

S.125

An act relating to expanding the sex offender registry

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

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

(a) The Act. The Adam Walsh Child Protection and Safety Act of 2006 was signed by President George W. Bush in 2006. While well-intended, it contains a broad span of provisions that would significantly change state practice related to the registration and management of sex offenders in Vermont in a manner that is inconsistent with widely accepted evidence-based best practices at a substantial financial cost to the state. In comments directed to the U.S. Department of Justice regarding proposed guidelines to interpret and implement the act, the National Conference of State Legislatures called the guidelines a “burdensome,” “preemptive,” “unfunded mandate” for the states, requiring every legislature to undertake an extensive review of its laws as compared to the act and necessitating changes to state policy traditionally within the purview of the states.

(b) No state is in compliance. Due to the complexity and costs associated with the act, as of February 1, 2009, no state has been certified to be in substantial compliance with the act. States are required to comply with the act by July 27, 2009 or lose 10 percent of the state’s federal Byrne/JAG Funds,

although Vermont has recently received a one-year extension from the Office of Justice Programs' SMART office, which is responsible for regulations and compliance under the act.

(c) Constitutional challenges. The act is currently being challenged on a number of constitutional grounds in both federal and state courts at a substantial cost to many states. In addition, registry requirements and the consequences for failure to comply with them have expanded so significantly in recent years that imposition of such requirements on offenders may now violate the constitutional ban on retroactive punishment.

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

(e) Retroactive application and juveniles. Regulations issued by former U.S. Attorney General Alberto Gonzales require states to apply the requirements of the act retroactively, requiring Vermont to reter all sexual offenders, some of whom are currently beyond their duty to register. The retroactive application also applies to juveniles adjudicated delinquent for certain sexual offenses, even though they are currently not required to be registered under state law. Even though such juveniles were afforded the protections of the juvenile system at the time of their plea, they would now be subject to a registration term as long as 25 years with no opportunity to petition for relief and subject to inclusion on the Internet sex offender registry.

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

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

(a) As used in this section:

(1) "Coercion" means:

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

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

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

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

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

(b) No person shall knowingly:

(1) recruit, entice, harbor, transport, provide, or obtain by any means through or affecting interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States a person under the age of 18 for the purpose of having the person engage in a commercial sex act;

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

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

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

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

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

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

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

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

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

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

(10) “Sex offender” means:

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

- (i) sexual assault as defined in 13 V.S.A. § 3252;
- (ii) aggravated sexual assault as defined in 13 V.S.A. § 3253;
- (iii) lewd and lascivious conduct as defined in 13 V.S.A. § 2601;
- (iv) sexual abuse of a vulnerable adult as defined in 13 V.S.A. § 1379;
- (v) second or subsequent conviction for voyeurism as defined in 13 V.S.A. § 2605(b) or (c);
- (vi) kidnapping with intent to commit sexual assault as defined in 13 V.S.A. § 2405(a)(1)(D); and
- (vii) an attempt to commit any offense listed in this subdivision (A).

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

- (i) any offense listed in subdivision (A) of this subdivision (10);
- (ii) kidnapping as defined in 13 V.S.A. § 2405(a)(1)(D);

- (iii) lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602;
  - (iv) ~~white~~ slave traffic as defined in 13 V.S.A. § 2635;
  - (v) sexual exploitation of children as defined in 13 V.S.A. chapter 64;
  - (vi) ~~or~~ procurement or solicitation as defined in 13 V.S.A. § 2632(a)(6);
  - (vii) aggravated sexual assault of a child as defined in 13 V.S.A. § 3254;
  - (viii) sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in 13 V.S.A. § 2635a;
  - (ix) sexual exploitation of a minor as defined in 13 V.S.A. § 3258(b);
  - (x) an attempt to commit any offense listed in this subdivision (B).
- (C) A person who takes up residence within this state, other than within a correctional facility, and who has been convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, for a sex crime the elements of which would constitute a crime under subdivision ~~(10)~~(A) or (B) of this ~~section~~ subdivision (10) if committed in this state.

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

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

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

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

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

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

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

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

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

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

(F) A second or subsequent conviction for voyeurism (13 V.S.A.



