

## Senate proposal of amendment

### H. 44

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

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

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

#### § 33. JURISDICTION; FAMILY DIVISION

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

\* \* \*

(8) All ~~juvenile~~ proceedings filed pursuant to 33 V.S.A. chapters 51, 52, 52A, and 53, including proceedings involving “youthful offenders” pursuant to 33 V.S.A. § 5281 whether the matter originated in the Criminal or Family Division of the Superior Court, except for a proceeding charging the holder of a commercial driver’s license or commercial learner’s permit as defined in 23 V.S.A. § 4103 ~~with an offense or violation listed in 23 V.S.A. § 4116 that would result in the license holder being disqualified from driving a commercial motor vehicle if convicted or operating a commercial motor vehicle with any offense or violation of any traffic control law other than parking, vehicle weight, or vehicle defect violations.~~

\* \* \*

(b) The Family Division of the Superior Court has jurisdiction to hear and dispose of proceedings involving ~~misdemeanor~~ motor vehicle offenses filed ~~or pending on or after July 1, 2016,~~ pursuant to 33 V.S.A. §§ 5201, 5203, and 5280, and 5281. The Family Division of the Superior Court shall forward a record of any conviction or adjudication for violation of a law related to motor vehicle traffic control, other than a parking violation, to the Commissioner of Motor Vehicles pursuant to 23 V.S.A. § 1709. As used in this subsection, “conviction” has the same meaning as in 23 V.S.A. § 4(60).

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

#### Subchapter 13. Drunken Driving

#### § 1200. DEFINITIONS

As used in this subchapter:

\* \* \*

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

§ 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF  
ALCOHOL OR OTHER SUBSTANCE; CRIMINAL REFUSAL;  
ENHANCED PENALTY FOR BAC OF 0.16 OR MORE

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

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

(A) 0.08 or more; or

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

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

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

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

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

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

(d)(1) A person who is convicted of a second or subsequent violation of subsection (a), (b), or (c) of this section when the person’s alcohol concentration is proven to be 0.16 or more shall not, for three years from the date of the conviction for which the person’s alcohol concentration is 0.16 or more, operate, attempt to operate, or be in actual physical control of any vehicle on a highway when the person’s alcohol concentration is 0.02 or more. The prohibition imposed by this subsection shall be in addition to any other penalties imposed by law.

(2) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway when the person’s alcohol

concentration is 0.02 or more if the person has previously been convicted of a second or subsequent violation of subsection (a), (b), or (c) of this section within the preceding three years and the person's alcohol concentration for the second or subsequent violation was proven to be 0.16 or greater. A violation of this subsection shall be considered a third or subsequent violation of this section and shall be subject to the penalties of subsection 1210(d) of this title.

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

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

(g) For purposes of this section and section 1205 of this title, the defendant may assert as an affirmative defense that the person was not operating, attempting to operate, or in actual physical control of the vehicle because the person:

- (1) had no intention of placing the vehicle in motion; and
- (2) had not placed the vehicle in motion while under the influence.

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

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

(j) A person suspected of violating this section shall submit to the collection of an evidentiary blood sample when a warrant for that person's blood is issued pursuant to subdivision 1202(f)(1) of this title. This subsection shall not be construed as impairing a person's right to challenge the validity of a search warrant in any subsequent legal proceedings.

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

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

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

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

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

(4) Evidentiary test. The evidentiary test shall be required of a person when a law enforcement officer has reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title.

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

\* \* \*

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

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

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

(3) If a test is taken and the results indicate that the person is under the influence of alcohol or other drug, the person will be subject to criminal

charges and the person's license or privilege to operate will be suspended for at least 90 days.

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

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

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

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

(B) is involved in a crash or collision resulting in serious bodily injury or death to another, in which case the court may issue a search warrant and order the person to submit to a blood test, the results of which may be offered into evidence against the person at trial; or

(C) knowingly hinders the collection of an evidentiary blood sample when a warrant for that person's blood is issued pursuant to subdivision (f)(1) of this section.

