

1 H.674

2 Introduced by Representative Wizowaty of Burlington

3 Referred to Committee on

4 Date:

5 Subject: Judicial Bureau; jurisdiction

6 Statement of purpose of bill as introduced: This bill proposes to expand the
7 jurisdiction of the Judicial Bureau by decriminalizing simple assault;
8 disorderly conduct; bad checks; retail theft; theft of rented property; unlawful
9 mischief; third offense for the purchase or attempt to purchase alcohol by a
10 minor; third offense for the knowing and unlawful possession of marijuana by
11 a minor; and noise in the nighttime.

12 An act relating to the decriminalization of various offenses

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

14 Sec. 1. 4 V.S.A. § 1102 is amended to read:

15 § 1102. JUDICIAL BUREAU; JURISDICTION

16 (a) A Judicial Bureau is created within the Judicial Branch under the
17 supervision of the Supreme Court.

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

19 * * *

20 (25) Violations of 13 V.S.A. § 1023, relating to simple assault.

1 (26) Violations of 13 V.S.A. § 1026, relating to disorderly conduct.

2 (27) Violations of 13 V.S.A. § 2022, relating to the issuance or passing
3 of bad checks.

4 (28) Violations of 13 V.S.A. § 2575, relating to retail theft.

5 (29) Violations of 13 V.S.A. § 2591, relating to the theft of rented
6 property.

7 (30) Violations of 13 V.S.A. § 3701, relating to the act of unlawful
8 mischief.

9 (31) Violations of 7 V.S.A. § 657, relating to a third offense for the
10 purchase or attempt to purchase malt or vinous beverages or spirituous liquor
11 by a person under 21 years of age.

12 (32) Violations of 18 V.S.A. § 4230(c), relating to a third offense for the
13 knowing and unlawful possession of marijuana or hashish.

14 (33) Violations of 13 V.S.A. § 1022, relating to noise in the nighttime.

15 Sec. 2. 13 V.S.A. § 1023 is amended to read:

16 § 1023. SIMPLE ASSAULT

17 (a) A person is guilty of simple assault if he or she:

18 (1) attempts to cause or purposely, knowingly, or recklessly causes
19 bodily injury to another; or

20 (2) negligently causes bodily injury to another with a deadly weapon; or

1 (3) attempts by physical menace to put another in fear of imminent
2 serious bodily injury.

3 (b) A person who ~~is convicted of~~ commits simple assault shall be
4 ~~imprisoned for not more than one year or fined not more than \$1,000.00, or~~
5 ~~both, unless the offense is committed in a fight or scuffle entered into by~~
6 ~~mutual consent, in which case a person convicted of simple assault shall be~~
7 ~~imprisoned not more than 60 days or fined not more than \$500.00 or both~~
8 assessed a civil penalty of not more than \$1,000.00 unless the offense is
9 committed in a fight or scuffle entered into by mutual consent, in which case a
10 person who commits simple assault shall be assessed a civil penalty of not
11 more than \$500.00.

12 Sec. 3. 13 V.S.A. § 1026 is amended to read:

13 § 1026. DISORDERLY CONDUCT

14 A person who, with intent to cause public inconvenience, or annoyance or
15 recklessly creating a risk thereof:

16 (1) ~~Engages~~ engages in fighting or in violent, tumultuous or threatening
17 behavior; or

18 (2) ~~Makes~~ makes unreasonable noise; or

19 (3) ~~In~~ in a public place, uses abusive or obscene language; or

20 (4) ~~Without~~ without lawful authority, disturbs any lawful assembly or
21 meeting of persons; or

1 (5) ~~Obstructs~~ obstructs vehicular or pedestrian traffic, shall be
2 ~~imprisoned for not more than 60 days or fined not more than \$500.00 or both~~
3 assessed a civil penalty of not more than \$500.00.

4 Sec. 4. 13 V.S.A. 2022 is amended to read:

5 § 2022. BAD CHECKS

6 (a) A person who issues or passes a check or similar ~~sight~~ order for the
7 payment of money, knowing that it will not be honored by the drawee,
8 commits a civil offense and shall be imprisoned for not more than one year or
9 fined not more than \$1,000.00 or both assessed a civil penalty of not more than
10 \$1,000.00.

11 (b) The court shall order restitution in the amount of the check or order,
12 together with a service charge not to exceed \$5.00, if it is established that the
13 defendant has the ability to pay. For the purposes of this section, it may be
14 inferred that the issuer knew that the check or order, other than a post-dated
15 check or order, would not be paid if:

16 (1) the issuer had no account with the drawee at the time the check or
17 order was issued; or

18 (2) the issuer had insufficient funds with the drawee at the time the
19 check or order was issued or presented for payment; and

20 (A) the check or order was presented to the drawee for payment not
21 more than 30 days after the date of issuance; and

1 (B) payment was refused by the drawee for reasons other than seizure
2 or attachment of the issuer's funds by order of a court or authorized
3 governmental agency; and

4 (C) the issuer or a person acting in his or her behalf failed to make
5 full satisfaction of the amount of the check or order within 10 days after
6 receiving notice of its dishonor by the drawee.

