

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 645
3 entitled “An act relating to the expansion of approaches to restorative justice”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

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

8 CHAPTER 7. ATTORNEY GENERAL

9 Subchapter 1. Election; Authority; Duties

10 § 151. ELECTION AND TERM

11 * * *

12 Subchapter 2. Restorative Justice Approaches

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

14 (a) Purpose.

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

1 (2) The program shall be designed to provide a restorative option for
2 juveniles children or youth alleged to have caused harm in violation of a
3 criminal statute or who have been charged with violating a criminal statute and
4 subject to a delinquency or youthful offender petition filed with the Family
5 Division of the Superior Court, as well as for victims or those acting on a
6 victim’s behalf who have been allegedly harmed by the responsible party. The
7 diversion program can accept referrals to the program as follows:

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

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

15 (C) Post-charge by prosecutors of juveniles children or youths who
16 have been charged with an offense and who have substance abuse or mental
17 health treatment needs regardless of the juvenile’s child’s or youth’s prior
18 criminal delinquency and youthful offender history record, except a juvenile
19 child or youth charged with a felony offense that is a crime listed in 13 V.S.A.
20 § 5301(7) shall not be eligible under this section. Juveniles who have attained
21 18 years of age Children or youths who are subject to a delinquency or

1 youthful offender petition in the Family Division pursuant to 33 V.S.A.
2 chapters 52 or 52A shall also be eligible under this section. Programming for
3 these juveniles children or youths is intended to support access to appropriate
4 treatment or other resources with the aim of improving the person’s health and
5 reducing future adverse involvement in the justice system.

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

12 (1) The Attorney General shall support the operation of diversion
13 programs in local communities each of the State’s counties through grants of
14 financial assistance to, or contracts for services with, one municipalities or
15 other local organizations municipality or organization to provide programs or
16 services employing restorative justice principles, including a community
17 justice center and the balanced and restorative justice program, in each county.
18 Municipalities or other local organizations engaged with a similar pre charge
19 referral program before July 1, 2024 shall be prioritized for grants of financial
20 assistance or contracts for services

1 (A) In counties where there is more than one pre- or post-charge
2 diversion provider, and the pre-charge provider received an average of 25 pre-
3 charge referrals, based on the records of the Department of Corrections, per
4 year during the three preceding fiscal years, the Attorney General shall offer to
5 grant or contract directly with all pre-charge providers in that county or
6 provide for sub-granting or sub-contracting by the current post-charge provider
7 in that county.

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

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

1 (3) 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 (4) In consultation with the diversion programs, the Attorney General
4 shall adopt a policies and procedures manual to promote a uniform system
5 across the State in compliance with this section. The manual shall include
6 policies related to victims, including:

7 (A) the timely notification to alleged victims of a referral to pre- and
8 post-charge diversion;

9 (B) an invitation to engage in the restorative process; and

10 (C) how information is shared through restorative agreements
11 concerning any alleged victims.

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

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

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

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

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

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

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

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

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

20 ~~(9) Each participant shall pay a fee to the local juvenile court diversion~~
21 ~~project. The amount of the fee shall be determined by project officers based~~

1 ~~upon the financial capabilities of the participant. The fee shall not exceed~~
2 ~~\$150.00. The fee shall be a debt due from the participant, and payment of such~~
3 ~~shall be required for successful completion of the Program. Notwithstanding~~
4 ~~32 V.S.A. § 502(a), fees collected under this subdivision shall be retained and~~
5 ~~used solely for the purpose of the Court Diversion Program. Qualifying~~
6 ~~offenses; eligibility and referral process. The Department of State’s Attorneys~~
7 ~~and Sheriffs, in cooperation with the Office of the Attorney General and the~~
8 ~~county’s juvenile court diversion program, shall develop and adopt clear~~
9 ~~criteria for deciding which juveniles will be eligible for pre-charge and post-~~
10 ~~charge diversion. The criteria shall be updated every two years and shared~~
11 ~~with the Community Justice Unit of the Office of the Attorney General on or~~
12 ~~before January April 15 of each odd-numbered year. The Community Justice~~
13 ~~Unit shall publicly post the provided criteria. However, a State’s Attorney~~
14 ~~shall retain final discretion over the juveniles who are eligible for diversion~~
15 ~~and the referral of each case to diversion.~~

16 (1) Pre-charge diversion. ~~The pre-charge diversion program~~ A law
17 enforcement agency or prosecutor shall accept refer juveniles children or youth
18 who meet the criteria established pursuant to the policy adopted by the
19 county’s State’s Attorney referred by a law enforcement agency or prosecutor
20 to the pre-charge diversion program before charges a delinquency or youthful
21 offender petition are is filed.

