

Journal of the House

Thursday, February 19, 2009

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Rev. David Hall of Christ Episcopal Church, Montpelier, VT.

Rules Suspended; House Bills Introduced

House bills of the following titles were severally introduced. Pending first reading of the bills, on motion of **Rep. Komline of Dorset**, the rules were suspended and the bills were read the first time by number and referred or placed on the Calendar as follows:

H. 234

By Reps. Johnson of Canaan, Adams of Hartland, Ainsworth of Royalton, Branagan of Georgia, Brennan of Colchester, Canfield of Fair Haven, Conquest of Newbury, Donaghy of Poultney, Helm of Castleton, Howrigan of Fairfield, Larocque of Barnet, Marcotte of Coventry, McAllister of Highgate, McNeil of Rutland Town, Morrissey of Bennington, Peaslee of Guildhall, Savage of Swanton, Toll of Danville and Winters of Williamstown,

An act relating to authorizing site-specific management plans of wild turkey flocks doing damage;

To the committee on Fish, Wildlife & Water Resources.

H. 235

By Reps. Martin of Springfield, Deen of Westminster, McCullough of Williston, Pellett of Chester, Spengler of Colchester and Zenie of Colchester,

An act relating to outdoor lighting on state property;

To the committee on Corrections and Institutions.

H. 236

By Rep. Malcolm of Pawlet,

An act relating to a residency requirement for elected planning commission members;

To the committee on Government Operations.

H. 237

By Reps. Donahue of Northfield, Andrews of Rutland City, Fisher of Lincoln, Frank of Underhill, Mrowicki of Putney, Orr of Charlotte and Pugh of South Burlington,

An act relating to governance of the Vermont state hospital;

To the committee on Human Services.

H. 238

By Reps. Donovan of Burlington, Clark of Vergennes, Courcelle of Rutland City, Edwards of Brattleboro, Evans of Essex, Fisher of Lincoln, French of Randolph, Geier of South Burlington, Jerman of Essex, Johnson of South Hero, Keenan of St. Albans City, Kitzmiller of Montpelier, Lorber of Burlington, Macaig of Williston, Martin of Springfield, McFaun of Barre Town, Moran of Wardsboro, Mrowicki of Putney, Nuovo of Middlebury, Partridge of Windham, Potter of Clarendon, Sharpe of Bristol, Weston of Burlington and Zuckerman of Burlington,

An act relating to safe patient handling;

To the committee on Human Services.

H. 239

By Reps. Stevens of Waterbury, Baker of West Rutland, Conquest of Newbury, Edwards of Brattleboro, Savage of Swanton and South of St. Johnsbury,

An act relating to biannual payments of county taxes;

To the committee on Government Operations.

H. 240

By Reps. Adams of Hartland, Baker of West Rutland, Bohi of Hartford, Consejo of Sheldon, Fagan of Rutland City, Helm of Castleton, Higley of Lowell, Howrigan of Fairfield, Hubert of Milton, Komline of Dorset, Krawczyk of Bennington, Lewis of Derby, McCullough of Williston, McFaun of Barre Town, Morley of Barton, Morrissey of Bennington, Peltz of Woodbury, Rodgers of Glover, Scheuermann of Stowe, Spengler of Colchester, Webb of Shelburne and Winters of Williamstown,

An act relating to no-net-loss of state hunting lands;

To the committee on Fish, Wildlife & Water Resources.

H. 241

By Reps. Malcolm of Pawlet, Potter of Clarendon, Lawrence of Lyndon, Stevens of Shoreham, Ainsworth of Royalton, Botzow of Pownal, Bray of New Haven, Partridge of Windham and Taylor of Barre City,

An act relating to amending the Vermont agricultural credit program to include forestry, timber harvesting, and forest products manufacturing ;

To the committee on Agriculture .

