

1 S.264

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: January 7, 2014

5 Subject: Court procedure; criminal procedure; technical corrections

6 Statement of purpose: This bill proposes to make several technical corrections
7 related to civil and criminal procedure statutes.

8 An act relating to technical corrections to civil and criminal procedure
9 statutes

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

11 ~~Sec. 1. 1 V.S.A. § 317(c)(41) is amended to read:~~

12 (41) documents reviewed by the Victim's Compensation Board for
13 purposes of approving an application for compensation pursuant to 13 V.S.A.
14 chapter 167, except as provided by 13 V.S.A. §§ ~~5360~~ 5358a(b) and 7043(c).

15 Sec. 2. 12 V.S.A. § 2794 is amended to read:

16 § 2794. EXECUTION UPON REAL ESTATE; HOMESTEAD A PART

17 When an execution is levied upon real estate of which the debtor's
18 homestead is a part or upon that part of a homestead in excess of \$75,000.00
19 ~~\$125,000.00 in value, the location and boundaries of the homestead shall be~~

1 ~~ascertained before the sale and set out in the manner provided for the levy of~~
2 execution upon real estate whereof a homestead forms a part.

3 Sec. 3. 2009 Acts and Resolves No. 58, Sec. 14, as amended by 2010 Acts and
4 Resolves No. 66, Sec. 3, is further amended to read:

5 Sec. 14. 13 V.S.A. § 5411a is amended to read:

6 § 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

7 * * *

8 (b) The ~~department~~ Department shall electronically post the following
9 information ~~on~~ regarding sex offenders designated in subsection (a) of this
10 section:

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

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

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

14 (4) a digital photograph of the offender;

15 (5) the offender's town of residence;

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

17 (7) except as provided in subsection (l) of this section, the offender's
18 address or, if the offender does not have a fixed address, other information
19 about where the offender habitually lives, if:

20 (A) the offender has been designated as high risk by the Department
21 of Corrections pursuant to section 5411b of this title;

- 1 ~~(B) the offender has not complied with sex offender treatment;~~
- 2 (C) there is an outstanding warrant for the offender's arrest;
- 3 (D) the offender is subject to the Registry for a conviction of a sex
4 offense against a child under 13 years of age; or
- 5 (E) the offender's name has been electronically posted for an offense
6 committed in another jurisdiction which required the person's address to be
7 electronically posted in that jurisdiction;
- 8 (8) if the offender is under the supervision of the Department of
9 Corrections, the name and telephone number of the local Department of
10 Corrections office in charge of monitoring the sex offender;
- 11 ~~(8)~~(9) whether the offender complied with treatment recommended by
12 the Department of Corrections;
- 13 ~~(9)~~(10) a statement that there is an outstanding warrant for the
14 offender's arrest, if applicable;
- 15 ~~(10)~~(11) the reason for which the offender information is accessible
16 under this section;
- 17 ~~(11)~~(12) whether the offender has been designated ~~high risk~~ high risk by
18 the Department of Corrections pursuant to section 5411b of this title; and
- 19 ~~(12)~~(13) if the offender has not been subject to a risk assessment, a
20 statement that the offender has not been so assessed and that such a person is
21 presumed to be high risk, provided that the Department of Corrections shall

1 ~~permit a person subject to this subdivision to obtain a risk assessment at the~~
2 person's own expense.

3 * * *

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

6 * * *

7 Sec. 4. 18 V.S.A. § 4474(b) is amended to read:

8 (b) Prior to acting on an application, the ~~department~~ Department shall
9 obtain from the Vermont ~~criminal information center~~ Criminal Information
10 Center a Vermont criminal record, an out-of-state criminal record, and a
11 criminal record from the Federal Bureau of Investigation for the applicant. ~~For~~
12 ~~purposes of this subdivision~~ As used in this subsection, "criminal record"
13 means a record of whether the person has ever been convicted of a drug-related
14 crime. Each applicant shall consent to release of criminal records to the
15 ~~department~~ Department on forms ~~substantially similar to the release forms~~
16 developed by the ~~center~~ pursuant to 20 V.S.A. § 2056e Center. The
17 ~~department~~ Department shall comply with all laws regulating the release of
18 criminal history records and the protection of individual privacy. The Vermont
19 ~~criminal information center~~ Criminal Information Center shall send to the
20 requester any record received pursuant to this section or inform the ~~department~~
21 ~~of public safety~~ Department of Public Safety that no record exists. If the

