the
5 Supreme Court from a decision or order:

6 (1) granting a motion to suppress evidence;

7 (2) granting a motion to have confessions declared inadmissible; or

8 (3) granting or refusing to grant other relief where the effect is to
9 impede seriously, although not to foreclose completely, continuation of the
10 prosecution.

11 (d) In making this appeal, the attorney for the State must certify to the court
12 that the appeal is not taken for purpose of delay and that:

13 (1) the evidence suppressed or declared inadmissible is substantial proof
14 of a fact material in a proceeding; or

15 (2) the relief to be sought upon appeal is necessary to avoid seriously
16 impeding such proceeding.

17 (e) The appeal in all cases shall be taken within seven business days after
18 the decision, judgment, or order has been rendered. In cases where the
19 defendant is detained for lack of bail, he or she shall be released pending the
20 appeal upon such conditions as the court shall order unless bail is denied as
21 provided in the Vermont Constitution or in other pending cases. Such appeals

1 shall take precedence on the docket over all cases and shall be assigned for
2 hearing or argument at the earliest practicable date and expedited in every way.

3 (f) For purposes of this section, “prosecution for a misdemeanor” and
4 “prosecution for a felony” shall include delinquency and youthful offender
5 proceedings filed pursuant to 33 V.S.A. chapters 52 and 52A, and the State
6 shall have the same right of appeal in those proceedings as it has in criminal
7 proceedings under this section.

8 Sec. 13. 14 V.S.A. § 3098 is amended to read:

9 § 3098. VULNERABLE NONCITIZEN CHILDREN

10 * * *

11 (i) Confidentiality. In any judicial proceedings in response to a request that
12 the court make the findings necessary to support a petition for classification as
13 a special immigrant juvenile, information regarding the child’s immigration
14 status, nationality, or place of birth that is not otherwise protected by State
15 laws shall remain confidential. This information shall also be exempt from
16 public inspection and copying under the Public Records Act and shall be kept
17 confidential, except that the information shall be available for inspection by the
18 court, the child who is the subject of the proceeding, the parties, the attorneys
19 for the parties, the child’s counsel, and the child’s guardian.

1 Sec. 15. 4 V.S.A. § 1102 is amended to read:

2 § 1102. JUDICIAL BUREAU; JURISDICTION

3 (a) The Judicial Bureau is created within the Judicial Branch under the
4 supervision of the Supreme Court.

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

6 * * *

7 (31) Violations of 23 V.S.A. § 1213(k) relating to tampering with an
8 ignition interlock device on behalf of another person.

9 * * *

10 Sec. 16. 32 V.S.A. § 1591 is amended to read:

11 § 1591. SHERIFFS AND OTHER OFFICERS

12 There shall be paid to sheriffs' departments and constables in civil causes
13 and to sheriffs, deputy sheriffs, and constables for the transportation and care
14 of prisoners, juveniles, and patients with a mental condition or psychiatric
15 disability the following fees:

16 (1) Civil process:

17 (A) For serving each process, the fees shall be as follows:

18 (i) \$10.00 for each reading or copy in which the officer is directed
19 to make an arrest;

1 Sec. 17. 33 V.S.A. § 5117 is amended to read:

2 § 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

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

15 * * *

16 (d) Such records and files shall be available to:

17 (1) State's Attorneys and all other law enforcement officers in

18 connection with record checks and other legal purposes; and

19 (2) the National Instant Criminal Background Check System in

20 connection with a background check conducted on a person under 21 years of

21 age pursuant to 18 U.S.C. § 922(t)(1)(C) and 34 U.S.C. § 40901(l).

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

* * *

* * *

Sec. 18. 33 V.S.A. § 5225 is amended to read:

§ 5225. PRELIMINARY HEARING; RISK ASSESSMENT

(b) Risk and needs screening.

(1) Prior to the preliminary hearing, the child shall be afforded an opportunity to undergo a risk and needs screening, which shall be conducted by the Department or by a community provider that has contracted with the Department to provide risk and need screenings for children alleged to have committed delinquent acts.

(2) If the child participates in such a screening, the Department or the community provider shall report the risk level result of the screening, the number and source of the collateral contacts made, and the recommendation for charging or other alternatives to the State’s Attorney. The State’s Attorney shall consider the results of the risk and needs screening in determining whether to file a charge. In lieu of filing a charge, the State’s Attorney may refer a child directly to a youth-appropriate community-based provider that has been approved by the Department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subsection shall not require the State’s Attorney to file a charge. If the community-based provider does not accept the case or if

1 the child fails to complete the program in a manner deemed satisfactory and
2 timely by the provider, the child's case shall return to the State's Attorney for
3 charging consideration.

4 (3) Information related to the present alleged offense directly or
5 indirectly derived from the risk and needs screening or from other
6 conversations with the Department or community-based provider shall not be
7 used against the youth in the youth's case for any purpose, including
8 impeachment or cross-examination, provided that the fact of the youth's
9 participation in risk and needs screening may be used in subsequent
10 proceedings.

11 (4) If a charge is brought in the Family Division, the risk level result
12 shall be provided to the child's attorney.

13 (c) Referral to diversion. Based on the results of the risk and needs
14 screening, if a child presents a low to moderate risk to reoffend, the State's
15 Attorney shall refer the child directly to court diversion unless the State's
16 Attorney states on the record why a referral to court diversion would not serve
17 the ends of justice. If the court diversion program does not accept the case or
18 if the child fails to complete the program in a manner deemed satisfactory and
19 timely by the provider, the child's case shall return to the State's Attorney for
20 charging consideration.

21 * * *

1 Sec. 19. 33 V.S.A. § 5284 is amended to read:

2 § 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION
3 ORDER

4 * * *

5 (c)(1) If the court approves the motion for youthful offender treatment after
6 an adjudication pursuant to subsection 5281(d) of this title, the court:

7 ~~(1)(A)~~ shall approve a disposition case plan and impose conditions of
8 juvenile probation on the youth; and

9 ~~(2)(B)~~ may transfer legal custody of the youth to a parent, relative,
10 person with a significant relationship with the youth, or Commissioner,
11 provided that any transfer of custody shall expire on the youth's 18th birthday.

12 (2) Prior to the approval of a disposition case plan the court may refer a
13 child directly to a youth-appropriate community-based provider that has been
14 approved by the department and which may include a community justice center
15 or a balanced and restorative justice program. Referral to a community-based
16 provider pursuant to this subdivision shall not require the court to place the
17 child on probation. If the community-based provider does not accept the case
18 or if the child fails to complete the program in a manner deemed satisfactory
19 and timely by the provider, the child shall return to the court for further
20 proceedings, including the imposition of the disposition order.

1 (d) The Department for Children and Families and the Department of
2 Corrections shall be responsible for supervision of and providing services to
3 the youth until ~~he or she~~ the youth reaches 22 years of age. Both Departments
4 shall designate a case manager who together shall appoint a lead Department to
5 have final decision-making authority over the case plan and the provision of
6 services to the youth. The youth shall be eligible for appropriate community-
7 based programming and services provided by both Departments.

8 Sec. 20. EFFECTIVE DATE

9 This act shall take effect on passage.