

# Senate Calendar

WEDNESDAY, FEBRUARY 25, 2009

50th DAY OF BIENNIAL SESSION

## TABLE OF CONTENTS

	Page No.
<b>NEW BUSINESS</b>	
<b>Third Reading</b>	
<b>S. 34</b> Agreement to elect the president by national popular vote .....	239
Sen. Brock and Sen. Starr amendment .....	239
<b>S. 48</b> Relating to marketing of prescribed products .....	239
<b>S. 84</b> Relating to Vermont Veterans' Memorial Cemetery .....	239
<b>S. 92</b> Relating to financing campaigns for elected office.....	239
Sen. Brock amendment.....	239
<b>S. 96</b> Relating to unclaimed property .....	242
<b>H. 232</b> Relating to fiscal year 2009 budget adjustment .....	242
<b>Second Reading</b>	
<b>Favorable with Recommendation of Amendment</b>	
<b>S. 59</b> Relating to approval for expenditures for gifts .....	242
Government Operations Committee Report.....	242
<b>House Proposal of Amendment</b>	
<b>S. 13</b> Improving Vermont's sexual abuse response system.....	243
Sen. Sears amendment.....	282
<b>NOTICE CALENDAR</b>	
<b>(First Day on Notice Calendar pursuant to Rule 83)</b>	
Proposed Amendment to the Constitution—Proposal 5 .....	288
<b>Ordered to Lie</b>	
<b>S. 7</b> To prohibit the use of lighted tobacco products in the workplace .....	288



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ORDERS OF THE DAY

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**NEW BUSINESS**

**Third Reading**

**S. 34**

An act relating to the agreement among the states to elect the president by national popular vote.

**AMENDMENT TO S. 34 TO BE OFFERED BY SENATORS BROCK  
AND STARR BEFORE THIRD READING**

Senators Brock and Starr move to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. SECRETARY OF STATE; STUDY; REPORT

The secretary of state shall study the history of election results for the office of President of the United States in Vermont. By January 1, 2010, the secretary of state shall file a report with the general assembly which analyzes which presidential candidates would have been supported in Vermont if The Agreement Among the States to Elect the President by National Popular Vote had been in effect for each presidential election.

Sec. 2. ATTORNEY GENERAL; OPINION

By January 1, 2010, the attorney general shall file an opinion with the General Assembly which analyzes whether The Agreement Among the States to Elect the President by National Popular Vote as set forth in S.34 as introduced in the 2009 legislative session is valid under the Constitution of the United States.

**S. 48**

An act relating to marketing of prescribed products.

**S. 84**

An act relating to Vermont Veterans' Memorial Cemetery.

**S. 92**

An act relating to financing campaigns for elected office.

**AMENDMENT TO S. 92 TO BE OFFERED BY SENATOR BROCK  
BEFORE THIRD READING**

Senator Brock moves to amend the bill as follows:

First: By striking out Sec. 4 in its entirety and inserting in lieu thereof a new Sec. 4 to read:

Sec. 4. 17 V.S.A. § 2805 is amended to read:

§ 2805. LIMITATIONS OF CONTRIBUTIONS

(a) A candidate ~~for state representative or local office~~ or political committee shall not accept contributions totaling more than ~~\$200.00~~ \$1,320.00 from a single source, ~~political committee or political party in~~ for any ~~two year~~ general election cycle.

(b) A candidate ~~for state senator or county office~~ or political committee shall not accept contributions totaling more than ~~\$300.00~~ \$3,950.00 from a ~~single source,~~ political committee or political party in ~~for~~ any ~~two year~~ general election cycle. A candidate for the office of governor, lieutenant governor, secretary of state, state treasurer, auditor of accounts, or attorney general shall not accept contributions totaling more than ~~\$400.00~~ from a single source, ~~political committee or political party in~~ any two year general election cycle. A ~~political committee, other than a political committee of a candidate, or a political party shall not accept contributions totaling more than \$2,000.00 from a single source, political committee or political party in any two year general election cycle.~~

~~(b) A single source, political committee or political party shall not contribute more to a candidate, political committee or political party than the candidate, political committee or political party is permitted to accept under subsection (a) of this section.~~

~~(c) A candidate, political party or political committee shall not accept, in any two year general election cycle, more than 25 percent of total contributions from contributors who are not residents of the state of Vermont or from political committees or parties not organized in the state of Vermont.~~

A single source or political committee shall not contribute more to a candidate or political committee than the candidate or political committee is permitted to accept under subsections (a) and (b) of this section.

(d) A candidate shall not accept a monetary contribution in excess of \$50.00 unless made by check, credit or debit card, or other electronic transfer.

(e) A candidate, political party, or political committee shall not knowingly accept a contribution which is not directly from the contributor, but was transferred to the contributor by another person for the purpose of transferring the same to the candidate, or otherwise circumventing the provisions of this chapter. It shall be a violation of this chapter for a person to make a

contribution with the explicit or implicit understanding that the contribution will be transferred in violation of this subsection.

(f) This section shall not be interpreted to limit the amount a candidate or his or her immediate family may contribute to his or her own campaign. For purposes of this subsection, “immediate family” means ~~individuals related to the candidate in the first, second or third degree of consanguinity~~ a candidate’s spouse or civil union partner, parent, grandparent, child, grandchild, sister, brother, stepparent, stepgrandparent, stepchild, stepgrandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, legal guardian, or former legal guardian.

(g) The limitations on contributions established by this section shall not apply to contributions made for the purpose of advocating a position on a public question, including a constitutional amendment.

(h) For purposes of this section, the term “candidate” includes the candidate’s political committee.

(i) The contribution limitations contained in this section shall be adjusted for inflation by increasing them based on the Consumer Price Index. Increases shall be rounded up to the nearest \$10.00. Increases shall be effective for the first two-year general election cycle beginning after the general election held in 2010. On or before July 1, 2011, the secretary of state shall calculate and publish the amount of each limitation that will apply to the election cycle in which July 1, 2011 falls. On July 1 of each subsequent odd-numbered year, the secretary shall publish the amount of each limitation for the election cycle in which that publication falls.

(j) Contributions accepted by candidates shall be treated as follows:

(1) A candidate who accepts a contribution prior to the date of the primary election may designate the contribution or portion of the contribution as either a primary or general election contribution. Once designated, a general election contribution accepted prior to the primary election shall be accounted for separately.

(2) A contribution accepted by a candidate after the date of the primary election shall be a general election contribution. A candidate may designate a contribution or portion of the contribution accepted after the date of the primary election as a primary election contribution only for the purpose of retiring debt incurred for the primary election.

(3) Contributions that were accepted prior to the primary election may be used for the general election if all debt incurred for the primary election has been retired.

(4) Expenditures related to a previous two-year general election cycle and contributions to retire a debt of a previous two-year general election cycle shall be attributed to the earlier two-year general election cycle.

(k) The following shall apply to an independent candidate who certifies to the secretary of state that he or she will not accept contributions from any political party:

(1) The candidate may accept contributions from one political committee, designated by the candidate, up to the limitations set forth in subsection (e) of this section for political party contributions; and

(2) For the purposes of this chapter, "contribution" shall not include:

(A) Compensation paid by one political committee, designated by the candidate, to its employees;

(B) Costs paid by one political committee, designated by the candidate, in connection with a campaign event.

(l) A candidate accepts a contribution when the contribution is deposited in the candidate's campaign account.

Second: By striking out Sec. 5 in its entirety

**S. 96**

An act relating to unclaimed property.

**H. 232**

An act relating to fiscal year 2009 budget adjustment.

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 59**

An act relating to approval of expenditures for gifts.

**Reported favorably with recommendation of amendment by Senator Flanagan for the Committee on Government Operations.**

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 32 V.S.A. § 437 is added to read:

**§ 437. EXPENDITURES FOR GIFTS; APPROVAL REQUIRED**

The use of state funds by an agency, department, office, or other unit of the executive branch of state government for gifts of any value given to anyone,

including members of the legislative branch, state employees, or the public, shall be prohibited without the specific approval of the secretary of administration or designee. Any gifts shall be limited to those that provide some utility to the recipient that is related to the mission of the agency, department, office, or other unit of the executive branch of state government; or act as an incentive to change the behavior of the recipient in a manner consistent with the goals of the agency, department, office, or other unit of the executive branch of state government; or convey a message or provide awareness or education to an intended recipient who is a member of the target audience for the agency, department, office, or other unit of the executive branch of state government. For the purposes of this section, “gifts of any value” includes shirts, caps, and other articles of clothing, pens, writing implements, and calendars bearing the logo of or otherwise identifying the donor.

(Committee vote: 5-0-0)

### **House Proposal of Amendment**

#### **S. 13**

An act relating to Vermont’s sexual abuse response system.

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

#### Sec. 1. LEGISLATIVE INTENT

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

\* \* \* Prevention \* \* \*

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

(a) Prevention is the most important and most often overlooked tool available to the state to fight sexual violence against children. 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. The Vermont Approach, Vermont’s strategic plan for comprehensive,

collaborative sexual violence prevention, should continue to be supported in its efforts to prevent sexual violence. Proper funding will increase the state's ability to fight child sexual abuse and to provide needed services to victims and communities.

