

1 H.23

2 Introduced by Representatives Grad of Moretown and Emmons of Springfield

3 Referred to Committee on

4 Date:

5 Subject: Crimes; criminal procedure; corrections; human services; education;
6 sex offenders

7 Statement of purpose: This bill proposes to develop a comprehensive
8 statewide approach to the prevention of child sexual abuse; include a sexual
9 abuse prevention component in all school health curricula; conduct outreach
10 efforts to raise awareness of families and communities about child sexual
11 abuse; require school districts to check the child abuse and neglect registry and
12 vulnerable adult abuse, neglect, and exploitation registry prior to hiring staff or
13 volunteers and to conduct periodic rechecks of the registries and criminal
14 history records; permit criminal record checks to be done through a
15 subscription service with the Vermont criminal information center; require
16 school boards to ensure that all school employees receive orientation on the
17 prevention, identification, and reporting of child abuse and that parents and
18 caregivers receive information and education about child sexual abuse; require
19 that licensed child care facilities ensure that all employees receive orientation
20 on the prevention, identification, and reporting of child abuse; require that the
21 child sexual abuse victim treatment specialist position be returned to the center

1 for the prevention and treatment of sexual abuse; criminalize sexual contact
2 between an employee in a supervisory union, a school district, or an
3 independent school and a student who is enrolled in or attending a program or
4 school within the person's supervisory union, school district, or independent
5 school; require registered sex offenders to report whether they are living in a
6 household with a child under the age of 16; fund and staff special investigation
7 units fully and place responsibility for sex offender registry compliance with
8 the units; require participation by the department of corrections in child
9 protection response teams and special investigation units; require collection of
10 DNA from any person arraigned for a felony or misdemeanor domestic
11 violence or a registrable sex offense; eliminate the right to take pretrial
12 depositions of child victims in sexual abuse cases; amend the age requirement
13 for admissibility of prior statements of child victims to 10 years at the time the
14 statements were made; amend the evidentiary requirements for human services
15 board substantiation proceedings to minimize the impact on child witnesses;
16 establish a new crime of aggravated sexual assault of child with a mandatory
17 25-year-to-life sentence; eliminate the option of a deferred sentence for a
18 person charged with sexual abuse of a child; establish an index for deferred
19 sentences and permit the department of corrections access for the purpose of
20 preparing a presentence report for the sentencing court for most sex offenses;
21 mandate presentence reports for most sex offenses and add new crimes for

1 which the reports are required; permit information from the child abuse and
2 neglect registry and the vulnerable adult abuse, neglect, and exploitation
3 registry to be used for the purpose of preparing a presentence report; permit the
4 department for children and families access to presentence investigations;
5 permit a sentencing court access to its sealed juvenile records of a person
6 convicted of a sexual offense; permit the department of corrections access to
7 any sealed juvenile records of a person convicted of a sexual offense for the
8 purpose of developing a presentence report or supervising the person; require
9 courts to review and amend conditions of probation for sex offenders as
10 appropriate when a split sentence is imposed; require periodic polygraph
11 examinations and supervision of computer activities as special conditions of
12 probation for sex offenders; require a judicial hearing prior to discharging a
13 sex offender from probation unless all parties support discharge; establish a
14 systems approach of community supervision of sex offenders and assign
15 specialized probation officers to work only with sex offenders; require an
16 independent review of probation and parole caseloads as they relate to
17 supervision of sex offenders; require high-risk sex offenders to serve at least
18 70 percent of their maximum sentence; add all department of corrections'
19 employees to the list of mandatory reporters of suspected child abuse or
20 neglect; mandate a prehearing detention for sex offenders who violate
21 risk-related conditions of probation or parole; establish a biennial independent

1 review of the state sexual abuse response system; fully comply with federal
2 law that requires the department for children and families to release
3 information to the public about child fatalities to include release of information
4 about “near fatalities”; urge local communities not to enact sex offender
5 residency restrictions; request that the League of Cities and Towns, Inc. work
6 with communities to ensure they are receiving accurate information about the
7 potential pitfalls of such laws and to encourage communities to focus on
8 prevention and other strategies to improve public safety; and require the
9 department of corrections to report to the general assembly: protocols for
10 permitting a sex offender to live in a home with children and plans to notify the
11 department for children and families; criteria and centralized review or release
12 recommendations made by the department with respect to sex offenders; a plan
13 to improve training and oversight of department employees who work with sex
14 offenders; and an update on the implementation of this act.