1 ~~department~~ Department disapproves an application, the department
2 Department shall promptly provide a copy of any record of convictions and
3 pending criminal charges to the applicant and shall inform the applicant of the
4 right to appeal the accuracy and completeness of the record pursuant to rules
5 adopted by the Vermont ~~criminal information center~~ Criminal Information
6 Center. No person shall confirm the existence or nonexistence of criminal
7 record information to any person who would not be eligible to receive the
8 information pursuant to this subchapter.

9 Sec. 5. 18 V.S.A. § 4474g(b) is amended to read:

10 (b) Prior to acting on an application for a registry identification card, the
11 ~~department of public safety~~ Department of Public Safety shall obtain with
12 respect to the applicant a Vermont criminal history record, an out-of-state
13 criminal history record, and a criminal history record from the Federal Bureau
14 of Investigation. Each applicant shall consent to the release of criminal history
15 records to the ~~department~~ Department on forms ~~substantially similar to the~~
16 ~~release forms developed in accordance with 20 V.S.A. § 2056e~~ by the Vermont
17 Criminal Information Center.

18 Sec. 6. 20 V.S.A. § 2056e(a) is amended to read:

19 (a) The ~~department of buildings and general services~~ Department of
20 Buildings and General Services shall obtain from the Vermont ~~criminal~~
21 ~~information center~~ Criminal Information Center a Vermont criminal record, an

1 ~~out of state criminal record, and a record from the Federal Bureau of~~
2 Investigation for any applicant for a ~~state~~ State security personnel position who
3 has given written authorization, on a release form prescribed ~~under section~~
4 ~~2056e of this chapter by the Center,~~ pursuant to the provisions of this
5 subchapter and the user's agreement filed by the ~~commissioner of buildings~~
6 ~~and general services~~ Commissioner of Buildings and General Services with the
7 ~~center~~ Center. The user's agreement shall require the ~~department~~ Department
8 to comply with all federal and ~~state~~ State statutes, rules, regulations, and
9 policies regulating the release of criminal history records and the protection of
10 individual privacy. The user's agreement shall be signed and kept current by
11 the ~~commissioner~~ Commissioner. Release of interstate and Federal Bureau of
12 Investigation criminal history records is subject to the rules and regulations of
13 the Federal Bureau of Investigation's National Crime Information Center.

14 Sec. 7. 20 V.S.A. § 2056h is amended to read:

15 § 2056h. DISSEMINATION OF CRIMINAL HISTORY RECORDS TO THE
16 DEPARTMENT OF FINANCIAL REGULATION

17 (a) The Department of Financial Regulation shall obtain from the Vermont
18 Criminal Information Center a Vermont criminal record, an out-of-state
19 criminal record, and a record from the Federal Bureau of Investigation (FBI) or
20 any applicant for a banking division examiner position who has given written
21 authorization, on a release form prescribed ~~under section 2056e of this chapter~~

1 ~~by the Center, pursuant to the provisions of this subchapter and the user's~~
2 agreement filed by the Commissioner of Financial Regulation with the ~~center~~
3 Center. The user's agreement shall require the Department to comply with all
4 federal and State statutes, rules, regulations, and policies regulating the release
5 of criminal history records, and the protection of individual privacy. The
6 user's agreement shall be signed and kept current by the Commissioner.
7 Release of interstate and ~~F.B.I.~~ FBI criminal history records is subject to the
8 rules and regulations of the ~~F.B.I.'s~~ FBI's National Crime Information Center.