7 Sec. 5. 13 V.S.A. § 2577 is amended to read:

8 § 2577. PENALTY

9 (a) A person ~~convicted of the offense of~~ who commits retail theft of
10 merchandise having a retail value not in excess of \$900.00 commits a civil
11 offense and shall be punished by a fine assessed a civil penalty of not more
12 than \$500.00 ~~or imprisonment for not more than six months, or both.~~

13 (b) A person ~~convicted of the offense of~~ who commits retail theft of
14 merchandise having a retail value in excess of \$900.00 commits a civil offense
15 and shall be punished by a fine assessed a civil penalty of not more than
16 \$1,000.00 ~~or imprisonment for not more than 10 years, or both.~~

17 (c) Notwithstanding the provisions of subsections (a) and (b) of this
18 section, a person ~~convicted of~~ who commits retail theft pursuant to:

19 (1) ~~Subdivision~~ subdivision 2575(4) of this title shall be ~~imprisoned not~~
20 ~~more than two years or fined~~ assessed a civil penalty of not more than
21 \$1,000.00, ~~or both; or~~

1 (2) ~~Subdivision~~ subdivision 2575(5), (6), or (7) of this title shall be
2 ~~imprisoned for not more than 10 years or fined~~ assessed a civil penalty of not
3 more than \$5,000.00, or both.

4 Sec. 6. 13 V.S.A. § 2578 is repealed:

5 § 2578. ~~RESTITUTION~~

6 ~~(a) A sentencing court may order reasonable restitution where merchandise~~
7 ~~stolen is not recovered or is recovered in damaged condition. Damages shall be~~
8 ~~calculated based on retail value.~~

9 ~~(b) Restitution may be ordered in addition to any other penalties imposed.~~

10 ~~(c) Restitution shall be supervised by the department of corrections.~~

11 [Repealed.]

12 Sec. 7. 13 V.S.A. § 2579 is amended to read:

13 § 2579. CIVIL RECOVERY FOR RETAIL THEFT

14 (a) Any person over ~~the age of~~ 16 years of age or any emancipated minor
15 who commits the offense of retail theft against a retail mercantile
16 establishment in violation of section 2575 of this title shall be civilly liable to
17 the retail mercantile establishment in an amount consisting of:

18 (1) damages equal to the retail price of the merchandise if the item is not
19 returned in a merchantable condition; and

20 (2) a civil penalty of two times the retail price of the merchandise, to be
21 not less than \$25.00 and not more than \$300.00.

1 (b) The fact that an action may be brought against an individual as
2 provided in this section shall not limit the right of a retail mercantile
3 establishment to demand, in writing, that a person who is liable for damages
4 and penalties under this section remit the damages and penalties prior to the
5 commencement of any legal action.

6 (c) If the person to whom a demand is made complies with the demand,
7 that person shall incur no further civil liability for that specific act of retail
8 theft.

9 (d) Any demand made under this section shall be accompanied by a copy
10 of this law.

11 (e) ~~A criminal prosecution under section 2575 of this title is not a~~
12 ~~prerequisite to the applicability of this section and such a criminal prosecution~~
13 ~~shall not bar an action under this section. An action under this section shall not~~
14 ~~bar a criminal prosecution under section 2575 of this title. [Repealed.]~~

15 (f) The provisions of this section shall not be construed to prohibit or limit
16 any other cause of action which a retail mercantile establishment may have
17 against a person who unlawfully takes merchandise from a retail mercantile
18 establishment, except as provided in subsection (c) of this section.

19 (g) Any testimony or statements by the defendant or any evidence derived
20 from an attempt to reach a civil settlement or from a civil proceeding brought

1 under this section shall be inadmissible in any other court proceeding relating
2 to such retail theft.

3 (h) If a retail mercantile establishment files suit to recover damages and
4 penalties pursuant to subsection (a) of this section and the mercantile
5 establishment fails to appear at a hearing in such proceedings without excuse
6 from the court, the court shall dismiss the suit with prejudice and award costs
7 to the defendant.

8 (i) A person who knowingly uses the provisions of this section to demand
9 or extract money from a person who is not legally obligated to pay a penalty
10 commits a civil offense and shall be ~~imprisoned not more than one year or~~
11 ~~fined~~ assessed a civil penalty of not more than \$1,000.00, ~~or both.~~

12 Sec. 8. 13 V.S.A. § 2591 is amended to read:

13 § 2591. THEFT OF RENTED PROPERTY

14 (a) A person who converts to his or her own use any personal property,
15 other than a motor vehicle leased or rented pursuant to a written agreement
16 which has been entrusted to the person under an agreement in writing which
17 provides for the delivery of that personal property to a particular person or
18 place or at a particular time, abandons it, or refuses or neglects to deliver it to
19 the person or place and at the time specified in the written agreement, or who
20 destroys, secretes, appropriates, converts, sells, or attempts to sell all or any

1 part of it, or who removes or permits or causes it to be removed from this state,
2 without the consent of its owner, shall ~~be~~:

3 (1) if the value of the property involved is \$900.00 or less, ~~imprisoned~~
4 ~~not more than six months or~~ be assessed a civil penalty of not more than
5 \$500.00, ~~or both~~;