15 An act relating to improving Vermont’s sexual abuse response system

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

1 Sec. 1. LEGISLATIVE INTENT

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

9 * * * **Prevention** * * *

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

12 (a) Prevention is the most important and most often overlooked tool
13 available to the state to fight sexual violence against children. While there are
14 a number of programs and organizations devoted to raising awareness about
15 sexual abuse of children, a coordinated and properly funded statewide
16 approach is needed to ensure that we are devoting appropriate resources and
17 programming to stopping abuse before it happens, not just responding to the
18 crime.

19 (b) The senate committee on health and welfare and the house committee
20 on human services, in consultation with the senate and house committees on
21 education and on appropriations, shall build on the recent work of the senate

1 committee on judiciary in an effort to develop a comprehensive statewide
2 approach to the prevention of child sexual abuse. Legislation shall be
3 developed for introduction on January 5, 2010.

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

5 § 131. DEFINITIONS

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

12 * * *

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

15 (10) Nutrition; and

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

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

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

7 § 254. EDUCATOR LICENSURE; EMPLOYMENT OF
8 SUPERINTENDENTS

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

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

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

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

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

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

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

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

20 (e) The commissioner shall request and obtain from the department for
21 children and families information from the child abuse and neglect registry and

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

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

10 § 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES;

11 CONTRACTORS

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

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

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

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

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

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

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

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

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

14 (2) ~~if~~ If the requester is a superintendent, a notice of any criminal record
15 which is located in either another state repository or FBI records, but not a
16 record of the specific convictions except those relating to crimes of a sexual
17 nature involving children.

18 (3) ~~if~~ If the requester is a headmaster, a notice of any criminal record
19 which is located in either another state repository or FBI records, but not a
20 record of the specific convictions. However, if there is a record relating to any
21 crimes of a sexual nature involving children, the Vermont criminal information

1 center shall send this record to the commissioner who shall notify the
2 headmaster in writing, with a copy to the person about whom the request was
3 made, that the record includes one or more convictions for a crime of a sexual
4 nature involving children.

5 * * *

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

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

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

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

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

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

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

6 § 256. CONTINUED VALIDITY OF CRIMINAL RECORD CHECK;

7 MAINTENANCE OF RECORDS

8 (a) Anyone required to request a criminal record check or registry check
9 under this subchapter about a person who previously has undergone a check,
10 regardless of whether the check was for student teaching, licensure, or
11 employment purposes, shall comply with that requirement by ~~acquiring the~~
12 ~~results of the previous criminal record check unless:~~

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

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

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

19 (b) Anyone required to request a criminal record check or registry check
20 under this subchapter about a person who previously has undergone a check
21 may request a name and date of birth or fingerprint-supported recheck of the

1 record or registry at any time during the course of the record subject's
2 employment or service in the capacity for which the original check was
3 authorized. Rechecking criminal records may be accomplished through a
4 subscription service.

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

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

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

17 ~~(e)~~(d) Upon authorization by the person, the commissioner shall release
18 information maintained in the central records repository to a requesting
19 superintendent or, in the case of a requesting headmaster, to the person. The
20 commissioner shall maintain the notice or record in the repository at least until
21 the person ceases working for a Vermont school district or independent school

1 for a period of one year or more or until the person requests that the record be
2 destroyed.

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

4 Sec. 7. 20 V.S.A. § 2064 is added to read:

5 § 2064. SUBSCRIPTION SERVICE

6 (a) As used in this section:

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

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

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

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

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

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

7 (2) How to interpret the criminal conviction records.

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

10 (4) Misuse of the subscription service.

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

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

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

1 (h) No person shall confirm the existence or nonexistence of criminal
2 conviction record information or disclose the contents of a criminal conviction
3 record without the individual's permission to any person other than the
4 individual and properly designated employees of the authorized education
5 official who have a documented need to know the contents of the record.

6 (i) Authorized education officials shall confidentially retain all criminal
7 conviction information received pursuant to this section for a period of three
8 years. At the end of the retention period, the criminal conviction information
9 must be shredded.

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

14 Sec. 8. 16 V.S.A. § 563a is added to read:

15 § 563a. SCHOOL BOARDS; PREVENTION OF CHILD ABUSE

16 The school board of a school district shall:

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

1 Sec. 10. COMMUNITY OUTREACH PLAN

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

8 Sec. 11. VICTIM TREATMENT SPECIALIST

9 (a) The center for the prevention and treatment of sexual abuse (the center)
10 is a state program designed to address the treatment needs of both sexual abuse
11 victims and sex offenders. The center provides resources and referral services
12 to prevent and treat sexual abuse, offers networking and educational
13 conferences, and supplies grants to programs that address sexual abuse.

