

**THE SENATE COMMITTEE ON JUDICIARY'S
34-POINT COMPREHENSIVE PLAN FOR
VERMONT'S SEXUAL ABUSE
RESPONSE SYSTEM**

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**STATE OF VERMONT
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November 12, 2008

Senator Peter Shumlin
President Pro Tempore
State House
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Dear Senator Shumlin:

On behalf of the Senate Committee on Judiciary, I am pleased to provide you with what the Committee believes to be a thorough and thoughtful response to your charge to the Committee contained in your letter of July 15, 2008. (*See* Appendix A.) The Committee's 34-point comprehensive plan for Vermont's sexual abuse response system was developed with the comments of Brooke Bennett's mother in mind when she told the Committee that "her only hope was that the Legislature would change the laws in such a way that it would protect children." It is our plan to have companion legislation ready for Senate floor action at the start of the legislative session in January.

The Senate Committee on Judiciary (the Committee), joined by House Committee on Corrections and Institutions Chair Rep. Alice Emmons and House Committee on Judiciary Vice chair Rep. Maxine Grad, held eight full-day committee meetings and five public hearings around the state. The Committee heard from over 150 witnesses, both experts and concerned citizens, as well as thousands of Vermonters via e-mail, letters, petitions and phone calls. (*See* Appendix B.) The Committee established a website on which we listed notices of meetings, agendas, and a number of documents from witness testimony to the Committee's correspondence with the executive and judicial branches.¹

What went wrong?

It is the policy of the general assembly to not identify victims without their prior approval, and thus the Committee has omitted any identifying information about Michael Jacques' known victims in order to protect their privacy. We have attempted

¹ <http://www.leg.state.vt.us/workgroups/sexoffenders/>

to tell the important details of Michael Jacques' crimes in a manner which we hope is sensitive to his victims. We know that the mere fact that we are raising these crimes again will be extremely painful for his victims and, for that, we offer our deepest apologies. However, in order to understand fully the mistakes that were made and how we might prevent them in the future, it is important that we know his full history, as ugly and painful as it might be. We hope that anyone who may read this report will share our deep sympathies for those whom Jacques has harmed and not speculate publically about their identities.

As we all have learned over these past few months, Michael Jacques (Jacques) has a long history of sexual violence which was not taken seriously enough by either the criminal justice system or those who knew him. Despite evidence of his long history of sexual abuse, he was able to escape any real justice and left a trail of victims over 30 years. This was in part because he preyed on vulnerable victims who trusted him – children, young women, relatives, an employee under his supervision. He used manipulation, violence, and drugs and alcohol to exploit his victims further and weaken their ability to protect themselves. Jacques, as many sex offenders, was a master at deception and manipulation. Yet, looking back over the history of his crimes, it is difficult to understand why he was given so many chances to reoffend.

There is no doubt that major mistakes were made on behalf of the state; mistakes which we hope to remedy through our series of recommendations. Unfortunately, his story also illustrates the inherent difficulties in prosecuting crimes of sexual violence and why so many offenders unjustly avoid punishment.

Court documents indicate Jacques' first criminal charge was in Orange County, Vermont, in 1985 for lewd and lascivious conduct with a child under the age of 16. According to the affidavit submitted in support of the charge, Jacques began molesting a relative (Victim A) when he was 11 years old and the victim was 8 years old. As the years progressed, the abuse escalated to include sexual intercourse. When the victim was 12 years old, she told a female relative about the abuse. This relative spoke to Jacques, who denied it. The abuse subsided for a short period of time. Jacques resumed his abuse of the victim, resulting in a pregnancy that was eventually terminated when the victim was 15 years old and Jacques was 18.

Jacques sought to have the matter transferred to juvenile court based on the fact that he had been 17 years old at the time of the alleged crime. This motion was denied. According to court documents, the case was dismissed on September 10, 1985 by the state's attorney due to the victim's refusal to testify against Jacques.

Jacques' second contact with the criminal justice system was in 1986 or 1987 when he was charged with sexual assault of a minor. The victim (Victim B) testified to the Committee that when she was 13 years old, she "dated" Jacques' 13-year-old brother. According to the victim, Jacques was known for having parties at his apartment in Barre where minors could obtain alcohol and marijuana. She said that Jacques, who was 19 or 20 at the time, sexually assaulted her during one of these parties. The victim reported

the assault and recounted to the Committee the painful and frightening process of being deposed prior to trial by Jacques' attorney while Jacques was in the room. She said she was not provided with any information about the case after that until she was notified that Jacques had been sentenced and placed on probation.

Jacques had been offered a plea arrangement by the Orange County State's Attorney in which he agreed to plead guilty to lewd and lascivious conduct with a child in return for a deferred sentence. A deferred sentence is a sentence that will not be imposed unless the defendant fails to fulfill conditions of probation that are set by the court. If the defendant violates the terms of probation or of the deferred sentence agreement, the court imposes a sentence. If the defendant fulfills the conditions of probation and of the deferred sentence agreement, the court strikes the adjudication of guilt and discharges the person.

The deferred sentence statute at the time of Jacques' sentencing for this offense provided a standard of five years of probation. It appears as though Jacques fulfilled the conditions of both probation and the deferred sentence, as no official records exist of this adjudication, and the Committee relied on witness testimony and subsequent court documents that mention the deferred sentence to piece together the sequence of events.

In June 1992, Jacques was charged with kidnapping, aggravated sexual assault, sexual assault, and simple assault for abducting and raping an 18-year-old co-worker (Victim C). According to court documents, after a night of drinking with Jacques and another co-worker, the victim fell asleep in her car. When she awoke, she was in her car alone with Jacques who had driven her to a remote field. Jacques violently bound her, beat her, and raped her at knifepoint. The victim said that Jacques repeatedly said he would have to kill her because he knew she would report him to the police. She was able to convince him that he had a choice and that she would not tell police about him. Jacques agreed to let the victim go, apologized, promised to get psychiatric help, and coached the victim on how she should tell police, if she had to report the crime, that she did not know who had assaulted her. Later that night, the victim was in a car accident while driving home and told the officer on the scene that she had been raped, but she did not expect anyone to believe her. Upon questioning at the police barracks, the victim recounted the details of the assault, but, complying with Jacques' orders, said she did not know her attacker. After continued questioning by law enforcement, the victim admitted that it was Jacques.

On July 12, 1993, Jacques signed a plea agreement with the Orange County State's Attorney in which he agreed to plead nolo contendere to kidnapping and aggravated sexual assault. In turn, the state would dismiss the charges for sexual assault and simple assault and "recommend a sentence of 6 to 20 years, all suspended except 6 years to serve with credit from [his date of arrest]. The sentences on each count [are] to be concurrent, [and] the credit to be concurrent, as well. The parties agree to waive the PSI and the defendant agrees to waive sentence reconsideration." The conditions of probation included that there be no contact with the victim or her family, that the defendant fully complete sex offender treatment to the satisfaction of the probation

officer, and that he submit to alcohol screening and abstinence, if recommended based upon the screening.

According to the transcript of the sentencing hearing before Judge Alan Cook, the victim was consulted about and in agreement with the plea agreement, although she was not in attendance. When the court inquired as to the state's reasons for engaging in the plea agreement, the Orange County State's Attorney responded:

Because of the uncertainty of what the outcome would be at trial. And the uncertainty of – that's the main – the main reason. And I suppose a compelling reason is the State's position that Michael Jacques is finally willing to admit that he has some serious problems of a sexual nature that need to be addressed and that can be addressed by incarceration [and] treatment. And that by being supervised over a long period of time, he will get counseling that he – that he does need and has needed.

On August 21, 1996, Jacques was released from prison, having served a total of four years, two months and 18 days (this included 404 days served in pretrial detention). The original six-year prison sentence was reduced because, at the time, Vermont law credited offenders for "good time." Jacques' sentence was reduced by 540 days of Automatic Reduction of Term and 109 days of Earned Reduction of Term for participation in treatment. Jacques received sex offender treatment in prison for two years and eight months, but his mandatory release from prison cut the program short by several months.

Upon his release from prison, Jacques registered as a sex offender in Vermont and entered a community-based sex offender treatment program. He was supervised by probation officer (PO) Paul McNaughton.

In March 1997, PO McNaughton successfully petitioned Judge David Suntag to expand Jacques' probation conditions because of his lengthy history of sexual violence and the fact that he had "engaged in risky, manipulative and deceitful behavior since his release." The court approved 19 additional conditions of probation related to sex offender treatment, including one prohibiting Jacques from residing with any person under 16.

On August 18, 1997, the Department of Corrections (DOC) filed a violation of probation with the court alleging that Jacques was living in a household with a three-year-old child, in violation of the housing conditions of his probation. On November 3, 1997, Jacques admitted to the violation, and Judge Shireen Avis Fisher ordered Jacques to serve four Sundays on a work crew. According to subsequent court testimony, after admitting the violation, Jacques was given permission to continue living in the household with the child. There is no independent documentation to corroborate this; however, we do know that Jacques continued to reside with the child after this hearing and was not violated for this living arrangement. There is no evidence that the Department of Social and Rehabilitation Services (later known as DCF) was notified by

DOC or the court of Jacques' contact with the child in violation of his probation or that he was being given permission to reside with a child.

According to DOC, sometime in 1997 Jacques was caught drinking alcohol in the presence of minors, a violation of his probation conditions. A probation violation was never filed.

In a November 2000 letter to PO McNaughton, Jacques' treatment provider said that Jacques had requested to be discharged from his treatment program. The treatment provider stated:

[Jacques] had been coming on a less-than-weekly schedule for six months previous to this request following a probation and parole judgment that Mr. Jacques had been meeting his supervision requirements . . . Mr. Jacques has made the necessary adjustments for the transition from inpatient to community-based living. He recognizes that his sexual offender issues and risk remain and he has demonstrated that he is able to utilize a wide variety of both cognitive behavioral and dynamic understandings and skills around controlling that risk . . . Given the behaviors and skills demonstrated during his time in programming it is clear that [Jacques] has benefitted greatly from his programming while incarcerated and has been able to maintain his learned skills during his time in community programming. Given these circumstances it would seem that [he] has derived maximum benefit from his mandated programming . . . It is hoped that [he] will continue his learning curve and will maintain his risk control lifestyle. . . .

Sex offender treatment for Jacques ended in December 2000.

In early 2002, a DOC treatment team held a meeting concerning Jacques. The treatment team recommendation for any case is advisory. It appears as though this was the last treatment team meeting on Jacques.

On April 23, 2002, Tom Hunter, the district manager for the White River Probation and Parole Office, filed a motion in Orange County District Court to amend Jacques' conditions of probation to include periodic polygraph exams. Hunter explained to the Committee that nothing about Jacques in particular had triggered the request, but rather it was part of a larger effort on the part of his office to use polygraphs routinely on sex offenders under supervision, and that Jacques had voluntarily agreed to the modification.

The motion was denied by Judge Amy Davenport, who stated on the order, "While the court has no objection to probationers voluntarily submitting to a lie detector test, this is not a condition of probation." In response to the Committee's inquiries about her ruling, Judge Davenport responded that ordering a polygraph as a condition of probation was not listed as an option under the law, 28 V.S.A. § 252, and was not routinely done at that time.

In 2002, McNaughton retired, and Jacques was supervised for a short period by two other POs before being assigned to PO Richard Kearney in January 2003.

In 2003, Jacques began sexually abusing the child whom he was granted permission to live with in 1997 (Victim D), according to an affidavit filed in connection with criminal charges brought against Jacques in Orange County on June 30, 2008.

On March 7, 2003, Jacques petitioned the court for discharge from probation. The Orange County State's Attorney's Office opposed the motion, and it was denied by Judge Michael Pratt.

On August 23, 2004, PO Kearney, supported by his supervisor, Richard Rideout, petitioned the court to discharge Jacques from probation, stating that Jacques had "satisfied all case general and specific conditions of his probation." The Orange County State's Attorney's Office again opposed discharge, because "the crimes underlying the probationary sentence were pre-meditated and particularly brutal. . . ." According to deputy state's attorney Robert DiBartolo,

the State maintains that the defendant's crimes warrant extraordinarily long, if not lifetime, supervision. The plea agreement called for a split sentence with a long maximum sentence specifically so that the Department of Corrections could supervise the defendant for an extended period of time on probation, yet still have a substantial sentence to be served should the defendant violate his probation.

A hearing was held on October 18, 2004 before Judge Amy Davenport. At the hearing, PO Kearney testified in strong support of Jacques' discharge. Kearney noted that Jacques was married with two daughters, excelled in his field of employment, purchased his own home, and met with Kearney once a month.

When I make comments about successes in sex offender treatment, I have three names of which Michael Jacques is one. . . . At this point in time, Mr. Jacques has met all the requirements that the Court has imposed upon him. He's done that – just hasn't met them, he's far exceeded them. If what we're looking to do is make significant life changes so that this doesn't happen again, Mr. Jacques has made those significant changes. All the instruments that we use, all of the risk assessments . . . basically boil down to residence, employment, relationships, finances, education. If you were to grade Mr. Jacques using these assessment tools in the past and grade him now, there is no room for anymore improvement. We've moved Mr. Jacques as far from point A to Z as possible. He's done what he needs to do.

The Court questioned Jacques about his history of sexual violence, discussing each recorded incident and making Jacques acknowledge his past offenses on the record. The Court asked Jacques why the public should feel safe if he is no longer supervised

by the state. Recognizing that he is married, has a child, a home, and stable employment — all good indicators that he has made positive changes in his life — the Court said, “I’m wondering what has changed inside your head that you think would make somebody like me feel more secure that you aren’t going to, given an opportunity, go and do something like this again?” Jacques responded by discussing his treatment in prison and how it helped him recognize and understand his anger, which resulted in violence.

The Court noted that after Jacques was released from prison, PO McNaughton still had concerns about him in 1997. Jacques acknowledged such and said he relies on a relapse prevention cycle that was developed with his treatment providers and supervisors.