§ 2605(b) or (c);

(G) Slave traffic (13 V.S.A. § 2635);

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

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

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

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

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

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

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

(5)(A) Sex offenders who have not complied with sex offender treatment recommended by the department of corrections or who are ineligible for sex offender treatment. The department of corrections shall establish rules for the administration of this subdivision and shall specify what circumstances constitute noncompliance with treatment and criteria for ineligibility to

participate in treatment. Offenders subject to this provision shall have the right to appeal the department of corrections' determination in superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure. This subdivision shall apply prospectively and shall not apply to those sex offenders who did not comply with treatment or were ineligible for treatment prior to March 1, 2005.

(B) The department of corrections shall notify the department if a sex offender who is compliant with sex offender treatment completes his or her sentence but has not completed sex offender treatment. As long as the offender complies with treatment, the offender shall not be considered noncompliant under this subdivision and shall not be placed on the Internet registry in accordance with this subdivision alone. However, the offender shall submit to the department proof of continuing treatment compliance every three months. Proof of compliance shall be a form provided by the department that the offender's treatment provider shall sign, attesting to the offender's continuing compliance with recommended treatment. Failure to submit such proof as required under this subdivision (B) shall result in the offender's placement on the Internet registry in accordance with subdivision (A) of this subdivision (5).

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

(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 date and nature of the offender's conviction;
- (7) 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) whether the offender complied with treatment recommended by the department of corrections;
- (9) a statement that there is an outstanding warrant for the offender's arrest, if applicable; and
- (10) the reason for which the offender information is accessible under this section.

(c) The department shall have the authority to take necessary steps to obtain digital photographs of offenders whose information is required to be posted on the Internet and to update photographs as necessary. An offender who is requested by the department to report to the department or a local law

enforcement agency for the purpose of being photographed for the Internet shall comply with the request within 30 days.

(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.

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

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

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

(h) Posting of the information shall include the following language: "This information is made available for the purpose of complying with 13 V.S.A. § 5401 et seq., which requires the Department of Public Safety to establish and maintain a registry of persons who are required to register as sex offenders and to post electronically information on sex offenders. The registry is based on the legislature's decision to facilitate access to publicly available information about persons convicted of sexual offenses. EXCEPT FOR OFFENDERS SPECIFICALLY DESIGNATED ON THIS SITE AS HIGH-RISK, THE

DEPARTMENT OF PUBLIC SAFETY HAS NOT CONSIDERED OR ASSESSED THE SPECIFIC RISK OF REOFFENSE WITH REGARD TO ANY INDIVIDUAL PRIOR TO HIS OR HER INCLUSION WITHIN THIS REGISTRY AND HAS MADE NO DETERMINATION THAT ANY INDIVIDUAL INCLUDED IN THE REGISTRY IS CURRENTLY DANGEROUS. THE MAIN PURPOSE OF PROVIDING THIS DATA ON THE INTERNET IS TO MAKE INFORMATION MORE EASILY AVAILABLE AND ACCESSIBLE, NOT TO WARN ABOUT ANY SPECIFIC INDIVIDUAL. IF YOU HAVE QUESTIONS OR CONCERNS ABOUT A PERSON WHO IS NOT LISTED ON THIS SITE OR YOU HAVE QUESTIONS ABOUT SEX OFFENDER INFORMATION LISTED ON THIS SITE, PLEASE CONTACT THE DEPARTMENT OF PUBLIC SAFETY OR YOUR LOCAL LAW ENFORCEMENT AGENCY. PLEASE BE AWARE THAT MANY NONOFFENDERS SHARE A NAME WITH A REGISTERED SEX OFFENDER. Any person who uses information in this registry to injure, harass, or commit a criminal offense against any person included in the registry or any other person is subject to criminal prosecution.”

(i) The department shall post electronically general information about the sex offender registry and how the public may access registry information.

Electronically posted information regarding sex offenders listed in

subsection (a) of this section shall be organized and available to search by the sex offender's name and the sex offender's county of residence.

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

(k) If a sex offender's information is required to be posted electronically pursuant to subdivision (a)(2) of this section, the department shall list the offender's convictions for any crime listed in subdivision 5401(10) of this title, regardless of the date of the conviction or whether the offender was required to register as a sex offender based upon that conviction.

