

1 S.189

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: January 3, 2012

5 Subject: Executive; attorney general; court diversion

6 Statement of purpose: This bill proposes to designate the court file as
7 confidential once a case is accepted by the court diversion project.

8 An act relating to expanding confidentiality of cases accepted by the court
9 diversion project

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

11 ~~Sec. 1. 3 V.S.A. § 164(c)(1) is amended to read:~~

12 ~~(c) All adult court diversion projects receiving financial assistance from the
13 attorney general shall adhere to the following provisions:~~

14 ~~(1) The diversion project shall accept only persons against whom
15 charges have been filed and the court has found probable cause, but are not yet
16 adjudicated. If the prosecuting attorney refers a case to diversion, the
17 information and affidavit court file related to the charges shall be confidential
18 and shall remain confidential unless:~~

19 ~~(A) the board declines to accept the case;~~

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

1 ~~(C) the board accepts the case, but the person does not successfully~~
2 ~~complete diversion.~~

3 Sec. 2. EFFECTIVE DATE

4 ~~This act shall take effect on passage.~~

~~*Sec. 1. 3 V.S.A. § 164(c)(1) is amended to read:*~~

~~*(c) All adult court diversion projects receiving financial assistance from the attorney general shall adhere to the following provisions:*~~

~~*(1) The diversion project shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. The state's attorney shall notify, in writing, the diversion program and the court of his or her intention to refer the person to diversion. If the prosecuting attorney refers a case to diversion, the information and affidavit files held by the court, the state's attorney, and the law enforcement agency related to the charges shall be confidential and shall remain confidential unless:*~~

~~*(A) the board declines to accept the case;*~~

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

~~*(C) the board accepts the case, but the person does not successfully complete diversion;*~~

~~*(D) the state's attorney recalls the referral to diversion.*~~

~~*Sec. 2. 3 V.S.A. § 164a is added to read:*~~

~~*§ 164a. RESTITUTION*~~

~~*(a) A diversion program may refer an individual who has suffered a pecuniary loss as a direct result of a delinquent act or crime alleged to have been committed by a juvenile or adult accepted to its program to the restitution unit established by 13 V.S.A. § 5362 for the purpose of application for an advance payment pursuant to 13 V.S.A. § 5363(d)(1). The restitution unit may enter into a repayment contract with a juvenile or adult accepted into diversion and shall have the authority to bring a civil action to enforce the repayment contract in the event that the juvenile or adult defaults in performing the terms of the contract.*~~

~~*(b) The restitution unit and the diversion program shall develop a process for documenting victim loss, information sharing between the unit and diversion programs regarding the amount of restitution paid by the unit and*~~

~~diversion participants' contractual agreements to reimburse the unit,
transmittal of payments from participants to the unit, and maintenance of the
confidentiality of diversion information.~~

~~Sec. 3. 13 V.S.A. § 5362 is amended to read:~~

~~§ 5362. RESTITUTION UNIT~~

~~* * *~~

~~(c) The restitution unit shall have the authority to:~~

~~* * *~~

~~(7) Enter into a repayment contract with a juvenile or adult accepted
into a diversion program and to bring a civil action to enforce the contract
when a diversion program has referred an individual pursuant to 3 V.S.A.
§ 164a.~~

~~Sec. 4. 13 V.S.A. § 5363 is amended to read:~~

~~§ 5363. CRIME VICTIMS' RESTITUTION SPECIAL FUND~~

~~(a) There is hereby established in the state treasury a fund to be known as
the crime victims' restitution special fund, to be administered by the restitution
unit established by section 5362 of this title, and from which payments may be
made to provide restitution to crime victims.~~

~~(b)(1) There shall be deposited into the fund:~~

~~(A) All monies collected by the restitution unit pursuant to section
7043 and subdivision 5362(c)(7) of this title.~~

~~(B) All fees imposed by the clerk of court and designated for deposit
into the fund pursuant to section 7282 of this title.~~

