

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 645
3 entitled “An act relating to expansion of the approaches to restorative justice”
4 respectfully reports that it has considered the same and recommends that the
5 Senate propose to the House that the bill be amended by striking out all after
6 the enacting clause and inserting in 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) “Criminal history records” has the same meaning as in 20 V.S.A.

17 § 2056a(1).

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

19 § 2056a(3).

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

4 (5) “Pre-charge diversion” means a referral of an individual to a
5 community-based restorative justice provider by a law enforcement officer or
6 prosecutor after the referring officer ~~and~~ or prosecutor has determined that
7 ~~reasonable suspicion~~ probable cause exists that the individual has committed a
8 criminal offense and before the individual is criminally charged with the
9 offense or before a petition is filed in family court for the offense. ~~Pre-charge~~
10 diversion shall not be construed to include a community referral.

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

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

13 (a) Purpose.

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

20 (2) The program shall be designed to provide a restorative option for
21 children or youth alleged to have caused harm in violation of a criminal statute

1 or who have been charged with violating a criminal statute and subject to a
2 delinquency or youthful offender petition filed with the Family Division of the
3 Superior Court, as well as for victims or those acting on a victim’s behalf who
4 have been allegedly harmed by the responsible party. The juvenile diversion
5 program may accept referrals to the program as follows:

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

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

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

19 (1) Beginning on July 1, 2025, the Attorney General shall support the
20 operation of diversion programs in each of the State’s counties through grants
21 of financial assistance to, or contracts for services with, a single municipality

1 or organization to provide community-based restorative justice programs and
2 services in each county. Upon approval of the Attorney General, the single
3 municipality or organization receiving a grant pursuant to this section may
4 issue subgrants to diversion providers or execute subcontracts for diversion
5 services.

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

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

1 charged and crime types; successful completion rates; and possible causes of
2 any geographical disparities.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~Attorney shall retain final discretion over the referral of each case for~~
2 ~~diversion. The provisions of 33 V.S.A. § 5225(c) and § 5280(e) shall apply.~~

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

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

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

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

15 ~~(9) Each participant shall pay a fee to the local juvenile court diversion~~
16 ~~project. The amount of the fee shall be determined by project officers based~~
17 ~~upon the financial capabilities of the participant. The fee shall not exceed~~
18 ~~\$150.00. The fee shall be a debt due from the participant, and payment of such~~
19 ~~shall be required for successful completion of the Program. Notwithstanding~~
20 ~~32 V.S.A. § 502(a), fees collected under this subdivision shall be retained and~~
21 ~~used solely for the purpose of the Court Diversion Program.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 diversion programming shall not be used against the person in any criminal,
2 civil, family, juvenile, or administrative investigation, prosecution, or case for
3 any purpose, including impeachment or cross-examination. However, the fact
4 of participation and success, or reasons for failure, may become part of the
5 prosecutor's records. This subsection shall not be construed to prohibit the
6 limited disclosure or use of information to specific persons in the following
7 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) When disclosure to other community-based restorative justice
14 providers is necessary to facilitate coordination for an individual who has more
15 than one active referral before different community justice providers.

16 (D) Where there is a reasonable suspicion of abuse or neglect of a
17 child or vulnerable adult and a report is made pursuant to the provisions of
18 33 V.S.A. § 4914 or 33 V.S.A. § 6903 or to comply with any law.

19 (D) Where a court or administrative tribunal determines that the
20 materials were submitted by a participant in the program for the purpose of
21 avoiding discovery of the material in a court or administrative proceeding. If a

1 participant wishes to avail themselves of this provision, the participant may
2 disclose this information in camera to a judicial officer for the purposes of
3 seeking such a ruling.

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

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

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

1 the decision to accept the juvenile diversion contract, so that the candidate may
2 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 is available for
6 consultation at public expense upon the request of the candidate.

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

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

14 ~~(B) The special index and related documents specified in subdivision~~
15 ~~(A) of this subdivision (3) 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 implementing~~
4 ~~this subsection (e).~~ Any victims shall be notified of the victim's rights and role
5 in the pre-charge diversion process, including notification of a candidate's
6 referral to the pre-charge diversion program by the pre-charge diversion
7 program.

