

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 § 162a. DEFINITIONS

14 As used in this subchapter:

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

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

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

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

3 (a) Purpose.

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

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

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

19 (B) Post-charge by prosecutors for children or youth charged with a
20 first or a second misdemeanor or a first nonviolent felony, or other offenses as

1 the prosecutor deems appropriate, pursuant to a policy adopted in accordance
2 with subdivisions (c)(3)–(4) of this section.

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

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

20 (1) The Attorney General shall support the operation of diversion
21 programs in each of the State’s counties through grants of financial assistance

1 to, or contracts for services with, a single municipality or organization to
2 provide ~~programs or services employing restorative justice principles,~~
3 ~~including a community justice center and the balanced and restorative justice~~
4 ~~program, community-based restorative justice programs and services~~ in each
5 county.

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

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

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

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

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

8 (4) In consultation with the pre-charge and post-charge diversion
9 programs, the Center for Crime Victims Services, the Department of State's
10 Attorneys and Sheriffs' Victim Advocates, the Division for Racial Justice
11 Statistics of the Office of Racial Equity, and the State Archivist, the Attorney
12 General shall adopt a policies and procedures manual for community-based
13 restorative justice providers to promote a uniform system across the State in
14 compliance with this section. The manual shall include policies related to
15 victims, including:

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

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

19 (C) how information is shared through about restorative agreements
20 concerning any alleged victims; and

1 (D) best practices for collecting data from all parties that engage with
2 the pre-charge and post-charge diversion programs.

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

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

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

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

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

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

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

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

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

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

11 ~~(9) Each participant shall pay a fee to the local juvenile court diversion~~
12 ~~project. The amount of the fee shall be determined by project officers based~~
13 ~~upon the financial capabilities of the participant. The fee shall not exceed~~
14 ~~\$150.00. The fee shall be a debt due from the participant, and payment of such~~
15 ~~shall be required for successful completion of the Program. Notwithstanding~~
16 ~~32 V.S.A. § 502(a), fees collected under this subdivision shall be retained and~~
17 ~~used solely for the purpose of the Court Diversion Program. Juvenile diversion~~
18 ~~program policy and referral process requirements.~~

19 ~~(1) Juvenile pre-charge diversion policy required. In order for a~~
20 ~~county's community-based restorative justice provider to be eligible to receive~~
21 ~~pre-charge diversion grants or contracts referrals pursuant to this section, each~~

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

6 (2) Juvenile pre-charge diversion policy contents. ~~For a community-~~
7 ~~based restorative justice provider to be eligible to receive grants or contracts to~~
8 ~~provide juvenile pre-charge diversion programming, a~~ A county’s State’s
9 Attorney’s juvenile pre-charge diversion program policy shall include the
10 following:

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

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

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

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

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

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

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

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

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

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

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

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

12 (D) 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 ~~(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) All information related to any offense gathered in the course of the
19 juvenile diversion process shall be held strictly confidential and shall not be
20 released without the participant’s prior consent.

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

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

13 (B) when disclosure is necessary to report bodily harm any party
14 causes another during restorative justice programming;

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

18 (D) where a court or administrative tribunal determines that the
19 materials were submitted by a participant in the program for the purpose of
20 avoiding discovery of the material in a court or administrative proceeding. If a
21 participant wishes to avail themselves of this provision, the participant may

1 disclose this information in camera to a judicial officer for the purposes of
2 seeking such a ruling.

3 (3)(A) Notwithstanding subdivision (1) of this subsection (d), if law
4 enforcement or the prosecutor refers a case to diversion, a victim may only
5 request information relating to the victim that is divulged by the diversion
6 participant during the juvenile diversion process. A victim shall keep the
7 information released to the victim strictly confidential and shall not be
8 disclosed.

9 (B) A victim who engages in a reparative process with the participant
10 through the juvenile diversion program shall keep all information learned
11 through the reparative process strictly confidential and it shall not be disclosed.

