

1 H.774

2 Introduced by Representatives Oliver of Sheldon, Goslant of Northfield,
3 Bartley of Fairfax, Beck of St. Johnsbury, Branagan of Georgia,
4 Brennan of Colchester, Burditt of West Rutland, Clifford of
5 Rutland City, Demar of Enosburgh, Graham of Williamstown,
6 Hango of Berkshire, Harrison of Chittenden, Labor of Morgan,
7 McFaun of Barre Town, Morgan of Milton, Morrissey of
8 Bennington, Page of Newport City, Parsons of Newbury,
9 Peterson of Clarendon, Shaw of Pittsford, Smith of Derby,
10 Walker of Swanton, and Williams of Granby

11 Referred to Committee on

12 Date:

13 Subject: Crimes; criminal procedure; bail; conditions of release

14 Statement of purpose of bill as introduced: This bill proposes to expand the
15 mechanisms to hold offenders accountable for violations of conditions of
16 release. Specifically, this bill proposes to lift the \$200.00 cap on bail for
17 persons who commit a new offense while on pretrial release; explicitly permits
18 a court to consider whether a person is subject to pretrial release or community
19 supervision, and is compliant with current court orders when setting conditions
20 of release; creates an expedited summary hearing procedure for violations of
21 conditions of release; prohibits repeat offenders from being referred to

1 diversion; permits courts to consider any violations of conditions of release
2 during sentencing; and requires the Office of the Attorney General and
3 Department of Corrections to report annually on various data related to
4 referrals to diversion and other programs employing restorative justice.

5 An act relating to bail and violations of conditions of release

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

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

8 § 7551. IMPOSITION OF BAIL, SECURED APPEARANCE BONDS, AND
9 APPEARANCE BONDS

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

18 (b) Limitation on imposition of bail, secured appearance bonds, and
19 appearance bonds.

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

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

6 ~~(B)~~ ~~at the initial appearance or upon the temporary release pursuant~~
7 ~~to Rule 5(b) of the Vermont Rules of Criminal Procedure of a person charged~~
8 ~~with a violation of a misdemeanor offense that is eligible for expungement~~
9 ~~pursuant to subdivision 7601(4)(A) of this title.~~

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

17 (3) This subsection shall not be construed to restrict the court's ability to
18 impose conditions on such persons to reasonably mitigate the risk of flight
19 from prosecution or to reasonably protect the public in accordance with section
20 7554 of this title.

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

2 § 7554. RELEASE PRIOR TO TRIAL

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

7 (1) The defendant shall be ordered released on personal recognizance or
8 upon the execution of an unsecured appearance bond in an amount specified by
9 the judicial officer unless the judicial officer determines that such a release will
10 not reasonably mitigate the risk of flight from prosecution as required. In
11 determining whether the defendant presents a risk of flight from prosecution,
12 the judicial officer shall consider, in addition to any other factors, the
13 seriousness of the offense charged and the number of offenses with which the
14 person is charged. If the judicial officer determines that the defendant presents
15 a risk of flight from prosecution, the officer shall, either in lieu of or in
16 addition to the methods of release in this section, impose the least restrictive of
17 the following conditions or the least restrictive combination of the following
18 conditions that will reasonably mitigate the risk of flight ~~of~~ from prosecution
19 by the defendant as required:

20 (A) Place the defendant in the custody of a designated person or
21 organization agreeing to supervise ~~him or her~~ the defendant if the defendant is

1 charged with an offense that is not a nonviolent misdemeanor or nonviolent
2 felony as defined in 28 V.S.A. § 301.

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

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

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

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

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

20 (G) [Repealed.]

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

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

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

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

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

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

1 (F) [Repealed.]

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

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

8 (1) In subdivision (a)(1) of this section, the judicial officer, on the basis
9 of available information, shall take into account the nature and circumstances
10 of the offense charged; the weight of the evidence against the accused; the
11 accused's employment; financial resources, including the accused's ability to
12 post bail; the accused's character and mental condition; the accused's length of
13 residence in the community; and the accused's record of appearance at court
14 proceedings or of flight ~~to avoid~~ from prosecution or failure to appear at court
15 proceedings.