H. 242

By Reps. Martin of Springfield, Aswad of Burlington, Courcelle of Rutland City, Deen of Westminster, Devereux of Mount Holly, Jewett of Ripton, McCullough of Williston, Shand of Weathersfield and Spengler of Colchester,

An act relating to insurance coverage for restorative dental composite fillings ;

To the committee on Health Care.

H. 243

By Reps. Adams of Hartland, Consejo of Sheldon, Fagan of Rutland City, McCullough of Williston, Peltz of Woodbury and Rodgers of Glover,

An act relating to the creation of an apprentice hunting license;

To the committee on Fish, Wildlife & Water Resources.

H. 244

By Reps. Zenie of Colchester, Atkins of Winooski, Bissonnette of Winooski, Bohi of Hartford, Bray of New Haven, Condon of Colchester, Consejo of Sheldon, Copeland-Hanzas of Bradford, Devereux of Mount Holly, Fisher of Lincoln, Haas of Rochester, Hube of Londonderry, Johnson of South Hero, Leriche of Hardwick, Macaig of Williston, Marcotte of Coventry, Martin of Springfield, Milkey of Brattleboro, Mook of Bennington, Moran of Wardsboro, Mrowicki of Putney, Pearce of Richford, Peltz of Woodbury, Perley of Enosburg, Spengler of Colchester, Stevens of Waterbury, Townsend of Randolph, Waite-Simpson of Essex and Zuckerman of Burlington,

An act relating to a Vermont state employees' cost-savings incentive program;

To the committee on Government Operations.

H. 245

By Reps. Kitzmiller of Montpelier, Bissonnette of Winooski, Botzow of Pownal, Clerkin of Hartford, Dickinson of St. Albans Town, Lorber of

Burlington, Marcotte of Coventry, Shand of Weathersfield, Smith of Mendon, Turner of Milton and Wilson of Manchester,

An act relating to the administration of trusts;

To the committee on Judiciary.

H. 246

By Rep. Malcolm of Pawlet,

An act relating to quitclaim deeds and adverse possession;

To the committee on Judiciary.

H. 247

By Reps. Waite-Simpson of Essex, Andrews of Rutland City, Atkins of Winooski, Audette of South Burlington, Bissonnette of Winooski, Cheney of Norwich, Condon of Colchester, Donahue of Northfield, Donovan of Burlington, Evans of Essex, Fisher of Lincoln, Frank of Underhill, French of Randolph, Heath of Westford, Jerman of Essex, Lanpher of Vergennes, Lenes of Shelburne, Lorber of Burlington, Macaig of Williston, Martin of Wolcott, Mook of Bennington, Mrowicki of Putney, Partridge of Windham, Pearce of Richford, Peltz of Woodbury, Potter of Clarendon, Sharpe of Bristol, Smith of Mendon, Stevens of Waterbury, Sweaney of Windsor, Till of Jericho, Webb of Shelburne, Young of St. Albans City and Zenie of Colchester,

An act relating to organ and tissue donations;

To the committee on Human Services.

H. 248

By Reps. Greshin of Warren, Devereux of Mount Holly, Scheuermann of Stowe and Smith of Mendon,

An act relating to designating skiing and snowboarding as the official state sports ;

To the committee on General, Housing and Military Affairs.

H. 249

By Reps. Gilbert of Fairfax, Bohi of Hartford, Branagan of Georgia, Clark of Vergennes, Clerkin of Hartford, Consejo of Sheldon, Dickinson of St. Albans Town, French of Randolph, Howrigan of Fairfield, Jerman of Essex, Johnson of South Hero, Keenan of St. Albans City, Martin of Wolcott, McAllister of Highgate, Pearce of Richford, Perley of Enosburg, Potter of Clarendon, Savage of Swanton, Turner of Milton, Waite-Simpson of Essex, Wheeler of Derby and Young of St. Albans City,

An act relating to volunteer nonprofit service organizations and casino nights;

To the committee on General, Housing and Military Affairs.