Jacques’s wife, Denise, testified in support of his discharge, saying that Jacques and she “have a very stable life with our children.” Denise described the “special bond” that Jacques has with his stepdaughter and credited him with making her a better person and a better parent. She said that he had worked very hard at his career to provide a level of financial stability that she thought she would never experience. She continually impressed upon the court her belief that he had put his past behind him and was living an exemplary life.

Because of what he’s done and the person that he’s become, you know, he – we’re raising two children that at some point in their lives will become aware of – of the issues and the way their father was prior. It’s not the person that he is now. That’s not the person that is in their lives, and I must say that if Michael could shield his children from that for their whole entire life, he would, but we know that it’s just not possible; that this is something that he deals with on a daily basis and no matter the outcome of this hearing today will continue to deal with on a daily basis, and I have high hopes that my children will be better children, better adults, better people because of the type of person that he is now . . . [T]hey will be able to look beyond a person and realize people do make mistakes, but that people can change; that they can better themselves.

Denise testified that probation, which required Jacques to check in with his PO once a month, did not adversely affect their family’s life at the time. Jacques’ attorney, Kevin Griffin, argued that DOC supervision was so minimal at the time that it did not serve any value.

The practical effect is since 2000, DOC isn’t even involved in his life. I mean, he checks in to let them know he’s okay and that’s it. He’s not doing any further programming. He’s exceeded any departmental guidelines in terms of supervision that they would ever have anyway, and I guess my question is if not now, when? So, do we do another year where he’ll check in with Rich occasionally and that’s it and then come back here in a year and ask the same thing, or two years?

I guess the only thing I would ask the Court to at least consider . . . if you’re not going to discharge him now, is there some time period that . . . he could at least

know that if he continues to do what he does so he doesn't have to keep coming back, either six months or on a yearly basis, petitioning for discharge at this point because they're not doing anything else with him.

The State did not offer any witnesses. DiBartolo told the Court that while he recognized the positive changes Jacques had made in his life, everyone must remember the brutal nature of the crime and the impact of the assault on the victim. He advocated for keeping Jacques on probation for the full 20 years allowable under his sentence.

The only reason I can glean from Jacques wanting to be off probation is because it's embarrassing and it's inconvenient to be on probation and he wants closure. Those are all understandable, but the fact of the matter is that he's a twice convicted sex offender and I think society has the right to have him on probation and to have somebody checking up on him at least once in a while, even if it's just a monthly meeting with a probation officer to find out where he is, what he's doing, to make sure his life is still stable and is going . . . the way it should go because I think that things like stress and so forth in a person's life can have adverse effects on somebody's mental health and cause them to do things at some point that they may not normally do if they didn't have that stress in their lives . . . So far so good, yeah, but the amount of obligation on his part at this time is minimal and I think that it's a small price to pay for what he did.

The Court denied Jacques' requests for immediate discharge, but ruled that probation could be terminated after July 1, 2006 if he received no probation violations.

In October 2004, Jacques was placed on the new Vermont Internet Sex Offender Registry. The online registry is available to the public and provided a picture of Jacques and information about his 1992 criminal conviction, his supervision and treatment status, his town of residence, and his date of birth.

On April 19, 2005, Jacques was arrested in Hanover, NH for a violation of the New Hampshire sex offender requirements. Jacques was working in Hanover at the time, and was required to update his registry information annually within 30 days of his birthday in accordance with New Hampshire law. According to the affidavit in support of the arrest warrant, Jacques had signed an offender registration form acknowledging this requirement and was given a copy of this form. He was further advised of this requirement by PO Kearney. Jacques claimed that he had misunderstood his obligations. In September 2005, he pled guilty to the charge and was sentenced to one year suspended and a fine.

DOC did not report this violation to the Vermont court as a violation of Jacques' probation. PO Kearney testified to the Committee that he did not think it was important to report the "technical" violation to the Vermont court. The Committee asked current DOC Commissioner Robert Hofmann about his view of this failure to report, to which he responded:

The court specifically asked to be advised of any violations. [T]he NH Sex Offender Registry conviction should have been reported to the court. To exclude the NH violation from the court record was a serious mistake given the nature of the underlying violent offense.

On November 21, 2006, PO Kearney, supported by his supervisor, again recommended that Jacques be discharged from probation, stating that Jacques had complied with all conditions of probation. **Not knowing of the NH violation**, Orange County Judge Patricia Zimmerman approved discharge on December 2, 2006.

On June 30, 2008, Jacques was charged with aggravated sexual assault (repeated) for the sexual abuse of Victim D from the period of October 2003 through June 2008.

On July 1, 2008, Jacques was charged by federal authorities with various kidnapping offenses in relation to the disappearance and death of his niece, Brooke Bennett (Victim E).

On July 7, 2008, the Orange County State's Attorney dismissed the aggravated sexual assault case against Jacques.

On October 1, 2008, a federal grand jury sitting in Rutland returned an indictment charging Jacques with the kidnap, rape, and murder of Brooke Bennett and production of child pornography for drugging Victim D and then filming his sexual assault on her. The grand jury issued a "Notice of Special Findings" that details aggravating factors that make Jacques eligible for the death penalty.

Does treatment reduce sex offender recidivism?

In Vermont, as in other states, 95 percent of all convicted sex offenders return to our communities. Treatment is an important tool in sex offender management and data clearly has shown that offenders who successfully complete treatment are less likely to reoffend. However, it is only a tool and not a cure. Treatment must be combined with effective supervision.

To develop an appropriate response to sexual offenses, it is important to understand that not all sex offenders are the same. Sex offenders vary with respect to a number of issues, including victim preferences, behavior preferences, motivation, and attitudes toward deviant behavior. Because of these differences, offenders vary with respect to their risk to reoffend sexually. Reconviction data suggest that most sex offenders do not reoffend. However, reoffense rates vary among different types of sex offenders and are related to specific characteristics of the offender and the offense. It is believed that about 40 percent of all sex offenders are at low risk to sexually reoffend, at about a rate of 10 percent over the course of 10 years. Because of the many variables affecting reoffense rates, predicting whether a particular person will sexually reoffend is not an exact science, and we must rely on probabilities. The true rate of reoffense is difficult

to determine because of under-reporting, and is usually estimated to be 10-15 percent higher than convictions.

According to the most recent study in Vermont, slightly more than one-half of incarcerated sex offenders enter sex offender treatment. Of those offenders, slightly more than half completed the treatment.^{2,3} Incarcerated sex offender treatment ranges in duration from 6 months for low-risk offenders to two to three years for high-risk offenders and occurs toward the end of an offender's minimum release date. In community programs, approximately 85 percent of offenders who enter sex offender treatment complete the treatment. Vermont studies show that male sex offenders who complete treatment have a rate of reoffense that is six times lower than that of male offenders who do not complete treatment.⁴

The Committee was thankful for the expert assistance of Dr. Kurt Bumby of the Center for Sex Offender Management.⁵ Dr. Bumby, accompanied by myriad studies, graphs, and charts, briefed the Committee on the latest data on sex offender treatment, data which showed that treatment does have value as a public safety tool. He explained that Vermont currently employs the best approach to treatment, which is to use research-supported tools to assess the risk of each sex offender and programming tailored to that risk. According to Dr. Bumby, data has shown that adherence to a sex offender treatment program reduces but does not eliminate both sexual recidivism and general recidivism rates for all levels of sex offenders. Nothing, not even intensive supervision, has a more pronounced impact on reducing recidivism than treatment. Only when intensive supervision is combined with treatment do studies show a decrease in sexually based reoffenses.

The Committee also had the valuable assistance of Dr. Jill Levinson, who has written extensively on sex offender management issues. Dr. Levinson said that sex offender treatment is similar to many medical and mental health treatments that do not offer a cure but manage and reduce symptoms. "Sex offender treatment teaches clients how to change their thinking and their behavior, and many are able and willing to do so and avoid reoffense," Dr. Levinson told the Committee. Jacques' treatment provider clearly took this approach in that he discussed the skills Jacques had learned to control risk and urged Jacques to remain in contact with the provider and return if needed. He closed

² McGrath, R. J., Cumming, G., Livingston, J. A., Hoke, S. E. (2003). *Outcome of a treatment program for adult sex offenders: From prison to community*. Journal of Interpersonal Violence, 18, 3-17.

³ However, current data indicates that 68 percent of offenders who participate in treatment complete treatment. The Committee wonders whether this is a result of recent legislation that subjects offenders who fail to complete treatment to stricter registry requirements.

⁴ McGrath, *supra* note 1 at 12.

⁵ Established in June 1997, the Center for Sex Offender Management's (CSOM) goal is to enhance public safety by preventing further victimization through improving the management of adult and juvenile sex offenders who are in the community. The Center for Sex Offender Management is sponsored by the Office of Justice Programs, U.S. Department of Justice, in collaboration with the National Institute of Corrections, State Justice Institute, and the American Probation and Parole Association. CSOM is administered through a cooperative agreement between OJP and the Center for Effective Public Policy.

his letter to PO McNaughton saying, “[i]t is hoped that Michael will continue his learning curve and will maintain his risk control lifestyle.”

Vermont is a recognized international leader in the management of sex offenders. According to its mission, the Vermont Treatment Program for Sexual Abusers (VTPSA) “teaches offenders how to accept, understand, modify and maintain permanent changes in behavior relating to illegal sexual behavior.” It is composed of three prison-based programs and 13 community-based programs and utilizes widely acknowledged best practices in the treatment of sex offenders. The program is headed by clinical director Bob McGrath and program director Georgia Cumming, who have provided valuable assistance to this Committee for a number of years.

Senator Shumlin, you inquired whether our faith in treatment is misplaced and our answer is no. However, we must understand that the role treatment plays is one of many strategies we should employ to promote public safety. We should continue to invest strongly in treatment, as cost-benefit analysis show that it yields positive dividends, both tangible and intangible. But we must recognize the limitations of treatment and never view any sex offender as “cured.” In the interest of public safety, we must provide sex offenders with the skills they need to control their risk and provide meaningful supervision if we are to combat these crimes.

What changes have been made to Vermont’s sex offender laws in recent years?

You inquired as to how Vermont laws pertaining to sex offenders had changed since Jacques was convicted and sentenced in 1993. In the last 15 years, the general assembly has addressed sexual violence in each biennium and enacted 18 bills.⁶ A partial list of these changes includes:

- Criminalizing the acts of:
 - voyeurism
 - luring a child for sexual purposes
 - possession of child pornography
 - sexual exploitation of an inmate

- Strengthening the laws regarding:

⁶ Act No. 100 of the 1993 Adjourned Session; Act No. 50 of the 1995 Adjourned Session; Act No. 124 of the 1995 Adjourned Session (1996); Act No. 122 of the 1999 Adjourned Session (2000); Act No. 124 of the 1999 Adjourned Session (2000); Act No. 134 of the 1999 Adjourned Session (2000); Act No. 41 of the 2001 Adjourned Session; Act No. 49 of the 2001 Adjourned Session; Act No. 43 of the 2003 Adjourned Session; Act No. 157 of the 2003 Adjourned Session (2004); Act No. 63 of the 2005 Adjourned Session; Act No. 79 of the 2005 Adjourned Session; Act No. 83 of the 2005 Adjourned Session; Act No. 170 of the 2005 Adjourned Session (2006); Act No. 177 of the 2005 Adjourned Session (2006); Act No. 192 of the 2005 Adjourned Session (2006); Act No. 77 of the 2007 Adjourned Session; Act No. 174 of the 2007 Adjourned Session (2008).

- lewd and lascivious conduct with a child
 - sexual assault
 - the use of a child in a sexual performance
 - disseminating indecent material to a minor or in the presence of a minor
 - the promotion or transmission of child pornography
 - sexual abuse of a vulnerable adult
- Increasing the penalties by establishing mandatory minimums and “indeterminate lifetime sentencing” maximums for:
 - lewd and lascivious conduct with a child
 - sexual assault
 - aggravated sexual assault
- Adding clergy to the list of people who are mandatory reporters of child abuse.
- Establishing a sex offender registry and notification system, including an Internet registry available to the public. The registry has been expanded by the general assembly seven times since its creation in 1996.
- Eliminating “good time” (a reduction in minimum or maximum terms) for inmates in exchange for compliant behavior in prison.
- Expanding special investigation units to all regions of the state.
- Requiring presentence investigations, which may include psychosexual evaluations, for most convicted sex offenders.
- Requiring DOC, prior to releasing a sex offender into the community, to consider carefully the proximity of the offender’s residence to any risk group associated with the offender.
- Establishing a high-risk noncompliant status for maxed-out sex offenders who refuse treatment and placing additional registry obligations on such offenders.
- Extending protections granted to child victims of sexual abuse under the Vermont Rules of Evidence to include vulnerable adults.
- Strengthening the “rape shield” law by extending the protections to depositions in preparation for trial.
- Establishing a procedure whereby a victim of a crime involving a sexual act can petition the court to order the convicted perpetrator to be tested for HIV and other infectious diseases.
- Establishing a process for a victim of a sexual assault to obtain a restraining order against the perpetrator once he or she is released from prison.

- Establishing an address confidentiality program for victims of sexual assault.
- Providing funding and resources to the center for Crime Victim Services and the Network Against Domestic Violence and Sexual Assault for developing and implementing a comprehensive plan for public education regarding sexual violence.

Many of these changes have taken place in the last four years, and I have attached a summary of the applicable acts. (*See* Appendix C.)

What would have been the outcome if current laws had been in place when Jacques was sentenced in 1993?

Jacques was convicted in 1993 of one count of aggravated sexual assault. In 1993, the aggravated sexual assault statute provided for no minimum term of imprisonment and a maximum term of life. Jacques received a split sentence of six to 20 years pursuant to a plea deal.

