

1 S.109

2 Introduced by Senator Hashim

3 Referred to Committee on

4 Date:

5 Subject: Court procedure; criminal procedure; miscellaneous amendments

6 Statement of purpose of bill as introduced: This bill proposes to make a
7 number of miscellaneous amendments related to civil and criminal procedure
8 statutes.

9 An act relating to miscellaneous judiciary procedures

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

11 Sec. 1. 3 V.S.A. § 164 is amended to read:

12 § 164. ADULT COURT DIVERSION PROGRAM

13 (a) Purpose.

14 (1) The Attorney General shall develop and administer an adult court
15 diversion program, for both pre-charge and post-charge referrals, available in
16 all counties.

17 (2) The program shall be designed to provide a restorative option for
18 persons alleged to have caused harm in violation of a criminal statute or who
19 have been charged with violating a criminal statute as well as for victims or
20 those acting on a victim's behalf who have been allegedly harmed by the

1 ~~responsible party~~ person referred to the program. The diversion program can
2 accept referrals to the program as follows:

3 * * *

4 (c) Adult diversion program policy and referral requirements.

5 * * *

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

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

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

19 * * *

1 Sec. 2. 4 V.S.A. § 71 is amended to read:

2 § 71. APPOINTMENT AND TERM OF SUPERIOR JUDGES

3 (a) ~~There shall be 34 Superior judges, whose term of office shall, The~~
4 number of Superior Judges shall be as determined by the General Assembly.
5 The term of office of a Superior Judge shall, except in the case of an
6 appointment to fill a vacancy or unexpired term, begin on April 1 in the year of
7 their appointment or retention and continue for six years.

8 * * *

9 Sec. 3. 4 V.S.A. § 1102 is amended to read:

10 § 1102. JUDICIAL BUREAU; JURISDICTION

11 (a) The Judicial Bureau is created within the Judicial Branch under the
12 supervision of the Supreme Court.

13 (b) The Judicial Bureau shall have jurisdiction of the following matters:

14 * * *

15 (4) Violations of 7 V.S.A. § 1005, relating to possession and
16 procurement of tobacco products by a person under 21 years of age.

17 * * *

18 Sec. 4. 4 V.S.A. § 1106 is amended to read:

19 § 1106. HEARING

20 * * *

1 (d) A Unless otherwise provided by law, a law enforcement officer may
2 void or amend a complaint issued by that officer by so marking the complaint
3 and returning it to the Bureau, regardless of whether the amended complaint is
4 a lesser included violation. At the hearing, a law enforcement officer may u
5 unless otherwise provided by law, void or amend a complaint issued by that
6 officer in the discretion of that officer.

7 * * *

8 Sec. 5. 7 V.S.A. § 1005(c) is amended to read:

9 (c) A person under 21 years of age who misrepresents ~~his or her~~ the
10 person's age by presenting false identification to purchase tobacco products,
11 tobacco substitutes, or tobacco paraphernalia shall be ~~fined~~ subject to a civil
12 penalty of not more than \$50.00 or provide up to 10 hours of community
13 service, or both.

14 Sec. 6. 13 V.S.A. § 5351(7) is amended to read:

15 (7) "Victim" means:

16 (A) a person who sustains injury or death as a direct result of the
17 commission or attempted commission of a crime;

18 (B) an intervenor who is physically injured or killed in an attempt to
19 assist the person described in subdivision (A) of this subdivision (7) or the
20 police;

1 (C) a surviving immediate family member of a homicide victim,
2 including a spouse, domestic partner, parent, sibling, child, grandparent, or
3 other survivor who may suffer severe emotional harm as a result of the
4 victim's death as determined on a case-by-case basis in the discretion of the
5 Board; or

6 (D) a resident of this State who is injured or killed as the result of a
7 crime committed outside the United States.