H. 250

By Reps. Stevens of Waterbury, Andrews of Rutland City, Branagan of Georgia, Burke of Brattleboro, Conquest of Newbury, Donovan of Burlington, Edwards of Brattleboro, Evans of Essex, Fagan of Rutland City, French of Shrewsbury, Greshin of Warren, Jerman of Essex, Lanpher of Vergennes, Lenes of Shelburne, Manwaring of Wilmington, Martin of Springfield, Martin of Wolcott, Moran of Wardsboro, Potter of Clarendon, Ram of Burlington, Shand of Weathersfield, Smith of Mendon, South of St. Johnsbury, Stevens of Shoreham, Sweaney of Windsor, Taylor of Barre City, Townsend of Randolph, Waite-Simpson of Essex, Webb of Shelburne and Wilson of Manchester,

An act relating to a statewide education property tax;

To the committee on Ways and Means.

Bills Referred to Committee on Ways and Means

House bills of the following titles, appearing on the Calendar, affecting the revenue of the state, under the rule, were referred to the Committee on Ways and Means:

H. 62

House bill, entitled

An act relating to an exemption from municipal dog-control ordinances for working farm dogs

H. 109

House bill, entitled

An act relating to the Uniform Limited Cooperative Association Act

Joint Resolution Adopted in Concurrence

J.R.S. 20.

By Senator Shumlin,

Joint resolution providing for a State of the Judiciary message.

Whereas, the State of the Judiciary is an issue of importance to every citizen of the state and every member of this General Assembly; and

Whereas, the General Assembly and the Judiciary, as co-equal branches of state government, should take advantage of opportunities to understand and better appreciate the mission and goals of the other; and

Whereas, a State of the Judiciary message offers a unique opportunity for inter-branch communication on the special challenges currently facing the Judiciary, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the Senate and the House of Representatives shall meet in Joint Assembly on Thursday, February 19, 2009, at 11:30 A.M. for the purpose of hearing the Chief Justice of the Supreme Court of the State of Vermont address the Joint Assembly on the State of the Judiciary.

Was taken up read and adopted in concurrence.

Special Committee Report

Rep. Sweaney of Windsor, for the committee on Government Operations, reported that it has considered the matter of qualification and election of **Rep. Paul Poirier of Barre City**, District Washington 3-1 and finds that Rep. Paul Poirier of Barre City was duly elected and is qualified to represent Washington District 3-1 as a member of the Vermont House of Representatives.

Thereupon, **Rep. Atkins of Winooski** moved that the House adopt the report, which was agreed to.

Message from the Senate No. 18

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has on its part passed Senate bill of the following title:

S. 29. An act relating to legislative committee subpoena power.

In the passage of which the concurrence of the House is requested.

The Senate has on its part adopted joint resolutions of the following titles:

J.R.S. 20. Joint resolution providing for a State of the Judiciary message.

J.R.S. 21. Joint resolution in support of the United States dairy industry.

In the adoption of which the concurrence of the House is requested.

Bill Read Second Time; Consideration Interrupted by Recess

H. 232

Heath of Westford spoke for the committee on Appropriations.

House bill entitled

An act relating to fiscal year 2009 budget adjustment

Having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the bill be read the third time? **Rep. Heath of Westford** moved that the bill be amended as follows:

By inserting a new Sec. 127 to read:

Sec. 127. 10 V.S.A. § 1942(a) and (b) is amended to read:

