

# House Calendar

---

Wednesday, May 02, 2012

121st DAY OF THE ADJOURNED SESSION

House Convenes at 9:30 A.M.

---

---

## TABLE OF CONTENTS

---

---

	<b>Page No.</b>
<b>ACTION CALENDAR</b>	
<b>Action Postponed Until May 2, 2012</b>	
<b>Senate Proposal of Amendment</b>	
<b>H. 535</b> Racial disparities in the Vermont criminal justice system .....	2917
<b>NEW BUSINESS</b>	
<b>Senate Proposal of Amendment</b>	
<b>H. 747</b> Cigarette manufacturers .....	2919
<b>Committee of Conference Report</b>	
<b>S. 199</b> An act relating to immunization exemptions and the immunization pilot program.....	2920
<b>Action Under Rule 52</b>	
<b>J.R.S. 58</b> Joint resolution relating to respectful language in the Vermont Statutes Annotated.....	2924
<b>NOTICE CALENDAR</b>	
<b>Senate Proposal of Amendment</b>	
<b>H. 577</b> Public water systems .....	2924
<b>H. 600</b> Mandatory mediation in foreclosure proceedings .....	2925
Rep. Koch amendment .....	2926
<b>Committee of Conference Report</b>	
<b>S. 189</b> An act relating to expanding confidentiality of cases accepted by the court diversion project.....	2926
<b>S. 244</b> An act relating to referral to court diversion for driving with a suspended license .....	2933
<b>Ordered to Lie</b>	
<b>H. 775</b> Allowed interest rates for installment loans .....	2939

---

---

## ORDERS OF THE DAY

---

---

### ACTION CALENDAR

Action Postponed Until May 2, 2012

#### Senate Proposal of Amendment

#### H. 535

An act relating to racial disparities in the Vermont criminal justice system

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

#### Sec. 1. DATA COLLECTION AND ANALYSIS; APPROPRIATION

(a) Research regarding sentencing practices routinely concludes that two variables drive sentencing decisions—the seriousness of the offense and the defendant’s risk to reoffend. The Vermont Center for Justice Research (“the center”) shall examine the effect of these and other variables, including the race of the defendant, on sentencing decisions in Vermont, for a five-year period. The center shall use data from the Federal Bureau of Investigation Interstate Identification Index, the department of motor vehicles, the Vermont criminal information center, the department of corrections, and the Vermont courts to explain if the disparities are based on legal or nonlegal factors. The center’s research shall focus on the following:

(1) How do the sentences of people of particular census categories, in the aggregate and by national incident-based reporting system race data fields (NIBRS), which currently include white, black, Asian, Native American or Alaskan Native, and Hispanic, compare to the sentences of white defendants with respect to sentence type, length of sentence, and level of restriction?

(2) How does the actual time spent by people of particular census categories, in the aggregate and by NIBRS race data fields, under department of corrections’ supervision (and the degree of restriction) compare to the time spent by (and the degree of restriction of) white defendants?

(3) If disparate sentencing patterns or disparate service patterns exist for people of particular census categories, in the aggregate and by NIBRS race data fields, what variables included in the study design explain the disparity?

(b) On or before December 15, 2012, results of the study shall be reported to the house and senate committees on judiciary, to the court administrator, and to each organization or entity represented on the governor’s criminal justice cabinet.

(c) The human rights commission is authorized to transfer \$20,000.00 from its existing budget to the Vermont Center for Justice Research to finance this data collection analysis and report and is authorized to apply for and receive grants for the same purpose.

Sec. 2. 20 V.S.A. § 2366 is added to read:

§ 2366. LAW ENFORCEMENT AGENCIES; BIAS-FREE POLICING POLICY; RACE DATA COLLECTION

(a) No later than January 1, 2013, every state, local, county, and municipal law enforcement agency that employs one or more certified law enforcement officers shall adopt a bias-free policing policy. The policy shall contain the essential elements of such a policy as determined by the Law Enforcement Advisory Board after its review of the current Vermont State Police Policy and the most current model policy issued by the office of the attorney general.