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

2 (i) the name and contact information of the ~~juvenile~~ **child or youth**
3 alleged to be the responsible party;

4 (ii) the name and contact information of the alleged victim or
5 victims of the offense;

6 (iii) ~~an affidavit of probable cause~~ **a factual statement of the**
7 **alleged offense;** and

8 (iv) a citation to the ~~Criminal~~ **Family** Division of the Superior
9 Court.

10 (B) At the time of the pre-charge referral, law enforcement shall
11 submit documentation of the pre-charge diversion referral to the State’s
12 Attorney, including the ~~affidavit of probable cause~~ **factual statement of the**
13 **alleged offense** and citation to the ~~Criminal~~ **Family** Division.

14 (C) Offenses that **presumptively** qualify for pre-charge referral
15 include all misdemeanors except **those listed in 33 V.S.A. § 5204(a)(1)-(12).**
16 However, the State’s Attorney may refer any crime to the pre-charge diversion
17 program.

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

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

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

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

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

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

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

10 ~~(viii) a violation of 13 V.S.A. § 1026a related to aggravated~~
11 ~~disorderly conduct;~~

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

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

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

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

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

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

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

5 (D) Prosecutors shall have the right to withdraw any pre-charge
6 referral from the diversion program and file a **charge petition in court the**
7 **Family Division.**

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

11 (F) A **juvenile child or youth** who does not successfully complete
12 pre-charge diversion shall have the **juvenile's child's or youth's** referral sent
13 back to the law enforcement agency and prosecutor.

14 (2) Post-charge diversion. **The post-charge diversion program A**
15 **prosecutor shall accept refer juveniles children or youth who meet the criteria**
16 **established pursuant to the policy adopted by the county's State's Attorney to**
17 **the post-charge diversion program for children or youths** against whom
18 charges a **petition have has** been filed and the court has found probable cause,
19 but are not adjudicated.

20 (A) A prosecutor may refer a **juvenile child or youth** to diversion
21 either before or after arraignment **a preliminary hearing** and shall notify in

1 writing the diversion program and the court of the prosecutor’s intention of the
2 referral to diversion.

3 (B) If a juvenile child or youth is charged with a qualifying crime as
4 defined in 13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the
5 prosecutor shall provide the juvenile child or youth with the opportunity to
6 participate in the court diversion program unless the prosecutor states on the
7 record at arraignment the preliminary hearing or a subsequent hearing why a
8 referral to the post-charge program would not serve the ends of justice.

9 Factors considered in the ends-of-justice determination include the juvenile’s
10 child’s or youth’s criminal delinquency record, the views of the alleged victim
11 or victims, and the need for probationary supervision.

12 (C) Notwithstanding subdivisions (1) and (2) of this subsection (c),
13 the diversion program may accept cases pursuant to 33 V.S.A. §§ 5225(c) and
14 5280(e).

15 (3)(A) On or before March 1, 2025, the Department of State’s Attorneys
16 and Sheriffs, in consultation with the Community Justice Unit of the Office of
17 the Attorney General, the Office of the Defender General, the Center for Crime
18 Victim Services, and the Judiciary community-based restorative justice
19 providers, shall develop and establish uniform model pre-charge and post-
20 charge juvenile diversion referral policies that outline clear criteria for
21 determining which juveniles children and youths will be eligible for pre-charge

1 and post-charge diversion. Such criteria shall include an evidence-based
2 screening process for individuals who are not presumptively eligible for the
3 pre-charge and post-charge juvenile diversion programs. The Department of
4 State’s Attorneys and Sheriffs may also establish evidence-based criteria for
5 qualifying offenses in addition to those offenses mandated outlined pursuant to
6 subdivision (1)(C) of this subsection (c) The policies shall also contemplate
7 how victim perspectives are incorporated into diversion programming.

8 (B) On or before April 1, 2025 In order for a county’s community-
9 based restorative justice provider to be eligible to receive grants or contracts
10 pursuant to this section, each State’s Attorney’s office shall adopt and follow a
11 pre-charge and post-charge referral policy. To encourage fair and consistent
12 pre-charge and post-charge diversion referral policies and methods statewide,
13 the Department of State’s Attorneys and Sheriffs, in consultation with the
14 Community Justice Unit, shall publicly post the policies of each State’s
15 Attorney’s office.

