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S.287

Introduced by Senators Brock, Norris and Collamore
Referred to Committee on
Date:
Subject: Crimes; criminal procedure; bail; conditions of release
Statement of purpose of bill as introduced: This bill proposes to expand the mechanisms to hold offenders accountable for violations of conditions of release. Specifically, this bill proposes to lift the \$200.00 cap on bail for persons who commit a new offense while on pretrial release; explicitly permits a court to consider whether a person is subject to pretrial release or community supervision, and is compliant with current court orders when setting conditions of release; creates an expedited summary hearing procedure for violations of conditions of release; prohibits repeat offenders from being referred to diversion; permits courts to consider any violations of conditions of release during sentencing; and requires the Office of the Attorney General and Department of Corrections to report annually on various data related to referrals to diversion and other programs employing restorative justice.

An act relating to bail and violations of conditions of release

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

2 Sec. 1. 13 V.S.A. § 7551 is amended to read:

3 § 7551. IMPOSITION OF BAIL, SECURED APPEARANCE BONDS, AND
4 APPEARANCE BONDS

5 (a) Bonds; generally. A bond given by a person charged with a criminal
6 offense or by a witness in a criminal prosecution under section 6605 of this
7 title, conditioned for the appearance of the person or witness before the court
8 in cases where the offense is punishable by fine or imprisonment, and in
9 appealed cases, shall be taken to the Criminal Division of the Superior Court
10 where the prosecution is pending and shall remain binding upon parties until
11 discharged by the court or until sentencing. The person or witness shall appear
12 at all required court proceedings.

13 (b) Limitation on imposition of bail, secured appearance bonds, and
14 appearance bonds.

15 (1) ~~Except as provided in subdivision (2) of this subsection, no~~ No bail,
16 ~~secured appearance bond, or appearance bond~~ may be imposed:

17 ~~(A)~~ at the initial appearance of a person charged with a misdemeanor
18 if the person was cited for the offense in accordance with Rule 3 of the
19 Vermont Rules of Criminal Procedure; ~~or~~

20 ~~(B) at the initial appearance or upon the temporary release pursuant~~
21 ~~to Rule 5(b) of the Vermont Rules of Criminal Procedure of a person charged~~

1 ~~with a violation of a misdemeanor offense that is eligible for expungement~~
2 ~~pursuant to subdivision 7601(4)(A) of this title.~~

3 (2) In the event the court finds that imposing bail is necessary to
4 mitigate the risk of flight from prosecution for a person charged with a
5 violation of a misdemeanor offense that is eligible for expungement pursuant
6 to subdivision 7601(4)(A) of this title, the court may impose bail in a
7 maximum amount of \$200.00. The \$200.00 limit shall not apply to an offense
8 committed by a defendant who has been released pending trial for another
9 offense.

10 (3) This subsection shall not be construed to restrict the court's ability to
11 impose conditions on such persons to reasonably mitigate the risk of flight
12 from prosecution or to reasonably protect the public in accordance with section
13 7554 of this title.

14 Sec. 2. 13 V.S.A. § 7554 is amended to read:

15 § 7554. RELEASE PRIOR TO TRIAL

16 (a) Release; conditions of release. Any person charged with an offense,
17 other than a person held without bail under section 7553 or 7553a of this title,
18 shall at ~~his or her~~ the person's appearance before a judicial officer be ordered
19 released pending trial in accordance with this section.

20 (1) The defendant shall be ordered released on personal recognizance or
21 upon the execution of an unsecured appearance bond in an amount specified by

1 the judicial officer unless the judicial officer determines that such a release will
2 not reasonably mitigate the risk of flight from prosecution as required. In
3 determining whether the defendant presents a risk of flight from prosecution,
4 the judicial officer shall consider, in addition to any other factors, the
5 seriousness of the offense charged and the number of offenses with which the
6 person is charged. If the judicial officer determines that the defendant presents
7 a risk of flight from prosecution, the officer shall, either in lieu of or in
8 addition to the methods of release in this section, impose the least restrictive of
9 the following conditions or the least restrictive combination of the following
10 conditions that will reasonably mitigate the risk of flight ~~of~~ from prosecution
11 by the defendant as required:

12 (A) Place the defendant in the custody of a designated person or
13 organization agreeing to supervise ~~him or her~~ the defendant if the defendant is
14 charged with an offense that is not a nonviolent misdemeanor or nonviolent
15 felony as defined in 28 V.S.A. § 301.