(b) The policy shall encourage ongoing bias-free law enforcement training for state, local, county, and municipal law enforcement agencies.

(c) State, local, county, and municipal law enforcement agencies that employ one or more certified law enforcement officers are encouraged to work with the Vermont association of chiefs of police to extend the collection of roadside-stop race data uniformly throughout state law enforcement agencies, with the goal of obtaining uniform roadside-stop race data for analysis.

Sec. 3. 20 V.S.A. § 2358 is amended to read:

§ 2358. MINIMUM TRAINING STANDARDS

\* \* \*

(e) The criteria for all minimum training standards under this section shall include anti-bias training approved by the Vermont criminal justice training council.

Sec. 4. 24 V.S.A. § 1939 is amended as follows:

§ 1939. LAW ENFORCEMENT ADVISORY BOARD

\* \* \*

(e) The board shall examine how individuals make complaints to law enforcement and suggest, on or before December 15, 2012, to the senate and house committees on judiciary what procedures should exist to file a complaint.

Sec. 5. CRIMINAL JUSTICE AGENCIES; BIAS-FREE CRIMINAL JUSTICE POLICY

The general assembly encourages all criminal justice entities through their professional rules of conduct to ensure that all actions taken are done in a manner that is free of bias.

(For text see House Journal 3/27/2012 )

## **NEW BUSINESS**

### **Senate Proposal of Amendment**

#### **H. 747**

An act relating to cigarette manufacturers

The Senate proposes to the House to amend the bill as follows:

In Sec. 1, 7 V.S.A. § 1003, by striking out subsection (g) in its entirety and inserting in lieu thereof a new subsection (g) to read:

(g) As used in this section, "little cigars" means any rolls of tobacco wrapped in leaf tobacco or any substance containing tobacco, other than any roll of tobacco which is a cigarette within the meaning of 32 V.S.A. § 7202(1) and as to which 1,000 units weigh not more than three pounds.

Second: By striking out Sec. 5 and inserting in lieu thereof a new Sec. 5 to read:

Sec. 5. 33 V.S.A. § 1920 is amended to read:

#### **§ 1920. AGENT FOR SERVICE OF PROCESS**

(a) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or other business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this subchapter or subchapter 1A of this chapter, or both, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and satisfactory proof of the appointment and availability of such agent to the attorney general. The secretary of state shall be designated as agent for service of process for importers of nonparticipating manufacturers located outside the United States. Service shall be made upon the secretary of state in accordance with the provisions of 12 V.S.A. §§ 851 and 852.

\* \* \*

Third: By adding Secs. 9 and 10 to read:

Sec. 9. 6 V.S.A. § 561 is amended to read:

§ 561. INTENT

The intent of this act is to establish policy and procedures for growing industrial hemp in Vermont so that farmers and other businesses in the Vermont agricultural industry can take advantage of this market opportunity ~~when federal regulations permit.~~

Sec. 10. REPEAL

Sec. 3 of No. 212 of the Acts of the 2007 Adj. Sess. (2008) (delayed effective date of industrial hemp cultivation program) is repealed.

and that after passage the title of the bill be amended to read: “An act relating to cigarette manufacturers, commercial cigarette rolling machines, and industrial hemp”

(For text see House Journal 3/20/2012 )

### **Committee of Conference Report**

#### **S. 199**

An act relating to immunization exemptions and the immunization pilot program

#### TO THE SENATE AND HOUSE OF REPRESENTATIVES:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon Senate Bill entitled:

#### **S. 199 An act relating to immunization exemptions and the immunization pilot program**

Respectfully report that they have met and considered the same and recommend that the bill be amended as follows:

Respectfully reports that it has met and considered the same and recommends that the House Proposal of Amendment be further amended as follows:

First: By striking Sec. 1 in its entirety and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 1121 is amended to read:

§ 1121. IMMUNIZATIONS REQUIRED PRIOR TO ATTENDING  
SCHOOL AND CHILD CARE FACILITIES

\* \* \*

(c) To the extent permitted under the federal Health Insurance Portability and Accountability Act, Pub. L. 104-191, all schools and child care facilities shall make publicly available the aggregated immunization rates of the student body for each required vaccine using a standardized form that shall be created by the department of health. Each school and child care facility shall annually, on or before January 1, submit its standardized form containing the student body's aggregated immunization rates to the department of health. Notwithstanding section 1120 of this title, for the purposes of this subsection only, the term "child care facility" shall exclude a family day care home licensed or registered under 33 V.S.A. chapter 35.

Second: By striking Sec. 2 in its entirety and inserting in lieu thereof the following:

Sec. 2. 18 V.S.A. § 1122 is amended to read:

§ 1122. EXEMPTIONS

(a) ~~A Notwithstanding subsections 1121(a) and (b) of this title, a person may remain in school or in the child care facility without a required immunization:~~

(1) ~~If the person, or, in the case of a minor, the person's parent or guardian presents a written statement, from form created by the department and signed by a licensed health care practitioner authorized to prescribe vaccines or a health clinic, or nurse stating that the person is in the process of being immunized. The person may continue to attend school or the child care facility as long as for up to six months while the immunization process is being accomplished;~~

(2) ~~If a health care practitioner, licensed to practice in Vermont and authorized to prescribe vaccines, certifies in writing that a specific immunization is or may be detrimental to the person's health or is not appropriate, provided that when a particular vaccine is no longer contraindicated, the person shall be required to receive the vaccine; or~~

(3) ~~If the person, or, in the case of a minor, the person's parent or guardian states in writing annually provides a signed statement to the school or child care facility on a form created by the Vermont department of health that the person, parent, or guardian:~~

(A) has holds religious beliefs or philosophical personal convictions opposed to immunization;

(B) has reviewed and understands evidence-based educational material provided by the department of health regarding immunizations,

including information about the risks and benefits of immunization;

(C) understands that failure to complete the required immunization schedule increases the risk to the person and others of contracting or carrying a vaccine-preventable infectious disease; and

(D) understands that there are persons with special health needs attending schools and child care facilities who are unable to be immunized or who are at heightened risk of contracting a vaccine-preventable communicable disease and for whom such a disease could be life-threatening.

(b) The health department may provide by rule for further exemptions to immunization based upon sound medical practice.

(c) A form signed pursuant to subdivision (a)(3) of this section and the fact that such a form was signed shall not be:

(1) construed to create or deny civil liability for any person; or

(2) admissible as evidence in any civil proceeding.

(d) In the event the immunization rate for measles, mumps, rubella (MMR); diphtheria, tetanus, pertussis (DTaP); or tetanus, diphtheria, pertussis (Tdap) drops below a threshold of 90 percent statewide, the commissioner of health shall suspend use of personal exemptions for the applicable vaccine by persons enrolled in schools in the state. The suspension shall apply beginning at the start of the academic year following the department's determination. At least two months prior to the start of an academic year in which the suspension shall apply, schools shall provide written notice of the department's determination to each current and incoming student in the state or, in the case of a minor, to the person's parent or guardian. The suspension of personal exemptions shall terminate once the immunization rate for the applicable vaccine in question has remained above a 90-percent threshold statewide for three consecutive academic years.

Third: In Sec. 3, 18 V.S.A. § 1124, subdivision (a), in the second sentence by striking the word "philosophical" and inserting in lieu thereof "personal"

Fourth: By inserting after Sec. 5, REPORT, a new section to read as follows:

#### Sec. 6. INTERIM WORKING GROUP ON PROTECTING

#### IMMUNOCOMPROMISED STUDENTS AND STUDENTS WITH SPECIAL HEALTH NEEDS

(a) The departments of education and of health shall convene a working group on how to protect immunocompromised students and students with

special health needs, which shall study the feasibility of allowing these students to enroll in a public school maintained by an adjoining school district, where the adjoining school district has a higher immunization rate than the school maintained by the student's school district of residence. For the purpose of protecting immunocompromised students and students with special health needs, the working group shall also assess the necessity and practicability of requiring adults employed at schools to be fully immunized. The working group shall submit a report of its findings and recommendations to the senate committee on health and welfare and the house committee on health care on or before January 1, 2013.