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

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

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

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

1 ~~are referred to diversion pursuant to subdivision (a)(2)(C) of this section, the~~
2 ~~matter shall become confidential upon the successful completion of diversion.~~

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

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

15 ~~(A) the diversion program declines to accept the referral;~~

16 ~~(B) the juvenile declines to participate in diversion;~~

17 ~~(C) the diversion program accepts the referral, but the juvenile does~~
18 ~~not successfully complete diversion; or~~

19 ~~(D) the prosecutor recalls the referral to diversion.~~

20 ~~(2) Information related to the present any offense that is divulged during~~
21 ~~the adult diversion program a person divulges in preparation for, during, or as a~~

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

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

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

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

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

1 (e) Rights and responsibilities.

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

12 ~~(A) two years have elapsed since the successful completion of~~
13 ~~juvenile diversion 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. Juvenile~~
20 ~~court diversion programs shall be set up to respect the rights of participants.~~

1 (2) ~~The court may expunge any records that were sealed pursuant to this~~
2 ~~subsection prior to July 1, 2018 unless the State’s Attorney’s office that~~
3 ~~prosecuted the case objects. Thirty days prior to expunging a record pursuant~~
4 ~~to this subdivision, the court shall provide written notice of its intent to~~
5 ~~expunge the record to the State’s Attorney’s office that prosecuted the case.~~
6 Diversion participants shall be informed of their right to the advice, and
7 assistance, and access to legal private counsel or the public defender at all
8 stages of the diversion process, including the initial decision to participate and
9 the decision to accept the juvenile diversion contract, so that the candidate may
10 give informed consent. Notwithstanding the financial need determination
11 pursuant to 13 V.S.A. § 5236, a public defender shall be assigned at public
12 expense at the request of the diversion participant.

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

18 (B) ~~The special index and related documents specified in subdivision~~
19 ~~(A) of this subdivision (3) 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 implementing~~
7 ~~this subsection (e). Information related to the present offense that is divulged~~
8 ~~during the juvenile diversion program shall not be used against the juvenile~~
9 ~~child or youth in the juvenile’s criminal or juvenile child’s or youth’s case for~~
10 ~~any purpose, including impeachment or cross-examination. However, the fact~~
11 ~~of participation and success, or reasons for failure, may become part of the~~
12 ~~prosecutor’s records.~~

13 ~~(4)(A) The pre- and post-charge diversion program may charge fees to~~
14 ~~its participants, which shall be paid to the local juvenile court diversion~~
15 ~~program. If a fee is charged, it shall be determined by program officers or~~
16 ~~employees based upon the financial capabilities of the participant. The fee~~
17 ~~shall not exceed \$150.00 \$300.00. Any fee charged shall be a debt due from~~
18 ~~the participant, and payment of such shall be required for successful~~
19 ~~completion of the program.~~

20 ~~(B) Each participant in the post charge diversion program shall pay a~~
21 ~~fee to the local juvenile court diversion program. The amount of the fee shall~~

1 ~~be determined by program officers or employees based upon the financial~~
2 ~~capabilities of the participant. The fee shall not exceed \$300.00. The fee shall~~
3 ~~be a debt due from the participant, and payment of such shall be required for~~
4 ~~successful completion of the program.~~

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

8 (5) Any alleged victims shall be notified once a juvenile chooses to
9 participate in the pre-charge diversion program by the pre-charge diversion
10 program.

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

18 (1) Not later than 10 days after the successful completion of the pre-
19 charge diversion program, the juvenile diversion program shall notify the
20 referring entity ~~victim, law enforcement agency,~~ and the State's Attorney
21 office of the participant's successful completion, ~~after which all related records~~

1 held by the referring entity, a law enforcement agency, and the prosecutor shall
2 be expunged within two years after successful completion. Payment of
3 restitution is required for successful completion. Two years after the diversion
4 program notifies the law enforcement agency and the State’s Attorney office of
5 successful completion, all records held by the diversion program, the law
6 enforcement agency, and the State’s Attorney office shall be expunged.

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

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

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

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

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

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

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

14 (B) The special index and related documents specified in subdivision
15 (A) of this subdivision (4) 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 expungement order and the certificate may be
19 permitted only upon petition by the person who is the subject of the case. The
20 Chief Superior Judge may permit special access to the index and the

1 documents for research purposes pursuant to the rules for public access to
2 court records.

3 (D) The Court Administrator shall establish policies for
4 implementing this subsection (f).

