

1 S.125

2 Introduced by Committee on Judiciary

3 Date:

4 Subject: Crimes; sex offender registry; sex trafficking of children; exploitation
5 of minors

6 Statement of purpose: This bill proposes to address compliance issues related
7 to the federal Adam Walsh Child Safety and Protection Act of 2006; create a
8 new crime that addresses commercial sex trafficking; establish age gap
9 provisions within the child pornography laws to address conduct known as
10 “sexting”; expand the list of registrable sex offenses; expand the number of
11 registered sex offenders on the Internet registry; and include sex offenders’
12 home addresses on the Internet registry if the addresses are verified by the
13 department of public safety.

14 An act relating to expanding the sex offender registry

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

16 Sec. 1. COMPLIANCE WITH THE ADAM WALSH CHILD PROTECTION
17 AND SAFETY ACT OF 2006

18 (a) The Act. The Adam Walsh Child Protection and Safety Act of 2006
19 was signed by President George W. Bush in 2006. While well-intended, it
20 contains a broad span of provisions that would significantly change state

1 practice related to the registration and management of sex offenders in
2 Vermont in a manner that is inconsistent with widely accepted evidence-based
3 best practices at a substantial financial cost to the state. In comments directed
4 to the U.S. Department of Justice regarding proposed guidelines to interpret
5 and implement the act, the National Conference of State Legislatures called the
6 guidelines a “burdensome,” “preemptive,” “unfunded mandate” for the states,
7 requiring every legislature to undertake an extensive review of its laws as
8 compared to the act and necessitating changes to state policy traditionally
9 within the purview of the states.

10 (b) No state is in compliance. Due to the complexity and costs associated
11 with the act, as of February 1, 2009, no state has been certified to be in
12 substantial compliance with the act. States are required to comply with the act
13 by July 27, 2009 or lose 10 percent of the state’s federal Byrne/JAG Funds,
14 although Vermont has recently received a one-year extension from the Office
15 of Justice Programs’ SMART office, which is responsible for regulations and
16 compliance under the act.

17 (c) Constitutional challenges. The act is currently being challenged on a
18 number of constitutional grounds in both federal and state courts at a
19 substantial cost to many states. In addition, registry requirements and the
20 consequences for failure to comply with them have expanded so significantly

1 in recent years that imposition of such requirements on offenders may now
2 violate the constitutional ban on retroactive punishment.

3 (d) Risk assessments. Vermont has adopted a practice of assigning
4 offender risk levels through the use of actuarial risk assessment instruments.
5 These instruments use a predetermined range of variables that have high
6 correlation to sexual recidivism such as criminal history, victim profile, and
7 age at time of offense to determine an offender's potential risk of recidivism.
8 The Adam Walsh Act mandates an entirely different offense tier structure and
9 demands that risk determination be based solely on an offender's crime of
10 conviction, not on an actuarial risk assessment score. According to the most
11 recent research, using crime of conviction as the primary method of
12 determining offender risk is a far less reliable predictor of re-offense than is the
13 use of actuarial tools.

14 (e) Retroactive application and juveniles. Regulations issued by former
15 U.S. Attorney General Alberto Gonzales require states to apply the
16 requirements of the act retroactively, requiring Vermont to re-tier all sexual
17 offenders, some of whom are currently beyond their duty to register. The
18 retroactive application also applies to juveniles adjudicated delinquent for
19 certain sexual offenses, even though they are currently not required to be
20 registered under state law. Even though such juveniles were afforded the
21 protections of the juvenile system at the time of their plea, they would now be

1 subject to a registration term as long as 25 years with no opportunity to petition
2 for relief and subject to inclusion on the Internet sex offender registry.

3 Sec. 2. 13 V.S.A. § 2635a is added to read:

4 § 2635a. SEX TRAFFICKING OF CHILDREN; SEX TRAFFICKING BY
5 FORCE, FRAUD, OR COERCION

6 (a) As used in this section:

7 (1) “Coercion” means:

8 (A) threats of serious harm to or physical restraint against any
9 person;

10 (B) any scheme, plan, or pattern intended to cause a person to believe
11 that failure to perform an act would result in serious bodily harm to or physical
12 restraint against any person; or

13 (C) the abuse or threatened abuse of law or the legal process.

