

1 H.411

2 Introduced by Representatives McCoy of Poultney, Burditt of West Rutland,
3 Goslant of Northfield, Harvey of Castleton, Malay of Pittsford,
4 and Oliver of Sheldon

5 Referred to Committee on

6 Date:

7 Subject: Crimes and criminal procedure

8 Statement of purpose of bill as introduced: This bill proposes to provide
9 additional time for the administration of extradition warrants; to expedite the
10 extradition of persons who have broken the terms of bail, probation, parole, or
11 other release in another state; to prohibit a court from suspending the sentence
12 of a high-risk sex offender who has failed to comply with Sex Offender
13 Registry requirements; to restrict the use of alternative sentences for repeat
14 offenders or offenders who have violated the terms of probation or furlough
15 unless the court makes written findings on the record as to the compelling
16 reasons why the sentence will serve the interests of justice and protect the
17 public; to prohibit a court from reducing the sentence for a listed crime if the
18 defendant has a prior conviction for a listed crime; to outline the procedure to
19 revoke bail and define the term of “disrupts the prosecution” within one of the
20 statutory bases to revoke bail; to transition from a complex system of sealing
21 and expungement of certain criminal history records for which sentences have

1 been completed to one of sealing in most instances, with an expanded list of
2 qualifying crimes, and limited access to sealed records for certain entities that
3 require such records for criminal justice purposes and licensing; to amend the
4 statutory term of “recidivism” to adjust how recidivism is measured and create
5 new measures of criminal behavior; to increase the number of Big 14 offenses
6 that commence in the Criminal Division of the Superior Court rather than the
7 Family Division when committed by a juvenile; to repeal the Raise the Age
8 initiative for 19-year-old offenders; transfer jurisdiction over youthful offender
9 proceedings from the Family Division to the Criminal Division; and to repeal
10 prospective changes to law that would prohibit the use of Department of
11 Corrections’ facilities for lodging public inebriates.

12 An act relating to public safety

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

14 * * * Extradition * * *

15 Sec. 1. 13 V.S.A. § 4955 is amended to read:

16 § 4955. COMMITMENT TO AWAIT EXTRADITION; BAIL

17 If upon examination it appears that the person held is the person charged
18 with having committed the crime alleged and that the person probably
19 committed the crime, and, except in cases arising under section 4946 of this
20 title, that the person has fled from justice, the judge or magistrate shall commit

1 the person to jail by a warrant, reciting the accusation, for such a time, not
2 exceeding ~~30~~ 120 days, to be specified in the warrant as will enable the arrest
3 of the accused to be made under a warrant of the Governor on a requisition of
4 the executive authority of the state having jurisdiction of the offense, unless the
5 accused give bail as provided in section 4956 of this title, or until the person
6 shall be legally discharged. On request of the state, the hearing may be
7 continued for up to three ~~working~~ business days, only for the purpose of
8 determining whether the person probably committed the crime. Findings under
9 this section may be based upon hearsay evidence or upon copies of affidavits,
10 whether certified or not, made outside this State. It shall be sufficient for a
11 finding that a person probably committed the crime that there is a current grand
12 jury indictment from another state.

13 Sec. 2. 13 V.S.A. § 4967 is amended to read:

14 § 4967. WRITTEN WAIVER OF EXTRADITION PROCEEDINGS

15 (a) Any person arrested in this State charged with having committed any
16 crime in another state or alleged to have escaped from confinement, or broken
17 the terms of ~~his or her~~ bail, probation, or parole may waive the issuance and
18 service of the warrant provided for in sections 4947 and 4948 of this title and
19 all other procedure incidental to extradition proceedings, by executing or
20 subscribing in the presence of a judge of any court of record within this State a
21 writing that states that ~~he or she~~ the person consents to return to the demanding

1 state; provided however, before ~~such~~ the waiver ~~shall be~~ is executed or
2 subscribed by ~~such~~ the person ~~it shall be the duty of such,~~ the judge ~~to~~ shall
3 inform ~~such~~ the person of ~~his or her~~ the ~~rights~~ right to ~~the~~ issuance and service
4 of a warrant of extradition and to obtain a writ of habeas corpus as provided for
5 in section 4950 of this title.

6 (b) If and when such consent has been duly executed, it shall forthwith be
7 forwarded to the office of the Governor of this State and filed therein. The
8 judge shall direct the officer having such person in custody to deliver forthwith
9 such person to the duly accredited agent or agents of the demanding state, and
10 shall deliver or cause to be delivered to such agent or agents a copy of such
11 consent; provided however, that nothing in this section shall be deemed to limit
12 the rights of the accused person to return voluntarily and without formality to
13 the demanding state, nor shall this waiver procedure be deemed to be an
14 exclusive procedure or to limit the powers, rights or duties of the officers of the
15 demanding state or of this State.

16 (c) Notwithstanding any other provision of law, a law enforcement agency
17 in this State holding a person who is alleged to have broken the terms of the
18 person's probation, parole, bail, or any other release in the demanding state
19 shall immediately deliver that person to the duly authorized agent of the
20 demanding state without the requirement of a Governor's warrant if all of the
21 following apply:

1 (1) The person has signed a prior waiver of extradition as a term of the
2 person's current probation, parole, bail, or other release in the demanding state.

3 (2) The law enforcement agency holding the person has received an
4 authenticated copy of the prior waiver of extradition signed by the person and
5 photographs or fingerprints or other evidence properly identifying the person
6 as the person who signed the waiver.

7 (3) Except as the State's Attorney shall otherwise determine in the
8 interest of justice, all open criminal charges in this State have been disposed of
9 through trial and sentencing.

10 Sec. 3. 13 V.S.A. § 5043 is amended to read:

11 § 5043. HEARING, COMMITMENT, DISCHARGE

12 (a) If an arrest is made in this State by an officer of another state in
13 accordance with the provisions of section 5042 of this title, ~~he or she shall the~~
14 officer, without unnecessary delay, shall take the person arrested before a
15 Superior judge of the unit in which the arrest was made, who shall conduct a
16 hearing for the purpose of determining the lawfulness of the arrest.

17 (b) If the judge determines that the arrest was lawful, ~~he or she the judge~~
18 shall commit the person arrested to await for ~~a reasonable time~~ the issuance
19 within 120 days of an extradition warrant by the Governor of this State or
20 admit such person to bail pending the issuance of such warrant. The judge
21 shall consider the issuance of a judicial warrant for the arrest of the person who

1 has fled justice to Vermont from another state when determining the risk of
2 flight from prosecution.

3 (c) If the judge determines that the arrest was unlawful, ~~he or she~~ the judge
4 shall discharge the person arrested.

5 * * * Sentencing * * *

6 Sec. 4. 13 V.S.A. § 5411d is amended to read:

7 § 5411d. DESIGNATION OF NONCOMPLIANT HIGH-RISK SEX
8 OFFENDER

9 * * *

10 (g)(1) A noncompliant high-risk sex offender who knowingly fails to
11 comply with any of the Registry requirements under this section shall be
12 imprisoned for not less than five years and a maximum term of life and, in
13 addition, may be fined not more than \$50,000.00. ~~A sentence may be~~
14 ~~suspended in whole or in part, or the~~ The person may be eligible for parole or
15 release on conditional reentry or furlough, provided the person is subject to
16 intensive supervision by the Department of Corrections.

17 (2) In a criminal proceeding for violating any of the Registry
18 requirements under this section, a defendant shall be prohibited from
19 challenging ~~his or her~~ the defendant's status as a noncompliant high-risk sex
20 offender.

1 Sec. 5. 13 V.S.A. § 7031 is amended to read:

2 § 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

3 (a) When a respondent is sentenced to any term of imprisonment, other
4 than for life, the court imposing the sentence shall not fix the term of
5 imprisonment, unless the term is definitely fixed by statute, but shall establish
6 a maximum and may establish a minimum term for which the respondent may
7 be held in imprisonment. The maximum term shall not be more than the
8 longest term fixed by law for the offense of which the respondent is convicted,
9 and the minimum term shall be not less than the shortest term fixed by law for
10 the offense. If the court suspends a portion of the sentence, the unsuspended
11 portion of the sentence shall be the minimum term of sentence solely for the
12 purpose of any reductions of term for good behavior as set forth in 28 V.S.A.
13 § 811. A sentence shall not be considered fixed as long as the maximum and
14 minimum terms are not identical.

15 (b) The sentence of imprisonment of any person convicted of an offense
16 shall commence to run from the date on which the person is received at the
17 correctional facility for service of the sentence. The court shall give the person
18 credit toward service of ~~his or her~~ the person's sentence for any days spent in
19 custody as follows:

20 (1) The period of credit for concurrent and consecutive sentences shall
21 include all days served from the date of arraignment or the date of the earliest

1 detention for the offense, whichever occurs first, and end on the date of the
2 sentencing. Only a single credit shall be awarded in cases of consecutive
3 sentences, and no credit for one period of time shall be applied to a later
4 period.

5 (2) In sentencing a violation of probation, the court shall give the person
6 credit for any days spent in custody from the time the violation is filed or the
7 person is detained on the violation, whichever occurs first, until the violation is
8 sentenced. In a case in which probation is revoked and the person is ordered to
9 serve the underlying sentence, the person shall receive credit for all time
10 previously served in connection with the offense.

11 (3) A defendant who has received pre-adjudication treatment in a
12 residential setting for a substance use disorder after the charge has been filed
13 shall earn a reduction of one day in the offender's minimum and maximum
14 sentence for each day that the offender receives the inpatient treatment.

15 (c) If any such person is committed to a jail or other place of detention to
16 await transportation to the place at which ~~his or her~~ the person's sentence is to
17 be served, ~~his or her~~ the sentence shall commence to run from the date on
18 which ~~he or she~~ the person is received at the jail or the place of detention.

19 (d) A person who receives a zero minimum sentence for a conviction of a
20 nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301
21 shall report to probation and parole as directed by the court and begin to serve

1 the sentence in the community immediately, unless the person is serving a
2 prior sentence at the time.

3 (e) For a conviction of a listed crime pursuant to 13 V.S.A. § 5301(7), a
4 court shall not order a sentence that is suspended, deferred, or served as a
5 supervised sentence if the person has a prior conviction for escape pursuant to
6 13 V.S.A. § 1501 or a felony listed crime unless the court makes findings on
7 the record that there are compelling reasons why such a sentence will serve the
8 interests of justice and protect the public.

9 (f) A court shall not suspend, in whole or in part, a sentence for a person
10 who has previously been found to have violated probation, been
11 unsatisfactorily discharged from probation, or had furlough revoked unless the
12 court makes findings on the record that there are compelling reasons why such
13 a sentence will serve the interests of justice and protect the public.

14 Sec. 6. 13 V.S.A. § 7042 is amended to read:

15 § 7042. SENTENCE REVIEW

16 (a) Any court imposing a sentence under the authority of this title, within
17 90 days of the imposition of that sentence, or within 90 days after entry of any
18 order or judgment of the Supreme Court upholding a judgment of conviction,
19 may upon its own initiative or motion of the defendant, reduce the sentence.

20 (b) A State's Attorney or the Attorney General, within seven business days
21 of the imposition of a sentence, may file with the sentencing judge a motion to

1 increase, reduce, or otherwise modify the sentence. This motion shall set forth
2 reasons why the sentence should be altered. After hearing, the court may
3 confirm, increase, reduce, or otherwise modify the sentence.

4 (c) After a motion is filed under subsection (b) of this section, a
5 defendant's time for filing an appeal under 12 V.S.A. § 2383 shall commence
6 to run upon entry of a final order under subsection (b).

7 (d) A court shall not reduce the sentence for a conviction of a listed crime
8 as provided by 13 V.S.A. § 5301(7) if the defendant has a prior conviction for
9 a listed crime.

10 * * * Bail * * *

11 Sec. 7. BAIL REVOCATION; INTENT

12 It is the intent of the General Assembly that its bail revocation statute is
13 consistent with *State v. Sauve*, 159 Vt. 566 (1993); *State v. Gates*, 2016 VT 36;
14 and their progeny so that repeated failures to appear in court, repeated
15 violations of conditions of release, and other violations of court orders
16 constitute a compelling State interest that falls within the statutory definition of
17 “disrupts the prosecution.”

18 Sec. 8. 13 V.S.A. § 7575 is amended to read:

19 § 7575. REVOCATION OF THE RIGHT TO BAIL

20 (a) The prosecutor, or the court on its own motion, may move to revoke
21 bail pursuant to this section.

1 **(b)** The right to bail may be revoked entirely if the judicial officer finds that
2 the accused has:

3 (1) intimidated or harassed a victim, potential witness, juror, or judicial
4 officer in violation of a condition of release; ~~or~~

5 (2) repeatedly violated conditions of release in a manner that ~~impedes~~
6 disrupts the prosecution of the accused; ~~or~~

7 (3) violated a condition or conditions of release that constitute a threat to
8 the integrity of the judicial system; ~~or~~

9 (4) without just cause, failed to appear at a specified time and place
10 ordered by a judicial officer; or

11 (5) in violation of a condition of release, been charged with a felony or a
12 crime against a person or an offense similar to the underlying charge, for
13 which, after hearing, probable cause is found.

