

1 S.163

2 Introduced by Committee on Judiciary

3 Date:

4 Subject: Criminal procedure; sex offenses; Internet sex offender registry

5 Statement of purpose: This bill proposes to make two technical corrections to  
6 Act No. 1 and Act No. 58 of the Acts of 2009. The bill proposes to: (1) clarify  
7 legislative intent in Act. No. 1 by providing that prior law goes back into effect  
8 when the provisions regarding depositions of sensitive witnesses are repealed  
9 in 2011; and (2) address an omission made in Act No. 58 by including on the  
10 Internet sex offender registry offenders who commit a registrable offense  
11 outside Vermont.

12 An act relating to technical corrections to 2009 sex offender legislation

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

14 Sec. 1. Rule 15 of the Vermont Rules of Criminal Procedure is amended to  
15 read:

16 RULE 15. DEPOSITIONS

17 \* \* \*

18 (f) Protection of Deponents.

19 (1) Deponent's Counsel and Victim Advocate. A deponent may have  
20 counsel present at the deposition and may make legal objections to questions.

1 The deponent shall be treated as a party at hearings on motions pertaining to  
2 the deposition. A victim of an alleged crime may have a victim advocate  
3 present during the deposition. The deponent may apply to the court for a  
4 protective order if the deponent believes that he or she is being subjected to  
5 harassment or intimidation. A subpoena issued pursuant to V.R.Cr.P. 17, or  
6 other notice of the deposition given to the deponent, shall include notice that  
7 the deponent may have the assistance of counsel and the victim advocate as  
8 provided herein and seek a protective order as provided in subdivision (f)(3).

9 (2) Depositions of Sensitive Witnesses. A person under the age of 16 or  
10 any person who is a victim in a prosecution under 13 V.S.A. § 2601 (lewd and  
11 lascivious conduct), 2602 (lewd and lascivious conduct with a minor), 3252  
12 (sexual assault), or 3253 (aggravated sexual assault) shall be considered a  
13 sensitive witness. Prior to taking the deposition of a sensitive witness, the  
14 party seeking to take the deposition shall consult with the other parties and the  
15 deponent in an effort to reach an agreement on the time, place, manner, and  
16 scope of the taking of the deposition. If an agreement cannot be reached, the  
17 party seeking to take the deposition shall so advise the court and specify the  
18 matters which are in dispute. The court shall then issue an order regulating the  
19 taking of the deposition, including, in its discretion, a requirement that the  
20 deposition be taken in the presence of a judge or special master. The  
21 restrictions of 13 V.S.A. § 3255(a) shall apply to depositions. If a party taking

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

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

1 testimony will relate only to a peripheral issue in the case, or whether an  
2 informal interview or telephone conference with the witness will suffice for the  
3 purposes of discovery in the case.

4 Sec. 2. Sec. 11 of No. 58 of the Acts of 2009 is amended to read:

5 Sec. 11. APPLICABILITY

6 Secs. 6, 9, and 14 of this act (sex offender registry and Internet sex offender  
7 registry) shall apply only to the following persons:

8 (1) A person convicted prior to the effective date of this act who is  
9 under the supervision of the department of corrections except as provided in  
10 subdivision (3)(A) of this section.

11 (2) A person convicted on or after the effective date of this act.

12 (3)(A) A person convicted prior to the effective date of this act of a  
13 crime committed in this state who is not under the supervision of the  
14 department of corrections and is subject to sex offender registry requirements  
15 under subchapter 3 of chapter 167 of Title 13, or a person convicted prior to  
16 the effective date of this act of lewd or lascivious conduct with a child in  
17 violation of 13 V.S.A. § 2602 or a second or subsequent conviction for  
18 voyeurism in violation of 13 V.S.A. § 2605(b) or (c) who is under the  
19 supervision of the department of corrections, unless the sex offender review  
20 committee determines pursuant to the requirements of this subdivision (3),  
21 taking into account whether the person has been charged or convicted of a

1 criminal offense or a probation or parole violation since being placed on the  
2 registry, that the person has successfully reintegrated into the community.

3 (B)(i) No person's name shall be posted electronically pursuant to  
4 subdivision (3)(A) of this section before October 1, 2009.

5 (ii) On or before July 1, 2009, the department of public safety  
6 shall provide notice of the right to petition under this subdivision (3)(B) to all  
7 persons convicted prior to the effective date of this act who are not under the  
8 supervision of the department of corrections and are subject to sex offender  
9 registry requirements under subchapter 3 of chapter 167 of Title 13.

10 (iii) A person seeking a determination from the sex offender  
11 review committee that he or she is not subject to subdivision (3)(A) of this  
12 section shall file a petition with the committee before October 1, 2009. If a  
13 petition is filed before October 1, 2009, the petitioner's name shall not be  
14 posted electronically pursuant to subdivision (3)(A) of this section until after  
15 the sex offender review committee has ruled on the petition.

16 (C) All decisions made by the sex offender review committee under  
17 subdivision (3)(A) of this section shall be reviewed and approved by the  
18 commissioner of the department of corrections. The agency of human services  
19 shall adopt emergency rules which establish criteria for the commissioner's  
20 decision.

1           (4) A person convicted prior to July 1, 2009 of a crime committed in any  
2 jurisdiction of the United States other than Vermont, including a state,  
3 territory, commonwealth, the District of Columbia, or military, federal, or  
4 tribal court, who is not under the supervision of the department of corrections  
5 and is subject to sex offender registry requirements under subchapter 3 of  
6 chapter 167 of Title 13.

7           Sec. 3. EFFECTIVE DATE

8           (a) Sec. 1 of this act shall take effect on July 1, 2011.

9           (b) Secs. 2 and 3 of this act shall take effect on passage.