14 (b) When the center was established, it was administratively placed in the
15 department of corrections (DOC) because professionals who work with sex
16 offenders need to be understanding and supportive of victims' issues, just as
17 people working with victims need to understand offender treatment and
18 supervision. The center was staffed by an offender treatment specialist, a
19 victim treatment specialist, and an administrative assistant, with the original
20 director replaced by contracted clinical oversight. It was jointly managed by
21 DOC and the department for children and families (DCF). The victim

1 treatment specialist was a DCF position, funded by DCF, but placed within the
2 center in DOC. Recently, DCF moved the victim treatment specialist from the
3 center into the DCF central office, where new responsibilities were assigned.
4 The general assembly is concerned that this recent move dilutes the prevention
5 efforts of the center. The original concept for the position was to have a
6 person focused solely on working with victims on issues such as joint
7 investigations, training, and public education. While a number of state and
8 local agencies work on victims' issues, the specialist at the center was intended
9 to be the one person who could provide a comprehensive and integrated
10 approach and view.

11 (c) The victim treatment specialist position shall be returned from the
12 department for children and families to the center for the prevention and
13 treatment of sexual abuse. The position shall continue to be funded by the
14 department for children and families.

15 Sec. 12. 13 V.S.A. § 3258 is added to read:

16 § 3258. SEXUAL EXPLOITATION OF A STUDENT

17 (a) As used in this section:

18 (1) "Employee" means a person who has direct supervisory or
19 programmatic contact with students as a result of the person's work for the
20 program or school in which the student is enrolled or in attendance and shall
21 include persons employed by the school district or program, volunteers,

1 contractors and their employees, and persons employed by the supervisory
2 union who work in the school in which the student is enrolled or in attendance.

3 (2) "Independent school," "supervisory union," and "school district"
4 shall have the meanings defined in 16 V.S.A. § 11.

5 (b) No person who is an employee of a school district or an independent
6 school shall engage in a sexual act with a student under the age of 18 who is
7 enrolled in or attending a program in the same public school or independent
8 school where the employee is working.

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

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

12 § 5404. REPORTING UPON RELEASE FROM CONFINEMENT OR
13 SUPERVISION

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

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

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

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

3 (4) documentation of any treatment or counseling received.

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

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

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

18 Sec. 14. 13 V.S.A. § 5407 is amended to read:

19 § 5407. SEX OFFENDER'S RESPONSIBILITY TO REPORT

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

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(3) within three days after any change of address, or if a person is designated as a high-risk sex offender pursuant to section 5411b of this title, that person shall report to the department within 36 hours, and shall report whether a child under the age of 16 resides at such address;

* * *

- (5) within three days after any change in place of employment; ~~and~~
- (6) within three days of any name change;
- (7) within three days of a child under the age of 16 moving into the

residence of the registrant.

* * *

*** * * Investigation and Prosecution * * ***

Sec. 15. 13 V.S.A. § 5415 is added to read:

§ 5415. ENFORCEMENT; SPECIAL INVESTIGATION UNITS

Special investigation units, created pursuant to 24 V.S.A. § 1940, shall be primarily responsible for enforcement of this chapter's registry requirements and shall conduct in-person registry compliance checks in furtherance of the purposes of this chapter.

1 Sec. 16. APPROPRIATION; SPECIAL INVESTIGATION UNITS

2 (a) The sum of \$770,000.00 is appropriated from the general fund for the
3 department of state's attorneys and sheriffs for fiscal year 2010 for the purpose
4 of funding state's attorneys for special investigation units.

5 (b) The sum of \$880,000.00 is appropriated from the general fund for the
6 department of public safety for fiscal year 2010 for the purpose of funding
7 investigators for special investigation units.

8 Sec. 17. 33 V.S.A. § 4917 is amended to read:

9 § 4917. MULTIDISCIPLINARY TEAMS; EMPANELING

10 (a) The commissioner or his or her designee may empanel a
11 multidisciplinary team or a special investigative multi-task force team or both
12 wherever in the state there may be a probable case of child abuse or neglect
13 which warrants the coordinated use of several professional services.

14 (b) The commissioner or his or her designee, in conjunction with
15 professionals and community agencies, shall appoint members to the
16 multidisciplinary teams which may include persons who are trained and
17 engaged in work relating to child abuse or neglect such as medicine, mental
18 health, social work, nursing, child care, education, law, or law enforcement.