Today, the aggravated sexual assault statute establishes a *presumptive* minimum sentence of ten years of incarceration and a *mandatory* minimum sentence of five years of incarceration. The ten-year presumptive minimum must be served unless the judge makes written findings that a lesser sentence will serve the interests of justice and public safety. The judge may downward depart if these findings are made but still must impose a sentence of at least five years of incarceration.⁷

Aggravated sexual assault is one of the crimes that now require an indeterminate lifetime maximum sentence. This means that after the offender's release, he or she will continue to be under the supervision of the department of corrections for life and will be subject to the underlying lifetime maximum term of incarceration if he or she reoffends or violates the terms of probation. Additionally, the offender must complete sex offender treatment and programming in order to be eligible for release.⁸

Pursuant to 2008 laws, Jacques would not have been eligible to receive less than a ten-year minimum and lifetime maximum.⁹ The presentence investigation would have been required and could not have been waived as part of the plea agreement, and the court could have ordered a psychosexual evaluation which had the potential to affect sentencing. Because Vermont no longer credits offenders with good time, Jacques would have been required to serve at least 10 years in prison instead of the four he served. This would have made him eligible for release in 2002 (giving him credit for the year he served prior to trial) instead of 1996. Jacques would have been required to serve the rest of his life on probation.

⁷ 13 V.S.A. §3253.

⁸ *Id.* and 13 V.S.A. §3271.

⁹ It is very unlikely considering Jacques' history that any judge would do a downward departure to five years minimum.

For the violation of probation twice in 1997 and once in 2005, the maximum sentence of life in prison could have been imposed. If he received a sentence that was wholly or partially suspended for the violation, sex offender conditions and treatment would have been required as a condition of his new probation agreement. If he received a sentence for an unsuspended term of incarceration for the violation, he would not be released until he successfully completed all sex offender treatment and programming required by the DOC, unless it determined that he posed a sufficiently low risk of reoffense or that a program could be implemented which adequately supervised him and addressed any risk he posed to the community. It is likely that Jacques would have received more serious sanctions for his 1997 and 2005 violations, and that DOC would have felt compelled to report to the court his 1997 drinking in the presence of a minor violation and his 2005 New Hampshire violation.

Jacques' 1993 conviction qualified him for the Internet sex offender registry and heightened notification procedures, and he would be placed on the registry in the same way today.

It is impossible to know whether the circumstances leading to Brooke Bennett's murder would have changed if these laws had been in place in 1993. Under current law, it is theoretically possible that he would have been released from prison by 2008 but remain under DOC supervision. However, Jacques was on probation at the time he began abusing one of his victims and was presumably able to hide that behavior from both his family and his probation officer.

What if the governor's proposals had been in place in 1993?

You inquired whether the circumstances leading to Brooke Bennett's murder would have been different if the changes being advocated by Gov. Douglas and Lt. Gov. Dubie were the law in 1993. These proposals include chemical castration, reinstatement of the death penalty, civil commitment, and a 25-year mandatory minimum sentence for individuals convicted of any sex crime against a child under 12 years of age.

According to Bob McGrath, chemical castration already has been used in Vermont on a limited basis. According to the association for the treatment of sexual abusers (ATSA), the value of chemical castration is limited because it is only potentially helpful in treating "sexually aggressive males and other paraphiliacs whose inability to control their behavior leads to repeated occurrences of sexually deviant behavior." According to McGrath, there are also significant medical risks to the treatment that restrict its use to only a few years. Involuntary chemical castration of sex offenders raises major issues for physicians who would be required to prescribe the medications and is likely to invite litigation.

On June 25, 2008, in *Kennedy v. Louisiana*,¹⁰ the U.S. Supreme Court ruled that a Louisiana law authorizing capital punishment for the rape of a child under 12 was unconstitutional. The Court said that the Eighth Amendment to the U.S. Constitution, which bars cruel and unusual punishment, barred the state from executing a man convicted of raping his eight-year-old stepdaughter, finding that the death penalty is disproportionate to the crime when the crime itself did not or was not intended to result in the death of the victim.

There are three criteria for civil commitment of a sex offender. First, the offender must have committed a “qualifying offense.” This means that the offender has committed a sexually violent predatory offense involving contact against a victim who is not a family member. Second, the offender must have a diagnosed mental disorder, such as pedophilia or antisocial personality disorder. Third, the offender’s mental disorder must make the offender at risk to likely reoffend. Based on testimony the Committee received from a number of expert witnesses who cited the fact that DOC considered him a success story, Jacques would not have qualified for civil commitment upon his release from prison in 1996.

Lastly, Jacques’ victim in the 1992 kidnapping and aggravated sexual assault was 18 years old at the time of the crime. Therefore, any mandatory sentencing law concerning sexual violence against a child under 12 would not have applied to that crime.

In summary, none of the governor’s proposals would appear to have impacted Jacques in any way prior to the death of Brooke Bennett.

What changes should be made to Vermont’s sex offender laws to ensure the safety of our children and communities?

After months of study and hearings, the Committee has identified a number of strategies that would address the mistakes that were made with respect to the prosecution, sentencing, and supervision of Jacques and other offenders who were brought to the Committee’s attention as well as a number of best practices that will further our efforts in the prevention of child sexual abuse.

Below, you will find the Committee’s 34-point comprehensive plan for Vermont’s sexual abuse response system. We believe there is broad support for our recommendations, and it is our hope that the legislature can act very quickly to put them into law.

¹⁰ 128 S. Ct. 2641 (2008) and 554 U.S. ___ (2008).

Prevention

Take legislative action to create a comprehensive statewide approach to the prevention of child sexual abuse

It was evident to the Committee throughout the hearings this fall that prevention is the most important and most often overlooked piece of the debate on how the state should address sexual violence against children. The continuous focus on punishment has distracted us from recognizing earlier that much more can and should be done in the area of the prevention of child sexual abuse. While there are a number of programs and organizations devoted to raising awareness about sexual abuse of children, a coordinated and properly funded statewide approach is needed to ensure that we are devoting appropriate resources and programming to stopping abuse before it happens, not just responding to the crime.

To this end, the Committee recommends that the Senate Committee on Health and Human Services and the House Committee on Human Services, in consultation with the Senate and House Committees on Education and on Appropriations build on the work of the Senate Committee on Judiciary and its recommendations in an effort to develop a comprehensive statewide approach to the prevention of child sexual abuse.

Include a sexual abuse prevention component in all school health curricula

It is widely accepted that the majority of child sexual abuse is committed by a family member or someone known to the child, and that the abuse often goes unreported. One of the best ways to counteract this type of abuse is to empower children with information about what abuse is, that they do not have to endure it, and if it happens, to report it to an appropriate adult. Research suggests that children of all ages can successfully make use of prevention skills if they are taught concrete concepts in a clear, developmentally appropriate way and are given adequate time for learning and follow-up.

To ensure that all children receive information about protecting themselves from sexual abuse, **the Committee recommends that the Department for Children and Families (DCF) convene a working group that includes the Department of Education, parents, and prevention professionals to develop a comprehensive sexual abuse prevention program that can be added to the curriculum in all Vermont schools.**

The Committee understands that some parents may have hesitations about such a difficult subject being discussed with their children, but the Committee is confident that age-appropriate curricula can be developed with parents' concerns in mind. Knowledge is power, and keeping silent with our children on this subject only exposes them to more danger.

Establish grants for community child sexual abuse prevention programs

Denial of the problem of child sexual abuse, within communities and within families, is disturbingly prevalent in Vermont. A recent national study showed that only 63 percent of girls and 50 percent of boys reported that their parents had ever talked with them about sexual abuse prevention. Even if a child receives a child-focused prevention program at school or in the community, it is important that parents and caregivers talk to their children directly about sexual abuse and learning the warning signs of abuse.

The Committee recommends that the Center for the Prevention and Treatment of Sexual Abuse (Center) receive state funding to award grants to schools, communities, and organizations for the purpose of developing and conducting programs that assist families and communities in protecting children from sexual abuse. Educating our communities about the warning signs of sexual abuse and talking to our children in an appropriate manner about sexual abuse is the most effective tool we have at our disposal.

Conduct outreach efforts to reinforce parental responsibility and raise awareness of families and communities about child sexual abuse with a goal of creating a community outreach plan

Child sexual abuse is allowed to continue, in part, because it is such a taboo subject. The Committee was saddened to learn about the prevalence of incest in our state, as in the rest of the country, and that there is a generational cycle of abuse within families and communities that can result in “normalizing” this behavior to children. However, many people turn a blind eye to warning signs of sexual abuse because it is an idea so horrifying they cannot imagine that their family member, friend, or neighbor could harm a child in such a way.

The Committee believes that the state needs to reach out to all Vermonters in a way that makes it clear that child sexual abuse is never acceptable, that it is everyone’s problem, and that we all have a role in protecting the children in our communities.

The Committee recommends that the Agency of Human Services research the most effective way to reinforce parental responsibility and raise community awareness about child sexual abuse with a goal of creating a community outreach plan, developing materials, and implementing a public service announcement educating parents and raising community awareness about child sexual abuse. The Agency should present its findings to the Senate Committee on Health and Human Services and the House Committee on Human Services so that they may be included in the committee’s comprehensive plan.

Require school districts to check the child abuse registry and vulnerable adult abuse registry prior to hiring staff or volunteers and conduct periodic rechecks of the registries and VCIC records

Vermont law currently requires school districts to obtain a record of criminal convictions from the Vermont Criminal Information Center (VCIC) for all school staff or volunteers. The Committee recommends that districts also should be required to check the Vermont child abuse registry and the Vermont vulnerable adult registry in case a substantiation of abuse against a child or vulnerable adult has been recorded that did not result in criminal charges or a conviction. These checks should be done not only prior to hiring, but periodically to ensure that the school district learns of any subsequent convictions or substantiations.

Require that the child sexual abuse victim treatment specialist position be returned to the center for the prevention and treatment of sexual abuse

The Center is a state program designed to address the treatment needs of both sexual abuse victims and sex offenders. The Center provides resources and referral services to prevent and treat sexual abuse, offers networking and educational conferences, and supplies grants to programs that address sexual abuse.

When the Center was established, it was administratively placed in DOC because professionals who work with sex offenders need to be understanding and supportive of victims' issues, just as people working with victims need to understand offender treatment and supervision. The Center was staffed by an offender treatment specialist, a victim treatment specialist, and an administrative assistant, with the original director replaced by contracted clinical oversight. It was jointly managed by DOC and DCF. The victim treatment specialist was a DCF position, funded by DCF, but placed within the Center in DOC. Recently, DCF moved the victim treatment specialist out of the Center and into the DCF central office, where new responsibilities were assigned. The Committee is concerned that this recent move dilutes the prevention efforts of the Center. The original concept for the position was to have a person focused solely on working with victims on issues such as joint investigations, training, and public education. While a number of state and local agencies work on victims' issues, the specialist at the center was intended to be the one person who could provide a comprehensive and integrated approach and view. Thus, the Committee recommends that the victim treatment specialist position be moved back to the Center.

Criminalize sexual contact between an employee in a supervisory union, a school district, or independent school and a student who is enrolled in or attending a program or school within the person's supervisory union, school district, or independent school

Educators and school employees have a powerful mentoring role in the lives of Vermont's children. Because of the influence on young lives and the power dynamic in such a relationship, it is inappropriate for a school employee to have any sexual contact with a student regardless of whether that child has reached the age of consent (16) and

the relationship was consensual. While existing laws criminalize contact with anyone under the age of 16, there is no law prohibiting a school employee from engaging in a sexual relationship with a student who is 16 years of age or older. **The Committee recommends that the legislature criminalize such conduct in an effort to prevent the exploitation of a student by an adult school employee.**

Investigation and Prosecution

Fund and staff special investigation units fully now and place responsibility for registry compliance with the units

Special investigation units (SIUs) are devoted solely to the investigation, prosecution, and victim advocacy relating to sex crimes, child abuse, elder abuse, domestic violence, or crimes against those with physical or developmental disabilities. These units are multidisciplinary task forces composed of specially trained investigators, victim advocates, DCF workers, and prosecutors, whose caseload is confined to sexual and family violence and exploitation of vulnerable populations. The expertise these units garner with their specialized training translates into one of the most effective prosecution models currently in existence. Because the caseload is limited, the investigations are more thorough and more expertly performed than in other models.

Establishing fully funded and staffed special investigation units is the single most effective response the state can take in combating sexual abuse of children. However, currently only two units are fully operational. In 2006, the general assembly expanded special investigation units statewide to ensure that all Vermonters would benefit from the units' expertise at protecting victims and apprehending sex offenders. **The legislation required the units to be available to all Vermonters as soon as reasonably possible, but not later than July 1, 2009. The 2009 date was intended to be an absolute deadline for full operation of the units.**

Provided that these units are fully funded and staffed, the Committee recommends that they be charged with enforcing sex offender registry compliance. Some communities such as Bennington and Rutland have designated law enforcement officers whose job is to conduct compliance checks on sex offenders to ensure they are living and working in accordance with the information they have provided to the registry. These checks are essential for ensuring that offenders who are no longer under DOC supervision are not in violation of their registry obligations. Expanding compliance enforcement throughout the state through the SIUs lets all Vermonters rest assured that the registry information their local law enforcement officers and they rely on is accurate and up-to-date.

Require participation by the Department of Corrections in child protection response teams and special investigation units

Child protection must be a priority for everyone in state government, not just DCF. Any division of state government that provides services that result in employees having

contact with families with children has an obligation to ensure that those children's best interests are being served by the state. Because DOC frequently interacts with offenders' families and children, the Committee recommends that representatives of the DOC play a greater proactive role in child protection, starting with being active participants in regional Sexual Abuse Response Teams (SART) and, in their absence, Child Protection Teams (CPT), empanelled under the provisions of 33 V.S.A. §§ 4917-4918 and functioning in each district. SARTs are composed of state's attorneys, law enforcement, DCF, victims' advocates, and others and reviews child sexual abuse cases under joint investigation by law enforcement and DCF. CPTs encourage referrals from schools, organizations, and the community regarding suspected child abuse or neglect. The teams can serve as an important preventative tool, directing families to important resources and helping to develop strategies to support the family. DOC has strong and active participation with some response teams in the state, but not with others. **It is vital that DOC is a full partner in protecting children from sexual abuse throughout the state.**

Require collection of DNA from any person arraigned for a felony or misdemeanor domestic violence or a registrable sex offense

Currently, DNA is taken from Vermonters who have been convicted of a felony crime. This information is kept in a state DNA databank that can be accessed by law enforcement for the purposes of criminal investigations. The state database is connected to the National DNA Index System, which is run by the Federal Bureau of Investigation for federal and state information sharing.