(b) The working group shall be composed of the following members:

(1) the commissioner of education or designee, who shall serve as co-chair;

(2) the commissioner of health or designee, who shall serve as co-chair;

(3) one medical professional with training or experience treating immunocompromised patients, appointed by the commissioner of health;

(4) one medical professional specializing in pediatric care, appointed by the commissioner of health;

(5) the executive director of the Vermont Superintendents Association; and

(6) a member of the Vermont-National Education Association.

(c) For the purposes of its study, the working group shall have joint administrative support from the departments of education and of health.

(d) The working group on protecting immunocompromised students shall cease to exist on January 31, 2013.

and by renumbering Sec. 5, EFFECTIVE DATE, to be Sec. 7

Fifth: In the newly renumbered Sec. 7, EFFECTIVE DATE, in the title, by striking "DATE" and inserting in lieu thereof "DATES", and before the period by inserting the phrase ", except that Sec. 2(c) shall take effect one year thereafter"

REP. MICHAEL FISHER

REP. KRISTY K. SPENGLER

REP. GEORGE W. TILL

COMMITTEE ON THE PART OF THE HOUSE

SEN. KEVIN J. MULLIN  
SEN. CLAIRE D. AYER  
COMMITTEE ON THE PART OF THE SENATE

**Action Under Rule 52**

**J.R.S. 58**

Joint resolution relating to respectful language in the Vermont Statutes  
Annotated

(For text see **House Journal 5/1/2012**)

**NOTICE CALENDAR**

**Senate Proposal of Amendment**

**H. 577**

An act relating to public water systems

The Senate proposes to the House to amend the bill as follows:

By striking out Sec. 5 in its entirety and inserting in lieu thereof the following:

Sec. 5. 10 V.S.A. § 1973 is amended to read:

§ 1973. PERMITS

\* \* \*

(j)(1) When an applicant for a permit under this section proposes a water supply or wastewater system with isolation distances that extend onto property other than the property for which the permit is sought, the permit applicant shall send ~~a copy of the complete permit application~~ by certified mail, on a form provided by the secretary, a notice of an intent to file a permit application, including any plans the site plan that accurately depicts all isolation distances, to any landowner affected by the proposed isolation distances no later than at least seven calendar days prior to the date that the permit application is submitted to the secretary.

(2) If, during the course of the secretary's review of an application for a permit under this section, the location of a water supply or wastewater system permit is revised and the isolation distances of the revised system extend onto property other than the property for which the permit is sought, the permit applicant shall ~~provide~~ send by certified mail a copy of any revised plan to any

landowner affected by the isolation distances.

(3) If, after a permit has been issued under this section, a water supply or wastewater system is not installed according to the permitted plan and the record drawings submitted under subsection (e) of this section indicate that the isolation distances of the ~~as-built~~ system as constructed extend onto property other than the property on which the ~~as-built~~ system is located, the permittee shall ~~provide~~ send by certified mail a notification form provided by the secretary with a copy of the record drawings showing all isolation distances to any landowner affected by the isolation distances.

(4) A permit applicant or permittee subject to the requirements of subdivisions (1) through (3) of this subsection shall certify to the secretary that the ~~notice~~ notices and information required by this subsection have been sent to affected landowners and shall include in the certification the name and address of all affected landowners. If the secretary approves a permit application under this section, the permit shall not be issued to a permit applicant subject to the requirements of ~~subdivisions~~ subdivision ~~(1) and~~ (2) of this subsection until seven calendar days after the permit applicant certifies to the secretary that the notice required under this subsection has been sent to affected landowners.