19 The teams shall include a representative of the department of corrections.

20 Additional persons may be appointed when the services of those persons are
21 appropriate to any particular case.

1 * * *

2 Sec. 18. 20 V.S.A. § 1932 is amended to read:

3 § 1932. DEFINITIONS

4 As used in this subchapter:

5 * * *

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

11 * * *

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

17 * * *

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

19 (A) a felony;

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

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

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

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

8 Sec. 19. 20 V.S.A. § 1933 is amended to read:

9 § 1933. DNA SAMPLE REQUIRED

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

11 (1) ~~every~~ A person convicted in a court for whom the court has
12 determined at arraignment that there is probable cause that the person has
13 committed a designated crime in this state of a designated crime on or after the
14 effective date of this subchapter; and July 1, 2009.

15 (2) A person convicted in this state for a designated crime on or after
16 April 29, 1998.

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

20 (A) in the custody of the commissioner of corrections pursuant to
21 28 V.S.A. § 701;

1 (B) on parole for a designated crime;

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

3 ~~and~~ or

4 (D) on probation for a designated crime.

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

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

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

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

19 § 1940. EXPUNGEMENT OF RECORDS AND DESTRUCTION OF

20 SAMPLES

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

7 (1) The person is acquitted after a trial of all charges related to the
8 incident which prompted the taking of the DNA sample.

9 (2) All criminal charges related to an incident that caused the DNA
10 sample to be taken are dismissed by either the court or the state after
11 arraignment, unless the attorney for the state can show good cause why the
12 sample should not be destroyed.

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

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

17 (b) If any of the circumstances in subsection (a) of this section occur, the
18 court with jurisdiction or, as the case may be, the governor, shall so notify the
19 department, and the person's DNA record in the state DNA database and
20 CODIS and the person's DNA sample in the state DNA data bank shall be
21 removed and destroyed. The laboratory shall purge the DNA record and all

1 other identifiable information from the state DNA database and CODIS and
2 destroy the DNA sample stored in the state DNA data bank. If the person has
3 more than one entry in the state DNA database, CODIS, or the state DNA data
4 bank, only the entry related to the dismissed case shall be deleted. The
5 department shall notify the person upon completing its responsibilities under
6 this subsection, by certified mail addressed to the person's last known address.

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

11 Sec. 21. Rule 15 of the Vermont Rules of Criminal Procedure is amended to
12 read:

13 RULE 15. DEPOSITIONS

14 * * *

15 (f) Protection of Deponents.

16 (1) *Deponent's Counsel and Victim Advocate.* A deponent may have
17 counsel present at the deposition and may make legal objections to questions.
18 The deponent shall be treated as a party at hearings on motions pertaining to
19 the deposition. A victim of an alleged crime may have a victim advocate
20 present during the deposition. The deponent may apply to the court for a
21 protective order if the deponent believes that he or she is being subjected to

1 harassment or intimidation. A subpoena issued pursuant to V.R.Cr.P. 17, or
2 other notice of the deposition given to the deponent, shall include notice that
3 the deponent may have the assistance of counsel and the victim advocate as
4 provided herein and seek a protective order as provided in subdivision (f)(3).

5 (2) *Depositions of Sensitive Witnesses.* A person under the age of 16
6 who is the victim in a prosecution under 13 V.S.A. § 2602 (lewd and
7 lascivious conduct with a child), 3252 (sexual assault), 3253 (aggravated
8 sexual assault), or 3253a (aggravated sexual assault of a child) shall not be
9 deposed. A person under the age of 16 or any person who is a victim in a
10 prosecution under 13 V.S.A. § 2601 (lewd and lascivious conduct), ~~2602 (lewd~~
11 ~~and lascivious conduct with a minor),~~ 3252 (sexual assault), or 3253
12 (aggravated sexual assault) shall be considered a sensitive witness. Prior to
13 taking the deposition of a sensitive witness, the party seeking to take the
14 deposition shall consult with the other parties and the deponent in an effort to
15 reach an agreement on the time, place, manner and scope of the taking of the
16 deposition. If an agreement cannot be reached, the party seeking to take the
17 deposition shall so advise the court and specify the matters which are in
18 dispute. The court shall then issue an order regulating the taking of the
19 deposition including, in its discretion, a requirement that the deposition be
20 taken in the presence of a judge or special master. The restrictions of 13

1 V.S.A. § 3255(a) shall apply to depositions. If a party taking a deposition
2 proposes to ask about information that falls within 13 V.S.A. § 3255(a)(3)
3 (A)-(C), the party shall notify the other parties and the deponent of this intent
4 prior to seeking agreement on the scope of the deposition.

