

# Senate Calendar

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WEDNESDAY, JANUARY 31, 2024

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

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**ORDERS OF THE DAY**

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**ACTION CALENDAR**

**UNFINISHED BUSINESS OF FRIDAY, JANUARY 26, 2024**

**Proposed Amendments to the Vermont Constitution**

**PROPOSAL 1**

**(For Second Reading pursuant to Rule 77)**

Subject: Elections; sheriffs; qualifications

Offered by: Senators Hardy, Sears, Baruth, Clarkson, Hashim, Lyons,  
Vyhovsky, Watson and White

Subject: Elections; sheriffs; qualifications

**PENDING ACTION:** Second Reading of the proposed amendment

**Text of Proposal 1:**

PROPOSAL 1

Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont to allow the General Assembly to establish by law qualifications for individuals to be elected to and hold the office of sheriff. Currently, there are no specific qualifications for being a sheriff in Vermont, including no requirement that a sheriff have or maintain law enforcement officer certification.

Sec. 2. Section 50 of Chapter II of the Vermont Constitution is amended to read:

§ 50. ELECTION OF ASSISTANT JUDGES, SHERIFFS, AND STATE'S ATTORNEYS

The Assistant Judges shall be elected by the voters of their respective districts as established by law. Their judicial functions shall be established by law. Their term of office shall be four years and shall commence on the first day of February next after their election.

Sheriffs shall be elected by the voters of their respective districts as established by law. Their term of office shall be four years and shall commence on the first day of February next after their election. The General Assembly may establish by law qualifications for the election to and holding of such office.

State's Attorneys shall be elected by the voters of their respective districts as established by law. Their term of office shall be four years and shall commence on the first day of February next after their election.

### Sec. 3. EFFECTIVE DATE

The amendment set forth in Sec. 2 shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2026 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

### **Reported favorably with recommendation of amendment by Senator Hardy for the Committee on Government Operations**

The Committee on Government Operations recommends that Proposal 1 be amended by striking out the proposal in its entirety and inserting in lieu thereof the following:

#### PROPOSAL 1

##### Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont to allow the General Assembly to establish by law qualifications for individuals to be elected to and hold certain county offices and to be removed from office for failure to meet or to maintain those qualifications. Further, this proposal would eliminate reference to the office of High Bailiff.

Sec. 2. Section 50 of Chapter II of the Vermont Constitution is amended to read:

#### § 50. ELECTION OF ASSISTANT JUDGES, SHERIFFS, AND STATE'S ATTORNEYS

The Assistant Judges shall be elected by the voters of their respective districts as established by law. Their judicial functions shall be established by law. Their term of office shall be four years and shall commence on the first day of February next after their election. The General Assembly may establish by law qualifications for the election to and holding of such office and procedures for removal from such office for failure to meet or to maintain the required qualifications.

Sheriffs shall be elected by the voters of their respective districts as established by law. Their term of office shall be four years and shall commence on the first day of February next after their election. The General Assembly may establish by law qualifications for the election to and holding of such office and procedures for removal from such office for failure to meet or to maintain the required qualifications.

State's Attorneys shall be elected by the voters of their respective districts as established by law. Their term of office shall be four years and shall commence on the first day of February next after their election. The General Assembly may establish by law qualifications for the election to and holding of such office and procedures for removal from such office for failure to meet or to maintain the required qualifications.

Sec. 3. Section 51 of Chapter II of the Vermont Constitution is amended to read:

§ 51. ELECTION OF JUDGES OF PROBATE

Judges of Probate shall be elected by the voters of their respective districts as established by law. The General Assembly may establish by law qualifications for the election to and holding of such office and procedures for removal from such office for failure to meet or to maintain the required qualifications. Their term of office shall be four years and shall commence on the first day of February next after their election.

Sec. 4. Section 43 of Chapter II of the Vermont Constitution is amended to read:

The Governor, Lieutenant-Governor, Treasurer, Secretary of State, Auditor of Accounts, Senators, Town Representatives, Assistant Judges of the County Court, Sheriffs, ~~High Bailiffs~~, State's Attorneys, Judges of Probate and Justices of the Peace, shall be elected biennially on the first Tuesday next after the first Monday of November, beginning in A.D. 1914.

Sec. 5. EFFECTIVE DATE

The amendments set forth in Secs. 2 through 4 shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2026 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

(Committee vote: 5-1-0)

**NEW BUSINESS**

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 190.**

An act relating to statements made by a child victim of an offense involving serious bodily injury.

**Reported favorably with recommendation of amendment by Senator Norris 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. Rule 15(e) of the Vermont Rules of Criminal Procedure is amended to read:

(e) Limitations.

\* \* \*

(5) Depositions of Minors in ~~Sexual Assault~~ Cases Involving Sexual Assault or Serious Bodily Injury.

