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H.44

Introduced by Representatives LaLonde of South Burlington and Burditt of
West Rutland

Referred to Committee on

Date:

Subject: Judiciary; motor vehicles; impaired driving; reporting

Statement of purpose of bill as introduced: This bill proposes to make
miscellaneous changes to the laws governing impaired driving. Specifically,
this bill proposes language that the Family Division of the Superior Court
reports adjudications of delinquencies and youthful offender violations related
to impaired driving to the Commissioner of Motor Vehicles. Further, this bill
proposes to align the impaired driving statutes so that a person whose blood
alcohol content is at the legal limit is considered a violation. Additionally, this
bill proposes language that a person's refusal to comply with a warrant for a
blood sample could be prosecuted as a DUI refusal criminal charge. Finally,
this bill proposes to add definitions for certain terms used throughout the
statutes.

18 An act relating to miscellaneous amendments to the laws governing
19 impaired driving

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

2 Sec. 1. 4 V.S.A. § 33 is amended to read:

3 § 33. JURISDICTION; FAMILY DIVISION

4 (a) Notwithstanding any other provision of law to the contrary, the Family
5 Division shall have exclusive jurisdiction to hear and dispose of the following
6 proceedings filed or pending on or after October 1, 1990:

7 * * *

8 (8) All ~~juvenile~~ proceedings filed pursuant to 33 V.S.A. chapters 51, 52,
9 52A, and 53, including proceedings involving “youthful offenders” pursuant to
10 33 V.S.A. § 5281 whether the matter originated in the Criminal or Family
11 Division of the Superior Court, except for a proceeding charging the holder of
12 a commercial driver’s license as defined in 23 V.S.A. § 4103 with an offense
13 or violation listed in 23 V.S.A. § 4116 that would result in the license holder
14 being disqualified from driving a commercial motor vehicle if convicted.

15 * * *

16 (b) The Family Division of the Superior Court has jurisdiction to hear and
17 dispose of proceedings involving ~~misdemeanor~~ motor vehicle offenses filed ~~or~~
18 ~~pending on or after July 1, 2016~~, pursuant to 33 V.S.A. §§ 5201, 5203, ~~and~~
19 5280, and 5281. The Family Division of the Superior Court shall forward a
20 record of any conviction for violation of a law related to motor vehicle traffic
21 control, other than a parking violation, to the Commissioner of Motor Vehicles

1 pursuant to 23 V.S.A. § 1709. As used in this subsection, “conviction” has the
2 same meaning as in 23 V.S.A. § 4(60).

3 Sec. 2. 23 V.S.A. chapter 13, subchapter 13 is amended to read:

4 Subchapter 13. Drunken Driving

5 § 1200. DEFINITIONS

6 As used in this subchapter:

7 * * *

8 (11) “Serious bodily injury” has the same meaning as in 13 V.S.A.
9 § 1021(2).

10 § 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF

11 ALCOHOL OR OTHER SUBSTANCE; CRIMINAL REFUSAL;

12 ENHANCED PENALTY FOR BAC OF 0.16 OR MORE

13 (a) A person shall not operate, attempt to operate, or be in actual physical
14 control of any vehicle on a highway:

15 (1) when the person’s alcohol concentration is:

16 (A) 0.08 or more; or

17 (B) 0.02 or more if the person is operating a school bus as defined in
18 subdivision 4(34) of this title; or

19 (C) 0.04 or more if the person is operating a commercial vehicle as
20 defined in subdivision 4103(4) of this title; or

21 (2) when the person is under the influence of alcohol; or

1 (3) when the person is under the influence of any other drug or under the
2 combined influence of alcohol and any other drug.

3 (b)(1) A person who has previously been convicted of a violation of this
4 section shall not operate, attempt to operate, or be in actual physical control of
5 any vehicle on a highway and refuse a law enforcement officer's reasonable
6 request under the circumstances for an evidentiary test where the officer had
7 reasonable grounds to believe the person was in violation of subsection (a) of
8 this section.