8 (f) ~~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.~~ Records; deletion and
15 expungement.

16 (1) Pre-charge diversion records deletion.

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

1 (B) Within 30 days after the two-year anniversary notifying the
2 State’s Attorney’s office of the participant’s successful completion, the
3 Attorney General shall provide notice that all records held by the diversion
4 program shall be deleted.

5 (C) Within 30 days after the two-year anniversary notifying the law
6 enforcement agency and the State’s Attorney’s office of the participant’s
7 successful completion, the Attorney General shall provide notice that all
8 records held by the law enforcement agency and the State’s Attorney’s office
9 shall be deleted, including any held by the Attorney General. Criminal history
10 records maintained on the Valcour database or other similar nonpublic law
11 enforcement databases are exempt from deletion and shall only be used for
12 criminal justice purposes.

13 (2) Pre-charge diversion case index.

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

20 (B) The special index and related documents specified in subdivision
21 (A) of this subdivision (2) shall be confidential and shall be physically and

1 electronically segregated in a manner that ensures confidentiality and that
2 limits access to authorized persons.

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

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

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

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

20 (5) Post-charge diversion records expungement. Within 30 days after
21 the two-year anniversary of a successful completion of post-charge diversion,

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

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

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

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

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

21 (7) Post-charge diversion case index.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 § 164. ADULT COURT DIVERSION PROGRAM

1 (a) Purpose.

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

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

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

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

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

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

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

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

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

1 ~~petition in the Family Division pursuant to 33 V.S.A. chapters 52 or 52A shall~~
2 ~~also be eligible under this section. Programming for these persons is intended~~
3 ~~to support access to appropriate treatment or other resources with the aim of~~
4 ~~improving the person’s health and reducing future adverse involvement in the~~
5 ~~justice system. The Adult Pre-Charge Diversion Program established pursuant~~
6 ~~to this section shall operate only to the extent funds are appropriated to the~~
7 ~~Office of the Attorney General, the Department of State’s Attorneys and~~
8 ~~Sheriffs, and the Office of the Defender General to carry out the Program.~~

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

1 (4) 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 (5) In consultation with community-based restorative justice providers,
4 the Center for Crime Victims Services, the Department of State’s Attorneys
5 and Sheriffs’ Victim Advocates, the Division for Racial Justice Statistics of the
6 Office of Racial Equity, and the State Archivist, the Attorney General shall
7 adopt a policies and procedures manual for community-based restorative
8 justice providers to promote a uniform system across the State in compliance
9 with this section. The manual shall include the following policies and
10 procedures related to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~include data on diversion program referrals in each county and possible causes~~
2 ~~of any geographical disparities.~~ Confidentiality.

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

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

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

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

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

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

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

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

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

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

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

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

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

10 ~~(1) The diversion program shall accept only persons against whom~~
11 ~~charges have been filed and the court has found probable cause, but are not yet~~
12 ~~adjudicated. The prosecuting attorney may refer a person to diversion either~~
13 ~~before or after arraignment and shall notify in writing the diversion program~~
14 ~~and the court of his or her intention to refer the person to diversion. The matter~~
15 ~~shall become confidential when notice is provided to the court, except that for~~
16 ~~persons who are subject to conditions of release imposed pursuant to 13 V.S.A.~~
17 ~~§ 7554 and who are referred to diversion pursuant to subdivision (b)(2) of this~~
18 ~~section, the matter shall become confidential upon the successful completion of~~
19 ~~diversion. 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 program would not serve the ends of~~
3 ~~justice. If the prosecuting attorney prosecutor refers a case to diversion, the~~
4 ~~prosecuting attorney prosecutor may release information to the victim upon a~~
5 ~~showing of legitimate need and subject to an appropriate protective agreement~~
6 ~~defining the purpose for which the information is being released and in all~~
7 ~~other respects maintaining the confidentiality of the information; otherwise,~~
8 ~~files held by the court, the prosecuting attorney prosecutor, and the law~~
9 ~~enforcement agency related to the charges shall be confidential and shall~~
10 ~~remain confidential unless:~~

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

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

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

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

18 (2) ~~Alleged offenders shall be informed of their right to the advice and~~
19 ~~assistance of private counsel or the public defender at all stages of the~~
20 ~~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.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Records; deletion and expungement.