14 **(c)** If the court revokes bail, it shall order the defendant's immediate arrest
15 without a warrant if the person is within the State and declare any bond
16 pledged by the defendant forfeited.

17 **(d)(1)** If a defendant's bail is revoked, the court shall set the defendant's
18 case for trial not more than 60 days from the date of revocation.

19 **(2)** If the trial is not commenced within 60 days after revocation and the
20 delay is not attributable to the defense, the court shall immediately schedule a
21 bail hearing for the defendant.

1 Sec. 9. 13 V.S.A. § 7576 is amended to read:

2 § 7576. DEFINITIONS

3 As used in this chapter:

4 * * *

5 (4) “Disrupt the prosecution” means, in addition to any other meaning
6 recognized by law, committing a criminal offense or violating a condition of
7 release by a defendant who has been released pending trial for another offense
8 and demonstrates that there is no condition or combination of conditions of
9 release that will reasonably mitigate the defendant’s risk of flight from
10 prosecution, reasonably mitigate the defendant’s risk to public safety, or
11 reasonably ensure the defendant’s compliance with court orders and
12 appearances.

13 (5) “Needs screening” means a preliminary systematic procedure to
14 evaluate the likelihood that an individual has a substance abuse or a mental
15 health condition.

16 (5)(6) “Risk assessment” means a pretrial assessment that is designed to
17 be predictive of a person’s failure to appear in court and risk of violating
18 pretrial conditions of release with a new alleged offense.

19 (6)(7) “Secured appearance bond” means a written agreement ~~which~~ that
20 allows a person charged with a criminal offense to be released if:

1 (A) the person pledges to pay the court a specified amount in the
2 event that the person fails to appear at a court proceeding; and

3 (B) a portion of the bond is paid to the court prior to release.

4 ~~(7)~~(8) “Surety” means:

5 (A) a person who agrees to be responsible for guaranteeing the
6 appearance in court of a person charged with a criminal offense; or

7 (B) a person who agrees to be responsible for guaranteeing that
8 another person complies with the conditions of a peace bond under section
9 7573 of this title.

10 ~~(8)~~(9) “Surety bond” means a written agreement, in a form established
11 by the Court Administrator, under which a surety guarantees the appearance in
12 court of a person charged with a criminal offense, and pledges to pay the court
13 a specified amount if the person fails to appear.

14 ~~(9)~~(10) “Flight from prosecution” means any action or behavior
15 undertaken by a person charged with a criminal offense to avoid court
16 proceedings.

17 * * * Criminal History Records * * *

18 Sec. 10. 13 V.S.A. chapter 230 is amended to read:

19 CHAPTER 230. ~~EXPUNGEMENT AND SEALING OF CRIMINAL~~
20 HISTORY RECORDS

1 § 7601. DEFINITIONS

2 As used in this chapter:

3 (1) “Court” means the Criminal Division of the Superior Court.

4 (2) “Criminal history record” means all information documenting an
5 individual’s contact with the criminal justice system, including data regarding
6 identification, arrest or citation, arraignment, judicial disposition, custody, and
7 supervision.

8 (3) ~~“Predicate offense” means a criminal offense that can be used to~~
9 ~~enhance a sentence levied for a later conviction and includes operating a~~
10 ~~vehicle under the influence of alcohol or other substance in violation of~~
11 ~~23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title,~~
12 ~~and stalking in violation of section 1062 of this title. “Predicate offense” shall~~
13 ~~not include misdemeanor possession of cannabis, a disorderly conduct offense~~
14 ~~under section 1026 of this title, or possession of a controlled substance in~~
15 ~~violation of 18 V.S.A. § 4230(a), 4231(a), 4232(a), 4233(a), 4234(a), 4234a(a),~~
16 ~~4234b(a), 4235(b), or 4235a(a). [Repealed.]~~

17 (4) “Qualifying crime” means:

18 (A) ~~a misdemeanor offense that is not:~~

19 (i) ~~a listed crime as defined in subdivision 5301(7) of this title;~~

20 (ii) ~~an offense involving sexual exploitation of children in~~
21 ~~violation of chapter 64 of this title;~~

1 ~~(iii) an offense involving violation of a protection order in~~
2 ~~violation of section 1030 of this title;~~

3 ~~(iv) prostitution as defined in section 2632 of this title, or~~
4 ~~prohibited conduct under section 2601a of this title; or~~

5 ~~(v) a predicate offense;~~

6 ~~(B) a violation of subsection 3701(a) of this title related to criminal~~
7 ~~mischief;~~

8 ~~(C) a violation of section 2501 of this title related to grand larceny;~~

9 ~~(D) a violation of section 1201 of this title related to burglary,~~
10 ~~excluding any burglary into an occupied dwelling, as defined in subdivision~~
11 ~~1201(b)(2) of this title;~~

12 ~~(E) a violation of 18 V.S.A. § 4223 related to fraud or deceit;~~

13 ~~(F) a violation of section 1802 of this title related to uttering a forged~~
14 ~~or counterfeited instrument;~~

15 ~~(G) a violation of 18 V.S.A. § 4230(a) related to possession and~~
16 ~~cultivation of cannabis;~~

17 ~~(H) a violation of 18 V.S.A. § 4231(a) related to possession of~~
18 ~~cocaine;~~

19 ~~(I) a violation of 18 V.S.A. § 4232(a) related to possession of LSD;~~

20 ~~(J) a violation of 18 V.S.A. § 4233(a) related to possession of heroin;~~

1 ~~(K) a violation of 18 V.S.A. § 4234(a) related to possession of~~
2 ~~depressant, stimulant, and narcotic drugs;~~

3 ~~(L) a violation of 18 V.S.A. § 4234a(a) related to possession of~~
4 ~~methamphetamine;~~

5 ~~(M) a violation of 18 V.S.A. § 4234b(a) related to possession of~~
6 ~~ephedrine and pseudoephedrine;~~

7 ~~(N) a violation of 18 V.S.A. § 4235(b) related to possession of~~
8 ~~hallucinogenic drugs;~~

9 ~~(O) a violation of 18 V.S.A. § 4235a(a) related to possession of~~
10 ~~ecstasy; or~~

11 ~~(P) any offense for which a person has been granted an unconditional~~
12 ~~pardon from the Governor all misdemeanor offenses except:~~

13 ~~(i) a listed crime as defined in subdivision 5301(7) of this title;~~

14 ~~(ii) a violation of chapter 64 of this title related to sexual~~
15 ~~exploitation of children;~~

16 ~~(iii) a violation of section 1030 of this title related to a violation of~~
17 ~~an abuse prevention order, an order against stalking or sexual assault, or a~~
18 ~~protective order concerning contact with a child;~~

19 ~~(iv) a violation of chapter 28 of this title related to abuse, neglect,~~
20 ~~and exploitation of a vulnerable adult;~~

- 1 (v) a violation of subsection 2605(b) or (c) of this title related to
2 voyeurism;
- 3 (vi) a violation of subdivisions 352(1)–(10) of this title related to
4 cruelty to animals;
- 5 (vii) a violation of section 5409 of this title related to failure to
6 comply with sex offender registry requirements;
- 7 (viii) a violation of section 1455 of this title related to hate
8 motivated crimes;
- 9 (ix) a violation of subsection 1304(a) of this title related to cruelty
10 to a child;
- 11 (x) a violation of section 1305 of this title related to cruelty by
12 person having custody of another;
- 13 (xi) a violation of section 1306 of this title related to mistreatment
14 of persons with impaired cognitive function;
- 15 (xii) a violation of section 3151 of this title related to female
16 genital mutilation;
- 17 (xiii) a violation of subsection 3258(b) of this title related to
18 sexual exploitation of a minor;
- 19 (xiv) a violation of subdivision 4058(b)(1) of this title related to
20 violation of an extreme risk protection order; and

1 (xv) an offense committed in a motor vehicle as defined in
2 23 V.S.A. § 4 by a person who is the holder of a commercial driver’s license or
3 commercial driver’s permit pursuant to 23 V.S.A. chapter 39; and

4 (B) the following felonies:

5 (i) a violation of section 1201 of this title related to burglary,
6 excluding any burglary into an occupied dwelling, unless the person was
7 25 years of age or younger at the time of the offense and did not carry a
8 dangerous or deadly weapon during the commission of the offense;

9 (ii) designated felony property offenses as defined in subdivision
10 (5) of this section;

11 (iii) offenses relating to possessing, cultivating, selling,
12 dispensing, or transporting regulated drugs, including violations of 18 V.S.A.
13 § 4230(a) and (b), 4231(a) and (b), 4232(a) and (b), 4233(a) and (b), 4233a(a),
14 4234(a) and (b), 4234a(a) and (b), 4234b(a) and (b), 4235(b) and (c), or
15 4235a(a) and (b); and

16 (iv) any offense for which a person has been granted an
17 unconditional pardon from the Governor.

18 (5) “Designated felony property offense” means:

19 (A) a felony violation of 9 V.S.A. § 4043 related to fraudulent use of
20 a credit card;

21 (B) section 1801 of this title related to forgery and counterfeiting;

- 1 (C) section 1802 of this title related to uttering a forged or
2 counterfeited instrument;
- 3 (D) section 1804 of this title related to counterfeiting paper money;
- 4 (E) section 1816 of this title related to possession or use of credit
5 card skimming devices;
- 6 (F) section 2001 of this title related to false personation;
- 7 (G) section 2002 of this title related to false pretenses or tokens;
- 8 (H) section 2029 of this title related to home improvement fraud;
- 9 (I) section 2030 of this title related to identity theft;
- 10 (J) section 2501 of this title related to grand larceny;
- 11 (K) section 2531 of this title related to embezzlement;
- 12 (L) section 2532 of this title related to embezzlement by officers or
13 servants of an incorporated bank;
- 14 (M) section 2533 of this title related to embezzlement by a receiver
15 or trustee;
- 16 (N) section 2561 of this title related to receiving stolen property;
- 17 (O) section 2575 of this title related to retail theft;
- 18 (P) section 2582 of this title related to theft of services;
- 19 (Q) section 2591 of this title related to theft of rented property;
- 20 (R) section 2592 of this title related to failure to return a rented or
21 leased motor vehicle;

- 1 (S) section 3016 of this title related to false claims;
2 (T) section 3701 of this title related to unlawful mischief;
3 (U) section 3705 of this title related to unlawful trespass;
4 (V) section 3733 of this title related to mills, dams, or bridges;
5 (W) section 3761 of this title related to unauthorized removal of

6 human remains;

- 7 (X) section 3766 of this title related to grave markers and ornaments;
8 (Y) chapter 87 of this title related to computer crimes; and
9 (Z) 18 V.S.A. § 4223 related to fraud or deceit in obtaining a
10 regulated drug.

11 § 7602. ~~EXPUNGEMENT AND SEALING OF RECORD,~~
12 ~~POSTCONVICTION; PROCEDURE~~

13 ~~(a)(1) A person may file a petition with the court requesting expungement~~
14 ~~or sealing of the criminal history record related to the conviction if:~~

15 ~~(A) the person was convicted of a qualifying crime or qualifying~~
16 ~~crimes arising out of the same incident or occurrence;~~

17 ~~(B) the person was convicted of an offense for which the underlying~~
18 ~~conduct is no longer prohibited by law or designated as a criminal offense;~~

19 ~~(C) pursuant to the conditions set forth in subsection (g) of this~~
20 ~~section, the person was convicted of a violation of 23 V.S.A. § 1201(a) or~~
21 ~~§ 1091 related to operating under the influence of alcohol or other substance,~~

1 ~~excluding a violation of those sections resulting in serious bodily injury or~~
2 ~~death to any person other than the operator, or related to operating a school bus~~
3 ~~with a blood alcohol concentration of 0.02 or more or operating a commercial~~
4 ~~vehicle with a blood alcohol concentration of 0.04 or more; or~~

5 ~~(D) pursuant to the conditions set forth in subsection (h) of this~~
6 ~~section, the person was convicted under 1201(c)(3)(A) of a violation of~~
7 ~~subdivision 1201(a) of this title related to burglary when the person was~~
8 ~~25 years of age or younger, and the person did not carry a dangerous or deadly~~
9 ~~weapon during commission of the offense.~~

10 ~~(2) The State's Attorney or Attorney General shall be the respondent in~~
11 ~~the matter.~~

12 ~~(3) The court shall grant the petition without hearing if the petitioner~~
13 ~~and the respondent stipulate to the granting of the petition. The respondent~~
14 ~~shall file the stipulation with the court, and the court shall issue the petitioner~~
15 ~~an order of expungement and provide notice of the order in accordance with~~
16 ~~this section.~~

17 ~~(4) This section shall not apply to an individual licensed as a~~
18 ~~commercial driver pursuant to 23 V.S.A. chapter 39 seeking to seal or expunge~~
19 ~~a record of a conviction for a felony offense committed in a motor vehicle as~~
20 ~~defined in 23 V.S.A. § 4.~~

1 ~~(b)(1) The court shall grant the petition and order that the criminal history~~
2 ~~record be expunged pursuant to section 7606 of this title if the following~~
3 ~~conditions are met:~~