~~(C) All monies donated to the restitution unit or the crime victims'
restitution special fund.~~

~~(D) Such sums as may be appropriated to the fund by the general
assembly.~~

~~* * *~~

~~(d)(1) The restitution unit is authorized to advance up to \$10,000.00 to a
victim or to a deceased victim's heir or legal representative if the victim:~~

~~(A) was first ordered by the court to receive restitution on or after
July 1, 2004;~~

~~(B) is a natural person or the natural person's legal representative;~~

~~(C) has not been reimbursed under subdivision (2) of this subsection;~~

~~(D) is a natural person and has been referred to the restitution unit by a diversion program pursuant to 3 V.S.A. § 164a.~~

~~***~~

~~Sec. 5. 13 V.S.A. § 7045(n) is amended to read:~~

~~(n) After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure of an offender aged 18 or older shall include copies of the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.~~

~~Sec. 6. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2012.~~

~~Sec. 1. 3 V.S.A. § 164(c)(1) is amended to read:~~

~~(c) All adult court diversion projects receiving financial assistance from the attorney general shall adhere to the following provisions:~~

~~(1) The diversion project shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. The prosecuting attorney shall notify in writing the diversion program and the court of his or her intention to refer the person to diversion. If the prosecuting attorney refers a case to diversion, the ~~information and affidavit~~ prosecuting attorney may release information to the victim upon a showing of legitimate need and subject to an appropriate protective agreement defining the purpose for which the information is being released and in all other respects maintaining the confidentiality of the information; otherwise files held by the court, the prosecuting attorney, and the law enforcement agency related to the charges shall be confidential and shall remain confidential unless:~~

~~(A) the board declines to accept the case;~~

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

~~(C) the board accepts the case, but the person does not successfully complete diversion;~~

~~(D) the prosecuting attorney recalls the referral to diversion.~~

~~Sec. 2. 3 V.S.A. § 164a is added to read:~~

~~§ 164a. RESTITUTION~~

~~(a) A diversion program may refer an individual who has suffered a pecuniary loss as a direct result of a delinquent act or crime alleged to have~~

been committed by a juvenile or adult accepted to its program to the restitution unit established by 13 V.S.A. § 5362 for the purpose of application for an advance payment pursuant to 13 V.S.A. § 5363(d)(1). The restitution unit may enter into a repayment contract with a juvenile or adult accepted into diversion and shall have the authority to bring a civil action to enforce the repayment contract in the event that the juvenile or adult defaults in performing the terms of the contract.

(b) The restitution unit and the diversion program shall develop a process for documenting victim loss, information sharing between the unit and diversion programs regarding the amount of restitution paid by the unit and diversion participants' contractual agreements to reimburse the unit, transmittal of payments from participants to the unit, and maintenance of the confidentiality of diversion information.

Sec. 3. 13 V.S.A. § 5362 is amended to read:

§ 5362. RESTITUTION UNIT

* * *

(c) The restitution unit shall have the authority to:

* * *

(7) Enter into a repayment contract with a juvenile or adult accepted into a diversion program and to bring a civil action to enforce the contract when a diversion program has referred an individual pursuant to 3 V.S.A. § 164a.

Sec. 4. 13 V.S.A. § 5363 is amended to read:

§ 5363. CRIME VICTIMS' RESTITUTION SPECIAL FUND

(a) There is hereby established in the state treasury a fund to be known as the crime victims' restitution special fund, to be administered by the restitution unit established by section 5362 of this title, and from which payments may be made to provide restitution to crime victims.

(b)(1) There shall be deposited into the fund:

(A) All monies collected by the restitution unit pursuant to section 7043 and subdivision 5362(c)(7) of this title.

(B) All fees imposed by the clerk of court and designated for deposit into the fund pursuant to section 7282 of this title.

(C) All monies donated to the restitution unit or the crime victims' restitution special fund.