9 (2) A person shall not refuse to comply with a search warrant issued
10 pursuant to subsection 1202(f) of this title. This subdivision (2) shall not be
11 construed as impairing a person's right to challenge the validity of a search
12 warrant in any subsequent legal proceedings.

13 (c) A person shall not operate, attempt to operate, or be in actual physical
14 control of any vehicle on a highway and be involved in a crash or collision
15 resulting in serious bodily injury or death to another and refuse a law
16 enforcement officer's reasonable request under the circumstances for an
17 evidentiary test where the officer has reasonable grounds to believe the person
18 has any amount of alcohol or drugs in ~~his or her~~ the person's system.

19 (d)(1) A person who is convicted of a second or subsequent violation of
20 subsection (a), (b), or (c) of this section when the person's alcohol
21 concentration is proven to be 0.16 or more shall not, for three years from the

1 date of the conviction for which the person's alcohol concentration is 0.16 or
2 more, operate, attempt to operate, or be in actual physical control of any
3 vehicle on a highway when the person's alcohol concentration is 0.02 or more.
4 The prohibition imposed by this subsection shall be in addition to any other
5 penalties imposed by law.

6 (2) A person shall not operate, attempt to operate, or be in actual
7 physical control of any vehicle on a highway when the person's alcohol
8 concentration is 0.02 or more if the person has previously been convicted of a
9 second or subsequent violation of subsection (a), (b), or (c) of this section
10 within the preceding three years and the person's alcohol concentration for the
11 second or subsequent violation was proven to be 0.16 or greater. A violation
12 of this subsection shall be considered a third or subsequent violation of this
13 section and shall be subject to the penalties of subsection 1210(d) of this title.

14 (e) The fact that a person charged with a violation of this section is or has
15 been entitled to use a drug under the laws of this State shall not constitute a
16 defense against any charge of violating this section.

17 (f) A person may not be convicted of more than one violation of subsection
18 (a) of this section arising out of the same incident.

19 (g) For purposes of this section and section 1205 of this title, the defendant
20 may assert as an affirmative defense that the person was not operating,

1 attempting to operate, or in actual physical control of the vehicle because the
2 person:

3 (1) had no intention of placing the vehicle in motion; and

4 (2) had not placed the vehicle in motion while under the influence.

5 (h) As used in subdivision (a)(3) of this section, “under the influence of a
6 drug” means that a person’s ability to operate a motor vehicle safely is
7 diminished or impaired in the slightest degree. This subsection shall not be
8 construed to affect the meaning of the term “under the influence of alcohol.”

9 (i) Evidence of the results of a standardized field sobriety test conducted by
10 a law enforcement officer trained in Advanced Roadside Impaired Driving
11 Enforcement or a certified Drug Recognition Expert’s systematic evaluation of
12 observable signs and symptoms of a person charged with a violation of this
13 section shall be presumptively admissible at trial to demonstrate whether or not
14 the person was operating under the influence in violation of this section.

15 * * *

16 § 1202. CONSENT TO TAKING OF TESTS TO DETERMINE BLOOD
17 ALCOHOL CONTENT OR PRESENCE OF OTHER DRUG

18 (a)(1) Implied consent. Every person who operates, attempts to operate, or
19 is in actual physical control of any vehicle on a highway in this State is deemed
20 to have given consent to an evidentiary test of that person’s breath for the
21 purpose of determining the person’s alcohol concentration or the presence of

1 other drug in the blood. The test shall be administered at the direction of a law
2 enforcement officer.