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

14 (e) Rights and responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~(D) The Court Administrator shall establish policies for implementing~~
2 ~~this subsection (e). Information related to the present offense that is divulged~~
3 ~~during the juvenile diversion program shall not be used against the child or~~
4 ~~youth in the child’s or youth’s case for any purpose, including impeachment or~~
5 ~~cross-examination. However, the fact of participation and success, or reasons~~
6 ~~for failure, may become part of the prosecutor’s records.~~

7 ~~(4) The pre-charge and post-charge diversion program may charge fees~~
8 ~~to its participants, which shall be paid to the local juvenile court diversion~~
9 ~~program. If a fee is charged, it shall be determined by program officers or~~
10 ~~employees based upon the financial capabilities of the participant. The fee~~
11 ~~shall not exceed \$300.00. Any fee charged shall be a debt due from the~~
12 ~~participant, and payment of such shall be required for successful completion of~~
13 ~~the program. Notwithstanding 32 V.S.A. § 502(a), fees collected pursuant to~~
14 ~~this subdivision (4) shall be retained and used solely for the purpose of the~~
15 ~~juvenile court diversion program.~~

16 ~~(4) Any alleged victims shall be notified once a juvenile chooses to~~
17 ~~participate in upon referral to the pre-charge diversion program by the pre-~~
18 ~~charge diversion program.~~

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

1 ~~deleted, and the participant, the court, and law enforcement officers and~~
2 ~~departments shall reply to any request for information that no record exists~~
3 ~~with respect to such participant inquiry in any matter. Copies of the order shall~~
4 ~~be sent to each agency or official named therein.~~ Records; deletion and
5 expungement.

6 (1) Pre-charge diversion records deletion. Not later than 10 days after
7 the successful completion of the pre-charge diversion program, the juvenile
8 diversion program shall notify the victim, law enforcement agency, and the
9 State's Attorney office of the participant's successful completion. Payment of
10 restitution is required for successful completion. Two years after the diversion
11 program notifies the law enforcement agency and the State's Attorney office of
12 successful completion, the Attorney General shall provide a certified notice
13 that all records held by the diversion program, the law enforcement agency,
14 and the State's Attorney office shall be expunged deleted.

15 (2) Pre-charge diversion case index.

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

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

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

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

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

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

1 completed pre-charge diversion prior to July 1, 2025 must apply to the court to
2 have the person's records deleted. Deletion shall occur if the requirements of
3 subdivisions (1)–(3) of this subsection (f) are met.

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

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

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

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

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

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

7 (7) Post-charge diversion case index.

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

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

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

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

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

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

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

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

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

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

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

18 (2) Notwithstanding subdivision (1) of this subsection, a law
19 enforcement agency, State’s Attorney office, court, or community-based
20 restorative justice provider may disclose information to colleges, universities,
21 public agencies of the State, and nonprofit research organizations that a

1 community-based restorative justice provider has agreements with for use in
2 connection with research projects of a public service nature, but no person
3 associated with those institutions or agencies may disclose that information in
4 any manner that would reveal the identity of an individual who provided the
5 information to the community-based restorative justice provider.

6 § 164. ADULT COURT DIVERSION PROGRAM

7 (a) Purpose.

8 (1) The Attorney General shall develop and administer an adult court
9 diversion program, for both pre-charge and post-charge referrals, in all
10 counties.

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

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

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

1 prosecutor deems appropriate, pursuant to a policy adopted in accordance with
2 subdivisions (c)(3)–(4) of this section..

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

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

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

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

1 also be eligible under this section. Programming for these persons is intended
2 to support access to appropriate treatment or other resources with the aim of
3 improving the person’s health and reducing future adverse involvement in the
4 justice system. Administration; report.

5 (1) The Attorney General shall support the operation of diversion
6 programs in each of the State’s counties through grants of financial assistance
7 to, or contracts for services with, a single municipality or organization to
8 provide programs or services employing restorative justice principles,
9 including a community justice center and the balanced and restorative justice
10 program, community-based restorative justice programs and services in each
11 county.