5 (3) *Protective Orders.* At the request of a party or deponent, and for
6 good cause shown, the court may make any protective order which justice
7 requires to protect a party or deponent from emotional harm, unnecessary
8 annoyance, embarrassment, oppression, invasion of privacy, or undue burden
9 of expense or waste of time. Such orders may include, among other remedies,
10 the following: (1) that the deposition may be taken only on specified terms and
11 conditions, including a designation of the time, place, and manner of taking the
12 deposition; (2) that the deposition may be taken only by written questions; (3)
13 that certain matters not be inquired into, or that the scope of the deposition be
14 limited to certain matters; (4) that the deposition be conducted with only such
15 persons present as the court may designate; (5) that after the deposition has
16 been taken, the tape or transcription be sealed until further order of the court;
17 (6) that the deposition not be taken. In ruling on such request, the court may
18 consider, among other things, the age, health, level of intellectual functioning
19 and emotional condition of the witness, whether the witness has knowledge
20 material to the proof of or defense to any essential element of the crime,
21 whether the witness has provided a full written, taped or transcribed account of

1 his or her proposed testimony at trial, whether the witness's testimony will
2 relate only to peripheral issue in the case, or whether an informal interview or
3 telephone conference with the witness will suffice for the purposes of
4 discovery in the case.

5 Sec. 22. REPORT

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

10 Sec. 23. Rule 804a of the Vermont Rules of Evidence is amended to read:

11 804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE TEN OR

12 ~~UNDER; MENTALLY RETARDED OR MENTALLY ILL PERSON~~

13 IN NEED OF GUARDIANSHIP

14 (a) Statements by a person who is a child ten years of age or under or a
15 ~~mentally retarded or mentally ill~~ person in need of guardianship as defined in
16 14 V.S.A. § 3061(4) ~~or (5)~~ at the time of trial the statements were made are not
17 excluded by the hearsay rule if the court specifically finds at the time they are
18 offered that:

19 (1) the statements are offered in a civil, criminal, or administrative
20 proceeding in which the child or ~~mentally retarded or mentally ill~~ person in
21 need of guardianship is a putative victim of sexual assault under 13 V.S.A.

1 § 3252, aggravated sexual assault under 13 V.S.A. § 3253, aggravated sexual
2 assault of a child under 13 V.S.A. § 3253a, lewd or lascivious conduct under
3 13 V.S.A. § 2601, ~~or~~ lewd or lascivious conduct with a child under 13 V.S.A.
4 § 2602, incest under 13 V.S.A. § 205, abuse, neglect, or exploitation under 33
5 V.S.A. § 6913, sexual abuse of a vulnerable adult under 13 V.S.A. § 1379 or
6 wrongful sexual activity and the statements concern the alleged crime or the
7 wrongful sexual activity; or the statements are offered in a juvenile proceeding
8 under chapter ~~55~~ 53 of Title 33 involving a delinquent act alleged to have been
9 committed against a child ~~thirteen~~ 13 years of age or under or a ~~mentally~~
10 ~~retarded or mentally ill~~ person in need of guardianship, if the delinquent act
11 would be an offense listed herein if committed by an adult and the statements
12 concern the alleged delinquent act; or the child is the subject of a petition
13 alleging that the child is in need of care or supervision under chapter ~~55~~ 53 of
14 Title 33, and the statement relates to the sexual abuse of the child;

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

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

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

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

6 Sec. 24. 33 V.S.A. § 4916b is amended to read:

7 § 4916b. HUMAN SERVICES BOARD HEARING

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

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

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

18 (3) At a hearing held under this subsection, evidence is admissible if it is
19 of a type commonly relied upon by reasonably prudent persons in the conduct
20 of their affairs, and, notwithstanding any administrative rule to the contrary,

1 the Vermont Rules of Evidence are inapplicable except for the rules respecting
2 privilege.

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

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

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

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

15 *** * * Sentencing * * ***

16 Sec. 25. 13 V.S.A. § 3253a is added to read:

17 § 3253a. AGGRAVATED SEXUAL ASSAULT OF A CHILD

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

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

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

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

7 (4) The actor has previously been convicted in this state of sexual
8 assault under subsection 3252(a) or (b) of this title, aggravated sexual assault
9 under section 3253 of this title, or aggravated sexual assault of a child under
10 this section, or has been convicted in any jurisdiction in the United States or
11 territories of an offense which would constitute sexual assault under subsection
12 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this
13 title, or aggravated sexual assault of a child under 3253a of this section if
14 committed in this state.

