Journal of the Senate

THURSDAY, JANUARY 22, 2009

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 9

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered concurrent resolutions originating in the Senate of the following titles:

S.C.R. 1. Senate concurrent resolution congratulating the Aldrich Public Library on its centennial anniversary.

S.C.R. 2. Senate concurrent resolution congratulating The Bridge newspaper on its 15th anniversary.

S.C.R. 3. Senate concurrent resolution commemorating the centennial anniversary of the appointment of Vermont's first state forester and the establishment of the first state forest.

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 2. House concurrent resolution congratulating Sean Ross of Milton High School on winning the 2008 Division II individual cross-country championship.

H.C.R. 3. House concurrent resolution congratulating the 2008 Milton High School Yellowjackets Division II championship girls' soccer team.

H.C.R. 4. House concurrent resolution congratulating Essex High School athletics Coach William O'Neil on his 1,000 career victory.

H.C.R. 5. House concurrent resolution congratulating the 2008 U-32 Raiders Division II championship boys' soccer team.

H.C.R. 6. House concurrent resolution congratulating the Spaulding Union High School Crimson Tide 2008 Division II championship football team.

H.C.R. 7. House concurrent resolution congratulating the Lost Nation Theater of Montpelier on its designation as "one of the best regional theaters in America".

H.C.R. 8. House concurrent resolution congratulating the 2008 Springfield High School Cosmos Division III championship football team.

H.C.R. 9. House concurrent resolution congratulating the Weston Craft Show on its 25th anniversary.

H.C.R. 10. House concurrent resolution honoring Terry and Linda Pecor of Huntington on the 30th anniversary of the proprietorship of Beaudry's Store.

H.C.R. 11. House concurrent resolution congratulating the Huntington Public Library on the dedication of its new home in the historic Huntington Union Meeting House.

H.C.R. 12. House concurrent resolution congratulating CarShare Vermont on launching its car sharing service.

H.C.R. 13. House concurrent resolution honoring the legislative service of Samuel H. Burr.

H.C.R. 14. House concurrent resolution honoring the legislative council service of Charles Alan Boright.

H.C.R. 15. House concurrent resolution congratulating the Leland & Gray Union High School Rebels 2008 Division III championship baseball team.

In the adoption of which the concurrence of the Senate is requested.

Message from the House No. 10

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a bill of the following title:

H. 11. An act relating to the disposition of property upon death, transfer of interest in vehicle upon death, and homestead exemption.

In the passage of which the concurrence of the Senate is requested.

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

S. 28.

By Senators Snelling, Bartlett, Campbell, Mazza and Miller,

An act relating to the regulation of landscape architects.

To the Committee on Government Operations.

S. 29.

By Senators Sears, Campbell, Cummings, Mullin and Nitka,

An act relating to legislative committee subpoena power.

To the Committee on Judiciary.

S. 30.

By Senator Mullin,

An act relating to school choice for students who have been subject to harassment.

To the Committee on Education.

S. 31.

By Senator Hartwell,

An act relating to exemptions to property transfer tax.

To the Committee on Finance.

S. 32.

By Senator Hartwell,

An act relating to tax credits for biomass harvesting and the manufacture of products that produce biomass power.

To the Committee on Finance.

S. 33.

By Senator Hartwell,

An act relating to tax on plastic bags.

To the Committee on Finance.

Bill Referred

House bill of the following title was read the first time and referred:

H. 11.

An act relating to the disposition of property upon death, transfer of interest in vehicle upon death, and homestead exemption.

To the Committee on Judiciary.

Joint Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Shumlin,

J.R.S. 9. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, January 23, 2009, it be to meet again no later than Tuesday, January 27, 2009.

Rules Suspended; Bill Amended; Third Reading Ordered

S. 13.

Appearing on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and Senate bill entitled:

An act relating to improving Vermont's sexual abuse response system.

Was taken up for immediate consideration.

Senator Sears, for the Committee on Judiciary, to which the bill was referred, reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE INTENT

This act is intended to implement the November 12, 2008, Report of the Senate Committee on Judiciary's 34-Point Comprehensive Plan for Vermont's Sexual Abuse Response System. The purpose of this act is to increase child sexual abuse prevention efforts, enhance investigations and prosecutions of child sexual abuse, provide sentencing courts with the information necessary to devise appropriate sentences for sex offenders, and improve supervision of sex offenders.

* * * Prevention * * *

Sec. 2. COMPREHENSIVE STATEWIDE APPROACH TO THE PREVENTION OF CHILD SEXUAL ABUSE

(a) Prevention is the most important and most often overlooked tool available to the state to fight sexual violence against children. While there are

a number of programs and organizations devoted to raising awareness about sexual abuse of children, a coordinated and properly funded statewide approach is needed to ensure that we are devoting appropriate resources and programming to stopping abuse before it happens, not just responding to the crime.

(b) The senate committee on health and welfare and the house committee on human services, in consultation with the senate and house committees on education and on appropriations, shall build on the recent work of the senate committee on judiciary in an effort to develop a comprehensive statewide approach to the prevention of child sexual abuse. Legislation shall be developed for introduction on January 5, 2010.

Sec. 3. 16 V.S.A. § 131 is amended to read:

§ 131. DEFINITIONS

For purposes of this subchapter~~: "Comprehensive~~ , "comprehensive health education" means a systematic and extensive elementary and secondary educational program designed to provide a variety of learning experiences for students that encourages parental involvement and is based upon knowledge of the human organism as it functions within its environment. The term includes, but is not limited to, a study of:

* * *

(9) Drugs, including education about alcohol, caffeine, nicotine, and prescribed drugs; ~~and~~

(10) Nutrition; and

(11)(A) Prevention of sexual abuse and sexual violence, including developmentally appropriate instruction for students around promoting healthy and respectful relationships, maintaining effective communication with trusted adults, recognizing sexual offending behaviors, and gaining awareness of available school and community resources.

(B) The department for children and families shall convene a working group that includes the department of education, parents, and sexual abuse prevention professionals to develop technical assistance materials in subdivision (A) of this subdivision (11). Any future amendments to the technical assistance materials shall include the participation of the same stakeholders.

Sec. 4. 16 V.S.A. § 254 is amended to read:

§ 254. EDUCATOR LICENSURE; EMPLOYMENT OF SUPERINTENDENTS

(a) The commissioner shall sign and keep a user agreement with the Vermont criminal information center.

(b) The commissioner shall request and obtain from the Vermont criminal information center the criminal record for any person applying for an initial license, for renewal of a license, or for reinstatement of a lapsed license as a professional educator or for any person who is offered a position as superintendent of schools in Vermont.

(c) A request made under this section shall be accompanied by a release signed by the person on a form provided by the Vermont criminal information center, a set of the person's fingerprints, and a fee established by the Vermont criminal information center which shall reflect the cost of obtaining the record. The fee shall be paid by the applicant. The release form to be signed by the applicant shall include a statement informing the applicant of:

(1) the right to challenge the accuracy of the record by appealing to the Vermont criminal information center pursuant to rules adopted by the commissioner of public safety; and

(2) the commissioner's policy regarding maintenance and destruction of records and the person's right to request that the record or notice be maintained for purposes of using it to comply with future criminal record check requests made pursuant to section 256 of this title.

(d) Upon completion of a criminal record check, the Vermont criminal information center shall send to the commissioner either a notice that no record exists or a copy of the record. If a copy of a criminal record is received, the commissioner shall forward it to the person and shall inform the person in writing of:

(1) the right to challenge the accuracy of the record by appealing to the Vermont criminal information center pursuant to rules adopted by the commissioner of public safety; and

(2) the commissioner's policy regarding maintenance and destruction of records and the person's right to request that the record or notice be maintained for purposes of using it to comply with future criminal record check requests made pursuant to section 256 of this title.

(e) The commissioner shall request and obtain from the department for children and families information from the child abuse and neglect registry and from the department of disabilities, aging, and independent living information

from the vulnerable adult abuse, neglect, and exploitation registry for any person applying for an initial license, for renewal of a license, or for reinstatement of a lapsed license as a professional educator or for any person who is offered a position as superintendent of schools in Vermont. The department for children and families and the department of disabilities, aging, and independent living shall adopt rules governing the process for registry information requests and the dissemination and maintenance of records in accordance with this subsection.

Sec. 5. 16 V.S.A. § 255 is amended to read:

§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES; CONTRACTORS

(a) Superintendents, headmasters of recognized or approved Vermont independent schools, and their contractors shall request criminal record information for the following:

(1) The person a superintendent or headmaster is prepared to recommend for any full-time, part-time, or temporary employment.

(2) Any person directly under contract to an independent school or school district who may have unsupervised contact with school children.