(A) No deposition of a victim under the age of 16 shall be taken in a prosecution under 13 V.S.A. §§ 2601 (lewd and lascivious conduct), 2602 (lewd and lascivious conduct with a child), 3252 (sexual assault), 3253 (aggravated sexual assault), ~~or 3253a (aggravated sexual assault of a child), or~~ 13 V.S.A. § 1304(b) (cruelty to a child involving serious bodily) injury except by agreement of the parties or after approval of the court pursuant to subparagraph (B) of this paragraph (5).

(B) The court shall not approve a deposition under this subdivision unless the court finds that the testimony of the child is necessary to assist the trial, that the evidence sought is not reasonably available by any other means, and that the probative value of the testimony outweighs the potential detriment to the child of being deposed. In determining whether to approve a deposition under this subdivision, the court shall consider the availability of recorded statements of the victim and the complexity of the issues involved.

(C)(i) If a deposition is taken pursuant to this paragraph (5), the court shall issue a protective order to protect the deponent from emotional harm, unnecessary annoyance, embarrassment, oppression, invasion of privacy, or undue burden of expense or waste of time. The protective order may include, among other remedies, the following: (I) 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; (II) that the deposition may be taken only by written questions; (III) that certain matters not be inquired into, or that the scope of the deposition be limited to certain matters; (IV) that the deposition be conducted with only such persons present as the court may designate; or (V) that after the deposition has been taken, the tape or transcription be sealed until further order of the court. The restrictions of 13 V.S.A. § 3255(a) shall apply to depositions taken pursuant to this paragraph (5).

(ii) If a deposition is taken pursuant to this paragraph (5), the court shall appoint an attorney to represent the child for the purposes of the deposition.

Sec. 2. Rule 804a of the Vermont Rules of Evidence is amended to read:

**RULE 804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE 12 OR UNDER; PERSON WITH A MENTAL ILLNESS OR AN INTELLECTUAL OR DEVELOPMENTAL DISABILITY**

(a) Statements by a person who is a child 12 years of age or under or who is a person with a mental illness as defined in 18 V.S.A. § 7101(14) or intellectual or developmental disability as defined in 1 V.S.A. §§ 146, 148 at the time 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 person with a mental illness or intellectual or developmental disability 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, 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 13 V.S.A. § 1304(b) (cruelty to a child involving serious bodily injury) 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 52 of Title 33 involving a delinquent act alleged to have been committed against a child 13 years of age or under or a person with a mental illness or intellectual or developmental disability 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 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 person with a mental illness or intellectual or developmental disability 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 person with a mental illness or intellectual or developmental disability to testify for the state.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2024.

(Committee vote: 5-0-0)

**Amendment to the recommendation of amendment of the Committee on  
Judiciary to S. 190 to be offered by Senator Vyhovsky**

Senator Vyhovsky moves to amend the recommendation of amendment of the Committee on Judiciary by adding a Sec. 2a to read as follows:

Sec. 2a. 24 V.S.A. § 1940 is amended to read:

§ 1940. 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 to special investigative units ~~which~~ that:

(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 (lewd or lascivious conduct with child);

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

(iii) 13 V.S.A. chapter 64 (sexual exploitation of children);

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

(v) 13 V.S.A. § 1379 (sexual abuse of a vulnerable adult); 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;

(B) potential violations of:



- (i) 13 V.S.A. § 2601 (lewd and lascivious conduct);
- (ii) 13 V.S.A. § 2605 (voyeurism); and
- (iii) 13 V.S.A. § 1304 (cruelty to a child); and

(3) may assist with the investigation of other incidents, including incidents involving domestic violence and crimes against vulnerable adults.

(b) Any interview of a child pursuant to this section shall be electronically recorded. As used in this subsection, “electronically recorded” means an audio and visual recording that is an authentic, accurate, unaltered record of the interview.

(c) A 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.

~~(e)~~(d) A Special Investigative Unit Grants Board is created, which shall comprise the Attorney General, the Secretary of Administration, the Executive Director 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. Special investigative units organized and operating under this section 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 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 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)~~(e) 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.

### **ORDERED TO LIE**

#### **S. 94.**

An act relating to the City of Barre tax increment financing district.

### **CONFIRMATIONS**

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Utility Commission, underlined below, shall be fully and separately acted upon.