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

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

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

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

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

13 Sec. 26. 13 V.S.A. § 7041 is amended to read:

14 § 7041. DEFERRED SENTENCE

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

20 (b) Notwithstanding subsection (a) of this section, the court may defer
21 sentencing and place the respondent on probation without a written agreement

1 between the state's attorney and the respondent if the following conditions are
2 met:

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

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

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

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

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

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

15 (c) Notwithstanding subsections (a) and (b) of this section, the court may
16 not defer a sentence for a violation of section 2602 (lewd and lascivious
17 conduct with a child), 3252(c), (d), or (e) (sexual assault of a child), 3253(a)(8)
18 (aggravated sexual assault), or 3253a (aggravated sexual assault of a child) of
19 this title.

20 (d) Entry of deferment of sentence shall constitute an appealable judgment
21 for purposes of appeal in accordance with section 2383 of Title 12 and Rule 3

1 of the Vermont Rules of Appellate Procedure. Except as otherwise provided,
2 entry of deferment of sentence shall constitute imposition of sentence solely
3 for the purpose of sentence review in accordance with section 7042 of this title.
4 The court may impose sentence at any time if the respondent violates the
5 conditions of the deferred sentence during the period of deferment.

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

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

20 (g) The Vermont criminal information center shall retain a special index of
21 deferred sentences for sex offenses that require registration pursuant to section

1 5401 of this title. This index shall only list the name and date of birth of the
2 subject of the expunged files and records, the offense for which the subject was
3 convicted, and the docket number of the proceeding which was the subject of
4 the expungement. The special index shall be confidential and may be accessed
5 only by the director of the Vermont criminal information center and a
6 designated clerical staff person for the purpose of providing information to the
7 department of corrections in the preparation of a presentence investigation in
8 accordance with 28 V.S.A. § 204a.

9 Sec. 27. 33 V.S.A. § 5119 is amended to read:

10 § 5119. SEALING OF RECORDS

11 * * *

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

16 * * *

17 (5) The order unsealing a record pursuant to subdivisions (2), (3), and
18 (4) of this subsection must state whether the record is unsealed entirely or in
19 part and the duration of the unsealing. If the court's order unseals only part of
20 the record or unseals the record only as to certain persons, the order must

1 specify the particular records that are unsealed or the particular persons who
2 may have access to the record, or both.

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

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

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

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

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

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

19 § 204. SUBMISSION OF WRITTEN REPORT; PROTECTION OF

20 RECORDS

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Sec. 29. 28 V.S.A. § 204a is amended to read:

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

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

- (1) lewd and lascivious conduct in violation of section 2601 of Title 13;
- (2) lewd and lascivious conduct with a child in violation of section 2602
of Title 13;
- (3) sexual assault in violation of section 3252 of Title 13;
- (4) aggravated sexual assault in violation of section 3253 of Title 13; ~~or~~
- (5) aggravated sexual assault of a child in violation of section 3253a of
Title 13;
- (6) kidnapping with intent to commit sexual assault in violation of
subdivision 2405(a)(1)(D) of Title 13; or
- (7) an offense involving sexual exploitation of children in violation of
chapter 64 of Title 13.

(b) A presentence investigation required by this section:
(1) shall include an assessment of the offender's risk of reoffense and a
determination of whether the person is a high risk offender;

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

2 ~~and~~

3 (3) shall include information regarding the offender's records

4 maintained by the department for children and families in the child abuse and

5 neglect registry pursuant to 33 V.S.A. § 4916 if the offender was previously

6 substantiated for child abuse or neglect;

7 (4) shall include information, if any, regarding prior convictions of the

8 offender; and

9 (5) shall be completed before the defendant is sentenced. Upon

10 completion, the department shall submit copies of the presentence

11 investigation to the court, the state's attorney, ~~and~~ the defendant's attorney,

12 and the department for children and families. Copies of a presentence

13 investigation authorized by this subdivision shall remain confidential and are

14 not subject to public inspection.

15 * * *

16 (d) The requirement that a presentence investigation be performed pursuant

17 to subsection (a) of this section:

18 (1) ~~may be waived if the court finds that a report is not necessary for~~

19 ~~purposes of sentencing; and~~

20 (2) shall not be interpreted to prohibit the performance of a presentence

21 investigation, psychosexual evaluation, or risk assessment at any other time

1 during the proceeding, including prior to the entry of a plea agreement or prior
2 to sentencing for a violation of probation.