3 (2) Blood test. If breath testing equipment is not reasonably available or
4 if the officer has reason to believe that the person is unable to give a sufficient
5 sample of breath for testing or if the law enforcement officer has reasonable
6 grounds to believe that the person is under the influence of a drug other than
7 alcohol, the person is deemed to have given consent to the taking of an
8 evidentiary sample of blood. If in the officer's opinion the person is incapable
9 of decision or unconscious or dead, it is deemed that the person's consent is
10 given and a sample of blood shall be taken. A blood test sought pursuant to
11 this subdivision shall be obtained pursuant to subsection (f) of this section.

12 (3) Saliva test. If the law enforcement officer has reasonable grounds to
13 believe that the person is under the influence of a drug other than alcohol, or
14 under the combined influence of alcohol and a drug, the person is deemed to
15 have given consent to providing of an evidentiary sample of saliva. A saliva
16 test sought pursuant to this subdivision shall be obtained pursuant to
17 subsection (f) of this section. Any saliva test administered under this section
18 shall be used only for the limited purpose of detecting the presence of a drug in
19 the person's body and shall not be used to extract DNA information.

20 (4) Evidentiary test. The evidentiary test shall be required of a person
21 when a law enforcement officer has reasonable grounds to believe that the

1 person was operating, attempting to operate, or in actual physical control of a
2 vehicle in violation of section 1201 of this title.

3 (5) Fatal collision or incident resulting in serious bodily injury. The
4 evidentiary test shall also be required if the person is the surviving operator of
5 a motor vehicle involved in a fatal incident or collision or an incident or
6 collision resulting in serious bodily injury and the law enforcement officer has
7 reasonable grounds to believe that the person has any amount of alcohol or
8 other drug in ~~his or her~~ the person's system.

9 * * *

10 (d) At the time a test is requested, the person shall be informed of the
11 following statutory information:

12 (1) Vermont law authorizes a law enforcement officer to request a test to
13 determine whether the person is under the influence of alcohol or other drug.

14 (2) If the officer's request is reasonable and testing is refused, the
15 person's license or privilege to operate will be suspended for at least six
16 months.

17 (3) If a test is taken and the results indicate that the person is under the
18 influence of alcohol or other drug, the person will be subject to criminal
19 charges and the person's license or privilege to operate will be suspended for at
20 least 90 days.

1 (4) A person who is requested by a law enforcement officer to submit to
2 an evidentiary test or tests has the limited right to consult an attorney before
3 deciding whether or not to submit to such a test or tests. The person must
4 decide whether or not to submit to the evidentiary test or tests within a
5 reasonable time and not later than 30 minutes from the time of the initial
6 attempt to contact the attorney, regardless of whether a consultation took place.
7 The person also has the right to have additional tests made by someone of the
8 person's own choosing at the person's own expense. The person shall also be
9 informed of the location of one or more facilities available for drawing blood.

10 (5) A person who is requested by a law enforcement officer to submit to
11 an evidentiary test administered with an infrared breath-testing instrument may
12 elect to have a second infrared test administered immediately after receiving
13 the results of the first test.

14 (6) If the person refuses to take an evidentiary test, the refusal may be
15 offered into evidence against the person at trial, whether or not a search
16 warrant is sought. The person may be charged with the crime of criminal
17 refusal if the person:

18 (A) has previously been convicted of a violation of section 1201 of
19 this title; ~~or~~

20 (B) is involved in a crash or collision resulting in serious bodily
21 injury or death to another, in which case the court may issue a search warrant

1 and order the person to submit to a blood test, the results of which may be
2 offered into evidence against the person at trial; or

3 (C) refuses to comply with a search warrant that is obtained by a law
4 enforcement officer pursuant to subsection (f) of this section.

5 (e) In any proceeding under this subchapter, a law enforcement officer's
6 testimony that ~~he or she~~ the officer is certified pursuant to section 20 V.S.A. §
7 2358 shall be prima facie evidence of that fact.