14 (2) “Commercial sex act” means any sex act on account of which
15 anything of value is given to or received by any person.

16 (3) “Venture” means any group of two or more individuals associated in
17 fact, whether or not a legal entity.

18 (b) No person shall knowingly:

19 (1) recruit, entice, harbor, transport, provide, or obtain by any means
20 through or affecting interstate or foreign commerce or within the special

1 maritime and territorial jurisdiction of the United States a person under the age
2 of 18 for the purpose of having the person engage in a commercial sex act;

3 (2) compel by any means through or affecting interstate or foreign
4 commerce or within the special maritime and territorial jurisdiction of the
5 United States a person through force, fraud, or coercion to engage in a
6 commercial sex act;

7 (3) benefit financially or by receiving anything of value from
8 participation in a venture knowing that force, fraud, or coercion was or will be
9 used to cause any person to engage in a commercial sex act as part of the
10 venture.

11 (c) A person who violates subsection (b) of this section shall be imprisoned
12 for a term up to and including life or fined not more than \$25,000.00 or both.

13 Sec. 3. 13 V.S.A. § 2822(c) is added to read:

14 (c) This section shall not apply if the person is less than 19 years old, the
15 child is at least 13 years old, and the child knowingly and voluntarily and
16 without threat or coercion used an electronic communication device to transmit
17 an image of himself or herself to the person. This subsection shall not be
18 construed to prohibit a prosecution under section 2605 of this title (voyeurism).

19 Sec. 4. 13 V.S.A. § 2824(c) is added to read:

20 (c) This section shall not apply if the person is less than 19 years old, the
21 child is at least 13 years old, and the child knowingly and voluntarily and

1 without threat or coercion used an electronic communication device to transmit
2 an image of himself or herself to the person. This subsection shall not be
3 construed to prohibit a prosecution under section 2605 of this title (voyeurism).

4 Sec. 5. 13 V.S.A. § 2827(d) is added to read:

5 (d) This section shall not apply if the person is less than 19 years old, the
6 child is at least 13 years old, and the child knowingly and voluntarily and
7 without threat or coercion, used an electronic communication device to
8 transmit an image of himself or herself to the person. This subsection shall not
9 be construed to prohibit a prosecution under section 2605 of this title
10 (voyeurism).

11 Sec. 6. 13 V.S.A. § 5401(10) is amended to read;

12 (10) "Sex offender" means:

13 (A) A person who is convicted in any jurisdiction of the United
14 States, including a state, territory, commonwealth, the District of Columbia, or
15 military, federal, or tribal court of any of the following offenses:

16 (i) sexual assault as defined in 13 V.S.A. § 3252;

17 (ii) aggravated sexual assault as defined in 13 V.S.A. § 3253;

18 (iii) lewd and lascivious conduct as defined in 13 V.S.A. § 2601;

19 (iv) sexual abuse of a vulnerable adult as defined in 13 V.S.A.

20 § 1379;

1 (v) second or subsequent conviction for voyeurism as defined in
2 13 V.S.A. § 2605(b) or (c);

3 (vi) kidnapping with intent to commit sexual assault as defined in
4 13 V.S.A. § 2405(a)(1)(D); and

5 (vii) an attempt to commit any offense listed in this
6 subdivision (A).