3 * * *

4 Sec. 30. 33 V.S.A. § 4919 is amended to read:

5 § 4919. DISCLOSURE OF REGISTRY RECORDS

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

7 * * *

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

10 * * *

11 Sec. 31. 28 V.S.A. § 252a is added to read:

12 § 252a. REVIEW OF PROBATION CONDITIONS

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

21 (b) The department of corrections shall prepare a prerelease probation

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

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

17 Sec. 32. 28 V.S.A. § 252 is amended to read:

18 § 252. CONDITIONS OF PROBATION

19 * * *

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

1 * * *

2 (16) Submit to periodic polygraph testing if the offender is being placed
3 on probation for a sex offense that requires registration pursuant to 13 V.S.A.
4 § 5401;

5 (17) Permit a probation officer to monitor the offender's activities on a
6 computer or other electronic device if the offender is being placed on probation
7 for a sex offense that requires registration pursuant to 13 V.S.A. § 5401;

8 (18) Satisfy any other conditions reasonably related to his or her
9 rehabilitation. The court shall not impose a condition prohibiting the offender
10 from engaging in any legal behavior unless the condition is reasonably related
11 to the offender's rehabilitation or necessary to reduce risk to public safety.

12 Such conditions may include prohibiting the use of alcohol, prohibiting having
13 contact with minors, and if the offender is being placed on probation for a sex
14 offense that requires registration pursuant to 13 V.S.A. § 5401, prohibiting the
15 use of a computer or other electronic devices.

16 Sec. 33. 28 V.S.A. § 255 is amended to read:

17 § 255. DISCHARGE

18 (a) Upon the termination of the period of probation or the earlier discharge
19 of the probationer in accordance with section 251 of this title, the probationer
20 shall, ~~unless the court has ordered otherwise under subsection (b) of this~~
21 ~~section or under subsection 7043(1) of Title 13,~~ be relieved of any obligations

1 imposed by the order of the court and shall have satisfied the sentence for the
2 crime.

3 (b) [Deleted.]

4 (c) A court hearing shall be held prior to discharging an offender from
5 probation for a sex offense that requires registration pursuant to 13 V.S.A.
6 § 5401, unless all parties and the department of corrections have filed notice in
7 support of discharge with the court.

8 * * * **Corrections** * * *

9 Sec. 34. 28 V.S.A. § 106 is added to read:

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

12 (a) The department of corrections shall establish a comprehensive systems
13 approach to the management of sex offenders which employs longer and more
14 intensive community supervision of higher-risk sex offenders by specialized
15 probation officers coupled with regular polygraph tests and pre- and
16 postincarceration treatment to promote rehabilitation.

17 (b) Multidisciplinary case management teams shall be created, each
18 involving as appropriate a specialized probation or parole officer, a treatment
19 provider, a victim's advocate, a representative of the department for children
20 and families, a representative of the special investigation unit, and a forensic
21 polygraph examiner. These professionals shall collaborate, prioritizing

1 community safety and the protection of former victims. These teams shall
2 address the specific treatment and supervision needs of a particular offender to
3 assure protection of the public, to assist that offender in reintegrating safely
4 into the community, to support and protect known victims, and respond to any
5 new concerns about risk of reoffense.

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

12 Sec. 35. AUDIT OF DEPARTMENT OF CORRECTIONS' CASELOADS
13 PERTAINING TO SEX OFFENDERS

14 (a) On or before January 15, 2010, the center for the prevention and
15 treatment of sexual abuse shall submit to the house and senate committees on
16 judiciary and the house committee on institutions and corrections an
17 independent audit of probation and parole personnel's current sex offender
18 management caseloads. The audit shall assess the efficacy of the current
19 model and provide recommendations for increasing oversight of community
20 supervision of sex offenders and support for best practices for probation and
21 parole personnel.

1 (b) The audit shall be conducted by a qualified, independent consultant or
2 organization with knowledge of sex offender management and supervision.

3 (c) The audit shall be funded through the department of corrections and be
4 under the direction of the center for the prevention and treatment of sexual
5 abuse.

6 Sec. 36. 28 V.S.A. § 204b is added to read:

7 § 204b. HIGH-RISK SEXUAL OFFENDERS

8 A person who is sentenced to an incarcerative sentence for a violation of
9 any of the offenses listed in subsection 204a(a) of this title, and who is
10 designated by the department of corrections as high-risk pursuant to 13 V.S.A.
11 § 5411b while serving his or her sentence, shall not be eligible for probation,
12 parole, furlough, or any other type of early release until the expiration of 70
13 percent of his or her maximum sentence.