16 (B) Place restrictions on the travel ~~or~~, association, or place of abode
17 of the defendant during the period of release.

18 (C) Require the defendant to participate in an alcohol or drug
19 treatment program. The judicial officer shall take into consideration the
20 defendant's ability to comply with an order of treatment and the availability of
21 treatment resources.

1 (D) Upon consideration of the defendant's financial means, require
2 the execution of a secured appearance bond in a specified amount and the
3 deposit with the clerk of the court, in cash or other security as directed, of a
4 sum not to exceed 10 percent of the amount of the bond, such deposit to be
5 returned upon the appearance of the defendant as required.

6 (E) Upon consideration of the defendant's financial means, require
7 the execution of a surety bond with sufficient solvent sureties, or the deposit of
8 cash in lieu thereof.

9 (F) Impose any other condition found reasonably necessary to
10 mitigate the risk of flight from prosecution as required, including a condition
11 requiring that the defendant return to custody after specified hours.

12 (G) [Repealed.]

13 (2) If the judicial officer determines that conditions of release imposed
14 to mitigate the risk of flight from prosecution will not reasonably protect the
15 public, the judicial officer may impose, in addition, the least restrictive of the
16 following conditions or the least restrictive combination of the following
17 conditions that will reasonably ensure protection of the public:

18 (A) Place the defendant in the custody of a designated person or
19 organization agreeing to supervise ~~him or her~~ the defendant if the defendant is
20 charged with an offense that is not a nonviolent misdemeanor or nonviolent
21 felony as defined in 28 V.S.A. § 301.

1 (B) Place restrictions on the travel, association, or place of abode of
2 the defendant during the period of release.

3 (C) Require the defendant to participate in an alcohol or drug
4 treatment program. The judicial officer shall take into consideration the
5 defendant's ability to comply with an order of treatment and the availability of
6 treatment resources.

7 (D) Impose any other condition found reasonably necessary to
8 protect the public, except that a physically restrictive condition may only be
9 imposed in extraordinary circumstances.

10 (E) Suspend the officer's duties in whole or in part if the defendant is
11 a State, county, or municipal officer charged with violating section 2537 of this
12 title and the court finds that it is necessary to protect the public.

13 (F) [Repealed.]

14 (3) A judicial officer may order that a defendant not harass or contact or
15 cause to be harassed or contacted a victim or potential witness. This order
16 shall take effect immediately, regardless of whether the defendant is
17 incarcerated or released.

18 (b) Judicial considerations in imposing conditions of release. In
19 determining which conditions of release to impose:

20 (1) In subdivision (a)(1) of this section, the judicial officer, on the basis
21 of available information, shall take into account the nature and circumstances

1 of the offense charged; the weight of the evidence against the accused; the
2 accused's employment; financial resources, including the accused's ability to
3 post bail; the accused's character and mental condition; the accused's length of
4 residence in the community; and the accused's record of appearance at court
5 proceedings or of flight ~~to avoid~~ from prosecution or failure to appear at court
6 proceedings.

7 (2) In subdivision (a)(2) of this section, the judicial officer, on the basis
8 of available information, shall take into account the nature and circumstances
9 of the offense charged; the weight of the evidence against the accused; ~~and~~ the
10 accused's family ties, employment, character and mental condition, length of
11 residence in the community, record of convictions, and record of appearance at
12 court proceedings or of flight ~~to avoid~~ from prosecution or failure to appear at
13 court proceedings; whether the accused is subject to release on personal
14 recognizance or subject to conditions of release prior to trial, sentencing, or
15 appeal in another case pending before federal or state court; whether the
16 accused is on probation, parole, furlough, or some other form of community
17 supervision in another case adjudicated before a federal or state court; and
18 whether the accused is currently compliant with any standing court orders.

19 Recent history of actual violence or threats of violence may be considered by
20 the judicial officer as bearing on the character and mental condition of the
21 accused.

1 (c) Order. A judicial officer authorizing the release of a person under this
2 section shall issue an appropriate order containing a statement of the conditions
3 imposed, if any; shall inform such person of the penalties applicable to
4 violations of the conditions of release; and shall advise ~~him or her~~ the person
5 that a warrant for ~~his or her~~ the person's arrest will be issued immediately upon
6 any such violation.