8 (f)(1) If a blood test is sought from a person pursuant to subdivision (a)(2)
9 of this section, or if a person who has been involved in a crash or collision
10 resulting in serious bodily injury or death to another refuses an evidentiary test,
11 a law enforcement officer may apply for a search warrant pursuant to Rule 41
12 of the Vermont Rules of Criminal Procedure to obtain a sample of blood for an
13 evidentiary test. Pursuant to subdivision (d)(6) of this section, if a blood
14 sample is obtained by search warrant, the fact of the refusal may still be
15 introduced in evidence, in addition to the results of the evidentiary test. Once a
16 law enforcement official begins the application process for a search warrant,
17 the law enforcement official is not obligated to discontinue the process even if
18 the person later agrees to provide an evidentiary sample. The limitation
19 created by Rule 41(g) of the Vermont Rules of Criminal Procedure regarding
20 blood specimens shall not apply to search warrants authorized by this section.

1 or being in actual physical control, the Commissioner shall suspend the
2 person's operating license or nonresident operating privilege or the privilege of
3 an unlicensed operator to operate a vehicle for a period of 90 days and until the
4 person complies with section 1209a of this title. However, during the
5 suspension, an eligible person may operate under the terms of an ignition
6 interlock RDL or ignition interlock certificate issued pursuant to section 1213
7 of this title.

8 * * *

9 (b) Form of officer's affidavit. A law enforcement officer's affidavit in
10 support of a suspension under this section shall be in a standardized form for
11 use throughout the State and shall be sufficient if it contains the following
12 statements:

13 (1) The officer is a certified law enforcement officer.

14 (2) The officer who administered the test was certified to operate the
15 testing equipment.

16 (3) The officer had reasonable grounds to believe the person was
17 operating, attempting to operate, or in actual physical control of a vehicle in
18 violation of section 1201 of this title (noting the time and date of operating,
19 attempting to operate, or being in actual physical control).

20 (4) The officer informed the person of ~~his or her~~ the person's rights
21 under subsection 1202(d) of this title.

1 (5) The officer obtained an evidentiary test (noting the time and date the
2 test was taken) and the test indicated that the person's alcohol concentration
3 was at or above a legal limit specified in subsection 1201(a) or (d) of this title,
4 or the person refused to submit to an evidentiary test.

5 (6) The officer complied with the Servicemembers Civil Relief Act,
6 codified at 50 U.S.C. chapter 50.

7 (7) The officer confirmed the person's correct mailing address.

8 (c) Notice of suspension. On behalf of the Commissioner of Motor
9 Vehicles, a law enforcement officer requesting or directing the administration
10 of an evidentiary test shall serve notice of intention to suspend and of
11 suspension on a person who refuses to submit to an evidentiary test or on a
12 person who submits to a test the results of which indicate that the person's
13 alcohol concentration was at or above a legal limit specified in subsection
14 1201(a) or (d) of this title, at the time of operating, attempting to operate, or
15 being in actual physical control of a vehicle in violation of section 1201 of this
16 title. The notice shall be signed by the law enforcement officer requesting the
17 test. A copy of the notice shall be sent to the Commissioner of Motor
18 Vehicles, and a copy shall be mailed or given to the defendant within three
19 business days after the date the officer receives the results of the test. If
20 mailed, the notice is deemed received three days after mailing to the address
21 provided by the defendant to the law enforcement officer. A copy of the

1 affidavit of the law enforcement officer shall also be mailed by first-class mail
2 or given to the defendant and the Commissioner of Motor Vehicles within
3 seven days after the date of notice.

4 * * *

5 (f) Review by Superior Court. Within seven days following receipt of a
6 notice of intention to suspend and of suspension, a person may make a request
7 for a hearing before the Superior Court by mailing or delivering the form
8 provided with the notice. The request shall be mailed or delivered to the
9 Commissioner of Motor Vehicles, who shall then notify the Criminal Division
10 of the Superior Court that a hearing has been requested and provide the
11 Criminal Division and the State's Attorney with a copy of the notice of
12 intention to suspend and of suspension and the officer's affidavit.