16 (2) In subdivision (a)(2) of this section, the judicial officer, on the basis
17 of available information, shall take into account the nature and circumstances
18 of the offense charged; the weight of the evidence against the accused; ~~and~~ the
19 accused's family ties, employment, character and mental condition, length of
20 residence in the community, record of convictions, and record of appearance at
21 court proceedings or of flight ~~to avoid~~ from prosecution or failure to appear at

1 court proceedings; whether the accused is subject to release on personal
2 recognizance or subject to conditions of release prior to trial, sentencing, or
3 appeal in another case pending before federal or state court; whether the
4 accused is on probation, parole, furlough, or some other form of community
5 supervision in another case adjudicated before a federal or state court; and
6 whether the accused is currently compliant with any standing court orders.

7 Recent history of actual violence or threats of violence may be considered by
8 the judicial officer as bearing on the character and mental condition of the
9 accused.

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

16 (d) Review of conditions.

17 (1) A person for whom conditions of release are imposed and who is
18 detained as a result of ~~his or her~~ the person's inability to meet the conditions
19 of release or who is ordered released on a condition that ~~he or she~~ the person
20 return to custody after specified hours, or the State, following a material
21 change in circumstances, shall, within 48 hours following application, be

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

8 (2) A person for whom conditions of release are imposed shall, within
9 five working days following application, be entitled to have the conditions
10 reviewed by a judge in the court having original jurisdiction over the offense
11 charged. A person applying for review shall be given the opportunity for a
12 hearing. Unless the conditions of release are amended as requested, the judge
13 shall set forth in writing or orally on the record a reasonable basis for
14 continuing the conditions imposed. In the event that a judge in the court
15 having original jurisdiction over the offense charged is not available, any
16 Superior judge may review such conditions.

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

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

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

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

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

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

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

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

20 (j) Juveniles. Any juvenile between 14 and 16 years of age who is charged
21 with a listed crime as defined in subdivision 5301(7) of this title shall appear

1 before a judicial officer and be ordered released pending trial in accordance
2 with this section within 24 hours following the juvenile's arrest.

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

4 § 7554e. VIOLATIONS OF CONDITIONS OF RELEASE

5 (a) Arrest; citation; appearance.

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

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

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

17 (b) Hearing.

18 (1) A person appearing before a court pursuant to this section shall be
19 entitled to a hearing to determine whether a condition of release was violated.

20 In making the determination, the judicial officer shall consider the following:

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

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

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

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

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

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

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

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

19 (3) If probable cause is found that, while subject to conditions of
20 release, the person committed an offense under federal or State law, a
21 rebuttable presumption arises that no condition or combination of conditions

1 will reasonably ensure the person's court appearances, mitigate the person's
2 risk of flight from prosecution, or reasonably protect the public.

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

9 (d) Disposition of violations.

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

16 (2) If the judicial officer finds that there is no condition or combination
17 of conditions of release that will reasonably ensure the person's court
18 appearances, mitigate the person's risk of flight from prosecution, or
19 reasonably protect the public, or that the person is unlikely to abide by such
20 conditions, the officer may commit the person to the custody of the
21 Commissioner of Corrections as a detainee subject to the limitations pursuant

1 to subdivisions (A)–(D) of this subdivision, provided the court determines that
2 such commitment is reasonably necessary to assist in the management of the
3 conduct or behavior of the person. A person committed to the custody of the
4 Commissioner of Corrections shall be detained for:

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

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

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

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

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

18 (4) The court may revoke bail and hold a person without bail when the
19 person violates a condition of release issued in a case in which the person
20 could be held without bail pursuant to section 7553 or 7554a of this title, or

1 commits a new criminal offense while a case is pending in which the person
2 could be held without bail pursuant to section 7553 or 7554a of this title.

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

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

9 § 7559. ~~RELEASE; DESIGNATION; SANCTIONS~~

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

18 ~~(b) The Court Administrator shall designate persons to set bail for any~~
19 ~~person under arrest prior to arraignment when the offense charged provides for~~
20 ~~a penalty of less than two years imprisonment or a fine of less than \$1,000.00~~
21 ~~or both. Such persons designated by the Court Administrator shall be~~

1 considered judicial officers for the purposes of sections 7554 and 7556 of this
2 title.