7 (d) Review of conditions.

8 (1) A person for whom conditions of release are imposed and who is
9 detained as a result of ~~his or her~~ the person's inability to meet the conditions
10 of release or who is ordered released on a condition that ~~he or she~~ the person
11 return to custody after specified hours, or the State, following a material
12 change in circumstances, shall, within 48 hours following application, be
13 entitled to have the conditions reviewed by a judge in the court having original
14 jurisdiction over the offense charged. A party applying for review shall be
15 given the opportunity for a hearing. Unless the conditions of release are
16 amended as requested, the judge shall set forth in writing or orally on the
17 record a reasonable basis for continuing the conditions imposed. In the event
18 that a judge in the court having original jurisdiction over the offense charged is
19 not available, any Superior judge may review such conditions.

20 (2) A person for whom conditions of release are imposed shall, within
21 five working days following application, be entitled to have the conditions

1 reviewed by a judge in the court having original jurisdiction over the offense
2 charged. A person applying for review shall be given the opportunity for a
3 hearing. Unless the conditions of release are amended as requested, the judge
4 shall set forth in writing or orally on the record a reasonable basis for
5 continuing the conditions imposed. In the event that a judge in the court
6 having original jurisdiction over the offense charged is not available, any
7 Superior judge may review such conditions.

8 (e) Amendment of order. A judicial officer ordering the release of a person
9 on any condition specified in this section may at any time amend the order to
10 impose additional or different conditions of release, provided that the
11 provisions of subsection (d) of this section shall apply.

12 (f) Definition. The term “judicial officer” as used in this section and
13 section 7556 of this title ~~shall mean~~ means a clerk of a Superior Court or a
14 Superior Court judge.

15 (g) Admissibility of evidence. Information stated in, or offered in
16 connection with, any order entered pursuant to this section need not conform to
17 the rules pertaining to the admissibility of evidence in a court of law.

18 (h) Forfeiture. Nothing contained in this section shall be construed to
19 prevent the disposition of any case or class of cases by forfeiture of collateral
20 security if such disposition is authorized by the court.

1 (i) Forms. The Court Administrator shall establish forms for appearance
2 bonds, secured appearance bonds, surety bonds, and for use in the posting of
3 bail. Each form shall include the following information:

4 (1) The bond or bail may be forfeited in the event that the defendant or
5 witness fails to appear at any required court proceeding.

6 (2) The surety or person posting bond or bail has the right to be released
7 from the obligations under the bond or bail agreement upon written application
8 to the judicial officer and detention of the defendant or witness.

9 (3) The bond will continue through sentencing in the event that bail is
10 continued after final adjudication.

11 (j) Juveniles. Any juvenile between 14 and 16 years of age who is charged
12 with a listed crime as defined in subdivision 5301(7) of this title shall appear
13 before a judicial officer and be ordered released pending trial in accordance
14 with this section within 24 hours following the juvenile's arrest.

15 Sec. 3. 13 V.S.A. § 7554e is added to read:

16 § 7554e. VIOLATIONS OF CONDITIONS OF RELEASE

17 (a) Arrest; citation; appearance.

18 (1) Whenever a person is alleged to have violated a condition of release
19 ordered by a court pursuant to section 7554 of this title, the person may be
20 arrested or cited to appear before the court in which the conditions of release
21 were ordered.

1 (2) A judicial officer may issue a warrant for the arrest of a person
2 charged with violating a condition of release and the person shall appear before
3 the judicial officer.

4 (3) The person alleged to have violated a condition of release shall
5 appear before the judicial officer not later than the next business day following
6 the arrest or citation for a summary hearing pursuant to subsection (b) of this
7 section.

8 (b) Hearing.

9 (1) A person appearing before a court pursuant to this section shall be
10 entitled to a hearing to determine whether a condition of release was violated.
11 In making the determination, the judicial officer shall consider the following:

12 (A) whether probable cause exists that the person committed an
13 offense under federal or State law while subject to conditions of release; or

14 (B) whether clear and convincing evidence shows that the person
15 violated a condition of release and finds that:

16 (i) based on the factors set forth in section 7554 of this title, there
17 is no condition or combination of conditions of release that will reasonably
18 ensure the person's court appearances, mitigate the person's risk of flight from
19 prosecution, or reasonably protect the public; or

20 (ii) the person is unlikely to abide by any condition or
21 combination of conditions of release.