13 * * *

14 (h) Final hearing.

15 (1) If the defendant requests a hearing on the merits, the court shall
16 schedule a final hearing on the merits to be held within 21 days after the date
17 of the preliminary hearing. In no event may a final hearing occur more than 42
18 days after the date of the alleged offense without the consent of the defendant
19 or for good cause shown. The final hearing may only be continued by the
20 consent of the defendant or for good cause shown. The issues at the final
21 hearing shall be limited to the following:

1 (A) Whether the law enforcement officer had reasonable grounds to
2 believe the person was operating, attempting to operate, or in actual physical
3 control of a vehicle in violation of section 1201 of this title.

4 (B) Whether at the time of the request for the evidentiary test the
5 officer informed the person of the person's rights and the consequences of
6 taking and refusing the test substantially as set out in subsection 1202(d) of
7 this title.

8 (C) Whether the person refused to permit the test.

9 (D) Whether the test was taken and the test results indicated that the
10 person's alcohol concentration was at or above a legal limit specified in
11 subsection 1201(a) or (d) of this title, at the time of operating, attempting to
12 operate, or being in actual physical control of a vehicle in violation of section
13 1201 of this title, whether the testing methods used were valid and reliable, and
14 whether the test results were accurate and accurately evaluated. Evidence that
15 the test was taken and evaluated in compliance with rules adopted by the
16 Department of Public Safety shall be prima facie evidence that the testing
17 methods used were valid and reliable and that the test results are accurate and
18 were accurately evaluated.

19 (E) Whether the requirements of section 1202 of this title were
20 complied with.

1 (2) No less than seven days before the final hearing, and subject to the
2 requirements of Vermont Rule of Civil Procedure 11, the defendant shall
3 provide to the State and file with the court a list of the issues (limited to the
4 issues set forth in this subsection) that the defendant intends to raise. Only
5 evidence that is relevant to an issue listed by the defendant may be raised by
6 the defendant at the final hearing. The defendant shall not be permitted to raise
7 any other evidence at the final hearing, and all other evidence shall be
8 inadmissible.

9 (i) Finding by the court. The court shall electronically forward a report of
10 the hearing to the Commissioner. Upon a finding by the court that the law
11 enforcement officer had reasonable grounds to believe that the person was
12 operating, attempting to operate, or in actual physical control of a vehicle in
13 violation of section 1201 of this title and that the person refused to submit to a
14 test, or upon a finding by the court that the law enforcement officer had
15 reasonable grounds to believe that the person was operating, attempting to
16 operate, or in actual physical control of a vehicle in violation of section 1201
17 of this title and that the person submitted to a test and the test results indicated
18 that the person's alcohol concentration was at or above a legal limit specified
19 in subsection 1201(a) or (d) of this title, at the time the person was operating,
20 attempting to operate, or in actual physical control, the person's operating
21 license, or nonresident operating privilege, or the privilege of an unlicensed

1 operator to operate a vehicle shall be suspended or shall remain suspended for
2 the required term and until the person complies with section 1209a of this title.
3 Upon a finding in favor of the person, the Commissioner shall cause the
4 suspension to be canceled and removed from the record, without payment of
5 any fee.

6 * * *

7 (n) Presumption. In a proceeding under this section, if at any time within
8 two hours of operating, attempting to operate, or being in actual physical
9 control of a vehicle a person had an alcohol concentration ~~of~~ at or above a legal
10 limit specified in subsection 1201(a) or (d) of this title, it shall be a rebuttable
11 presumption that the person's alcohol concentration was above the applicable
12 limit at the time of operating, attempting to operate, or being in actual physical
13 control.

14 * * *

15 § 1210. PENALTIES

16 * * *

17 (f) Death resulting.

18 (1) If the death of any person results from a violation of section 1201 of
19 this title, the person convicted of the violation shall be fined not more than
20 \$10,000.00 or imprisoned not less than one year nor more than 15 years, or

1 both. The provisions of this subsection do not limit or restrict prosecutions for
2 manslaughter.