7 (B) A person who is convicted of any of the following offenses
8 against a victim who is a minor, except that, for purposes of this subdivision,
9 conduct which is criminal only because of the age of the victim shall not be
10 considered an offense for purposes of the registry if the perpetrator is under the
11 age of 18 and the victim is at least 12 years old:

12 (i) any offense listed in subdivision (A) of this subdivision (10);

13 (ii) kidnapping as defined in 13 V.S.A. § 2405(a)(1)(D);

14 (iii) lewd and lascivious conduct with a child as defined in
15 13 V.S.A. § 2602;

16 (iv) ~~white~~ slave traffic as defined in 13 V.S.A. § 2635;

17 (v) sexual exploitation of children as defined in 13 V.S.A. chapter
18 64;

19 (vi) ~~or~~ procurement or solicitation as defined in 13 V.S.A.
20 § 2632(a)(6);

1 (vii) aggravated sexual assault of a child as defined in 13 V.S.A.
2 § 3254;

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

5 (ix) sexual exploitation of a minor as defined in 13 V.S.A.
6 § 3258(b);

7 (x) an attempt to commit any offense listed in this subdivision (B).

8 (C) A person who takes up residence within this state, other than
9 within a correctional facility, and who has been convicted in any jurisdiction of
10 the United States, including a state, territory, commonwealth, the District of
11 Columbia, or military, federal, or tribal court, for a sex crime the elements of
12 which would constitute a crime under subdivision ~~(10)~~(A) or (B) of this ~~section~~
13 subdivision (10) if committed in this state.

14 (D) A nonresident sex offender who crosses into Vermont and who is
15 employed, carries on a vocation, or is a student.

16 Sec. 7. 13 V.S.A. § 5411a is amended to read:

17 § 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

18 (a) Notwithstanding sections 2056a-2056e of Title 20, the department shall
19 electronically post information on the Internet in accordance with subsection
20 (b) of this section regarding the following sex offenders, upon their release
21 from confinement:

1 (1) Sex offenders who have been convicted of ~~a violation of section~~
2 ~~3253 of this title (aggravated sexual assault), section 2602 of this title (lewd or~~
3 ~~lascivious conduct with child) if the offender has been designated as high risk~~
4 ~~by the department of corrections pursuant to section 5411b of this title, or~~
5 ~~subdivision 2405(a)(1)(D) of this title if a registrable offense (kidnapping and~~
6 ~~sexual assault of a child);~~

7 (A) Aggravated sexual assault of a child (13 V.S.A. § 3254);

8 (B) Aggravated sexual assault (13 V.S.A. § 3253);

9 (C) Sexual assault (13 V.S.A. § 3252);

10 (D) Kidnapping with intent to commit sexual assault (13 V.S.A.
11 § 2405(a)(1)(D));

12 (E) Lewd or lascivious conduct with child (13 V.S.A. § 2602);

13 (F) A second or subsequent conviction for voyeurism (13 V.S.A.
14 § 2605(b) or (c));

15 (G) Slave traffic (13 V.S.A. § 2635);

16 (H) Sex trafficking of children or sex trafficking by force, fraud, or
17 coercion (13 V.S.A. § 2635a);

18 (I) Sexual exploitation of a minor (13 V.S.A. § 3258(b));

19 (J) Any offense regarding the sexual exploitation of children (chapter
20 64 of this title);

21 (K) Sexual abuse of a vulnerable adult (13 V.S.A. § 1379).

1 (2) Sex offenders who have at least one prior conviction for an offense
2 described in subdivision 5401(10) of this subchapter.

3 (3) Sex offenders who have failed to comply with sex offender
4 registration requirements and for whose arrest there is an outstanding warrant
5 for such noncompliance. Information on offenders shall remain on the Internet
6 only while the warrant is outstanding.

7 (4) Sex offenders who have been designated as sexual predators
8 pursuant to section 5405 of this title.

9 (5)(A) Sex offenders who have not complied with sex offender
10 treatment recommended by the department of corrections or who are ineligible
11 for sex offender treatment. The department of corrections shall establish rules
12 for the administration of this subdivision and shall specify what circumstances
13 constitute noncompliance with treatment and criteria for ineligibility to
14 participate in treatment. Offenders subject to this provision shall have the right
15 to appeal the department of corrections' determination in superior court in
16 accordance with Rule 75 of the Vermont Rules of Civil Procedure. This
17 subdivision shall apply prospectively and shall not apply to those sex offenders
18 who did not comply with treatment or were ineligible for treatment prior to
19 March 1, 2005.