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

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

18 ~~(g) The process of automatically expunging records as provided in this~~
19 ~~section shall only apply to those persons who completed diversion on or after~~
20 ~~July 1, 2002. Any person who completed diversion prior to July 1, 2002 must~~

1 apply to the court to have his or her records expunged. Expungement shall
2 occur if the requirements of subsection (e) of this section are met.

3 (h)(g) Subject to the approval of the Attorney General, the Vermont
4 Association of Court Diversion Programs may develop and administer
5 programs to assist persons under this section charged with delinquent,
6 eriminal, and civil offenses Public records act exemption.

7 (1) Any records or information produced or acquired pursuant to this
8 section shall be exempt from public inspection or copying under Vermont's
9 Public Records Act.

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

19 (i) Notwithstanding subdivision (e)(1) of this section, the diversion
20 program may accept cases from the Youth Substance Awareness Safety
21 Program pursuant to 7 V.S.A. § 656 or 18 V.S.A. § 4230b. The confidentiality

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

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

7 § 164. ADULT COURT DIVERSION PROGRAM

8 (a) Purpose.

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

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

20 (A) Pre-charge by law enforcement or prosecutors for the qualifying
21 offenses listed in subdivision (c)(1)(C) of this section. Prosecutors may

1 establish additional criteria under which persons are eligible for pre-charge
2 diversion.

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

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

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

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

19 ~~(2) To assist persons who have been charged with an offense and who have~~
20 ~~substance abuse or mental health treatment needs regardless of the person’s~~
21 ~~prior criminal history record, except a person charged with a felony offense~~

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

8 (1) The Attorney General shall support the operation of diversion
9 programs in local communities each of the State's counties through grants of
10 financial assistance to, or contracts for services with, one municipalities or
11 other local organizations municipality or organization to provide programs or
12 services employing restorative justice principles, including a community
13 justice center and the balanced and restorative justice program, in each county.
14 Municipalities or other local organizations engaged with a similar pre-charge
15 referral program before July 1, 2024 shall be prioritized for grants of financial
16 assistance or contracts for services

17 (A) In counties where there is more than one pre- or post-charge
18 diversion provider, and the pre-charge provider received an average of 25 pre-
19 charge referrals, based on the records of the Department of Corrections, per
20 year during the three preceding fiscal years, the Attorney General shall offer to
21 grant or contract directly with all pre-charge providers in that county or

1 provide for sub-granting or sub-contracting by the current post-charge provider
2 in that county.

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

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

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

17 (4) In consultation with the diversion programs, the Attorney General
18 shall adopt a policies and procedures manual to promote a uniform system
19 across the State in compliance with this section. The manual shall include
20 policies related to victims, including:

1 (A) the timely notification to alleged victims of a referral to pre- and
2 post-charge diversion;

3 (B) an invitation to engage in the restorative process; and

4 (C) how information is shared through restorative agreements
5 concerning any alleged victims.

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

20 (1) Pre-charge diversion. The pre-charge diversion program A law
21 enforcement agency or prosecutor shall accept refer persons who meet the

1 criteria established pursuant to the uniform policy adopted by the county's
2 State's Attorney referred by a law enforcement agency or prosecutor to the
3 pre-charge diversion program before charges are filed.

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

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

7 (ii) the name and contact information of the alleged victim or
8 victims of the offense;

9 (iii) an affidavit of probable cause a factual statement of the
10 alleged offense; and

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

12 (B) At the time of the pre-charge referral, law enforcement shall
13 submit documentation of the pre-charge diversion referral to the State's
14 Attorney, including the affidavit of probable cause factual statement of the
15 alleged offense and citation to the Criminal Division.

16 (C) A State's Attorney may refer any offense to the pre-charge diversion
17 program. Offenses that presumptively qualify for pre-charge referral include
18 all misdemeanors except:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (F) A person who does not successfully complete pre-charge
11 diversion shall have the person’s referral sent back to the law enforcement
12 agency and prosecutor.

13 (2) Post-charge diversion. The post charge diversion program A
14 prosecutor shall accept refer a person who meets the criteria established
15 pursuant to the uniform policy adopted by the county’s State’s Attorney to the
16 post-charge diversion program for persons against whom charges have been
17 filed and the court has found probable cause, but are not adjudicated.

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

1 (B) 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 the alleged victim or victims,
8 or the need for probationary supervision.

9 (C) Notwithstanding subdivisions (1) and (2) of this subsection (c),
10 the diversion program may accept cases pursuant to 33 V.S.A. §§ 5225 and
11 5280.