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~~ address or, if the offender does not have a fixed address, other information about where the offender habitually lives;

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

(7) 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) whether the offender complied with treatment recommended by the department of corrections;

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

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

\* \* \*

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

§ 131. DEFINITIONS

For the purposes of this subchapter:

~~“Comprehensive,~~ “comprehensive health education” means a systematic and extensive elementary and secondary educational program designed to provide a variety of learning experiences based upon knowledge of the human

organism as it functions within its environment. The term includes, but is not limited to, a study of:

\* \* \*

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

Sec. 9a. 20 V.S.A. § 2061 is amended to read:

§ 2061. FINGERPRINTING

\* \* \*

(m) The Vermont crime information center may electronically transmit fingerprints and photographs of accused persons to the Federal Bureau of Investigation (FBI) at any time after arrest, summons, or citation ~~for the sole purpose of identifying an individual. However, the Vermont crime information center shall not forward fingerprints and photographs to the FBI for the purpose of inclusion in the National Crime Information Center Database until after arraignment.~~ If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and the



defendant is acquitted, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs. If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and all charges against the defendant are dismissed, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs, unless the attorney for the state can show good cause why the fingerprints and photographs should not be destroyed.

\* \* \*

Sec. 9b. 28 V.S.A. § 204 is amended to read:

§ 204. -SUBMISSION OF WRITTEN REPORT; PROTECTION OF  
RECORDS

\* \* \*

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

\* \* \*

(f) Except as otherwise provided by law, reports and records subject to this section may be inspected by a state or federal prosecutor as part of a criminal investigation. The information in the files may be used for any lawful purpose but shall not otherwise be made public.

Sec. 9c. 28 V.S.A. § 601 is amended to read:

§ 601. POWERS AND RESPONSIBILITIES OF THE SUPERVISING  
OFFICER OF EACH CORRECTIONAL FACILITY

The supervising officer of each facility shall be responsible for the efficient and humane maintenance and operation and for the security of the facility, subject to the supervisory authority conferred by law upon the commissioner. Each supervising officer is charged with the following powers and responsibilities:

\* \* \*

(10) To establish and maintain, in accordance with such rules and regulations as are established by the commissioner, a central file at the facility containing an individual file for each inmate. Except as otherwise may be indicated by the rules and regulations of the department, the content of the file of an inmate shall be confidential and shall not be subject to public inspection except by court order for good cause shown and shall not be accessible to inmates at the facility. Except as otherwise provided by law, the contents of an

inmate's file may be inspected by a state or federal prosecutor as part of a criminal investigation. The information in the files may be used for any lawful purpose but shall not otherwise be made public.

Sec. 9d. 28 V.S.A. § 856 is added to read:

§ 856. SPECIAL MANAGEMENT MEALS

(a) When an inmate misuses bodily waste or fluids, food, or eating utensils, the supervising officer of the facility or his or her designee may order that the inmate be served special management meals in lieu of regular inmate meals pursuant to this section.

(b)(1) When it appears to the supervising officer that an inmate may be subject to an order to receive special management meals, the officer shall notify the inmate in writing of the reason for the determination and the facility's evidence for it.

(2)(A) Before being served special management meals, the inmate shall be provided an opportunity to meet with a member of the facility's staff not involved in the incident. The purpose of the meeting shall be to serve as an initial check against mistaken decisions and to determine whether there are reasonable grounds to believe that the inmate misused bodily waste or fluids, food, or eating utensils.

(B) At a meeting between an inmate and a staff member held pursuant to this subdivision, the inmate may identify any disagreement he or

she has with the facility's version of the facts, identify witnesses who support his or her defense, identify any mitigating circumstances which should be considered, and offer any other arguments that may be appropriate. The inmate shall not have the right to cross-examine witnesses or to call witnesses to testify on his or her behalf.

(c) If the officer determines that there are reasonable grounds to believe that the inmate misused bodily waste or fluids, food, or eating utensils, the officer may order that the inmate be served special management meals in lieu of regular inmate meals for a maximum of seven consecutive days.

(d) When the supervising officer orders that an inmate be served special management meals, a hearing officer designated by the officer shall conduct a fact-finding hearing within 48 hours pursuant to the following procedure:

(1) Notice of the charge and of the hearing shall be given to the inmate.