(b) The senate committee on health and welfare, and the house committee on human services, in consultation with the senate and house committees on education and on appropriations and the house committee on corrections and institutions, shall build on the recent work of the senate committee on judiciary and upon the work of the sexual violence prevention task force, created by the general assembly in No. 192 of the Acts of the 2005 Adj. Sess.(2006), in an effort to enhance the comprehensive statewide approach to the prevention of child sexual abuse. As appropriate, legislation shall be developed for introduction on January 5, 2010.

Sec. 2a. Sec. 4 of No. 192 of the Acts of the 2005 Adj. Sess.(2006) is amended to read:

#### Sec. 4. SEXUAL VIOLENCE PREVENTION TASK FORCE

\* \* \*

(c) On or before January 15, 2007, and on or before January 15 for ~~five~~ seven years thereafter, the task force shall report on its activities during the preceding year to the house and senate committees on education and judiciary. The task force shall cease to exist after it files the report due on January 15, ~~2012~~ 2014.

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

#### § 131. DEFINITIONS

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

\* \* \*

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

(10) Nutrition; and

(11) How to recognize and prevent sexual abuse and sexual violence, including developmentally appropriate instruction about promoting healthy and respectful relationships, developing and maintaining effective communication



with trusted adults, recognizing sexually offending behaviors, and gaining awareness of available school and community resources.

#### Sec. 3a. TRANSITIONAL PROVISIONS

(a) On or before July 1, 2009, the commissioner of education, in consultation with the commissioner for children and families, shall convene a working group to consist of the following members:

(1) The members of the sexual violence prevention task force created by Sec. 4 of No. 192 of the Acts of the 2005 Adj. Sess. (2006).

(2) The coordinator of the Vermont network of treatment programs for juveniles with sexual behavior problems or the coordinator's designee, who shall be a psychologist with expertise in the area of counseling sexually abused children.

(3) One member of the Vermont school counselors association, to be selected by the board of the association.

(4) One member of the comprehensive health education and wellness advisory council created by 16 V.S.A. § 132 or an individual who currently provides health education in public schools, to be selected by the voting members of the advisory council.

(5) A representative of the early education provider community, to be selected by the officers of the board of Kids Are Priority One.

(6) Any other person or persons the members of the working group believe will inform their efforts.

(b) The working group shall prepare technical assistance materials that support the instruction required by 16 V.S.A. § 131(11). The materials shall be made available on or before July 1, 2010 to help school districts and supervisory unions in the creation and implementation of developmentally appropriate instructional programs.

(c) The working group shall provide training and other support related to implementing the requirements of 16 V.S.A. § 131(11) to any school district or supervisory union that requests its assistance.

#### Sec. 3b. EFFECTIVE DATE

(a) This section and Sec. 3a of this act shall take effect on passage.

(b) Sec. 3 of this act shall take effect on July 1, 2011.

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

§ 254. EDUCATOR LICENSURE; EMPLOYMENT OF SUPERINTENDENTS

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

(b) The commissioner shall request and obtain from the Vermont criminal information center the criminal record for any person applying for an initial license as a professional educator or for reinstatement of a license that has lapsed pursuant to subdivision 256(a)(3) of this title, or for any person who is offered a position as superintendent of schools in Vermont.

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

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

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

(d) Upon completion of a criminal record check required by subsection (b) of this section, the Vermont criminal information center shall send to the commissioner either a notice that no record exists or a copy of the record. If a copy of a criminal record is received, the commissioner shall forward it to the person and shall inform the person in writing of:

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

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

(e) The commissioner shall request and obtain information from the child protection registry maintained by the department for children and families and from the vulnerable adult abuse, neglect, and exploitation registry maintained

by the department of disabilities, aging, and independent living (collectively, the “registries”) for any person for whom a criminal record check is required under subsection (b) of this section. The department for children and families and the department of disabilities, aging, and independent living shall adopt rules governing the process for obtaining information from the registries and for disseminating and maintaining records of that information under this subsection. A person denied a license based upon information acquired under this subsection may appeal the decision pursuant to subsection 1696(f) of this title.

(f) A person convicted of a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13 shall not be eligible for an initial license as a professional educator, renewal of a license, reinstatement of a lapsed license, or employment as a superintendent of schools in Vermont under this section.

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

§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES;  
CONTRACTORS

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

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

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

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

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

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

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

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

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

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

(3) ~~if~~ If the requester is a headmaster, a notice of any criminal record ~~which~~ that is located in either another state repository or FBI records, but not a record of the specific convictions. However, if there is a record relating to any crimes of a sexual nature involving children, the Vermont criminal information center shall send this record to the commissioner who shall notify the headmaster in writing, with a copy to the person about whom the request was made, that the record includes one or more convictions for a crime of a sexual nature involving children.

\* \* \*

(h) A superintendent or headmaster shall request and obtain information from the child protection registry maintained by the department for children and families and from the vulnerable adult abuse, neglect, and exploitation registry maintained by the department of disabilities, aging, and independent living (collectively, the “registries”) for any person for whom a criminal record check is required under subsection (a) of this section. The department for children and families and the department of disabilities, aging, and independent living shall adopt rules governing the process for obtaining information from the registries and for disseminating and maintaining records of that information under this subsection.

(i) A person convicted of a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13 shall not be eligible for employment under this section.

(j) The board of trustees of a recognized or approved independent school shall request a criminal record check and a check of the registries pursuant to the provisions of this section prior to offering employment to a headmaster.

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

§ 256. CONTINUED VALIDITY OF CRIMINAL RECORD CHECK;  
MAINTENANCE OF RECORDS

(a)(1) Anyone required to request a criminal record check and a check of the child protection and the vulnerable adult abuse, neglect, and exploitation

registries under this subchapter about a person who previously has undergone a ~~check~~ one or both checks, regardless of whether the check was for student teaching, licensure, or employment purposes, shall comply with that requirement by acquiring the results of the previous criminal record check unless:

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

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

~~(3)~~(C) since the record check, there has been a period of one year or more during which the person has not worked for a Vermont school district or a recognized or an approved independent school; or

(D) as otherwise required by this chapter.

(2) Anyone required to request a criminal record check under this subchapter about a person who has previously undergone a check may request a name and date of birth or fingerprint-supported recheck of the criminal record at any time during the course of the record subject's employment in the capacity for which the original check was required. Rechecking criminal records may be accomplished through a subscription service.

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

\* \* \*

Sec. 6a. AGENCY OF HUMAN SERVICES; CHILD PROTECTION REGISTRY; VULNERABLE ADULT ABUSE, NEGLECT, AND EXPLOITATION REGISTRY

The agency of human services, the commissioner of the department for children and families, and the commissioner of the department of disabilities, aging, and independent living shall implement protocols for sharing and providing information from the child protection registry and from the vulnerable adult abuse, neglect, and exploitation registry in a coordinated manner to those entities authorized by law to receive such information. Protocols shall focus on the most efficient and timely manner to provide such information to authorized requestors.

Sec. 6b. 16 V.S.A. § 252(1) is amended to read;

(1) "Criminal record" means the record of:

\* \* \*

(A) convictions in Vermont, including whether any of the convictions is an offense listed in 13 V.S.A. § 5401(10) (sex offender definition for registration purposes); and

\* \* \*

#### Sec. 6c. EFFECTIVE DATES

(a) This section and Sec. 6a shall take effect on passage.

(b) Sec. 6b shall take effect July 1, 2009.

(c) Secs. 4, 5, and 6 of this act shall take effect on December 31, 2010 and shall apply solely to criminal record checks or registry checks required after that date; provided, however, for a person currently licensed as an educator who has not been the subject of a criminal records check pursuant to 16 V.S.A. § 254 or 255, the commissioner shall cause a criminal record check and a registry check to be conducted pursuant to the procedures outlined in 16 V.S.A. § 254 at the time the educator's license is next renewed following the effective date of this section.

#### Sec. 7. VOLUNTEERS, WORK STUDY STUDENTS, AND COMMUNITY-BASED LEARNING; STUDY

The commissioner of education shall examine ways to ensure that students are not placed in situations where they may be vulnerable to sexual exploitation or abuse without creating barriers that make it impossible or impractical for volunteers and work study students to assist school staff or for students to participate in community-based learning programs. The commissioner shall propose mechanisms for ensuring that registered sex offenders do not have unsupervised contact with students as volunteers. On or before January 15, 2010, the commissioner shall submit recommendations to the house and senate committees on education and on judiciary.

#### Sec. 7a. EFFECTIVE DATE

This section and Sec. 7 of this act shall take effect on passage.

Sec. 8. 20 V.S.A. § 2064 is added to read:

#### § 2064. SUBSCRIPTION SERVICE

(a) As used in this section:

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

(2) “Subscription service” means a service provided by the center whereby authorized requestors may be notified when an individual’s criminal record is updated.

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

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

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

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

(2) How to interpret the criminal conviction records.

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

(4) Misuse of the subscription service.

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

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

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

(h) Except insofar as criminal conviction record information must be retained or made public pursuant to chapter 51 of Title 16 or the state board of education administrative rules promulgated thereunder, no person shall confirm the existence or nonexistence of criminal conviction record information or disclose the contents of a criminal conviction record without the

individual's permission to any person other than the individual and properly designated employees of the authorized education official who have a documented need to know the contents of the record.