12 (3)(A) On or before March 1, 2025, the Department of State’s Attorneys
13 and Sheriffs, in consultation with the Community Justice Unit of the Office of
14 the Attorney General, the Office of the Defender General, the Center for Crime
15 Victim Services, and the Judiciary community-based restorative justice
16 providers, shall develop and establish uniform model pre-charge and post-
17 charge adult diversion referral policies that outline clear criteria for
18 determining which persons will be eligible for pre-charge and post-charge
19 diversion. Such criteria shall include an evidence-based screening process for
20 individuals who are not presumptively eligible for the pre-charge and post-
21 charge juvenile diversion programs. The Department of State’s Attorneys and

1 Sheriffs may also establish evidence-based criteria for qualifying offenses in
2 addition to those offenses mandated outlined pursuant to subdivision (1)(C) of
3 this subsection (c). The policies shall also contemplate how victim
4 perspectives are incorporated into diversion programming.

5 (B) On or before April 1, 2025 In order for a county's community-
6 based restorative justice provider to be eligible to receive grants or contracts
7 pursuant to this section, each State's Attorney's office shall adopt and follow a
8 pre-charge and post-charge referral policy. To encourage fair and consistent
9 pre-charge and post-charge diversion referral policies and methods statewide,
10 the Department of State's Attorneys and Sheriffs, in consultation with the
11 Community Justice Unit, shall publicly post the policies of each State's
12 Attorney's office.

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

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

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

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

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

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

11 (3) Information related to the present any offense that is divulged during
12 the adult diversion program a person divulges in preparation for, during, or as a
13 follow-up to the provision of the adult diversion programming shall not be
14 used against the person in the person’s any criminal, civil, family, or juvenile
15 investigation, prosecution, or case for any purpose, including impeachment or
16 cross-examination. However, the fact of participation and success, or reasons
17 for failure, may become part of the prosecutor’s records. This subsection shall
18 not be construed to prohibit the limited disclosure or use of information to
19 specific persons in the following 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) Where there is a reasonable suspicion of abuse or neglect of a
7 child or vulnerable adult and a report is made pursuant to the provisions of 33
8 V.S.A. § 4914 or 33 V.S.A. § 6903 or to comply with any law.

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

15 ~~(3)~~(4) If law enforcement or the prosecutor refers a case to diversion, the
16 prosecutor may release information to the victim upon a showing of legitimate
17 need and subject to an appropriate protective agreement defining the purpose
18 for which the information is being released and in all other respects
19 maintaining the confidentiality of the information; otherwise, files held by the
20 court, the prosecutor, law enforcement agency, referring entity, and the

1 diversion program related to the matter shall be confidential and shall remain
2 confidential unless:

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

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

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

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

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

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

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

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

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

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

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

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

1 to accept the adult diversion contract, so that the candidate may give informed
2 consent. Diversion participants shall be informed of their right to the advice,
3 and assistance, and access to legal private counsel or the public defender at all
4 stages of the diversion process, including the initial decision to participate and
5 the decision to accept the juvenile diversion contract, so that the candidate may
6 give informed consent. Notwithstanding the financial need determination
7 pursuant to 13 V.S.A. § 5236, a public defender shall be assigned at public
8 expense at the request of the diversion participant.

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

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

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

5 ~~(A) The pre- and post-charge diversion program may charge fees to~~
6 ~~its participants, which shall be paid to the local adult court diversion program.~~
7 ~~If a fee is charged, it shall be determined by program officers or employees~~
8 ~~based upon the financial capabilities of the participant. The fee shall not~~
9 ~~exceed \$150.00 \$300.00. Any fee charged shall be a debt due from the~~
10 ~~participant, and payment of such shall be required for successful completion of~~
11 ~~the program.~~

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

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

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

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

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

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

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

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

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

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

16 Records and expungement.

17 (1) Not later than 10 days after the successful completion of the pre-
18 charge diversion program, the juvenile diversion program shall notify the
19 referring entity victim, law enforcement agency, and the State's Attorney
20 office of the participant's successful completion, after which all related records
21 held by the referring entity, a law enforcement agency, and the prosecutor shall

1 ~~be expunged within two years after successful completion. Payment of~~
2 ~~restitution is required for successful completion. Two years after the diversion~~
3 ~~program notifies the law enforcement agency and the State’s Attorney office of~~
4 ~~successful completion, all records held by the diversion program, the law~~
5 ~~enforcement agency, and the State’s Attorney office shall be expunged.~~

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

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

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

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

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

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

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

14 (B) The special index and related documents specified in subdivision
15 (A) of this subdivision (4) 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 expungement order and the certificate may be
19 permitted only upon petition by the person who is the subject of the case. The
20 Chief Superior Judge may permit special access to the index and the

1 documents for research purposes pursuant to the rules for public access to
2 court records.