#### Sec. 6. EFFECTIVE DATE

(a) This section and Secs. 1 (combined sewer overflows; awards), 2 (public water systems permits), 3 (repeal of temporary permits for public water systems), and 4 (awards from special environmental revolving loan fund) of this act shall take effect on July 1, 2012.

(b) Sec. 5 (notice of isolation distances) shall take effect on September 1, 2012.

and that after passage the title of the bill be amended to read: “An act relating to public water systems and potable water supply and wastewater system isolation distances”

(For text see House Journal 2/28/2012 )

### **H. 600**

An act relating to mandatory mediation in foreclosure proceedings

The Senate proposes to the House to amend the bill as follows:

First: By adding a Sec. 4a to read follows:

Sec. 4a. 12 V.S.A. § 4633(e) is amended to read:

(e) The mediator may permit a party identified in subdivision (d)(1) of this

section to participate in mediation by telephone or teleconferencing, provided that the court shall not find that the requirements of this subchapter have been met unless the following parties have been physically present at the mediation:

(1) the mortgagor, or a person with decision-making authority for the mortgagor; and

(2) the mortgagee, or a person with decision-making authority for the mortgagee.

Second: In Sec. 6, in subsection (a) and (c), by striking out the following: “December 3, 2013” where it twice appears and inserting in lieu thereof the following: December 31, 2013

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

Sec. 7. EFFECTIVE DATES

(a) This section and Secs. 1, 5, and 6 of this act shall take effect on passage.

(b) Secs. 2, 3, and 4 of this act shall take effect on July 1, 2012.

(For text see House Journal 3/15/2012 )

**Amendment to be offered by Rep. Koch of Barre Town to H. 600**

Rep. Koch of Barre Town moves that the House concur in the Senate proposal of amendment with the following additional proposals of amendment

First: In Sec. 2, 12 V.S.A. § 4631, in subsection (c), by striking the words “a randomized” and inserting in lieu thereof the words “an objective and neutral”

Second: By striking Sec. 4a in its entirety

**Committee of Conference Report**

**S. 189**

An act relating to expanding confidentiality of cases accepted by the court diversion project

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon Senate Bill entitled:

**S. 189 An act relating to expanding confidentiality of cases accepted by the court diversion project**

Respectfully report that they have met and considered the same and recommend that the bill be amended by striking all after the enacting clause

and inserting in lieu thereof the following:

Sec. 1. 3 V.S.A. § 164(c)(1) is amended to read:

(c) All adult court diversion projects receiving financial assistance from the attorney general shall adhere to the following provisions:

(1) The diversion project shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. The prosecuting attorney shall notify in writing the diversion program and the court of his or her intention to refer the person to diversion. If the prosecuting attorney refers a case to diversion, ~~the information and affidavit~~ prosecuting attorney may release information to the victim upon a showing of legitimate need and subject to an appropriate protective agreement defining the purpose for which the information is being released and in all other respects maintaining the confidentiality of the information; otherwise files held by the court, the prosecuting attorney, and the law enforcement agency related to the charges shall be confidential and shall remain confidential unless:

(A) the board declines to accept the case;

(B) the person declines to participate in diversion; ~~or~~

(C) the board accepts the case, but the person does not successfully complete diversion;

(D) the prosecuting attorney recalls the referral to diversion.

Sec. 2. 3 V.S.A. § 164a is added to read:

§ 164a. RESTITUTION

(a) A diversion program may refer an individual who has suffered a pecuniary loss as a direct result of a delinquent act or crime alleged to have been committed by a juvenile or adult accepted to its program to the restitution unit established by 13 V.S.A. § 5362 for the purpose of application for an advance payment pursuant to 13 V.S.A. § 5363(d)(1). The restitution unit may enter into a repayment contract with a juvenile or adult accepted into diversion and shall have the authority to bring a civil action to enforce the repayment contract in the event that the juvenile or adult defaults in performing the terms of the contract.