3 (2) If the death or serious bodily injury of more than one person results
4 from a violation of section 1201 of this title, the operator may be convicted of
5 a separate violation of this subdivision for each decedent or person injured.

6 (3)(A) If the death of any person results from a violation of section 1201
7 of this title and the person convicted of the violation previously has been
8 convicted two or more times of a violation of that section, a sentence ordered
9 pursuant to this subsection shall, except as provided in subdivision (B) of this
10 subdivision (3), include at least a five-year term of imprisonment. The five-
11 year minimum term of imprisonment required by this subdivision (3)(A) shall
12 be served and may not be suspended, deferred, or served as a supervised
13 sentence. The defendant shall not be eligible for probation, parole, furlough,
14 or any other type of early release until the expiration of the five-year term of
15 imprisonment.

16 (B) Notwithstanding subdivision (A) of this subdivision (3), if the
17 death or serious bodily injury of any person results from a violation of section
18 1201 of this title and the person convicted of the violation previously has been
19 convicted two or more times of a violation of that section, the court may
20 impose a sentence that does not include a term of imprisonment or that
21 includes a term of imprisonment of less than five years if the court makes

1 written findings on the record that such a sentence will serve the interests of
2 justice and public safety.

3 (g) Injury resulting.

4 (1) If serious bodily injury, ~~as defined in 13 V.S.A. § 1021(2)~~, results to
5 any person other than the operator from a violation of section 1201 of this title,
6 the person convicted of the violation shall be fined not more than \$5,000.00 or
7 imprisoned not more than 15 years, or both.

8 (2) If serious bodily injury ~~as defined in 13 V.S.A. § 1021(2)~~ or death
9 results to more than one person other than the operator from a violation of
10 section 1201 of this title, the operator may be convicted of a separate violation
11 of this subdivision for each person injured or decedent.

12 (3)(A) If serious bodily injury ~~as defined in 13 V.S.A. § 1021(2)~~ results
13 to any person other than the operator from a violation of section 1201 of this
14 title and the person convicted of the violation previously has been convicted
15 two or more times of a violation of section 1201, a sentence ordered pursuant
16 to this subsection shall, except as provided in subdivision (B) of this
17 subdivision (3), include at least a five-year term of imprisonment. The five-
18 year minimum term of imprisonment required by this subdivision (3)(A) shall
19 be served and may not be suspended, deferred, or served as a supervised
20 sentence. The defendant shall not be eligible for probation, parole, furlough,

1 or any other type of early release until the expiration of the five-year term of
2 imprisonment.

3 (B) Notwithstanding subdivision (A) of this subdivision (3), if
4 serious bodily injury as defined in ~~13 V.S.A. § 1021(2)~~ results to any person
5 other than the operator from a violation of section 1201 of this title and the
6 person convicted of the violation previously has been convicted two or more
7 times of a violation of section 1201, the court may impose a sentence that does
8 not include a term of imprisonment or that includes a term of imprisonment of
9 less than five years if the court makes written findings on the record that such a
10 sentence will serve the interests of justice and public safety.

11 * * *

12 Sec. 3. 33 V.S.A. § 5202 is amended to read:

13 § 5202. ORDER OF ADJUDICATION; NONCRIMINAL

14 (a)(1) An order of the Family Division of the Superior Court in proceedings
15 under this chapter shall not:

16 (A) be deemed a conviction of crime;

17 (B) impose any civil disabilities sanctions ordinarily resulting from a
18 conviction; or

19 (C) operate to disqualify the child in any civil service application or
20 appointment.

1 no event shall a disposition hearing be held later than 35 days after a finding
2 that a child is delinquent.

3 * * *

4 Sec. 5. EFFECTIVE DATE

5 This act shall take effect on July 1, 2025.