The Committee recommends that if a court makes a probable cause determination at arraignment for a person charged with a felony, misdemeanor domestic violence pursuant to 13 V.S.A. § 1042, or a misdemeanor for which registration as a sex offender is required by 13 V.S.A. § 5401 et seq., the person shall be required to submit a DNA sample.

Eliminate the right to take pretrial depositions of child victims in sexual abuse cases

Currently, Vermont permits deposing child sexual abuse victims prior to a criminal trial. The rule considers such children "sensitive witnesses" and permits the court to issue an order regulating the deposition and to require that it be taken in the presence of a judge or special master. The court may also issue a protective order which sets forth certain conditions to protect a child from "emotional harm." (V.R.Cr.P. 15(f))

State's attorneys and victims' organizations believe that these protections are inadequate and that permitting a child victim to be deposed prior to trial is an unnecessary, very painful experience for the child. Our goal should be to minimize the traumatic impact of a criminal proceeding on the child as much as possible, they say. Conversely, opponents of such a change testified that such depositions inform both parties of the strengths and weaknesses of the case and can facilitate a pretrial

settlement. Without the information gleaned during a deposition, opponents said that more cases would likely go to trial and result in more sex offenders being acquitted.

The Committee received very powerful testimony about this issue, and while some Committee members have concerns about the potential increase in trials that might result with such a prohibition, the Committee recommends that Vermont prohibit pretrial depositions of victims under 16 years of age in criminal cases involving L&L with a child, sexual assault, aggravated sexual assault, and aggravated sexual assault of a child under 16. The Committee also recommends that the court administrator, department of state's attorneys and sheriffs, and the defender general's office report to the Committees on Judiciary in January 2012 on the impact of this rule change as it relates to the number of cases going to trial.

Amend the age requirement for admissibility of prior statements of child victims so delays in trial dates do not limit the use of the statements

Under the Vermont Rules of Evidence, statements made by a victim of sexual abuse are admissible at trial provided that the child is 10 years old or younger at the time of trial, the statements were not taken in preparation for a legal proceeding, the child is available to testify, and the statements appear reliable. (V.R.E. 804a) State's attorneys have requested that the rule be changed to include statements made by such victims who were 10 years old or younger *at the time the statements were made*. Often, child sexual abuse cases take considerable time to bring to trial, and exclusion of such statements because the child has gotten older unduly burdens the prosecution. If a child is sexually abused when she is seven years old, at which time she gives her firsthand account of the abuse in a statement, and the alleged perpetrator is not brought to trial until the victim is 11 years old, it is unlikely that such a young child will be able to remember and testify to the details of the crime in the manner in which she did four years prior. The rule unintentionally acts as an incentive for a defendant to delay a trial until the victim's statements are no longer available. Therefore, the Committee believes that as long as the other protections in the rule are in place and statements are vetted by the court for their trustworthiness, a statement made by a child victim who is 10 years old or younger at the time the statement is made should be admissible at trial.

Amend the evidentiary requirements for Human Services Board substantiation proceedings to minimize impact on child witnesses

When a report of child abuse or neglect is made, DCF is required to determine whether the actions reported have been "substantiated," meaning that the report is based on accurate and reliable information that would lead a reasonable person to believe the child has been abused or neglected. This is a civil process that must take place regardless of whether a criminal investigation is initiated or criminal charges are brought against the alleged perpetrator. If the allegations are substantiated, a record of the report is included on the Vermont Child Abuse and Neglect Registry. DCF uses the registry in its own investigations and to screen potential foster parents and adoptive

parents, as well as applicants and employees who work in a professional capacity with children or vulnerable adults. The registry is not available to the public.

A person who is substantiated for child abuse or neglect may appeal the substantiation to the Human Services Board. Because the hearings are de novo, a child may be subject to having to recount the abuse before the board, after having done so to DCF investigators and law enforcement officials. To minimize the trauma to children who may be the subject of such hearings, the Committee recommends that the substantiation proceedings allow for the admission of a child's recorded statements and any court judgments or convictions for related behavior by the abuser.

Consider adopting the Federal Rule of Evidence that allows the introduction of evidence of a defendant's commission of other sex offenses in a prosecution for sexual abuse of a child

According to both the state and federal Rules of Evidence, generally the use of evidence of a defendant's prior bad acts as character evidence is not admissible to prove that the defendant acted with conformity in the current matter before the court. The reasoning behind the rule is that such evidence does not offer any direct probative value as to whether the defendant committed the particular act for which he or she is currently on trial, yet the information may be very prejudicial. However, an exception is made in the federal rules for criminal cases in which the defendant is charged with sexual abuse of a child and "evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant." (F.R.E. 414)

Vermont state's attorneys and others have requested that the Committee amend the Vermont Rules of Evidence to reflect the federal rule regarding prior bad acts and sexual violence against children, arguing that such evidence is particularly relevant in sexual offense prosecutions to demonstrate the accused's propensity for such an offense. Opponents claim that such a change is bad policy that eliminates the legal protections that ensure a person is convicted for the charge at hand rather than for his or her past crimes or for just being a bad person. Such a rule, they say, infringes upon a defendant's constitutional right to a fair trial.

The Committee heard compelling testimony from witnesses on this issue and is currently split about whether to recommend that Vermont adopt the federal rule permitting evidence of prior bad acts in cases involving sexual abuse of children. The Committee intends to explore this issue further while taking legislative action on other parts of its plan with the goal of coming to a consensus on the right approach for Vermont.

Sentencing

Establish a new crime of aggravated sexual assault of child under 16 with a mandatory 25-year-to-life sentence

The Committee heard from a number of witnesses about whether to enact a “Jessica’s Law.” Two major components of such a law include a mandatory 25-years-to-life prison sentence for first-time offenders convicted of sex crimes against children and the use of global positioning satellites (GPS) or electronic devices to track the location of sex offenders following release. According to the National Conference of State Legislatures,

25 states have enacted mandatory 25-year minimum sentences for first-time child sex crime offenders, 39 states have enacted GPS or electronic monitoring provisions specific to sex offenders, and 23 states have enacted *both* GPS or electronic monitoring and 25-year minimums. (See Appendix D.

Vermont has a wide range of crimes and penalties for sexual abuse of children. (See Appendix E.) These laws have been amended recently to increase penalties, including the imposition of some mandatory minimums. The legislature has engaged in a lengthy debate about the benefits and pitfalls of tough mandatory minimum sentences for sex offenders for a few years. Although people’s opinions on the efficacy of mandatory minimums may differ, it is clear that everyone believes in tough penalties for people who offend against children.

Advocates of such laws say that offenders who are convicted of sexually assaulting a child deserve a tough sentence every time and do not want prosecutors or judges to have authority to determine sentences on a case-by-case basis. In the governor’s “Safe Communities 23-Point Action Plan,” presented to the Committee on August 28, 2008, the administration recommended enacting a “Jessica’s Law” that would involve “a 25-year minimum sentence for all sex offenses involving child victims.” Lt. Governor Dubie presented the Committee with a petition signed by over 50,000 Vermonters supporting “mandatory 25-year sentences for first-time violent sexual offense against a child, with a ‘presumptive’ clause for weak evidence or a victim who chooses not to testify.”

Opponents of such sentences, including many state’s attorneys and victim advocates, say that harsh mandatory sentences deprive prosecutors of the ability to plea bargain with a defendant, an important tool in sexual abuse cases. Sex crimes are notoriously difficult to prosecute because of the secretive nature of the crimes and lack of physical evidence. This difficulty is only compounded when the victim is a child. In the time it takes to bring a case to trial, a child’s memory may have begun to fade, or parents may not want to put the child through the pain of a trial. In cases of incest, a child may feel guilty about reporting the abuser or be pressured by family members not to testify. Forcing a case to trial without good evidence and strong testimony can result in dismissals and acquittals, meaning that those offenders never serve a sentence.

After thoughtful deliberation, the Committee recommends enacting a new statute, “Aggravated Sexual Assault of a Child Under 16” with a mandatory minimum of 25-years-to-life, while leaving the existing statutes as they are currently. For the most serious sexual offenses against a child, this approach allows prosecutors to charge a person under the new crime if they think the evidence and case are strong and likely to result in a conviction. Yet, the current structure is still available if the prosecutor determines another charge is more appropriate based on the facts or strength of the case.

The Committee believes that this approach will promote tough sentences for sex crimes against children and provide Vermont with one of the highest age ranges in the nation by having the new law apply to a child under age 16. The new statute would also allow enough flexibility for prosecutors to determine on a case-by-case basis the right charge to pursue that will consider both the victim’s welfare and future public safety.

Eliminate the option of a deferred sentence for a person charged with sexual abuse of child

Vermont law allows a person charged with a crime to receive a deferred sentence whereby, if the defendant successfully completes a period of probation, the charge is dismissed without a conviction being entered. The result is that, upon completion of the probationary period, the person can truthfully deny having been convicted of the underlying criminal offense. If the defendant violates the terms of the probation, the conviction is entered, and the person is sentenced on the charge. These types of sentences are usually given to first-time offenders, often as part of a plea agreement, and afford the defendant an opportunity to expunge his or her record by being law-abiding and showing the court that the previous incident was not illustrative of a criminal pattern.

Because of the very serious nature of crimes involving sexual abuse of children, the Committee does not think that deferred sentences are ever appropriate in cases involving L&L with a child (13 V.S.A. § 2602), sexual assault of a child (13 V.S.A. § 3251), or aggravated sexual assault of a child (13 V.S.A. § 3252) and recommends that the law be amended to eliminate this option.

Establish an index for deferred sentences and permit court access for sentencing in sexual abuse cases

Currently, if a person successfully completes the conditions of a deferred sentence, the person’s record with respect to that offense is expunged and any records relating to that offense are destroyed, and the act is considered never to have occurred. **The Committee believes that the court should have as much information as possible prior to sentencing a defendant for any sexually based crime and should be aware of whether the defendant previously received a deferred sentence.** Therefore, the Committee recommends that the VCIC retain an index of records that are expunged in accordance with the deferred sentencing law, and a sentencing court should have access

to that index for the sole purpose of consideration in subsequent sentencing matters related to sex crimes. It is not the intent of the Committee that this list be accessed for any other purpose.

Mandate presentence investigations in sexual abuse cases

In 2006, the legislature enacted a law requiring the DOC to conduct a presentence investigation (PSI) for all persons convicted of lewd and lascivious conduct, lewd and lascivious conduct with a child, sexual assault, aggravated sexual assault, or an offense involving sexual exploitation of children. The court was given discretion to waive the PSI if it determined that it was not necessary for the purposes of sentencing.

Conducting a PSI prior to sentencing every convicted sex offender is going to be costly, but the Committee believes that failure to conduct such investigations results in inappropriate sentences for violent repeat offenders. Financial concerns were likely the reason PSIs were often not done in previous sex offender cases. Sometimes, as in the 1993 sentencing of Michael Jacques (Jacques), the PSI was waived by both parties as part of a binding plea agreement in which the court was only permitted to either approve or reject in its entirety.

The Committee believes that in cases of sexual abuse, a PSI should always be conducted to provide the court with the best information on the offender's history and recommends that the law be amended to require the court to order a PSI in such cases and to prohibit parties from waiving the PSI as part of a plea agreement.

Permit a sentencing court access to the sealed juvenile record of a person convicted of sexual abuse of a child

The Committee continues to support the confidentiality of juvenile proceedings and records if a court determines that a minor due to his or her age, mental capacity, or other factors should not be tried in adult court. The legislature's stated policy with respect to juveniles is clear in statute: "To remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to provide supervision, care, and rehabilitation which assure balanced attention to the protection of the community; accountability to victims and the community for offenses; and the development of competencies to enable children to become responsible and productive members of the community."

However, the Committee recommends that if a person is convicted or adjudicated delinquent of a sexually based crime, the sentencing court should have access to any prior juvenile records of the offender, whether sealed or not. **This decision is in keeping with the Committee's previously stated policy that sentencing courts have as much information as possible for the purpose of fashioning an appropriate sentence for sex offenders that considers prior criminal activity.**

Require courts to review and amend conditions of probation for sex offenders as appropriate when a split sentence is imposed

Split sentences, ones in which the offender receives a mandatory prison sentence that is followed by a usually longer period on probation, have become common in recent years in Vermont. Offenders may be discharged from probation before the maximum term. In 1993, Jacques received a sentence of six to 20 years, all suspended except for six years to serve. The Committee recommends that when an offender receives a split sentence, the court should tailor conditions of probation based on relevant information about the offender that is developed after the date of sentencing and during the offender's period of incarceration, instead of relying on conditions that were set forth in the initial sentencing. Considering this additional information will provide for better community supervision of the offender.

Require periodic polygraph exams and supervision of computer activities as special conditions of probation for sex offenders

According to many experts who testified before the Committee, verification tools such as polygraphs and computer monitoring can aid in the supervision and treatment of sex offenders by ensuring they are in compliance with conditions of probation and truthful in treatment. The Committee believes that courts and supervising probation officers should routinely require appropriate periodic polygraph exams and either restrictions or monitoring of an offender's computer activities as conditions of probation for sex offenders. These conditions can be waived by the court if it finds that such conditions are not appropriate, considering the nature of the crime or the particular offender. The Committee recommends amending the statutes to reflect such conditions as an appropriate and routine condition of probation for sex offenders.