(D) Such sums as may be appropriated to the fund by the general assembly.

* * *

(d)(1) The restitution unit is authorized to advance up to \$10,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

(A) was first ordered by the court to receive restitution on or after July 1, 2004;

(B) is a natural person or the natural person's legal representative; ~~and~~

(C) has not been reimbursed under subdivision (2) of this subsection; and

(D) is a natural person and has been referred to the restitution unit by a diversion program pursuant to 3 V.S.A. § 164a.

* * *

Sec. 5. 13 V.S.A. § 7043(n) is amended to read:

(n) After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure of an offender aged 18 or older shall include copies of the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.

Sec. 6. 13 V.S.A. § 5360 is added to read:

§ 5360. APPLICATION INFORMATION; CONFIDENTIALITY

(a) All documents reviewed by the victims compensation board for purposes of approving an application for compensation shall be confidential and shall not be disclosed without the consent of the victim except as provided in this section and subsection 7043(c) of this title.

(b) For the purpose of requesting restitution, the amount of assistance provided by the victims compensation board shall be established by copies of bills submitted to the victims compensation board reflecting the amount paid by the board and stating that the services for which payment was made were for uninsured pecuniary losses.

(c) The following shall be confidential and shall be redacted by the victims compensation board for any purpose including restitution: the victim's residential address, telephone number, and other contact information and the victim's Social Security number. In cases involving stalking, sexual offenses, and domestic violence, the following information shall also be confidential and

shall not be disclosed by the victims compensation board for any purpose, including restitution, absent a court order:

(1) the victim's employer's name, telephone number, address, or any other contact information; and

(2) the victim's medical or mental health provider's name, telephone number, address, or any other contact information.

Sec. 7. 13 V.S.A. § 7043 is amended to read:

§ 7043. RESTITUTION

* * *

(b)(1) When ordered, restitution may include:

(A) return of property wrongfully taken from the victim;

(B) cash, credit card, or installment payments paid to the restitution unit; or

(C) payments in kind, if acceptable to the victim.

(2) In the event of a victim's crime-related death, the court may, at the request of the restitution unit, direct the unit to pay up to \$10,000.00 from the restitution fund to the victim's estate to cover future uninsured material losses caused by the death.

(c) Restitution hearing.

(1) Unless the amount of restitution is agreed to by the parties at the time of sentencing, the court shall set the matter for a restitution hearing.

(2) Prior to the date of the hearing, the prosecuting attorney shall provide the defendant with a statement of the amount of restitution claimed together with copies of bills that support the claim for restitution. If any amount of the restitution claim has been paid by the victims compensation fund, the prosecuting attorney shall provide the defendant with copies of bills submitted by the victims compensation board pursuant to section 5360 of this title.

(3) Absent consent of the victim, medical and mental health records submitted to the victims compensation board shall not be discoverable for the purposes of restitution except by order of the court. If the defendant files a motion to view copies of such records, the prosecuting attorney shall file the records with the court under seal. The court shall conduct an in camera review of the records to determine what records, if any, are relevant to the parties' dispute with respect to restitution. If the court orders disclosure of the documents, the court shall issue a protective order defining the extent of

dissemination of the documents to any person other than the defendant, the defendant's attorney, and the prosecuting attorney.

~~(e)~~(d) In awarding restitution, the court shall make findings with respect to:

(1) The total amount of the material loss incurred by the victim. If sufficient documentation of the material loss is not available at the time of sentencing, the court shall set a hearing on the issue, and notice thereof shall be provided to the offender.

(2) The offender's current ability to pay restitution, based on all financial information available to the court, including information provided by the offender.

~~(d)~~(e)(1) An order of restitution shall establish the amount of the material loss incurred by the victim, which shall be the restitution judgment order. In the event the offender is unable to pay the restitution judgment order at the time of sentencing, the court shall establish a restitution payment schedule for the offender based upon the offender's current and reasonably foreseeable ability to pay, subject to modification under subsection (k) of this section. Notwithstanding 12 V.S.A. chapter 113 ~~of Title 12~~ or any other provision of law, interest shall not accrue on a restitution judgment.