1 (2) The judicial officer shall issue an appropriate order addressing the
2 alleged violation pursuant to subsection (d) of this section.

3 (c) Burden of proof; admissibility of evidence; rebuttable presumptions.

4 (1) The State shall have the burden to prove a violation of conditions of
5 release by clear and convincing evidence.

6 (2) Information stated in, or offered in connection with, any order
7 entered pursuant to this section need not conform to the rules pertaining to the
8 admissibility of evidence in a court of law.

9 (3) If probable cause is found that, while subject to conditions of
10 release, the person committed an offense under federal or State law, a
11 rebuttable presumption arises that no condition or combination of conditions
12 will reasonably ensure the person's court appearances, mitigate the person's
13 risk of flight from prosecution, or reasonably protect the public.

14 (4) In cases subject to subdivision (d)(4) of this section, when a person
15 violates a condition of release or commits a new criminal offense, a rebuttable
16 presumption arises that no condition or combination of conditions will
17 reasonably ensure the person's court appearances, mitigate the person's risk of
18 flight from prosecution, or reasonably protect the public when a person
19 violates a condition of release or commits a new criminal offense.

20 (d) Disposition of violations.

1 (1) If the judicial officer finds that there is a condition or combination of
2 conditions of release that will reasonably ensure the person's court
3 appearances, mitigate the person's risk of flight from prosecution, or
4 reasonably protect the public, and that the person is likely to abide by such
5 conditions, the officer shall treat the person pursuant to sections 7551 and 7554
6 of this title and may amend conditions of release accordingly.

7 (2) If the judicial officer finds that there is no condition or combination
8 of conditions of release that will reasonably ensure the person's court
9 appearances, mitigate the person's risk of flight from prosecution, or
10 reasonably protect the public, or that the person is unlikely to abide by such
11 conditions, the officer may commit the person to the custody of the
12 Commissioner of Corrections as a detainee subject to the limitations pursuant
13 to subdivisions (A)–(D) of this subdivision, provided the court determines that
14 such commitment is reasonably necessary to assist in the management of the
15 conduct or behavior of the person. A person committed to the custody of the
16 Commissioner of Corrections shall be detained for:

17 (A) not more than 14 days for a first violation of a condition of
18 release;

19 (B) not more than 30 days for a second violation of a condition of
20 release;

1 (C) not more than 30 days for a third violation of a condition of
2 release or any new criminal offense under federal or State law while subject to
3 conditions of release; and

4 (D) any amount of time, but not less than 30 days, that the judicial
5 officer determines is necessary to assist in the management or behavior of the
6 person for a fourth or subsequent violation of a condition of release, or the
7 commission of any new violent crime.

8 (3) A detainee held pursuant to subdivision (4) of this subsection shall
9 be entitled to review pursuant to subsection 7554(d) of this title.

10 (4) The court may revoke bail and hold a person without bail when the
11 person violates a condition of release issued in a case in which the person
12 could be held without bail pursuant to section 7553 or 7554a of this title, or
13 commits a new criminal offense while a case is pending in which the person
14 could be held without bail pursuant to section 7553 or 7554a of this title.

15 (e) Prosecution for contempt. Nothing in this section shall be construed to
16 modify or limit a judicial officer's ability to exercise the officer's own
17 authority to address contempt or to a prosecutor's ability to commence a
18 prosecution for contempt for any reason, including if the person violated a
19 condition of release.

1 Sec. 4. 13 V.S.A. § 7559 is amended to read:

2 § 7559. ~~RELEASE; DESIGNATION; SANCTIONS~~

3 ~~(a) The officer in charge of a facility under the control of the department of~~
4 ~~corrections, county jail or a local lockup shall discharge any person held by~~
5 ~~him or her upon receipt of an order for release issued by a judicial officer~~
6 ~~pursuant to section 7554 of this title, accompanied by the full amount of any~~
7 ~~bond or cash bail fixed by the judicial officer. The officer in charge, or a~~
8 ~~person designated by the Court Administrator, shall issue a receipt for such~~
9 ~~bond or cash bail, and shall account for and turn over such bond or cash bail to~~
10 ~~the court having jurisdiction.~~