20 (B) The department of corrections shall notify the department if a sex
21 offender who is compliant with sex offender treatment completes his or her

1 sentence but has not completed sex offender treatment. As long as the
2 offender complies with treatment, the offender shall not be considered
3 noncompliant under this subdivision and shall not be placed on the Internet
4 registry in accordance with this subdivision alone. However, the offender shall
5 submit to the department proof of continuing treatment compliance every three
6 months. Proof of compliance shall be a form provided by the department that
7 the offender's treatment provider shall sign, attesting to the offender's
8 continuing compliance with recommended treatment. Failure to submit such
9 proof as required under this subdivision (B) shall result in the offender's
10 placement on the Internet registry in accordance with subdivision (A) of this
11 subdivision (5).

12 (6) Sex offenders who have been designated by the department of
13 corrections, pursuant to section 5411b of this title, as high-risk.

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

- 16 (1) the offender's name and any known aliases;
17 (2) the offender's date of birth;
18 (3) a general physical description of the offender;
19 (4) a digital photograph of the offender;
20 (5) the offender's town of residence;
21 (6) the date and nature of the offender's conviction;

1 (7) if the offender is under the supervision of the department of
2 corrections, the name and telephone number of the local department of
3 corrections office in charge of monitoring the sex offender;

4 (8) whether the offender complied with treatment recommended by the
5 department of corrections;

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

8 (10) the reason for which the offender information is accessible under
9 this section.

10 (c) The department shall have the authority to take necessary steps to
11 obtain digital photographs of offenders whose information is required to be
12 posted on the Internet and to update photographs as necessary. An offender
13 who is requested by the department to report to the department or a local law
14 enforcement agency for the purpose of being photographed for the Internet
15 shall comply with the request within 30 days.

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

18 (e) Information regarding a sex offender shall not be posted electronically
19 if the conduct that is the basis for the offense is criminal only because of the
20 age of the victim and the perpetrator is within 38 months of age of the victim.

1 (f) Information regarding a sex offender shall not be posted electronically
2 prior to the offender reaching the age of 18, but such information shall be
3 otherwise available pursuant to section 5411 of this title.

4 (g) Information on sex offenders shall be posted on the Internet for the
5 duration of time for which they are subject to notification requirements under
6 section 5401 et seq. of this title.

7 (h) Posting of the information shall include the following language: “This
8 information is made available for the purpose of complying with 13 V.S.A.
9 § 5401 et seq., which requires the Department of Public Safety to establish and
10 maintain a registry of persons who are required to register as sex offenders and
11 to post electronically information on sex offenders. The registry is based on
12 the legislature’s decision to facilitate access to publicly available information
13 about persons convicted of sexual offenses. EXCEPT FOR OFFENDERS
14 SPECIFICALLY DESIGNATED ON THIS SITE AS HIGH-RISK, THE
15 DEPARTMENT OF PUBLIC SAFETY HAS NOT CONSIDERED OR
16 ASSESSED THE SPECIFIC RISK OF REOFFENSE WITH REGARD TO
17 ANY INDIVIDUAL PRIOR TO HIS OR HER INCLUSION WITHIN THIS
18 REGISTRY AND HAS MADE NO DETERMINATION THAT ANY
19 INDIVIDUAL INCLUDED IN THE REGISTRY IS CURRENTLY
20 DANGEROUS. THE MAIN PURPOSE OF PROVIDING THIS DATA ON
21 THE INTERNET IS TO MAKE INFORMATION MORE EASILY

1 AVAILABLE AND ACCESSIBLE, NOT TO WARN ABOUT ANY
2 SPECIFIC INDIVIDUAL. IF YOU HAVE QUESTIONS OR CONCERNS
3 ABOUT A PERSON WHO IS NOT LISTED ON THIS SITE OR YOU
4 HAVE QUESTIONS ABOUT SEX OFFENDER INFORMATION LISTED
5 ON THIS SITE, PLEASE CONTACT THE DEPARTMENT OF PUBLIC
6 SAFETY OR YOUR LOCAL LAW ENFORCEMENT AGENCY. PLEASE
7 BE AWARE THAT MANY NONOFFENDERS SHARE A NAME WITH A
8 REGISTERED SEX OFFENDER. Any person who uses information in this
9 registry to injure, harass, or commit a criminal offense against any person
10 included in the registry or any other person is subject to criminal prosecution.”