(i) Except insofar as criminal conviction record information must be retained or made public pursuant to chapter 51 of Title 16 or the state board of education administrative rules promulgated thereunder, authorized education officials shall confidentially retain all criminal conviction information received pursuant to this section for a period of three years. At the end of the retention period, the criminal conviction information must be shredded.

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

Sec. 9. 16 V.S.A. § 563a is added to read:

§ 563a. SCHOOL BOARDS; PREVENTION, IDENTIFICATION, AND REPORTING OF CHILD SEXUAL ABUSE AND SEXUAL VIOLENCE

The school board of a school district shall ensure that adults employed in the schools maintained by the district receive orientation, information, or instruction on the prevention, identification, and reporting of child sexual abuse, as defined in subdivision 4912(8) of Title 33, and sexual violence. This shall include information regarding the signs and symptoms of sexual abuse, sexual violence, grooming processes, recognizing the dangers of child sexual abuse in and close to the home, and other predatory behaviors of sex offenders. The school board shall also provide opportunities for parents, guardians, and other interested persons to receive the same information. The department of education and the agency of human services shall provide materials and technical support to any school board that requests assistance in implementing this section.

Sec. 9a. EFFECTIVE DATE AND IMPLEMENTATION

(a) This section shall take effect on passage.

(b) Sec. 9 of this act shall take effect on July 1, 2011.

(c) On or before July 1, 2010, the department of education and the agency of human services shall prepare the materials that will be required by Sec. 9 of this act on its effective date.

Sec. 10. 33 V.S.A. § 3502 is amended to read:

§ 3502. CHILD CARE FACILITIES; SCHOOL AGE CARE IN PUBLIC SCHOOLS; 21ST CENTURY FUND



\* \* \*

(d)(1) Regulations pertaining to child care facilities and family child care homes shall be designed to ensure that children in child care facilities and family child care homes are provided with wholesome growth and educational experiences, and are not subjected to neglect, mistreatment, or immoral surroundings.

(2) A licensed child care facility shall ensure that all individuals working at the facility receive orientation, based on materials recommended by the agency of human services and the department of education, on the prevention, identification, and mandatory reporting of child abuse, including child sexual abuse, signs and symptoms of sexual abuse, sexual violence, grooming processes, recognizing the dangers of child sexual abuse in and close to the home, and other predatory behaviors of sex offenders.

\* \* \*

#### Sec. 11. COMMUNITY OUTREACH PLAN

The agency of human services shall work with the sexual violence prevention task force and other appropriate groups to raise community awareness about the nature and extent of child sexual abuse, including the role of adults in protecting children, and to create and implement a community outreach plan. The department for children and families is directed to expand its current outreach program regarding reports of suspected child abuse or neglect to assure public awareness of the need to report risk of harm. The agency shall report on its progress by November 15, 2009 to the senate committee on health and welfare and to the house committee on human services. The report shall include:

(1) an update of the agency's ongoing efforts to raise community awareness of the nature and extent of child sexual abuse in the state, including the status of the community outreach plan;

(2) a list of the community partners, organizations, and programs that work with children which the agency has identified as part of the outreach plan; and

(3) a list of specific strategies that the agency has undertaken or will undertake in furtherance of implementing the community outreach plan.

Sec. 12. 33 V.S.A. chapter 6 is added to read:

CHAPTER 6. PREVENTION AND TREATMENT OF SEXUAL ABUSE  
§ 601. CENTER FOR THE PREVENTION AND TREATMENT OF SEXUAL ABUSE

(a) There is established within the agency of human services the Vermont center for the prevention and treatment of sexual abuse (the center). The center shall be jointly overseen by the commissioner of the department of corrections and the commissioner of the department for children and families.

(b) The purpose of the center shall be to protect Vermont's citizens from sexual assault and child sexual abuse. The center shall oversee Vermont's systematic response to sexual assault and child sexual abuse, while recognizing that many agencies, organizations, and individuals have their own independent roles and responsibilities within this system.

(c) The responsibilities of the center shall include:

(1) Coordinating sex offender treatment programs in correctional and juvenile institutions and in the community.

(2) Coordinating victim and family treatment programs.

(3) Providing support to sexual abuse prevention programs statewide and in local communities.

(4) Providing training to recognize and prevent sexual abuse in consultation with the department of corrections, the department for children and families, the department of mental health, the department of state's attorneys and sheriffs, and other agencies, organizations, and individuals as are desirable and necessary.

(5) Providing a central organization for the acquisition and dissemination of information regarding best practices for the prevention of sexual violence; the treatment and supervision of adult and juvenile offenders; the provision of victims services; judicial practices conducive to public protection and the supervision of offenders; protocols for coordinated investigations of allegations of child sexual abuse; and any other information that may be beneficial in aiding Vermont's response to sexual abuse.

(6) Making available an array of services to sexually abused children and their family members.

(7) Providing grants to community agencies to further the center's purpose of protecting Vermont's citizens from sexual assault and child sexual abuse.

(d) The commissioner of corrections and the commissioner for children and families shall be responsible for maintaining and providing staffing for the center and shall report every two years to the corrections oversight committee on the accomplishments of the center.

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

§ 3258. SEXUAL EXPLOITATION OF A MINOR

(a) No person shall engage in a sexual act with a minor if:

(1) the actor is at least 48 months older than the minor; and

(2) the actor is in a position of power, authority, or supervision over the minor by virtue of the actor's undertaking the responsibility, professionally or voluntarily, to provide for the health or welfare of minors, or guidance, leadership, instruction, or organized recreational activities for minors.

(b) A person who violates subsection (a) of this section shall be imprisoned for not more than two years or fined not more than \$2,000.00, or both.

Sec. 13a. 13 V.S.A. § 5301(7) is amended to read:

(7) For the purpose of this chapter, "listed crime" means any of the following offenses:

\* \* \*

(AA) the attempt to commit any of the offenses listed in this section;  
~~and~~

(BB) abuse (section 1376 of this title), abuse by restraint (section 1377 of this title), neglect (section 1378 of this title), sexual abuse (section 1379 of this title), financial exploitation (section 1380 of this title), and exploitation of services (section 1381 of this title);

(CC) aggravated sexual assault of a child in violation of section 3253a of this title.

Sec. 13b. 13 V.S.A. § 5401(10) is amended to read:

(10) "Sex offender" means:

\* \* \*

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

\* \* \*

(vi) kidnapping with intent to commit sexual assault as defined in 13 V.S.A. § 2405(a)(1)(D); ~~and~~

(vii) aggravated sexual assault of a child in violation of section 3253a of this title; and

(viii) an attempt to commit any offense listed in this subdivision.

Sec. 14. 13 V.S.A. § 5404 is amended to read:

§ 5404. REPORTING UPON RELEASE FROM CONFINEMENT OR SUPERVISION

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

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

(2) the address upon release and whether the offender will be living with a child under the age of 18;

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

(4) documentation of any treatment or counseling received.

(b) The department of corrections shall notify the department within 24 hours of the time a sex offender changes his or her address or place of employment, or enrolls in or separates from any postsecondary educational institution, or begins residing with a child under the age of 18. In addition, the department of corrections shall provide the department with any updated information requested by the department.

(c) With respect to a sex offender residing with a child under the age of 18 under circumstances enumerated in subsection (a) or (b) of this section, the department of corrections shall communicate with the department for children and families. If placement in a home with a child is being considered by the department of corrections, the department of corrections shall notify the department for children and families, and the departments shall work together to determine whether such a placement is appropriate. If the department of corrections does not have a role in the placement of the offender in the community, but knows the offender will be residing with a person under the age of 18, the department of corrections shall notify the department for children and families at least 24 hours prior to releasing the offender from confinement.

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

~~(d)~~(e) If it has not been previously submitted, upon receipt of the information to be provided to the department pursuant to subsection (a) of this

section, the department shall immediately transmit the conviction data and fingerprints to the Federal Bureau of Investigation.

Sec. 15. 13 V.S.A. § 5407 is amended to read:

**§ 5407. SEX OFFENDER'S RESPONSIBILITY TO REPORT**

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

\* \* \*

(3) within three days after any change of address, or if a person is designated as a high-risk sex offender pursuant to section 5411b of this title, that person shall report to the department within 36 hours, and shall report whether a child under the age of 18 resides at such address;

\* \* \*

(5) within three days after any change in place of employment; ~~and~~

(6) within three days of any name change;

(7) within three days of a child under the age of 18 moving into the residence of the registrant.

\* \* \*

(h) If the department is notified by an offender that he or she is living with a child under the age of 18, the department shall notify the department for children and families within three days.

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

Sec. 16. 13 V.S.A. § 5415 is added to read:

**§ 5415. ENFORCEMENT; SPECIAL INVESTIGATION UNITS**

(a) Special investigation units, created pursuant to 24 V.S.A. § 1940, shall be responsible for the investigation of violations of this chapter's registry requirements and are authorized to conduct in-person registry compliance checks in a time, place, and manner it deems appropriate in furtherance of the purposes of this chapter. This section shall not be construed to prohibit local law enforcement from enforcing the provisions of this chapter.

(b) The department of public safety shall report to the senate and house committees on judiciary on or before December 15, 2009, and annually thereafter, regarding its efforts under this section.