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

(f)(1) If a blood test is sought from a person pursuant to subdivision (a)(2) of this section, or if a person who has been involved in a crash or collision resulting in serious bodily injury or death to another refuses an evidentiary test, a law enforcement officer may apply for a search warrant pursuant to Rule 41 of the Vermont Rules of Criminal Procedure to obtain a sample of blood for an evidentiary test. Pursuant to subdivision (d)(6) of this section, if a blood sample is obtained by search warrant, the fact of the refusal may still be introduced in evidence, in addition to the results of the evidentiary test. Once a law enforcement official begins the application process for a search

warrant, the law enforcement official is not obligated to discontinue the process even if the person later agrees to provide an evidentiary sample. The limitation created by Rule 41(g) of the Vermont Rules of Criminal Procedure regarding blood specimens shall not apply to search warrants authorized by this section.

(2) If an evidentiary saliva test is sought from a person pursuant to subdivision (a)(3) of this section, a law enforcement officer may apply for a search warrant pursuant to Rule 41 of the Vermont Rules of Criminal Procedure to obtain a sample of saliva for the evidentiary test. Pursuant to subdivision (d)(6) of this section, if a saliva sample is obtained by search warrant, the fact of the refusal may still be introduced in evidence, in addition to the results of the evidentiary test.

(g) The Defender General shall provide statewide 24-hour coverage seven days a week to ensure that adequate legal services are available to persons entitled to consult an attorney under this section.

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#### § 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

(a) Refusal; alcohol concentration at or above legal limits; suspension periods.

\* \* \*

(2) Upon affidavit of a law enforcement officer that the officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person submitted to a test and the test results indicated that the person's alcohol concentration was at or above a limit specified in subsection 1201(a) of this title, at the time of operating, attempting to operate, or being in actual physical control, the Commissioner shall suspend the person's operating license or nonresident operating privilege or the privilege of an unlicensed operator to operate a vehicle for a period of 90 days and until the person complies with section 1209a of this title. However, during the suspension, an eligible person may operate under the terms of an ignition interlock RDL or ignition interlock certificate issued pursuant to section 1213 of this title.

\* \* \*

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

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

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

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

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

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

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

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

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

\* \* \*

(f) Review by Superior Court. Within seven days following receipt of a notice of intention to suspend and of suspension, a person may make a request for a hearing before the Superior Court by mailing or delivering the form provided with the notice. The request shall be mailed or delivered to the Commissioner of Motor Vehicles, who shall then notify the Criminal Division of the Superior Court that a hearing has been requested and provide the

Criminal Division and the State's Attorney with a copy of the notice of intention to suspend and of suspension and the officer's affidavit.

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(h) Final hearing.

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

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

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

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

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

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

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



(i) Finding by the court. The court shall electronically forward a report of the hearing to the Commissioner. Upon a finding by the court that the law enforcement officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person refused to submit to a test, or upon a finding by the court that the law enforcement officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person submitted to a test and the test results indicated that the person's alcohol concentration was at or above a legal limit specified in subsection 1201(a) or (d) of this title, at the time the person was operating, attempting to operate, or in actual physical control, the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle shall be suspended or shall remain suspended for the required term and until the person complies with section 1209a of this title. Upon a finding in favor of the person, the Commissioner shall cause the suspension to be canceled and removed from the record, without payment of any fee.

\* \* \*

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

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## § 1210. PENALTIES

\* \* \*

### (f) Death resulting.

(1) If the death of any person results from a violation of section 1201 of this title, the person convicted of the violation shall be fined not more than \$10,000.00 or imprisoned not less than one year nor more than 15 years, or both. The provisions of this subsection do not limit or restrict prosecutions for manslaughter.

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

(3)(A) If the death of any person results from a violation of section 1201 of this title and the person convicted of the violation previously has been

convicted two or more times of a violation of that section, a sentence ordered pursuant to this subsection shall, except as provided in subdivision (B) of this subdivision (3), include at least a five-year term of imprisonment. The five-year minimum term of imprisonment required by this subdivision (3)(A) shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year term of imprisonment.

(B) Notwithstanding subdivision (A) of this subdivision (3), if the death or serious bodily injury of any person results from a violation of section 1201 of this title and the person convicted of the violation previously has been convicted two or more times of a violation of that section, the court may impose a sentence that does not include a term of imprisonment or that includes a term of imprisonment of less than five years if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

(g) Injury resulting.