12 (A) In counties where there is more than one pre-charge or post-
13 charge diversion provider, and the pre-charge provider received an average of
14 25 pre-charge referrals, based on the records of the Department of Corrections,
15 per year during the three preceding fiscal years, the Attorney General shall
16 offer to grant or contract directly with all pre-charge providers in that county or
17 provide for sub-granting or sub-contracting by the current post-charge provider
18 in that county.

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

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

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

15 (4) In consultation with the pre-charge and post-charge diversion
16 programs, the Center for Crime Victims Services, the Department of State’s
17 Attorneys and Sheriffs’ Victim Advocates, the Division for Racial Justice
18 Statistics of the Office of Racial Equity, and the State Archivist, the Attorney
19 General shall adopt a policies and procedures manual for community-based
20 restorative justice providers to promote a uniform system across the State in

1 compliance with this section. The manual shall include policies related to
2 victims, including:

3 (A) the timely notification to **alleged** victims of a referral to pre-
4 charge and post-charge diversion;

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

6 (C) how information is shared **through about** restorative agreements
7 concerning any **alleged** victims; and

8 **(D) best practices for collecting data from all parties that engage with**
9 **the pre-charge and post-charge diversion programs.**

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

16 (1) **Adult pre-charge diversion policy required.** In order for a county's
17 community-based restorative justice provider to be eligible to **receive grants or**
18 **contracts referrals** pursuant to this section, each State's Attorney's office shall
19 adopt an adult pre-charge **and post-charge** diversion referral policy. To
20 encourage fair and consistent pre-charge and post-charge diversion referral
21 policies and methods statewide, the Department of State's Attorneys and

1 Sheriffs and the Community Justice Unit shall publicly post the policies of
2 adopted by each State’s Attorney’s office.

3 (2) Adult pre-charge diversion policy contents. For a community based
4 restorative justice provider to be eligible to receive grants or contracts to
5 provide pre-charge diversion programming, a A county’s State’s Attorney’s
6 pre-charge diversion program policy shall include the following:

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

9 (B) Additional criteria to determine whether a responsible party is
10 eligible to participate in pre-charge diversion.

11 (C) Appropriate documentation to accompany a referral to pre-charge
12 diversion, including the name and contact information of the responsible party
13 the name and contact information of the victim or victims, and a factual
14 statement or affidavit of probable cause of the alleged offense.

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

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

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

1 (iii) a person does not successfully complete pre-charge diversion
2 programming.

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

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

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

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

19 (C) If a person is charged with a qualifying crime as defined in
20 13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall
21 provide the person with the opportunity to participate in the court diversion

1 program unless the prosecutor states on the record at arraignment or a
2 subsequent hearing why a referral to the post-charge program would not serve
3 the ends of justice. Factors considered in the ends-of-justice determination
4 include the person’s criminal record, the views of the alleged victim or victims,
5 or the need for probationary supervision.

6 (D) Notwithstanding subdivisions (1) and (2) of this subsection (c),
7 the diversion program may accept cases pursuant to 33 V.S.A. §§ 5225 and
8 5280.

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

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

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

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

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

18 (B) when disclosure is necessary to report bodily harm any party
19 causes another during restorative justice programming;

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

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

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

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

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

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

1 ~~(D) the prosecutor recalls the referral to diversion.~~ Notwithstanding
2 ~~subdivision (2) of this subsection (d), if law enforcement or the prosecutor~~
3 ~~refers a case to diversion, a victim may only request information relating to the~~
4 ~~victim that is divulged by the diversion participant during the adult diversion~~
5 ~~process. A victim shall keep the information released to the victim strictly~~
6 ~~confidential and shall not be disclosed.~~

7 ~~(B) A victim who engages in a reparative process with the participant~~
8 ~~through the adult diversion program shall keep all information learned through~~
9 ~~the reparative process strictly confidential and it shall not be disclosed.~~