4 ~~(A) At least five years have elapsed since the date on which the~~
5 ~~person successfully completed the terms and conditions of the sentence for the~~
6 ~~conviction, or if the person has successfully completed the terms and~~
7 ~~conditions of an indeterminate term of probation that commenced at least five~~
8 ~~years previously.~~

9 ~~(B) The person has not been convicted of a crime arising out of a new~~
10 ~~incident or occurrence since the person was convicted for the qualifying crime.~~

11 ~~(C) Any restitution and surcharges ordered by the court have been~~
12 ~~paid in full, provided that payment of surcharges shall not be required if the~~
13 ~~surcharges have been waived by the court pursuant to section 7282 of this title.~~

14 ~~(D) The court finds that expungement of the criminal history record~~
15 ~~serves the interests of justice.~~

16 ~~(2) The court shall grant the petition and order that all or part of the~~
17 ~~criminal history record be sealed pursuant to section 7607 of this title if the~~
18 ~~conditions of subdivisions (1)(A), (B), and (C) of this subsection are met and~~
19 ~~the court finds that:~~

20 ~~(A) sealing the criminal history record better serves the interests of~~
21 ~~justice than expungement; and~~

1 ~~(B) the person committed the qualifying crime after reaching 19~~
2 ~~years of age.~~

3 ~~(c)(1) The court shall grant the petition and order that the criminal history~~
4 ~~record be expunged pursuant to section 7606 of this title if the following~~
5 ~~conditions are met:~~

6 ~~(A) At least 10 years have elapsed since the date on which the person~~
7 ~~successfully completed the terms and conditions of the sentence for the~~
8 ~~conviction.~~

9 ~~(B) The person has not been convicted of a felony arising out of a~~
10 ~~new incident or occurrence in the last seven years.~~

11 ~~(C) The person has not been convicted of a misdemeanor during the~~
12 ~~past five years.~~

13 ~~(D) Any restitution and surcharges ordered by the court for any crime~~
14 ~~of which the person has been convicted has been paid in full, provided that~~
15 ~~payment of surcharges shall not be required if the surcharges have been waived~~
16 ~~by the court pursuant to section 7282 of this title.~~

17 ~~(E) After considering the particular nature of any subsequent offense,~~
18 ~~the court finds that expungement of the criminal history record for the~~
19 ~~qualifying crime serves the interests of justice.~~

20 ~~(2) The court shall grant the petition and order that all or part of the~~
21 ~~criminal history record be sealed pursuant to section 7607 of this title if the~~

1 ~~conditions of subdivisions (1)(A), (B), (C), and (D) of this subsection are met~~
2 ~~and the court finds that:~~

3 ~~(A) sealing the criminal history record better serves the interests of~~
4 ~~justice than expungement; and~~

5 ~~(B) the person committed the qualifying crime after reaching 19~~
6 ~~years of age.~~

7 ~~(d) For petitions filed pursuant to subdivision (a)(1)(B) of this section,~~
8 ~~unless the court finds that expungement would not be in the interests of justice,~~
9 ~~the court shall grant the petition and order that the criminal history record be~~
10 ~~expunged in accordance with section 7606 of this title if the following~~
11 ~~conditions are met:~~

12 ~~(1) The petitioner has completed any sentence or supervision for the~~
13 ~~offense.~~

14 ~~(2) Any restitution and surcharges ordered by the court have been paid~~
15 ~~in full, provided that payment of surcharges shall not be required if the~~
16 ~~surcharges have been waived by the court pursuant to section 7282 of this title.~~

17 ~~(e) For petitions filed pursuant to subdivision (a)(1)(B) of this section for a~~
18 ~~conviction for possession of a regulated drug under 18 V.S.A. chapter 84,~~
19 ~~subchapter 1 in an amount that is no longer prohibited by law or for which~~
20 ~~criminal sanctions have been removed:~~

1 ~~(1) The petitioner shall bear the burden of establishing that his or her~~
2 ~~conviction was based on possessing an amount of regulated drug that is no~~
3 ~~longer prohibited by law or for which criminal sanctions have been removed.~~

4 ~~(2) There shall be a rebuttable presumption that the amount of the~~
5 ~~regulated drug specified in the affidavit of probable cause associated with the~~
6 ~~petitioner's conviction was the amount possessed by the petitioner.~~

7 ~~(f) Prior to granting an expungement or sealing under this section for~~
8 ~~petitions filed pursuant to subdivision 7601(4)(D) of this title, the court shall~~
9 ~~make a finding that the conduct underlying the conviction under section 1201~~
10 ~~of this title did not constitute a burglary into an occupied dwelling, as defined~~
11 ~~in subdivision 1201(b)(2) of this title. The petitioner shall bear the burden of~~
12 ~~establishing this fact.~~

13 ~~(g) For petitions filed pursuant to subdivision (a)(1)(C) of this section, only~~
14 ~~petitions to seal may be considered or granted by the court. This subsection~~
15 ~~shall not apply to an individual licensed as a commercial driver pursuant to~~
16 ~~23 V.S.A. chapter 39. Unless the court finds that sealing would not be in the~~
17 ~~interests of justice, the court shall grant the petition and order that the criminal~~
18 ~~history record be sealed in accordance with section 7607 of this title if the~~
19 ~~following conditions are met:~~

20 ~~(1) At least 10 years have elapsed since the date on which the person~~
21 ~~successfully completed the terms and conditions of the sentence for the~~

1 ~~conviction, or if the person has successfully completed the terms and~~
2 ~~conditions of an indeterminate term of probation that commenced at least~~
3 ~~10 years previously.~~

4 ~~(2) At the time of the filing of the petition:~~

5 ~~(A) the person has only one conviction of a violation of 23 V.S.A.~~
6 ~~§ 1201, which shall be construed in accordance with 23 V.S.A. § 1211; and~~

7 ~~(B) the person has not been convicted of a crime arising out of a new~~
8 ~~incident or occurrence since the person was convicted of a violation of~~
9 ~~23 V.S.A. § 1201(a).~~

10 ~~(3) Any restitution ordered by the court has been paid in full.~~

11 ~~(4) The court finds that sealing of the criminal history record serves the~~
12 ~~interests of justice.~~

13 ~~(h) For petitions filed pursuant to subdivision (a)(1)(D) of this section,~~
14 ~~unless the court finds that expungement or sealing would not be in the interests~~
15 ~~of justice, the court shall grant the petition and order that the criminal history~~
16 ~~record be expunged or sealed in accordance with section 7606 or 7607 of this~~
17 ~~title if the following conditions are met:~~

18 ~~(1) At least 15 years have elapsed since the date on which the person~~
19 ~~successfully completed the terms and conditions of the sentence for the~~
20 ~~conviction, or the person has successfully completed the terms and conditions~~

1 ~~of an indeterminate term of probation that commenced at least 15 years~~
2 ~~previously.~~

3 ~~(2) The person has not been convicted of a crime arising out of a new~~
4 ~~incident or occurrence since the person was convicted of a violation of~~
5 ~~subdivision 1201(c)(3)(A) of this title.~~

6 ~~(3) Any restitution ordered by the court has been paid in full.~~

7 ~~(4) The court finds that expungement or sealing of the criminal history~~
8 ~~record serves the interests of justice. Petition.~~

9 (1) A person may file a petition with the court requesting sealing of a
10 criminal history record related to a conviction under the following
11 circumstances:

12 (A) The person was convicted of an offense for which the underlying
13 conduct is no longer prohibited by law or designated as a criminal offense.

14 (B) The person was convicted of a qualifying crime or qualifying
15 crimes arising out of the same incident or occurrence.

16 (2) Whichever office prosecuted the offense resulting in the conviction,
17 the State's Attorney or Attorney General, shall be the respondent in the matter
18 unless the prosecuting office authorizes the other to act as the respondent.

19 (3) The court shall grant the petition without hearing if the petitioner
20 and the respondent stipulate to the granting of the petition. The respondent
21 shall file the stipulation with the court, and the court shall issue the petitioner

1 an order of sealing and provide notice of the order in accordance with this
2 section.

3 (4) This section shall not apply to an individual who is the holder of a
4 commercial driver's license or commercial driver's permit pursuant to
5 23 V.S.A. chapter 39 seeking to seal a record of a conviction for a
6 misdemeanor or felony offense committed in a motor vehicle as defined in
7 23 V.S.A. § 4.

8 (b) Offenses that are no longer prohibited by law. For petitions filed
9 pursuant to subdivision (a)(1)(A) of this section, the court shall grant the
10 petition and order that the criminal history record be sealed if the following
11 conditions are met:

12 (1) The petitioner has completed any sentence or supervision for the
13 offense.

14 (2) Any restitution and surcharges ordered by the court have been paid
15 in full, provided that payment of surcharges shall not be required if the
16 surcharges have been waived by the court pursuant to section 7282 of this title.

17 (c) Qualifying misdemeanors. For petitions filed to seal a qualifying
18 misdemeanor pursuant to subdivision (a)(1)(B) of this section, the court shall
19 grant the petition and order that the criminal history record be sealed if the
20 following conditions are met:

1 (1) At least three years have elapsed since the date on which the person
2 completed the terms and conditions of the sentence.

3 (2) Any restitution and surcharges ordered by the court for any crime of
4 which the person has been convicted has been paid in full, provided that
5 payment of surcharges shall not be required if the surcharges have been waived
6 by the court pursuant to section 7282 of this title.

7 (3) The person does not have a pending criminal charge.

8 (4) The respondent has failed to show that sealing would be contrary to
9 the interest of justice.

10 (d) Qualifying felony offenses. For petitions filed to seal a qualifying
11 felony pursuant to subdivision (a)(1)(B) of this section, the court shall grant the
12 petition and order that the criminal history record be sealed if the following
13 conditions are met:

14 (1) At least seven years have elapsed since the date on which the person
15 completed the terms and conditions of the sentence.

16 (2) Any restitution and surcharges ordered by the court for any crime of
17 which the person has been convicted has been paid in full, provided that
18 payment of surcharges shall not be required if the surcharges have been waived
19 by the court pursuant to section 7282 of this title.

20 (3) The person does not have a pending criminal charge.

1 (4) The respondent has failed to show that sealing would be contrary to
2 the interest of justice.

3 (e) Qualifying DUI misdemeanor. For petitions filed to seal a qualifying
4 DUI misdemeanor pursuant to subdivision (a)(1)(B) of this section, the court
5 shall grant the petition and order that the criminal history record be sealed if
6 the following conditions are met:

7 (1) At least 10 years have elapsed since the date on which the person
8 completed the terms and conditions of the sentence.

9 (2) Any restitution and surcharges ordered by the court for any crime of
10 which the person has been convicted has been paid in full, provided that
11 payment of surcharges shall not be required if the surcharges have been waived
12 by the court pursuant to section 7282 of this title.

13 (3) The person does not have a pending criminal charge.

14 (4) The person is not the holder of a commercial driver's license or
15 commercial driver's permit pursuant to 23 V.S.A. chapter 39.

16 (5) The respondent has failed to show that sealing would be contrary to
17 the interest of justice.

18 (f) Fish and wildlife offenses. Sealing a criminal history record related to a
19 fish and wildlife offense shall not void any fish and wildlife license suspension
20 or revocation imposed pursuant to the accumulation of points related to the
21 sealed offense. Points accumulated by a person shall remain on the person's

1 license and, if applicable, completion of the remedial course shall be required,
2 as set forth in 10 V.S.A. § 4502.

3 § 7603. ~~EXPUNGEMENT AND SEALING OF RECORD, NO~~
4 ~~CONVICTION; PROCEDURE~~

5 (a) Unless either party objects in the interests of justice, the court shall
6 issue an order sealing the criminal history record related to the citation or arrest
7 of a person:

8 (1) within 60 days after the final disposition of the case if:

9 (A) the court does not make a determination of probable cause at the
10 time of arraignment; ~~or~~

11 (B) the charge is dismissed before trial with or without prejudice; or

12 (C) the defendant is acquitted of the charges; or

13 (2) at any time if the prosecuting attorney and the defendant stipulate
14 that the court may grant the petition to seal the record.

15 (b) If a party objects to sealing ~~or expunging~~ a record pursuant to this
16 section, the court shall schedule a hearing to determine if sealing ~~or expunging~~
17 the record serves the interests of justice. The defendant and the prosecuting
18 attorney shall be the only parties in the matter.

19 (c), (d) [Repealed.]

1 (e) ~~Unless either party objects in the interests of justice, the court shall~~
2 ~~issue an order expunging a criminal history record related to the citation or~~
3 ~~arrest of a person:~~

4 (1) ~~within 60 days after the final disposition of the case if:~~

5 (A) ~~the defendant is acquitted of the charges; or~~

6 (B) ~~the charge is dismissed with prejudice;~~

7 (2) ~~at any time if the prosecuting attorney and the defendant stipulate~~
8 ~~that the court may grant the petition to expunge the record. [Repealed.]~~

9 (f) ~~Unless either party objects in the interests of justice, the court shall issue~~
10 ~~an order to expunge a record sealed pursuant to subsection (a) or (g) of this~~
11 ~~section eight years after the date on which the record was sealed. [Repealed.]~~

12 (g) A person may file a petition with the court requesting sealing ~~or~~
13 ~~expungement~~ of a criminal history record related to the citation or arrest of the
14 person at any time. The court shall grant the petition and issue an order sealing
15 ~~or expunging~~ the record if it finds that sealing ~~or expunging~~ the record serves
16 the interests of justice, or if the parties stipulate to sealing ~~or expungement~~ of
17 the record.