(3) Any employee of a contractor under contract to an independent school or school district in a position that may result in unsupervised contact with school children.

(4) Any student working toward a degree in teaching who is a student teacher in a school within the superintendent's or headmaster's jurisdiction.

(b) After signing a user agreement, a superintendent or a headmaster shall make a request directly to the Vermont criminal information center. A contractor shall make a request through a superintendent or headmaster.

(c) A request made under this section shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont criminal information center which shall reflect the cost of obtaining the record from the FBI. The fee shall be paid in accordance with adopted school board policy.

(d) Upon completion of a criminal record check, the Vermont criminal information center shall send to the superintendent or headmaster a notice that no record exists or, if a record exists:

(1) ~~a~~ A copy of any criminal record for Vermont convictions~~, and~~.

(2) ~~if~~ If the requester is a superintendent, a notice of any criminal record which is located in either another state repository or FBI records, but not a

record of the specific convictions except those relating to crimes of a sexual nature involving children.

(3) ~~if~~ If the requester is a headmaster, a notice of any criminal record which is located in either another state repository or FBI records, but not a record of the specific convictions. However, if there is a record relating to any crimes of a sexual nature involving children, the Vermont criminal information center shall send this record to the commissioner who shall notify the headmaster in writing, with a copy to the person about whom the request was made, that the record includes one or more convictions for a crime of a sexual nature involving children.

* * *

(h)(1) Superintendents, headmasters of recognized or approved Vermont independent schools, and their contractors shall request from the department for children and families information from the child abuse and neglect registry and from the department of disabilities, aging, and independent living information from the vulnerable adult abuse, neglect, and exploitation registry for the following:

(A) The person a superintendent or headmaster is prepared to recommend for any full-time, part-time, or temporary employment.

(B) Any person directly under contract to an independent school or school district who may have unsupervised contact with schoolchildren.

(C) Any employee of a contractor under contract to an independent school or school district in a position that may result in unsupervised contact with schoolchildren.

(D) Any student working toward a degree in teaching who is a student teacher in a school within the superintendent's or headmaster's jurisdiction.

(2) The department for children and families and the department of disabilities, aging, and independent living shall adopt rules governing the process for registry information requests and the dissemination and maintenance of records in accordance with this subsection.

Sec. 6. 16 V.S.A. § 256 is amended to read:

§ 256. CONTINUED VALIDITY OF CRIMINAL RECORD CHECK; MAINTENANCE OF RECORDS

(a) Anyone required to request a criminal record check or registry check under this subchapter about a person who previously has undergone a check, regardless of whether the check was for student teaching, licensure, or

employment purposes, shall comply with that requirement by ~~acquiring the results of the previous criminal record check unless:~~

~~(1) the person refuses to authorize release of the information;~~

~~(2) the record no longer exists; or~~

~~(3) since the record check, there has been a period of one year or more during which the person has not worked for a Vermont school district or independent school~~ requesting another record check or registry check in accordance with the procedures set forth in this subchapter.

(b) Anyone required to request a criminal record check or registry check under this subchapter about a person who previously has undergone a check may request a name and date of birth or fingerprint-supported recheck of the record or registry at any time during the course of the record subject's employment or service in the capacity for which the original check was authorized. Rechecking criminal records may be accomplished through a subscription service.

(c) A superintendent or headmaster who receives criminal record information under this subchapter shall maintain the record or information pursuant to the user agreement for maintenance of records. At the end of the time required by the user agreement for maintenance of the information, the superintendent or headmaster shall destroy the information in accordance with the user agreement unless the person authorizes maintenance of the record. If authorized by the person, the superintendent or headmaster shall:

(1) if the information is a notice of no criminal record, securely maintain the information indefinitely; or

(2) if the information is a criminal record or notice of the existence of a criminal record, send it to the commissioner for secure maintenance in a central records repository.

~~(c)~~(d) Upon authorization by the person, the commissioner shall release information maintained in the central records repository to a requesting superintendent or, in the case of a requesting headmaster, to the person. The commissioner shall maintain the notice or record in the repository at least until the person ceases working for a Vermont school district or independent school for a period of one year or more or until the person requests that the record be destroyed.

~~(d)~~(e) The state board may adopt rules regarding maintenance of records.

Sec. 7. 16 V.S.A. § 260 is amended to read:

§ 260. SCHOOL BOARD POLICIES

Each school board shall, by July 1, 1999, adopt a policy on supervision of volunteers and work study students. Policies shall require that superintendents, headmasters of recognized or approved schools, and their contractors check the names and birth dates of any volunteers or work study students with the Vermont Internet sex offender registry prior to allowing the volunteers or work study students unsupervised contact with schoolchildren. A person who is on the Vermont Internet sex offender registry shall not be eligible to be a volunteer or work study student.

Sec. 8. 20 V.S.A. § 2064 is added to read:

§ 2064. SUBSCRIPTION SERVICE

(a) As used in this section:

(1) "State Identification Number (SID)" means a unique number generated by the center to identify a person in the criminal history database.

(2) "Subscription service" means a service provided by the center whereby authorized requestors may be notified when an individual's criminal record is updated.

(b) The center shall provide the department for children and families and education officials authorized under subchapter 4 of chapter 5 of Title 16 to receive criminal records access to a criminal record subscription service. Authorized persons may subscribe to an individual's SID number, provided the individual has given written authorization on a release form provided by the center.

(c) The release form shall contain the individual's name, signature, date of birth, and place of birth. The release form shall state that the individual has the right to appeal the findings to the center, pursuant to rules adopted by the commissioner of public safety.

(d) The center shall provide authorized officials with information regarding the subscription service offered by the center prior to being authorized to participate in the subscription service. The materials shall address the following topics:

(1) Requirements of subscription, renewal, and cancellation with the service.

(2) How to interpret the criminal conviction records.

(3) How to obtain source documents summarized in the criminal conviction records.

(4) Misuse of the subscription service.

(e) Authorized officials shall certify on their subscription request that they have read and understood materials prior to receiving authorization to request a subscription from the center.

(f) During the subscription period, the center shall notify authorized officials in writing if new criminal conviction information is added to an individual's criminal history record. Notification may be sent electronically.

(g) An authorized official who receives a criminal conviction record pursuant to this section shall provide a free copy of such record to the subject of the record within ten days of receipt of the record.

(h) Except insofar as criminal conviction record information must be retained or made public pursuant to chapter 51 of Title 16 or the state board of education administrative rules promulgated thereunder, no person shall confirm the existence or nonexistence of criminal conviction record information or disclose the contents of a criminal conviction record without the individual's permission to any person other than the individual and properly designated employees of the authorized education official who have a documented need to know the contents of the record.

(i) Except insofar as criminal conviction record information must be retained or made public pursuant to chapter 51 of Title 16 or the state board of education administrative rules promulgated thereunder, authorized education officials shall confidentially retain all criminal conviction information received pursuant to this section for a period of three years. At the end of the retention period, the criminal conviction information must be shredded.

(j) A person who violates any subsection of this section shall be assessed a civil penalty of not more than $5,000.00. Each unauthorized disclosure shall constitute a separate civil violation. The office of the attorney general shall have authority to enforce this section.

Sec. 9. 16 V.S.A. § 563a is added to read:

§ 563a. SCHOOL BOARDS; PREVENTION OF CHILD ABUSE

The school board of a school district shall:

(1) Ensure that all adults working in the schools receive orientation, based on materials recommended by the agency of human services and the department of education, on the prevention, identification, and reporting of child abuse.

(2) Provide opportunity for parents and caregivers to receive information and education, based on materials recommended by the agency of

human services and the department of education, regarding child sexual abuse and sexual violence, mandatory reporting of child abuse, signs and symptoms of sexual abuse, sexual violence, grooming processes, and other predatory behaviors of sexual offenders.

Sec. 10. 33 V.S.A. § 3502 is amended to read:

§ 3502. CHILD CARE FACILITIES; SCHOOL AGE CARE IN PUBLIC SCHOOLS; 21ST CENTURY FUND

* * *

(d)(1) Regulations pertaining to child care facilities and family child care homes shall be designed to ensure that children in child care facilities and family child care homes are provided with wholesome growth and educational experiences, and are not subjected to neglect, mistreatment, or immoral surroundings.

(2) A licensed child care facility shall ensure that all adults working at the facility receive orientation, based on materials recommended by the agency of human services and the department of education, on the prevention, identification, and reporting of child abuse, including child sexual abuse.

* * *

Sec. 11. COMMUNITY OUTREACH PLAN

The agency of human services shall research the most effective way to raise community awareness about child sexual abuse, including the role of adults, with a goal of creating a community outreach plan that includes such strategies as educational materials and public service announcements. The agency shall report on its progress by November 15, 2009 to the senate committee on health and welfare and to the house committee on human services.