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

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

15 (1) ~~The diversion program shall accept only persons against whom~~
16 ~~charges have been filed and the court has found probable cause, but are not yet~~
17 ~~adjudicated. The prosecuting attorney may refer a person to diversion either~~
18 ~~before or after arraignment and shall notify in writing the diversion program~~
19 ~~and the court of his or her intention to refer the person to diversion. The matter~~
20 ~~shall become confidential when notice is provided to the court, except that for~~
21 ~~persons who are subject to conditions of release imposed pursuant to 13 V.S.A.~~

1 ~~§ 7554 and who are referred to diversion pursuant to subdivision (b)(2) of this~~
2 ~~section, the matter shall become confidential upon the successful completion of~~
3 ~~diversion. If a person is charged with a qualifying crime as defined in~~
4 ~~13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall~~
5 ~~provide the person with the opportunity to participate in the court diversion~~
6 ~~program unless the prosecutor states on the record at arraignment or a~~
7 ~~subsequent hearing why a referral to the program would not serve the ends of~~
8 ~~justice. If the prosecuting attorney prosecutor refers a case to diversion, the~~
9 ~~prosecuting attorney prosecutor may release information to the victim upon a~~
10 ~~showing of legitimate need and subject to an appropriate protective agreement~~
11 ~~defining the purpose for which the information is being released and in all~~
12 ~~other respects maintaining the confidentiality of the information; otherwise,~~
13 ~~files held by the court, the prosecuting attorney prosecutor, and the law~~
14 ~~enforcement agency related to the charges shall be confidential and shall~~
15 ~~remain confidential unless:~~

- 16 ~~(A) the diversion program declines to accept the case;~~
17 ~~(B) the person declines to participate in diversion;~~
18 ~~(C) the diversion program accepts the case, but the person does not~~
19 ~~successfully complete diversion; or~~

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

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

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

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

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

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

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

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

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

20 ~~(6) Information related to the present offense that is divulged during the~~
21 ~~adult diversion program shall not be used against the person in the person’s~~

1 ~~criminal or juvenile case for any purpose, including impeachment or cross-~~
2 ~~examination. However, the fact of participation and success, or reasons for~~
3 ~~failure, may become part of the prosecutor's records. Any alleged victims~~
4 ~~shall be notified once a person chooses to participate in the pre-charge~~
5 ~~diversion program by the pre-charge diversion program.~~

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

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

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

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

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

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

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

20 ~~(C) Notwithstanding subdivision (B) of this subdivision (e)(7), the~~
21 ~~Attorney General shall, upon request, provide to a participant or his or her~~

1 attorney sufficient documentation to show that the participant successfully
2 completed diversion.

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

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

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

14 **Records; deletion and expungement.**

15 (1) **Pre-charge diversion records deletion.** Not later than 10 days after
16 the successful completion of the pre-charge diversion program, the juvenile
17 diversion program shall notify the victim, law enforcement agency, and the
18 State’s Attorney office of the participant’s successful completion. Payment of
19 restitution is required for successful completion. Two years after the diversion
20 program notifies the law enforcement agency and the State’s Attorney office of
21 successful completion, the Attorney General shall provide a certified notice

1 that all records held by the diversion program, the law enforcement agency,
2 and the State's Attorney office shall be ~~expunged~~ deleted.

3 (2) Pre-charge diversion case index.

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

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

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

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

19 (3) Effect of Deletion. Except as otherwise provided in this section,
20 upon the certified notice to delete files and records under this section, the
21 matter shall be considered never to have occurred; all index references thereto

1 shall be deleted; and the participant, the Community Justice Unit, law
2 enforcement officers and departments, prosecutors, the referring entity, and the
3 diversion program shall reply to any request for information that no record
4 exists with respect to such participant inquiry in any matter. Copies of the
5 certified notice shall be sent to each agency, entity, or official named therein.

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

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

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

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

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

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

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

15 (7) Post-charge diversion case index.

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

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

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

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

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

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

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

5 (g) Public records act exemption.