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

1 ~~prosecuted the case written notice of its intent to expunge the record.~~

2 [Repealed.]

3 § 7604. ~~NEW CHARGE~~

4 ~~If a person is charged with a criminal offense after he or she has filed a~~
5 ~~petition for expungement pursuant to this chapter, the court shall not act on the~~
6 ~~petition until disposition of the new charge. [Repealed.]~~

7 § 7605. ~~DENIAL OF PETITION~~

8 ~~If a petition for expungement or sealing is denied by the court pursuant to~~
9 ~~this chapter, no further petition shall be brought for at least two years, unless a~~
10 ~~shorter duration is authorized by the court.~~

11 § 7606. ~~EFFECT OF EXPUNGEMENT~~

12 ~~(a) Order and notice. Upon finding that the requirements for expungement~~
13 ~~have been met, the court shall issue an order that shall include provisions that~~
14 ~~its effect is to annul the record of the arrest, conviction, and sentence and that~~
15 ~~such person shall be treated in all respects as if the person had never been~~
16 ~~arrested, convicted, or sentenced for the offense. The court shall provide~~
17 ~~notice of the expungement to the respondent, Vermont Crime Information~~
18 ~~Center (VCIC), the arresting agency, the Restitution Unit of the Vermont~~
19 ~~Center for Crime Victim Services, and any other entity that may have a record~~
20 ~~related to the order to expunge. The VCIC shall provide notice of the~~

1 ~~expungement to the Federal Bureau of Investigation's National Crime~~
2 ~~Information Center.~~

3 ~~(b) Effect.~~

4 ~~(1) Upon entry of an expungement order, the order shall be legally~~
5 ~~effective immediately and the person whose record is expunged shall be treated~~
6 ~~in all respects as if he or she had never been arrested, convicted, or sentenced~~
7 ~~for the offense.~~

8 ~~(2) In any application for employment, license, or civil right or privilege~~
9 ~~or in an appearance as a witness in any proceeding or hearing, a person may be~~
10 ~~required to answer questions about a previous criminal history record only with~~
11 ~~respect to arrests or convictions that have not been expunged.~~

12 ~~(3) The response to an inquiry from any person regarding an expunged~~
13 ~~record shall be that "NO CRIMINAL RECORD EXISTS."~~

14 ~~(4) Nothing in this section shall affect any right of the person whose~~
15 ~~record has been expunged to rely on it as a bar to any subsequent proceedings~~
16 ~~for the same offense.~~

17 ~~(e) Process.~~

18 ~~(1) The court shall remove the expunged offense from any accessible~~
19 ~~database that it maintains.~~

20 ~~(2) Until all charges on a docket are expunged, the case file shall remain~~
21 ~~publicly accessible.~~

1 ~~(3) When all charges on a docket have been expunged, the case file shall~~
2 ~~be destroyed pursuant to policies established by the Court Administrator.~~

3 ~~(d) Special index.~~

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

8 ~~(2) The special index and related documents specified in subdivision (1)~~
9 ~~of this subsection shall be confidential and shall be physically and~~
10 ~~electronically segregated in a manner that ensures confidentiality and that~~
11 ~~limits access to authorized persons.~~

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

16 ~~(4) [Repealed].~~

17 ~~(5) The Court Administrator shall establish policies for implementing~~
18 ~~this subsection. [Repealed.]~~

19 § 7607. EFFECT OF SEALING

20 ~~(a) Order and notice. Upon entry of an order to seal, the order shall be~~
21 ~~legally effective immediately and the person whose record is sealed shall be~~

1 ~~treated in all respects as if the person had never been arrested, convicted, or~~
2 ~~sentenced for the offense and that its effect is to annul the record of arrest,~~
3 ~~conviction, and sentence. The court shall provide notice of the sealing to the~~
4 ~~respondent, Vermont Crime Information Center (VCIC), the arresting agency,~~
5 ~~the Restitution Unit of the Vermont Center for Crime Victim Services, and any~~
6 ~~other entity that may have a record related to the order to seal send a copy of~~
7 ~~any order sealing a criminal history record to all of the parties and attorneys~~
8 ~~representing the parties, including to the prosecuting agency that prosecuted~~
9 ~~the offense, the Vermont Crime Information Center (VCIC), the arresting~~
10 ~~agency, and any other entity that may have a record subject to the sealing~~
11 ~~order. VCIC shall provide notice of the sealing order to the Federal Bureau of~~
12 ~~Investigation's National Crime Information Center. The VCIC shall provide~~
13 ~~notice of the sealing to the Federal Bureau of Investigation's National Crime~~
14 ~~Information Center.~~

15 (b) Effect.

16 (1) Except as provided in ~~subdivision~~ subsection (c) of this section,
17 upon entry of a sealing order, the order shall be legally effective immediately
18 and the person whose record is sealed shall be treated in all respects as if ~~he or~~
19 ~~she~~ the person had never been arrested, convicted, or sentenced for the offense.

20 (2) In any application for employment, license, or civil right or privilege
21 or in an appearance as a witness in any proceeding or hearing, a person may be

1 required to answer questions about a previous criminal history record only with
2 respect to arrests or convictions that have not been sealed.

3 (3) The response to an inquiry from any member of the public regarding
4 a sealed record shall be that “NO CRIMINAL RECORD EXISTS.”

5 (4) Nothing in this section shall affect any right of the person whose
6 record has been sealed to rely on it as a bar to any subsequent proceeding for
7 the same offense.

8 (c) Exceptions. A party seeking to use a sealed criminal history record in a
9 court proceeding shall, prior to any use of the record in open court or in a
10 public filing, notify the court of the party’s intent to do so. The court shall
11 thereafter determine whether the record may be used prior its disclosure in the
12 proceeding. This shall not apply to the use of a sealed record pursuant to
13 subdivision (2), (3), (4), or (7) of this subsection. Use of a sealed document
14 pursuant to an exception shall not change the effect of sealing under subsection
15 (b) of this section. Notwithstanding any other provision of law or a sealing
16 order, entities may access and use sealed records in the following
17 circumstances, and the sealed record shall remain otherwise confidential:

18 (1) An entity or person that possesses a sealed record may continue to
19 use it for any litigation or claim arising out of the same incident or occurrence
20 ~~or involving the same defendant.~~

1 (2) A criminal justice agency as defined in 20 V.S.A. § 2056a and the
2 Attorney General may use the criminal history record sealed in accordance
3 with section 7602 or 7603 of this title ~~without limitation~~ for criminal justice
4 purposes as defined in 20 V.S.A. § 2056a.

5 (3) A sealed record of a prior violation of 23 V.S.A. § 1201(a) shall be
6 admissible as a predicate offense for the purpose of imposing an enhanced
7 penalty for a subsequent violation of that section, in accordance with the
8 provisions of 23 V.S.A. § 1210.

9 (4) A person or a court in possession of an order issued by a court
10 regarding a matter that was subsequently sealed may file or cite to that decision
11 in any subsequent proceeding. The party or court filing or citing to that
12 decision shall ensure that information regarding the identity of the defendant in
13 the sealed record is redacted.

14 (5) The Vermont Crime Information Center and Criminal Justice
15 Information Services Division of the Federal Bureau of Investigations shall
16 have access to sealed criminal history records without limitation for the
17 purpose of responding to queries to the National Instant Criminal Background
18 Check System regarding firearms transfers and attempted transfers.

19 (6) The State's Attorney and Attorney General may disclose information
20 contained in a sealed criminal history record when required to meet their
21 otherwise legally required discovery obligations.

1 (7) The person whose criminal history records have been sealed
2 pursuant to this chapter and the person’s attorney may access and use the
3 sealed records in perpetuity and shall not be subject to the 10-year limitation.

4 (8) A law enforcement agency may inspect and receive copies of the
5 sealed criminal history records of any applicant who applies to the agency to
6 be a law enforcement officer or a current employee for the purpose of internal
7 investigation.

8 (9) Persons or entities conducting research shall have access to a sealed
9 criminal history record to carry out research pursuant to 20 V.S.A. § 2056b in
10 perpetuity and shall not be subject to the 10-year limitation.

11 (10) Upon adopting rules outlining a process for handling sealed records
12 and maintaining confidentiality and the standards for determining when
13 information contained in a sealed record may be used for the purpose of
14 licensing decisions, the Vermont Criminal Justice Council may inspect and
15 receive copies of sealed criminal history records. Access to such records shall
16 not be permitted if the Legislative Committee on Administrative Rules objects
17 to some or all of the rules pursuant to 3 V.S.A. § 842(b) and files the objection
18 or objections in certified form pursuant to 3 V.S.A. § 842(c). Sealed records
19 shall remain confidential and not be available for inspection and copying
20 unless and until the Council relies on such records in a public licensing
21 decision.

1 (11) Upon adopting rules outlining a process for handling sealed records
2 and maintaining confidentiality and the standards for determining when
3 information contained in a sealed record may be used for the purpose of
4 licensing decisions, the Vermont Office of Professional Regulation may
5 inspect and receive copies of sealed criminal history records. Access to such
6 records shall not be permitted if the Legislative Committee on Administrative
7 Rules objects to some or all of the rules pursuant to 3 V.S.A. § 842(b) and files
8 the objection or objections in certified form pursuant to 3 V.S.A. § 842(c).
9 Sealed records shall remain confidential and not be available for inspection and
10 copying unless and until the Office relies on such records in a public licensing
11 decision.

12 (12) Upon adopting rules outlining a process for handling sealed records
13 and maintaining confidentiality and the standards for determining when
14 information contained in a sealed record may be used for the purpose of
15 licensing decisions, the Vermont Board of Medical Practice may inspect and
16 receive copies of sealed criminal history records. Access to such records shall
17 not be permitted if the Legislative Committee on Administrative Rules objects
18 to some or all of the rules pursuant to 3 V.S.A. § 842(b) and files the objection
19 or objections in certified form pursuant to 3 V.S.A. § 842(c). Sealed records
20 shall remain confidential and not be available for inspection and copying
21 unless and until the Board relies on such records in a public licensing decision.

1 (d) Process.

2 (1) The court shall bar viewing of the sealed offense in any accessible
3 database that it maintains.

4 (2) Until all charges on a docket have been sealed, the case file shall
5 remain publicly accessible.

6 (3) When all charges on a docket have been sealed, the case file shall
7 become exempt from public access.

8 (4) When a sealing order is issued by the court, any person or entity,
9 except the court, that possesses criminal history records shall:

10 (A) bar viewing of the sealed offense in any accessible database that
11 it maintains or remove information pertaining to the sealed records from any
12 publicly accessible database that the person or entity maintains; and

13 (B) clearly label the criminal history record as “SEALED” to ensure
14 compliance with this section.

15 (e) Special index.

16 (1) The court shall keep a special index of cases that have been sealed
17 together with the sealing order. The index shall list only the name of the
18 person convicted of the offense, ~~his or her~~ the person's date of birth, the docket
19 number, and the criminal offense that was the subject of the sealing.

20 (2) The special index and related documents specified in subdivision (1)
21 of this subsection 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 (3) Except as provided in subsection (c) of this section, inspection of the
4 sealing order may be permitted only upon petition by the person who is the
5 subject of the case. The Chief Superior Judge may permit special access to the
6 index and the documents for research purposes pursuant to the rules for public
7 access to court records.

8 (4) ~~The Court Administrator shall establish policies for implementing~~
9 ~~this subsection.~~ [Repealed.]

10 (f) Victims Compensation Program. Upon request, the ~~Victim's~~ Victims
11 Compensation Program shall be provided with a copy, redacted of all
12 information identifying the offender, of the affidavit for the sole purpose of
13 verifying the expenses in a victim's compensation application submitted
14 pursuant to section 5353 of this title.

15 (g) Restitution. The sealing of a criminal record shall not affect the
16 authority of the Restitution Unit to enforce a restitution order in the same
17 manner as a civil judgment pursuant to subdivision 5362(c)(2) of this title.

18 § 7608. VICTIMS

19 (a) At the time a petition is filed pursuant to this chapter, the respondent
20 shall give notice of the petition to any victim of the offense who is known to
21 the respondent. The victim shall have the right to offer the respondent a

1 statement prior to any stipulation or to offer the court a statement. The
2 disposition of the petition shall not be unnecessarily delayed pending receipt of
3 a victim's statement. The respondent's inability to locate a victim after a
4 reasonable effort has been made shall not be a bar to granting a petition.

5 (b) As used in this section, "reasonable effort" means attempting to contact
6 the victim by first-class mail at the victim's last known address ~~and~~, by
7 telephone at the victim's last known phone number, and by email at the
8 victim's last known email address.