(b) The restitution unit and the diversion program shall develop a process for documenting victim loss, information sharing between the unit and diversion programs regarding the amount of restitution paid by the unit and diversion participants' contractual agreements to reimburse the unit, transmittal of payments from participants to the unit, and maintenance of the

confidentiality of diversion information.

Sec. 3. 13 V.S.A. § 5362 is amended to read:

§ 5362. RESTITUTION UNIT

\* \* \*

(c) The restitution unit shall have the authority to:

\* \* \*

(7) Enter into a repayment contract with a juvenile or adult accepted into a diversion program and to bring a civil action to enforce the contract when a diversion program has referred an individual pursuant to 3 V.S.A. § 164a.

Sec. 4. 13 V.S.A. § 5363 is amended to read:

§ 5363. CRIME VICTIMS' RESTITUTION SPECIAL FUND

(a) There is hereby established in the state treasury a fund to be known as the crime victims' restitution special fund, to be administered by the restitution unit established by section 5362 of this title, and from which payments may be made to provide restitution to crime victims.

(b)(1) There shall be deposited into the fund:

(A) All monies collected by the restitution unit pursuant to section 7043 and subdivision 5362(c)(7) of this title.

(B) All fees imposed by the clerk of court and designated for deposit into the fund pursuant to section 7282 of this title.

(C) All monies donated to the restitution unit or the crime victims' restitution special fund.

(D) Such sums as may be appropriated to the fund by the general assembly.

\* \* \*

(d)(1) The restitution unit is authorized to advance up to \$10,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

(A) was first ordered by the court to receive restitution on or after July 1, 2004;

(B) is a natural person or the natural person's legal representative; and

(C) has not been reimbursed under subdivision (2) of this subsection;

(D) is a natural person and has been referred to the restitution unit by

a diversion program pursuant to 3 V.S.A. § 164a.

\* \* \*

Sec. 5. 13 V.S.A. § 7043(n) is amended to read:

(n) After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure of an offender aged 18 or older shall include copies of the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.

Sec. 6. 13 V.S.A. § 5360 is added to read:

§ 5360. APPLICATION INFORMATION; CONFIDENTIALITY

(a) All documents reviewed by the victims' compensation board for purposes of approving an application for compensation shall be confidential and shall not be disclosed without the consent of the victim except as provided in this section and subsection 7043(c) of this title.

(b) For the purpose of requesting restitution, the amount of assistance provided by the victim's compensation board shall be established by copies of bills submitted to the victim's compensation board reflecting the amount paid by the board and stating that the services for which payment was made were for uninsured pecuniary losses.

(c) The following shall be confidential and shall be redacted by the victim's compensation board for any purpose including restitution: the victim's residential address, telephone number, and other contact information and the victim's social security number. In cases involving stalking, sexual offenses, and domestic violence, the following information shall also be confidential and shall not be disclosed by the victim's compensation board for any purpose, including restitution, absent a court order:

(1) the victim's employer's name, telephone number, address, or any other contact information; and

(2) the victim's medical or mental health provider's name, telephone number, address, or any other contact information.

Sec. 7. 13 V.S.A. § 7043 is amended to read:

§ 7043. RESTITUTION

\* \* \*

(b)(1) When ordered, restitution may include:

- (A) return of property wrongfully taken from the victim;
- (B) cash, credit card, or installment payments paid to the restitution unit; or
- (C) payments in kind, if acceptable to the victim.

(2) In the event of a victim's crime-related death, the court may, at the request of the restitution unit, direct the unit to pay up to \$10,000.00 from the restitution fund to the victim's estate to cover future uninsured material losses caused by the death.

(c) Restitution hearing.

(1) Unless the amount of restitution is agreed to by the parties at the time of sentencing, the court shall set the matter for a restitution hearing.