Require a judicial hearing prior to discharging a sex offender from probation unless all parties support discharge

In 2004, the court denied Jacques' request for discharge from probation, but recommended that he be discharged in 18 months if he continued to comply with his conditions of probation. In 2006, upon a request for discharge from Jacques, another court, using the earlier decision as the basis, discharged Jacques without a hearing. The state's attorney did not file an objection with the court. During the Committee hearings, it was discovered that Jacques' probation officer failed to report to the court that Jacques violated his probation in 2005 for failure to register as a sex offender in New Hampshire where he was working. This event, had it been known to the court, most likely would have prevented him from being discharged in 2006.

The Committee recommends that a hearing must be held for final discharge of a sex offender from probation, not through an administrative process, unless all parties have filed notice of their support for discharge with the court. In the future, if a final discharge hearing must be held in front of a judge, incidents such as Jacques' violation of probation will not be readily overlooked.

Corrections and Offender Supervision

Support a systems approach of community supervision and assign specialized probation officers to work only with sex offenders

A legislative study committee convened in 2004 recommended that the Department of Corrections move toward a comprehensive systems approach which employs longer and more intensive community supervision of higher-risk sex offenders coupled with regular polygraph tests and pre- and post-incarceration treatment to promote rehabilitation. Because no action was taken on this recommendation, this Committee recommends that the general assembly require such action.

Multidisciplinary case management teams should be created, each involving as appropriate, a specialized probation or parole officer, a treatment provider, a victim's advocate, a DCF representative, an SIU representative, and a forensic polygraph examiner. These professionals would collaborate, prioritizing community safety and the protection of former victims. By working together in a comprehensive systems approach, they can create a program that addresses the specific treatment and supervision needs of a particular offender to assure protection of the public, to assist that offender in reintegrating safely into the community, to support and protect known victims, and respond to any new concerns about risk of reoffense.

Currently, Vermont utilizes many of the components of the systems approach. However, the current department assignment of probation and parole officers based upon geographic area, rather than specialization, hinders its full implementation. There are definite benefits to specialized caseloads which could help the state improve supervision and successful treatment of sex offenders in the community.

Ideally, in each county, some probation and parole officers should be specially trained to work with sex offenders. These officers can provide more consistent and intensive case management and impose and enforce conditions uniquely suited to aiding the offenders' reintegration into the community and, it is hoped, reducing the likelihood of reoffense. If officers were organized in this manner, the case loads of 40 offenders per officer would most likely be acceptable. Vermont currently has one polygraph examiner who works with sex offenders.

Vermont should move to a systems approach on a statewide basis over the next few years and best replicate that model in rural areas of the state where concentration of offenders makes such a model more challenging from an administrative perspective.

Require an independent review of probation and parole caseloads as they relate to supervision of sex offenders

Pending implementation of a comprehensive systems approach, independent audit of existing caseloads could help to ensure Vermont is employing proper supervision and best practices when it comes to supervising sex offenders. The Committee's review demonstrates a need for more thorough oversight of community supervision of sex offenders and support in following best practice for probation and parole personnel. The audit should be funded through the Department of Corrections under the direction of the Center for the Prevention and Treatment of Sexual Abuse.

Require better collaboration and oversight in decisions to recommend a sex offender for release from confinement or discharge from supervision

Information gathered this fall by the Committee clearly indicates a need to strengthen procedures and safeguards relating to the release of sex offenders from incarceration or community supervision. Department of Corrections' decisions to release or recommend release of a sex offender from confinement or discharge from supervision should be done in consultation with a treatment team of individuals with expertise in the field of managing sex offenders, and such decisions and the rationale should be documented in the case record. A decision to release an offender in spite of treatment team advice to the contrary should be reviewed by the Commissioner or a designee. The Department of Corrections should operate under the assumption that sex offenders should be supervised in the community for as long as possible unless overwhelming information indicates otherwise.

Require high-risk sex offenders to serve at least 70 percent of their maximum sentence or 70 percent of their maximum supervision period in cases of split sentences

The Committee believes that a sex offender who is designated by DOC as high-risk to reoffend should never be released from confinement at the sentence minimum or released significantly early from community supervision despite indications of successful reintegration. Providing supervision and rehabilitation for sex offenders in the community is a critical tool for preventing reoffense, and the state should seek to ensure long periods of supervision for high-risk sex offenders to ensure public safety.

The Committee recommends that any sex offender who receives a straight incarcerative sentence should serve at least 70 percent of the maximum sentence in prison. For example, a high-risk sex offender sentenced to five-to-20 years would be required to serve at least 14 years in prison before the offender would be eligible for community release. A sex offender who receives a split sentence, which includes a pre-set term of imprisonment and a maximum term for probation, would not be eligible for discharge from probation until that offender had served 70 percent of the community supervision sentence. For example, a high-risk sex offender who was sentenced to a five-to-20 split sentence would serve five years in prison and not be eligible for discharge from probation for an additional 10.5 years (70 percent of 15).

Make all Department of Corrections' employees mandatory reporters of suspected child abuse

Vermont law requires people in certain professions who have frequent contact with children to be mandatory reporters of suspected child abuse and neglect. The Committee believes that because of the high degree of contact that DOC workers have with offenders and their families, all DOC employees should be mandatory reporters under the law. Currently, only probation officers are required to report. **The Committee recommends that the law be amended to include all DOC employees as mandated reporters and require DOC to train all staff in the reporting of suspected child abuse and neglect, including risk of harm.**

Implement protocols when a sex offender is considered for release to a home with children

Within months of his release for a 1993 aggravated sexual assault conviction, Jacques was living in a home with a small child. He was sanctioned for violating the residency conditions of his probation, but DOC never notified DCF of the situation and later officially approved of Jacques' continued residence with this child during his probation. The child later became an alleged victim of Jacques.

The Committee recommends that the general rule is that sex offenders are not released from confinement into a home with children and, while under community supervision, are not routinely approved to live in a home with children. If placement in a home with children is being considered, DOC shall notify DCF, and the departments shall work together to determine whether such a placement is appropriate. If any risk of harm to a child is determined to exist based on placement of the offender in the home, the residence shall not be approved. If a placement is determined to be appropriate, such a decision shall be revisited periodically by the departments to ensure that a risk of harm to a child does not emerge.

Mandate prehearing detention for sex offenders who violate risk-related conditions of probation or parole

An offender who has violated a risk-related condition of community supervision, such as using alcohol or drugs or having contact with children, poses a potential threat to the community, and it is important that there be an assessment of the risk as soon as possible. Therefore, the Committee recommends that when a sex offender violates a risk-related condition of probation or parole, the offender be detained until a full review of the circumstances of the violation is conducted, and the appropriate response is prepared for presentation to the court.

System-wide

Establish a biennial independent review of the state sexual abuse response system

The Senate Committee on Judiciary's review of the Bennett case and the procedures and policies behind it demonstrated that a periodic, comprehensive review of the state's sexual abuse response system is necessary to ensure the implementation of best practices, good communication and training throughout state government, and proper oversight. Currently, decisions are made independently by various parties in the system on a continuous basis, yet there is no systematic coordination or oversight to ensure that these parties' actions work together to respond effectively to incidents of sexual violence and foster community safety. Addressing the issue of sexual violence in piecemeal fashion, as has been the practice, without periodically assessing the system as a whole hinders our ability to provide the best protection we can against sexual violence.

Thus, the Committee recommends that an independent audit should be conducted every two years, funded through the Department of Corrections (DOC) under the direction of the Center for the Prevention and Treatment of Sexual Abuse (Center). The review should address prevention, criminal investigations, presentence investigations and sentencing of offenders, DOC supervision and treatment of offenders, victim and family assistance and treatment, and training for those working in the system.

Require appropriate training of individuals working in the state's sexual abuse response system

Overall, Vermont should be proud of the level of knowledge and professionalism of those who work in the state's sexual response system. However, the Committee's review of the Bennett case discovered several instances where training and oversight of state employees would have better served public safety, particularly with respect to DOC.

Each agency with a role in the state's response to sexual abuse must demonstrate and document that employees who make key decisions about sex offenders and victims have appropriate training. Training should include orientation and mentoring for new employees, as well as continuing education for long-term employees.

Continue to examine the policy and fiscal impacts of implementing the Federal Adam Walsh Child Protection and Safety Act of 2006 in order to adopt the provisions that best promote public safety in Vermont

States have until mid-2009 to comply with Title I Sex Offender Registration and Notification Act (SORNA) provisions of the federal Adam Walsh Child Protection and Safety Act of 2006, or face a 10-percent reduction in federal law enforcement assistance

grants. The act mandates information that must be collected; defines tiers of sex offenders for the purpose of registration duration; requires periodic, including in-person, verification of registration information; and requires Internet-based information that contributes to a national registry; along with other related requirements. To date, no states have been deemed in substantial compliance with SORNA – a number of states that enacted legislation in 2007-2008 in an attempt to comply with the act and four states that have submitted formal application packets were rejected by the governing federal agency, and a U.S. district court has ruled Nevada's attempt to comply with the act unconstitutional.

While the Committee recognizes the value in having some uniformity among the states with respect to sex offender registries, the SORNA requirements are complex and costly, and the Committee believes it needs to take more time to consider the impacts. The act would require Vermont to change its policy on a number of issues, including grouping sex offenders based on crime instead of risk to reoffend, requiring some juveniles adjudicated delinquent to register as sex offenders for life, and applying registry requirements retroactively. Based on initial estimations from the Joint Fiscal Office, Vermont would stand to lose \$34,782 if it failed to comply with SORNA, while systemwide costs to implement SORNA are estimated at over \$1,000,000.

The Committee supports expanding Vermont's Internet sex offender registry and may implement all or portions of SORNA. However, the Committee has discovered some failures on the part of our existing Internet registry that must be corrected before the general assembly considers expanding it. DOC's failure to provide DPS with updated information on sex offenders on supervision has resulted in incorrect or inadequate information on the registry. The Committee wants to see the existing registry provided with the resources and information it needs to run well under the existing law before any changes are made, and the Committee recommends that the governor include in the 2009 budget adjustment proposal the funding necessary to provide VCIC with the resources and staffing it needs to administer our current sex offender registry properly.

The Committee recommends that the Senate and House Committees on Judiciary take time during the 2008 legislative year to explore further the impacts of implementing SORNA. Because implementation of SORNA would cost the state much more than would be lost in federal monies, the Committee believes the general assembly should implement the portions of SORNA that are in accordance with Vermont's public safety policy on sex offenders and not enact any provisions it finds to be unconstitutional or contrary to best practices regarding the management of sex offenders. In furtherance of this goal, the Committee hopes to have the assistance of Vermont Law School in determining whether full implementation of SORNA would violate the Vermont Constitution.

The Committee also urges Vermont's Congressional delegation to initiate legislative hearings on SORNA in order to understand better the unfunded mandate and logistical burden it places on the states and how Congress might amend the act in a way that

would allow states more flexibility in determining the best way to protect its children from sexual violence.

Urge local communities not to enact sex offender residency restrictions because evidence suggests such policies may be counterproductive and may actually lessen public safety

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

Expert witnesses who testified before the Committee said that research showed that sex offender residency restrictions were unlikely to deter sex offenders from committing new crimes and should not be considered a viable public safety strategy. In fact, such policies could actually have a negative impact on public safety by isolating offenders or driving them underground. Densely populated towns and city centers that have ordinances push offenders out into more rural communities where there are fewer opportunities for successful community reintegration and law enforcement supervision. Providing the offender with the needed tools to get a new chance at life reduces the chance that he or she will reoffend, and thus these ordinances run counter to this principle.

The Committee understands why communities might feel better having a residency restriction for sex offenders. However, a number of states and local communities have tried this approach, and the empirical data based on these laws says they do not work and could cause more harm. The Committee recommends that the Vermont League of Cities and Towns work with local communities to ensure they are getting accurate and substantive information about such laws and that they focus on prevention and other strategies to improve community safety.

Fully comply with federal law that requires DCF to release information to the public about child fatalities to include release of information about “near fatalities”

Currently, the commissioner of DCF may publicly disclose the findings or information about any case of child abuse or neglect that has resulted in the fatality of a child, unless the prosecutor who is investigating or prosecuting any matter involving the fatality requests that the information be withheld until a later time in consideration of any criminal proceedings involving the fatality. The federal Child Abuse Prevention and Treatment Act (42 U.S.C.A. 5106a(b)(2)(A)(x)) requires that this provision be extended to include information on “near fatalities,” and the Committee recommends that the Vermont law be amended to reflect such a change.

Explicitly permit legislative committees to subpoena witnesses and establish a penalty for perjury before a legislative committee

The Committee undertook a very thorough investigation that required the cooperation of many witnesses. The Committee was pleased that most of those who were requested to appear did so. Unfortunately, a few did not. Judges involved in Mr. Jacques' previous cases who were asked to testify declined on the basis that the Judicial Code of Ethics prevented them from appearing and answering specific questions about the cases. A compromise was reached, and the Committee's questions were answered through a series of written communications. The Committee sought to receive testimony from PO McNaughton, but as he had retired from state employment, state officials were unable to locate him. Perhaps more troubling was a deputy state's attorney's refusal to participate in the hearings. Knowing no legal reason why the Orange County prosecutor could not appear, the Committee was left to believe he simply did not want to discuss his office's handling of Jacques' previous cases.

To ensure that legislative committees have clear authority to subpoena unwilling witnesses and documents in the course of a legislative investigation whether or not the general assembly is in session, the Committee recommends that such subpoena power be explicitly stated in statute. Mason's Manual of Legislative Procedure states that "a legislative body may compel the testimony of all persons as witnesses in regard to any subject on which it has power to act, and into which it has instituted an investigation." (See Mason's, Sec 800.) Vermont law does not specifically address this power, but presumes it in 2 V.S.A. § 22 by allowing legislative subpoenas to be enforced through superior court. However, it is less clear whether a committee can exercise subpoena power after adjournment or in the absence of a resolution.