9 § 7609. ~~EXPUNGEMENT~~ SEALING OF CRIMINAL HISTORY RECORDS
10 OF AN INDIVIDUAL 18–21 YEARS OF AGE

11 (a) Procedure. Except as provided in subsection (b) of this section, the
12 record of the criminal proceedings for an individual who was 18–21 years of
13 age at the time the individual committed a qualifying crime shall be ~~expunged~~
14 sealed within 30 days after the date on which the individual successfully
15 completed the terms and conditions of the sentence for the conviction of the
16 qualifying crime, absent a finding of good cause by the court. The court shall
17 issue an order to ~~expunge~~ seal all records and files related to the arrest,
18 citation, investigation, charge, adjudication of guilt, criminal proceedings, and
19 probation related to the sentence. A copy of the order shall be sent to each
20 agency, department, or official named in the order. Thereafter, the court, law
21 enforcement officers, agencies, and departments shall reply to any request for

1 information that no record exists with respect to such individual.

2 Notwithstanding this subsection, the record shall not be ~~expunged~~ sealed until
3 restitution and surcharges have been paid in full, provided that payment of
4 surcharges shall not be required if the surcharges have been waived by the
5 court pursuant to section 7282 of this title.

6 (b) Exceptions.

7 (1) A criminal record that includes both qualifying and nonqualifying
8 offenses shall not be eligible for ~~expungement~~ sealing pursuant to this section.

9 (2) The Vermont Crime Information Center shall retain a special index
10 of sentences for sex offenses that require registration pursuant to chapter 167,
11 subchapter 3 of this title. This index shall only list the name and date of birth
12 of the subject of the ~~expunged~~ sealed files and records, the offense for which
13 the subject was convicted, and the docket number of the proceeding that was
14 the subject of the ~~expungement~~ sealing. The special index shall be confidential
15 and shall be accessed only by the Director of the Vermont Crime Information
16 Center and an individual designated for the purpose of providing information
17 to the Department of Corrections in the preparation of a presentence
18 investigation in accordance with 28 V.S.A. §§ 204 and 204a.

19 (c) Petitions. An individual who was 18–21 years of age at the time the
20 individual committed a qualifying crime may file a petition with the court
21 requesting ~~expungement~~ sealing of the criminal history record related to the

1 qualifying crime after 30 days have elapsed since the individual completed the
2 terms and conditions for the sentence for the qualifying crime. The court shall
3 grant the petition and issue an order sealing ~~or expunging~~ the record if it finds
4 that sealing ~~or expunging~~ the record serves the interests of justice.

5 § 7610. CRIMINAL HISTORY RECORD SEALING SPECIAL FUND

6 There is established the Criminal History Record Sealing Special Fund,
7 which shall be managed in accordance with 32 V.S.A. chapter 7, subchapter 5.
8 Fees collected pursuant to 32 V.S.A. § 1431(e) for the filing of a petition to
9 seal a criminal history record of a violation of 23 V.S.A. § 1201(a) shall be
10 deposited into and credited to this Fund. This Fund shall be available to the
11 Office of the Court Administrator, the Department of State's Attorneys and
12 Sheriffs, the Department of Motor Vehicles, and the Vermont Crime
13 Information Center to offset the administrative costs of sealing such records.
14 Balances in the Fund at the end of the fiscal year shall be carried forward and
15 remain in the Fund.

16 § 7611. UNAUTHORIZED DISCLOSURE

17 A State or municipal employee or contractor or any agent of the court,
18 including an attorney and an employee or contractor of the attorney, who
19 knowingly accesses or discloses sealed criminal history record information
20 without authorization shall be assessed a civil penalty of not more than

1 \$1,000.00. Each unauthorized disclosure shall constitute a separate civil
2 violation.

3 Sec. 11. 13 V.S.A. § 7041 is amended to read:

4 § 7041. DEFERRED SENTENCE

5 (a) Upon an adjudication of guilt and after the filing of a presentence
6 investigation report, the court may defer sentencing and place the respondent
7 on probation upon such terms and conditions as it may require if a written
8 agreement concerning the deferring of sentence is entered into between the
9 State's Attorney and the respondent and filed with the clerk of the court.

10 (b) Notwithstanding subsection (a) of this section, the court may defer
11 sentencing and place the respondent on probation without a written agreement
12 between the State's Attorney and the respondent if the following conditions are
13 met:

14 (1) [Repealed.]

15 (2) the crime for which the respondent is being sentenced is not a listed
16 crime as defined in subdivision 5301(7) of this title;

17 (3) the court orders a presentence investigation in accordance with the
18 procedures set forth in V.R.C.P. Rule 32, unless the State's Attorney agrees to
19 waive the presentence investigation;

20 (4) the court permits the victim to submit a written or oral statement
21 concerning the consideration of deferment of sentence;

1 (5) the court reviews the presentence investigation and the victim's
2 impact statement with the parties; and

3 (6) the court determines that deferring sentence is in the interests of
4 justice.

5 (c) Notwithstanding subsections (a) and (b) of this section, the court may
6 not defer a sentence for a violation of section 3253a (aggravated sexual assault
7 of a child), section 2602 (lewd and lascivious conduct with a child unless the
8 victim and the defendant were within five years of age and the act was
9 consensual), 3252(c) (sexual assault of a child under 16 years of age unless the
10 victim and the defendant were within five years of age and the act was
11 consensual), 3252(d) or (e) (sexual assault of a child), 3253(a)(8) (aggravated
12 sexual assault), or 3253a (aggravated sexual assault of a child) of this title, or
13 for violation of a listed crime as provided in subdivision 5301 if the defendant
14 has a prior conviction for a listed crime.

15 (d) Entry of deferment of sentence shall constitute an appealable judgment
16 for purposes of appeal in accordance with 12 V.S.A. § 2383 and V.R.A.P.
17 Rule 3. Except as otherwise provided, entry of deferment of sentence shall
18 constitute imposition of sentence solely for the purpose of sentence review in
19 accordance with section 7042 of this title. The court may impose sentence at
20 any time if the respondent violates the conditions of the deferred sentence
21 during the period of deferment.

1 (e) Upon violation of the terms of probation or of the deferred sentence
2 agreement, the court shall impose sentence. Upon fulfillment of the terms of
3 probation and of the deferred sentence agreement, the court shall strike the
4 adjudication of guilt and discharge the respondent. Except as provided in
5 subsection (h) of this section, the record of the criminal proceedings shall be
6 ~~expunged~~ sealed upon the discharge of the respondent from probation, absent a
7 finding of good cause by the court. The court shall issue an order to ~~expunge~~
8 seal all records and files related to the arrest, citation, investigation, charge,
9 adjudication of guilt, criminal proceedings, and probation related to the
10 deferred sentence. Copies of the order shall be sent to each agency,
11 department, or official named therein. Thereafter, the court, law enforcement
12 officers, agencies, and departments shall reply to any request for information
13 that no record exists with respect to such person upon inquiry in the matter.
14 Notwithstanding this subsection, the record shall not be ~~expunged~~ sealed until
15 restitution has been paid in full.

16 (f) A deferred sentence imposed under subsection (a) or (b) of this section
17 may include a restitution order issued pursuant to section 7043 of this title.
18 Nonpayment of restitution shall not constitute grounds for imposition of the
19 underlying sentence.

1 (g) [Repealed.]

2 (h) The Vermont Crime Information Center shall retain a special index of
3 deferred sentences for sex offenses that require registration pursuant to
4 subchapter 3 of chapter 167 of this title. This index shall only list the name
5 and date of birth of the subject of the ~~expunged~~ sealed files and records, the
6 offense for which the subject was convicted, and the docket number of the
7 proceeding that was the subject of the ~~expungement~~ sealing. The special index
8 shall be confidential and may be accessed only by the director of the Vermont
9 Crime Information Center and a designated clerical staffperson for the purpose
10 of providing information to the Department of Corrections in the preparation of
11 a presentence investigation in accordance with 28 V.S.A. §§ 204 and 204a.

12 Sec. 12. 24 V.S.A. § 2002 is added to read:

13 § 2002. EXPUNGEMENT OF MUNICIPAL VIOLATION RECORDS

14 (a) Expungement. Two years following the satisfaction of a judgment
15 resulting from an adjudication of a municipal violation, the Judicial Bureau
16 shall make an entry of “expunged” and notify the municipality of such action,
17 provided the person has not been adjudicated for any subsequent municipal
18 violations during that time. The data transfer to the municipality shall include
19 the name, date of birth, ticket number, and offense. Violations of offenses
20 adopted pursuant to chapter 117 of this title shall not be eligible for
21 expungement under this section.

1 (b) Effect of expungement.

2 (1) Upon entry of an expungement order, the order shall be legally
3 effective immediately and the individual whose record is expunged shall be
4 treated in all respects as if the individual had never been adjudicated of the
5 violation.

6 (2) Upon an entry of expunged, the case will be accessible only by the
7 Clerk of the Court for the Judicial Bureau or the Clerk's designee.
8 Adjudications that have been expunged shall not appear in the results of any
9 Judicial Bureau database search by name, date of birth, or any other data
10 identifying the defendant. Except as provided in subsection (c) of this section,
11 any documents or other records related to an expunged adjudication that are
12 maintained outside the Judicial Bureau's case management system shall be
13 destroyed.

14 (3) Upon receiving an inquiry from any person regarding an expunged
15 record, the Judicial Bureau and the municipality shall respond that "NO
16 RECORD EXISTS."

17 (c) Exception for research entities. Research entities that maintain
18 adjudication records for purposes of collecting, analyzing, and disseminating
19 criminal justice data shall not be subject to the expungement requirements
20 established in this section. Research entities shall abide by the policies

1 established by the Court Administrator and shall not disclose any identifying
2 information from the records they maintain.

3 (d) Policies for implementation. The Court Administrator shall establish
4 policies for implementing this section.

5 (e) Application. This section shall apply to municipal violations that occur
6 on and after July 1, 2025.

7 Sec. 13. 23 V.S.A. § 2303 is amended to read:

8 § 2303. EXPUNGEMENT OF VIOLATION RECORDS

9 * * *

10 (e) Application. This section shall apply to motor vehicle violations that
11 occur on and after July 1, 2021.

12 * * * Recidivism * * *

13 Sec. 14. FINDINGS AND INTENT

14 (a) Findings. The General Assembly finds:

15 (1) The State's current definition of recidivism is based upon offenders
16 who are sentenced to more than one year of incarceration and who, after
17 release, return to an incarcerative setting within three years, but only after
18 conviction of a new offense or a violation of Department of Corrections'
19 supervision and the new sentence for the violation is not fewer than 90 days.

20 (2) The vast majority of misdemeanor crimes have maximum terms of
21 imprisonment of not more than six months.

1 (3) Few, if any, misdemeanor sentences are served in a Department of
2 Corrections' facility.

3 (4) Under current law, a person could commit 10 instances of retail theft
4 within a calendar year, be convicted of each separate offense and sentenced to
5 probation or incarcerative sentences of a few days for each offense, and the
6 behavior would not constitute recidivism.

7 (b) Intent. It is the intent of the General Assembly that:

8 (1) the definition of recidivism more accurately reflect new convictions,
9 returns to incarceration, and probation violations and revocations; and

10 (2) the State establish a statutory measure of violent crime recidivism
11 and of individual success.

12 Sec. 15. 28 V.S.A. § 3 is amended to read:

13 § 3. GENERAL DEFINITIONS

14 As used in this title:

15 (1) "Child" means any person:

16 (A) charged with having committed a delinquent act as defined in
17 33 V.S.A. § 5102 or adjudicated a delinquent and committed to the custody of
18 the Commissioner; or

19 (B) charged with being or adjudicated unmanageable as defined by

20 33 V.S.A. § 5102(3)(C) and (D), and committed to the custody of the

1 Commissioner for Children and Families and subsequently transferred to the
2 custody of the Commissioner.

3 (C) [Repealed.]

4 (2) “Commissioner” means the Commissioner of Corrections.

5 (3) “Correctional facility” or “facility” means any building, enclosure,
6 space, or structure of or supported by the Department and used for the
7 confinement of persons committed to the custody of the Commissioner, or for
8 any other matter related to such confinement.

9 (4) “Department” means the Department of Corrections.

10 (5) “Desistance” means the process by which criminality, or the
11 individual risk for antisocial conduct, declines over the life-course of the
12 individual, generally after adolescence.

13 (6) “Inmate” means any person, not a child, committed to the custody of
14 the Commissioner pursuant to the law of the State and subsequently committed
15 to a correctional facility and any person confined at a correctional facility
16 during the pendency of a prosecution against ~~him or her~~ the person.

17 ~~(6)~~(7) “Law” includes the laws and ordinances of the State, its political
18 subdivisions, and municipalities.

19 ~~(7)~~(8) “Law enforcement officer” means a State Police officer, a sheriff,
20 a deputy sheriff, a municipal police officer, a constable, the Commissioner, or
21 a member of the Department of Corrections when appointed in writing by the

1 Commissioner and when ~~his or her~~ the appointment is filed in the Office of the
2 Secretary of State. The Commissioner or such member shall have the same
3 powers as a sheriff.

4 (9) “Listed crime” has the same definition as in 13 V.S.A. § 5301(7).

5 ~~(8)~~(10) “Offender” means any person convicted of a crime or offense
6 under the laws of this State, and, for purposes of ~~work crew~~ community
7 restitution, a person found in civil contempt under 15 V.S.A. § 603.