11 ~~(b) The Court Administrator shall designate persons to set bail for any~~
12 ~~person under arrest prior to arraignment when the offense charged provides for~~
13 ~~a penalty of less than two years imprisonment or a fine of less than \$1,000.00~~
14 ~~or both. Such persons designated by the Court Administrator shall be~~
15 ~~considered judicial officers for the purposes of sections 7554 and 7556 of this~~
16 ~~title.~~

17 ~~(c) Any person who is designated by the Court Administrator under~~
18 ~~subsection (b) of this section, may refuse the designation by so notifying the~~
19 ~~Court Administrator in writing within seven days of the designation.~~

20 ~~(d) A person who has been released pursuant to section 7554 of this title~~
21 ~~with or without bail on condition that he or she appear at a specified time and~~

1 ~~place in connection with a prosecution for an offense and who without just~~
2 ~~cause fails to appear shall be imprisoned not more than two years or fined not~~
3 ~~more than \$5,000.00, or both.~~

4 ~~(e) The State's Attorney may commence a prosecution for criminal~~
5 ~~contempt under Rule 42 of the Vermont Rules of Criminal Procedure against a~~
6 ~~person who violates a condition of release imposed under section 7554 of this~~
7 ~~title. The maximum penalty that may be imposed under this subsection shall~~
8 ~~be a fine of \$1,000.00 or imprisonment for six months, or both. Upon~~
9 ~~commencement of a prosecution for criminal contempt, the court shall review,~~
10 ~~in accordance with section 7554 of this title, and may continue or modify~~
11 ~~conditions of release or terminate release of the person.~~

12 ~~(f) Notwithstanding Rule 3 of the Vermont Rules of Criminal Procedure, a~~
13 ~~law enforcement officer may arrest a person without a warrant when the officer~~
14 ~~has probable cause to believe the person without just cause has failed to appear~~
15 ~~at a specified time and place in connection with a prosecution for an offense or~~
16 ~~has violated a condition of release relating to a restriction on travel or a~~
17 ~~condition of release that he or she not directly contact, harass, or cause to be~~
18 ~~harassed a victim or potential witness. [Repealed.]~~

19 Sec. 5. 13 V.S.A. § 7576 is amended to read:

20 § 7576. DEFINITIONS

21 As used in this chapter:

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(9) “Flight from prosecution” means any action or behavior undertaken by a person charged with a criminal offense to avoid court proceedings, including noncompliance with court orders and failures to appear at court hearings.

Sec. 6. 13 V.S.A. § 7030 is amended to read:

§ 7030. SENTENCING ALTERNATIVES

(a) In determining which of the following should be ordered, the court shall consider the nature and circumstances of the crime; the history and character of the defendant; the defendant’s family circumstances and relationships; the impact of any sentence upon the defendant’s minor children; the need for treatment; any violations of conditions of release by the defendant; and the risk to self, others, and the community at large presented by the defendant:

(1) A deferred sentence pursuant to section 7041 of this title.

(2) Referral to a community reparative board pursuant to 28 V.S.A. chapter 12 in the case of an offender who has pled guilty to a nonviolent felony, a nonviolent misdemeanor, or a misdemeanor that does not involve the subject areas prohibited for referral to a community justice center under 24 V.S.A. § 1967. Referral to a community reparative board pursuant to this subdivision does not require the court to place the offender on probation. The offender shall return to court for further sentencing if the reparative board does

1 not accept the case or if the offender fails to complete the reparative board
2 program to the satisfaction of the board in a time deemed reasonable by the
3 board.

4 (3) Probation pursuant to 28 V.S.A. § 205.

5 (4) Supervised community sentence pursuant to 28 V.S.A. § 352.

6 (5) Sentence of imprisonment.

7 (b) When ordering a sentence of probation, the court may require
8 participation in the Restorative Justice Program established by 28 V.S.A.
9 chapter 12 as a condition of the sentence.

10 Sec. 7. 18 V.S.A. § 4253 is amended to read:

11 § 4253. USE OF A FIREARM WHILE SELLING OR DISPENSING A
12 DRUG

13 (a) A person who uses a firearm during and in relation to selling or
14 dispensing a regulated drug in violation of subdivision 4230(b)(3), 4231(b)(3),
15 4232(b)(3), 4233(b)(3), 4234(b)(3), 4234a(b)(3), 4235(c)(3), or 4235a(b)(3) of
16 this title shall be imprisoned not more than three years or fined not more than
17 \$5,000.00, or both, in addition to the penalty for the underlying crime.