Sec. 12. CENTER FOR THE PREVENTION AND TREATMENT OF SEXUAL ABUSE

(a) There is established within the agency of human services the Vermont center for the prevention and treatment of sexual abuse (center). The center shall be jointly overseen by the commissioner of the department of corrections and the commissioner of the department for children and families.

(b) The purpose of the center shall be to protect Vermont's citizens from sexual assault and child sexual abuse. The center shall oversee Vermont's systematic response to sexual assault and child sexual abuse, while recognizing that many agencies, organizations, and individuals have their own independent roles and responsibilities within this system.

(c) The responsibilities of the center shall include:

(1) Overseeing and coordinating sex offender treatment programs in correctional and juvenile institutions and in the community with support from the department of corrections and the department for children and families.

(2) Overseeing and coordinating victim and family treatment programs with support from the department for children and families.

(3) Providing support to sexual abuse prevention programs statewide and in local communities.

(4) Providing training to recognize and prevent sexual abuse in consultation with the department of corrections, the department for children and families, the department of state's attorneys and sheriffs, and other agencies, organizations, and individuals as are desirable and necessary.

(5) Providing a central organization for the acquisition and dissemination of information regarding best practices for the prevention of sexual violence; the treatment and supervision of adult and juvenile offenders; the provision of victims services; judicial practices conducive to public protection and the supervision of offenders; protocols for coordinated investigations of allegations of child sexual abuse; and any other information that may be beneficial in aiding Vermont's response to sexual abuse.

(d) The commissioner of the department of corrections and the commissioner of the department for children and families shall be responsible for maintaining and providing staffing for the center and shall report to the general assembly periodically on the status of the center.

Sec. 13. 13 V.S.A. § 3258 is added to read:

§ 3258. SEXUAL EXPLOITATION OF A MINOR

(a) No person shall engage in a sexual act with a minor if:

(1) the actor is at least 48 months older than the minor;

(2) the actor is in a position of power, authority, or supervision over the minor by virtue of the actor's professional, legal, occupational, or volunteer status and the minor's participation in a program or activity; and

(3) the actor abuses his or her position of power, authority, or supervision over the minor in order to engage in a sexual act.

(b) A person who violates subsection (a) of this section shall be imprisoned for not more than five years or fined not more than $10,000.00, or both.

Sec. 14. 13 V.S.A. § 5404 is amended to read:

§ 5404. REPORTING UPON RELEASE FROM CONFINEMENT OR SUPERVISION

(a) Upon receiving a sex offender from the court on a probationary sentence or any alternative sentence under community supervision by the department of corrections, or prior to releasing a sex offender from confinement or supervision, the department of corrections shall forward to the department the following information concerning the sex offender:

(1) an update of the information listed in subsection 5403(a) of this title;

(2) the address upon release and whether the offender will be living with a child under the age of 16;

(3) name, address, and telephone number of the local department of corrections office in charge of monitoring the sex offender; and

(4) documentation of any treatment or counseling received.

(b) The department of corrections shall notify the department within 24 hours of the time a sex offender changes his or her address or place of employment, or enrolls in or separates from any postsecondary educational institution, or begins residing with a child under the age of 16. In addition, the department of corrections shall provide the department with any updated information requested by the department.

(c) The information required to be provided by subsection (a) of this section shall also be provided by the department of corrections to a sex offender's parole or probation officer within three days of the time a sex offender is placed on probation or parole by the court or parole board.

(d) If it has not been previously submitted, upon receipt of the information to be provided to the department pursuant to subsection (a) of this section, the department shall immediately transmit the conviction data and fingerprints to the Federal Bureau of Investigation.

Sec. 15. 13 V.S.A. § 5407 is amended to read:

§ 5407. SEX OFFENDER'S RESPONSIBILITY TO REPORT

(a) Except as provided in section 5411d of this title, a sex offender shall report to the department as follows:

* * *

(3) within three days after any change of address, or if a person is designated as a high-risk sex offender pursuant to section 5411b of this title,

that person shall report to the department within 36 hours, and shall report whether a child under the age of 16 resides at such address;

* * *

(5) within three days after any change in place of employment; ~~and~~

(6) within three days of any name change;

(7) within three days of a child under the age of 16 moving into the residence of the registrant.

Sec. 16. 13 V.S.A. § 5415 is added to read:

§ 5415. ENFORCEMENT; SPECIAL INVESTIGATION UNITS

(a) Special investigation units, created pursuant to 24 V.S.A. § 1940, shall be responsible for the investigation of violations of this chapter's registry requirements and are authorized to conduct in-person registry compliance checks in a time, place, and manner it deems appropriate in furtherance of the purposes of this chapter. This section shall not be construed to prohibit local law enforcement from enforcing the provisions of this chapter.

(b) The department of public safety shall report to the senate and house committees on of before December 15, 2009, and annually thereafter, regarding its efforts under this section.

Sec. 17. APPROPRIATION; SPECIAL INVESTIGATION UNITS

(a) The sum of $770,000.00 is appropriated from the general fund for the department of state's attorneys and sheriffs for fiscal year 2010 for the purpose of funding grants for special investigation units pursuant to 24 V.S.A. § 1940.

(b) The sum of $880,000.00 is appropriated from the general fund for the department of public safety for fiscal year 2010 for the purpose of funding Vermont state police investigators for special investigation units. The Vermont state police shall have the authority to coordinate and supervise the case management of the special investigation units.

Sec. 18. 33 V.S.A. § 4917 is amended to read:

§ 4917. MULTIDISCIPLINARY TEAMS; EMPANELING

(a) The commissioner or his or her designee may empanel a multidisciplinary team or a special investigative multi-task force team or both wherever in the state there may be a probable case of child abuse or neglect which warrants the coordinated use of several professional services. These teams shall participate and cooperate with the local special investigation unit in compliance with 13 V.S.A. § 5415.

(b) The commissioner or his or her designee, in conjunction with professionals and community agencies, shall appoint members to the multidisciplinary teams which may include persons who are trained and engaged in work relating to child abuse or neglect such as medicine, mental health, social work, nursing, child care, education, law, or law enforcement. The teams shall include a representative of the department of corrections. Additional persons may be appointed when the services of those persons are appropriate to any particular case.

* * *

Sec. 19. 20 V.S.A. § 1931 is amended to read:

§ 1931. POLICY

It is the policy of this state to assist federal, state, and local criminal justice and law enforcement agencies in the identification, detection or exclusion of individuals who are subjects of the investigation or prosecution of ~~violent~~ crimes. Identification, detection, and exclusion may be facilitated by the DNA analysis of biological evidence left by the perpetrator of a ~~violent~~ crime and recovered from the crime scene. The DNA analysis of biological evidence can also be used to identify missing persons.

Sec. 20. 20 V.S.A. § 1932 is amended to read:

§ 1932. DEFINITIONS

As used in this subchapter:

* * *

(5) "DNA sample" means a forensic unknown tissue sample or a tissue sample provided by any person convicted of ~~violent~~ a designated crime ~~or a forensic unknown sample~~. The DNA sample may be blood or other tissue type specified by the department.

* * *

(10) "State DNA database" means the laboratory DNA identification record system. The state DNA database is a collection of the DNA records related to forensic casework, ~~convicted offenders~~ persons required to provide a DNA sample under this subchapter, and anonymous DNA records used for protocol development or quality control.

* * *

(12) " Designated crime" means any of the following offenses:

(A) a felony;

(B) 13 V.S.A. § 1042 (domestic assault);

(C) any crime for which a person is required to register as a sex offender pursuant to subchapter 3 of chapter 167 of Title 13;

(D) an attempt to commit any offense listed in this subdivision; or

~~(C)~~(E) any other offense, if, as part of a plea agreement in an action in which the original charge was a crime listed in this subdivision and probable cause was found by the court, there is a requirement that the defendant submit a DNA sample to the DNA data bank.

Sec. 21. 20 V.S.A. § 1933 is amended to read:

§ 1933. DNA SAMPLE REQUIRED

(a) The following persons shall submit a DNA sample:

(1) ~~every~~ A person convicted in a court in this state of a designated crime on or after ~~the effective date of this subchapter; and~~ April 29, 1998.

(2) ~~every~~ A person who was convicted in a court in this state of a designated crime prior to ~~the effective date of this subchapter~~ April 29, 1998, and, after ~~the effective date of this subchapter~~ such date, is:

(A) in the custody of the commissioner of corrections pursuant to 28 V.S.A. § 701;

(B) on parole for a designated crime;

(C) serving a supervised community sentence for a designated crime; ~~and~~ or

(D) on probation for a designated crime.

(b) A person required to submit a DNA sample who is serving a sentence ~~for a designated crime~~ in a correctional facility shall have his or her DNA samples collected or taken at the receiving correctional facility, or at a place and time designated by the commissioner of corrections or by a court, if the person has not previously submitted a DNA sample.

(c) A person serving a sentence for a designated crime not confined to a correctional facility shall have his or her DNA samples collected or taken at a place and time designated by the commissioner of corrections, the commissioner of public safety, or a court if the person has not previously submitted a DNA sample in connection with the designated crime for which he or she is serving the sentence.

Sec. 22. 20 V.S.A. § 1940 is amended to read:

§ 1940. EXPUNGEMENT OF RECORDS AND DESTRUCTION OF SAMPLES

(a) ~~If a person's conviction of a designated crime is reversed and the case is nolle prosequi or dismissed or the person is granted a full pardon~~ In accordance with procedures set forth in subsection (b) of this section, the department shall destroy the DNA sample and any records of a person related to the sample that were taken in connection with a particular alleged designated crime in any of the following circumstances:

(1) A person's conviction related to an incident that caused the DNA sample to be taken is reversed, and the case is dismissed.

(2) The person is granted a full pardon related to an incident that caused the DNA sample to be taken.

(b) If any of the circumstances in subsection (a) of this section occur, the court with jurisdiction or, as the case may be, the governor, shall so notify the department, and the person's DNA record in the state DNA database and CODIS and the person's DNA sample in the state DNA data bank shall be removed and destroyed. The laboratory shall purge the DNA record and all other identifiable information from the state DNA database and CODIS and destroy the DNA sample stored in the state DNA data bank. If the person has more than one entry in the state DNA database, CODIS, or the state DNA data bank, only the entry related to the dismissed case shall be deleted. The department shall notify the person upon completing its responsibilities under this subsection, by certified mail addressed to the person's last known address.

~~(b)~~(c) If the identity of the subject of a forensic unknown sample becomes known and that subject is excluded as a suspect in the case, the sample record shall be removed from the state DNA database upon the conclusion of the criminal investigation and finalization of any criminal prosecution.

Sec. 23. 20 V.S.A. § 1932 is amended to read:

§ 1932. DEFINITIONS

As used in this subchapter:

* * *

(5) "DNA sample" means a forensic unknown tissue sample or a tissue sample provided by any person convicted of a designated crime or for whom the court has determined at arraignment there is probable cause that the person has committed a felony. The DNA sample may be blood or other tissue type specified by the department.

Sec. 24. 20 V.S.A. § 1933 is amended to read:

§ 1933. DNA SAMPLE REQUIRED

(a) The following persons shall submit a DNA sample:

(1) A person convicted in a court in this state of a designated crime on or after April 29, 1998.

(2) A person for whom the court has determined at arraignment there is probable cause that the person has committed a felony in this state on or after July 1, 2011.

(3) A person who was convicted in a court in this state of a designated crime prior to April 29, 1998 and, after such date, is:

(A) in the custody of the commissioner of corrections pursuant to 28 V.S.A. § 701;

(B) on parole for a designated crime;

(C) serving a supervised community sentence for a designated crime; or

(D) on probation for a designated crime.

(b) At the time of arraignment, the court shall set a date and time for the person to submit a DNA sample.

(c) A person required to submit a DNA sample who is serving a sentence in a correctional facility shall have his or her DNA samples collected or taken at the receiving correctional facility, or at a place and time designated by the commissioner of corrections or by a court, if the person has not previously submitted a DNA sample.

~~(c)~~(d) A person serving a sentence for a designated crime not confined to a correctional facility shall have his or her DNA samples collected or taken at a place and time designated by the commissioner of corrections, the commissioner of public safety, or a court if the person has not previously submitted a DNA sample in connection with the designated crime for which he or she is serving the sentence.

Sec. 25. 20 V.S.A. § 1940 is amended to read:

§ 1940. EXPUNGEMENT OF RECORDS AND DESTRUCTION OF SAMPLES

(a) In accordance with procedures set forth in subsection (b) of this section, the department shall destroy the DNA sample and any records of a person related to the sample that were taken in connection with a particular alleged designated crime in any of the following circumstances:

(1) A person's conviction related to an incident that caused the DNA sample to be taken is reversed and the case is dismissed.

(2) The person is granted a full pardon related to an incident that caused the DNA sample to be taken.

(3) If the sample was taken post-arraignment, the felony charge which required the DNA sample is downgraded to a misdemeanor by the prosecuting attorney, upon a plea agreement or the person is convicted of a lesser offense that is a misdemeanor.

(4) If the sample was taken post-arraignment, the person is acquitted after a trial of all charges related to the incident which prompted the taking of the DNA sample.

(5) If the sample was taken post-arraignment, all criminal charges related to an incident that caused the DNA sample to be taken are dismissed by either the court or the state after arraignment, unless the attorney for the state can show good cause why the sample should not be destroyed.

* * *

Sec. 26. Rule 15 of the Vermont Rules of Criminal Procedure is amended to read:

RULE 15. DEPOSITIONS

* * *

(f) Protection of Deponents.

(1) *Deponent's Counsel and Victim Advocate.* A deponent may have counsel present at the deposition and may make legal objections to questions. The deponent shall be treated as a party at hearings on motions pertaining to the deposition. A victim of an alleged crime may have a victim advocate present during the deposition. The deponent may apply to the court for a protective order if the deponent believes that he or she is being subjected to harassment or intimidation. A subpoena issued pursuant to V.R.Cr.P. 17, or other notice of the deposition given to the deponent, shall include notice that the deponent may have the assistance of counsel and the victim advocate as provided herein and seek a protective order as provided in subdivision (f)(3).

(2) *Depositions of Sensitive Witnesses.* A person under the age of 16 who is the victim in a prosecution under 13 V.S.A. § 2602 (lewd and lascivious conduct with a child), 3252 (sexual assault), 3253 (aggravated sexual assault), or 3253a (aggravated sexual assault of a child) shall not be deposed. A person under the age of 16 or any person who is a victim in a prosecution under 13 V.S.A. § 2601 (lewd and lascivious conduct), ~~2602 (lewd~~

~~and lascivious conduct with a minor),~~ 3252 (sexual assault), or 3253 (aggravated sexual assault) shall be considered a sensitive witness. Prior to taking the deposition of a sensitive witness, the party seeking to take the deposition shall consult with the other parties and the deponent in an effort to reach an agreement on the time, place, manner and scope of the taking of the deposition. If an agreement cannot be reached, the party seeking to take the deposition shall so advise the court and specify the matters which are in dispute. The court shall then issue an order regulating the taking of the deposition including, in its discretion, a requirement that the deposition be taken in the presence of a judge or special master. The restrictions of 13 V.S.A. § 3255(a) shall apply to depositions. If a party taking a deposition proposes to ask about information that falls within 13 V.S.A. § 3255(a)(3)(A)-(C), the party shall notify the other parties and the deponent of this intent prior to seeking agreement on the scope of the deposition.

(3) *Protective Orders.* At the request of a party or deponent, and for good cause shown, the court may make any protective order which justice requires to protect a party or deponent from emotional harm, unnecessary annoyance, embarrassment, oppression, invasion of privacy, or undue burden of expense or waste of time. Such orders may include, among other remedies, the following: (1) that the deposition may be taken only on specified terms and conditions, including a designation of the time, place, and manner of taking the deposition; (2) that the deposition may be taken only by written questions; (3) that certain matters not be inquired into, or that the scope of the deposition be limited to certain matters; (4) that the deposition be conducted with only such persons present as the court may designate; (5) that after the deposition has been taken, the tape or transcription be sealed until further order of the court; (6) that the deposition not be taken. In ruling on such request, the court may consider, among other things, the age, health, level of intellectual functioning and emotional condition of the witness, whether the witness has knowledge material to the proof of or defense to any essential element of the crime, whether the witness has provided a full written, taped or transcribed account of his or her proposed testimony at trial, whether the witness's testimony will relate only to peripheral issue in the case, or whether an informal interview or telephone conference with the witness will suffice for the purposes of discovery in the case.

Sec. 27. REPORT

The court administrator, the department of state's attorneys and sheriffs, and the office of the defender general shall individually report to the senate and house committees on judiciary in January 2012 on the impacts of Sec. 21 of this act as it relates to disposition of such cases.

Sec. 28. Rule 804a of the Vermont Rules of Evidence is amended to read:

804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE ~~TEN~~ TWELVE OR UNDER; ~~MENTALLY RETARDED OR MENTALLY ILL~~ PERSON IN NEED OF GUARDIANSHIP

(a) Statements by a person who is a child ~~ten~~ 12 years of age or under or a ~~mentally retarded or mentally ill~~ person in need of guardianship as defined in 14 V.S.A. ~~§ 3061(4) or (5)~~ § 3061 at the time ~~of trial~~ the statements were made are not excluded by the hearsay rule if the court specifically finds at the time they are offered that:

(1) the statements are offered in a civil, criminal, or administrative proceeding in which the child or ~~mentally retarded or mentally ill~~ person in need of guardianship is a putative victim of sexual assault under 13 V.S.A. § 3252, aggravated sexual assault under 13 V.S.A. § 3253, aggravated sexual assault of a child under 13 V.S.A. § 3253a, lewd or lascivious conduct under 13 V.S.A. § 2601, ~~or~~ lewd or lascivious conduct with a child under 13 V.S.A. § 2602, incest under 13 V.S.A. § 205, abuse, neglect, or exploitation under 33 V.S.A. § 6913, sexual abuse of a vulnerable adult under 13 V.S.A. § 1379, or wrongful sexual activity and the statements concern the alleged crime or the wrongful sexual activity; or the statements are offered in a juvenile proceeding under chapter ~~55~~ 53 of Title 33 involving a delinquent act alleged to have been committed against a child ~~thirteen~~ 13 years of age or under or a ~~mentally retarded or mentally ill~~ person in need of guardianship, if the delinquent act would be an offense listed herein if committed by an adult and the statements concern the alleged delinquent act; or the child is the subject of a petition alleging that the child is in need of care or supervision under chapter ~~55~~ 53 of Title 33, and the statement relates to the sexual abuse of the child;

(2) the statements were not taken in preparation for a legal proceeding and, if a criminal or delinquency proceeding has been initiated, the statements were made prior to the defendant's initial appearance before a judicial officer under Rule 5 of the Vermont Rules of Criminal Procedure;

(3) the child or ~~mentally retarded or mentally ill~~ person in need of guardianship is available to testify in court or under Rule 807; and

(4) the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.

(b) Upon motion of either party in a criminal or delinquency proceeding, the court shall require the child or ~~mentally retarded or mentally ill~~ person in need of guardianship to testify for the state.

Sec. 29. 33 V.S.A. § 4916b is amended to read:

§ 4916b. HUMAN SERVICES BOARD HEARING

(a) Within 30 days of the date on which the administrative reviewer mailed notice of placement of a report on the registry, the person who is the subject of the substantiation may apply in writing to the human services board for relief. The board shall hold a fair hearing pursuant to 3 V.S.A. § 3091. When the department receives notice of the appeal, it shall make note in the registry record that the substantiation has been appealed to the board.

(b)(1) The board shall hold a hearing within 60 days of the receipt of the request for a hearing and shall issue a decision within 30 days of the hearing.

(2) Priority shall be given to appeals in which there are immediate employment consequences for the person appealing the decision.

(3) At a hearing held under this subsection, evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, and, notwithstanding any administrative rule to the contrary, the Vermont Rules of Evidence are inapplicable except for the rules respecting privilege.

(A) Rule 804a of the Vermont Rules of Evidence shall not apply to hearings held under this subsection.

(B) Convictions and adjudications, whether by verdict, by judgment, or by a plea of any type, shall be competent evidence in a hearing held under this subchapter.

(c) A hearing may be stayed upon request of the petitioner if there is a related criminal or family court case pending in court which arose out of the same incident of abuse or neglect for which the person was substantiated.

(d) If no review by the board is requested, the department's decision in the case shall be final, and the person shall have no further right for review under this section. The board may grant a waiver and permit such a review upon good cause shown.

Sec. 30. 13 V.S.A. § 3253a is added to read:

§ 3253a. AGGRAVATED SEXUAL ASSAULT OF A CHILD

(a) A person commits the crime of aggravated sexual assault of a child if the actor is over the age of 18 and commits sexual assault against a child under the age of 16 in violation of section 3252 of this title and at least one of the following circumstances exists:

(1) At the time of the sexual assault, the actor causes serious bodily injury to the victim or to another.

(2) The actor is joined or assisted by one or more persons in physically restraining, assaulting, or sexually assaulting the victim.

(3) The actor commits the sexual act under circumstances which constitute the crime of kidnapping.

(4) The actor has previously been convicted in this state of sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section, or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section if committed in this state.

(5) At the time of the sexual assault, the actor is armed with a deadly weapon and uses or threatens to use the deadly weapon on the victim or on another.

(6) At the time of the sexual assault, the actor threatens to cause imminent serious bodily injury to the victim or to another, and the victim reasonably believes that the actor has the present ability to carry out the threat.

(7) At the time of the sexual assault, the actor applies deadly force to the victim.

(8) The victim is subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence or the victim is subjected to repeated nonconsensual sexual acts as part of the actor's common scheme and plan.

(b) A person who commits the crime of aggravated sexual assault of a child shall be imprisoned for not less than 25 years with a maximum term of life, and, in addition, may be fined not more than $50,000.00. The 25-year term of imprisonment required by this subsection shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the 25-year term of imprisonment.

Sec. 31. LEGISLATIVE INTENT; CONSENT BY A MINOR

It is the intent of the general assembly in this act to address, among other issues, the Vermont supreme court's decisions in State v. Deyo, 2006 VT 120, and State v. Hazelton, 2006 VT 121. In both Deyo and Hazelton, the court ruled that the general assembly had adopted the common law doctrine that a minor cannot consent to a sexual act. Such a reading of the law disregards the plain language of the statutes which clearly indicates that the general assembly considered a minor's ability to consent when it enacted amendments to the

statutory rape law in 2006 to ensure that teenagers who engaged in consensual sexual acts would not be criminally liable, or would at least not be subject to high mandatory minimum sentences. In this act, the general assembly responds to Deyo and Hazelton by clarifying further that "consent" as defined in 13 V.S.A. § 3251(3) means consent in fact.

Sec. 32. 13 V.S.A. § 3251 is amended to read:

§ 3251. DEFINITIONS

As used in this chapter:

* * *

(3) "Consent" means words or actions by a person indicating a voluntary agreement to engage in a sexual act. Provided, further, that when the general assembly uses the terms "consent," "consensual," and "nonconsensual," it does not intend to adopt the common law doctrine that a minor cannot consent to a sexual act.

* * *

Sec. 33. 13 V.S.A. § 7041 is amended to read:

§ 7041. DEFERRED SENTENCE

(a) Upon an adjudication of guilt and after the filing of a presentence investigation report, the court may defer sentencing and place the respondent on probation upon such terms and conditions as it may require if a written agreement concerning the deferring of sentence is entered into between the state's attorney and the respondent and filed with the clerk of the court.

(b) Notwithstanding subsection (a) of this section, the court may defer sentencing and place the respondent on probation without a written agreement between the state's attorney and the respondent if the following conditions are met:

(1) the respondent is 28 years old or younger;

(2) the crime for which the respondent is being sentenced is not a listed crime as defined in subdivision 5301(7) of this title;

(3) the court orders a presentence investigation in accordance with the procedures set forth in Rule 32 of the Vermont Rules of Criminal Procedure, unless the state's attorney agrees to waive the presentence investigation;

(4) the court permits the victim to submit a written or oral statement concerning the consideration of deferment of sentence;

(5) the court reviews the presentence investigation and the victim's impact statement with the parties; and

(6) the court determines that deferring sentence is in the interest of justice.

(c) Notwithstanding subsections (a) and (b) of this section, the court may not defer a sentence for a violation of section 2602 (lewd and lascivious conduct with a child), 3252(c) (sexual assault of a child under 16 unless the victim and the defendant were within five years of age and the act was consensual), 3252(d) or (e) (sexual assault of a child), 3253(a)(8) (aggravated sexual assault), or 3253a (aggravated sexual assault of a child) of this title.

(d) Entry of deferment of sentence shall constitute an appealable judgment for purposes of appeal in accordance with section 2383 of Title 12 and Rule 3 of the Vermont Rules of Appellate Procedure. Except as otherwise provided, entry of deferment of sentence shall constitute imposition of sentence solely for the purpose of sentence review in accordance with section 7042 of this title. The court may impose sentence at any time if the respondent violates the conditions of the deferred sentence during the period of deferment.

~~(d)~~(e) Upon violation of the terms of probation or of the deferred sentence agreement, the court shall impose sentence. Upon fulfillment of the terms of probation and of the deferred sentence agreement, the court shall strike the adjudication of guilt and discharge the respondent. ~~Upon discharge~~ Except as provided in subsection (g) of this section, the record of the criminal proceedings shall be expunged ~~except that the record shall not be expunged until restitution has been paid in full~~ upon the discharge of the respondent from probation, absent a finding of good cause by the court. Notwithstanding this subsection, the record shall not be expunged until restitution has been paid in full.

~~(e)~~(f) A deferred sentence imposed under subsection (a) or (b) of this section may include a restitution order issued pursuant to section 7043 of this title. Nonpayment of restitution shall not constitute grounds for imposition of the underlying sentence.

(g) The Vermont criminal information center shall retain a special index of deferred sentences for sex offenses that require registration pursuant to section 5401 of this title. This index shall only list the name and date of birth of the subject of the expunged files and records, the offense for which the subject was convicted, and the docket number of the proceeding which was the subject of the expungement. The special index shall be confidential and may be accessed only by the director of the Vermont criminal information center and a designated clerical staff person for the purpose of providing information to the department of corrections in the preparation of a presentence investigation in accordance with 28 V.S.A. § 204a.

Sec. 34. 33 V.S.A. § 5119 is amended to read:

§ 5119. SEALING OF RECORDS

* * *

(f)(1) Except as provided in subdivisions (2), (3), ~~and~~ (4), and (5) of this subsection, inspection of the files and records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of such records, and only to those persons named in the record.

* * *

(5) The order unsealing a record pursuant to subdivisions (2), (3), and (4) of this subsection must state whether the record is unsealed entirely or in part and the duration of the unsealing. If the court's order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed or the particular persons who may have access to the record, or both.

(6)(A) If a person is convicted of a sex offense that requires registration pursuant to 13 V.S.A. § 5401, the court may inspect its own files and records included in the sealing order for the purpose of imposing sentence upon or supervising the person for the registrable offense.

(B) If a person is convicted of a sex offense that requires registration pursuant to 13 V.S.A. § 5401, the following persons or entities, without court permission, may inspect any files and records included in the sealing order:

(i) The department of corrections for the purpose of preparing a presentence investigation prior to the court's sentencing the person for the registrable offense.

(ii) Officials of correctional facilities operated by the department of corrections to which the person is committed for the registrable offense.

(iii) A parole board in considering the person's parole or discharge or in exercising supervision over the person in connection with the registrable offense.

Sec. 35. 28 V.S.A. § 204 is amended to read:

§ 204. SUBMISSION OF WRITTEN REPORT; PROTECTION OF RECORDS

(a) A court, before which a person is being prosecuted for any crime, may in its discretion order the commissioner to submit a written report as to the circumstances of the alleged offense and the character and previous criminal history record of the person, with recommendation. If the presentence report is being prepared in connection with a person's conviction for a sex offense that

requires registration pursuant to 13 V.S.A. § 5401, the commissioner shall obtain information pertaining to the person's juvenile record, if any, in accordance with 33 V.S.A. §§ 5117 and 5119, and any deferred sentences received for a registrable sex offense in accordance with 13 V.S.A. § 7041(g), and include such information in the presentence report.

* * *

(d) Any presentence report, pre-parole report, or supervision history prepared by any employee of the department in the discharge of the employee's official duty, except as provided in subdivision 204a(b)(5) and section 205 of this title, is privileged and shall not be disclosed to anyone outside the department other than the judge or the parole board, except that the court or board may in its discretion permit the inspection of the report or parts thereof by the state's attorney, the defendant or inmate or his or her attorney, or other persons having a proper interest therein, whenever the best interest or welfare of the defendant or inmate makes that action desirable or helpful.

* * *

Sec. 36. 28 V.S.A. § 204a is amended to read:

§ 204a. ~~SEXUAL~~ SEX OFFENDERS; ~~PRE-SENTENCE~~ PRESENTENCE INVESTIGATIONS; RISK ASSESSMENTS; PSYCHOSEXUAL EVALUATIONS

(a) The department of corrections shall conduct a presentence investigation for all persons convicted of:

(1) lewd and lascivious conduct in violation of section 2601 of Title 13;

(2) lewd and lascivious conduct with a child in violation of section 2602 of Title 13;

(3) sexual assault in violation of section 3252 of Title 13;

(4) aggravated sexual assault in violation of section 3253 of Title 13; ~~or~~

(5) aggravated sexual assault of a child in violation of section 3253a of Title 13;

(6) kidnapping with intent to commit sexual assault in violation of subdivision 2405(a)(1)(D) of Title 13; or

(7) an offense involving sexual exploitation of children in violation of chapter 64 of Title 13.

(b) A presentence investigation required by this section:

(1) shall include an assessment of the offender's risk of reoffense and a determination of whether the person is a high risk offender;

(2) shall include a psychosexual evaluation if so ordered by the court; ~~and~~

(3) shall include information regarding the offender's records maintained by the department for children and families in the child abuse and neglect registry pursuant to 33 V.S.A. § 4916 if the offender was previously substantiated for child abuse or neglect;

(4) shall include information, if any, regarding any deferred sentences received by the offender for a registrable sex offense in accordance with 13 V.S.A. § 7041(g); and

(5) shall be completed before the defendant is sentenced. Upon completion, the department shall submit copies of the presentence investigation to the court, the state's attorney, ~~and~~ the defendant's attorney, and the department for children and families. Copies of a presentence investigation authorized by this subdivision shall remain privileged and are not subject to public inspection.

* * *

(d) The requirement that a presentence investigation be performed pursuant to subsection (a) of this section~~:~~

~~(1) may be waived if the court finds that a report is not necessary for purposes of sentencing; and~~

~~(2)~~ shall not be interpreted to prohibit the performance of a presentence investigation, psychosexual evaluation, or risk assessment at any other time during the proceeding, including prior to the entry of a plea agreement or prior to sentencing for a violation of probation.

* * *

Sec. 37. 33 V.S.A. § 4919 is amended to read:

§ 4919. DISCLOSURE OF REGISTRY RECORDS

(a) The commissioner may disclose a registry record only as follows:

* * *

(9) To the commissioner of the department of corrections in accordance with the provisions of 28 V.S.A. § 204a(b)(3).

* * *

Sec. 38. 28 V.S.A. § 252a is added to read:

§ 252a. REVIEW OF PROBATION CONDITIONS

(a) Whenever the court imposes a sentence upon a defendant who has been convicted of an offense enumerated in section 204a of this title that includes a period of incarceration of more than 180 days to serve to be followed by probation, the court shall review the probation conditions imposed at the time of sentencing after the incarceration portion of the sentence has been served, and prior to the offender's release to probation. Such review shall include information about the offender developed after the date of sentencing, including information about the offender's incarceration period.

(b) The department of corrections shall prepare a prerelease probation report to the court at least 30 days prior to the release based upon information available to the department. The prerelease probation report shall include the offender's degree of participation in treatment while incarcerated and the need for additional treatment or conditions and other information relevant to the offender's release to the probationary sentence. The department of corrections shall provide a copy of the prerelease probation report to the attorney for the offender and the prosecuting attorney at the same time it provides the report to the court.

(c) If the department of corrections, the prosecuting attorney, or the court on its own motion recommends a change to the original probation order, the court shall schedule a modification hearing prior to the release date. The court may modify the conditions or add further requirements as authorized by section 252 of this title. The offender shall have a reasonable opportunity to contest the modification prior to its imposition. The prosecuting attorney shall represent the state in connection with any proceeding held in accordance with this section.

Sec. 39. 28 V.S.A. § 252 is amended to read:

§ 252. CONDITIONS OF PROBATION

* * *

(b) When imposing a sentence of probation, the court may, as a condition of probation, require that the offender:

* * *

(16) Submit to periodic polygraph testing if the offender is being placed on probation for a sex offense that requires registration pursuant to 13 V.S.A. § 5401;

(17) Permit a probation officer or designee to monitor or examine the offender's activities, communications, and use of any computer or other digital or electronic device, including cell phone, smartphone, digital camera, digital video camera, digital music player or recorder, digital video player or recorder,

personal digital assistant, portable electronic storage device, gaming system, or any other contemporary device capable of the storage of digital electronic communication or data storage or access to the Internet or other computer or digital network;

(18) Satisfy any other conditions reasonably related to his or her rehabilitation. The court shall not impose a condition prohibiting the offender from engaging in any legal behavior unless the condition is reasonably related to the offender's rehabilitation or necessary to reduce risk to public safety. Such conditions may include prohibiting the use of alcohol, prohibiting having contact with minors, prohibiting or limiting the use of a computer or other electronic devices, and permitting a probation officer access to all mail covers, subscription services, and credit card statements.

Sec. 40. LEGISLATIVE INTENT

It is the intent of the general assembly that Sec. 39 of this act be construed to presume that any search of a probationer or his or her houses, papers, and possessions be conducted in strict adherence with Chapter I, Article 11 of the Constitution of the State of Vermont.

Sec. 41. 28 V.S.A. § 255 is amended to read:

§ 255. DISCHARGE

(a) Upon the termination of the period of probation or the earlier discharge of the probationer in accordance with section 251 of this title, the probationer shall~~, unless the court has ordered otherwise under subsection (b) of this section or under subsection 7043(l) of Title 13,~~ be relieved of any obligations imposed by the order of the court and shall have satisfied the sentence for the crime.

(b) [Deleted.]

(c) A court hearing shall be held prior to discharging an offender from probation for a sex offense that requires registration pursuant to 13 V.S.A. § 5401, unless all parties and the department of corrections have filed notice in support of discharge with the court.

Sec. 42. 28 V.S.A. § 106 is added to read:

§ 106. SYSTEMS APPROACH TO COMMUNITY SUPERVISION OF SEX OFFENDERS; SPECIALIZED PROBATION OFFICERS

(a) The department of corrections shall establish a comprehensive systems approach to the management of sex offenders which employs longer and more intensive community supervision of higher-risk sex offenders by specialized

probation officers coupled with regular polygraph tests and pre- and postincarceration treatment to promote rehabilitation.

(b) Multidisciplinary case management teams shall be created, each involving as appropriate a specialized probation or parole officer, a treatment provider, a victim's advocate, a representative of the department for children and families, and a forensic polygraph examiner. These professionals shall collaborate, prioritizing community safety and the protection of former victims and shall participate and cooperate with the local special investigation unit in compliance with 13 V.S.A. § 5415. These teams shall address the specific treatment and supervision needs of a particular offender to assure protection of the public, to assist that offender in reintegrating safely into the community, to support and protect known victims, and respond to any new concerns about risk of reoffense.

(c) The department of corrections shall designate and specially train probation and parole officers in each district office to supervise sex offenders, to provide more consistent and intensive case management and impose and enforce conditions uniquely suited to aiding the offenders' reintegration into the community. These officers shall not have a caseload of more than 40 offenders.

Sec. 43. AUDIT OF DEPARTMENT OF CORRECTIONS' CASELOADS PERTAINING TO SEX OFFENDERS

(a) On or before January 15, 2010, the auditor of accounts shall submit to the house and senate committees on judiciary and the house committee on institutions and corrections an independent audit of probation and parole personnel's current sex offender management caseloads. The audit shall assess the efficacy of the current model and provide recommendations for increasing oversight of community supervision of sex offenders and support for best practices for probation and parole personnel.

(b) The audit shall be conducted in consultation with the center for the prevention and treatment of sexual abuse.

Sec. 44. 28 V.S.A. § 204b is added to read:

§ 204b. HIGH-RISK SEXUAL OFFENDERS

A person who is sentenced to an incarcerative sentence for a violation of any of the offenses listed in subsection 204a(a) of this title, and who is designated by the department of corrections as high-risk pursuant to 13 V.S.A. § 5411b while serving his or her sentence, shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of 70 percent of his or her maximum sentence.

Sec. 45. 33 V.S.A. § 4913 is amended to read:

§ 4913. SUSPECTED CHILD ABUSE AND NEGLECT; REMEDIAL ACTION

(a) Any physician, surgeon, osteopath, chiropractor, or physician's assistant licensed, certified, or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, dentist, psychologist, pharmacist, any other health care provider, school superintendent, school teacher, school librarian, child care worker, school principal, school guidance counselor, mental health professional, social worker, probation officer, any employee, contractor, and grantee of the agency of human services who have contact with clients, police officer, camp owner, camp administrator, camp counselor, or member of the clergy who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 4914 of this title within 24 hours. As used in this subsection, "camp" includes any residential or nonresidential recreational program.

* * *

Sec. 46. TRAINING IN THE REPORTING OF SUSPECTED CHILD ABUSE; DEPARTMENT OF CORRECTIONS

The general assembly finds that employees, contractors, and grantees of the agency of human services who have contact with clients should be mandatory reporters under the law. The agency shall develop training for its employees in the identification and reporting of suspected child abuse and neglect, including the assessment of risk of harm, and report to the senate and house committees on judiciary, the senate committee on health and welfare, the house committee on human services, and the house committee on corrections and institutions no later than September 15, 2009 regarding its efforts to ensure that its employees are properly trained.

Sec. 47. 28 V.S.A. § 502b is amended to read:

§ 502b. TERMS AND CONDITIONS OF PAROLE

(a) When an inmate is paroled, the parole board shall establish terms and conditions of parole that it deems reasonably necessary to ensure that the inmate will lead a law-abiding life and that will assist the inmate to do so. Such terms and conditions shall be set forth in the parolee's parole agreement. Terms and conditions of parole shall be designed to protect the victim, potential victims, and the public, and to reduce the risk of reoffense. Such conditions may include prohibiting the use of alcohol; prohibiting having

contact with minors; prohibiting or limiting the use of a computer or other electronic devices; permitting a probation officer access to all mail covers, subscription services, and credit card statements; and permitting a probation officer to monitor or examine the offender's activities, communications, and use of any computer or other digital or electronic device, including cell phone, smartphone, digital camera, digital video camera, digital music player or recorder, digital video player or recorder, personal digital assistant, portable electronic storage device, gaming system, or any other contemporary device capable of the storage of digital electronic communication or data storage or access to the Internet or other computer or digital network.

* * *

Sec. 48. Rule 32.1 of the Vermont Rules of Criminal Procedure is amended to read:

RULE 32.1. REVOCATION AND MODIFICATION OF PROBATION

(a) Revocation of Probation.

(1) Preliminary Hearing. Whenever a probationer is held in custody on the ground that he or she has violated a condition of ~~his~~ probation, ~~he~~ the probationer shall be afforded a prompt hearing before a judicial officer in order to determine whether there is probable cause to hold the probationer for a revocation hearing. The probationer shall be given:

(A) notice of the preliminary hearing and its purpose and of the alleged violation of probation;

(B) an opportunity to appear at the hearing and present evidence in his or her own behalf;

(C) upon request, the opportunity to question opposing witnesses ~~against him~~ unless, for good cause, the judicial officer decides that justice does not require the appearance of the witness; and

(D) notice of ~~his~~ the right to be represented by counsel and ~~his~~ the right to assigned counsel if he or she is unable to obtain counsel.

The proceeding shall be taken down by a court reporter or recording equipment. If probable cause is found to exist, the probationers shall be held for a revocation hearing. If probable cause is not found to exist, the proceeding shall be dismissed.

(2) Revocation Hearing. The revocation hearing, unless waived by the probationer, shall be held within a reasonable time in the court in which probation is imposed. The probationer shall be given:

(A) written notice of ~~his~~ the alleged violation of probation;

(B) disclosure of the evidence against him or her;

(C) an opportunity to appear and to present evidence ~~in his own behalf~~;

(D) the opportunity to question opposing witnesses ~~against him~~; and

(E) written notice of ~~his~~ the right to be represented by counsel and ~~his~~ the right to assigned counsel if he or she is unable to obtain counsel.

(3) Release From Custody.

(A) ~~A~~ Except as otherwise provided, a probationer held in custody pursuant to a request to revoke probation may be released by a judicial officer pending hearing or appeal. In determining conditions of release, the judicial officer shall consider the factors set forth in 13 V.S.A. § 7554(b). Any denial of or change in the terms of release shall be reviewable in the manner provided in 13 V.S.A. §§ 7554 and 7556 for ~~pre-trial~~ pretrial release.

(B) Notwithstanding subdivision (a)(3)(A) of this rule, a probationer who is serving a sentence for a sex offense that requires registration pursuant to 13 V.S.A. § 5401 who violates a risk-related condition of probation may be held in custody until the revocation hearing.

(b) Modification of Probation. A hearing and assistance of counsel are required before the terms or conditions of probation can be modified, unless the relief granted to the probationer upon his or her request or the court's own motion is favorable to ~~him~~ the probationer.

Sec. 49. AUDIT OF THE STATE'S SEXUAL ABUSE RESPONSE SYSTEM

(a) On or before November 15, 2011, and every five years thereafter, the auditor of accounts shall submit to the house and senate committees on judiciary and the house committee on corrections and institutions an independent audit of the state's sexual abuse response system that addresses prevention, criminal investigations, presentence investigations and sentencing of offenders, supervision and treatment of offenders, victim and family assistance and treatment, and training for those working in the system.

(b) The audit shall be conducted in consultation with the center for the prevention and treatment of sexual abuse.

Sec. 50. 33 V.S.A. § 306 is amended to read:

§ 306. ADMINISTRATIVE PROVISIONS

* * *

(c) The commissioner may publicly disclose the findings or information about any case of child abuse or neglect that has resulted in the fatality or near fatality of a child, including information obtained under chapter 49 of this title, unless the state's attorney or attorney general who is investigating or prosecuting any matter involving the fatality requests the commissioner to withhold disclosure, in which case the commissioner shall not disclose any information until completion of any criminal proceedings involving the fatality or the state's attorney or attorney general consents to disclosure, whichever occurs earlier.