8 Sec. 7. 13 V.S.A. § 7282 is amended to read:

9 § 7282. SURCHARGE

10 * * *

11 (c) ~~SIU surcharge.~~ In addition to any penalty or fine imposed by the court
12 for a criminal offense committed after July 1, 2009, the clerk of the court shall
13 levy an additional surcharge of \$100.00 to be deposited in the General Fund, in
14 support of the Specialized Investigative Unit Grants Board created in 24
15 V.S.A. § 1940(c), and used to pay for the costs of Specialized Investigative
16 Units.

17 Sec. 8. 12 V.S.A. § 5135(b) is amended to read:

18 (b) A defendant who attends a hearing held under section 5133 or 5134 of
19 this title at which a temporary or final order under this chapter is issued and
20 who receives notice from the court on the record that the order has been issued
21 shall be deemed to have been served. A defendant notified by the court on the

1 record shall be required to adhere immediately to the provisions of the order.
2 ~~However, even when the court has previously notified the defendant of the~~
3 ~~order, the court shall transmit the order for additional service by a law~~
4 ~~enforcement agency.~~ The clerk shall mail a copy of the order to the defendant
5 at the defendant's last known address.

6 Sec. 9. 14 V.S.A. § 2 is amended to read:

7 § 2. DEPOSIT OF WILL FOR SAFEKEEPING; DELIVERY; FINAL
8 DISPOSITION

9 (a) A will may be deposited for safekeeping in the Probate Division of the
10 Superior Court for the district in which the testator resides on payment to the
11 court of the applicable fee required by ~~32 V.S.A. § 1434(a)(17)~~ 32 V.S.A.
12 § 1434(a)(18). The register shall give to the testator a receipt, shall safely keep
13 each will so deposited, and shall keep an index of the wills so deposited.

14 * * *

15 Sec. 10. 14 V.S.A. § 931 is amended to read:

16 § 931. LIMITATIONS ON CLAIMS OF CREDITORS

17 All claims against the decedent's estate that arose before the death of the
18 decedent, including claims of the State and any subdivision thereof except
19 claims filed by the State on behalf of Vermont Medicaid, absolute or
20 contingent, liquidated or unliquidated, founded on contract, tort, or other legal
21 basis, if not barred earlier by other statute of limitations, are barred against the

1 estate, the legal representative of the estate, and the heirs and devisees of the
2 decedent, unless presented within one year after the decedent's death. Nothing
3 in this section affects or prevents any proceeding to enforce any mortgage,
4 pledge, or other lien upon the property of the estate. Claims filed by the State
5 on behalf of Vermont Medicaid must be filed in accordance with subsection
6 1203(d) of this title. This section shall not be construed to affect the period of
7 limitations applicable to a claim under 12 V.S.A. § 557.

8 Sec. 11. 14 V.S.A. § 3068 is amended to read:

9 § 3068. HEARING

10 * * *

11 (e)(1) If upon completion of the hearing and consideration of the record the
12 court finds that the respondent is not a person in need of guardianship, it shall
13 dismiss the petition and seal the records of the proceeding.

14 (2) If a motion to withdraw the petition is made before the final hearing,
15 the court shall dismiss the petition and seal the records of the proceeding.

16 (f) If upon completion of the hearing and consideration of the record the
17 court finds that the petitioner has proved by clear and convincing evidence that
18 the respondent is a person in need of guardianship or will be a person in need
19 of guardianship on attaining 18 years of age, it shall enter judgment specifying
20 the powers of the guardian pursuant to sections 3069 and 3070 of this title and
21 the duties of the guardian pursuant to section 3071 of this title.

1 (g) Any party to the proceeding before the court may appeal the court's
2 decision in the manner provided in section 3080 of this title.

3 Sec. 12. 14 V.S.A. § 4051 is amended to read:

4 § 4051. STATUTORY FORM POWER OF ATTORNEY

5 A document substantially in the following form may be used to create a
6 statutory form power of attorney that has the meaning and effect prescribed by
7 this chapter.