11 (i) The department shall post electronically general information about the
12 sex offender registry and how the public may access registry information.
13 Electronically posted information regarding sex offenders listed in
14 subsection (a) of this section shall be organized and available to search by the
15 sex offender’s name and the sex offender’s county of residence.

16 (j) The department shall adopt rules for the administration of this section
17 and shall expedite the process for the adoption of such rules. The department
18 shall not implement this section prior to the adoption of such rules.

19 (k) If a sex offender’s information is required to be posted electronically
20 pursuant to subdivision (a)(2) of this section, the department shall list the
21 offender’s convictions for any crime listed in subdivision 5401(10) of this title,

1 regardless of the date of the conviction or whether the offender was required to
2 register as a sex offender based upon that conviction.

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

4 § 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

5 * * *

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

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

9 (2) the offender's date of birth;

10 (3) a general physical description of the offender;

11 (4) a digital photograph of the offender;

12 (5) the offender's ~~town-of-residence~~ address or, if the offender does not
13 have a fixed address, other information about where the offender habitually
14 lives;

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

16 (7) if the offender is under the supervision of the department of
17 corrections, the name and telephone number of the local department of
18 corrections office in charge of monitoring the sex offender;

19 (8) whether the offender complied with treatment recommended by the
20 department of corrections;

1 (9) a statement that there is an outstanding warrant for the offender’s
2 arrest, if applicable; and

3 (10) the reason for which the offender information is accessible under
4 this section.

5 * * *

6 Sec. 9. 16 V.S.A. § 131 is amended to read:

7 § 131. DEFINITIONS

8 For the purposes of this subchapter:

9 “~~Comprehensive,~~ “comprehensive health education” means a systematic
10 and extensive elementary and secondary educational program designed to
11 provide a variety of learning experiences based upon knowledge of the human
12 organism as it functions within its environment. The term includes, but is not
13 limited to, a study of:

14 * * *

15 (8) Human growth and development, including understanding the
16 physical, emotional and social elements of individual development and
17 interpersonal relationships including instruction in parenting methods and
18 styles. This shall include information regarding the possible outcomes of
19 premature sexual activity, contraceptives, adolescent pregnancy, childbirth,
20 adoption, ~~and~~ abortion, and criminal penalties under state law for consensual
21 sexual activity between consenting teenagers;

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Sec. 10. Rule 413 of the Vermont Rules of Evidence is added to read:

RULE 413. EVIDENCE OF SIMILAR CRIMES IN PROSECUTIONS OF
SEXUAL CRIMES

(a) Evidence of the defendant's conviction of another offense may be
considered for its bearing on any matter to which it is relevant in a criminal
case in which the defendant is accused of a crime set forth in:

(1) subchapter 1 (lewd and indecent conduct) of chapter 59 (lewdness
and prostitution) of Title 13;

(2) section 2635a (sex trafficking of children and sex trafficking by
force, fraud, or coercion) of chapter 59 (lewdness and prostitution) of Title 13;

(3) chapter 64 (sexual exploitation of children) of Title 13;

(4) chapter 72 (sexual assault) of Title 13; or

(5) section 2802 (disseminating indecent material to a minor in the
presence of the minor), 2802a (disseminating indecent material to a minor
outside the presence of the minor) or 2804b (displaying obscene material to
minors) of chapter 63 (obscenity) of Title 13.

(b) In a case in which the state intends to offer evidence under this rule, the
prosecutor or attorney for the state shall disclose the evidence to the defendant,
including statements of witnesses or a summary of the substance of any

1 testimony that is expected to be offered, at least 15 days before the scheduled
2 date of trial or at such later time as the court may allow for good cause.