(2) The inmate shall have an opportunity, subject to reasonable rules, to confront the person bringing the charge.

(3) The inmate shall have the right to be present and heard at the hearing subject to reasonable rules of conduct.

(4) The hearing officer shall summon to testify any available witness or other persons with relevant knowledge of the incident, subject to reasonable rules. The inmate charged may be permitted to question any person who testifies pursuant to this subdivision.

(5) If the inmate so requests, he or she may be assisted in the preparation and presentation of his or her case by an assigned employee of the facility if the supervising officer determines in his or her discretion that the requested employee is reasonably available.

(e) If the hearing officer determines that a preponderance of the evidence does not establish that the inmate misused bodily waste or fluids, food, or eating utensils, the supervising officer shall discontinue service of special management meals to the inmate.

(f) The service of special management meals shall not be construed as punishment and shall not be subject to the requirements of sections 851–853 of this title.

Sec. 10. 13 V.S.A. § 7031 is amended to read:

§ 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

(a) When a respondent is sentenced to any term of imprisonment, other than for life, the court imposing the sentence shall not fix the term of imprisonment, unless such term is definitely fixed by statute, but shall establish a maximum and may establish a minimum term for which such respondent may be held in imprisonment. The maximum term shall not be more than the longest term fixed by law for the offense of which the respondent is convicted and the minimum term shall be not less than the shortest term fixed by law for such offense. If the court suspends a portion of

said sentence, the unsuspended portion of such sentence shall be the minimum term of sentence solely for the purpose of any reductions of term for good behavior as provided for in section 811 of Title 28.

(b) The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which the person is received at the correctional facility for service of the sentence. The court shall give the person credit toward service of his or her sentence for any days spent in custody in connection with the offense for which sentence was imposed. The commissioner of corrections shall award credit for time served as ordered by the court in the mittimus pursuant to any plea agreement approved by the court, except that no such credit shall be awarded for any time not served in a correctional center or residential treatment facility.

(c) If any such person is committed to a jail or other place of detention to await transportation to the place at which his or her sentence is to be served, his or her sentence shall commence to run from the date on which he or she is received at such jail or such place of detention.

Sec. 11. 13 V.S.A. § 7044 is amended to read:

§ 7044. SENTENCE CALCULATION; NOTICE TO DEFENDANT

(a) Within 30 days after sentencing in all cases where the court imposes a sentence which includes a period of incarceration to be served, the commissioner of corrections shall provide to the court and the office of the

defender general a calculation of the potential shortest and longest lengths of time the defendant may be incarcerated taking into account the provisions for reductions of term pursuant to 28 V.S.A. § 811 based on the sentence or sentences the defendant is serving, and the effect of any credit for time served as ordered by the court pursuant to 13 V.S.A. § 7031. The commissioner's calculation shall be a public record.

(b) In all cases where the court imposes a sentence which includes a period of incarceration to be served, the department of corrections shall provide the defendant with a copy and explanation of the sentence calculation made pursuant to subsection (a) of this section.

Sec. 12. Rule 804a of the Vermont Rules of Evidence is amended to read:

Rule 804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE 12

~~OR UNDER; PERSON IN NEED OF GUARDIANSHIP WITH~~  
DEVELOPMENTAL DISABILITY OR MENTAL ILLNESS

(a) Statements by a person who is a child 12 years of age or under or who is a person in need of guardianship as defined in 14 V.S.A. § 3061 with a mental illness as defined in 18 V.S.A. § 7101(14) or a developmental disability as defined in 18 V.S.A. § 722(2) 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 ~~in need of guardianship~~ with a mental illness 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 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 ~~in need of guardianship~~ with a mental illness 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 ~~in need of guardianship~~ with a mental illness 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 ~~in need of guardianship~~ with a mental illness or developmental disability to testify for the state.

#### Sec. 13. REPORT

The department of public safety shall report to the senate and house committees on judiciary no later than December 15, 2009 regarding the management, staffing, funding, and operation of the sex offender registry. The report shall address actions taken by the department to communicate with other agencies and departments regarding information placed on the sex offender Internet registry and the department's readiness and plan for implementing Sec. 8 of this act in 2010.

#### Sec. 14. EFFECTIVE DATE

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

(1) Sec. 12 of this act shall take effect on July 2, 2009.

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