8 ~~(9)~~(11) “Supervising officer” means the highest administrative officer in
9 charge of any correctional facility.

10 ~~(10)~~(12) “Correctional officer” means any person who is an employee of
11 the Department of Corrections whose official duties or job classification
12 includes the supervision or monitoring of a person on parole, probation, or
13 serving any sentence of incarceration whether inside or outside a correctional
14 facility, and who has received training, as approved by the Commissioner of
15 Corrections, as provided in section 551a of this title.

16 (13) “Recidivism” means an individual’s relapse into committing a
17 criminal offense after receiving criminal sanctions for a previous crime.

18 (14) “Repeat violent offender” means an individual who commits
19 repeated criminal offenses for which the offense is against another individual
20 and is considered significant and violent.

1 ~~(11)~~(15) “Restorative justice program” means a program developed and
2 implemented by the Commissioner, consistent with State policy and legislative
3 intent as provided by section 2a of this title.

4 ~~(12)~~(16) Despite other names this concept has been given in the past or
5 may be given in the future, “segregation” means a form of separation from the
6 general population that may or may not include placement in a single-
7 occupancy cell and that is used for disciplinary, administrative, or other
8 reasons, but shall not mean confinement to an infirmary or a residential
9 treatment setting for purposes of evaluation, treatment, or provision of
10 services.

11 Sec. 16. 28 V.S.A. § 4 is amended to read:

12 § 4. STANDARD MEASURE AND CLASSIFICATIONS OF RECIDIVISM;
13 DESISTANCE; REPEAT VIOLENT OFFENDERS

14 (a) Recidivism. The Department shall calculate the rate of recidivism
15 based upon ~~offenders~~ individuals who are sentenced to more than one year of
16 incarceration who, after release from incarceration, return to prison within
17 three years for a conviction for a new offense or a violation of supervision
18 resulting, and the new incarceration sentence or time served on the violation is
19 at least 90 days convicted of a criminal offense and meet one of the following
20 classifications:

1 (1) Class one recidivism. Less than two years elapse from the time of
2 sentencing before the individual is convicted of a new offense.

3 (2) Class two recidivism. Less than five years elapse from the time of
4 sentencing before the individual is convicted of a new offense.

5 (3) Class three recidivism. Less than 10 years elapse from the time of
6 sentencing before the individual is convicted of a new offense.

7 (b) Desistance. The Department shall calculate and classify the rate of
8 desistance based upon individuals who are convicted of a criminal offense and
9 meet one of the following classifications:

10 (1) Class one desistance. Less than 12 months elapse from the time of
11 sentencing before a judicial officer finds probable cause for a new offense.

12 (2) Class two desistance. Less than two years elapse from the time of
13 sentencing before a judicial officer finds probable cause for a new offense.

14 (3) Class three desistance. Less than five years elapse from the time of
15 sentencing before a judicial officer finds probable cause for a new offense.

16 (c) Repeat violent offenders. The Department shall calculate the rate of
17 repeat violent offenders based upon individuals who are convicted of a
18 criminal offense and meet one of the following classifications:

19 (1) Class one repeat violence. Less than two years elapse from the time
20 of sentencing before the individual is convicted of a listed offense.

1 (2) Class two repeat violence. Less than five years elapse from the time
2 of sentencing before the individual is convicted of a listed offense.

3 (3) Class three repeat violence. Less than 10 years elapse from the time
4 of sentencing before the individual is convicted of a listed offense.

5 Sec. 17. 28 V.S.A. § 125(b) is amended to read:

6 (b) Definitions. As used in this section:

7 * * *

8 (3) “Desistance” ~~means the process by which criminality, or the~~
9 ~~individual risk for antisocial conduct, declines over the life course of the~~
10 ~~individual, generally after adolescence~~ has the same meaning as in subsection
11 4(b) of this title.

12 * * *

13 (5) “Recidivism” has the same meaning as in section 4-3 of this title.

14 * * * Big 14 Juvenile Offenses * * *

15 Sec. 18. 33 V.S.A. § 5201 is amended to read:

16 § 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

17 * * *

18 (c)(1) Any proceeding concerning a child who is alleged to have committed
19 an act specified in subsection 5204(a) of this title after attaining 14 years of
20 age, but not 22 years of age, shall originate in the Criminal Division of the
21 Superior Court, provided that jurisdiction may be transferred in accordance

1 with this chapter and chapter 52A of this title, unless the State's Attorney files
2 the charge directly as a youthful offender petition in the Family Division.

3 (2)(A) Any proceeding concerning a child who is alleged to have
4 committed one of the following acts after attaining 14 years of age, but not 22
5 years of age, shall originate in the Criminal Division of the Superior Court,
6 provided that jurisdiction may be transferred in accordance with this chapter
7 and chapter 52A of this title, unless the State's Attorney files the charge
8 directly as a youthful offender petition in the Family Division:

9 (i) a violation of a condition of release as defined in 13 V.S.A.
10 § 7559 imposed by the Criminal Division for any of the offenses listed in
11 subsection 5204(a) of this title; or

12 (ii) a violation of a condition of release as defined in 13 V.S.A.
13 § 7559 imposed by the Criminal Division for an offense that was transferred
14 from the Family Division pursuant to section 5204 of this title.

15 (B) This subdivision (2) shall not apply to a proceeding that is the
16 subject of a final order accepting the case for youthful offender treatment
17 pursuant to subsection 5281~~(d)~~ (c) of this title.

18 ~~(3) Any proceeding concerning a child who is alleged to have committed~~
19 ~~one of the following acts after attaining 16 years of age, but not 22 years of~~
20 ~~age, shall originate in the Criminal Division of the Superior Court, provided~~
21 ~~that jurisdiction may be transferred in accordance with this chapter and chapter~~

1 ~~52A of this title, unless the State's Attorney files the charge directly as a~~
2 ~~youthful offender petition in the Family Division:~~

3 ~~(A) using a firearm while committing a felony in violation of 13~~
4 ~~V.S.A. § 4005, or an attempt to commit that offense;~~

5 ~~(B) trafficking a regulated drug in violation of 18 V.S.A. chapter 84,~~
6 ~~subchapter 1, or an attempt to commit that offense; or~~

7 ~~(C) aggravated stalking as defined in 13 V.S.A. § 1063(a)(3), or an~~
8 ~~attempt to commit that offense.~~

9 (d) Any proceeding concerning a child who is alleged to have committed
10 any offense other than those specified in subsection 5204(a) of this title or
11 subdivision (c)(2) ~~or (3)~~ of this section before attaining 19 years of age shall
12 originate in the Family Division of the Superior Court, provided that
13 jurisdiction may be transferred in accordance with this chapter.

14 * * *

15 Sec. 19. 33 V.S.A. § 5203 is amended to read:

16 § 5203. TRANSFER FROM OTHER COURTS

17 (a) If it appears to a Criminal Division of the Superior Court that the
18 defendant was under 19 years of age at the time the offense charged was
19 alleged to have been committed and the offense charged is an offense not
20 specified in subsection 5204(a) or subdivision 5201(c)(2) ~~or (3)~~ of this title,
21 that court shall forthwith transfer the proceeding to the Family Division of the

1 Superior Court under the authority of this chapter, and the minor shall then be
2 considered to be subject to this chapter as a child charged with a delinquent
3 act.

4 (b) If it appears to a Criminal Division of the Superior Court that the
5 defendant had attained 14 years of age but not 18 years of age at the time an
6 offense specified in subsection 5204(a) or subdivision 5201(c)(2) ~~or (3)~~ of this
7 title was alleged to have been committed, that court may forthwith transfer the
8 proceeding to the Family Division of the Superior Court under the authority of
9 this chapter, and the minor shall then be considered to be subject to this chapter
10 as a child charged with a delinquent act.

11 (c) If it appears to the State's Attorney that the defendant was under 19
12 years of age at the time the felony offense charged was alleged to have been
13 committed and the felony charged is not an offense specified in subsection
14 5204(a) or subdivision 5201(c)(2) ~~or (3)~~ of this title, the State's Attorney shall
15 file charges in the Family Division of the Superior Court, pursuant to section
16 5201 of this title. The Family Division may transfer the proceeding to the
17 Criminal Division pursuant to section 5204 of this title.

18 * * *

1 Sec. 20. 33 V.S.A. § 5204 is amended to read:

2 § 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR
3 COURT

4 (a) After a petition has been filed alleging delinquency, upon motion of the
5 State's Attorney and after hearing, the Family Division of the Superior Court
6 may transfer jurisdiction of the proceeding to the Criminal Division of the
7 Superior Court if the child had attained 16 years of age but not 19 years of age
8 at the time the act was alleged to have occurred and the delinquent act set forth
9 in the petition is a felony not specified in subdivisions (1)–~~(11)~~(30) of this
10 subsection or if the child had attained 12 years of age but not 14 years of age at
11 the time the act was alleged to have occurred, and if the delinquent act set forth
12 in the petition was any of the following:

13 (1) arson causing death as defined in 13 V.S.A. § 501 or an attempt to
14 commit that offense;

15 (2) assault and robbery with a dangerous weapon as defined in 13
16 V.S.A. § 608(b) or an attempt to commit that offense;

17 (3) assault and robbery causing bodily injury as defined in 13 V.S.A.
18 § 608(c) or an attempt to commit that offense;

19 (4) aggravated assault as defined in 13 V.S.A. § 1024 or an attempt to
20 commit that offense;

1 (5) murder as defined in 13 V.S.A. § 2301 and aggravated murder as
2 defined in 13 V.S.A. § 2311 or an attempt to commit either of those offenses;

3 (6) manslaughter as defined in 13 V.S.A. § 2304 or an attempt to
4 commit that offense;

5 (7) kidnapping as defined in 13 V.S.A. § 2405 or an attempt to commit
6 that offense;

7 (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407 or an
8 attempt to commit that offense;

9 (9) maiming as defined in 13 V.S.A. § 2701 or an attempt to commit
10 that offense;

11 (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2) or an
12 attempt to commit that offense; ~~or~~

13 (11) aggravated sexual assault as defined in 13 V.S.A. § 3253 and
14 aggravated sexual assault of a child as defined in 13 V.S.A. § 3253a or an
15 attempt to commit either of those offenses;

16 (12) stalking as defined in 13 V.S.A. § 1062 or aggravated stalking as
17 defined in 13 V.S.A. § 1063(a)(3) or an attempt to commit either of those
18 offenses;

19 (13) carrying a dangerous or deadly weapon while committing a felony
20 in violation of 13 V.S.A. § 4005 or an attempt to commit that offense;

1 (14) trafficking a regulated drug in violation of 18 V.S.A. chapter 84,
2 subchapter 1 or an attempt to commit that offense;

3 (15) domestic assault as defined in 13 V.S.A. § 1042, first degree
4 aggravated domestic assault as defined in 13 V.S.A. § 1043, and second degree
5 aggravated domestic assault as defined in 13 V.S.A. § 1044 or an attempt to
6 commit any of those offenses;

7 (16) selling or dispensing a regulated drug with death resulting as
8 defined in 18 V.S.A. § 4250 or an attempt to commit that offense;

9 (17) using a firearm while selling or dispensing a regulated drug as
10 defined in 18 V.S.A. § 4253 or an attempt to commit that offense;

11 (18) lewd or lascivious conduct as defined in 13 V.S.A. § 2601 or an
12 attempt to commit that offense;

13 (19) lewd or lascivious conduct with a child as defined in 13 V.S.A.
14 § 2602 or an attempt to commit that offense;

15 (20) eluding a police officer with death or serious bodily injury resulting
16 as defined in 23 V.S.A. § 1133(b) or an attempt to commit that offense;

17 (21) willful and malicious injuries caused by explosives as defined in 13
18 V.S.A. § 1601, injuries caused by destructive devices as defined in 13 V.S.A.
19 § 1605, and injuries caused by explosives as defined in 13 V.S.A. § 1608 or an
20 attempt to commit any of those offenses;

1 (22) human trafficking as defined in 13 V.S.A. § 2652 and aggravated
2 human trafficking as defined in 13 V.S.A. § 2653 or an attempt to commit
3 either of those offenses;

4 (23) grand larceny as defined in 13 V.S.A. § 2501 or an attempt to
5 commit that offense;

6 (24) larceny from the person as defined in 13 V.S.A. § 2503 or an
7 attempt to commit that offense;

8 (25) operating a vehicle under the influence of alcohol or any other drug
9 with death or serious bodily injury resulting as defined in 23 V.S.A. § 1210 or
10 an attempt to commit that offense;

11 (26) negligent or grossly negligent operation of a vehicle with death or
12 serious bodily injury resulting as defined in 23 V.S.A. § 1091 or an attempt to
13 commit that offense;

14 (27) leaving the scene of an accident with death or serious bodily injury
15 resulting as defined in 23 V.S.A. § 1128 or an attempt to commit that offense;

16 (28) commission of a hate motivated crime as defined in 13 V.S.A.
17 § 1455 or an attempt to commit that offense;

18 (29) conspiracy as defined in 13 V.S.A. § 1404 or an attempt to commit
19 that offense; or

1 (1) the filing of a youthful offender petition by a State's Attorney in the
2 Criminal Division of the Superior Court; or

3 (2) ~~transfer to the Family Court of a proceeding from the Criminal~~
4 ~~Division of the Superior Court as provided in section 5281 of this title~~ the
5 filing of a motion in the Criminal Division of the Superior Court by the State's
6 Attorney, the defendant, or the court on its own motion requesting that a
7 defendant in a criminal proceeding who has attained 14 years of age but not 22
8 years of age at the time the offense is alleged to have been committed be
9 treated as a youthful offender; or

10 (3) the filing of a youthful offender petition in the Family Division of
11 the Superior Court concerning a child who is alleged to have committed an
12 offense after attaining 14 years of age but not 22 years of age that could
13 otherwise be filed in the Criminal Division.