**Sec. 17. APPROPRIATION; SPECIAL INVESTIGATION UNITS**

(a)(1) The sum of \$770,000.00 is appropriated from the general fund for the department of state's attorneys and sheriffs for fiscal year 2010 for the purpose of funding grants for special investigation units pursuant to 24 V.S.A. § 1940. The funds shall be allocated to special investigative units created to ensure equal levels of service in all regions of the state in a manner consistent with the counties' geographies.

(2) In fiscal year 2010, the specialized investigative units grant board may, in its discretion, provide up to five law enforcement grants to county or municipal agencies, or both, for the purposes of augmenting the investigative services provided by the Vermont state police.

(b) The sum of \$880,000.00 is appropriated from the general fund for the department of public safety for fiscal year 2010 for the purpose of funding Vermont state police investigators for special investigation units. The Vermont state police shall have the authority to coordinate and supervise the investigative functions of the special investigation units.

Sec. 18. 33 V.S.A. § 4917 is amended to read:

§ 4917. MULTIDISCIPLINARY TEAMS; EMPANELING

(a) The commissioner or his or her designee may empanel a multidisciplinary team or a special investigative multi-task force team or both wherever in the state there may be a probable case of child abuse or neglect which warrants the coordinated use of several professional services. These teams shall participate and cooperate with the local special investigation unit in compliance with 13 V.S.A. § 5415.

(b) The commissioner or his or her designee, in conjunction with professionals and community agencies, shall appoint members to the multidisciplinary teams which may include persons who are trained and engaged in work relating to child abuse or neglect such as medicine, mental health, social work, nursing, child care, education, law, or law enforcement. The teams shall include a representative of the department of corrections, unless the team chair determines that participation by the department is not necessary. Additional persons may be appointed when the services of those persons are appropriate to any particular case.

\* \* \*

Sec. 19. 20 V.S.A. § 1931 is amended to read:

§ 1931. POLICY

It is the policy of this state to assist federal, state, and local criminal justice and law enforcement agencies in the identification, detection or exclusion of

individuals who are subjects of the investigation or prosecution of ~~violent~~ crimes. Identification, detection, and exclusion may be facilitated by the DNA analysis of biological evidence left by the perpetrator of a ~~violent~~ crime and recovered from the crime scene. The DNA analysis of biological evidence can also be used to identify missing persons.

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

§ 1932. DEFINITIONS

As used in this subchapter:

\* \* \*

(5) “DNA sample” means a forensic unknown tissue sample or a tissue sample provided by any person convicted of ~~violent~~ a designated crime ~~or a forensic unknown sample~~. The DNA sample may be blood or other tissue type specified by the department.

\* \* \*

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

\* \* \*

(12) “Designated crime” means any of the following offenses:

(A) a felony;

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

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

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

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

Sec. 21. 20 V.S.A. § 1933 is amended to read:

§ 1933. DNA SAMPLE REQUIRED

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

(1) ~~every~~ A person convicted in a court in this state of a designated crime on or after ~~the effective date of this subchapter;~~ and April 29, 1998.

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

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

(B) on parole for a designated crime;

(C) serving a supervised community sentence for a designated crime; ~~and or~~

(D) on probation for a designated crime.

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

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

Sec. 22. 20 V.S.A. § 1940 is amended to read:

§ 1940. EXPUNGEMENT OF RECORDS AND DESTRUCTION OF SAMPLES

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

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

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



(b) If any of the circumstances in subsection (a) of this section occur, the court with jurisdiction or, as the case may be, the governor, shall so notify the department, and the person's DNA record in the state DNA database and CODIS and the person's DNA sample in the state DNA data bank shall be removed and destroyed. The laboratory shall purge the DNA record and all other identifiable information from the state DNA database and CODIS and destroy the DNA sample stored in the state DNA data bank. If the person has more than one entry in the state DNA database, CODIS, or the state DNA data bank, only the entry related to the dismissed case shall be deleted. The department shall notify the person upon completing its responsibilities under this subsection, by certified mail addressed to the person's last known address.

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

(d) If a DNA sample from the state DNA database, CODIS, or the state DNA data bank is matched to another DNA sample during the course of a criminal investigation, the record of the match shall not be expunged even if the sample itself is expunged in accordance with the provisions of this section. If a match has been made and any of the circumstances in subsection (a) of this section occur, the department may confirm the match prior to expunging the sample.

Sec. 23. 20 V.S.A. § 1932 is amended to read:

§ 1932. DEFINITIONS

As used in this subchapter:

\* \* \*

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

Sec. 24. 20 V.S.A. § 1933 is amended to read:

§ 1933. DNA SAMPLE REQUIRED

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

(1) A person convicted in a court in this state of a designated crime on or after April 29, 1998.

(2) A person for whom the court has determined at arraignment there is probable cause that the person has committed a felony in this state on or after July 1, 2011.

(3) A person who was convicted in a court in this state of a designated crime prior to April 29, 1998 and, after such date, is:

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

(B) on parole for a designated crime;

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

(D) on probation for a designated crime.

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

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

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

Sec. 25. 20 V.S.A. § 1940 is amended to read:

§ 1940. EXPUNGEMENT OF RECORDS AND DESTRUCTION OF SAMPLES

(a) In accordance with procedures set forth in subsection (b) of this section, the department shall destroy the DNA sample and any records of a person related to the sample that were taken in connection with a particular alleged designated crime in any of the following circumstances:

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

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

(3) If the sample was taken post-arraignment, the felony charge which required the DNA sample is downgraded to a misdemeanor by the prosecuting attorney upon a plea agreement or the person is convicted of a lesser offense that is a misdemeanor other than domestic assault pursuant to 13 V.S.A. § 1042 or a sex offense for which registration is required pursuant to 13 V.S.A. § 5401 et seq.

(4) If the sample was taken post-arraignment, the person is acquitted after a trial of the charges which required the taking of the DNA sample.

(5) If the sample was taken post-arraignment, the charges which required the taking of the DNA sample are dismissed by either the court or the state after arraignment unless the attorney for the state can show good cause why the sample should not be destroyed.

\* \* \*

Sec. 26. Rule 15 of the Vermont Rules of Criminal Procedure is amended to read:

#### RULE 15. DEPOSITIONS

\* \* \*

(e) Limitations.

\* \* \*

##### (5) Depositions of Minors in Sexual Assault Cases.

(A) No deposition of a victim under the age of 16 shall be taken in a prosecution under 13 V.S.A. §§ 2601 (lewd and lascivious conduct), 2602 (lewd and lascivious conduct with a child), 3252 (sexual assault), 3253 (aggravated sexual assault), or 3253a (aggravated sexual assault of a child) except by agreement of the parties or after approval of the court pursuant to subdivision (B) of this subdivision (5).

(B) The court shall not approve a deposition under this subdivision unless the court finds that the testimony of the child is necessary to assist the trial, that the evidence sought is not reasonably available by any other means, and that the probative value of the testimony outweighs the potential detriment to the child of being deposed. In determining whether to approve a deposition under this subdivision, the court shall consider the availability of recorded statements of the victim and the complexity of the issues involved.

(C)(i) If a deposition is taken pursuant to this subdivision (5), the court shall issue a protective order to protect the deponent from emotional harm, unnecessary annoyance, embarrassment, oppression, invasion of privacy, or undue burden of expense or waste of time. The protective order

may include, among other remedies, the following: (I) that the deposition may be taken only on specified terms and conditions, including a designation of the time, place, and manner of taking the deposition; (II) that the deposition may be taken only by written questions; (III) that certain matters not be inquired into, or that the scope of the deposition be limited to certain matters; (IV) that the deposition be conducted with only such persons present as the court may designate; or (V) that after the deposition has been taken, the tape or transcription be sealed until further order of the court. The restrictions of 13 V.S.A. § 3255(a) shall apply to depositions taken pursuant to this subdivision.

(ii) If a deposition is taken pursuant to this subdivision (5), the court shall appoint an attorney to represent the child for the purposes of the deposition.

(f) Protection of Deponents.

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

(2) Depositions of Sensitive Witnesses. A person under the age of 16 who is a victim in a prosecution for an offense other than one listed in subdivision (e)(5) of this section, or any person aged 16 or older who is a victim in a prosecution under 13 V.S.A. § 2601 (lewd and lascivious conduct), ~~2602 (lewd and lascivious conduct with a minor)~~, 3252 (sexual assault), or 3253 (aggravated sexual assault) shall be considered a sensitive witness. Prior to taking the deposition of a sensitive witness, the party seeking to take the deposition shall consult with the other parties and the deponent in an effort to reach an agreement on the time, place, manner and scope of the taking of the deposition. If an agreement cannot be reached, the party seeking to take the deposition shall so advise the court and specify the matters which are in dispute. The court shall then issue an order regulating the taking of the deposition including, in its discretion, a requirement that the deposition be taken in the presence of a judge or special master. The restrictions of 13 V.S.A. § 3255(a) shall apply to depositions. If a party taking a deposition proposes to ask about information that falls within 13 V.S.A.

§ 3255(a)(3)(A)-(C), the party shall notify the other parties and the deponent of this intent prior to seeking agreement on the scope of the deposition.