6 (2) if the property involved exceeds \$900.00 in value:

7 (A) ~~imprisoned for not more than two years or fined~~ be assessed a
8 civil penalty of not more than \$1,000.00, ~~or both~~; or

9 (B) ~~imprisoned for not more than five years or fined~~ be assessed a
10 civil penalty of not more than \$5,000.00 if the person has been previously
11 ~~convicted of~~ found to have committed a violation of this subdivision (a)(2) ~~of~~
12 ~~this section.~~

13 (b) All written agreements for the rental of personal property shall bear a
14 statement in bold face type in the following form:

15 NOTICE

16 FAILURE TO RETURN THE RENTAL PROPERTY WITHIN 72
17 HOURS AFTER DELIVERY TO YOU OF NOTICE TO RETURN, OR
18 WITHIN 15 DAYS AFTER THIS AGREEMENT HAS EXPIRED OR THE
19 PRESENTING OF FALSE, FICTITIOUS OR MISLEADING
20 IDENTIFICATION MAY BE CONSIDERED AS EVIDENCE OF AN
21 INTENTION TO COMMIT LARCENY.

1 Sec. 9. 13 V.S.A. § 3701 is amended to read:

2 § 3701. UNLAWFUL MISCHIEF

3 (a) A person who, with intent to damage property, and having no right to
4 do so or any reasonable ground to believe that he or she has such a right, does
5 any damage to any property which is valued in an amount exceeding \$1,000.00
6 commits a civil offense and shall be ~~imprisoned for not more than five years or~~
7 ~~fined~~ assessed a civil penalty of not more than \$5,000.00 ~~or both.~~

8 (b) A person who, with intent to damage property, and having no right to
9 do so or any reasonable ground to believe that he or she has such a right, does
10 any damage to any property which is valued in an amount exceeding \$250.00
11 commits a civil offense and shall be ~~imprisoned for not more than one year or~~
12 ~~fined~~ assessed a civil penalty of not more than \$1,000.00 ~~or both.~~

13 (c) A person who, having no right to do so or any reasonable ground to
14 believe that he or she has such a right, intentionally does any damage to
15 property of any value not exceeding \$250.00 commits a civil offense and shall
16 be ~~imprisoned for not more than six months or fined~~ assessed a civil penalty of
17 not more than \$500.00 ~~or both.~~

18 (d) A person who, with intent to damage property, and having no right to
19 do so or any reasonable ground to believe that he or she has such a right, does
20 any damage to any property by means of an explosive commits a civil offense

1 ~~and shall be imprisoned for not more than five years or fined~~ assessed a civil
2 penalty of not more than \$5,000 or both.

3 (e) ~~For the purposes of~~ As used in this section, “property” means real or
4 personal property.

5 (f) A person who suffers damages as a result of a violation of this section
6 may recover those damages together with reasonable attorney’s fees in a civil
7 action under this section.

8 Sec. 10. 7 V.S.A. § 657 is amended to read:

9 § 657. PERSON UNDER 21 YEARS OF AGE MISREPRESENTING AGE,
10 PROCURING, POSSESSING, OR CONSUMING ALCOHOLIC
11 BEVERAGES; THIRD OR SUBSEQUENT OFFENSE

12 A person under 21 years of age who engages in conduct in violation of
13 subdivision 656(a)(1) of this title ~~commits a crime if the person and who~~ has
14 been adjudicated at least twice previously in violation of subdivision 656(a)(1)
15 of this title commits a civil offense and shall be ~~imprisoned not more than 30~~
16 ~~days or fined~~ assessed a civil penalty of not more than \$600.00, or both.

17 Sec. 11. 18 V.S.A. § 4230c is amended to read:

18 § 4230c. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS
19 OF AGE; THIRD OR SUBSEQUENT OFFENSE; CRIME

20 No person shall knowingly and unlawfully possess marijuana. A person
21 under 21 years of age who knowingly and unlawfully possesses one ounce or

1 less of marijuana or five grams or less of hashish ~~commits a crime if the person~~
2 and who has been adjudicated at least twice previously in violation of section
3 4230b of this title commits a civil offense and shall be ~~imprisoned not more~~
4 ~~than 30 days or fined~~ assessed a civil penalty of not more than \$600.00, ~~or~~
5 ~~both.~~

6 Sec. 12. 13 V.S.A. § 1022 is amended to read:

7 § 1022. NOISE IN THE NIGHTTIME

8 A person who, between sunset and sunrise, disturbs and breaks the public
9 peace by firing guns, blowing horns, or other unnecessary and offensive noise
10 commits a civil offense and shall be ~~fined~~ assessed a civil penalty of not more
11 than \$ 50.00. However, this section shall not prevent a person employing
12 workmen, for the purpose of giving notice to his or her employees, from
13 ringing bells or using whistles or gongs of such size and weight, in such
14 manner, and at such hours as the selectmen of the town, the aldermen of the
15 city, or the trustees of the village may prescribe in writing.

16 Sec. 13. EFFECTIVE DATE

17 This act shall take effect on July 1, 2014.