9 * * *

10 Sec. 8. 27 V.S.A. § 145 is amended to read:

11 § 145. EFFECT OF SPOUSE JOINING IN MORTGAGE

12 If the homestead or lands included therein are mortgaged by the joint deed
13 of husband and wife, the joining of the wife or husband in the mortgage shall
14 have no other effect than to bar her or his claim to the homestead as against the
15 mortgage. If the mortgage includes lands other than the homestead, and the
16 owner thereof dies, the other lands shall be first sold by the executor or
17 administrator and applied on the mortgage and the residue only shall rest on
18 the homestead. When the ~~probate division of the superior court~~ Probate
19 Division of the Superior Court orders the whole to be sold, the balance of the
20 proceeds after the payment of the mortgage, not exceeding \$75,000.00

1 ~~§125,000.00 shall be under the control of the court Court as in case of the sale~~
2 of a homestead under this chapter.

3 Sec. 9. 27 V.S.A. § 182 is amended to read:

4 § 182. APPLICATION TO SUPERIOR COURT FOR RELIEF

5 When a dwelling house, outbuildings, and lands in which a homestead right
6 exists, exceed in value ~~\$75,000.00~~, \$125,000.00 and a severance of the
7 homestead would greatly depreciate the value of the residue of the premises or
8 be of great inconvenience to the parties interested either in the residue or in the
9 homestead, either party may apply for relief to the ~~superior court~~ Superior
10 Court by a complaint setting forth the facts.

11 Sec. 10. 27 V.S.A. § 183 is amended to read:

12 § 183. TRANSFER OR SALE IN LIEU OF SEVERANCE

13 When it appears upon hearing that such homestead cannot be occupied in
14 severalty without great inconvenience to the parties interested therein or in
15 such residue, the ~~court~~ Court may order such homestead to be transferred to
16 such other parties and the payment of ~~\$75,000.00~~ \$125,000.00 to the owner
17 thereof, or, at the option of the owner, ~~such court~~ the Court may order the
18 parties to transfer such residue to him or her and order him or her thereupon to
19 pay such other parties the value thereof to be fixed by the ~~court~~ Court. If the
20 case requires, the ~~court~~ Court may order a sale of the whole premises and
21 apportion the proceeds between the parties, and the ~~court~~ Court may make such

1 ~~orders in the premises as are equitable. If such homestead is sold, the court~~

2 Court may control the investment of the proceeds of the sale in a new

3 homestead or make such disposition thereof as equity requires.

4 Sec. 11. EFFECTIVE DATE

5 ~~This act shall take effect on passage.~~

Sec. 1. 1 V.S.A. § 317(c)(41) is amended to read:

(41) documents reviewed by the Victim's Compensation Board for purposes of approving an application for compensation pursuant to 13 V.S.A. chapter 167, except as provided by 13 V.S.A. §§ ~~5360~~ 5358a(b) and 7043(c).

Sec. 2. 4 V.S.A. § 1111 is added to read:

§ 1111. CIVIL VIOLATION; FAILURE TO PRODUCE IDENTIFICATION

(a) A law enforcement officer is authorized to detain a person if:

(1) the officer has reasonable grounds to believe the person has committed a civil violation of Title 7, 13, 18, or 23; and

(2) the person refuses to identify himself or herself satisfactorily to the officer when requested by the officer.

(b) The person may be detained under this section only until the person identifies himself or herself satisfactorily to the officer or is properly identified. If the officer is unable to obtain the identification information, the person shall forthwith be brought before a judge in the Criminal Division of the Superior Court for that purpose. A person who refuses to identify himself or herself to the Court on request shall immediately and without service of an order on the person be subject to civil contempt proceedings pursuant to 12 V.S.A. § 122.