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

(4) Pro se defendants. A pro se defendant in a prosecution for an offense listed in subdivision (e)(5) or (f)(2) of this section shall not be permitted to depose the victim directly. In such a case, the court shall appoint counsel for the defendant for purposes of the deposition.

#### Sec. 27. REPORT

The court administrator, the department of state's attorneys and sheriffs, the office of the defender general, and the center for crime victim services shall individually report and the Vermont bar association and the American Civil Liberties Union of Vermont are respectfully requested to report individually to the senate and house committees on judiciary in January 2011 on the impacts of Sec. 26 of this act as it relates to disposition of the cases addressed in Sec. 26.

#### Sec. 27a. SUNSET

Section 26 of this act shall be repealed on July 1, 2011.

Sec. 28. Rule 804a of the Vermont Rules of Evidence is amended to read:

804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE ~~TEN~~ 12 OR UNDER; ~~MENTALLY RETARDED OR MENTALLY ILL~~ PERSON IN NEED OF GUARDIANSHIP

(a) Statements by a person who is a child ~~ten~~ 12 years of age or under or a ~~mentally retarded or mentally ill~~ person in need of guardianship as defined in 14 V.S.A. § ~~3061(4) or (5)~~ § 3061 at the time of ~~trial~~ the statements were made are not excluded by the hearsay rule if the court specifically finds at the time they are offered that:

(1) the statements are offered in a civil, criminal, or administrative proceeding in which the child or ~~mentally retarded or mentally ill~~ person in need of guardianship is a putative victim of sexual assault under 13 V.S.A. § 3252, aggravated sexual assault under 13 V.S.A. § 3253, aggravated sexual assault of a child under 13 V.S.A. § 3253a, lewd or lascivious conduct under 13 V.S.A. § 2601, ~~or~~ lewd or lascivious conduct with a child under 13 V.S.A. § 2602, incest under 13 V.S.A. § 205, abuse, neglect, or exploitation under 33 V.S.A. § 6913, sexual abuse of a vulnerable adult under 13 V.S.A. § 1379, or wrongful sexual activity and the statements concern the alleged crime or the wrongful sexual activity; or the statements are offered in a juvenile proceeding under chapter ~~55~~ 52 of Title 33 involving a delinquent act alleged to have been committed against a child ~~thirteen~~ 13 years of age or under or a ~~mentally retarded or mentally ill~~ person in need of guardianship, if the delinquent act would be an offense listed herein if committed by an adult and the statements concern the alleged delinquent act; or the child is the subject of a petition alleging that the child is in need of care or supervision under chapter ~~55~~ 53 of Title 33, and the statement relates to the sexual abuse of the child;

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

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

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

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

Sec. 29. 33 V.S.A. § 4916b is amended to read:

§ 4916b. HUMAN SERVICES BOARD HEARING

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

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

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

(3) Rule 804a of the Vermont Rules of Evidence (V.R.E) shall apply to hearings held under this subsection only as follows:

(A) V.R.E. 804a(a)(1) and (4) shall apply.

(B) V.R.E. 804a(a)(2) shall apply, except that any deposition or testimony given under oath at another proceeding shall be admissible evidence in a hearing held under this subsection.

(C) V.R.E. 804a(a)(3) shall apply to hearings under this subsection unless the hearing officer determines, based on a preponderance of the evidence, that requiring the child to testify will present a substantial risk of trauma to the child.

(D) V.R.E. 804a(b) shall not apply.

(4) Convictions and adjudications which arose out of the same incident of abuse or neglect for which the person was substantiated, whether by verdict, by judgment, or by a plea of any type, including a plea resulting in a deferred sentence, shall be competent evidence in a hearing held under this subchapter.

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

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

\* \* \* Sentencing \* \* \*

Sec. 30. 13 V.S.A. § 3253a is added to read:

§ 3253a. AGGRAVATED SEXUAL ASSAULT OF A CHILD

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

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

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

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

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

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

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

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

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

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

Secs. 31 and 32. [RESERVED]



Sec. 33. 13 V.S.A. § 7041 is amended to read:

§ 7041. DEFERRED SENTENCE

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

(b) Notwithstanding subsection (a) of this section, the court may defer sentencing and place the respondent on probation without a written agreement between the state's attorney and the respondent if the following conditions are met:

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

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

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

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

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

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

(c) Notwithstanding subsections (a) and (b) of this section, the court may not defer a sentence for a violation of section 3253a of this title (aggravated sexual assault of a child).

(d) Entry of deferment of sentence shall constitute an appealable judgment for purposes of appeal in accordance with section 2383 of Title 12 and Rule 3 of the Vermont Rules of Appellate Procedure. Except as otherwise provided, entry of deferment of sentence shall constitute imposition of sentence solely for the purpose of sentence review in accordance with section 7042 of this title. The court may impose sentence at any time if the respondent violates the conditions of the deferred sentence during the period of deferment.

~~(d)~~(e) Upon violation of the terms of probation or of the deferred sentence agreement, the court shall impose sentence. Upon fulfillment of the terms of probation and of the deferred sentence agreement, the court shall strike the adjudication of guilt and discharge the respondent. ~~Upon discharge~~ Except as

provided in subsections (g) and (h) of this section, the record of the criminal proceedings shall be expunged ~~except that the record shall not be expunged until restitution has been paid in full~~ upon the discharge of the respondent from probation, absent a finding of good cause by the court. The court shall issue an order to expunge all records and files related to the arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation related to the deferred sentence. Copies of the order shall be sent to each agency, department, or official named therein. Thereafter, the court, law enforcement officers, agencies, and departments shall reply to any request for information that no record exists with respect to such person upon inquiry in the matter. Notwithstanding this subsection, the record shall not be expunged until restitution has been paid in full.

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

(g) Upon discharge of the respondent from probation for a violation of section 2602 (lewd and lascivious conduct with a child), 3252(c), (d), or (e) (sexual assault of a child), or 3253(a)(8) (aggravated sexual assault involving a child under 13) of this title, the court shall issue an order to expunge any record of the adjudication of guilt related to the deferred sentence. An entity subject to the expungement order shall be permitted to retain its own records and files related to the arrest, citation, investigation, and charge which led to the deferred sentence, and may share such records and files with other investigating agencies in accordance with state and federal law. Copies of the order shall be sent to each agency, department, or official named therein. The court, law enforcement officers, agencies, and departments shall reply to any request for information that no record of conviction exists with respect to such person upon inquiry in the matter.

(h) The Vermont criminal information center shall retain a special index of deferred sentences for sex offenses that require registration pursuant to subchapter 3 of chapter 167 of this title. This index shall only list the name and date of birth of the subject of the expunged files and records, the offense for which the subject was convicted, and the docket number of the proceeding which was the subject of the expungement. The special index shall be confidential and may be accessed only by the director of the Vermont criminal information center and a designated clerical staffperson for the purpose of providing information to the department of corrections in the preparation of a presentence investigation in accordance with 28 V.S.A. § 204a.

Sec. 33a. 33 V.S.A. § 5117(b)(1) is amended to read:

(b)(1) Notwithstanding the foregoing, inspection of such records and files by the following is not prohibited:

\* \* \*

(G) The commissioner of corrections if the information would be helpful in preparing a presentence report, in determining placement, or in developing a treatment plan for a person convicted of a sex offense that requires registration pursuant to subchapter 3 of chapter 167 of Title 13.

Sec. 34. 33 V.S.A. § 5119 is amended to read:

§ 5119. SEALING OF RECORDS

\* \* \*

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

\* \* \*

(5) The order unsealing a record pursuant to subdivisions (2), (3), and (4) of this subsection must state whether the record is unsealed entirely or in part and the duration of the unsealing. If the court's order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed or the particular persons who may have access to the record, or both.

(6) If a person is convicted of a sex offense that requires registration pursuant to subchapter 3 of chapter 167 of Title 13, the court in which the person was convicted:

(A) may inspect its own files and records included in the sealing order for the purpose of imposing sentence upon or supervising the person for the registrable offense; and

(B) shall examine court indices developed pursuant to subdivision (e)(2)(A) of this section. If the offender appears on any of the court indices, the court shall unseal any court files and records relating to the juvenile adjudication and shall make them available to the commissioner of corrections for the purposes of preparing a presentence investigation, determining placement, or developing a treatment plan. The commissioner shall use only information relating to adjudications relevant to a sex offense conviction.

Sec. 35. 28 V.S.A. § 204 is amended to read:

§ 204. SUBMISSION OF WRITTEN REPORT; PROTECTION OF RECORDS

(a) A court, before which a person is being prosecuted for any crime, may in its discretion order the commissioner to submit a written report as to the circumstances of the alleged offense and the character and previous criminal history record of the person, with recommendation. If the presentence report is being prepared in connection with a person's conviction for a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13, the commissioner shall obtain information pertaining to the person's juvenile record, if any, in accordance with 33 V.S.A. §§ 5117 and 5119(f)(6), and any deferred sentences received for a registrable sex offense in accordance with 13 V.S.A. § 7041(g), and include such information in the presentence report.

\* \* \*

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

\* \* \*

Sec. 36. 28 V.S.A. § 204a is amended to read:

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

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

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

(7) an offense involving sexual exploitation of children in violation of chapter 64 of Title 13.