8 VERMONT STATUTORY FORM POWER OF ATTORNEY IMPORTANT
9 INFORMATION

10 * * *

11 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

12 My agent MAY NOT do any of the following specific acts for me UNLESS I
13 have INITIALED the specific authority listed below:

14 (CAUTION: Granting any of the following will give your agent the authority
15 to take actions that could significantly reduce your property or change how
16 your property is distributed at your death. INITIAL ONLY the specific
17 authority you WANT to give your agent.)

18 () An agent who is not an ancestor, spouse, or descendant may exercise
19 authority under this power of attorney to create in the agent or in an individual
20 to whom the agent owes a legal obligation of support an interest in my

- 1 property whether by gift, rights of survivorship, beneficiary designation,
2 disclaimer, or otherwise
- 3 () Create, amend, revoke, or terminate an inter vivos, family, living,
4 irrevocable, or revocable trust
- 5 () Consent to the modification or termination of a noncharitable irrevocable
6 trust under 14A V.S.A. § 411
- 7 () Make a gift, subject to the limitations of 14 V.S.A. § 4047 (gifts) and any
8 special instructions in this power of attorney
- 9 ~~() Consent to the modification or termination of a noncharitable irrevocable~~
10 ~~trust under 14A V.S.A. § 411~~
- 11 () Create, amend, or change rights of survivorship
- 12 () Create, amend, or change a beneficiary designation
- 13 () Waive the principal's right to be a beneficiary of a joint and survivor
14 annuity, including a survivor benefit under a retirement plan
- 15 () Exercise fiduciary powers that the principal has authority to delegate
- 16 () Authorize another person to exercise the authority granted under this power
17 of attorney
- 18 () Disclaim or refuse an interest in property, including a power of appointment
- 19 () Exercise authority with respect to elective share under 14 V.S.A. § 319
- 20 () Exercise waiver rights under 14 V.S.A. § 323

1 transferred to the Criminal Division under subsection (a) of this section if the
2 delinquent act set forth in the petition is:

3 (I) [Repealed.]

4 (II) human trafficking or aggravated human trafficking in
5 violation of 13 V.S.A. § 2652 or 2653;

6 (III) defacing a firearm's serial number in violation of ~~13~~
7 ~~V.S.A. § 4024~~ 13 V.S.A. § 4026; or

8 (IV) straw purchasing of firearm in violation of 13 V.S.A.
9 § 4025; and

10 (ii) the child had attained 16 years of age but not 19 years of age at
11 the time the act was alleged to have occurred.

12 Sec. 15. 33 V.S.A. § 5225 is amended to read:

13 § 5225. PRELIMINARY HEARING; RISK ASSESSMENT

14 (a) Preliminary hearing. A preliminary hearing shall be held at the time
15 and date specified on the citation or as otherwise ordered by the court. If a
16 child is taken into custody prior to the preliminary hearing, the preliminary
17 hearing shall be at the time of the temporary care hearing. Counsel for the
18 child shall be assigned prior to the preliminary hearing.

19 (b) Risk and needs screening.

20 (1) Prior to the preliminary hearing, the child shall be afforded an
21 opportunity to undergo a risk and needs screening, which shall be conducted

1 by the Department or by a community provider that has contracted with the
2 Department to provide risk and need screenings for children alleged to have
3 committed delinquent acts.

4 (2) If the child participates in such a screening, the Department or the
5 community provider shall report the risk level result of the screening, the
6 number and source of the collateral contacts made, and the recommendation
7 for charging or other alternatives to the State's Attorney. The State's Attorney
8 shall consider the results of the risk and needs screening in determining
9 whether to file a charge. In lieu of filing a charge, the State's Attorney may
10 refer a child directly to a youth-appropriate community-based provider that has
11 been approved by the Department, which may include pre-charge diversion
12 pursuant to 3 V.S.A. § 163, a community justice center or a balanced and
13 restorative justice program. Referral to a community-based provider pursuant
14 to this subsection shall not require the State's Attorney to file a charge. If the
15 community-based provider does not accept the case or if the child fails to
16 complete the program in a manner deemed satisfactory and timely by the
17 provider, the child's case shall return to the State's Attorney for charging
18 consideration.