Sec. 2a. 18 V.S.A. § 4230a(e) is amended to read:

~~*(e)(1) Upon request by a law enforcement officer who reasonably suspects that a person has committed or is committing a violation of this section, the person shall give his or her name and address to the law enforcement officer and shall produce a motor vehicle operator's license, an identification card, a passport, or another suitable form of identification.*~~

~~*(2) A law enforcement officer is authorized to detain a person if:*~~

~~*(A) the officer has reasonable grounds to believe the person has violated this section; and*~~

(B) the person refuses to identify himself or herself satisfactorily to the officer when requested by the officer.

~~(3)~~(2) The person may be detained only until the person identifies himself or herself satisfactorily to the officer or is properly identified. If the officer is unable to obtain the identification information, the person shall forthwith be brought before a judge in the Criminal Division of the Superior Court for that purpose. A person who refuses to identify himself or herself to the Court on request shall immediately and without service of an order on the person be subject to civil contempt proceedings pursuant to 12 V.S.A. § 122.

Sec. 2b. 24 V.S.A. § 1983(b) is amended to read as follows:

(b) The person may be detained only until the person identifies himself or herself satisfactorily to the officer or is properly identified. If the officer is unable to obtain the identification information, the person shall forthwith be brought before a Criminal Division of the Superior Court judge for that purpose. A person who refuses to identify himself or herself to the Court on request shall immediately and without service of an order on the person be subject to civil contempt proceedings pursuant to 12 V.S.A. § 122.

Sec. 3. 9 V.S.A. § 2292 is amended to read:

§ 2292. DEFENSES; LIABILITY AND PROTECTION OF TRANSFEREE

** * **

(e) A transfer is not voidable under subdivision 2288(a)(2) or section 2289 of this title if the transfer results from:

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law;

(2) enforcement of a security interest in compliance with Article 9 of Title 9A; or

(3) foreclosure of a mortgage in compliance with subchapter 6 of chapter 163 or subchapter 1 of chapter 172 of Title 12.

** * **

Sec. 4. 12 V.S.A. § 2794 is amended to read:

§ 2794. EXECUTION UPON REAL ESTATE; HOMESTEAD A PART

When an execution is levied upon real estate of which the debtor's homestead is a part or upon that part of a homestead in excess of ~~\$75,000.00~~ \$125,000.00 in value, the location and boundaries of the homestead shall be ascertained before the sale and set out in the manner provided for the levy of execution upon real estate whereof a homestead forms a part.

Sec. 5. 13 V.S.A. § 2651(3) is amended to read:

(3) “Commercial sex act” means any ~~sex~~ sexual act, sexual conduct, or sexually explicit performance on account of which anything of value is promised to, given to, or received by any person.

Sec. 6. 18 V.S.A. § 4474(b) is amended to read:

(b) Prior to acting on an application, the ~~department~~ Department shall obtain from the Vermont ~~criminal information center~~ Crime Information Center a Vermont criminal record, an out-of-state criminal record, and a criminal record from the Federal Bureau of Investigation for the applicant. ~~For purposes of this subdivision~~ As used in this subsection, “criminal record” means a record of whether the person has ever been convicted of a drug-related crime. Each applicant shall consent to release of criminal records to the ~~department~~ Department on forms substantially similar to the release forms developed by the ~~center pursuant to 20 V.S.A. § 2056e~~ Center. The ~~department~~ Department shall comply with all laws regulating the release of criminal history records and the protection of individual privacy. The Vermont ~~criminal information center~~ Crime Information Center shall send to the requester any record received pursuant to this section or inform the ~~department of public safety~~ Department of Public Safety that no record exists. If the ~~department~~ Department disapproves an application, the ~~department~~ Department shall promptly provide a copy of any record of convictions and pending criminal charges to the applicant and shall inform the applicant of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the Vermont ~~criminal information center~~ Crime Information Center. No person shall confirm the existence or nonexistence of criminal record information to any person who would not be eligible to receive the information pursuant to this subchapter.