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

16 (A) ~~two years have elapsed since the successful completion of the~~
17 ~~adult 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 Except as otherwise provided in this section, any records or information
5 produced or acquired pursuant to this section shall be exempt from public
6 inspection or copying under Vermont’s Public Records Act and shall be kept
7 confidential.

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

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

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

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

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

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

17 ~~(h) Except as otherwise provided in this section, upon the entry of an order~~
18 ~~expunging files and records under this section, the proceedings in the matter~~
19 ~~shall be considered never to have occurred, all index references thereto shall be~~
20 ~~deleted, and the participant, the court, and law enforcement officers and~~
21 ~~departments shall reply to any request for information that no record exists~~

1 with respect to such participant inquiry in any matter. Copies of the order shall
2 be sent to each agency or official named therein.

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

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

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

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

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

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§ ~~165~~ 161. PUBLIC CONTRACT ADVOCATE

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

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

* * *

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

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

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

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

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

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

15 (f) Diversion Program requirements.

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

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

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

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

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

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

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

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

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

20 * * *

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

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

5 * * *

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

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

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

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

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

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

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

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

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

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

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

10 (f) Diversion Program requirements.

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

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

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

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

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

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

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

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

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

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

17 * * *

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

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

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

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

7 (1) the Commissioner of Corrections or designee;

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

9 (3) five representatives selected to represent the State’s community-
10 based restorative justice providers currently receiving reparative board funding
11 from the Department of Corrections.

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

14 (1) defining the Program and its scope;

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

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

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

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

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

7 (7) consulting with the Department of State’s Attorneys and Sheriffs, the
8 Office of the Defender General, and the Center for Crime Victim Services on
9 considerations to incorporate into the Program.

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

12 (e) Report and updates.

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

16 (2) On or before July 15, 2025, the Working Group shall provide an
17 update to the Joint Legislatives Justice Oversight Committee and on Judiciary
18 concerning any progress.

19 (3) On or before November 15, 2025, the Working Group shall submit a
20 written report in the form of proposed legislation to the Joint Legislative

1 Justice Oversight Committee, the Senate Committee on Judiciary, and the
2 House Committees on Corrections and Institutions and on Judiciary.

3 (f) Meetings.

4 (1) The Chief Judge of the Vermont Superior Court or designee shall
5 call the first meeting of the Working Group to occur on or before July 15,
6 2024.

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

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

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

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

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

17 Sec. 7. DEPARTMENT OF STATE’S ATTORNEYS AND SHERIFFS;

18 POSITION; APPROPRIATION

19 (a) On July 1, 2024, a new, permanent, exempt Director of Policy position
20 is created in the Department of State’s Attorneys and Sheriffs. In addition to
21 any other duties deemed appropriate by the Department, the Director of Policy

1 shall supervise the development, oversight, and compliance work related to the
2 Council’s internal, external, and State-mandated policies.

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

5 Sec. 8. COMMUNITY JUSTICE UNIT; DIVERSION PROGRAM

6 ADMINISTRATION PLAN; REPORT

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

15 Sec. 9. OFFICE OF THE ATTORNEY GENERAL; PRE-CHARGE

16 DIVERSION PROVIDERS; GRANTS

17 In counties where there is more than one pre-charge or post-charge
18 diversion provider and, based on the records of the Department of Corrections,
19 the pre-charge provider received an average of 25 pre-charge referrals per year
20 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 Sec. 10. REDESIGNATION

4 24 V.S.A. §§ 1961–1969 are redesignated at 28 V.S.A. §§ 915–923.

5 Sec. 11. REPEALS

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

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

8 (c) Section 9 of this act is repealed on July 1, 2029.

9 Sec. 12. EFFECTIVE DATES

10 This act shall take effect on July 1, 2024 except that Sec. 1 (juvenile and
11 adult pre-charge and post-charge diversion) and Sec 9 (attorney general pre-
12 charge diversion grants) shall take effect on July 1, 2025.

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17 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE

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