(a) There is hereby established a licensing fee of one cent per gallon of motor fuel sold by a distributor or dealer or used by a user in this state, which will be assessed against every distributor, dealer or user as defined in 23 V.S.A. chapters 27 and 28, and which will be deposited into the petroleum cleanup fund. After analysis of the projected unencumbered fund balance, ~~The~~ secretary, in consultation with the Vermont Petroleum Association and the Vermont Fuel Dealers Association, Inc. ~~shall~~ may make a recommendation to the legislature as to annually determine whether or not to assess the one-cent licensing fee for the upcoming year. ~~If the unencumbered balance of the motor fuel account of the fund established under subsection 1941(a) of this title is equal to or greater than \$7,000,000.00, then the one cent licensing assessment for the upcoming year shall not be assessed. If the unencumbered balance in the fund is less than \$7,000,000, then the annual fee may be assessed. The secretary shall notify all sellers assessing this fee of the status of the fee for the upcoming year.~~ This fee will be paid in the same manner, at the same time, and subject to the same restrictions or limitations as the tax on motor fuels. The fee will be collected by the commissioner of motor vehicles and deposited into the petroleum cleanup fund. This fee requirement shall terminate on April 1, 2011.

(b) There is assessed against every seller receiving more than \$10,000.00 annually for the retail sale of heating oil or kerosene, sold in this state and not used to propel a motor vehicle, a licensing fee of one-half cent per gallon of such heating oil or kerosene. This fee shall be subject to the collection, administration, and enforcement provisions of chapter 233 of Title 32, and the fees collected under this subsection by the commissioner of taxes shall be deposited into the petroleum cleanup fund. After analysis of the projected unencumbered fund balance, ~~The~~ secretary, in consultation with the Vermont Petroleum Association and the Vermont Fuel Dealers Association, Inc. ~~shall~~ may make a recommendation to the legislature as to annually determine whether or not to assess the one-half cent licensing fee for the upcoming year. ~~If the unencumbered balance of heating fuel account of the fund established~~

~~under subsection 1941(a) of this title is equal to or greater than \$3,000,000.00, then the one half cent licensing assessment for the upcoming year shall not be assessed. If the unencumbered balance in the fund is less than \$3,000,000, then the annual fee may be assessed. The secretary shall notify all sellers assessing this fee of the status of the fee for the upcoming year. This fee provision shall terminate April 1, 2011.~~

And by renumbering the remaining section be renumbered to be numerically correct.

Recess

At ten o'clock and twenty-five minutes in the forenoon, the Speaker declared a recess for a Joint Assembly pursuant to J.R.S. 11, until one o'clock in the afternoon.

At one o'clock in the afternoon, the Speaker called the House to order.

Joint Assembly

At ten o'clock and thirty minutes in the forenoon, the hour for the Joint Assembly having arrived, pursuant to the provisions of Joint resolution, entitled

J.R.S. 11. Joint resolution providing for a Joint Assembly for the election of a Sergeant at Arms, an Adjutant and Inspector General, and three Trustees of the University of Vermont and State Agricultural College;

The Senate appeared in the Hall of the House.

Thereupon, the Joint Assembly recessed its session, at twelve o'clock and forty minutes in the afternoon, until tomorrow morning at nine o'clock in the forenoon.

Consideration Resumed; Bill Amended and Third Reading Ordered

H. 232

Consideration resumed on House bill entitled

An act relating to fiscal year 2009 budget adjustment;

Was taken up and the amendment offered by **Rep. Heath of Westford** agreed to and third reading ordered.

Recess

At two o'clock and twenty-five minutes in the afternoon, the Speaker declared a recess until three o'clock in the afternoon.

At three o'clock in the afternoon, the Speaker called the House to order.

Bill Read Second Time; Consideration Interrupted by Recess**S. 13**

Lippert of Hinesburg, for the committee on Judiciary, to which had been referred House bill, entitled

An act relating to improving Vermont's sexual abuse response system

Reported in favor of its passage when amended 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 September 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 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 requires registration pursuant to subchapter 3 of chapter 167 of Title 13; 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 the safety of students in schools and offsite workplaces 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. The school board shall also provide opportunities for parents, guardians, and other interested persons to receive written information regarding child sexual abuse and sexual violence. 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

~~(C)~~(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)~~ (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, the center for crime victims services, the Vermont bar association, and the American Civil Liberties Union of Vermont shall individually report 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~~ 53 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 FOR FUTURE USE

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 FOR FUTURE USE

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 FOR FUTURE USE

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).