Benjamin D. Battles of Waterbury – Superior Court Judge – Senator Vyhovsky for the Committee on Judiciary (1/26/2024)

Alexander N. Burke of Arlington – Superior Court Judge – Senator Sears for the Committee on Judiciary (2/1/2024)

Rachel Marie Malone of South Burlington – Superior Court Judge – Senator Hashim for the Committee on Judiciary (2/1/2024)

Susan Ann McManus of Manchester – Superior Court Judge – Senator Sears for the Committee on Judiciary (2/1/2024)

Navah C. Spero of Richmond – Superior Court Judge – Senator Vyhovsky for the Committee on Judiciary (2/1/2024)

Rory Thomas Thibault of Cabot – Superior Court Judge – Senator Hashim for the Committee on Judiciary (2/1/2024)

## NOTICE OF JOINT ASSEMBLY

**Thursday, February 15, 2024 - 10:30 A.M. – House Chamber** - Election of an Adjutant and Inspector General, and two legislative Trustees of the Vermont State Colleges Corporation.

Candidates for the positions of Adjutant and Inspector General, and legislative candidates for trustees of the Vermont State Colleges Corporation must notify the Secretary of State **in writing** of their candidacies not later than Thursday, February 8, 2024, by 4:00 P.M., pursuant to the provisions of 2 V.S.A. §12(b). Otherwise their names will not appear on the ballots for these positions.

The following rules shall apply to the conduct of these elections:

First: All nominations for these offices will be presented in alphabetical order prior to voting.

Second: There will be only one nominating speech of not more than three (3) minutes and not more than two seconding speeches of not more than one (1) minute each for each nominee.

**Friday, March 1, 2024 - 10:30 A.M. – House Chamber** - Election of a Sergeant at Arms.

Candidates for the position of Sergeant at Arms, must notify the Secretary of State **in writing** of their candidacies not later than Friday, February 23, 2024, by 4:00 P.M., pursuant to the provisions of 2 V.S.A. §12(b). Otherwise their names will not appear on the ballots for these positions.

The following rules shall apply to the conduct of this election:

First: All nominations for this office will be presented in alphabetical order prior to voting.

Second: There will be only one nominating speech of not more than three (3) minutes and not more than two seconding speeches of not more than one (1) minute each for each nominee.

## JFO NOTICE

Grants and Positions that have been submitted to the Joint Fiscal Committee by the Administration, under 32 V.S.A. §5(b)(3):

**JFO #3178: \$456,436.00** to the Agency of Natural Resources, Secretary's Office from the U.S. Environmental Protection Agency. Funds will support (1) limited-service position, Environmental Analyst IV. This position will serve as administrative lead developing the updated Climate Action Plan with the

Vermont Climate Council and perform added work required by the EPA grant. Position is funded through 6/30/2027.

*[Received January 11, 2024]*

**JFO #3176:** \$250,000.00 to the Agency of Human Services, Department of Mental Health from the National Association of State Mental Health Program Directors. These funds will increase rapid access to behavioral health care by supporting the peer service component of the mental health urgent care clinic being established in Chittenden County. This clinic will offer an alternative to seeking mental health care in emergency departments

*[Received January 11, 2024]*

**JFO #3177: \$2,543,564.00** to the Agency of Natural Resources, Secretary's Office from the U.S. Environmental Protection Agency. Funding is phase one of a two-phase funding opportunity aimed to support Vermont with climate change mitigation planning efforts. A comprehensive climate action plan will be developed, to overlap with and be synonymous to the required update to Vermont's Climate Action Plan in 2025.

*[Received January 12, 2024]*

**JFO #3179:** Two (2) limited-service positions. One (1) to the Department of Mental Health, Project AWARE Lead Coordinator and one (1) to the Agency of Education, Project AWARE Co-Coordinator. The positions will liaison to coordinate and expand the state's efforts to develop sustainable infrastructure for school-based mental health. Both positions are fully funded through 9/29/28 from previous SAMHSA grant award JFO #2934.

*[Received January 26, 2024]*

## **FOR INFORMATION ONLY**

### **CONSTITUTIONAL AMENDMENTS**

The 2023-2024 biennium is the second reading of a proposal of amendment; there is only a second reading this biennium. Third reading is during the 2025-2026 biennium.

Upon being reported by a committee, the proposal is printed in full in the Senate Calendar on the Notice Calendar for five legislative days. Senate Rule 77.

At second reading the proposal of amendment is read in full. Senate Rule 77.

The vote on any constitutional proposal of amendment and any amendment thereto is by yeas and nays. Senate Rules 77 and 80, and Vermont Constitutional §72 (requirement of 2/3 vote of members).

At second reading, the questions is: “Shall the Senate adopt the proposal of amendment to the Constitution of Vermont (as amended) as recommended by the Committee on \_\_\_\_\_ and request the concurrence of the House?” which requires 20 votes – 2/3 of the Senate. Vermont Constitution §72. Any amendments to the proposal of amendment require a majority. Senate Rule 80.

Amendments recommended by any senator shall be submitted to the committee of reference, in written form, where they shall be acted upon by the committee. Upon adoption or rejection of any amendment by the committee, the amendment and recommendation shall be printed in the calendar at least one legislative day before second reading. Senate Rule 78.