18 (b) A person who uses a firearm during and in relation to trafficking a
19 regulated drug in violation of subsection 4230(c), 4231(c), 4233(c), or
20 4234a(c) of this title shall be imprisoned not more than five years or fined not

1 more than \$10,000.00, or both, in addition to the penalty for the underlying
2 crime.

3 (c) For purposes of this section, “use of a firearm” ~~shall include~~ includes:

4 (1) carrying or possessing a firearm; and

5 (2) the exchange of firearms for drugs, and this section shall apply to the
6 person who trades a firearm for a drug and the person who trades a drug for a
7 firearm.

8 (d) Conduct constituting the offense of using a firearm while selling,
9 dispensing, or trafficking a regulated drug shall be considered a violent act for
10 the purposes of determining bail.

11 Sec. 8. 3 V.S.A. § 164 is amended to read:

12 § 164. ADULT COURT DIVERSION PROGRAM

13 (a) The Attorney General shall develop and administer an adult court
14 diversion program in all counties. In consultation with diversion programs, the
15 Attorney General shall adopt a policies and procedures manual in compliance
16 with this section.

17 (b) The program shall be designed for two purposes:

18 (1) To assist adults who have been charged with a first ~~or a second~~
19 misdemeanor or a first nonviolent felony.

20 (2) To assist persons who have been charged with an offense and who
21 have substance abuse or mental health treatment needs regardless of the

1 person's prior criminal history record, except a person charged with a felony
2 offense that is a crime listed in 13 V.S.A. § 5301(7) shall not be eligible under
3 this section. Persons who have attained 18 years of age who are subject to a
4 petition in the Family Division pursuant to 33 V.S.A. ~~chapters~~ chapter 52 or
5 52A shall also be eligible under this section. Programming for these persons is
6 intended to support access to appropriate treatment or other resources with the
7 aim of improving the person's health and reducing future adverse involvement
8 in the justice system.

9 * * *

10 (e) All adult court diversion programs receiving financial assistance from
11 the Attorney General shall adhere to the following provisions:

12 (1) The diversion program shall accept only persons against whom
13 charges have been filed and the court has found probable cause, but are not yet
14 adjudicated. A repeat offender shall not be accepted by the diversion program.
15 The prosecuting attorney may refer a person to diversion either before or after
16 arraignment and shall notify in writing the diversion program and the court of
17 ~~his or her~~ the attorney's intention to refer the person to diversion. The matter
18 shall become confidential when notice is provided to the court, except that for
19 persons who are subject to conditions of release imposed pursuant to 13 V.S.A.
20 § 7554 and who are referred to diversion pursuant to subdivision (b)(2) of this
21 section, the matter shall become confidential upon the successful completion of

1 diversion. If a person is charged with a qualifying crime as defined in
2 13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall
3 provide the person with the opportunity to participate in the court diversion
4 program unless the prosecutor states on the record at arraignment or a
5 subsequent hearing why a referral to the program would not serve the ends of
6 justice. If the prosecuting attorney refers a case to diversion, the prosecuting
7 attorney may release information to the victim upon a showing of legitimate
8 need and subject to an appropriate protective agreement defining the purpose
9 for which the information is being released and in all other respects
10 maintaining the confidentiality of the information; otherwise, files held by the
11 court, the prosecuting attorney, and the law enforcement agency related to the
12 charges shall be confidential and shall remain confidential unless:

- 13 (A) the diversion program declines to accept the case;
14 (B) the person declines to participate in diversion;
15 (C) the diversion program accepts the case, but the person does not
16 successfully complete diversion; or
17 (D) the prosecuting attorney recalls the referral to diversion.

18 (2) Alleged offenders shall be informed of their right to the advice and
19 assistance of private counsel or the public defender at all stages of the
20 diversion process, including the initial decision to participate, and the decision

1 to accept the adult diversion contract, so that the candidate may give informed
2 consent.

3 (3) The participant shall be informed that ~~his or her~~ the participant's
4 selection of the adult diversion contract is voluntary.