Rep. Acinapura of Brandon, for the committee on Appropriations, recommended the bill ought to pass in concurrence when amended as recommended by the committee on Judiciary.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time and the report of the committees on Judiciary and Appropriations agreed to.

Recess

At four o'clock and forty-five minutes in the afternoon, the Speaker declared a recess until five o'clock and thirty minutes in the afternoon.

At five o'clock and thirty minutes in the afternoon, the Speaker called the House to order.

Consideration Resumed; Bill Amended; Consideration Interrupted by Recess

S. 13

Consideration resumed on Senate bill, entitled

An act relating to Vermont's sexual abuse response system;

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Judiciary?, **Lippert of Hinesburg** moved to amend the report of the committee on Judiciary as follows:

First: In Sec. 3a (Transitional provisions), in subdivision (a)(1), after the word "violence" by adding the word "prevention"

Second: In Sec. 6b, 16 V.S.A. § 252(1), in subdivision (A), by striking “requires registration pursuant to subchapter 3 of chapter 167 of Title 13” and inserting in lieu thereof “is an offense listed in 13 V.S.A. § 5401(10) (sex offender definition for registration purposes)”

Third: In Sec. 28, Rule 804a of the Vermont Rules of Evidence, in subdivision (a)(1), after the words “or the statements are offered in a juvenile proceeding under chapter” by striking “53” and inserting in lieu thereof “52”

Which was agreed to.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Judiciary, as amended? **Rep. Crawford of Burke** moved to amend the report of the committee on Judiciary, as amended, as follows:

First: In Sec. 3a, subsection (a), by striking the date “September 1, 2009” and inserting in lieu thereof the date “July 1, 2009”

Second: In Sec. 3a, subsection (b), by striking the date “July 1, 2010” and inserting in lieu thereof the date “October 31, 2009”

Third: In Sec. 3b, subsection (b), by striking the date “July 1, 2011” and inserting in lieu thereof the date “July 1, 2010”

Thereupon, **Rep. Lippert of Hinesburg** asked that the question be divided and that the recommendation of proposal of amendment offered by Rep. Crawford of Burke in the first instance be taken up first and that the Second and Third instances of recommendation of proposals of amendment be taken up second.

Thereupon, the first recommendation of proposal of amendment offered by Rep. Crawford of Burke in the first instance was agreed to and the Second and Third recommendation of proposals of amendment offered by Rep. Crawford of Burke were disagreed to.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Judiciary, as amended?, **Rep. Canfield of Fair Haven** moved to amend the recommendation of proposal of amendment offered by the committee on Judiciary, as amended, as follows:

By adding a new Sec. 15 a to read:

Sec. 15a to read:

Sec. 15a. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding sections 2056a-2056e of Title 20, the department shall electronically post information on the Internet in accordance with subsection (b) of this section ~~regarding the following sex offenders, upon their release from confinement:~~

~~(1) Sex offenders who have been convicted of a violation of section 3253 of this title (aggravated sexual assault), section 2602 of this title (lewd or lascivious conduct with child) if the offender has been designated as high risk by the department of corrections pursuant to section 5411b of this title, or subdivision 2405(a)(1)(D) of this title if a registrable offense (kidnapping and sexual assault of a child) for all sex offenders who are required to register pursuant to subdivision 5401(10) of this title.~~

~~(2) Sex offenders who have at least one prior conviction for an offense described in subdivision 5401(10) of this subchapter.~~

~~(3) Sex offenders who have failed to comply with sex offender registration requirements and for whose arrest there is an outstanding warrant for such noncompliance. Information on offenders shall remain on the Internet only while the warrant is outstanding.~~

~~(4) Sex offenders who have been designated as sexual predators pursuant to section 5405 of this title.~~