3 ~~(e) Any person who is designated by the Court Administrator under
4 subsection (b) of this section, may refuse the designation by so notifying the
5 Court Administrator in writing within seven days of the designation.~~

6 ~~(d) A person who has been released pursuant to section 7554 of this title
7 with or without bail on condition that he or she appear at a specified time and
8 place in connection with a prosecution for an offense and who without just
9 cause fails to appear shall be imprisoned not more than two years or fined not
10 more than \$5,000.00, or both.~~

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

19 ~~(f) Notwithstanding Rule 3 of the Vermont Rules of Criminal Procedure, a
20 law enforcement officer may arrest a person without a warrant when the officer
21 has probable cause to believe the person without just cause has failed to appear~~

1 ~~at a specified time and place in connection with a prosecution for an offense or~~
2 ~~has violated a condition of release relating to a restriction on travel or a~~
3 ~~condition of release that he or she not directly contact, harass, or cause to be~~
4 ~~harassed a victim or potential witness. [Repealed.]~~

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

6 § 7576. DEFINITIONS

7 As used in this chapter:

8 * * *

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

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

14 § 7030. SENTENCING ALTERNATIVES

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

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

1 (2) Referral to a community reparative board pursuant to 28 V.S.A.
2 chapter 12 in the case of an offender who has pled guilty to a nonviolent
3 felony, a nonviolent misdemeanor, or a misdemeanor that does not involve the
4 subject areas prohibited for referral to a community justice center under
5 24 V.S.A. § 1967. Referral to a community reparative board pursuant to this
6 subdivision does not require the court to place the offender on probation. The
7 offender shall return to court for further sentencing if the reparative board does
8 not accept the case or if the offender fails to complete the reparative board
9 program to the satisfaction of the board in a time deemed reasonable by the
10 board.

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

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

13 (5) Sentence of imprisonment.

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

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

18 § 4253. USE OF A FIREARM WHILE SELLING OR DISPENSING A

19 DRUG

20 (a) A person who uses a firearm during and in relation to selling or
21 dispensing a regulated drug in violation of subdivision 4230(b)(3), 4231(b)(3),

1 4232(b)(3), 4233(b)(3), 4234(b)(3), 4234a(b)(3), 4235(c)(3), or 4235a(b)(3) of
2 this title shall be imprisoned not more than three years or fined not more than
3 \$5,000.00, or both, in addition to the penalty for the underlying crime.

4 (b) A person who uses a firearm during and in relation to trafficking a
5 regulated drug in violation of subsection 4230(c), 4231(c), 4233(c), or
6 4234a(c) of this title shall be imprisoned not more than five years or fined not
7 more than \$10,000.00, or both, in addition to the penalty for the underlying
8 crime.

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

10 (1) carrying or possessing a firearm; and

11 (2) the exchange of firearms for drugs, and this section shall apply to the
12 person who trades a firearm for a drug and the person who trades a drug for a
13 firearm.

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

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

18 § 164. ADULT COURT DIVERSION PROGRAM

19 (a) The Attorney General shall develop and administer an adult court
20 diversion program in all counties. In consultation with diversion programs, the

1 Attorney General shall adopt a policies and procedures manual in compliance
2 with this section.

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

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

6 (2) To assist persons who have been charged with an offense and who
7 have substance abuse or mental health treatment needs regardless of the
8 person's prior criminal history record, except a person charged with a felony
9 offense that is a crime listed in 13 V.S.A. § 5301(7) shall not be eligible under
10 this section. Persons who have attained 18 years of age who are subject to a
11 petition in the Family Division pursuant to 33 V.S.A. ~~chapters~~ chapter 52 or
12 52A shall also be eligible under this section. Programming for these persons is
13 intended to support access to appropriate treatment or other resources with the
14 aim of improving the person's health and reducing future adverse involvement
15 in the justice system.

16 * * *

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

19 (1) The diversion program shall accept only persons against whom
20 charges have been filed and the court has found probable cause, but are not yet
21 adjudicated. A repeat offender shall not be accepted by the diversion program.