3 (D) The Court Administrator shall establish policies for
4 implementing this subsection (f).

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

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

18 **(g) Public records act exemption.**

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

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

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

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

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

15 ~~(D) the participant does not owe restitution related to the case. Any~~
16 ~~records or information produced or acquired pursuant to this section shall be~~
17 ~~exempt from public inspection or copying under Vermont's Public Records~~
18 ~~Act and shall be kept confidential.~~

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

1 ~~to this subdivision, the court shall provide written notice of its intent to~~
2 ~~expunge the record to the State's Attorney's office that prosecuted the case.~~

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

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

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

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

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

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

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

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

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

- (1) the person shall contact the Diversion Program in the county where the offense occurred within 15 days;
- (2) failure to contact the Diversion Program within 15 days will result in the case being referred to the Judicial Bureau, where the person, if found liable for the violation, will be subject to a civil penalty and a suspension of the person's operator's license and may face substantially increased insurance rates;
- (3) no money should be submitted to pay any penalty until after adjudication; and
- (4) the person shall notify the Diversion Program if the person's address changes.

* * *

(d) Registration in Youth Substance Abuse Safety Program. Within 15 days after receiving a notice of violation, the person shall contact the Diversion Program in the county where the offense occurred and register for

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

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

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

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

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

6 (f) Diversion Program requirements.

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

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

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

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

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

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

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

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

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

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

13 * * *

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

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

18 * * *

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

1 provide ~~his or her~~ the person's name and address and shall explain procedures
2 under this section, including that:

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

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

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

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

14 * * *

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

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

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

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

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

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

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

3 (f) Diversion Program requirements.

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

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

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

1 counseling, and any other condition related to the offense that the Diversion
2 Program has imposed, the Diversion Program shall:

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

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

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

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

1 § 910a. REPARATIVE BOARDS; FUNCTIONS

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

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

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

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

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

1 ~~compensate a victim or victims and the community, increase an offender's~~
2 ~~awareness of the effect of his or her behavior on a victim or victims and the~~
3 ~~community, and identify ways to help an offender comply with the law.~~

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

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

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

10 ~~§ 1101. [Repealed.]~~

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

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

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

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

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

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

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

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

7 § 913. POST-ADJUDICATION REPARATIVE PROGRAM

8 (a) Purpose.

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

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

17 (b) Administration; report.

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

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

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

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

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

1 § 914. QUALIFYING OFFENSES; ELIGIBILITY AND REFERRAL

2 PROCESS

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

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

19 (1) list mandatory qualifying offenses;

20 (2) permit the parties to supplement the list of mandatory qualifying
21 offenses;

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

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

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

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

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

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

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

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

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

3 (c) Compliance.

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

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

15 (d) Confidentiality.

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

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

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

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

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

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

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

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

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

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

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

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

12 **Sec. 6. DEPARTMENT OF STATE’S ATTORNEYS AND SHERIFFS;**

13 **POSITION; APPROPRIATION**

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

19 (b) The position of Director of Policy established in subsection (a) of this
20 section shall be subject to a General Fund appropriation in FY 2024.

1 **Sec. 7. COMMUNITY JUSTICE UNIT; DIVERSION PROGRAM**

2 **ADMINISTRATION PLAN; REPORT**

3 In counties where there is more than one pre- and post-charge diversion
4 provider, the Community Justice Unit of the Office of the Attorney General
5 shall collaborate with each county’s juvenile and adult pre- and post-charge
6 providers and each county’s State’s Attorney or designee to develop a plan to
7 streamline the administration and provision of juvenile and adult pre- and post-
8 charge diversion programs on or before July 1, 2026. The Community Justice
9 Unit shall report on such plan in the 2026 annual report required pursuant to 3
10 V.S.A. §§ 163(b)(2) and 164(b)(2).

11 **Sec. 8. REPEALS**

12 (a) 3 V.S.A. § 163(b)(1)(A) is repealed on July 1, 2029.

13 (b) 3 V.S.A. § 164(b)(1)(A) is repealed on July 1, 2029.

14 **Sec. 9. EFFECTIVE DATES**

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

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1 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE