

# Senate Calendar

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WEDNESDAY, FEBRUARY 25, 2015

**SENATE CONVENES AT: 1:00 P.M.**

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**ACTION CALENDAR**

**UNFINISHED BUSINESS OF TUESDAY, FEBRUARY 24, 2015**

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 9.**

An act relating to improving Vermont's system for protecting children from abuse and neglect.

**Reported favorably with recommendation of amendment by Senator Sears for the Committee on Judiciary.**

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Legislative Findings \* \* \*

Sec. 1. LEGISLATIVE FINDINGS

(a) In 2014, the tragic deaths of two children exposed problems with Vermont's system intended to protect children from abuse and neglect. This act is intended to address these problems and implement the recommendations of the Joint Legislative Committee on Child Protection created by 2014 Acts and Resolves No. 179, Sec. C.109.

(b) To protect Vermont's children better from abuse and neglect, and to address the increasing burden of drug abuse and other factors that are ripping families apart, the General Assembly believes that our State's child protection system must be comprehensive, focused on the safety and best interests of children, and properly funded. This system must ensure that:

(1) the dedicated frontline professionals who struggle to handle the seemingly ever-increasing caseloads have the support, training, and resources necessary to do their job;

(2) the most serious cases of abuse are thoroughly investigated and prosecuted if appropriate;

(3) courts have the information and tools necessary to make the best possible decisions;

(4) all participants in the child protection system, from the frontline caseworker to the judge determining ultimate custody, work together to prioritize the child's safety and best interests;

(5) an effective oversight structure is established; and

(6) children who have suffered abuse and neglect can find safe, nurturing, and permanent homes, whether with their custodial parents, relatives, or other caring families and individuals.

(c) This act is only the beginning of what must be an ongoing process in which the House and Senate Committees on Judiciary, the Senate Committee on Health and Welfare, the House Committee on Human Services, in consultation with the Senate and House Committees on Appropriations, continue to enhance the statewide approach to the prevention of child abuse and neglect.

(d) In 2014, the tragic deaths of two children exposed problems with Vermont's child protection system. The General Assembly believes that this act will begin to address these problems, improve our State's system for protecting our children, and help prevent future tragedies.

\* \* \* Crimes and Criminal Procedure; Cruelty to a Child; Establishing a New Crime of Failure to Protect a Child; Enhancing Penalties for Manufacturing Methamphetamine When a Child is Present \* \* \*

Sec. 2. 13 V.S.A. § 1304 is amended to read:

§ 1304. CRUELTY TO ~~CHILDREN UNDER 10 BY ONE OVER 16~~ A CHILD

A person over ~~the age of~~ 16 years of age, having the custody, ~~charge~~ or care of a child ~~under 10 years of age~~, who ~~wilfully~~ willfully assaults, ~~ill treats~~, neglects, or abandons ~~or exposes such~~ the child, or causes ~~or procures such~~ the child to be assaulted, ~~ill treated~~, neglected, or abandoned ~~or exposed~~, in a manner to cause ~~such~~ the child unnecessary suffering, or to endanger his or her health, shall be imprisoned not more than two years or fined not more than \$500.00, or both.

Sec. 3. 13 V.S.A. § 1304a is added to read:

§ 1304a. FAILURE TO PROTECT A CHILD

(a) A person having the custody or care of a child commits the crime of failure to protect a child if:

(1) the person knows, or reasonably should have known that the child is in danger of:

(A) death;

(B) serious bodily injury as defined in section 1021 of this title;

(C) lewd or lascivious conduct with a child in violation of section 2602 of this title;

(D) sexual exploitation of children in violation of chapter 64 of this title; or

(E) sexual assault in violation of chapter 72 of this title; and

(2) the person fails to act to prevent a child from suffering any of the possible outcomes as set forth in subdivision (1) of this subsection; and

(3) the person's failure to act is a proximate cause of the child suffering any of the possible outcomes as set forth in subdivision (1) of this subsection.

(b) It shall be an affirmative defense to this section, if proven by a preponderance of the evidence, that:

(1) the defendant failed to act because of a reasonable fear that he or she or another person would suffer death, bodily injury, or serious bodily injury as defined in section 1021 of this title, or sexual assault in violation of chapter 72 of this title as a result of acting to prevent harm to the child; or

(2) where the child's injury or death resulted from a lack of medical treatment or care, the defendant made a reasonable decision to not seek medical care or to withhold medical treatment.

(c) A person who violates this section shall be imprisoned not more than ten years or fined not more than \$20,000.00, or both.

(d) The provisions of this section shall not limit or restrict prosecutions for any other offense arising out of the same incident or conduct.

Sec. 4. 18 V.S.A. § 4236 is amended to read:

§ 4236. MANUFACTURE OR CULTIVATION

(a)(1) A person knowingly and unlawfully manufacturing or cultivating a regulated drug shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both.

(2) A person who violates subdivision (1) of this subsection shall be imprisoned for not more than 30 years or fined not more than \$1,500,000.00, or both, if:

(A) the regulated drug is methamphetamine; and

(B) a child is actually present at the site of methamphetamine manufacture or attempted manufacture.

(b) This section shall not apply to the cultivation of marijuana.

Sec. 5. JUDICIAL BRANCH REPORT ON PROSECUTIONS,  
CONVICTIONS, AND SENTENCES PURSUANT TO 13 V.S.A.  
§ 1304a

The Judicial Branch shall track all prosecutions and convictions pursuant to 13 V.S.A. § 1304a, and, on January 15, 2018, shall report to the House and Senate Committees on Judiciary concerning:

(1) the number of arrests, prosecutions, and convictions pursuant to 13 V.S.A. § 1304a;

(2) the disposition of all cases prosecuted pursuant to 13 V.S.A. § 1304a;

(3) the sentence imposed for all convictions pursuant to 13 V.S.A. § 1304a; and

(4) Any other data or information that the Judicial Branch deems relevant.

\* \* \* Municipal and County Government; Special Investigative  
Units; Mission and Jurisdiction \* \* \*

Sec. 6. 24 V.S.A. § 1940 is amended to read:

§ 1940. ~~TASK FORCES; SPECIALIZED~~ SPECIAL INVESTIGATIVE  
UNITS; BOARDS; GRANTS

(a) Pursuant to the authority established under section 1938 of this title, and in collaboration with law enforcement agencies, investigative agencies, victims' advocates, and social service providers, the Department of State's Attorneys and Sheriffs shall coordinate efforts to provide access in each region of the state State to special investigative units ~~to investigate sex crimes, child abuse, domestic violence, or crimes against those with physical or developmental disabilities. The General Assembly intends that access to special investigative units be available to all Vermonters as soon as reasonably possible, but not later than July 1, 2009~~ which:

(1) shall investigate:

(A) an incident in which a child suffers, by other than accidental means, serious bodily injury as defined in 13 V.S.A. § 1021; and

(B) potential violations of:

(i) 13 V.S.A. § 2602;

(ii) 13 V.S.A. chapter 60;

(iii) 13 V.S.A. chapter 64; and

(iv) 13 V.S.A. chapter 72; and

(2) may investigate:

(A) an incident in which a child suffers:

(i) bodily injury, by other than accidental means, as defined in 13 V.S.A. § 1021; or

(ii) death; and

(B) potential violations of:

(i) 13 V.S.A. § 2601;

(ii) 13 V.S.A. § 2605;

(iii) 13 V.S.A. § 1304; and

(iv) 13 V.S.A. § 1304a.

(b) A ~~task force or specialized~~ special investigative unit organized and operating under this section may accept, receive, and disburse in furtherance of its duties and functions any funds, grants, and services made available by the State of Vermont and its agencies, the federal government and its agencies, any municipality or other unit of local government, or private or civic sources. Any employee covered by an agreement establishing a special investigative unit shall remain an employee of the donor agency.

(c) A ~~Specialized~~ Special Investigative Unit Grants Board is created which shall ~~be comprised of~~ comprise the Attorney General, the Secretary of Administration, the Executive Director of the Department of State's Attorneys and Sheriffs, the Commissioner of Public Safety, the Commissioner for Children and Families, a representative of the Vermont Sheriffs' Association, a representative of the Vermont Association of Chiefs of Police, the Executive Director of the Center for Crime Victim Services, and the Executive Director of the Vermont League of Cities and Towns. ~~Specialized~~ Special investigative units organized and operating under this section ~~for the investigation of sex crimes, child abuse, elder abuse, domestic violence, or crimes against those with physical or developmental disabilities~~ may apply to the Board for a grant or grants covering the costs of salaries and employee benefits to be expended during a given year for the performance of unit duties as well as unit operating costs for rent, utilities, equipment, training, and supplies. Grants under this section shall be approved by a majority of the entire Board and shall not exceed 50 percent of the yearly salary and employee benefit costs of the unit. Preference shall be given to grant applications which include the participation of the Department of Public Safety, the Department for Children and Families, sheriffs' departments, community victims' advocacy organizations, and

municipalities within the region. Preference shall also be given to grant applications which promote policies and practices that are consistent across the State, including policies and practices concerning the referral of complaints, the investigation of cases, and the supervision and management of special investigative units. However, a sheriff's department in a county with a population of ~~less~~ fewer than 8,000 residents shall upon application receive a grant of up to \$20,000.00 for 50 percent of the yearly salary and employee benefits costs of a part-time ~~specialized~~ special investigative unit investigator which shall be paid to the department as time is billed on a per hour rate as agreed by contract up to the maximum amount of the grant.

(d) The Board may adopt rules relating to grant eligibility criteria, processes for applications, awards, and reports related to grants authorized pursuant to this section. The Attorney General shall be the adopting authority.

\* \* \* Adoption Act; Postadoption Contact Agreements \* \* \*

Sec. 7. 15A V.S.A. § 1-109 is amended to read:

§ 1-109. TERMINATION OF ORDERS AND AGREEMENTS FOR VISITATION OR COMMUNICATION UPON ADOPTION

When a decree of adoption becomes final, except as provided in Article 4 of this title and 33 V.S.A. § 5124, any order or agreement for visitation or communication with the minor shall be unenforceable.

Sec. 8. 33 V.S.A. § 5124 is added to read:

§ 5124. POSTADOPTION CONTACT AGREEMENTS

(a) Either or both parents and each intended adoptive parent may enter into a postadoption contact agreement regarding communication or contact between either or both parents and the child after the finalization of an adoption by the intended adoptive parent or parents who are parties to the agreement. Such an agreement may be entered into if:

(1) the child is in the custody of the Department for Children and Families;

(2) an order terminating parental rights has not yet been entered; and

(3) either or both parents agree to a voluntary termination of parental rights, including an agreement in a case which began as an involuntary termination of parental rights.

(b) The Court may approve the postadoption contact agreement if it determines that the child's best interests will be served by postadoption communication or contact with either or both parents. In making a best interests determination, the Court may look to:



(1) the length of time that the child has been under the actual care, custody, and control of a person other than a parent;

(2) the desires of the child, the child's parents; and the child's intended adoptive parents;

(3) the child's relationship with and the interrelationships between the child's parents, the child's intended adoptive parents, the child's siblings, and any other person with a significant relationship with the child;

(4) the willingness of the parents to respect the bond between the child and the child's intended adoptive parents;

(5) the willingness of the intended adoptive parents to respect the bond between the child and the parents;

(6) the adjustment to the child's home, school, and community;

(7) any evidence of abuse or neglect of the child; and

(8) the recommendations of any guardian ad litem involved in the proceeding and the Department.

(c) Before the Court orders postadoption communication or contact, the Court must review all of the following, which will be made a part of the Court record:

(1) a sworn affidavit by the parties to the agreement which affirmatively states that the agreement was entered into knowingly and voluntarily and is not the product of coercion, fraud, or duress and that the parties have not relied on any representations other than those contained in the agreement;

(2) a written acknowledgment by each parent that the termination of parental rights is irrevocable, even if the intended adoption is not finalized, the adoptive parents do not abide by the postadoption contact agreement, or the adoption is later dissolved;

(3) an agreement to the postadoption contact or communication from the child to be adopted, if he or she is 14 years of age or older; and

(4) an agreement to the postadoption contact or communication in writing from the Department, the guardian ad litem, and the attorney for the child.

(d) A postadoption contact agreement must be in writing and signed by each parent and each intended adoptive parent entering into the agreement. There may be separate agreements for each parent. The agreement shall specify:

(1) the form of communication or contact to take place;

- (2) the frequency of the communication or contact;
- (3) if visits are agreed to, whether supervision shall be required, and if supervision is required, what type of supervision shall be required;
- (4) if written communication or exchange of information is agreed upon, whether that will occur directly or through the Vermont Adoption Registry, set forth in 15A V.S.A. § 6-103;
- (5) if the Adoption Registry shall act as an intermediary for written communication, that the signing parties will keep their addresses updated with the Adoption Registry;
- (6) that failure to provide contact due to the child's illness or other good cause shall not constitute grounds for an enforcement proceeding;
- (7) that the right of the signing parties to change their residence is not impaired by the agreement;
- (8) an acknowledgment by the intended adoptive parents that the agreement grants either or both parents the right to seek to enforce the postadoption contact agreement;
- (9) an acknowledgment that once the adoption is finalized, the court shall presume that the adoptive parent's judgment concerning the best interests of the child is correct;
- (10) the finality of the termination of parental rights and of the adoption shall not be affected by implementation of the provisions of the postadoption contact agreement; and
- (11) a disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the termination of parental rights or the adoption.
- (e) A copy of the order approving the postadoption contact agreement and the postadoption contact agreement shall be filed with the Probate Division of the Superior Court with the petition to adopt filed under 15A V.S.A. Article 3, and, if the agreement specifies a role for the Adoption Registry, with the Registry.
- (f) The order approving a postadoption contact agreement shall be a separate order from the final order terminating parental rights.
- (g) The executed postadoption contact agreement shall become final upon legal finalization of an adoption under 15A V.S.A. Article 3.

Sec. 9. 15A V.S.A. Article 9 is added to read:

ARTICLE 9. ENFORCEMENT, MODIFICATION, AND TERMINATION  
OF POSTADOPTION CONTACT AGREEMENTS

§ 9-101. ENFORCEMENT, MODIFICATION, AND TERMINATION OF  
POSTADOPTION CONTACT AGREEMENTS

(a) A postadoption contact agreement may be modified or terminated by agreement of the parties. The parties shall file the modified postadoption contact agreement with the Court that finalized the adoption. The Court shall review the modified agreement pursuant to the requirements of 33 V.S.A. § 5124(b), and, if approved, shall issue an order modifying the agreement.

(b) An adoptive parent may petition for review of a postadoption contact agreement entered into under 33 V.S.A. § 5124 if the adoptive parent believes the best interests of the child are being compromised by the terms of the agreement.

(c) A former parent may petition for enforcement of a postadoption contact agreement entered into under 33 V.S.A. § 5124 if the adoptive parent is not in compliance with the terms of the agreement.

(d) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the termination of parental rights or the adoption.

(e) The Court shall not act on a petition to modify or enforce the agreement unless the petitioner had in good faith participated or attempted to participate in mediation or alternative dispute resolution proceedings to resolve the dispute prior to bringing the petition for enforcement.

(f) Parties to the proceeding shall be the individuals who signed the original agreement created under 33 V.S.A. § 5124. The adopted child, if 14 years of age or older, may also participate. The Department for Children and Families shall not be required to be a party to the proceeding and the Court shall not order further investigation or evaluation by the Department.

(g) The Court may order the communication or contact be terminated or modified if the Court deems such termination or modification to be in the best interests of the child. In making a best interests determination, the Court may consider:

(1) the protection of the physical safety of the adopted child or other members of the adoptive family, or the emotional well-being of the adopted child;

(2) whether enforcement of the agreement undermines the adoptive parent’s parental authority; and

(3) whether, due to a change in circumstances, continued compliance with the agreement would be unduly burdensome to one or more of the parties.

(h) A Court-imposed modification of a previously approved agreement may limit, restrict, condition, or decrease contact between the former parents and the child, but in no event shall a Court-imposed modification serve to expand, enlarge, or increase the amount of contact between the birth parents and the child or place new obligations on the adoptive parents.

(i) No testimony or evidentiary hearing shall be required, although the Court may, in its discretion, hold a hearing. A hearing held to review an agreement for postadoption contact will be confidential. Documentary evidence or offers of proof may serve as the basis for the Court’s decision regarding enforcement or modification of an agreement.

(j) In an action to enforce the agreement, the burden of proof shall be on the former parent to show by a preponderance of the evidence that enforcement of the agreement is in the best interests of the child.

(k) In an action to modify or terminate the agreement, the burden of proof shall be on the adoptive parent to show by clear and convincing evidence that the modification or termination of the agreement is in the best interests of the child.

(l) Failure to comply with the agreement or petitioning the Court to enforce, modify, or terminate an agreement shall not form the basis for an award of monetary damages.

(m) An agreement for postadoption contact or communication under 33 V.S.A. § 5124 shall cease to be enforceable on the date the adopted child turns 18 years of age, or upon dissolution of the adoption.

\* \* \* Human Services; Child Welfare Services; Definitions;  
Investigations; Referral to Law Enforcement \* \* \*

Sec. 10. 33 V.S.A. § 4912 is amended to read:

§ 4912. DEFINITIONS

As used in this subchapter:

(1) “Abused or neglected child” means a child whose physical health, psychological growth and development, or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child’s welfare. An “abused or neglected child” also

means a child who is sexually abused or at substantial risk of sexual abuse by any person and a child who has died as a result of abuse or neglect.

\* \* \*

(11) “Physical injury” means ~~death or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means~~ any impairment of physical condition by other than accidental means.

\* \* \*

(14) “Risk of harm” means a significant danger that a child will suffer ~~serious harm by~~ other than by accidental means, ~~which harm would be likely to cause~~ serious physical injury, neglect, emotional maltreatment, or sexual abuse, including as the result of:

(A) the production or preproduction of methamphetamines when a child is actually present;

(B) leaving a child without developmentally appropriate supervision;

(C) not providing developmentally appropriate supervision or care for a child due to use of illegal substances, or misuse of prescription drugs or alcohol;

(D) failing to supervise appropriately a child in a situation in which drugs, alcohol, or drug paraphernalia are accessible to the child; and

(E) a registered sex offender or person substantiated for sexually abusing a child residing with or spending unsupervised time with a child.

(15)(A) ~~“Sexual abuse” consists of any act or acts by any person involving sexual molestation or exploitation of a child, including incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts sexual conduct, sexual excitement, or sadomasochistic abuse involving a child~~ means any conduct involving a child that constitutes a potential violation of:

(i) lewdness and prostitution in violation of 13 V.S.A. chapter 59;

(ii) human trafficking in violation of 13 V.S.A. chapter 60;

(iii) obscenity in violation of 13 V.S.A. chapter 63, except for violations of 13 V.S.A. § 2802b;

(iv) sexual exploitation of children in violation of 13 V.S.A. chapter 64; or

(v) sexual assault in violation of 13 V.S.A. chapter 72.

(B) In determining whether to accept a report as a valid allegation of sexual abuse pursuant to section 4915 of this title, or to take any other action, the Department need not establish every element of the crimes listed in subdivision (A), and need only establish that there is a valid allegation that the conduct described in the crimes listed in subdivision (A) is alleged to have occurred and that conduct involved a child.

\* \* \*

(17) “Serious physical injury” means, by other than accidental means:

(A) physical injury which creates any of the following:

(i) a substantial risk of death;

(ii) a substantial loss or impairment of the function of any bodily member or organ;

(iii) a substantial impairment of health; or

(iv) substantial disfigurement; or

(B) strangulation by intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.

Sec. 11. 33 V.S.A. § 4915b(e) is amended to read:

(e) The Department:

(1) shall report to and request assistance from law enforcement in the following circumstances:

~~(1) investigations of child sexual abuse by an alleged perpetrator age 10 or older;~~

~~(2) investigations of serious physical abuse or neglect likely to result in criminal charges or requiring emergency medical care~~

(A) an incident in which a child suffers, by other than accidental means, serious bodily injury as defined in 13 V.S.A. § 1021; and

(B) potential violations of:

(i) 13 V.S.A. § 2602;

(ii) 13 V.S.A. chapter 60;

(iii) 13 V.S.A. chapter 64; and

(iv) 13 V.S.A. chapter 72; and

(3) may report to and request assistance from law enforcement when appropriate, including:

(A) an incident in which a child suffers:

(i) bodily injury, by other than accidental means, as defined in 13 V.S.A. § 1021; or

(ii) death; and

(B) potential violations of:

(i) 13 V.S.A. § 2601;

(ii) 13 V.S.A. § 2605;

(iii) 13 V.S.A. § 1304; and

(iv) 13 V.S.A. § 1304a.

~~(3)~~(C) situations potentially dangerous to the child or Department worker.

\* \* \*

\* \* \* Confidentiality \* \* \*

Sec. 12. 33 V.S.A. § 4913 is amended to read:

§ 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL ACTION

\* \* \*

(b)(1) The Commissioner shall inform the person who made the report under subsection (a) of this section:

~~(1)~~(A) whether the report was accepted as a valid allegation of abuse or neglect;

~~(2)~~(B) whether an assessment was conducted and, if so, whether a need for services was found; and

~~(3)~~(C) whether an investigation was conducted and, if so, whether it resulted in a substantiation.

(2) Upon request, the Commissioner shall provide relevant information contained in the case records concerning a person's report to a person who:

(A) made the report under subsection (a) of this section; and

(B) is engaged in an ongoing working relationship with the child or family who is the subject of the report.

(3) Any information disclosed under this subsection (2) shall not be disseminated by the mandated reporter requesting the information. A person who intentionally violates the confidentiality provisions of this section shall be fined not more than \$2,000.00.

(4) In providing records under this subsection (2), the Department may withhold information that could compromise the safety of the reporter or the child or family who is the subject of the report.

\* \* \*

Sec. 13. 33 V.S.A. § 4921 is amended to read:

§ 4921. DEPARTMENT'S RECORDS OF ABUSE AND NEGLECT

(a) The Commissioner shall maintain all records of all investigations, assessments, reviews, and responses initiated under this subchapter. The Department may use and disclose information from such records in the usual course of its business, including to assess future risk to children, to provide appropriate services to the child or members of the child's family, or for other legal purposes.

(b) The Commissioner shall promptly inform the parents, if known, or guardian of the child that a report has been accepted as a valid allegation pursuant to subsection 4915(b) of this title and the Department's response to the report. The Department shall inform the parent or guardian of his or her ability to request records pursuant to subsection (c) of this section. This section shall not apply if the parent or guardian is the subject of the investigation.

(c) Upon request, the redacted investigation file shall be disclosed to:

(1) the child's parents, foster parent, or guardian, absent good cause shown by the Department, provided that the child's parent, foster parent, or guardian is not the subject of the investigation; and

(2) the person alleged to have abused or neglected the child, as provided for in subsection 4916a(d) of this title.

(d) ~~Upon request,~~ Department records created under this subchapter shall be disclosed to:

(1) the ~~court~~ Court, parties to the juvenile proceeding, and the child's guardian ad litem if there is a pending juvenile proceeding or if the child is in the custody of the Commissioner;



(2) the Commissioner or person designated by the Commissioner to receive such records;

(3) persons assigned by the Commissioner to conduct investigations; and

(4) law enforcement officers engaged in a joint investigation with the Department, an ~~assistant attorney general~~ Assistant Attorney General, or a ~~state's attorney~~; State's Attorney.

~~(5) other State agencies conducting related inquiries or proceedings; and~~

~~(6) a Probate Division of the Superior Court involved in guardianship proceedings. The Probate Division of the Superior Court shall provide a copy of the record to the respondent, the respondent's attorney, the petitioner, the guardian upon appointment, and any other individual, including the proposed guardian, determined by the Court to have a strong interest in the welfare of the respondent.~~

(e)(1) Upon request, relevant Department records created under this subchapter ~~may~~ shall be disclosed to:

(A) ~~service providers working with a person or child who is the subject of the report; and~~ A person, agency, or organization, including a multidisciplinary team empaneled under section 4917 of this title, authorized to diagnose, care for, treat, or supervise a child or family who is the subject of a report or record created under this subchapter, or who is responsible for the child's health or welfare.

(B) Health and mental health care providers working directly with the child or family who is the subject of the report or record.

(C) Educators working directly with the child or family who is the subject of the report or record.

(D) Licensed or approved foster care givers for the child.

(E) Mandated reporters as defined by section 4913 of this subchapter, making a report in accordance with the provisions of section 4914 of this subchapter and engaging in an ongoing working relationship with the child or family who is the subject of the report.

(F) Other State agencies conducting related inquiries or proceedings.

(G) The Child Protection Advocate appointed under section 8001 of this title.

(H) A Probate Division of the Superior Court involved in guardianship proceedings. The Probate Division of the Superior Court shall

provide a copy of the record to the respondent, the respondent's attorney, the petitioner, the guardian upon appointment, and any other individual, including the proposed guardian, determined by the Court to have a strong interest in the welfare of the respondent.

(I) ~~other~~ Other governmental entities for purposes of child protection.

(2) Determinations of relevancy shall be made by the Department. In providing records under this subsection (e), the Department may withhold information that could compromise the safety of the reporter or the child or family who is the subject of the report.

(3) In providing information under this section, the Department may also provide other records related to its child protection activities for the child.

(f) Any records or reports disclosed under this section and information relating to the contents of those records or reports shall not be disseminated by the receiving persons or agencies to any persons or agencies, other than to those persons or agencies authorized to receive information pursuant to this section. A person who intentionally violates the confidentiality provisions of this section shall be fined not more than \$2,000.00.

Sec. 14. 33 V.S.A. § 5110 is amended to read:

#### § 5110. CONDUCT OF HEARINGS

(a) Hearings under the juvenile judicial proceedings chapters shall be conducted by the Court without a jury and shall be confidential.

(b) The general public shall be excluded from hearings under the juvenile judicial proceedings chapters, and only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, and such other persons as the Court finds to have a proper interest in the case or in the work of the Court, including a foster parent or a representative of a residential program where the child resides, may be admitted by the Court. An individual without party status seeking inclusion in the hearing may petition the Court for admittance by filing a request with the clerk of the Court. This subsection shall not prohibit a victim's exercise of his or her rights under sections 5233 and 5234 of this title, and as otherwise provided by law.

(c) There shall be no publicity given by any person to any proceedings under the authority of the juvenile judicial proceedings chapters except with the consent of the child, the child's guardian ad litem, and the child's parent, guardian, or custodian. A person who violates this provision may be subject to contempt proceedings pursuant to Rule 16 of the Vermont Rules for Family Proceedings.

\* \* \* Juvenile Proceedings; General Provisions; Children in Need of Care or Supervision; Request for an Emergency Care Order \* \* \*

Sec. 15. 33 V.S.A. § 5302 is amended to read:

§ 5302. REQUEST FOR EMERGENCY CARE ORDER

(a) If an officer takes a child into custody pursuant to ~~subdivision~~ section 5301(1) or (2) of this title, the officer shall immediately notify the child's custodial parent, guardian, or custodian and release the child to the care of the child's custodial parent, guardian, or custodian unless the officer determines that the child's immediate welfare requires the child's continued absence from the home.

(b) If the officer determines that the child's immediate welfare requires the child's continued absence from the home, ~~the officer shall:~~

(1) ~~Remove~~ The officer shall remove the child from the child's surroundings, contact the Department, and deliver the child to a location designated by the Department. The Department shall have the authority to make reasonable decisions concerning the child's immediate placement, safety, and welfare pending the issuance of an emergency care order.

(2) ~~Prepare~~ The officer or a social worker employed by the Department for Children and Families shall prepare an affidavit in support of a request for an emergency care order and provide the affidavit to the State's Attorney. The affidavit shall include: the reasons for taking the child into custody; and to the degree known, potential placements with which the child is familiar; the names, addresses, and telephone number of the child's parents, guardian, custodian, or care provider; the name, address, and telephone number of any relative who has indicated an interest in taking temporary custody of the child. The officer or social worker shall contact the Department and the Department may prepare an affidavit as a supplement to the affidavit of the law enforcement officer or social worker if the Department has additional information with respect to the child or the family.

\* \* \*

\* \* \* Temporary Care Order; Custody \* \* \*

Sec. 16. 33 V.S.A. § 5308 is amended to read:

§ 5308. TEMPORARY CARE ORDER

(a) The Court shall order that legal custody be returned to the child's custodial parent, guardian, or custodian unless the Court finds by a preponderance of the evidence that a return home would be contrary to the best interests of the ~~child's welfare~~ child because any one of the following exists:

(1) A return of legal custody could result in substantial danger to the physical health, mental health, welfare, or safety of the child.

(2) The child or another child residing in the same household has been physically or sexually abused by a custodial parent, guardian, or custodian, or by a member of the child's household, or another person known to the custodial parent, guardian, or custodian.

(3) The child or another child residing in the same household is at substantial risk of physical or sexual abuse by a custodial parent, guardian, or custodian, or by a member of the child's household, or another person known to the custodial parent, guardian, or custodian. It shall constitute prima facie evidence that a child is at substantial risk of being physically or sexually abused if:

(A) a custodial parent, guardian, or custodian receives actual notice that a person has committed or is alleged to have committed physical or sexual abuse against a child; and

(B) a custodial parent, guardian, or custodian knowingly or recklessly allows the child to be in the physical presence of the alleged abuser after receiving such notice.

(4) The custodial parent, guardian, or guardian has abandoned the child.

(5) The child or another child in the same household has been neglected and there is substantial risk of harm to the child who is the subject of the petition.

(b) ~~Upon a finding that any of the conditions set forth in subsection (a) of this section exists~~ a return home would be contrary to the best interests of the child, the Court may issue such temporary orders related to the legal custody of the child as it deems necessary and sufficient ~~to protect the welfare and safety of the child, including, in order of preference:~~

(1) ~~A~~ a conditional custody order returning legal custody of the child to the custodial parent, guardian, or custodian, noncustodial parent, relative, or a person with a significant relationship with the child, subject to such conditions and limitations as the Court may deem necessary and sufficient ~~to protect the child;~~

~~(2)(A) An order transferring temporary legal custody to a noncustodial parent. Provided that parentage is not contested, upon a request by a noncustodial parent for temporary legal custody and a personal appearance of the noncustodial parent, the noncustodial parent shall present to the Court a care plan that describes the history of the noncustodial parent's contact with the child, including any reasons why contact did not occur, and that addresses:~~

~~(i) the child's need for a safe, secure, and stable home;~~  
~~(ii) the child's need for proper and effective care and control; and~~  
~~(iii) the child's need for a continuing relationship with the custodial parent, if appropriate.~~

~~(B) The Court shall consider court orders and findings from other proceedings related to the custody of the child.~~

~~(C) The Court shall transfer legal custody to the noncustodial parent unless the Court finds by a preponderance of the evidence that the transfer would be contrary to the child's welfare because any of the following exists:~~

~~(i) The care plan fails to meet the criteria set forth in subdivision (2)(A) of this subsection.~~

~~(ii) Transferring temporary legal custody of the child to the noncustodial parent could result in substantial danger to the physical health, mental health, welfare, or safety of the child.~~

~~(iii) The child or another child residing in the same household as the noncustodial parent has been physically or sexually abused by the noncustodial parent or a member of the noncustodial parent's household, or another person known to the noncustodial parent.~~

~~(iv) The child or another child residing in the same household as the noncustodial parent is at substantial risk of physical or sexual abuse by the noncustodial parent or a member of the noncustodial parent's household, or another person known to the noncustodial parent. It shall constitute prima facie evidence that a child is at substantial risk of being physically or sexually abused if:~~

~~(I) a noncustodial parent receives actual notice that a person has committed or is alleged to have committed physical or sexual abuse against a child; and~~

~~(II) the noncustodial parent knowingly or recklessly allows the child to be in the physical presence of the alleged abuser after receiving such notice.~~

~~(v) The child or another child in the noncustodial parent's household has been neglected, and there is substantial risk of harm to the child who is the subject of the petition.~~

~~(D) If the noncustodial parent's request for temporary custody is contested, the Court may continue the hearing and place the child in the temporary custody of the Department, pending further hearing and resolution~~

~~of the custody issue. Absent good cause shown, the Court shall hold a further hearing on the issue within 30 days.~~

~~(3) An order transferring temporary legal custody of the child to a relative, provided:~~

~~(A) The relative seeking legal custody is a grandparent, great-grandparent, aunt, great-aunt, uncle, great-uncle, stepparent, sibling, or step-sibling of the child.~~

~~(B) The relative is suitable to care for the child. In determining suitability, the Court shall consider the relationship of the child and the relative and the relative's ability to:~~

~~(i) Provide a safe, secure, and stable environment.~~

~~(ii) Exercise proper and effective care and control of the child.~~

~~(iii) Protect the child from the custodial parent to the degree the Court deems such protection necessary.~~

~~(iv) Support reunification efforts, if any, with the custodial parent.~~

~~(v) Consider providing legal permanency if reunification fails.~~

(2) an order transferring temporary legal custody of the child to a noncustodial parent or to a relative;

(3) an order transferring temporary legal custody of the child to a person with a significant relationship with the child; or

(4) an order transferring temporary legal custody of the child to the Commissioner.

(C)(c) The Court shall consider orders and findings from other proceedings relating to the custody of the child, the child's siblings, or children of any adult in the same household as the child.

(d) In considering the suitability of a relative under this subdivision (3) an order under subsection (b) of this section, the Court may order the Department to conduct an investigation of a person seeking custody of the child, and the suitability of that person's home, and file a written report of its findings with the Court. The Court may place the child in the temporary custody of the Department Commissioner, pending such investigation.

~~(4) A temporary care order transferring temporary legal custody of the child to a relative who is not listed in subdivision (3)(A) of this subsection or a person with a significant relationship with the child, provided that the criteria in subdivision (3)(B) of this subsection are met. The Court may make such~~

~~orders as provided in subdivision (3)(C) of this subsection to determine suitability under this subdivision.~~

~~(5) A temporary care order transferring temporary legal custody of the child to the Commissioner.~~

~~(e)~~(e) If the Court transfers legal custody of the child, the Court shall issue a written temporary care order.

(1) The order shall include:

(A) a A finding that remaining in the home is contrary to the ~~child's welfare~~ best interests of the child and the facts upon which that finding is based; ~~and~~

(B) a A finding as to whether reasonable efforts were made to prevent unnecessary removal of the child from the home. If the Court lacks sufficient evidence to make findings on whether reasonable efforts were made to prevent the removal of the child from the home, that determination shall be made at the next scheduled hearing in the case but, in any event, no later than 60 days after the issuance of the initial order removing a child from the home.

(2) The order may include other provisions as may be ~~necessary for the protection and welfare~~ in the best interests of the child, ~~such as~~ including:

(A) ~~establishing parent-child contact under such and terms and conditions as are necessary for the protection of the child. and terms and conditions for that contact;~~

(B) requiring the Department to provide the child with services, if legal custody of the child has been transferred to the Commissioner;

(C) requiring the Department to refer a parent for appropriate assessments and services, including a consideration of the needs of children and parents with disabilities, provided that the child's needs are given primary consideration;

(D) requiring genetic testing if parentage of the child is at issue;

(E) requiring the Department to make diligent efforts to locate the noncustodial parent;

(F) requiring the custodial parent to provide the Department with names of all potential noncustodial parents and relatives of the child; and

(G) establishing protective supervision and requiring the Department to make appropriate service referrals for the child and the family, if legal custody is transferred to an individual other than the Commissioner.

(3) In his or her discretion, the Commissioner may provide assistance and services to children and families to the extent that funds permit, notwithstanding subdivision (2)(B) of this subsection.

~~(d) If a party seeks to modify a temporary care order in order to transfer legal custody of a child from the Commissioner to a relative or a person with a significant relationship with the child, the relative shall be entitled to preferential consideration under subdivision (b)(3) of this section, provided that a disposition order has not been issued and the motion is filed within 90 days of the date that legal custody was initially transferred to the Commissioner.~~

\* \* \* Legislature; Establishing a Joint Legislative Child Protection Oversight Committee \* \* \*

#### Sec. 17. JOINT LEGISLATIVE CHILD PROTECTION OVERSIGHT COMMITTEE

(a) Creation. There is created a Joint Legislative Child Protection Oversight Committee.

(b) Membership. The Committee shall be composed of the following 10 members, who shall be appointed each biennial session of the General Assembly:

(1) Five current members of the House of Representatives, not all from the same political party, who shall be appointed by the Speaker of the House; and

(2) Five current members of the Senate, not all from the same political party, who shall be appointed by the Committee on Committees.

(3) In addition to two members-at-large appointed from each chamber, one appointment shall be made from the following committees:

(A) House Committee on Education;

(B) Senate Committee on Education;

(C) House Committee on Judiciary;

(D) Senate Committee on Judiciary;

(E) House Committee on Human Services; and

(F) Senate Committee on Health and Welfare.

(c) Powers and duties.

(1) The Committee shall:



(A) Exercise oversight over Vermont's system for protecting children from abuse and neglect, including:

(i) evaluating whether the branches, departments, agencies, and persons that are responsible for protecting children from abuse and neglect are effective;

(ii) determining if there are deficiencies in the system and the causes of those deficiencies;

(iii) evaluating which programs are the most cost-effective;

(iv) determining whether there is variation in policies, procedures, practices, and outcomes between different areas of the State and the causes and results of any such variation; and

(v) evaluating the measures recommended by the Working Group to Recommend Improvements to CHINS Proceedings established in Sec. 23 of this Act to ensure that once a child is returned to his or her family, the court or the Department for Children and Families may continue to monitor the child and family where appropriate.

(B) At least annually, report on the Committee's activities and recommendations to the General Assembly.

(2) The Committee may review and make recommendations to the House and Senate Committees on Appropriations regarding budget proposals and appropriations relating to protecting children from abuse and neglect.

(d) Assistance. The Committee shall have the administrative, technical, and legal assistance of the Office of Legislative Council.

(e) Retaliation. No person who is an employee of the State of Vermont, or of any State, local, county, or municipal department, agency, or person involved in child protection, and who testifies before, supplies information to, or cooperates with the Committee shall be subject to retaliation by his or her employer. Retaliation shall include job termination, demotion in rank, reduction in pay, alteration in duties and responsibilities, transfer, or a negative job performance evaluation based on the person's having testified before, supplied information to, or cooperated with the Committee.

(f) Meetings.

(1) The member appointed from the Senate Committee on Health and Welfare shall call the first meeting of the Committee.

(2) The Committee shall select a Chair, Vice Chair, and Clerk from among its members and may adopt rules of procedure. The Chair shall rotate

biennially between the House and the Senate members. A quorum shall consist of six members.

(3) When the General Assembly is in session, the Committee shall meet at the call of the Chair. The Committee may meet six times during adjournment, and may meet more often subject to approval of the Speaker of the House and the President Pro Tempore of the Senate.

(g) Reimbursement. For attendance at meetings during adjournment of the General Assembly, members of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

(h) Sunset. On December 30, 2017 this section (creating the Joint Legislative Child Protection Oversight Committee) is repealed and the Committee shall cease to exist.

\* \* \* Department for Children and Families; Policies \* \* \*

Sec. 18. THE DEPARTMENT FOR CHILDREN AND FAMILIES;  
POLICIES, PROCEDURES, AND PRACTICES

(a) The Commissioner for Children and Families shall:

(1) ensure that policies, procedures, and practices are consistent, and are applied in a consistent manner, in all Department offices and in all regions of the State;

(2) ensure that policies, procedures, and practices are consistent with statute;

(3) develop metrics as to the appropriate case load for social workers in the Family Services Division that take into account the experience and training of a social worker, the number of families and the total number of children a social worker is responsible for, and the acuity or difficulty of cases;

(4) ensure that all employees assigned to carry out investigations have training or experience in conducting investigations and have a Master's degree in social work or an equivalent degree, or relevant experience;

(5) determine how to improve data sharing between the Department, courts, treatment providers, the Agency of Education, and other branches, departments, agencies, and persons involved in protecting children from abuse and neglect, including:

(A) determine the data that should be shared between parties;

(B) investigate regulatory requirements and security parameters;

(C) investigate the potential costs of creating a platform to share data; and

(D) make recommendations to address these issues and to improve the system for protecting children from abuse and neglect.

(6) develop policies, procedures, and practices to:

(A) ensure the consistent sharing of information, in a manner that complies with statute, with law enforcement, treatment providers, courts, State's Attorneys, guardians ad litem, and other relevant parties;

(B) encourage law enforcement, treatment providers, and all agencies, departments, and other persons that support recovery to provide regular treatment progress updates to the Commissioner;

(C) ensure that courts have all relevant information in a timely fashion, and that Department employees file paperwork and reports in a timely manner;

(D) require increased monitoring of a child's safety if:

(i) other children have been removed from the same home or the parent or guardian's parental rights as to another child have been terminated; or

(ii) the child is returned to a home from which other children have been removed;

(E) require that all persons living in a household, or that will have child care responsibilities, will be assessed for criminal history and potential safety risks whenever a child who has been removed from a home is returned to that home;

(F) increase the number of required face-to-face meetings between social workers and children;

(G) increase the number of required home visits and require unannounced home visits;

(H) improve information sharing with mandatory reporters who have an ongoing relationship with a child;

(I) ensure that mandatory reporters are informed that any confidential information they may receive cannot be disclosed to a person who is not authorized to receive that information;

(J) ensure all parties authorized to receive confidential information are aware of their right to receive that information; and

(K) apply results-based accountability or other data-based quality measures to determine if children in different areas of the State have different outcomes and the reasons for those differences.

(b) On or before September 1, 2015, the Commissioner shall submit a written report to the House Committees on Human Services and on Judiciary and to the Senate Committees on Health and Welfare and on Judiciary on:

(1) The Commissioner's response to the Vermont Citizen's Advisory Board (VCAB) Child Death Review Report dated November 7, 2014, and to the Casey Family Programs report dated December, 2014, including:

(A) the Commissioner's response to every recommendation in the reports and:

(i) if the Commissioner agrees with a recommendation, an explanation of any changes made in response to the recommendation;

(ii) if the Commissioner does not agree with a recommendation, an explanation of why; and

(iii) any suggestions concerning other options to implement a recommendation; and

(B) a description of any changes to the Department's policies, procedures, and practices made in response to the reports, including the language of any new or amended policies and procedures.

(2) The Commissioner's response to the issues in subsection (a) of this section, including the language of any new or amended policies and procedures.

\* \* \* Agency of Human Services; Evidence-Informed Models \* \* \*

Sec. 19. AGENCY OF HUMAN SERVICES; EVIDENCE-INFORMED MODELS

The Secretary of Human Services shall identify and utilize evidence-informed models of serving families that prioritize safety and prevention through early interventions with high risk families. The Secretary shall make recommendations in the FY2017 budget that reflect the utilization of these models.

\* \* \* Improvements to CHINS Proceedings \* \* \*

Sec. 20. WORKING GROUP TO RECOMMEND IMPROVEMENTS TO CHINS PROCEEDINGS

(a) Creation. There is created a working group to recommend ways to improve the efficiency, timeliness, and process of Children in Need of Care or Supervision (CHINS) proceedings.

(b) Membership. The Working Group shall be composed of the following members:

- (1) the Chief Administrative Judge or designee;
- (2) the Defender General or designee;
- (3) the Attorney General or designee;
- (4) the Commissioner for Children and Families or designee;
- (5) the Executive Director of State's Attorneys and Sheriffs or designee; and

(6) a guardian ad litem who shall be appointed jointly by the President Pro Tempore of the Senate and the Speaker of the House.

(c) Powers and duties. The Working Group shall study and make recommendations concerning:

(1) the reasons that statutory time frames are not met and how to ensure that statutory time frames are met in 90 percent of proceedings;

(2) how to ensure that attorneys, judges, and guardians ad litem appear on time and are prepared;

(3) how to monitor and improve the performance and work quality of attorneys, judges, and guardians ad litem;

(4) how to ensure that there is a sufficient number of attorneys available to handle all CHINS cases, in all regions of the State, in a timely manner;

(5) the role of guardians as litem, and how to ensure their information is presented to, and considered by, the court;

(6) how to ensure that once a child is returned to his or her family, the court or the Department for Children and Families, may continue to monitor the child and family where appropriate, and how to expedite a new proceeding that concerns a family with repeated contacts with the child protection system;

(7) whether the adoption of American Bar Association standards for attorneys who work in the area of child abuse and neglect would be appropriate;

(8) how and whether to provide financial assistance to individuals seeking to mediate a dispute over a postadoption contact agreement; and

(9) any other issue the Working Group determines is relevant to improve the efficiency, timeliness, process, and results of CHINS proceedings.

(d) Assistance. The Working Group shall have the administrative, technical, and legal assistance of the Office of the Attorney General. The Working Group may consult with any persons necessary in fulfilling its powers and duties.

(e) Report. On or before November 1, 2015, the Working Group shall report its findings and recommendations to the Joint Legislative Child Protection Oversight Committee, the House Committees on Human Services and on Judiciary, and the Senate Committees on Health and Welfare and on Judiciary.

(f) Meetings and sunset.

(1) The Attorney General or designee shall call the first meeting of the Working Group.

(2) The Working Group shall select a chair from among its members at the first meeting.

(3) The Working Group shall cease to exist on November 2, 2015.

\* \* \* Effective Dates \* \* \*

#### Sec. 21. EFFECTIVE DATES

This act shall take effect on July 1, 2015, except for this section, Sec. 17 (Joint Legislative Child Protection Oversight Committee) and Sec. 18 (Department for Children and Families; policies, procedures, and practices) which shall take effect on passage.

(Committee vote: 5-0-0)

**Reported favorably with recommendation of amendment by Senator Nitka for the Committee on Appropriations.**

The Committee recommends that the bill be amended as recommended by the Committee on Judiciary with the following amendments thereto:

First: In Sec. 17(b), by striking out the following: “10” and inserting in lieu thereof the following: 8

Second: In Sec. 17(b)(1) by striking out the following: “Five” and inserting in lieu thereof the following: Four

Third: In Sec. 17(b)(2) by striking out the following: “Five” and inserting in lieu thereof the following: Four

Fourth: In Sec. 17(b)(3) by striking out the following: “two members-at-large” and inserting in lieu thereof the following: one member-at-large

(Committee vote: 6-0-1)

**Amendment to Recommendation of Amendment of the Committee on  
Judiciary to S. 9 to be offered by Senator Flory**

Senator Flory moves to amend the recommendation of amendment of the Committee on Judiciary as follows:

First: In Sec. 13, 33 V.S.A. § 4921, by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) Upon request, the redacted investigation file shall be disclosed to:

(1) the child's parents, foster parent, or guardian, absent good cause shown by the Department; ~~and~~

(2) the person alleged to have abused or neglected the child, as provided for in subsection 4916a(d) of this title; and

(3) the parents of a child residing in a home with a person alleged to have abused or neglected a child.

Second: In Sec. 13, 33 V.S.A. § 4921(e)(1), by inserting a new subparagraph (J) to read as follows:

(J) A Family Division of the Superior Court involved in custody proceedings for a child who is the subject of a CHINS proceeding. The Family Division of the Superior Court shall provide a copy of the record to the parties to the custody proceeding.

**NEW BUSINESS**

**Third Reading**

**S. 98.**

An act relating to captive insurance companies.

**J.R.S. 9.**

Joint resolution encouraging public high schools to explore recruiting and enrolling international students on F-1 student visas in order to promote tuition-based income.

**Amendment to J.R.S. 9 to be offered by Senator Sirotkin before Third  
Reading**

Senator Sirotkin moves upon adoption that the title of the resolution be amended to read:

Joint resolution encouraging public high schools to explore recruiting and enrolling international students on F-1 student visas in order to promote tuition-based income while also exposing F-1 students and our public school K-12 Vermont students to enriched cross cultural learning experiences.

**NOTICE CALENDAR**  
**Committee Bill for Second Reading**

**S. 108.**

An act relating to repealing the sunset on provisions pertaining to patient choice at end of life.

By the Committee on Health & Welfare. (Senator Ayer for the committee.)

**Second Reading**

**Favorable**

**S. 71.**

An act relating to governance of the Vermont State Colleges.

**Reported favorably by Senator Degree for the Committee on Education.**

(Committee vote: 6-0-0)

**S. 97.**

An act relating to taxation of prewritten software.

**Reported favorably by Senator Ashe for the Committee on Finance.**

(Committee vote: 6-0-1)

**H. 194.**

An act relating to approval of amendments to the charter of the Town of St. Johnsbury.

**Reported favorably by Senator Benning for the Committee on Government Operations.**

(Committee vote: 4-0-1)

(No House amendments)

**Favorable with Recommendation of Amendment**

**S. 7.**

An act relating to bail determinations concerning a defendant charged with lewd and lascivious conduct with a child.

**Reported favorably with recommendation of amendment by Senator Benning for the Committee on Judiciary.**



The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 2602(f) is added to read:

(f) Conduct constituting the offense of lewd and lascivious conduct with a child under this section shall be considered a violent act for the purpose of determining bail under chapter 229 of this title.

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

§ 7554. RELEASE PRIOR TO TRIAL

(a) Any person charged with an offense, other than a person held without bail under section 7553 or 7553a of this title, shall at his or her appearance before a judicial officer be ordered released pending trial in accordance with this section.

(1) The ~~person~~ defendant shall be ordered released on personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the judicial officer determines that such a release will not reasonably ~~assure~~ ensure the appearance of the person as required. In determining whether the ~~person~~ defendant presents a risk of nonappearance, the judicial officer shall consider, in addition to any other factors, the seriousness of the offense charged and the number of offenses with which the person is charged. If the officer determines that such a release will not reasonably ~~assure~~ ensure the appearance of the ~~person~~ defendant as required, the officer shall, either in lieu of or in addition to the above methods of release, impose the least restrictive of the following conditions or the least restrictive combination of the following conditions ~~which that~~ will reasonably ~~assure~~ ensure the appearance of the ~~person~~ defendant as required:

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

(B) ~~place~~ Place restrictions on the travel, association, or place of abode of the ~~person~~ defendant during the period of release;

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

(D) ~~require~~ Require the execution of a secured appearance bond in a specified amount and the deposit with the clerk of the Court, in cash or other

security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the appearance of the ~~person~~ defendant as required;

(E) ~~require~~ Require the execution of a surety bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;

(F) ~~impose~~ Impose any other condition found reasonably necessary to ~~assure~~ ensure appearance as required, including a condition requiring that the ~~person~~ defendant return to custody after specified hours.

(2) If the judicial officer determines that conditions of release imposed to ~~assure~~ ensure appearance will not reasonably protect the public, the judicial officer may ~~in addition~~ impose in addition the least restrictive of the following conditions or the least restrictive combination of the following conditions ~~which that~~ that will reasonably ~~assure~~ ensure protection of the public:

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

(B) ~~place~~ Place restrictions on the travel, association, or place of abode of the ~~person~~ defendant during the period of release;

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

(D) ~~impose~~ Impose any other condition found reasonably necessary to protect the public, except that a physically restrictive condition may only be imposed in extraordinary circumstances;

(E) ~~if the person~~ If the defendant is a State, county, or municipal officer charged with violating section 2537 of this title, the Court may suspend the officer's duties in whole or in part, if the Court finds that it is necessary to protect the public.

\* \* \*

Sec. 3. 28 V.S.A. § 808(f) is amended to read:

(f) While appropriate community housing is an important consideration in release of offenders, the Department ~~of Corrections~~ shall not use lack of housing as the sole factor in denying furlough to offenders who have served at least their minimum sentence for a nonviolent misdemeanor or nonviolent felony provided that public safety and the best interests of the offender will be

served by reentering the community on furlough. The Department shall adopt rules to implement this subsection.

#### Sec. 4. COMMUNITY HOUSING PLAN

On or before October 15, 2015, the Department of Corrections shall report to the Joint Legislative Corrections Oversight Committee regarding a plan for reducing the growing number of nonviolent offenders being held past their minimum sentence because of the lack of community housing and regarding its proposal for rulemaking. The report shall include data for offenders who are held past their minimum sentence for lack of housing, the offenders' risk levels, and whether they were released and reincarcerated due to violating conditions.

#### Sec. 5. EFFECTIVE DATES

(a) Secs. 1 and 2 shall take effect on July 1, 2015.

(b) This section and Secs. 3 and 4 shall take effect on passage.

(Committee vote: 5-0-0)

### S. 13.

An act relating to the Vermont Sex Offender Registry.

**Reported favorably with recommendation of amendment by Senator Sears for the Committee on Judiciary.**

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 5401(10)(B)(viii) is amended to read:

(viii) sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in ~~13 V.S.A. § 2635a~~ 13 V.S.A. § 2652;

Sec. 2. 13 V.S.A. § 5403 is amended to read:

§ 5403. ~~REPORTING UPON CONVICTION TO DEPARTMENT OF~~  
PUBLIC SAFETY

(a) Upon conviction and prior to sentencing, the ~~court~~ Court shall order the sex offender to provide the ~~court~~ Court with the following information, which the ~~court~~ Court shall forward to the ~~department~~ Department forthwith:

- (1) name;
- (2) date of birth;
- (3) ~~general physical description~~;
- (~~4~~) current address;

~~(5)~~(4) Social Security number;

~~(6)~~ fingerprints;

~~(7)~~ current photograph;

~~(8)~~(5) current employment; and

~~(9)~~(6) name and address of any postsecondary educational institution at which the sex offender is enrolled as a student.

(b) Within 10 days after sentencing, the ~~court~~ Court shall forward to the ~~department~~ Department:

(1) the sex offender's conviction record, including offense, date of conviction, sentence and any conditions of release or probation;

(2) an order issued pursuant to section 5405a of this title, on a form developed by the Court Administrator, that the defendant comply with Sex Offender Registry requirements.

(c) The Departments of Corrections and of Public Safety shall jointly develop a process for the Department of Corrections to notify the Department of Public Safety when an offender who is under Department of Corrections supervision is required to be placed on the Sex Offender Registry because of a conviction that occurred in another jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court. The report shall include the offense of which the defendant was convicted that requires the placement of his or her name on the Registry.

Sec. 3. 13 V.S.A. § 5405a is added to read:

§ 5405a. COURT DETERMINATION OF SEX OFFENDER REGISTRY REQUIREMENTS

(a)(1) The Court shall determine at sentencing whether Sex Offender Registry requirements apply to the defendant.

(2) If the State and the defendant do not agree as to the applicability of Sex Offender Registry requirements to the defendant, the State shall file a motion setting forth the Sex Offender Registry requirements applicable to the defendant within 10 days of the entry of a guilty plea. To the extent the defendant opposes the motion, the State and the defendant shall present evidence at the sentencing as to the applicability of Sex Offender Registry requirements to the defendant.

(b) The Court shall consider the following when determining under this section whether Sex Offender Registry requirements apply to the defendant:

(1) the report issued pursuant to subsection 5403(c) of this title;

(2) the presentence investigation report regarding the offense for which the defendant is being sentenced;

(3) the Court's own judgment of conviction and any evidence that was presented at trial; and

(4) any other evidence admitted at sentencing and deemed relevant by the Court to the defendant's registry status.

(c) The State shall bear the burden of proving by a preponderance of the evidence the applicability of Sex Offender Registry requirements to the defendant under this section.

(d) Within 10 days after the sentencing or the hearing held pursuant to subdivision (a)(2) of this section, the Court shall issue an order determining whether Sex Offender Registry requirements apply to the defendant. The order shall include:

(1) the offense of which the defendant was convicted that requires the placement of his or her name on the Sex Offender Registry;

(2) any prior convictions that affect:

(A) the defendant's Sex Offender Registry Status;

(B) the length of time that the defendant is required to register as a sex offender; or

(C) whether information regarding the defendant is required to be electronically posted on the Internet under section 5411a of this title;

(3) the length of time that the defendant is required to register as a sex offender;

(4) whether the defendant is designated as a sexually violent predator under section 5405 of this title;

(5) whether the defendant was immediately released or remanded to the custody of the Department of Corrections; and

(6) whether information regarding the defendant is required to be electronically posted on the Internet under section 5411a of this title.

Sec. 4. 13 V.S.A. § 5407 is amended to read:

§ 5407. SEX OFFENDER'S RESPONSIBILITY TO REPORT

\* \* \*

(f) A person required to register as a sex offender under this subchapter shall continue to comply with this section for the life of that person, except during periods of incarceration, if that person:

\* \* \*

(2) has been convicted of a sexual assault as defined in section 3252 of this title or aggravated sexual assault as defined in section 3253 of this title, or a comparable offense in another jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court; however, if a person convicted under section 3252 is not more than six years older than the victim of the assault and if the victim is 14 years of age or older, then the offender shall not be required to register for life if the age of the victim was the basis for the conviction;

\* \* \*

Sec. 5. 13 V.S.A. § 5416 is added to read:

§ 5416. PERSONS SUBJECT TO ERRONEOUS SEX OFFENDER REGISTRY REQUIREMENTS; PETITION TO CORRECT

(a) A person may petition the Court for an order declaring that the person has been inadvertently subject to erroneous Sex Offender Registry requirements and directing the Department of Public Safety to correct the error. The petitioner shall provide notice of the petition to the State's Attorney or the Attorney General, who shall be the respondent in the matter.

(b) A petition filed under this section shall include:

(1) the Court's order issued under subdivision 5403(b)(2) of this title to comply with Sex Offender Registry requirements, if available; and

(2) the factual basis for the petitioner's allegation that he or she was subject to an erroneous sex offender registry requirement.

(c) The Court shall grant a petition filed under this section if it finds that the petitioner has demonstrated by a preponderance of the evidence that he or she was by Court order subject to an erroneous sex offender registry requirement. As used in this subsection, "erroneous sex offender registry requirement" includes the person's name being erroneously placed on the Sex Offender Registry or the Internet Sex Offender Registry, or the person being erroneously subject to lifetime registration under subsection 5407(f) of this title.

(d) If a petition filed under this section is granted, the Court shall enter an order declaring that the person had been inadvertently subject to erroneous Sex Offender Registry requirements. The Court shall provide the order to the

Department of Public Safety and direct the Department to take any action necessary to correct the error, including, if appropriate, removing the person's name from the Sex Offender Registry and the Internet Sex Offender Registry.

(e)(1) If the Court denies a petition filed under this section, no further petition shall be filed by the person with respect to the alleged error.

(2) This subsection shall not apply if the petition is based on:

(A) newly discovered evidence;

(B) an expungement order issued under chapter 230 of this title;

(C) a successful petition under chapter 182 of this title (innocence protection); or

(D) a successful petition for postconviction relief.

Sec. 6. 2009 Acts and Resolves No. 58, Sec. 28 is amended to read:

Sec. 28. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except as follows:

~~(1) that~~ Secs. 22 and 26 of this act shall take effect on July 2, 2009.

~~(2) Sec. 14 of this act shall take effect July 1, 2010, provided that Sec. 14 shall not take effect until the state auditor, in consultation with the department of public safety and the department of information and innovation technology, has provided a favorable performance audit regarding the Internet sex offender registry to the senate and house committees on judiciary, the house committee on corrections and institutions, and the joint committee on corrections oversight.~~

Sec. 7. REPEAL

2009 Acts and Resolves No. 58, Sec. 14 (electronic posting of offender addresses on Sex Offender Registry) is repealed.

Sec. 8. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

\* \* \*

(b) The Department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

(1) the offender's name and any known aliases;

(2) the offender's date of birth;

(3) a general physical description of the offender;

(4) a digital photograph of the offender;

(5) the offender's town of residence;

(6) the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:

(A) the Department determines that all the information to be electronically posted about the offender is correct; and

(B)(i) the offender has been designated as high-risk by the department of corrections pursuant to section 5411b of this title;

(ii) the offender has not complied with sex offender treatment;

(iii) there is an outstanding warrant for the offender's arrest;

(iv) the offender is subject to the registry for a conviction of a sex offense against a child under 13 years of age; or

(v) the offender's name has been electronically posted for an offense committed in another jurisdiction which required the person's address to be electronically posted in that jurisdiction;

~~(6)~~(7) the date and nature of the offender's conviction;

~~(7)~~(8) if the offender is under the supervision of the Department of Corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;

~~(8)~~(9) whether the offender complied with treatment recommended by the department of corrections;

~~(9)~~(10) a statement that there is an outstanding warrant for the offender's arrest, if applicable; and

~~(10)~~(11) the reason for which the offender information is accessible under this section.

\* \* \*

(d) ~~An offender's street address shall not be posted electronically.~~ The identity of a victim of an offense that requires registration shall not be released.

\* \* \*

## Sec. 9. EFFECTIVE DATES

(a) This act shall take effect on July 1, 2015, except as provided in subsection (b) of this section.



(b)(1) Sec. 8 of this act shall take effect on the date the Department of Public Safety reports to the General Assembly that the Sex Offender Registry has:

(A) no critical errors; and

(B) an error rate of ten percent or less for errors that are not critical errors.

(2) As used in this subsection, “critical error” means one of the following errors:

(A) An offender’s name should be on the Sex Offender Registry or the Internet Sex Offender Registry but it is not.

(B) An offender’s name should not be on the Sex Offender Registry or the Internet Sex Offender Registry but it is.

(C) An offender’s name is scheduled to be posted on the Sex Offender Registry or the Internet Sex Offender Registry for an incorrect length of time.

(Committee vote: 5-0-0)

#### **PUBLIC HEARINGS**

**Wednesday, February 25, 2015** - 9:30 A.M. - 10:30 A.M. - Room 11 - Re: Governor's Proposed FY 2016 State Budget - House Committee on Appropriations.

#### **FOR INFORMATION ONLY**

#### **CROSSOVER DEADLINES**

The Senate Rules Committee established the following Crossover deadlines:

(1) All **Senate** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 13, 2015**, and filed with the Secretary of the Senate so that they may be placed on the Calendar for Notice the next legislative day.

(2) All **Senate** bills referred pursuant to Senate Rule 31 to the Committees on Appropriations and Finance must be reported out by the last of those committees on or before **Friday, March 20, 2015**, and filed with the Secretary of the Senate so that they may be placed on the Calendar for Notice the next legislative day.

These deadlines may be waived for any bill or committee only with the consent of the Committee on Rules.

**Note:** Pursuant to Senate Rule 44A, the Senate will not act on House bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

**Exceptions to the foregoing deadlines include the major money bills (Appropriations “Big Bill”, Transportation Spending Bill, Capital Construction Bill, and Miscellaneous Tax Bill).**