19 * * *

1 Sec. 16. 27 V.S.A. § 348 is amended to read:

2 § 348. INSTRUMENTS CONCERNING REAL PROPERTY VALIDATED

3 (a) When an instrument of writing shall have been on record in the office of
4 the clerk in the proper town for a period of 15 years, and there is a defect in the
5 instrument because it omitted to state any consideration or was not sealed,
6 witnessed, acknowledged, validly acknowledged, or because a license to sell
7 was not issued or is defective, the instrument shall, from and after the
8 expiration of 15 years from the filing thereof for record, be valid. Nothing in
9 this section shall be construed to affect any rights acquired by grantees,
10 assignees, or encumbrancers under the instruments described in the preceding
11 sentence, nor shall this section apply to conveyances or other instruments of
12 writing, the validity of which is brought in question in any suit now pending in
13 any courts of the State.

14 * * *

15 (d) A release, discharge, or assignment of mortgage interest executed by a
16 commercial lender with respect to a one- to four-family residential real
17 property, including a residential unit in a condominium or in a common
18 interest community as defined in Title 27A, that recites authority to act on
19 behalf of the record holder of the mortgage under a power of attorney but
20 where the power of attorney is not of record shall have the same effect as if
21 executed by the record holder of the mortgage unless, within three years after

1 the instrument is recorded, an action challenging the release, discharge, or
2 assignment is commenced and a copy of the complaint is recorded in the land
3 records of the town where the release, discharge, or assignment is recorded.
4 This subsection shall not apply to releases, discharges, or assignments obtained
5 by fraud or forgery.

6 (e) A power of attorney made for the purpose of conveying, leasing,
7 mortgaging, or affecting any interest in real property that has been
8 acknowledged and signed in the presence of at least one witness shall be valid,
9 notwithstanding its failure to comply with 14 V.S.A. § 3503 or the
10 requirements of the Emergency Administrative Rules for Remote Notarial Acts
11 adopted by the Vermont Secretary of State, unless within three years after
12 recording, an action challenging its validity is commenced and a copy of the
13 complaint is recorded in the land records of the town where the power of
14 attorney is recorded. This subsection shall not apply to a power of attorney
15 obtained by fraud or forgery.

16 (f) Notwithstanding section 305 of this title, a deed, mortgage, lease, or
17 other instrument executed for the purpose of conveying or encumbering real
18 property executed by a person purporting to act as the agent or attorney-in-fact
19 for the party named in the deed, mortgage, lease, or other instrument, that has
20 been recorded for at least 15 years in the land records where the real property
21 is located shall be valid even if no power of attorney authorizing and

1 empowering an agent or attorney-in-fact appears of record, unless, within 15
2 years after recording, an action challenging the validity of the deed, mortgage,
3 lease, or other instrument is commenced and a copy of the complaint is
4 recorded in the land records of the town where the property is located.

5 Sec. 17. 32 V.S.A. § 1003 is amended to read:

6 § 1003. STATE OFFICERS

7 * * *

8 (c) The officers of the Judicial Branch named in this subsection shall be
9 entitled to annual salaries as follows:

	Annual	Annual
	Salary	Salary
	as of	as of
	July 14,	July 13,
	2024	2025
15 (1) Chief Justice of Supreme Court	\$214,024	\$225,581
16 (2) Each Associate Justice	\$204,264	\$215,294
17 (3) Administrative Chief Superior Judge	\$204,264	\$215,294
18 (4) Each Superior Judge	\$194,185	\$204,671
19 (5) [Repealed.]		
20 (6) Each Magistrate	\$146,413	\$154,319

1 (7) Each Judicial Bureau hearing
2 officer \$146,413 \$154,319

3 * * *

4 Sec. 18. 2023 Acts and Resolves No. 27, Sec. 5 (forensic facility report) is
5 amended to read:

6 Sec. 5. [Deleted.]

7 Sec. 19. EFFECTIVE DATES

8 This act shall take effect on passage, except that Sec. 1 shall take effect on
9 July 2, 2025.