Vermont law authorizes standing committees to meet after adjournment with the approval of the senate president pro tempore or the speaker of the house. (See 2 V.S.A. § 406.) The authority to exercise subpoena authority in the course of an approved investigation could be argued, but it is not clear. According to Senate Clerk David Gibson, Mason's indicates that when a body grants subpoena power to a standing committee via resolution, that authority ends with adjournment sine die of the legislature.

Therefore, the Committee believes it is important to address explicitly the legislative subpoena power, the circumstances under which it may be used, and the obligation of witnesses in statute so that the authority is unambiguous and obligations are clear to those who may be subpoenaed.

Summary

The last few months have been arduous for the many people involved in responding to your call for an investigation and response to the tragic death of Brooke Bennett. These are not easy subjects to discuss. However, this process has yielded a tremendous amount of important information that I believe will have a significant effect on

improving the state's response to sexual violence. While there have been some differences of opinion along the way, I truly believe that everyone who participated in the process has the best interests of children at heart. There may simply be different ideas about how to best assure their safety. On behalf of the Committee, thank you for placing your confidence in us and presenting us with such an important task. We look forward to enacting these changes so that Vermont will remain one of the safest states in the union.

I offer my gratitude to several people who helped make these proposals possible. We are deeply indebted to Michele Childs for her work and expertise in making this report possible. I thank Erik FitzPatrick and Sheri Burch of Legislative Council for their help and assistance throughout this most difficult process. In addition, I thank former Social and Rehabilitation Services Commissioner Bill Young for his advice and council as well as serving as an ex-officio member of the Committee. Our work was aided by the outstanding cooperation from the Administration, particularly Commissioners Dale, Hofmann, and Tremblay. Finally, special kudos go to the members of the committee: Senator John Campbell, Senator Ann Cummings, Senator Kevin Mullin, Senator Alice Nitka, Representative Alice Emmons, and Representative Maxine Grad.

Sincerely,

Sen. Richard Sears
(on behalf of the Senate
Committee on Judiciary)

APPENDIX A

Letter from Senator Peter Shumlin To Sen. Richard Sears



STATE OF VERMONT
PRESIDENT PRO TEM

July 15, 2008

Senator Richard Sears
343 Matteson Road
Bennington, VT 05257

Dear Senator Sears,

Vermonters are reacting with shock and outrage to the violent acts committed against Brooke Bennett. The horrific circumstances surrounding her abduction and death amount to one of the most heinous crimes ever committed in our state. It is difficult to imagine a more tragic fate for an innocent young Vermonter or a more devastating experience for a family and community. This terrible tragedy also raises significant questions for our criminal justice system, given that the sole suspect in Brooke Bennett's murder, her uncle Michael Jacques, was released from Department of Corrections supervision early after being convicted of a prior sexual offense.

It is critical that we do all we can to understand what went wrong in this case and how, going forward, we can continue to strengthen our laws pertaining to sexual crimes in order to protect our children from people they ought to be able to trust. To these ends, I am calling on you as chair of the Senate Judiciary Committee to hold up to six committee meetings and at least two public hearings and to prepare a report on your findings related to the following questions:

- 1) What went wrong?:
 - a. What went wrong within the Corrections Department that enabled Jacques' early release from probation? Given his 1993 conviction for kidnapping and raping an 18-year-old woman, what prompted the administration to argue that Jacques should be released early? Furthermore, why was the decision to do so approved in 2004?
 - b. Does evidence exist that treatment of sexual offenders is effective at reducing recidivism? We seem to place a great deal of faith in treatment. For example, completion of treatment is often cited as a reason for release from custody or supervision. Is this faith misplaced? If so, how must we change our laws and policies to reflect that reality?
- 2) Changes to Vermont Law between 2004 and 2007:
 - a. How have Vermont's laws pertaining to sex crimes changed since Jacques was convicted and sentenced in 1993? Had current law been in place at

that time, would the circumstances leading to Brooke Bennett's death have changed?

- b. Since 2004, the General Assembly has passed a number of new laws which have significantly strengthened the protections Vermonters have from sex offenders. How will these new laws affect Jacques' trial and potential conviction and sentence, going forward?

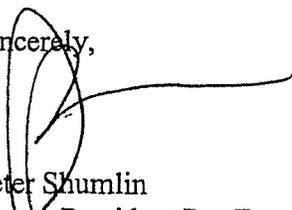
3) Changes to Vermont law, going forward:

- a. The Governor and Lieutenant Governor have called for the following specific changes in our laws pertaining to punishment of sex offenders: chemical castration, reinstatement of the death penalty, and a 25-year mandatory minimum sentence for individuals convicted of sex crimes against children under 12 years of age. If these laws had been in place at the time of Jacques' conviction, would the circumstances leading to Brooke Bennett's death have changed?
- b. What more needs to be done to continue to strengthen Vermont's laws pertaining to sexual violence against children? What can we do to further protect our children from sexual violence, prevent sexual violence, and protect the victims of sexual violence?
- c. In light of the passage of the Adam Welch Act by the United States Congress, what changes should Vermont undertake during the 2009 session?

In addition to exploring these questions thoroughly over the next three months, there are immediate actions we can pursue to ensure that our young people are as safe as possible, starting today. I invite the Judiciary Committee to join us in urging the Governor to move forward with full funding for Special Investigation Units throughout the state and to provide for full time State Police participation in these units immediately.

My goal is for the Committee to complete its hearings and prepare its report by November 15th, 2008. I look forward to discussing the Committee's findings and recommendations with you after that date, and I appreciate your continued vigilance on these matters of utmost concern to Vermonters.

Sincerely,



Peter Shumlin
Senate President Pro Tem

APPENDIX B

Witness List

WITNESS LIST

Rob Hofmann, Commissioner, Department of Corrections
Rich Kearney, Windsor County Probation and Parole, White River Junction
Tom Hunter, Windsor County Probation and Parole, Springfield
Karen Haag, Windham County Probation and Parole
Tom Tremblay, Commissioner, Department of Public Safety
Howard Kalfus, Esq., Department of Public Safety
Colonel James Baker, Vermont State Police
Det. Sgt. Ingrid Jonas, Vermont State Police
Chief Mike Schirling, Burlington Police Department
Sheriff Roger Marcoux, Lamoille County
Jane Woodruff, Esq., Executive Director, Dept. of State's Attorneys and Sheriffs
Bobby Sand, Esq., Windsor County State's Attorney
T.J. Donovan, Esq., Chittenden County State's Attorney
Erica Marthagé, Esq., Bennington County State's Attorney
Jim Hughes, Esq., Franklin County State's Attorney
Thomas Kelly, Esq., Washington County State's Attorney
Matt Valerio, Esq., Defender General, Office of the Defender General
Bob Sheil, Esq., Juvenile Defender, Office of the Defender General
Jason Sawyer, Esq., President, Vermont Association of Criminal Defense Lawyers
David F. Silver, Esq., Barr, Sternberg, Moss, Lawrence, Silver, Saltonstall & Fenster
Maryanne Kampmann, esq., Stetlar, Allen & Kampmann
Lee Suskin, Esq., Court Administrator
The Honorable Walter Morris
Robin Adler, Center for Justice Research at Norwich
Steve Dale, Commissioner, Department for Children and Families
Kurt Bumby, Ph.D, Center for Sexual Offender Management
Jill Levenson, Ph.D, LCSW, Lynn University
Georgia Cumming, Program Director, the Vermont Center for the Prevention and Treatment of Sexual Abuse
Bob McGrath, the Vermont Center for the Prevention and Treatment of Sexual Abuse
Michele Childs, Esq., Counsel to the Committees on Judiciary, Legislative Council
Maria Belliveau, Fiscal Analyst, Joint Fiscal Office
Jennifer Poehlmann, Esq., Center for Crime Victim Services
Karen Tongsgard-Scott, Executive Director, the Vermont Network Against Domestic and Sexual Violence
Stacie Rumenap, Executive Director, Stop Child Predators
Mary Alice McKenzie, Executive Director, Boys and Girls Club
Rosemary Webb, Child Lures Prevention
Jennifer Mitchell, Child Lures Prevention
Catherine Metropoulos, Victim and Child Advocate
Terry Buehner, Concerned Citizen
Charles Laramie, Concerned Citizen
Maryanne Kampmann, Concerned Citizen
Angelo Napolitano, Concerned Citizen
Suzen Wood, Concerned Citizen
Calbraith MacLeod, Inmate at St. Albans Correctional Facility

APPENDIX C

2004-2007 Legislative Acts Regarding Sex Offenses

2004 -2007 Legislative Acts Regarding Sex Offenses

H.148. AN ACT RELATING TO THE CHILD ABUSE REGISTRY AND INCREASED SEX OFFENDER REGISTRY REQUIREMENTS (2007)

- Established heightened sex offender registry requirements for persons designated noncompliant high-risk sex offenders by the department of corrections. These offenders are automatically subject to lifetime sex offender registration and community notification, must report to the department of public safety within 15 days after their release and every 30 days after that, and must inform the department of any changes in name, residence, post-secondary education status, or employment. They must also provide the department with identifying information about their vehicles, and are prohibited from operating any other vehicles at any time. An offender violates any of these heightened registry requirements is subject to a prison sentence of not less than five years and a mandatory maximum of life. The sentence may not be suspended, and the offender cannot be eligible for parole or other early release, unless the offender is placed under intensive supervision by the department of corrections.

NO. 192. AN ACT RELATING TO ENHANCING SENTENCES FOR AND PREVENTING RISKS POSED BY DANGEROUS SEXUAL OFFENDERS. (ALSO KNOWN AS THE "SEXUAL VIOLENCE PREVENTION ACT." (2006)

- Established a sentencing system, called "indeterminate lifetime sentencing," which mandates lifetime maximum sentences for most sex offenders. For most offenses, minimum sentences are not mandated and will therefore vary according to the circumstances associated with the crime. This means that, after the offender's release, he or she will continue to be under the supervision of the department of corrections for life and will be subject to the underlying lifetime maximum term of incarceration if he or she re-offends or violates the terms of probation. Additionally, the offender must complete sex offender treatment and programming in order to be eligible for release.
- For lewd and lascivious conduct with a child, established a presumptive minimum sentence of five years of incarceration for a second offense and ten years of incarceration for a third or subsequent offense.
- For aggravated sexual assault, established a presumptive minimum sentence of ten years of incarceration and a mandatory minimum sentence of five years of incarceration.

- Permitted arrest without a warrant for failure to comply with sex offender registry requirements, and increased the penalty for knowingly failing to comply for more than five consecutive days to a five-year felony.
- Required high risk offenders to report to the department of corrections within 36 hours of any change of address instead of the standard 72 hours for other sex offenders.
- Added all recidivist sex offenders to the internet sex offender registry, as well as offenders who commit lewd and lascivious conduct with a child if the offender is determined by the department of corrections to be high risk.
- Increased public access to sex offender registry information.
- Required the department of corrections to conduct pre-sentence investigations, which may include psychosexual evaluations, for all sex offenders, and to develop a release plan and a community reentry support team for all high risk sex offenders.
- Required the department of corrections, prior to the release of a sex offender, to give careful consideration to the proximity of the offender's residence to any risk group associated with the offender.
- Created an "age gap," exception to some sexual offenses when both parties have consented to the sexual conduct and one of the parties is a minor. Under the age gap exception, no crime is committed if a person is charged with lewd and lascivious conduct with a child, luring a child, or statutory rape, and the person is less than 19 years old, the child is at least 15 years old, and the conduct is consensual.
- Directed the antiviolence partnership at the University of Vermont to convene an education task force on sexual violence prevention.
- Expanded special investigative units, which specialize in investigating sex crimes, to all regions of Vermont.

NO. 193. AN ACT RELATING TO ORDERS AGAINST STALKING OR SEXUAL ASSAULT, NO CONTACT ORDERS, AND ESTABLISHING A VICTIMS' RIGHTS STUDY COMMITTEE. (2006)

- Created a process for obtaining an order against stalking or sexual assault that is closely modeled on the procedures for obtaining a relief from domestic abuse order. A person who was the victim of lewd and lascivious conduct with a child, sexual assault or aggravated sexual assault may obtain an order from the court directing the defendant to stay away from the plaintiff and his or her children. A

violation of the order is a crime, and upon conviction, the court may order the defendant to participate in mental health counseling or sex offender treatment approved by the department of corrections.

NO. 79. AN ACT RELATING TO CRIMINAL ABUSE, NEGLECT, AND
EXPLOITATION OF VULNERABLE ADULTS. (2005)

- Increased penalties for lewd and lascivious conduct with a child. Maximum life in prison for recidivists.
- Prohibited a person who is convicted of aggravated sexual assault from being eligible for early release or furlough until the expiration of the minimum sentence imposed. Crime is punishable by up to life in prison.
- Streamlined process for designating an offender as a sexually violent predator, requiring, prior to sentencing, a presentence investigations and a psychosexual evaluation on person suspected of being a predator.
- Appropriated \$50,000.00 in FY 06 to the department of corrections for the purpose of funding psychosexual evaluations as a part of presentence investigations conducted by the department in cases involving a petition to have a person designated as a sexually violent predator or in sentencing for the crimes of lewd and lascivious conduct with a child, aggravated sexual assault, and second offense use of electronic communication to lure a child. Required DOC to include this money in all future budgets.

NO. 83. AN ACT RELATING TO COMMUNITY SAFETY. (ALSO KNOWN AS
"THE SAFE COMMUNITES ACT." (2005)

- Established a new voyeurism crime, commonly known as a "Peeping Tom" law.
- Amended the stalking laws to include harassment of a family member and eased standard regarding fear of physical safety or emotional distress. Increased the penalty for stalking while in the possession of a deadly weapon.
- Required the posting of pre-1996 sex offense convictions for offenders listed on the internet registry because they are recidivists.

- Affirmed the right of law enforcement to engage in active community notification if law enforcement believes a particular sex offender poses a risk to members of the community.
- Required the department of corrections to identify all sex offenders under its supervision who are high-risk and to designate them as such so that their information will be available on the internet sex offender registry.
- Authorized special investigation organized and operating under current law for the investigation of sex crimes, child abuse, elder abuse, domestic violence, or crimes against those with physical or developmental disabilities units to obtain and disburse grant money in furtherance of their duties.
- Required all felons to submit a DNA sample upon conviction.