14 (b) ~~A State's Attorney may commence a proceeding in the Family Division~~
15 ~~of the Superior Court concerning a child who is alleged to have committed an~~
16 ~~offense after attaining 14 years of age but not 22 years of age that could~~
17 ~~otherwise be filed in the Criminal Division.~~

18 (1) Upon the filing of a motion under subdivision (a)(1) or (2) of this
19 section and the entering of a conditional plea of guilty by the youth, the
20 Criminal Division of the Superior Court shall enter an order deferring the

1 sentence and hold a hearing on the motion. If the youth declines to enter a
2 conditional plea, youthful offender status shall be denied.

3 (2) As used in this subsection, “conditional plea of guilty” means a plea
4 of guilty that is conditioned on the granting of youthful offender status that
5 may be withdrawn in the event that youthful offender status is denied.

6 (c) If a State’s Attorney files a petition under subdivision (a)(1) of this
7 section, the The case shall proceed as provided under subsection 5281(b) of
8 this title. Except as provided in subdivision 5283(c)(2) of this title, upon the
9 commencement of a youthful offender consideration proceeding in the Family
10 Division or the Criminal Division of the Superior Court, all future proceedings
11 regarding youthful offender status shall be sealed until youthful offender status
12 is denied or revoked.

13 (d)(1) Within 15 days after the Upon commencement of a youthful
14 offender proceeding pursuant to subsection (a) of this section, the court shall
15 notify the youth that the youth is required to complete a risk and needs
16 screening, which shall be conducted by the Department or by a community
17 provider that has contracted with the Department to provide risk and needs
18 screenings. The notice shall inform the youth that youthful offender status
19 may be denied if the youth fails to participate in the risk and needs screening.

20 (2) The risk and needs screening shall be completed prior to the youthful
21 offender status hearing held pursuant to section 5283 of this title. Unless the

1 court extends the period for the risk and needs screening for good cause
2 shown, the ~~Family Division~~ court shall reject the case for youthful offender
3 treatment if the youth does not complete the risk and needs screening within 15
4 days after the offer for the risk and needs screening.

5 (3) The Department or the community provider shall report the risk level
6 result of the screening, the number and source of the collateral contacts made,
7 and the recommendation for charging or other alternatives to the State's
8 Attorney.

9 (4) Information related to the present alleged offense directly or
10 indirectly derived from the risk and needs screening or other conversation with
11 the Department or community-based provider shall not be used against the
12 youth in the youth's criminal or juvenile case for any purpose, including
13 impeachment or cross-examination. However, the fact of participation in risk
14 and needs screening may be used in subsequent proceedings.

15 (e) The State's Attorney ~~shall~~ may refer directly to court diversion a youth
16 alleged to have committed any offense other than those specified in subsection
17 5204(a) of this title who presents a low to moderate risk to reoffend based on
18 the results of the risk and needs screening, ~~unless the State's Attorney states on~~
19 ~~the record at the hearing held pursuant to section 5283 of this title why a~~
20 ~~referral would not serve the ends of justice.~~ If the court diversion program
21 does not accept the case or if the youth fails to complete the program in a

1 manner deemed satisfactory and timely by the provider, the youth's case shall
2 return to the State's Attorney for charging consideration.

3 Sec. 24. 33 V.S.A. § 5281 is amended to read:

4 § 5281. ~~MOTION~~ PROCEDURES IN CRIMINAL DIVISION OF
5 SUPERIOR COURT

6 (a) ~~A motion may be filed in the Criminal Division of the Superior Court~~
7 ~~requesting that a defendant under 22 years of age in a criminal proceeding who~~
8 ~~had attained 12 years of age but not 22 years of age at the time the offense is~~
9 ~~alleged to have been committed be treated as a youthful offender. The motion~~
10 ~~may be filed by the State's Attorney, the defendant, or the court on its own~~
11 ~~motion.~~

12 (b) Unless the State's Attorney refers the youth directly to court diversion
13 pursuant to subsection 5280(e) of this title, upon the filing of a motion ~~under~~
14 ~~this section~~ or the filing of a youthful offender petition pursuant to section
15 5280 of this title, the Family Division court shall hold a hearing pursuant to
16 section 5283 of this title. ~~Pursuant to section 5110 of this title, the~~ The hearing
17 shall be confidential as provided in section 5284 of this title. ~~Copies of all~~
18 ~~records relating to the case shall be forwarded to the Family Division.~~

19 Conditions of release and any Department of Corrections supervision or
20 custody shall remain in effect until:

1 (1) ~~the Family Division accepts the case for treatment as a youthful~~
2 ~~offender and orders conditions of juvenile probation pursuant to section 5284~~
3 ~~of this title;~~

4 (2) any conditions of release or bail are modified, amended, or vacated
5 pursuant to 13 V.S.A. chapter 229; or

6 (3)(2) the case is otherwise concluded.

7 (e)(b)(1) If the ~~Family Division~~ court rejects the case for youthful offender
8 treatment pursuant to section 5284 of this title, ~~the case shall be transferred to~~
9 ~~the Criminal Division. The conditions of release imposed by the Criminal~~
10 ~~Division shall remain in effect, and~~ the case shall proceed as though the motion
11 for youthful offender treatment or youthful offender petition had not been
12 filed.

13 (2) Subject to Rule 11 of the Vermont Rules of Criminal Procedure and
14 Rule 410 of the Vermont Rules of Evidence, the ~~Family Division's~~ court's
15 denial of the motion for youthful offender treatment and any information
16 related to the youthful offender proceeding shall be inadmissible against the
17 youth for any purpose in the subsequent Criminal Division proceeding.

18 (d)(c) If the Family Division accepts the case for youthful offender
19 treatment, ~~the case shall proceed to a confidential merits hearing or admission~~
20 ~~pursuant to sections 5227-5229 of this title~~ the youth shall not be permitted to
21 withdraw the youth's plea of guilty after youthful offender status is approved

1 except to correct manifest injustice pursuant to Rule 32(d) of the Vermont
2 Rules of Criminal Procedure.

3 Sec. 25. 33 V.S.A. § 5282 is amended to read:

4 § 5282. ~~REPORT FROM THE DEPARTMENT~~

5 ~~(a) Within 30 days after the youth has completed the risk and needs~~
6 ~~screening pursuant to section 5280 of this title, unless the court extends the~~
7 ~~period for good cause shown or the State's Attorney refers the youth directly to~~
8 ~~court diversion pursuant to subsection 5280(e) of this title, the Department for~~
9 ~~Children and Families shall file a report with the Family Division of the~~
10 ~~Superior Court.~~

11 ~~(b) A report filed pursuant to this section shall include the following~~
12 ~~elements:~~

13 ~~(1) a recommendation as to whether diversion is appropriate for the~~
14 ~~youth because the youth is a low to moderate risk to reoffend;~~

15 ~~(2) a recommendation as to whether youthful offender status is~~
16 ~~appropriate for the youth; and~~

17 ~~(3) a description of the services that may be available for the youth.~~

18 ~~(c) A report filed pursuant to this section is privileged and shall not be~~
19 ~~disclosed to any person other than:~~

20 ~~(1) the Department;~~

21 ~~(2) the court;~~

- 1 ~~(3) the State's Attorney;~~
2 ~~(4) the youth, the youth's attorney, and the youth's guardian ad litem;~~
3 ~~(5) the youth's parent, guardian, or custodian if the youth is under 18~~
4 ~~years of age, unless the court finds that disclosure would be contrary to the best~~
5 ~~interests of the child;~~
6 ~~(6) the Department of Corrections; or~~
7 ~~(7) any other person when the court determines that the best interests of~~
8 ~~the youth would make such a disclosure desirable or helpful. [Repealed.]~~

9 Sec. 26. 33 V.S.A. § 5283 is amended to read:

10 § 5283. DISPOSITION HEARING IN FAMILY DIVISION

11 (a) Timeline. Unless the State's Attorney refers the youth directly to court
12 diversion pursuant to subsection 5280(e) of this title, a youthful offender
13 ~~consideration~~ disposition hearing shall be held not later than ~~60 days after the~~
14 ~~transfer of the case from the Criminal Division or filing of a youthful offender~~
15 ~~petition in the Family Division~~ 45 days after the filing of a motion or the filing
16 of a youthful offender petition under section 5280 of this title.

17 (b) Notice. Notice of the hearing shall be provided to the State's Attorney;
18 the youth; the youth's parent, guardian, or custodian; the victim; the
19 Department; and the Department of Corrections. The court shall not exclude
20 any victim from the proceeding or any portion of it unless, after hearing from
21 the parties and the victim, the court makes a finding on the record of good

1 cause. As used in this subsection, “victim” means a person who is the victim
2 of a crime for which a youth is charged; a parent, guardian, or legal
3 representative of the victim; or a victim’s advocate.

4 (c) Hearing procedure.

5 (1) If the motion is contested, all parties shall have the right to present
6 evidence and examine witnesses. Hearsay may be admitted and may be relied
7 on to the extent of its probative value. If reports are admitted, the parties shall
8 be afforded an opportunity to examine those persons making the reports, but
9 sources of confidential information need not be disclosed.

10 (2) For individuals who had attained 18 years of age but not 22 years of
11 age at the time the act is alleged to have been committed, hearings under
12 5284(a) of this title shall be open to the public. All other youthful offender
13 proceedings shall be confidential.

14 (d) Burden of proof. The burden of proof shall be on the moving party to
15 prove by a preponderance of the evidence that a child should be granted
16 youthful offender status. If the court makes the motion, the burden shall be on
17 the youth.

18 (e) Further hearing. On its own motion or the motion of a party, the court
19 may schedule a further hearing to obtain reports or other information necessary
20 for the appropriate disposition of the case.

1 Sec. 27. 33 V.S.A. § 5284 is amended to read:

2 § 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION
3 ORDER

4 (a)(1) In a hearing on a motion or petition for youthful offender status, the
5 court shall first consider whether public safety will be protected by treating the
6 youth as a youthful offender. If the court finds that public safety will not be
7 protected by treating the youth as a youthful offender, the court shall deny the
8 motion ~~and transfer the case to the Criminal Division of the Superior Court~~
9 ~~pursuant to subsection 5281(d) of this title, the conditions of release imposed~~
10 ~~by the Criminal Division shall remain in effect, and the case shall proceed as~~
11 ~~though the motion or petition for youthful offender treatment had not been~~
12 ~~filed.~~ If the court finds that public safety will be protected by treating the
13 youth as a youthful offender, the court shall proceed to make a determination
14 under subsection (b) of this section.

15 (2) When determining whether public safety will be protected by
16 treating the youth as a youthful offender, the court shall consider, on the basis
17 of the evidence admitted:

18 (A) the nature and circumstances of the charge and whether violence
19 was involved;

20 (B) the youth's mental health treatment history and needs;

21 (C) the youth's substance abuse history and needs;

- 1 (D) the youth's residential housing status;
- 2 (E) the youth's employment and educational situation;
- 3 (F) whether the youth has complied with conditions of release;
- 4 (G) the youth's criminal record and whether the youth has engaged in
- 5 subsequent criminal or delinquent behavior since the original charge;
- 6 (H) whether supervising the youth on youthful offender probation is
- 7 appropriate considering the nature of the charged offense and the age and
- 8 specialized needs of the youth;
- 9 (I) whether the youth has connections to the community; and
- 10 (J) the youth's history of violence and history of illegal or violent
- 11 conduct involving firearms or other deadly weapons.

12 (b)(1) The court shall deny the motion if the court finds that:

13 (A) public safety will not be protected by treating the youth as a

14 youthful offender;

15 (B) the youth is not amenable to treatment or rehabilitation as a

16 youthful offender; or

17 ~~(B)~~(C) there are insufficient services in the juvenile court system and

18 the Department for Children and Families and the Department of Corrections

19 to meet the youth's treatment and rehabilitation needs.

20 (2) The court shall grant the motion if the court finds that:

1 (A) public safety will be protected by treating the youth as a youthful
2 offender;

3 (B) the youth is amenable to treatment or rehabilitation as a youthful
4 offender; and

5 ~~(B)~~(C) there are sufficient services in the juvenile court system and
6 the Department for Children and Families and the Department of Corrections
7 to meet the youth's treatment and rehabilitation needs.