(2) Prior to the date of the hearing, the prosecuting attorney shall provide the defendant with a statement of the amount of restitution claimed together with copies of bills that support the claim for restitution. If any amount of the restitution claim has been paid by the victim's compensation fund, the prosecuting attorney shall provide the defendant with copies of bills submitted by the victim's compensation board pursuant to section 5360 of this title.

(3) Absent consent of the victim, medical and mental health records submitted to the victim's compensation board shall not be discoverable for the purposes of restitution except by order of the court. If the defendant files a motion to view copies of such records, the prosecuting attorney shall file the records with the court under seal. The court shall conduct an in camera review of the records to determine what records, if any, are relevant to the parties' dispute with respect to restitution. If the court orders disclosure of the documents, the court shall issue a protective order defining the extent of dissemination of the documents to any person other than the defendant, the defendant's attorney, and the prosecuting attorney.

~~(e)~~(d) In awarding restitution, the court shall make findings with respect to:

(1) The total amount of the material loss incurred by the victim. If sufficient documentation of the material loss is not available at the time of sentencing, the court shall set a hearing on the issue, and notice thereof shall be provided to the offender.

(2) The offender's current ability to pay restitution, based on all financial information available to the court, including information provided by the offender.

~~(d)~~(e)(1) An order of restitution shall establish the amount of the material

loss incurred by the victim, which shall be the restitution judgment order. In the event the offender is unable to pay the restitution judgment order at the time of sentencing, the court shall establish a restitution payment schedule for the offender based upon the offender's current and reasonably foreseeable ability to pay, subject to modification under subsection (k) of this section. Notwithstanding 12 V.S.A. chapter 113 ~~of Title 12~~ or any other provision of law, interest shall not accrue on a restitution judgment.

\* \* \*

~~(e)~~(f)(1) If not paid at the time of sentencing, restitution may be ordered as a condition of probation, supervised community sentence, furlough, preapproved furlough, or parole if the convicted person is sentenced to preapproved furlough, probation, or supervised community sentence, or is sentenced to imprisonment and later placed on parole. A person shall not be placed on probation solely for purposes of paying restitution. An offender may not be charged with a violation of probation, furlough, or parole for nonpayment of a restitution obligation incurred after July 1, 2004.

\* \* \*

~~(f)~~(g)(1) When restitution is requested but not ordered, the court shall set forth on the record its reasons for not ordering restitution.

\* \* \*

~~(g)~~(h) Restitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order.

~~(h)~~(i)(1) The court shall transmit a copy of a restitution order to the restitution unit, which shall make payment to the victim in accordance with section 5363 of this title.

\* \* \*

~~(i)~~(j) The restitution unit may bring an action, including a small claims procedure, to enforce a restitution order against an offender in the civil division of the superior court of the unit where the offender resides or in the unit where the order was issued. In an action under this subsection, a restitution order issued by the criminal division of the superior court shall be enforceable in the civil division of the superior court or in a small claims procedure in the same manner as a civil judgment. Superior and small claims filing fees shall be waived for an action under this subsection, and for an action to renew a restitution judgment.

~~(j)~~(k) All restitution payments shall be made to the restitution unit, with the exception of restitution relating to a conviction for welfare fraud ordered under

this section and recouped by the economic services division. The economic services division shall provide the restitution unit with a monthly report of all restitution collected through recoupment. This subsection shall have no effect upon the collection or recoupment of restitution ordered under Title 33.

~~(k)~~(l) The sentencing court may modify the payment schedule of a restitution order if, upon motion by the restitution unit or the offender, the court finds that modification is warranted by a substantial change in circumstances.

~~(j)~~(m) If the offender fails to pay restitution as ordered by the court, the restitution unit may file an action to enforce the restitution order in superior or small claims court. After an enforcement action is filed, any further proceedings related to the action shall be heard in the court where it was filed. The court shall set the matter for hearing and shall provide notice to the restitution unit, the victim, and the offender. If the court determines the offender has failed to comply with the restitution order, the court may take any action the court deems necessary to ensure the offender will make the required restitution payment, including:

\* \* \*

~~(m)~~(n)(1) Any monies owed by the state to an offender who is under a restitution order, including lottery winnings and tax refunds, shall be used to discharge the restitution order to the full extent of the unpaid total financial losses, regardless of the payment schedule established by the courts.