14 Sec. 37. 33 V.S.A. § 4913 is amended to read:

15 § 4913. SUSPECTED CHILD ABUSE AND NEGLECT; REMEDIAL
16 ACTION

17 (a) Any physician, surgeon, osteopath, chiropractor, or physician's assistant
18 licensed, certified, or registered under the provisions of Title 26, any resident
19 physician, intern, or any hospital administrator in any hospital in this state,
20 whether or not so registered, and any registered nurse, licensed practical nurse,
21 medical examiner, dentist, psychologist, pharmacist, any other health care

1 provider, school superintendent, school teacher, school librarian, child care
2 worker, school principal, school guidance counselor, mental health
3 professional, social worker, ~~probation officer~~ department of corrections'
4 employees, police officer, camp owner, camp administrator, camp counselor,
5 or member of the clergy who has reasonable cause to believe that any child has
6 been abused or neglected shall report or cause a report to be made in
7 accordance with the provisions of section 4914 of this title within 24 hours.
8 As used in this subsection, "camp" includes any residential or nonresidential
9 recreational program.

10 * * *

11 Sec. 38. TRAINING IN THE REPORTING OF SUSPECTED CHILD
12 ABUSE; DEPARTMENT OF CORRECTIONS

13 The general assembly finds that because department of corrections'
14 employees have frequent contact with offenders and their families, all
15 department employees should be mandatory reporters under the law. The
16 department shall develop training for its employees in the identification and
17 reporting of suspected child abuse and neglect, including the assessment of risk
18 of harm, and report to the senate and house committees on judiciary and the
19 house committee on corrections and institutions no later than September 15,
20 2009 regarding its efforts to ensure that its employees are properly trained.

1 Sec. 39. 28 V.S.A. § 502b is amended to read:

2 § 502b. TERMS AND CONDITIONS OF PAROLE

3 (a) When an inmate is paroled, the parole board shall establish terms and
4 conditions of parole that it deems reasonably necessary to ensure that the
5 inmate will lead a law-abiding life and that will assist the inmate to do so.
6 Such terms and conditions shall be set forth in the parolee's parole agreement.
7 Terms and conditions of parole for a person convicted of a sex offense that
8 requires registration pursuant to 13 V.S.A. § 5401 shall be designed to protect
9 the victim, potential victims, and the public, and to reduce the risk of reoffense.

10 * * *

11 Sec. 40. Rule 32.1 of the Vermont Rules of Criminal Procedure is amended to
12 read:

13 RULE 32.1. REVOCATION AND MODIFICATION OF PROBATION

14 (a) Revocation of Probation.

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

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

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

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

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

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

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

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

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

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

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

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

1 (3) Release From Custody.

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

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

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

16 * * * **Systemwide** * * *

17 Sec. 41. BIENNIAL INDEPENDENT REVIEW OF THE STATE'S

18 SEXUAL ABUSE RESPONSE SYSTEM

19 (a) On or before November 15, 2011, and every five years thereafter, the
20 commissioner of the department of corrections and the commissioner of the
21 department for children and families shall submit to the house and senate

1 committees on judiciary and the house committee on corrections and
2 institutions an independent audit of the state's sexual abuse response system
3 that addresses prevention, criminal investigations, presentence investigations
4 and sentencing of offenders, supervision and treatment of offenders, victim and
5 family assistance and treatment, and training for those working in the system.

6 (b) The audit shall be conducted by a qualified, independent consultant or
7 organization with knowledge of the matters identified in subsection (a) of this
8 section.

9 (c) The audit shall be funded through the department of corrections and be
10 under the direction of the center for the prevention and treatment of sexual
11 abuse.

12 Sec. 42. 33 V.S.A. § 306 is amended to read:

13 § 306. ADMINISTRATIVE PROVISIONS

14 * * *

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

1 or the state's attorney or attorney general consents to disclosure, whichever
2 occurs earlier.

3 Sec. 43. LOCAL COMMUNITY SEX OFFENDER REGISTRY

4 RESTRICTIONS

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

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

18 (c) According to sex offender management experts, research has shown that
19 sex offender residency restrictions are unlikely to deter sex offenders from
20 committing new crimes and should not be considered a viable public safety
21 strategy. While residency restrictions are intended to reduce sex crimes

1 against children by strangers, 90 percent of such crimes are committed by a
2 relative or family friend.

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

8 Sec. 44. REPORT; DEPARTMENT OF CORRECTIONS

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

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

1 develop these protocols in consultation with the chairs of the following
2 committees:

3 (A) Senate judiciary;

4 (B) House judiciary;

5 (C) House corrections and institutions;

6 (D) Senate health and welfare; and

7 (E) House human services.

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

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

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

2 Sec. 45. EFFECTIVE DATE

3 (a) Secs. 1, 2, 10-12, 15-17, 21-26, and 38-45 of this act shall take effect
4 upon passage.

5 (b) Secs. 3-9, 13, 14, 18-20, and 27-37 of this act shall take effect July 1,
6 2009.