8 (c)(1) If the court approves the motion for youthful offender treatment ~~after~~
9 ~~an adjudication pursuant to subsection 5281(d)~~ of this title, the court:

10 (A) shall place the youth on conditions of probation pursuant to 28
11 V.S.A. chapter 5, or such additional conditions imposed by the court, provided
12 that the requirements of this subdivision (A) may be satisfied by entering the
13 single condition of probation required under subdivision (C) of this subdivision
14 (c)(1);

15 (B) shall approve a disposition case plan and impose conditions of
16 juvenile probation on the youth; ~~and~~

17 (C) shall include as a condition of probation adherence to the
18 disposition case plan approved by the court; and

19 ~~(B)~~(D) may transfer legal custody of the youth to a parent, relative,
20 person with a significant relationship with the youth, or Commissioner of the

1 Department for Children and Families, provided that any transfer of custody
2 shall expire on the youth's 18th birthday.

3 (2) Prior to the approval of a disposition case plan, the court may refer a
4 child directly to a youth-appropriate community-based provider that has been
5 approved by the department and ~~which~~ that may include a community justice
6 center or a balanced and restorative justice program. Referral to a community-
7 based provider pursuant to this subdivision shall not require the court to place
8 the child on probation. If the community-based provider does not accept the
9 case or if the child fails to complete the program in a manner deemed
10 satisfactory and timely by the provider, the child shall return to the court for
11 further proceedings, including the imposition of the disposition order.

12 (d)(1) The Department for Children and Families and the Department of
13 Corrections shall be responsible for supervision of and providing services to
14 the youth until ~~the youth reaches 22 years of age~~ the earlier of:

15 (A) the youth successfully completing treatment and supervision; or

16 (B) the revocation of the youth's youthful offender designation
17 pursuant to section 5285 of this title.

18 (2) Both ~~Departments~~ the Department for Children and Families and the
19 Department of Corrections shall designate a case manager who together shall
20 appoint a lead ~~Department~~ department to have final decision-making authority
21 over the case plan and the provision of services to the youth. The youth shall

1 be eligible for appropriate community-based programming and services
2 provided by ~~both Departments~~ the Agency of Human Services.

3 Sec. 28. 33 V.S.A. § 5285 is amended to read:

4 § 5285. MODIFICATION OR REVOCATION OF DISPOSITION

5 (a) If it appears that the youth has violated the terms of juvenile probation
6 ordered by the court pursuant to subdivision 5284(c)(1) of this title, a motion
7 for modification or revocation of youthful offender status may be filed in the
8 Family Division of the Superior Court. The court shall set the motion for
9 hearing ~~as soon as practicable~~ within 30 days. The hearing may be joined with
10 a hearing on a violation of conditions of probation under section 5265 of this
11 title. ~~A~~ Consistent with the procedures of 28 V.S.A. § 301, a supervising
12 juvenile or adult probation officer may detain in an adult facility a youthful
13 offender who has attained 18 years of age for violating conditions of probation.
14 A youthful offender who has not attained 18 years of age may be detained in a
15 facility for juveniles pursuant to section 5266 of this title. A youthful offender
16 who is detained prior to attaining 18 years of age may be transferred to an adult
17 facility after the offender attains 18 years of age.

18 (b) A hearing under this section shall be held in accordance with section
19 5268 of this title.

20 (c) If the court finds after the hearing that the youth has violated the terms
21 of ~~his or her~~ the youth's probation, the court may:

1 (1) maintain the youth's status as a youthful offender, with modified
2 conditions of juvenile probation if the court deems it appropriate;

3 (2) revoke the youth's status as a youthful offender ~~and transfer the case~~
4 ~~with a record of the petition, affidavit, adjudication, disposition, and revocation~~
5 ~~to the Criminal Division for sentencing;~~ or

6 (3) transfer supervision of the youth to the Department of Corrections
7 with all of the powers and authority of the Department and the Commissioner
8 under Title 28, including graduated sanctions and electronic monitoring.

9 (d) If a youth's status as a youthful offender is revoked ~~and the case is~~
10 ~~transferred to the Criminal Division~~ pursuant to subdivision (c)(2) of this
11 section, the court shall ~~enter a conviction of guilty based on the admission to or~~
12 ~~finding of merits,~~ hold a sentencing hearing, and impose sentence. ~~Unless it~~
13 ~~serves the interest of justice, the case shall not be transferred back to the~~
14 ~~Family Division pursuant to section 5203 of this title.~~ When determining an
15 appropriate sentence, the court may take into consideration the youth's degree
16 of progress toward or regression from rehabilitation while on youthful offender
17 status. The Criminal Division shall have access to all Family Division records
18 of the proceeding.

19 Sec. 29. 33 V.S.A. § 5286 is amended to read:

20 § 5286. REVIEW PRIOR TO 18 YEARS OF AGE

1 (a) If a youth is on probation as a youthful offender prior to reaching 18
2 years of age, the ~~Family Division~~ court shall review the youth's case before ~~he~~
3 ~~or she~~ the youth reaches 18 years of age and set a hearing to determine whether
4 the court's jurisdiction over the youth should be continued past 18 years of
5 age. The hearing may be joined with a motion to terminate youthful offender
6 status under section 5285 of this title. The court shall provide notice and an
7 opportunity to be heard at the hearing to the State's Attorney, the youth, the
8 Department for Children and Families, and the Department of Corrections.

9 (b) After receiving a notice of review under this section, the State may file
10 a motion to modify or revoke pursuant to section 5285 of this title. If such a
11 motion is filed, it shall be consolidated with the review under this section and
12 all options provided for under section 5285 of this title shall be available to the
13 court.

14 (c) The following reports shall be filed with the court prior to the hearing:

15 (1) The Department for Children and Families and the Department of
16 Corrections shall jointly report their recommendations, with supporting
17 justifications, as to whether the ~~Family Division~~ court should continue
18 jurisdiction over the youth past 18 years of age and, if continued jurisdiction is
19 recommended, propose a case plan for the youth to ensure compliance with
20 and completion of the juvenile disposition.

1 (2) If the ~~Departments~~ departments recommend continued supervision
2 of the youthful offender past 18 years of age, the ~~Departments~~ departments
3 shall report on the services that would be available for the youth.

4 (d) If the court finds that it is in the best interests of the youth and
5 consistent with community safety to continue the case past 18 years of age, it
6 shall make an order continuing the court's jurisdiction up to 22 years of age.
7 The Department for Children and Families and the Department of Corrections
8 shall jointly develop a case plan for the youth and coordinate services and
9 share information to ensure compliance with and completion of the ~~juvenile~~
10 youthful offender disposition.

11 (e) If the court finds that it is not in the best interests of the youth to
12 continue the case past 18 years of age, it shall terminate the disposition order,
13 discharge the youth, and dismiss the case in accordance with subsection
14 5287(c) of this title.

15 Sec. 30. 33 V.S.A. § 5287 is amended to read:

16 § 5287. TERMINATION OR CONTINUANCE OF PROBATION

17 (a) A motion or stipulation may be filed at any time in the ~~Family~~ Criminal
18 Division requesting that the court terminate the youth's status as a youthful
19 offender and discharge ~~him or her~~ the youth from probation. The motion may
20 be filed by the State's Attorney, the youth, the Department, or the court on its
21 own motion.

1 (b) In determining whether a youth has successfully completed the terms of
2 probation, the court shall consider:

3 (1) the degree to which the youth fulfilled the terms of the case plan and
4 the probation order;

5 (2) the youth's performance during treatment;

6 (3) reports of treatment personnel; and

7 (4) any other relevant facts associated with the youth's behavior.

8 (c) If the court finds that the youth has successfully completed the terms of
9 the probation order, it shall terminate youthful offender status, discharge the
10 youth from probation, and file a written order dismissing the ~~Family Division~~
11 ~~case. The Family Division shall provide notice of the dismissal to the Criminal~~
12 ~~Division, which shall dismiss the criminal case.~~

13 (d) Upon discharge and dismissal under subsection (c) of this section, all
14 records relating to the case in the Criminal Division shall be ~~expunged, and all~~
15 ~~records relating to the case in the Family Court shall be sealed pursuant to~~
16 ~~section 5119 of this title~~ sealed. Notwithstanding any other provision of law or
17 a sealing order, entities may access and use sealed records in the following
18 circumstances, and the sealed record shall remain otherwise confidential:

19 (1) An entity or person that possesses a sealed record may continue to
20 use it for any litigation or claim arising out of the same incident or occurrence.

1 (2) A criminal justice agency as defined in 20 V.S.A. § 2056a and the
2 Attorney General may use the criminal history record sealed in accordance
3 with section 7602 or 7603 of this title for criminal justice purposes as defined
4 in 20 V.S.A. § 2056a.

5 (3) A sealed record of a prior violation of 23 V.S.A. § 1201(a) shall be
6 admissible as a predicate offense for the purpose of imposing an enhanced
7 penalty for a subsequent violation of that section, in accordance with the
8 provisions of 23 V.S.A. § 1210.

9 (4) A person or a court in possession of an order issued by a court
10 regarding a matter that was subsequently sealed may file or cite to that decision
11 in any subsequent proceeding. The party or court filing or citing to that
12 decision shall ensure that information regarding the identity of the defendant in
13 the sealed record is redacted.

14 (5) The Vermont Crime Information Center and Criminal Justice
15 Information Services Division of the Federal Bureau of Investigations shall
16 have access to sealed criminal history records without limitation for the
17 purpose of responding to queries to the National Instant Criminal Background
18 Check System regarding firearms transfers and attempted transfers.

19 (6) The State's Attorney and Attorney General may disclose information
20 contained in a sealed criminal history record when required to meet their
21 otherwise legally required discovery obligations.

1 (7) The person whose criminal history records have been sealed
2 pursuant to this chapter and the person's attorney may access and use the
3 sealed records.

4 (8) A law enforcement agency may inspect and receive copies of the
5 sealed criminal history records of any applicant who applies to the agency to
6 be a law enforcement officer or a current employee for the purpose of internal
7 investigation.

8 (9) Persons or entities conducting research shall have access to a sealed
9 criminal history record to carry out research pursuant to 20 V.S.A. § 2056b.

10 (10) Upon adopting rules outlining a process for handling sealed records
11 and maintaining confidentiality and the standards for determining when
12 information contained in a sealed record may be used for the purpose of
13 licensing decisions, the Vermont Criminal Justice Council may inspect and
14 receive copies of sealed criminal history records. Access to such records shall
15 not be permitted if the Legislative Committee on Administrative Rules objects
16 to some or all of the rules pursuant to 3 V.S.A. § 842(b) and files the objection
17 or objections in certified form pursuant to 3 V.S.A. § 842(c). Sealed records
18 shall remain confidential and not be available for inspection and copying
19 unless and until the Council relies on such records in a public licensing
20 decision.

1 (11) Upon adopting rules outlining a process for handling sealed records
2 and maintaining confidentiality and the standards for determining when
3 information contained in a sealed record may be used for the purpose of
4 licensing decisions, the Vermont Office of Professional Regulation may
5 inspect and receive copies of sealed criminal history records. Access to such
6 records shall not be permitted if the Legislative Committee on Administrative
7 Rules objects to some or all of the rules pursuant to 3 V.S.A. § 842(b) and files
8 the objection or objections in certified form pursuant to 3 V.S.A. § 842(c).
9 Sealed records shall remain confidential and not be available for inspection and
10 copying unless and until the Office relies on such records in a public licensing
11 decision.

12 (12) Upon adopting rules outlining a process for handling sealed records
13 and maintaining confidentiality and the standards for determining when
14 information contained in a sealed record may be used for the purpose of
15 licensing decisions, the Vermont Board of Medical Practice may inspect and
16 receive copies of sealed criminal history records. Access to such records shall
17 not be permitted if the Legislative Committee on Administrative Rules objects
18 to some or all of the rules pursuant to 3 V.S.A. § 842(b) and files the objection
19 or objections in certified form pursuant to 3 V.S.A. § 842(c). Sealed records
20 shall remain confidential and not be available for inspection and copying
21 unless and until the Board relies on such records in a public licensing decision.

1 (e) If the court denies the motion to discharge the youth from probation, the
2 court may extend or amend the probation order as it deems necessary.

3 (f) Upon the termination of the period of probation, the youth shall be
4 discharged from probation.

5 * * * Public Inebriates * * *

6 Sec. 31. REPEAL

7 2019 Acts and Resolves No. 6, Secs. 99 and 100 (amendments to 18 V.S.A.
8 §§ 4810(d)–(j) and 4811 that prohibited public inebriates from being
9 incarcerated in a Department of Corrections’ facility) are repealed.

10 * * * Effective Dates * * *

11 Sec. 32. EFFECTIVE DATES

12 (a) This section and Secs. 14–17 (relating to recidivism) and Sec. 31
13 (relating to public inebriates) shall take effect on passage.

14 (b) Secs. 21 and 22 (relating to raise the age) shall take effect on March 31,
15 2025.

16 (c) Secs. 1–3 (relating to extradition), Secs. 4–6 (related to reduced and
17 suspended sentences), Secs. 7–9 (related to bail), Secs. 18–20 (relating to the
18 big 14 juvenile offenses), and Secs. 23–30 (relating to youthful offenders) shall
19 take effect on July 1, 2025.

20 (d) Secs. 10–13 (relating to sealing criminal history records) shall take
21 effect on September 1, 2025.