(b) A presentence investigation required by this section:

(1) shall include an assessment of the offender's risk of reoffense and a determination of whether the person is a high risk offender;

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

(3) shall include information regarding the offender's records maintained by the department for children and families in the child protection registry pursuant to 33 V.S.A. § 4916 if the offender was previously substantiated for child abuse or neglect;

(4) shall include information, if any, regarding any deferred sentences received by the offender for a registrable sex offense in accordance with 13 V.S.A. § 7041(h); and

(5) shall be completed before the defendant is sentenced. Upon completion, the department shall submit copies of the presentence investigation to the court, the state's attorney, ~~and~~ the defendant's attorney, and the department for children and families. Copies of a presentence investigation authorized by this subdivision shall remain privileged and are not subject to public inspection.

\* \* \*

(d) The requirement that a presentence investigation be performed pursuant to subsection (a) of this section:

~~(1) may be waived if the court finds that a report is not necessary for purposes of sentencing; and~~

~~(2) shall not be interpreted to prohibit the performance of a presentence investigation, psychosexual evaluation, or risk assessment at any other time during the proceeding, including prior to the entry of a plea agreement or prior to sentencing for a violation of probation.~~

\* \* \*

Sec. 37. 33 V.S.A. § 4919 is amended to read:

#### § 4919. DISCLOSURE OF REGISTRY RECORDS

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

\* \* \*

(9) To the commissioner of the department of corrections in accordance

with the provisions of 28 V.S.A. § 204a(b)(3).

\* \* \* Corrections and Supervision \* \* \*

Sec. 38. 28 V.S.A. § 252a is added to read:

§ 252a. REVIEW OF PROBATION CONDITIONS

(a) When the court imposes a sentence upon a defendant who has been convicted of an offense enumerated in section 204a of this title that includes a period of incarceration of more than one year to serve to be followed by probation, the court may make the probation contingent on the offender fulfilling specific stated conditions, such as taking part in treatment while incarcerated, and may modify, following a hearing pursuant to subsection (c) of this section, the conditions of probation if a violation has occurred. The court shall review the probation conditions imposed at the time of sentencing after the incarceration portion of the sentence has been served, and prior to the offender's release to probation. Such review shall include information about the offender developed after the date of sentencing, including information about the offender's incarceration period.

(b) For an offender whose probation is contingent on fulfilling conditions pursuant to subsection (a) of this section, the department of corrections shall prepare a prerelease probation report to the court at least 30 days prior to the release based upon information available to the department. The prerelease probation report shall include the offender's degree of participation in treatment while incarcerated, whether conditions imposed under subsection (a) of this section were complied with, and other information relevant to the offender's release to the probationary sentence. The department of corrections shall provide a copy of the prerelease probation report to the attorney for the offender and the prosecuting attorney at the same time it provides the report to the court.

(c) If the commissioner of corrections believes the offender has violated a condition imposed under subsection (a) of this section, he or she may recommend a change to the original probation order. In this case, the court shall schedule a modification hearing prior to the release date. The court may modify the conditions or add further requirements as authorized by section 252 of this title. The offender shall have a reasonable opportunity to contest the modification prior to its imposition. The prosecuting attorney shall represent the state in connection with any proceeding held in accordance with this section.

Sec. 39. 28 V.S.A. § 252 is amended to read:

§ 252. CONDITIONS OF PROBATION

\* \* \*

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

\* \* \*

(16) Submit to periodic polygraph testing if the offender is being placed on probation for a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13;

(17) If the probation officer has reasonable grounds to believe the offender has violated a probation condition, permit a probation officer or designee to monitor or examine the offender's activities, communications, and use of any computer or other digital or electronic media, including cell phone, smartphone, digital camera, digital video camera, digital music player or recorder, digital video player or recorder, personal digital assistant, portable electronic storage device, gaming system, or any other contemporary device capable of the storage of digital electronic communication or data storage or access to the Internet or other computer or digital network;

(18) Satisfy any other conditions reasonably related to his or her rehabilitation. Such conditions may include prohibiting the use of alcohol, prohibiting having contact with minors, prohibiting or limiting the use of a computer or other electronic devices, and permitting a probation officer access to all computers or other digital or electronic media, mail covers, subscription services, and credit card statements. The court shall not impose a condition prohibiting the offender from engaging in any legal behavior unless the condition is reasonably related to the offender's rehabilitation or necessary to reduce risk to public safety.

Sec. 40. [RESERVED]

Sec. 41. 28 V.S.A. § 255 is amended to read:

§ 255. DISCHARGE

(a) Upon the termination of the period of probation or the earlier discharge of the probationer in accordance with section 251 of this title, the probationer shall, ~~unless the court has ordered otherwise under subsection (b) of this section or under subsection 7043(1) of Title 13,~~ be relieved of any obligations imposed by the order of the court and shall have satisfied the sentence for the crime.

(b) [DELETED]

(c) A court hearing shall be held prior to discharging an offender from probation for a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13.

Sec. 42. 28 V.S.A. § 106 is added to read:

§ 106. SYSTEMS APPROACH TO COMMUNITY SUPERVISION OF SEX OFFENDERS

(a) The department of corrections shall establish a comprehensive systems approach to the management of sex offenders, which employs longer and more intensive community supervision of high-risk sex offenders. To accomplish this, the department shall employ probation officers with training in the management of sex offenders sufficient to provide intensive community supervision and may use polygraph tests and prerelease and postincarceration treatment to promote rehabilitation.

(b) The department shall create multidisciplinary case management teams, each involving as appropriate a probation or parole officer with training in supervision of sex offenders, a treatment provider, a victim's advocate, a representative of the department for children and families, and a forensic polygraph examiner. These professionals shall collaborate, prioritizing community safety and the protection of former victims, and shall participate and cooperate in compliance with 13 V.S.A. § 5415 with the local special investigation unit. These teams shall address the specific treatment and supervision needs of a particular offender to enhance protection of the public, to assist that offender in reintegrating safely into the community, to support and protect known victims, and to respond to any new concerns about risk of reoffense.

(c) The department of corrections shall designate and train probation and parole officers in each district office to supervise sex offenders, to provide consistent and intensive case management, and to impose and enforce conditions uniquely suited to aiding the offenders' reintegration into the community. These officers shall not have a caseload of more than 45 offenders, except that a mixed caseload shall be managed pursuant to subdivision 105(d)(5) of this title.

Sec. 43. AUDIT OF DEPARTMENT OF CORRECTIONS' CASELOADS PERTAINING TO SEX OFFENDERS

(a) On or before January 15, 2011, the auditor of accounts shall submit to the house and senate committees on judiciary and the house committee on corrections and institutions an independent audit of the effectiveness of probation and parole's management of current sex offender caseloads.



(b) The audit shall be conducted in consultation with the center for the prevention and treatment of sexual abuse.

Sec. 44. 28 V.S.A. § 204b is added to read:

§ 204b. HIGH-RISK SEX OFFENDERS

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

Sec. 45. 33 V.S.A. § 4913 is amended to read:

§ 4913. SUSPECTED CHILD ABUSE AND NEGLECT; REMEDIAL ACTION

(a) Any physician, surgeon, osteopath, chiropractor, or physician's assistant licensed, certified, or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, emergency medical personnel as defined in subdivision 2651(6) of Title 24, dentist, psychologist, pharmacist, any other health care provider, child care worker, school superintendent, school teacher, school librarian, school principal, school guidance counselor, and any other individual who is regularly employed by a school district, or who is contracted and paid by a school district to provide student services for five or more hours per week during the school year, mental health professional, social worker, probation officer, any employee, contractor, and grantee of the agency of human services who have contact with clients, police officer, camp owner, camp administrator, camp counselor, or member of the clergy who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 4914 of this title within 24 hours. As used in this subsection, "camp" includes any residential or nonresidential recreational program.

\* \* \*

Sec. 46. TRAINING IN THE REPORTING OF SUSPECTED CHILD ABUSE; AGENCY OF HUMAN SERVICES

The agency of human services shall develop protocols for determining which of its employees, contractors, and grantees are mandatory reporters for purposes of 33 V.S.A. § 4913. The agency of human services shall train its employees who are mandatory reporters pursuant to 33 V.S.A. § 4913 in the

identification and reporting of suspected child abuse and neglect, including the assessment of risk of harm, and report to the senate and house committees on judiciary, the senate committee on health and welfare, the house committee on human services, and the house committee on corrections and institutions no later than September 15, 2009 regarding its efforts to ensure that its employees are properly trained.

Sec. 47. 28 V.S.A. § 502b is amended to read:

§ 502b. TERMS AND CONDITIONS OF PAROLE

(a) When an inmate is paroled, the parole board shall establish terms and conditions of parole that it deems reasonably necessary to ensure that the inmate will lead a law-abiding life and that will assist the inmate to do so. Such terms and conditions shall be set forth in the parolee's parole agreement. Terms and conditions of parole shall be designed to protect the victim, potential victims, and the public, and to reduce the risk of reoffense. Such conditions may include prohibiting the use of alcohol; prohibiting having contact with minors; prohibiting or limiting the use of a computer or other electronic devices; permitting a probation officer access to all computers or other digital or electronic media, mail covers, subscription services, and credit card statements; and if a probation officer has reasonable grounds to believe the offender has violated a parole condition, permit a probation officer to monitor or examine the offender's activities, communications, and use of any computer or other digital or electronic device, including cell phone, smartphone, digital camera, digital video camera, digital music player or recorder, digital video player or recorder, personal digital assistant, portable electronic storage device, gaming system, or any other contemporary device capable of the storage of digital electronic communication or data storage or access to the Internet or other computer or digital network.