* * *

~~(e)~~(f)(1) If not paid at the time of sentencing, restitution may be ordered as a condition of probation, supervised community sentence, furlough, preapproved furlough, or parole if the convicted person is sentenced to preapproved furlough, probation, or supervised community sentence, or is sentenced to imprisonment and later placed on parole. A person shall not be placed on probation solely for purposes of paying restitution. An offender may not be charged with a violation of probation, furlough, or parole for nonpayment of a restitution obligation incurred after July 1, 2004.

* * *

~~(f)~~(g)(1) When restitution is requested but not ordered, the court shall set forth on the record its reasons for not ordering restitution.

* * *

~~(g)~~(h) Restitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order.

~~(h)~~(i)(1) The court shall transmit a copy of a restitution order to the restitution unit, which shall make payment to the victim in accordance with section 5363 of this title.

* * *

~~(i)~~(j) *The restitution unit may bring an action, including a small claims procedure, to enforce a restitution order against an offender in the civil division of the superior court of the unit where the offender resides or in the unit where the order was issued. In an action under this subsection, a restitution order issued by the criminal division of the superior court shall be enforceable in the civil division of the superior court or in a small claims procedure in the same manner as a civil judgment. Superior and small claims filing fees shall be waived for an action under this subsection, and for an action to renew a restitution judgment.*

~~(j)~~(k) *All restitution payments shall be made to the restitution unit, with the exception of restitution relating to a conviction for welfare fraud ordered under this section and recouped by the economic services division. The economic services division shall provide the restitution unit with a monthly report of all restitution collected through recoupment. This subsection shall have no effect upon the collection or recoupment of restitution ordered under Title 33.*

~~(k)~~(l) *The sentencing court may modify the payment schedule of a restitution order if, upon motion by the restitution unit or the offender, the court finds that modification is warranted by a substantial change in circumstances.*

~~(l)~~(m) *If the offender fails to pay restitution as ordered by the court, the restitution unit may file an action to enforce the restitution order in superior or small claims court. After an enforcement action is filed, any further proceedings related to the action shall be heard in the court where it was filed. The court shall set the matter for hearing and shall provide notice to the restitution unit, the victim, and the offender. If the court determines the offender has failed to comply with the restitution order, the court may take any action the court deems necessary to ensure the offender will make the required restitution payment, including:*

* * *

~~(m)~~(n)(1) *Any monies owed by the state to an offender who is under a restitution order, including lottery winnings and tax refunds, shall be used to discharge the restitution order to the full extent of the unpaid total financial losses, regardless of the payment schedule established by the courts.*

* * *

~~(n)~~(o) *After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure shall include copies of*

the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.

~~(p)~~(p) An obligation to pay restitution is part of a criminal sentence and is:

** * **

~~(p)~~(q) A transfer of property made with the intent to avoid a restitution obligation shall be deemed a fraudulent conveyance for purposes of 9 V.S.A. chapter 57 of Title 9, and the restitution unit shall be entitled to the remedies of creditors provided under 9 V.S.A. § 2291.

Sec. 8. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS

** * **

(c) The following public records are exempt from public inspection and copying:

** * **

(40) ~~Records~~ records of genealogy provided in support of an application for tribal recognition pursuant to chapter 23 of this title;

(41) documents reviewed by the victim's compensation board for purposes of approving an application for compensation pursuant to 13 V.S.A. chapter 167, except as provided by 13 V.S.A. §§ 5360 and 7043(c).

Sec. 9. EFFECTIVE DATE

(a) Sections 1, 2, 3, 4, and 5 shall take effect on July 1, 2012.

(b) Sections 6, 7, 8, and this section shall take effect on passage.