NO. 157. AN ACT RELATING TO SEX OFFENDER REGISTRATION AND
COMMUNITY NOTIFICATION. (2004)

- Established an internet sex offender registry.
- Increased public access to registry information through telephone or other contact with law enforcement agencies or the registry.
- Required sex offenders who attend college in Vermont to keep the registry informed of their enrollment status at a particular campus. Campus police would be notified that a registered sex offender is attending classes as a student.
- Required persons who are convicted in federal court of a sexual offense to register as sex offenders in Vermont if they are living in this state.
- Permitted homeless registrants to make arrangements with the registry to keep their information current even though they do not have a permanent fixed address.
- Permitted the department of corrections to evaluate and designate certain sex offenders as high risk, which would subject such offenders to increased notification procedures.
- Increased immunity for law enforcement and corrections employees in connection with the release of registry information provided that the actions were not the result of gross negligence or willful misconduct.
- Required the department of public safety in cooperation with the department of corrections to develop a comprehensive training program to inform and instruct

law enforcement and corrections personnel on the operation of the sex offender registry and the administration of this act.

- Required the Vermont center for crime victim services in collaboration with the Vermont network against domestic violence and sexual assault and other appropriate agencies to develop a comprehensive plan for public education regarding sexual violence in Vermont.

NO. 63. AN ACT RELATING TO CORRECTIONS. (2005)

With respect to good time:

- required that department of corrections bookkeeping be updated to reflect good time reductions for time actually earned before July 1, 2005.
- provided that each inmate who committed a crime before July 1, 2005 would prospectively receive all good time reductions to which the inmate might potentially be entitled in the future in one lump sum under whatever system was in place at the time s/he committed the crime.
- required that notice be provided to victims and offenders regarding the impact of this section on minimum and maximum sentences.
- repealed 28 V.S.A. § 811 (good time) so that there would be no reduction in minimum or maximum terms for inmates who commit a crime after June 30, 2005 (except while in a work camp as provided below).
- provided that a work camp inmate may receive a 1:1 reduction in the minimum and maximum terms of incarceration upon demonstration of a high level of performance in the program.

APPENDIX D

Consequences of Sex Offenses Against a Child in Vermont

CONSEQUENCES FOR SEX OFFENSES AGAINST A CHILD IN VERMONT

Offense	Criminal Penalty	Registry	Other
<p>Lewd and Lascivious Conduct with a Child (any lewd or lascivious act upon a child under 16 with the intent of arousing or gratifying the actor's or child's sexual desires)</p>	<p><u>First offense:</u> Minimum: 2 years (advisory) Maximum: 15 years (advisory)</p>	<p><u>First offense:</u> Registration and notification for 10 years or lifetime for noncompliant high-risk offenders; Internet registry if designated high-risk by DOC</p>	<p><u>Presentence investigation (PSI) required for all offenders:</u> PSI must include assessment of offender's risk of reoffense, determination of whether person is high-risk offender, and psychosexual evaluation if ordered by the court. DOC must prepare recommendation for programming and treatment for all persons for whom PSI is required.</p>
<p>“Advisory minimum” must be subject to Dept. of Corrections (DOC) supervision, though not necessarily incarceration. “Advisory maximum” means maximum period defendant <i>may</i> be subject to DOC supervision, though not necessarily incarceration.</p>	<p><u>Second offense:</u> Minimum: 5 years (presumptive) Maximum: life (mandatory)</p> <p><u>Third offense:</u> Minimum: 10 years (presumptive) Maximum: life (mandatory)</p>	<p><u>Second offense:</u> Lifetime registration and notification, including Internet registry</p> <p><u>Third offense:</u> Lifetime registration and notification, including Internet registry</p>	<p><u>Indeterminate sentencing applies to second or subsequent offenses:</u> Mandatory lifetime maximum sentence. If sentence is wholly or partially suspended, sex offender conditions and treatment must be a condition of probation. If sentence is for an unsuspended term of incarceration, person shall not be released until successfully completing all sex offender treatment and programming required by DOC, unless department determines the person poses a sufficiently low risk of reoffense or that a program can be implemented which adequately supervises the person and addresses any risk the person may pose to the community.</p>
<p>“Presumptive minimum” must be served as period of incarceration unless judge finds on the record that downward departure to lesser sentence would serve the interests of justice and public safety. “Mandatory maximum” means period defendant <i>shall</i> be subject to DOC supervision, though not necessarily incarceration.</p>	<p>Minimum: none Maximum: 5 years (advisory)</p>	<p><u>First offense:</u> Registration and notification for 10</p>	<p>Presentence investigation required for all offenders.</p>

CONSEQUENCES FOR SEX OFFENSES AGAINST A CHILD IN VERMONT

Offense	Criminal Penalty	Registry	Other
		years or lifetime for noncompliant high-risk offenders; Internet registry if designated high-risk by DOC <u>Second or subsequent offense:</u> Lifetime registration and notification, including Internet registry	
Sexual Assault General: includes without consent, by threat or coercion, placing in fear of imminent bodily injury, use of drugs or alcohol. Also includes entrustment—if child is under 18 and entrusted to actor's care by authority of law, or is actor's child, grandchild, foster child, adopted child, or stepchild, or if actor is at least 18, resides in victim's household, and serves in parental role w/respect to victim.	Minimum: 3 years (advisory) Maximum: life (mandatory)	Lifetime registration and notification, including Internet registry	Presence investigation required for all offenders. Indeterminate sentencing applies to general and entrustment offenses, but not to offenses based solely on age.
Based solely on age ("statutory rape")—if child is under 16, unless persons are married and sexual act is consensual, or unless actor is less than 19, child is at least 15, and sexual act is consensual.	Minimum: none Maximum: 20 years (advisory)	Lifetime registration and notification, including Internet registry; however, if a person convicted of sexual assault is not more than six years older than the victim of the assault and if the victim is 14 years or older, then the offender shall be subject to	

CONSEQUENCES FOR SEX OFFENSES AGAINST A CHILD IN VERMONT

Offense	Criminal Penalty	Registry	Other
<p>Aggravated Sexual Assault (Sexual assault where victim is under age 13 and actor is at least 18)</p> <p>“Mandatory minimum” must be served as period of incarceration.</p>	<p>Minimums: 5 years (mandatory) 10 years (presumptive) Maximum: life (mandatory)</p>	<p>the 10-year registration period and not lifetime registration if the age of the victim was the basis for the conviction</p> <p>Lifetime registration and notification, including Internet registry</p>	<p>Presence investigation required for all offenders.</p> <p>Indeterminate sentencing applies to all offenses.</p>
<p>Luring a Child (to engage in a sexual act or lewd and lascivious conduct)</p>	<p>Minimum: none Maximum: 5 years (advisory)</p>	<p><u>First offense:</u> Registration and notification for 10 years or lifetime for noncompliant high-risk offenders; Internet registry if designated high-risk by DOC</p> <p><u>Second or subsequent offense:</u> Lifetime registration and notification, including Internet registry</p>	<p>Presence investigation required for all offenders.</p>
<p>Possession of Child Pornography</p>	<p><u>Clearly lewd exhibition:</u> Minimum: none Maximum: 2 years (advisory)</p> <p><u>Sexual conduct:</u> Minimum: none Maximum: 5 years (advisory)</p> <p><u>Second or subsequent offense:</u> Minimum: none</p>	<p><u>First offense:</u> Registration and notification for 10 years or lifetime for noncompliant high-risk offenders; Internet registry if designated high-risk by DOC</p> <p><u>Second or Subsequent offense:</u> Lifetime registration and notification, including Internet registry</p>	<p>Presence investigation required for all offenders.</p>

CONSEQUENCES FOR SEX OFFENSES AGAINST A CHILD IN VERMONT

Offense	Criminal Penalty	Registry	Other
<p>Use of Child in Sexual Performance, Consenting to Sexual Performance (by a child), Promoting Recording of Sexual Conduct (by a child)</p>	<p>Maximum: 10 years (advisory)</p> <p>Minimum: none Maximum: 10 years (advisory)</p> <p><u>Second or subsequent offense:</u> Minimum: 1 year (advisory) Maximum: 10 years (advisory)</p>	<p><u>First offense:</u> Registration and notification for 10 years or lifetime for noncompliant high-risk offenders; Internet registry if designated high-risk by DOC</p> <p><u>Second or subsequent offense:</u> Lifetime registration and notification, including Internet registry</p>	<p>Presence investigation required for all offenders.</p>

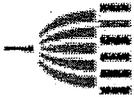
* Vermont law provides that the following sex offenders are subject to lifetime registration and notification, including the Internet, regardless of the predicate crimes:

- Recidivists
- Offenders designated by DOC as sexually violent predators pursuant to 13 V.S.A. § 5405.
- Offenders designated by DOC as noncompliant high-risk sex offenders pursuant to 13 V.S.A. § 5411d. Noncompliant high-risk sex offenders have heightened reporting requirements and supervision under the registry laws.

** **High-risk sex offender** – an offender designated as such by DOC for the purpose of identifying an offender as one who should be subject to increased public access to his or her status as a sex offender and related information, including Internet access. 13 V.S.A. § 5411b.
Noncompliant high-risk sex offender – an offender who commits a predicate offense, is not subject to indeterminate life sentences, is noncompliant with sex offender treatment as defined by department of corrections' directives, and is determined to be high-risk to reoffend. 13 V.S.A. § 5411d.
Sexually violent predator – an offender designated as such by a court. 13 V.S.A. § 5405.

APPENDIX E

State Statutes Related to Jessica's Law



NATIONAL CONFERENCE OF STATE LEGISLATURES

The Forum for America's Ideas

State Statutes Related to Jessica's Law

In February 2005, a nine year old Florida girl named Jessica Lunsford was raped and murdered. The accused offender lived across the street from Jessica and had a history of crimes against children. He was required to register as a sex offender under Florida law but failed to keep his registration information current, as required. This case prompted Florida House Bill 1877 later that year, which increased punishment and monitoring of child sex offenders. Two major components of the bill include a mandatory 25 years to life prison sentence for first time offenders convicted of sex crimes against children and the use of global positioning satellites (GPS) or electronic devices to track the location of sex offenders following release. Several states have since passed similar versions of the original Jessica's Law although the title of acts may vary by state.

At least 25 states have enacted mandatory 25 year minimum sentences for first time child sex crime offenders; at least 39 states have enacted GPS or electronic monitoring provisions specific to sex offenders; and at least 23 states have enacted both GPS or electronic monitoring and 25 year minimums, identified below by an asterisk next to the state name. Some states have not yet enacted these Jessica's Law components but may have comparable or related provisions; that information is also included below.

State	Statute Citations	Related Bill Numbers	Mandatory 25 Year Minimum 1 st Time Offense Sentencing Provisions & Related Information	Electronic/GPS Monitoring of Sex Offenders
Alabama	§13A-5-6; §15-20-21; §15-20-26.1	SB 53 (2005)	20 year minimum sentence for Class A and 10 years for a Class B or C felony sex offenses involving a child under age 12 while using a deadly weapon. Numerous criminal sex offenses enumerated in §15-20-21 including sexual abuse, kidnap, enticement.	Requires electronic monitoring of sexual violent predators.
Alaska	§12.55.125; §33.16.150	SB 218 (2006);	SB 218 raised presumptive sentencing ranges for sex related crimes against minors including 1 st 2 nd , 3 rd degree sex assault, sex abuse w/ a minor, prostitution, etc.	Requires GPS as condition of parole/probation when aggravating factors are found - not specific to sex offenders.
Arizona	§13-604.01; §13-1423	SB 1141(1998)	Life sentence for 1 st degree dangerous crimes against children including sexual assault or sexual conduct w/ a minor 12 years or younger & violent sex assault. Provides presumptive sentences ranging from 20-30 years for other sex related crimes.	Not Specified
*Arkansas	§5-14-103; §12-12-923	HB 1004 (2006) HB 1005 (2006)	25 year mandatory minimum sentence for rape of a child under 14 years of age.	Requires electronic monitoring of sexually violent predators for minimum 10 years after release.
*California	Penal Code: §269; 288.7; §3010; §3004	SB 1128 (2006) SB 619 (2005) SB 963 (2005) Prop 63 (2006)	25 years to life mandatory minimum sentence for intercourse or sodomy w/ child 10 years or younger and 15 years to life for oral copulation or sexual penetration w/ child 10 years or younger. 15 years to life w/ consecutive sentencing for additional sex acts w/ a child 14 years or younger.	Requires GPS monitoring of felony sex offenders for life.
Colorado	§18-1.3-406; §18-1.3-401	--	Presumptive sentencing with mandatory ranges provided for sex offenses constituting violent crimes.	Not Specified
*Connecticut	§53a-70c; §53a-90a; §53-21; §53a-30	SB 1458 (2007) HB 5846 (2006)	25 year mandatory minimum for aggravated sexual assault of a minor younger than 13 years. Also provides restrictions on sentence reduction or suspension, requiring specified periods of imprisonment ranging from 2-10 years for crimes including sexual assault of a minor, impairing morals of a child, child pornography, enticing a minor, etc.	Court authorized to impose GPS monitoring as a condition of probation - not specific to sex offenders.