\* \* \*

Sec. 48. Rule 32.1 of the Vermont Rules of Criminal Procedure is amended to read:

RULE 32.1. REVOCATION AND MODIFICATION OF PROBATION

(a) Revocation of Probation.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Release From Custody.

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

(B) A probationer who is serving a sentence for a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13 who violates a risk-related condition of probation may be held in custody until the revocation hearing.

(b) Modification of Probation. A hearing and assistance of counsel are required before the terms or conditions of probation can be modified, unless

the relief granted to the probationer upon his or her request or the court's own motion is favorable to ~~him~~ the probationer.

\* \* \* Systemwide \* \* \*

Sec. 49. AUDIT OF THE STATE'S SEXUAL ABUSE RESPONSE SYSTEM

(a) On or before November 15, 2011, and every five years thereafter, the auditor of accounts shall submit to the house and senate committees on judiciary, the house committees on corrections and institutions, on appropriations, on education, and on human services, and the senate committee on health and welfare an independent audit which assesses the status of the state's sexual abuse response system, including prevention, criminal investigations, presentence investigations and sentencing of offenders, supervision and treatment of offenders, victim and family assistance and treatment, and training for those working in the system.

(b) The audit shall be conducted in consultation with the center for the prevention and treatment of sexual abuse.

Sec. 50. 33 V.S.A. § 306 is amended to read:

§ 306. ADMINISTRATIVE PROVISIONS

\* \* \*

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

Sec. 51. [RESERVED]

Sec. 52. REPORT; DEPARTMENT OF CORRECTIONS

On or before November 15, 2009, the department of corrections shall report to the senate and house committees on judiciary, the senate committee on health and welfare, the house committee on human services, the senate committee on corrections; and the house committee on corrections and institutions regarding the following:

(1) Proposed legislation on protocols for releasing a sex offender from confinement into a home with children. Such protocols shall address:

(A) the notification of the department for children and families by the department of corrections if placement in a home with children is being considered;

(B) how the department for children and families and the department of corrections will work together in a coordinated fashion to determine whether such a placement is appropriate;

(C) the procedure to be followed if the department for children and families determines that risk of harm exists to a child based on the placement of the offender in the home and the proposed residence is not approved; and

(D) the procedure by which the decision to place an offender in a home with a child will be reviewed by the departments to ensure that a risk of harm to a child does not emerge.

(2) Criteria and centralized review of release recommendations made by the department with respect to sex offenders. 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 despite treatment team advice to the contrary should be reviewed by the commissioner or a designee. The department should operate under the assumption that sex offenders should be supervised in the community for as long as possible unless overwhelming information indicates otherwise.

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

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

Sec. 52a. 24 V.S.A. § 1940(c) is amended to read:

(c) A specialized investigative unit grants board is created which shall be comprised of the attorney general, the secretary of administration, the executive director of the department of state's attorneys, the commissioner of the department of public safety, a representative of the Vermont sheriffs' association, a representative of the Vermont association of chiefs of police, the executive director of the center for crime victim services, and the executive director of the Vermont League of Cities and Towns, Inc. Specialized investigative units organized and operating under this section for the investigation of sex crimes, child abuse, elder abuse, domestic violence, or crimes against those with physical or developmental disabilities may apply to

the board for a grant or grants covering the costs of salaries and employee benefits to be expended during a given year for the performance of unit duties as well as unit operating costs for rent, utilities, equipment, training, and supplies. Grants under this section shall be approved by a majority of the entire board and shall not exceed 50 percent of the yearly salary and employee benefit costs of the unit. Preference shall be given to grant applications which include the participation of the department of public safety, the department for children and families, sheriffs' departments, community victims' advocacy organizations, and municipalities within the region.

#### Sec. 53. EFFECTIVE DATES

(a) This section and Secs. 1 (legislative intent), 2 (comprehensive statewide approach to the prevention of child sexual abuse), 2a (sexual violence prevention task force), 11–13b (community outreach; center for the prevention and treatment of sexual abuse; sexual exploitation of a minor; listed crime definition; sex offender definition), 16–22 (special investigation units; multidisciplinary teams; DNA), 30 (aggravated sexual assault of a child), 46 (training AHS employees regarding mandatory reporting) and 49–52a (audit; child near fatality; DOC report; special investigation units) of this act shall take effect upon passage.

(b) Secs. 10 (child care facilities), 14–15 (reporting to sex offender registry), 26–29 (depositions; hearsay exceptions; human services board hearings), 33–44 (deferred sentences; juvenile records; probation conditions; discharge from probation audit of DOC sex offender caseloads, high-risk sex offenders), 47 (parole), and 48 (modification of probation) of this act shall take effect July 1, 2009.

(c) Secs. 8 (subscription service) and 45 (mandatory reporting of child abuse and neglect) of this act shall take effect July 1, 2010.

(d) Secs. 23–25 (DNA) of this act shall take effect July 1, 2011.

(e) All other sections of this act shall take effect as explicitly set forth in Secs. 3b (comprehensive health education), 6c (licensing and employment), 7a (volunteers, work study students, and community-based learning), and 9a (information for school employees and the public).

#### **SENATE PROPOSAL OF AMENDMENT TO HOUSE PROPOSAL OF AMENDMENT TO S. 13 TO BE OFFERED BY SENATOR SEARS ON BEHALF OF THE COMMITTEE ON JUDICIARY**

Senator Sears, on behalf of the Committee on Judiciary, recommends that the Senate concur with the House proposal of amendment, with further proposals of amendment to read as follows:

First: In Sec. 2, in subsection (b), by striking out the following: “and upon the work of the sexual violence prevention task force, created by the general assembly in No. 192 of the Acts of the 2005 Adj. Sess. (2006),”

Second: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read as follows:

Sec. 7. VOLUNTEERS; STUDY

The commissioner of education shall examine ways to ensure that students are not placed in situations where they may be vulnerable to sexual exploitation or abuse without creating barriers that make it impossible or impractical for volunteers to assist school staff. The commissioner shall propose mechanisms for ensuring that registered sex offenders do not have unsupervised contact with students as volunteers. On or before January 15, 2010, the commissioner shall submit recommendations to the house and senate committees on education and on judiciary.

Third: In Sec. 7a, after the words “This section”, by adding a comma, and striking out the word “and”, and after “Sec. 7” by adding the following: and Sec. 7b and by adding a new section to be numbered Sec. 7b, to read as follows:

Sec. 7b. 16 V.S.A. § 260 is amended to read:

§ 260. SCHOOL BOARD POLICIES

Each school board shall, by July 1, 1999, adopt a policy on supervision of volunteers and work study students. Policies shall require that superintendents, headmasters of recognized or approved schools, and their contractors check the names and birth dates of any work study students with the Vermont Internet sex offender registry prior to allowing work study students unsupervised contact with schoolchildren. A person who is on the Vermont Internet sex offender registry shall not be eligible to be a work study student.

Fourth: By striking out Sec. 13 in its entirety and inserting in lieu thereof a new Sec. 13 to read as follows:

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

§ 3258. SEXUAL EXPLOITATION OF A MINOR

(a) No person shall engage in a sexual act with a minor if:

(1) the actor is at least 48 months older than the minor; and

(2) the actor is in a position of power, authority, or supervision over the minor by virtue of the actor’s undertaking the responsibility, professionally or voluntarily, to provide for the health or welfare of minors, or guidance.

leadership, instruction, or organized recreational activities for minors.

(b) A person who violates subsection (a) of this section shall be imprisoned for not more than one year or fined not more than \$2,000.00, or both.

(c) A person who violates subsection (a) of this section and who abuses his or her position of power, authority, or supervision over the minor in order to engage in a sexual act shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both.

Fifth: In Sec. 18, 33 V.S.A. § 4917, subsection (b), by striking out the following: “, unless the team chair determines that participation by the department is not necessary”

Sixth: By adding two new sections to be numbered Secs. 31 and 32 to read as follows:

#### Sec. 31. LEGISLATIVE INTENT; CONSENT BY A MINOR

It is the intent of the general assembly in this act to address, among other issues, the Vermont supreme court’s decisions in State v. Deyo, 2006 VT 120, and State v. Hazelton, 2006 VT 121. These cases could be read to permit minors who engage in more than one consensual act to be prosecuted for aggravated sexual assault and subject to lifetime prison terms with ten-year minimum sentences. Such a result would contradict the legislature’s intent when it enacted amendments to the statutory rape law in 2006 to ensure that certain teenagers who engaged in consensual sexual acts would not be criminally liable, or would at least not be subject to high mandatory minimum sentences. In this act, the general assembly responds to Deyo and Hazelton by clarifying further that “consent” as defined in 13 V.S.A. § 3251(3) means consent in fact.