Sec. 51. LOCAL COMMUNITY SEX OFFENDER RESIDENCY RESTRICTIONS

(a) Some local communities in Vermont have recently enacted or debated local ordinances that are designed to prevent sexual violence against children by restricting where registered sex offenders can live. These restrictions usually prohibit a sex offender from living within a certain distance of a school, park, playground, or child care facility.

(b) The general assembly is very concerned that such policies could have a negative impact on public safety in our rural state by isolating offenders or driving them underground. Densely populated towns and city centers that have ordinances push offenders out into more rural communities where there are fewer opportunities for successful community reintegration and law enforcement supervision. Sex offender compliance with the state registry is currently over 99 percent, and the general assembly believes that keeping this high rate is essential to public safety.

(c) According to sex offender management experts, research has shown that sex offender residency restrictions are unlikely to deter sex offenders from committing new crimes and should not be considered a viable public safety strategy. While residency restrictions are intended to reduce sex crimes against children by strangers, 90 percent of such crimes are committed by a relative or family friend.

(d) Therefore, the general assembly respectfully requests that the Vermont League of Cities and Towns, Inc. work proactively with local communities to ensure they are receiving accurate and substantive information about the lack of efficacy of such laws and to encourage communities to focus on prevention and other strategies to improve community safety.

Sec. 52. REPORT; DEPARTMENT OF CORRECTIONS

On or before November 15, 2009, the department of corrections shall report to the senate and house committees on judiciary and the house committee on corrections and institutions regarding the following:

(1) Proposed legislation on protocols for releasing a sex offender from confinement into a home with children. If placement in a home with children is being considered, the department of corrections shall notify the department for children and families, and the departments shall work together to determine whether such a placement is appropriate. If any risk of harm to a child is determined to exist based on placement of the offender in the home, the residence shall not be approved. If a placement is determined to be appropriate, such a decision shall be revisited at set times by the departments to ensure that a risk of harm to a child does not emerge. The department shall develop these protocols in consultation with the chairs of the following committees:

(A) Senate judiciary;

(B) House judiciary;

(C) House corrections and institutions;

(D) Senate health and welfare; and

(E) House human services.

(2) Criteria and centralized review of release recommendations made by the department with respect to sex offenders. Decisions to release or recommend release of a sex offender from confinement or discharge from supervision should be done in consultation with a treatment team of individuals with expertise in the field of managing sex offenders, and such decisions and the rationale should be documented in the case record. A decision to release an offender despite treatment team advice to the contrary should be reviewed by the commissioner or a designee. The department should operate under the assumption that sex offenders should be supervised in the community for as long as possible unless overwhelming information indicates otherwise.

(3) A plan to improve training and oversight of department employees who work with sex offenders. Training should include orientation and mentoring for new employees, as well as continuing education for long-term employees.

(4) An update on the implementation of the provisions of this act.

Sec. 53. EFFECTIVE DATE

(a) This section and Secs. 1, 2, 11–13, 16–22, 30–32, and 49–52 of this act shall take effect upon passage.

(b) Secs. 3–7, 9, 10, 14, 15, 26–29, and 33–48 of this act shall take effect July 1, 2009.

(c) Sec. 8 of this act shall take effect July 1, 2010.

(d) Secs. 23–25 of this act shall take effect July 1, 2011.

And that when so amended the bill ought to pass.

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass when so amended.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered on a roll call, Yeas 29, Nays 0.

Senator Sears having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Lyons, MacDonald, Maynard, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr, White.

The Senator who voted in the negative was: None.

The Senator absent and not voting was: Kittell.

****During debate of the measure, Senator Sears addressed the Chair in connection with the Judiciary Committee report on the bill and requested that the statement of purpose to the bill be journalized, which was agreed to and is as follows:

"This bill proposes to:

Develop a comprehensive statewide approach to the prevention of child sexual abuse;

Include a sexual abuse prevention component in all school health curricula;

Conduct outreach efforts to raise awareness of families and communities about child sexual abuse;

Require the commissioner of education to check the child abuse and neglect registry and vulnerable adult abuse, neglect, and exploitation registry prior

issuing a new license, renewing a license, or reinstating a lapsed license for a professional educator;

Require school districts to check the child abuse and neglect registry and vulnerable adult abuse, neglect, and exploitation registry prior to hiring staff and to conduct periodic rechecks of the registries and criminal history records;

Permit criminal record checks to be done through a subscription service with the Vermont criminal information center;

Require school boards to ensure that all school employees receive orientation on the prevention, identification, and reporting of child abuse, and that parents and caregivers receive information and education about child sexual abuse;

Require that licensed child care facilities ensure that all employees receive orientation on the prevention, identification, and reporting of child abuse;

Formally establish the center for the prevention and treatment of sexual abuse and its mission;

Create a new crime of sexual exploitation of a minor;

Require registered sex offenders to report whether they are living in a household with a child under the age of 16;

Fund and staff special investigation units fully and place responsibility for sex offender registry compliance with the units;

Require participation by the department of corrections in child protection response teams and special investigation units;

Upon passage, require collection of DNA from any person convicted for a misdemeanor domestic violence or a misdemeanor sex offense for which registration as a sex offender is required;

As of 2011, require collection of DNA from any person arraigned for a felony offense; eliminate the right to take pretrial depositions of child victims in sexual abuse cases;

Amend the age requirement for admissibility of prior statements of child victims to 12 years at the time the statements were made;

Amend the evidentiary requirements for human services board substantiation proceedings to minimize the impact on child witnesses;

Establish a new crime of aggravated sexual assault of child with a mandatory 25-year-to-life sentence;

Clarify that the general assembly did not adopt the common law definition of consent and did previously enact legislation to ensure that teenagers who

engaged in consensual sexual acts would not be criminally liable, or would at least not be subject to high mandatory minimum sentences;

Eliminate the option of a deferred sentence for a person charged with sexual abuse of a child;

Establish an index for deferred sentences and permit the department of corrections access for the purpose of preparing a presentence report for the sentencing court for most sex offenses;

Mandate presentence reports for most sex offenses and add new crimes for which the reports are required;

Permit information from the child abuse and neglect registry and the vulnerable adult abuse, neglect, and exploitation registry to be used for the purpose of preparing a presentence report;

Permit the department for children and families access to presentence investigations;

Permit a sentencing court access to its sealed juvenile records of a person convicted of a sexual offense;

Permit the department of corrections access to any sealed juvenile records of a person convicted of a sexual offense for the purpose of developing a presentence report or supervising the person;

Require courts to review and amend conditions of probation for sex offenders as appropriate when a split sentence is imposed;

Permit periodic polygraph examinations and supervision of computer activities as special conditions of probation;

Require a judicial hearing prior to discharging a sex offender from probation;

Establish a systems approach of community supervision of sex offenders and assign specialized probation officers to work only with sex offenders;

Require an independent review of probation and parole caseloads as they relate to supervision of sex offenders;

Require high-risk sex offenders to serve at least 70 percent of their maximum sentence;

Add all agency of human services employees who have contact with clients to the list of mandatory reporters of suspected child abuse or neglect;

Mandate a prehearing detention for sex offenders who violate risk-related conditions of probation or parole;

Establish an independent review of the state sexual abuse response system;

Fully comply with federal law that requires the department for children and families to release information to the public about child fatalities to include release of information about "near fatalities";

Urge local communities not to enact sex offender residency restrictions and request that the League of Cities and Towns, Inc. work with communities to ensure they are receiving accurate information about the potential pitfalls of such laws and to encourage communities to focus on prevention and other strategies to improve public safety; and

Require the department of corrections to report to the general assembly:

- protocols for permitting a sex offender to live in a home with children and plans to notify the department for children and families;
- criteria and centralized review or release recommendations made by the department with respect to sex offenders;
- a plan to improve training and oversight of department employees who work with sex offenders; and
- an update on the implementation of this act."

Recess

On motion of Senator Shumlin the Senate recessed until one o'clock and fifty-five minutes.

Called to Order

At one o'clock and fifty-five minutes the Senate was called to order by the President.

Joint Assembly

At two o'clock, the hour having arrived for the meeting of the two Houses in Joint Assembly pursuant to:

J.R.S. 5. Joint resolution to provide for a Joint Assembly to hear the budget message of the Governor.

The Senate repaired to the hall of the House.

Having returned therefrom, at two o'clock and fifty-five minutes, the President assumed the Chair.

Adjournment

On motion of Senator Mazza, the Senate adjourned until nine o'clock in the morning.