~~(5)(A) Sex offenders who have not complied with sex offender treatment recommended by the department of corrections or who are ineligible for sex offender treatment. The department of corrections shall establish rules for the administration of this subdivision and shall specify what circumstances constitute noncompliance with treatment and criteria for ineligibility to participate in treatment. Offenders subject to this provision shall have the right to appeal the department of corrections' determination in superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure. This subdivision shall apply prospectively and shall not apply to those sex offenders who did not comply with treatment or were ineligible for treatment prior to March 1, 2005.~~

~~(B) The department of corrections shall notify the department if a sex offender who is compliant with sex offender treatment completes his or her sentence but has not completed sex offender treatment. As long as the offender complies with treatment, the offender shall not be considered noncompliant under this subdivision and shall not be placed on the Internet registry in accordance with this subdivision alone. However, the offender shall submit to the department proof of continuing treatment compliance every three months. Proof of compliance shall be a form provided by the department that the offender's treatment provider shall sign, attesting to the offender's continuing~~

~~compliance with recommended treatment. Failure to submit such proof as required under this subdivision (B) shall result in the offender's placement on the Internet registry in accordance with subdivision (A) of this subdivision (5).~~

~~(6) Sex offenders who have been designated by the department of corrections, pursuant to section 5411b of this title, as high risk.~~

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

- (1) the offender's name and any known aliases;
- (2) the offender's date of birth;
- (3) a general physical description of the offender;
- (4) a digital photograph of the offender;
- (5) the offender's ~~town of residence~~ address;
- (6) the date and nature of the offender's conviction;

(7) if the offender is under the supervision of the department of corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;

(8) whether the offender complied with treatment recommended by the department of corrections;

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

(10) the reason for which the offender information is accessible under this section.

(c) The department shall have the authority to take necessary steps to obtain digital photographs of offenders whose information is required to be posted on the Internet and to update photographs as necessary. An offender who is requested by the department to report to the department or a local law enforcement agency for the purpose of being photographed for the Internet shall comply with the request within 30 days.

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

* * *

(l) The Internet registry maintained pursuant to this section shall be searchable by either the offender's name or address.

Thereupon, **Rep. Canfield of Fair Haven** asked leave of the House to withdraw his amendment, which was agreed to.

Recess

At seven o'clock in the evening, the Speaker declared a recess until eight o'clock in the evening.

At eight o'clock in the evening, the Speaker called the House to order.

Consideration Resumed and Third Reading Ordered

S. 13

Consideration resumed on Senate bill, entitled

An act relating to Vermont's sexual abuse response system;

Thereupon, the recommendation of proposal of amendment offered by the committee on Judiciary, as amended, was agreed to.

Pending the question, Shall the bill be read a third time? **Rep. Nease of Johnson** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be read a third time? was decided in the affirmative. Yeas, 131. Nays, 2.

Those who voted in the affirmative are:

Acinapura of Brandon	Higley of Lowell	Myers of Essex
Adams of Hartland	Hooper of Montpelier	Nease of Johnson
Andrews of Rutland City	Howard of Rutland City	Nuovo of Middlebury
Atkins of Winooski *	Howrigan of Fairfield	O'Brien of Richmond
Baker of West Rutland	Hube of Londonderry	Obuchowski of Rockingham
Bissonnette of Winooski	Hubert of Milton	O'Donnell of Vernon
Bohi of Hartford	Jerman of Essex	Orr of Charlotte
Botzow of Pownal	Jewett of Ripton	Partridge of Windham
Branagan of Georgia	Johnson of South Hero	Pearce of Richford
Bray of New Haven	Johnson of Canaan	Peaslee of Guildhall
Brennan of Colchester	Keenan of St. Albans City	Pellett of Chester
Browning of Arlington	Kitzmiller of Montpelier	Perley of Enosburg
Burke of Brattleboro	Koch of Barre Town	Potter of Clarendon
Canfield of Fair Haven	Komline of Dorset	Pugh of South Burlington
Clark of Vergennes	Krawczyk of Bennington	Ram of Burlington
Clarkson of Woodstock	Lanpher of Vergennes	Reis of St. Johnsbury
Clerkin of Hartford	Larocque of Barnet	Rodgers of Glover
Conquest of Newbury	Larson of Burlington	Savage of Swanton
Consejo of Sheldon *	Lenes of Shelburne	Scheuermann of Stowe
Corcoran of Bennington	Leriche of Hardwick	Shand of Weathersfield
Courcelle of Rutland City	Lippert of Hinesburg	Sharpe of Bristol
Crawford of Burke	Lorber of Burlington	Smith of Mendon
Deen of Westminster	Macaig of Williston	South of St. Johnsbury
Devereux of Mount Holly	Malcolm of Pawlet	Stevens of Waterbury
Dickinson of St. Albans Town	Manwaring of Wilmington	Stevens of Shoreham
Donaghy of Poultney	Marcotte of Coventry	Sweaney of Windsor