Sec. 32. 13 V.S.A. § 3251 is amended to read:

#### § 3251. DEFINITIONS

As used in this chapter:

\* \* \*

(3) “Consent” means words or actions by a person indicating a voluntary agreement to engage in a sexual act. Provided, further, that when the general assembly uses the terms “consent,” “consensual,” and “nonconsensual,” it means consent or nonconsent in fact.

\* \* \*

Seventh: By adding a new section to be numbered Sec. 33b to read as follows:



Sec. 33b. 13 V.S.A. § 7041 is amended to read:

§ 7041. DEFERRED SENTENCE

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

(b) Notwithstanding subsection (a) of this section, the court may defer sentencing and place the respondent on probation without a written agreement between the state's attorney and the respondent if the following conditions are met:

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

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

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

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

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

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

(c) Notwithstanding subsections (a) and (b) of this section, the court may not defer a sentence for a violation of section 3253a ~~of this title~~ (aggravated sexual assault of a child, section 2602 (lewd and lascivious conduct with a child unless the victim and the defendant were within five years of age and the act was consensual), 3252(c) (sexual assault of a child under 16 unless the victim and the defendant were within five years of age and the act was consensual), 3252(d) or (e) (sexual assault of a child), 3253(a)(8) (aggravated sexual assault), or 3253a (aggravated sexual assault of a child) of this title.

(d) Entry of deferment of sentence shall constitute an appealable judgment for purposes of appeal in accordance with section 2383 of Title 12 and Rule 3 of the Vermont Rules of Appellate Procedure. Except as otherwise provided, entry of deferment of sentence shall constitute imposition of sentence solely for the purpose of sentence review in accordance with section 7042 of this title.

The court may impose sentence at any time if the respondent violates the conditions of the deferred sentence during the period of deferment.

(e) Upon violation of the terms of probation or of the deferred sentence agreement, the court shall impose sentence. Upon fulfillment of the terms of probation and of the deferred sentence agreement, the court shall strike the adjudication of guilt and discharge the respondent. Except as provided in ~~subsections (g) and~~ subsection (h) of this section, the record of the criminal proceedings shall be expunged upon the discharge of the respondent from probation, absent a finding of good cause by the court. The court shall issue an order to expunge all records and files related to the arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation related to the deferred sentence. Copies of the order shall be sent to each agency, department, or official named therein. Thereafter, the court, law enforcement officers, agencies, and departments shall reply to any request for information that no record exists with respect to such person upon inquiry in the matter. Notwithstanding this subsection, the record shall not be expunged until restitution has been paid in full.

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

~~(g) Upon discharge of the respondent from probation for a violation of section 2602 (lewd and lascivious conduct with a child), 3252(e), (d), or (e) (sexual assault of a child), or 3253(a)(8) (aggravated sexual assault involving a child under 13) of this title, the court shall issue an order to expunge any record of the adjudication of guilt related to the deferred sentence. An entity subject to the expungement order shall be permitted to retain its own records and files related to the arrest, citation, investigation, and charge which led to the deferred sentence, and may share such records and files with other investigating agencies in accordance with state and federal law. Copies of the order shall be sent to each agency, department, or official named therein. The court, law enforcement officers, agencies, and departments shall reply to any request for information that no record of conviction exists with respect to such person upon inquiry in the matter.~~

(h) The Vermont criminal information center shall retain a special index of deferred sentences for sex offenses that require registration pursuant to subchapter 3 of chapter 167 of this title. This index shall only list the name and date of birth of the subject of the expunged files and records, the offense for which the subject was convicted, and the docket number of the proceeding which was the subject of the expungement. The special index shall be

confidential and may be accessed only by the director of the Vermont criminal information center and a designated clerical staffperson for the purpose of providing information to the department of corrections in the preparation of a presentence investigation in accordance with 28 V.S.A. § 204a.

Eighth: In Sec. 41, 28 V.S.A. § 255(a), by removing the strike-throughs from the following: “~~unless the court has ordered otherwise under subsection (b) of this section or under subsection 7043(1) of Title 13,~~”

Ninth: By adding a new section to be numbered Sec. 51 to read as follows:

Sec. 51. LOCAL COMMUNITY SEX OFFENDER RESIDENCY RESTRICTIONS

(a) 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.

(b) The general assembly is very concerned that such policies could have a negative impact on public safety in our rural state 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. Sex offender compliance with the state registry is currently over 99 percent, and the general assembly believes that keeping this high rate is essential to public safety.

(c) According to sex offender management experts, research has shown that sex offender residency restrictions are unlikely to deter sex offenders from committing new crimes and should not be considered a viable public safety strategy. While residency restrictions are intended to reduce sex crimes against children by strangers, 90 percent of such crimes are committed by a relative or family friend.

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

Tenth: In Sec. 53, subsection (b), after the following: “high-risk sex offenders,” by adding the following: 45 (mandatory reporting of child abuse and neglect), and in subsection (c), at the beginning of the subsection, by striking out “Secs.” and inserting in lieu thereof the following: Sec. and by

striking out the following: “and 45 (mandatory reporting of child abuse and neglect)”, and by adding a new subsection (f) to read as follows:

(f) Sec. 33b shall take effect July 1, 2014.

## NOTICE CALENDAR

### Proposed Amendment to the Constitution

#### PROPOSAL 5

#### (First day on Notice Calendar pursuant to Rule 83)

Pursuant to Rule 83 of the Senate Rules, notice is hereby given that proposed amendment to the Constitution, Proposal 5, set forth below, will be read the third time and acted upon, on the seventh legislative day following Wednesday, February 25, 2009. At that time, the following question shall be presented: “Shall the Senate concur in the proposal and request the concurrence of the House?”

**SUBJECT:** Elections; voter’s oath; self-administration

**PENDING ACTION:** Third reading of the proposal (second biennium)

#### PROPOSAL 5

#### Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont to provide that a person who will attain the age of 18 by the date of the general election shall have the right to vote in the primary election.

Sec. 2. Section 42 of Chapter II of the Vermont Constitution is amended to read:

#### § 42. [VOTER'S QUALIFICATIONS AND OATH]

Every person of the full age of eighteen years who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who is of a quiet and peaceable behavior, and will take the following oath or affirmation, shall be entitled to all the privileges of a voter of this state:

You solemnly swear (or affirm) that whenever you give your vote or suffrage, touching any matter that concerns the State of Vermont, you will do it so as in your conscience you shall judge will most conduce to the best good of the same, as established by the Constitution, without fear or favor of any person.

Every person who will attain the full age of eighteen years by the date of the general election who is a citizen of the United States, having resided in this

State for the period established by the General Assembly and who is of a quiet and peaceable behavior, and will take the oath or affirmation set forth in this section, shall be entitled to vote in the primary election.

Sec. 3. EFFECTIVE DATE

This proposal of amendment shall take effect from the date of its approval by a majority vote of the voters of the state.

**Ordered to Lie**

**S. 7**

An act to prohibit the use of lighted tobacco products in the workplace.

**PENDING QUESTION:** Shall the bill be amended as recommended by the Committee on Health and Welfare?

**CONFIRMATIONS**

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Susan D. Plaustiner of Brownsville – Member of the Vermont Economic Development Authority – By Sen. Maynard for the Committee on Finance. (1/21)

Rachel Schumacher of North Bennington – Member of the Vermont Economic Development Authority – By Sen. Hartwell for the Committee on Finance. (1/21)

Steven J. Bourgeois of Swanton – Member of the Vermont Economic Development Authority – By Sen. Carris for the Committee on Finance. (1/28)

Thomas Pelletier of Montpelier – Member of the Vermont Housing Finance Agency – By Sen. Cummings for the Committee on Finance. (1/28)

Neale F. Lunderville of Burlington – Secretary of the Agency of Administration – By Sen. Flanagan for the Committee on Government Operations. (2/17)

Neale F. Lunderville of Burlington – Secretary of the Agency of Administration – By Sen. Flanagan for the Committee on Government Operations. (2/17)

Michael Welch of St. Johnsbury – Member of the Valuation Appeals Board – By Sen. McCormack for the Committee on Finance. (2/18)

David R. Coates of Colchester – Member of the Vermont Municipal Bond Bank – By Sen. Carris for the Committee on Finance. (2/18)

Sonia D. Alexander of Wilmington – Member of the Valuation Appeals Board – By Sen. Hartwell for the Committee on Finance. (2/25)

### **REPORTS ON FILE**

Pursuant to the provisions of 2 V.S.A. §20(c), one (1) hard copy of the following reports is on file in the office of the Secretary of the Senate. Effective January 2009, pursuant to Act No. 192, Adj. Sess. (2008) §5.005(g) some reports will automatically be sent by electronic copy only and can be found on the State of Vermont webpage.

48. Vermont Long Term Care Ombudsman Project' FY 2008 Annual Report. (February 2009)

*A number of reports were filed electronically and can be found on the State of Vermont webpage.*

### **PUBLIC HEARINGS**

**Wednesday, February 25, 2009 – 2:30-4:30 p.m. – Room 11 – FY 2010 STATE BUDGET** – (House Committee on Appropriations).

**Tuesday, March 17, 2009 – 2:45-4:30 p.m. and 6:30-8:00 p.m.- Room 11** – Vermont's revenue situation – (House Committee on Ways and Means).