8 (1) Pre-charge diversion records deletion.

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

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

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

1 shall be deleted, including any held by the Attorney General. Criminal history
2 records maintained on the Valcour database or other similar nonpublic law
3 enforcement databases are exempt from deletion and shall only be used for
4 criminal justice purposes.

5 (2) Pre-charge diversion case index.

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

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

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

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

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

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

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)–(C) of this subdivision. The court
20 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) the participant does not owe restitution related to the case.

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

13 (7) Post-charge diversion case index.

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

20 (B) The special index and related documents specified in subdivision
21 (A) of this subdivision (7) shall be confidential and shall be physically and

1 electronically segregated in a manner that ensures confidentiality and that
2 limits access to authorized persons.

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

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

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

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

1 records expunged. Expungement shall occur if the requirements of this
2 subsection (f) are met.

3 (g) Public records act exemption.

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

14 ~~(A) two years have elapsed since the successful completion of the~~
15 ~~adult 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;~~

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

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

2 Except as otherwise provided in this section, any records or information
3 produced or acquired pursuant to this section shall be exempt from public
4 inspection or copying under Vermont’s Public Records Act and shall be kept
5 confidential.

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

20 ~~(3)(A) The court shall keep a special index of cases that have been~~
21 ~~expunged pursuant to this section together with the expungement order. The~~

1 ~~index shall list only the name of the person convicted of the offense, his or her~~
2 ~~date of birth, the docket number, and the criminal offense that was the subject~~
3 ~~of the expungement.~~

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

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

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

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

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

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

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

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

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

20 * * *

21 § ~~465~~ 161. PUBLIC CONTRACT ADVOCATE

1 * * *

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

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

7 * * *

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

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

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

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

1 (4) the person shall notify the Diversion Program if the person’s address
2 changes.

3 * * *

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

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

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

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

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

13 (f) Diversion Program requirements.

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

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

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

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

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

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

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

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

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

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

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

18 * * *

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

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

5 * * *

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

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

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

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

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

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

* * *

(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
13 3 V.S.A. § 163 or 164 shall become effective when a notice of violation is
14 issued pursuant to subsection (b) of this section, 18 V.S.A. § 4230f(e)(1), or
15 18 V.S.A. § 4230f(e)(2) and shall remain in effect unless the person fails to
16 register with or complete the Youth Substance Awareness Safety Program.

17 * * *

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

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

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

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

8 (1) the Commissioner of Corrections or designee;

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

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

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

16 (1) defining the Program and its scope;

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

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

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

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

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

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

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

16 (e) Report and updates.

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

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

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

8 (f) Meetings.

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

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

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

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

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

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

1 Sec. 5. DEPARTMENT OF STATE’S ATTORNEYS AND SHERIFFS;
2 POSITION; APPROPRIATION

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

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

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

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

19 In counties where there is more than one pre-charge and post-charge
20 diversion provider, the Community Justice Unit of the Office of the Attorney
21 General shall collaborate with each county’s juvenile and adult pre-charge and

1 post-charge providers and each county’s State’s Attorney or designee to
2 develop a plan to streamline the administration and provision of juvenile and
3 adult pre-charge and post-charge diversion programs on or before April 1,
4 2025. The Community Justice Unit shall report on such plan to the Senate and
5 House Committees on Judiciary on or before April 1, 2025.

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

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

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

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

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

4 (b) As used in this section, “community referrals” mean referrals to
5 community-based restorative justice providers that do not involve criminal
6 offenses for which probable cause has been established has the same meaning
7 as defined in 13 V.S.A. § 162a(4).

8 Sec. 10. REPEALS

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

10 Sec. 11. EFFECTIVE DATES

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

14

15

16

17

18 (Committee vote: _____)

19

20

21

Senator _____

FOR THE COMMITTEE