Sec. 7. 18 V.S.A. § 4474g(b) is amended to read:

(b) Prior to acting on an application for a registry identification card, the ~~department of public safety~~ Department of Public Safety shall obtain with respect to the applicant a Vermont criminal history record, an out-of-state criminal history record, and a criminal history record from the Federal Bureau of Investigation. Each applicant shall consent to the release of criminal history records to the ~~department~~ Department on forms substantially similar to the release forms developed in accordance with ~~20 V.S.A. § 2056e~~ by the Vermont Crime Information Center.

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§ 145. EFFECT OF SPOUSE JOINING IN MORTGAGE

If the homestead or lands included therein are mortgaged by the joint deed of husband and wife, the joining of the wife or husband in the mortgage shall have no other effect than to bar her or his claim to the homestead as against the mortgage. If the mortgage includes lands other than the homestead, and the owner thereof dies, the other lands shall be first sold by the executor or

administrator and applied on the mortgage and the residue only shall rest on the homestead. When the ~~probate division of the superior court~~ Probate Division of the Superior Court orders the whole to be sold, the balance of the proceeds after the payment of the mortgage, not exceeding ~~\$75,000.00~~ \$125,000.00 shall be under the control of the ~~court~~ Court as in case of the sale of a homestead under this chapter.

Sec. 11. 27 V.S.A. § 182 is amended to read:

§ 182. APPLICATION TO SUPERIOR COURT FOR RELIEF

When a dwelling house, outbuildings, and lands in which a homestead right exists, exceed in value ~~\$75,000.00~~ \$125,000.00 and a severance of the homestead would greatly depreciate the value of the residue of the premises or be of great inconvenience to the parties interested either in the residue or in the homestead, either party may apply for relief to the ~~superior court~~ Superior Court by a complaint setting forth the facts.

Sec. 12. 27 V.S.A. § 183 is amended to read:

§ 183. TRANSFER OR SALE IN LIEU OF SEVERANCE

When it appears upon hearing that such homestead cannot be occupied in severalty without great inconvenience to the parties interested therein or in such residue, the ~~court~~ Court may order such homestead to be transferred to such other parties and the payment of ~~\$75,000.00~~ \$125,000.00 to the owner thereof, or, at the option of the owner, ~~such court~~ the Court may order the parties to transfer such residue to him or her and order him or her thereupon to pay such other parties the value thereof to be fixed by the ~~court~~ Court. If the case requires, the ~~court~~ Court may order a sale of the whole premises and apportion the proceeds between the parties, and the ~~court~~ Court may make such orders in the premises as are equitable. If such homestead is sold, the ~~court~~ Court may control the investment of the proceeds of the sale in a new homestead or make such disposition thereof as equity requires.

Sec. 13. 2009 Acts and Resolves No. 58, Sec. 14, as amended by 2010 Acts and Resolves No. 66, Sec. 3, is further amended to read:

Sec. 14. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

** * **

(b) The ~~department~~ Department shall electronically post the following information ~~on~~ regarding 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) except as provided in subsection (1) of this section, the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:

(A) the offender has been designated as high risk by the Department of Corrections pursuant to section 5411b of this title;

(B) the offender has not complied with sex offender treatment;

(C) there is an outstanding warrant for the offender's arrest;

(D) the offender is subject to the Registry for a conviction of a sex offense against a child under 13 years of age; or

(E) the offender's name has been electronically posted for an offense committed in another jurisdiction which required the person's address to be electronically posted in that jurisdiction;

(8) 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;

(9) whether the offender complied with treatment recommended by the Department of Corrections;

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

(11) the reason for which the offender information is accessible under this section;

(12) whether the offender has been designated ~~high risk~~ high risk by the Department of Corrections pursuant to section 5411b of this title; and

(13) if the offender has not been subject to a risk assessment, a statement that the offender has not been so assessed and that such a person is presumed to be high risk, provided that the Department of Corrections shall permit a person subject to this subdivision to obtain a risk assessment at the person's own expense.

* * *

(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.~~

* * *

Sec. 14. EFFECTIVE DATE

This act shall take effect on passage.