1 The prosecuting attorney may refer a person to diversion either before or after
2 arraignment and shall notify in writing the diversion program and the court of
3 ~~his or her~~ the attorney's intention to refer the person to diversion. The matter
4 shall become confidential when notice is provided to the court, except that for
5 persons who are subject to conditions of release imposed pursuant to 13 V.S.A.
6 § 7554 and who are referred to diversion pursuant to subdivision (b)(2) of this
7 section, the matter shall become confidential upon the successful completion of
8 diversion. If a person is charged with a qualifying crime as defined in
9 13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall
10 provide the person with the opportunity to participate in the court diversion
11 program unless the prosecutor states on the record at arraignment or a
12 subsequent hearing why a referral to the program would not serve the ends of
13 justice. If the prosecuting attorney refers a case to diversion, the prosecuting
14 attorney may release information to the victim upon a showing of legitimate
15 need and subject to an appropriate protective agreement defining the purpose
16 for which the information is being released and in all other respects
17 maintaining the confidentiality of the information; otherwise, files held by the
18 court, the prosecuting attorney, and the law enforcement agency related to the
19 charges shall be confidential and shall remain confidential unless:

- 20 (A) the diversion program declines to accept the case;
- 21 (B) the person declines to participate in diversion;

1 (C) the diversion program accepts the case, but the person does not
2 successfully complete diversion; or

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

4 (2) Alleged offenders shall be informed of their right to the advice and
5 assistance of private counsel or the public defender at all stages of the
6 diversion process, including the initial decision to participate, and the decision
7 to accept the adult diversion contract, so that the candidate may give informed
8 consent.

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

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

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

21 * * *

1 (g)(1) Within 30 days after the two-year anniversary of a successful
2 completion of adult diversion, the court shall provide notice to all parties of
3 record of the court's intention to order the expungement of all court files and
4 records, law enforcement records other than entries in the adult court diversion
5 program's centralized filing system, fingerprints, and photographs applicable
6 to the proceeding. However, the court shall not order expungement if the
7 participant does not satisfy each of subdivisions (A)–(D) of this subdivision.
8 The court shall give the State's Attorney an opportunity for a hearing to contest
9 the expungement of the records. The court shall expunge the records if it
10 finds:

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

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

16 (C) rehabilitation of the participant has been attained to the
17 satisfaction of the court; and

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

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

1 to this subdivision, the court shall provide written notice of its intent to
2 expunge the record to the State's Attorney's office that prosecuted the case.

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

8 (B) The special index and related documents specified in subdivision
9 (A) of this subdivision (3) 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 (C) Inspection of the expungement order and the certificate may be
13 permitted only upon petition by the person who is the subject of the case. The
14 Chief Superior Judge may permit special access to the index and the
15 documents for research purposes pursuant to the rules for public access to
16 court records.

17 (D) The Court Administrator shall establish policies for
18 implementing this subsection (g).

19 * * *

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

2 § 169. RESTORATIVE JUSTICE REFERRALS; REPORT

3 (a) Report. Annually, on or before November 15, the Office of the
4 Attorney General, in consultation with the Department of Corrections and
5 entities employing restorative justice principles, including community justice
6 centers, shall submit a report to the House Committees on Judiciary, and on
7 Corrections and Institutions; the Senate Committee on Judiciary; and the Joint
8 Legislative Justice Oversight Committee examining referrals to diversion and
9 other programs and services employing restorative justice principles. The
10 report shall include data showing the number of:

11 (1) referrals by crime type;

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

13 (3) repeat offenders by crime type; and

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

16 (b) Data sharing. Notwithstanding any provision of law to the contrary, the
17 Office of the Attorney General and the Department of Corrections shall
18 collaborate, share, and disclose any data relevant to complete the report
19 required by subsection (a) of this section. The obligation to disclose shall
20 supersede any other legal obligation with respect to the data required pursuant
21 to this section and the Office of the Attorney General and the Department of

1 Corrections shall not decline to collaborate, share, and disclose relevant data
2 based on any other purported legal obligation.

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

8 Sec. 10. EFFECTIVE DATE

9 This act shall take effect on passage.