State	Statute Citations	Related Bill Numbers	Mandatory 25 Year Minimum 1 st Time Offense Sentencing Provisions & Related Information	Electronic/GPS Monitoring of Sex Offenders
Delaware	Chapter 11; §4205A	HB 404 (2006)	25 years to life mandatory minimum sentence when victim is younger than 14 years and the crime is rape, continuous sexual abuse of a child, or a dangerous crime against a child.	Not Specified
*Florida	§800.04; §775.082;	HB 1877 (2005)	25 years to life mandatory minimum sentence for lewd or lascivious molestation against a victim less than 12 years of age.	Requires electronic monitoring of specified sex offenders for life.
*Georgia	§16-5-21 §17-10-6.2 §16-6-4 §16-5-21 §42-1-14	HB 1059 (2006)	25 year mandatory minimum sentence for crimes of sexual assault, aggravated assault with intent to rape, incest, kidnapping against a child less than 14 years old; aggravated child molestation, aggravated sodomy with child 13-15 years old; rape; aggravated sexual battery	Requires sexually dangerous predators to wear GPS electronic monitoring device for life.
Hawaii	---	---	---	Not Specified
Idaho	§20-219	HB 381 (2008)	---	Requires sexually violent predators be electronically monitored throughout probation or parole period.
Illinois	§730 ILCS 5/3-3-7; §720 ILCS 5/12-14.1	SB 1397 (2007) HB 4222 (2006)	Provides for extended sentencing periods of 15 and 20 years or minimum 50 years for predatory criminal sexual assault of a child; depending on use of firearm or resulting bodily injury.	Requires sexually violent predators be electronically monitored throughout probation or parole period.
Indiana	§11-13-3-4; §35-50-2-2; §35-50-2-4	SB 125 (2005) HB 1155 (2005) SB 12 (2005)	Provides fixed felony class A sentencing ranges of 20-50 years for specified sex crimes involving deadly force, including sexual misconduct w/ a minor and child molestation. Also limits suspension of class A child molestation sentence only to that in excess of 30 years.	Requires sexually violent predators be electronically monitored, includes GPS.
Iowa	§901A.2; §692A.4A; §903B.1; §903B.2; §902.14	HF 619 (2005)	Provides enhanced and special sentences up to life imprisonment for certain repeat sex offenders.	Requires certain sex offenders be electronically monitored or tracked for at least 5 years as condition of parole or probation.
*Kansas	§21-4642; §21-4643; §22-3717	HB 2576 (2006)	25 years to life mandatory minimum sentence for certain child (under 14) sex offenses including rape, sexual exploitation, sodomy, prostitution, trafficking, etc., with specific exceptions. Provides 40 year minimum for repeat offenders of certain sex offenses. Requires life imprisonment without the possibility of parole for repeat offenders classified as aggravated habitual sex offenders.	Requires electronic monitoring for life of certain sex offenders.
Kentucky	§431.520; §532.080; §532.060;	HB 003 (2006)	Certain sex related crimes classified as class A felonies are subject to indeterminate sentencing ranges from 20-50 years. 25 years to life for a 1 st degree persistent repeat felony sex offender.	Court is authorized to require electronic monitoring of certain sex offenders
*Louisiana	§14:78.1; §14.81.2; §14.81.1; §14.43.1; §15:550; §15:560.4	HB 004 (2006) HB 642 (2008) SB 164 (2004) HB 572 (2006)	25-99 years at hard labor mandatory minimum sentence for sex crimes against a child under 13 years old including: aggravated incest, molestation of a juvenile, sexual battery, pornography involving juveniles, etc.	Requires electronic monitoring for life of certain sex offenders.
Maine	17-A §253; 17-A §1252;	HP 1224 (2006)	Provides definite minimum sentence of 20 years for gross sexual assault of a child under age 12.	Conviction of gross sexual assault requires supervised release including electronic

State	Statute Citations	Related Bill Numbers	Mandatory 25 Year Minimum 1 st Time Offense Sentencing Provisions & Related Information	Electronic/GPS Monitoring of Sex Offenders
*Maryland	17-A §1231 Crime Code: §3-305; §3-303; §11-724	HB 2A (2006)	25 years to life mandatory minimum sentence for 1 st degree sex offense and rape with a child under age 13.	monitoring for duration. Parole Commission is authorized to use GPS as part of sex offender supervision.
Massachusetts	265, §23; 265, §47 §750.520b; §750.520n	HB 5234 (2006) HB 4811 (2008) HB 5421 (2006) HB 5531 (2006) H 5532 (2006) SB 709 (2006) SB 1122 (2006)	Provides for a minimum 10 years for rape of a child under 16 using a weapon. Minimum 25 year sentencing similar to "Jessica's Law" was removed from HB 4811 before passage. 25 years to life mandatory minimum sentence for 1 st degree sexual conduct with a child under age 13.	Requires GPS monitoring for certain sex offenders throughout probation. Requires lifetime electronic monitoring when convicted of criminal sexual conduct with a child under age 13
Minnesota	§609.3455	---	Provides for mandatory life sentence for egregious first-time offenders convicted of sexual conduct when the factfinder determines that a heinous element exists Minimum 20 years to life for sexual battery of a child under 14 years old.	Allows use of electronic surveillance on certain sex offenders. Allows court to order electronic monitoring on certain sex offenders.
Mississippi	§97-3-101; §99-19-84	SB 2527 (2006)	Minimum 20 years to life for sexual battery of a child under 14 years old.	Allows court to order electronic monitoring on certain sex offenders.
*Missouri	§566.030; §566.060; §566.213; §217.735; §559.106	HB 353 (2005)	Mandatory minimum 25 years for sexual trafficking of a child under age 12. Mandatory minimum 30 years to life for forcible rape or sodomy of a child under age 12.	Requires lifetime electronic monitoring/tracking using GPS for specified sex offenders.
*Montana	§45-5-625; §45-5-503; §45-5-507; §46-18-222; §46-18-206; §46-18-207; §46-23-1010	SB 207 (2005)	Mandatory minimum 25 years to life, with some exceptions, for sex related crimes with a child 12 years or younger including: sexual intercourse without consent, sexual abuse of children, incest, etc.	Requires electronic monitoring using GPS for level 3 sex offenders and authorizes use for other levels of sex offenders.
Nebraska	§28-319.01; §83-174.03	LB 1199 (2006)	Provides for minimum 15 year sentence for 1 st offense of 1 st degree sexual assault of a child under 12 years of age; repeat offenders subject to 25 year minimum.	Authorizes office of parole to use electronic monitoring on certain sex offenders.
*Nevada	§200.366; §176A.410; §213.1243; §213.1255	SB 471 (2007)	Mandatory life imprisonment with eligibility for parole only after 25 years has been served for sexual assault of a child under age 16 and substantial bodily harm did not occur; mandatory life imprisonment w/o parole if substantial bodily injury did occur. Mandatory life imprisonment with eligibility for parole only after 35 years has been served for sexual assault against a child under age 14 and substantial bodily harm did not occur.	Authorizes use of electronic monitoring device that will provide information related to sex offender's geographic location.
New Hampshire	§651:6; §632-A:2	HB 1692 (2006)	Authorizes but does not mandate extended sentencing of 25 years to life for 1 st degree sexual assault or aggravated felonious sexual assault against a child under age 13.	Not Specified
New Jersey	§30:4-123.92	SB 484 (2007)	Several bills have been recently introduced but died in committee. (2006: AB 960, SB 1204, 2004: SB 2594, AB 4177, AB 4067, AB 4068.)	Authorizes satellite-based monitoring of sex offenders
New Mexico	§31-21-10.1; §31-18-23;	---	Provides mandatory life imprisonment for repeat violent sexual offenders, not 1 st time offenders.	Requires GPS monitoring of sex offenders for the duration of parole.

State	Statute Citations	Related Bill Numbers	Mandatory 25 Year Minimum 1 st Time Offense Sentencing Provisions & Related Information	Electronic/GPS Monitoring of Sex Offenders
New York	§31-18-25 Penal Code: §130.95; §130.96; §70.08; §70.00; §70.06; §65.10; Exec. §837-r	AB 8939 (2006)	10 years to life minimum sentence for sex related crimes classified as predatory sexual assault & predatory sexual assault against a child less than 13 years old. 25 years to life minimum for persistent violent felony offenders.	Allows use of electronic monitoring on certain sex offenders as a condition of release.
*North Carolina	§14-27.2A §14-27.4A §14-208.40 §14-208.40A	HB 933 (2008) HB 1896 (2006)	Mandatory 25 years to life for sex related offenses against a child under 13 years of age including rape of a child, sexual offense with a child.	Requires satellite based monitoring for life of certain sex offenders.
North Dakota	§12.1-20-03; §25-03.3-24; §12-67-01; §12-67-02	HB 1216 (2007) SB 2029 (2007)	20 year mandatory minimum sentence for gross sexual imposition against a child under 15 but provides that the court may deviate from the minimum when it would impose manifest injustice, in which case a 5 year minimum must be observed.	Authorizes GPS monitoring for sex offender containment, requires for sexually dangerous persons.
Ohio	§2929.13 §2971.03	SB 260 (2007) HB 95 (2006)	25 years to life <i>indefinite</i> minimum sentence for rape of a child under age 13.	Authorizes GPS monitoring for certain sex offenders.
*Oklahoma	22 §991a; 10 §7115; 21 §1021;	SB 631 (2005) HB 1816 (2007)	25 years to life mandatory minimum sentence for sex related crimes against a child under 12 including sexual abuse & exploitation by a parent, child pornography, and sexual battery and lewd acts with a child under 16.	Requires GPS monitoring of habitual or aggravated sex offenders.
*Oregon	§137.700; §163.235;	HB 3511A (2006)	25 year mandatory minimum sentences for 1 st degree sex related offenses against a child under 12 including rape, sodomy, kidnapping, sexual penetration.	Requires lifetime "active tracking" of certain sex offenders.
Pennsylvania	42 §9718.2; 42 §9798.3;	HB 944 (2005)	Provides 10 year minimum sentence for sexual assault of a child under 16; 25 year minimum for 2 nd offenders and life imprisonment for 3 rd time offenders.	Authorizes GPS monitoring for certain sex offenders.
*Rhode Island	§11-37-8.2.1 §11-37-8.2 §13-8-30	SB 2058 (2006) HB 7040 (2006)	25 years to life mandatory minimum sentence for 1 st degree child molestation sexual assault against a child 14 years and under.	Requires lifetime GPS monitoring for convicted child molesters and high risk offenders.
*South Carolina	§16-3-655; §23-3-540	SB 1138 (2006) HB 3328 (2005)	25 years to life mandatory minimum sentence for criminal sexual conduct with a minor under 11 years old. Mandatory life imprisonment or death for subsequent offenders.	Requires active electronic monitoring for certain sex offenders.
South Dakota	§22-22-1.2 §23A-27-12.1; §24-15A-24	SB 208 (2006) SB 148 (2006)	Provides for minimum 15 year sentence for rape of a child under age 13.	Authorizes use of GPS and electronic monitoring for parole and probation - not specific to sex offenders.
*Tennessee	§39-13-522 §40-39-302 §40-39-303	HB 2314 (2007) HB 3182 (2004)	25 years to life mandatory minimum sentence for rape of a child under age 13.	Authorizes use of GPS and electronic monitoring on sex offenders.
*Texas	Penal Code: §21.02 Crim. Proc.	HB 008 (2007)	25 years to life mandatory minimum sentence for continuous Sexual Abuse of a child under age 14.	Authorizes use of GPS and electronic monitoring on sex offenders.

State	Statute Citations	Related Bill Numbers	Mandatory 25 Year Minimum 1 st Time Offense Sentencing Provisions & Related Information	Electronic/GPS Monitoring of Sex Offenders
Utah	§ 17.43; § 42.12 § 76-5-402.1; § 76-1-301 § 76-5-403.1 § 76-5-402.3	HB 013 (2008) HB 256 (2008)	25 years to life mandatory minimum sentence for sex related crimes against a child under age 14 including rape of a child, object rape of a child, sodomy of a child.	Not Specified
Vermont	13, § 3253 28, § 351	HB 856 (2006)	Provides presumptive sentencing minimum of 10 years, mandatory minimum 5 years, and mandatory maximum of life for sexual assault on a child under 13 years old.	Includes electronic monitoring in definition of an alternative sentencing program - not specific to sex offenders. Requires GPS tracking for certain sex offenders.
Virginia	§ 18.2-61; § 18.2-67.1; § 18.2-67.2; § 19.2-295.2-1	HB 846 (2006) SB 559 (2006)	25 year mandatory minimum sentence for rape, forcible sodomy, object sexual penetration against a child under 13 years old when committed in commission of or part of the same course of conduct as kidnapping, abduction, burglary, aggravated malicious wounding, etc. Provides for an additional suspended sentence of 40 years.	
Washington	§ 9.94A.712; § 9.94A.713	HB 3277 (2006) HB 2407 (2006)	25 year mandatory minimum sentence for predatory offenses of 1 st & 2 nd degree rape of a child and 1 st degree child molestation. Also provides 25 year minimum when victim is less than 15 years of age for 1 st & 2 nd degree rape, indecent liberties by forcible compulsion, 1 st degree kidnapping w/ sexual motivation. 25 year minimum also provided relating to sex crimes involving a person developmentally disabled, mentally disordered, a frail elder, or a vulnerable adult.	Allows for electronic monitoring of sex offenders released as a condition of community custody.
West Virginia	§ 61-8B-3; § 61-8B-7; § 62-11D-1; § 62-11D-3	HB 101A (2006)	25-100 year mandatory minimum sentence for 1 st degree sexual assault or sexual abuse against a child less than 12 years of age.	Requires electronic monitoring including GPS of sexually violent predators.
Wisconsin	§ 939.616 § 301.48	AB 784 (2005) AB 591 (2005)	25 year mandatory minimum prison sentence for sexual assault against a child under age 13 and repeated acts of sexual assault of the same child.	Requires lifetime GPS tracking for certain sex offenders.
Wyoming	§ 6-2-306 § 7-13-1102	---	Provides for mandatory life imprisonment for repeat, not 1 st time, sex offenders convicted of sexual abuse of a minor.	Allows electronic monitoring as part of intensive supervision programs - not specific to sex offenders.

NCJL's Criminal Justice Program is in Denver, Colorado, at 303-364-7700; or ci-info@ncsl.org
 Statutes and bills provided are summarized. Full text can be retrieved through: <http://www.ncsl.org/public/leglinks.cfm>