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

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

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

(B) Notwithstanding subdivision (A) of this subdivision (3), if serious bodily injury ~~as defined in 13 V.S.A. § 1021(2)~~ results to any person other than the operator from a violation of section 1201 of this title and the person convicted of the violation previously has been convicted two or more times of a violation of section 1201, the court may impose a sentence that does

not include a term of imprisonment or that includes a term of imprisonment of less than five years if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

\* \* \*

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

§ 5202. ORDER OF ADJUDICATION; NONCRIMINAL

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

(A) be deemed a conviction of crime;

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

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

(2) Notwithstanding subdivision (1) of this subsection, ~~an order of delinquency in proceedings~~ a merits adjudication order issued pursuant to section 5229 of this title in proceedings concerning a child or youthful offender who is alleged to have committed a violation of those sections specified in 23 V.S.A. § 801(a)(1) shall be an event in addition to those specified therein, enabling the Commissioner of Motor Vehicles to require proof of financial responsibility under 23 V.S.A. chapter 11.

(3) Notwithstanding subdivision (1) of this subsection, a merits adjudication order issued pursuant to section 5229 of this title in proceedings concerning a child or youthful offender who is alleged to have committed a violation of 23 V.S.A. chapter 13, subchapter 13 shall be reported to the Commissioner of Motor Vehicles in accordance with the provisions of 23 V.S.A. § 1709.

\* \* \*

Sec. 4. 33 V.S.A. § 5229 is amended to read:

§ 5229. MERITS ADJUDICATION

\* \* \*

(g) If, based on the child's admission or the evidence presented, the court finds beyond a reasonable doubt that the child has committed a delinquent act, the court shall order the Department to prepare a disposition case plan not later than seven business days before the disposition hearing and shall send a record of the adjudication to the Commissioner of Motor Vehicles within 10 days following its issuance. In no event shall a disposition hearing be held later than 35 days after a finding that a child is delinquent.

\* \* \*

Sec. 5. IMPAIRED DRIVING; IMPLIED CONSENT; PROCESSING; TASK FORCE; REPORT

(a) Creation. There is created the Impaired Driving Processing Task Force to study the concept of implied consent during impaired driving investigations with the objective to recommend approaches that minimize the duration for which impaired driving suspects are held during investigations and to streamline the processing and paperwork associated with such investigations.

(b) Membership. The Task Force shall be composed of the following members:

(1) the Chief Judge of the Superior Court or designee;

(2) the Defender General or designee;

(3) the Commissioner of Public Safety or designee;

(4) the Commissioner of Motor Vehicles or designee;

(5) the Executive Director of the Department of State's Attorneys and Sheriffs or designee;

(6) the President of the Vermont Sheriffs' Association or designee; and

(7) a representative from the Vermont Police Association.

(c) Powers and duties. The Task Force shall study impaired driving investigations in Vermont, including the following issues:

(1) the constitutional and statutory requirements of implied consent;

(2) how constitutional and statutory requirements related to implied consent affect the duration for which suspected impaired drivers are held by law enforcement;

(3) methods to minimize statutory requirements related to implied consent that pass constitutional muster; and

(4) any other relevant issues in accordance with subsection (a) of this section.

(d) Assistance. The Task Force shall have the administrative, technical, and legal assistance of the Department of Public Safety.

(e) Report. On or before November 15, 2025, the Task Force shall submit a written report in the form of proposed legislation to the House and Senate Committees on Judiciary with any recommendations for legislative action.

(f) Meetings.

(1) The Commissioner of Public Safety or designee shall call the first meeting of the Task Force to occur on or before August 1, 2025.

(2) The Task Force shall select a chair from among its members at the first meeting.

(3) The Task Force shall meet not more than six times.

(4) A majority of the Task Force's membership shall constitute a quorum.

(5) The Task Force shall cease to exist on February 1, 2026.

(g) Compensation and reimbursement. Members of the Task Force who are not otherwise compensated or reimbursed for their attendance shall be entitled to compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than six meetings.

#### Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2025.