Donovan of Burlington	Marek of Newfane	Taylor of Barre City
Edwards of Brattleboro	Martin of Springfield	Till of Jericho
Emmons of Springfield	Martin of Wolcott	Toll of Danville
Evans of Essex	Masland of Thetford	Townsend of Randolph
Fagan of Rutland City	McAllister of Highgate	Trombley of Grand Isle
Fisher of Lincoln	McCullough of Williston	Turner of Milton
Flory of Pittsford	McDonald of Berlin	Waite-Simpson of Essex
Frank of Underhill	McFaun of Barre Town	Webb of Shelburne
French of Shrewsbury	McNeil of Rutland Town	Westman of Cambridge
French of Randolph	Milkey of Brattleboro	Weston of Burlington
Geier of South Burlington	Miller of Shaftsbury	Wheeler of Derby
Gilbert of Fairfax	Minter of Waterbury	Wilson of Manchester
Grad of Moretown	Mitchell of Barnard	Winters of Williamstown
Greshin of Warren	Mook of Bennington	Wizowaty of Burlington
Haas of Rochester	Moran of Wardsboro	Young of St. Albans City
Head of South Burlington	Morley of Barton	Zenie of Colchester
Heath of Westford	Morrissey of Bennington	Zuckerman of Burlington
Helm of Castleton	Mrowicki of Putney	

Those who voted in the negative are:

Donahue of Northfield Kilmartin of Newport City *

Those members absent with leave of the House and not voting are:

Ainsworth of Royalton	Copeland-Hanzas of Bradford	Peltz of Woodbury
Ancl of Calais	Davis of Washington	Poirier of Barre City
Aswad of Burlington	Klein of East Montpelier	Spengler of Colchester
Audette of South Burlington	Lawrence of Lyndon	Wright of Burlington
Cheney of Norwich	Lewis of Derby	
Condon of Colchester	Maier of Middlebury	

Rep. Atkins of Winooski explained his as follows:

“Mr. Speaker:

I vote yes on S. 13, we must protect our vulnerable citizens. I do have concerns surrounding the unfunded mandates our schools will experience. I also feel that the DNA sections of the bill should have been explored regarding the constitutionality of that practice.”

Rep. Consejo of Sheldon explained his as follows:

“Mr. Speaker:

As good as that bill is, I consider it just a start. There is no doubt that we need to make the people that commit most of the abuse on our children, namely family, friends, neighbors, responsible and accountable for not doing their duty in reporting those crimes. I will push for a more comprehensive approach on how to correct that injustice, in the name of all Vermont children.”

Rep. Kilmartin of Newport City explained his as follows:

“Mr. Speaker:

My conscience and oath compel me to vote "no". This bill violates the Vermont Constitution and injures innocent citizens. It does nothing to heal the victims of sexual child abuse and break the cycle of generations of sexual child abuse."

Adjournment

At eight o'clock and twenty-five minutes in the evening, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.