5 (4) Each State's Attorney, in cooperation with the Office of the Attorney
6 General and the adult court diversion program, shall develop clear criteria for
7 deciding what types of offenses and offenders will be eligible for diversion;
8 however, the State's Attorney shall retain final discretion over the referral of
9 each case for diversion, but in no event shall repeat offenders be eligible for
10 referral.

11 (5) All information gathered in the course of the adult diversion process
12 shall be held strictly confidential and shall not be released without the
13 participant's prior consent ~~(except that research and reports that do not~~
14 ~~establish the identity of individual participants are allowed)~~.

15 * * *

16 (g)(1) Within 30 days after the two-year anniversary of a successful
17 completion of adult diversion, the court shall provide notice to all parties of
18 record of the court's intention to order the expungement of all court files and
19 records, law enforcement records other than entries in the adult court diversion
20 program's centralized filing system, fingerprints, and photographs applicable
21 to the proceeding. However, the court shall not order expungement if the

1 participant does not satisfy each of subdivisions (A)–(D) of this subdivision.

2 The court shall give the State’s Attorney an opportunity for a hearing to contest
3 the expungement of the records. The court shall expunge the records if it
4 finds:

5 (A) two years have elapsed since the successful completion of the
6 adult diversion program by the participant;

7 (B) the participant has not been convicted of a subsequent felony or
8 misdemeanor during the two-year period, and no proceedings are pending
9 seeking such conviction;

10 (C) rehabilitation of the participant has been attained to the
11 satisfaction of the court; and

12 (D) the participant does not owe restitution related to the case.

13 (2) The court may expunge any records that were sealed pursuant to this
14 subsection prior to July 1, 2018 unless the State’s Attorney’s office that
15 prosecuted the case objects. Thirty days prior to expunging a record pursuant
16 to this subdivision, the court shall provide written notice of its intent to
17 expunge the record to the State’s Attorney’s office that prosecuted the case.

18 (3)(A) The court shall keep a special index of cases that have been
19 expunged pursuant to this section together with the expungement order. The
20 index shall list only the name of the person convicted of the offense, ~~his or her~~

1 the person's date of birth, the docket number, and the criminal offense that was
2 the subject of the expungement.

3 (B) The special index and related documents specified in subdivision
4 (A) of this subdivision (3) shall be confidential and shall be physically and
5 electronically segregated in a manner that ensures confidentiality and that
6 limits access to authorized persons.

7 (C) Inspection of the expungement order and the certificate may be
8 permitted only upon petition by the person who is the subject of the case. The
9 Chief Superior Judge may permit special access to the index and the
10 documents for research purposes pursuant to the rules for public access to
11 court records.

12 (D) The Court Administrator shall establish policies for
13 implementing this subsection (g).

14 * * *

15 Sec. 9. 3 V.S.A. § 169 is added to read:

16 § 169. RESTORATIVE JUSTICE REFERRALS; REPORT

17 (a) Report. Annually, on or before November 15, the Office of the
18 Attorney General, in consultation with the Department of Corrections and
19 entities employing restorative justice principles, including community justice
20 centers, shall submit a report to the House Committees on Judiciary, and on
21 Corrections and Institutions; the Senate Committee on Judiciary; and the Joint

1 Legislative Justice Oversight Committee examining referrals to diversion and
2 other programs and services employing restorative justice principles. The
3 report shall include data showing the number of:

4 (1) referrals by crime type;

5 (2) first-time offenders by crime type;

6 (3) repeat offenders by crime type; and

7 (4) times an individual has been referred to the same program or service
8 and for which crimes.

9 (b) Data sharing. Notwithstanding any provision of law to the contrary, the
10 Office of the Attorney General and the Department of Corrections shall
11 collaborate, share, and disclose any data relevant to complete the report
12 required by subsection (a) of this section. The obligation to disclose shall
13 supersede any other legal obligation with respect to the data required pursuant
14 to this section and the Office of the Attorney General and the Department of
15 Corrections shall not decline to collaborate, share, and disclose relevant data
16 based on any other purported legal obligation.

17 (c) Confidentiality. Any data or records transmitted to or obtained by the
18 Office of the Attorney General and the Department of Corrections pursuant to
19 this section are exempt from public inspection and copying under the Public
20 Records Act and shall be confidential to the extent required by law unless and
21 until the data or records are included in the report required by this section.

- 1 Sec. 10. EFFECTIVE DATE
- 2 This act shall take effect on passage.