3 (c) This rule shall not be construed to limit the admission or consideration
4 of evidence under any other rule.

5 (d) For purposes of this rule, “offense” means a crime or delinquent act or
6 attempt or conspiracy to commit any crime or delinquent act of this state or of
7 any jurisdiction of the United States, including a state, territory,
8 commonwealth, the District of Columbia, or military, federal, or tribal
9 territory, and means a crime or delinquent act that involved:

10 (1) any conduct proscribed by chapter 109A of Title 18, United States
11 Code;

12 (2) contact, without consent, between any part of the defendant’s body
13 or an object and the genitals or anus of another person;

14 (3) contact, without consent, between the genitals or anus of the
15 defendant and any part of another person’s body;

16 (4) deriving sexual pleasure or gratification from the infliction of death,
17 bodily injury, or physical pain on another person; or

18 (5) an attempt or conspiracy to engage in conduct described in
19 subdivisions (d)(1)–(4) of this rule.

1 Sec. 11. Rule 804a of the Vermont Rules of Evidence is amended to read:

2 Rule 804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE 12

3 OR UNDER; PERSON ~~IN NEED OF GUARDIANSHIP~~ WITH

4 DEVELOPMENTAL DISABILITY OR MENTAL ILLNESS

5 (a) Statements by a person who is a child 12 years of age or under or who
6 is a person ~~in need of guardianship as defined in 14 V.S.A. § 3061~~ with a
7 mental illness as defined in 18 V.S.A. § 7101(14) or a developmental disability
8 as defined in 18 V.S.A. § 722(2) at the time the statements were made are not
9 excluded by the hearsay rule if the court specifically finds at the time they are
10 offered that:

11 (1) the statements are offered in a civil, criminal, or administrative
12 proceeding in which the child or person ~~in need of guardianship~~ with a mental
13 illness or developmental disability is a putative victim of sexual assault under
14 13 V.S.A. § 3252, aggravated sexual assault under 13 V.S.A. § 3253,
15 aggravated sexual assault of a child under 13 V.S.A. § 3253a, lewd or
16 lascivious conduct under 13 V.S.A. § 2601, lewd or lascivious conduct with a
17 child under 13 V.S.A. § 2602, incest under 13 V.S.A. § 205, abuse, neglect, or
18 exploitation under 33 V.S.A. § 6913, sexual abuse of a vulnerable adult under
19 13 V.S.A. § 1379, or wrongful sexual activity and the statements concern the
20 alleged crime or the wrongful sexual activity; or the statements are offered in a
21 juvenile proceeding under chapter 52 of Title 33 involving a delinquent act

1 alleged to have been committed against a child 13 years of age or under or a
2 person ~~in need of guardianship~~ with a mental illness or developmental
3 disability if the delinquent act would be an offense listed herein if committed
4 by an adult and the statements concern the alleged delinquent act; or the child
5 is the subject of a petition alleging that the child is in need of care or
6 supervision under chapter 53 of Title 33, and the statement relates to the sexual
7 abuse of the child;

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

12 (3) the child or person ~~in need of guardianship~~ with a mental illness or
13 developmental disability is available to testify in court or under Rule 807; and

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

16 (b) Upon motion of either party in a criminal or delinquency proceeding,
17 the court shall require the child or person ~~in need of guardianship~~ with a
18 mental illness or developmental disability to testify for the state.

19 Sec. 12. REPORT

20 The department of public safety shall report to the senate and house
21 committees on judiciary no later than December 15, 2009 regarding the

1 management, staffing, funding, and operation of the sex offender registry. The
2 report shall address actions taken by the department to communicate with other
3 agencies and departments regarding information placed on the sex offender
4 Internet registry and the department's readiness and plan for implementing
5 Sec. 8 of this act in 2010.

6 Sec. 13. EFFECTIVE DATE

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

8 (1) Sec. 11 of this act shall take effect on July 2, 2009.

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