\* \* \*

~~(n)~~(o) After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure shall include copies of the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.

~~(o)~~(p) An obligation to pay restitution is part of a criminal sentence and is:

\* \* \*

~~(p)~~(q) A transfer of property made with the intent to avoid a restitution obligation shall be deemed a fraudulent conveyance for purposes of 9 V.S.A. chapter 57 of ~~Title 9~~, and the restitution unit shall be entitled to the remedies of creditors provided under 9 V.S.A. § 2291.

Sec. 8. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS

\* \* \*

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(40) ~~Records~~ records of genealogy provided in support of an application for tribal recognition pursuant to chapter 23 of this title;

(41) documents reviewed by the victim's compensation board for purposes of approving an application for compensation pursuant to 13 V.S.A. chapter 167, except as provided by 13 V.S.A. §§ 5360 and 7043(c).

Sec. 9. EFFECTIVE DATE

(a) Sections 1, 2, 3, 4, and 5 shall take effect on July 1, 2012.

(b) Sections 6, 7, 8, and this section shall take effect on passage.

Rep. Maxine Grad

Rep. Linda Waite-Simpson

Rep. Gerald Reis

*Committee on the part of the House*

Sen. Alice Nitka

Sen. Richard Sears

Sen. Diane Snelling

*Committee on the part of the Senate*

**S. 244**

An act relating to referral to court diversion for driving with a suspended license

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon Senate Bill entitled:

**S. 244 An act relating to referral to court diversion for driving with a suspended license**

Respectfully report that they have met and considered the same and recommend that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

## Sec. 1. LEGISLATIVE PURPOSE

(a) The Vermont general assembly established the Nonviolent Misdemeanor Review Committee (committee) in No. 41 of the Acts of 2011, an act relating to effective strategies to reduce criminal recidivism, to propose alternatives to incarceration for nonviolent, low-risk misdemeanor offenses. The committee began its work by looking at the most common nonviolent misdemeanors. Driving without a license (DLS), both criminal and civil, was cited by witnesses as a significant driver of costs to the justice system.

(b) Currently, over 38,000 motor vehicle licenses are suspended in Vermont. There are a number of reasons that a person's motor vehicle operator's license can be suspended, including failure to pay civil fines, accumulation of points for moving violations, failure to pay child support, procurement of alcohol by a minor, and automatic suspensions for serious violations such as driving while intoxicated. The majority of licenses (60 percent) are suspended for failure to pay a traffic ticket, followed by accumulation of points for moving violations (24 percent).

(c) The committee determined that many otherwise law-abiding citizens become caught in a cycle of suspensions due to an inability to meet the financial obligations of fees, fines, and subsequent increases to insurance rates. The committee believes it is in the public interest to assist people under civil license suspension to regain their license and avoid the spiral that may eventually result in a criminal suspension.

(d) Court diversion is an existing preadjudication option for many people who have been charged with a crime. The diversion program offers willing offenders the opportunity to take responsibility for their actions and make amends to victims and the community.

## Sec. 2. DIVERSION PROGRAM FOR DRIVING WITH A SUSPENDED LICENSE

(a) The court administrator, the court diversion program, and the department of motor vehicles shall work cooperatively in an effort to assist Vermonters who have a suspended motor vehicle operator's license to regain their license through participation in the DLS diversion program, as provided in this section.

(b)(1) Except as provided in subdivision (2) of this subsection, the court administrator shall notify a person who has had his or her operator's license suspended that he or she is eligible to participate in the DLS diversion program, which is intended to assist people in regaining their operator's license. A person shall be eligible to participate in the DLS diversion program if the person completes all the requirements of the underlying violation and the

suspension and if, as a result, the person would otherwise be eligible to regain his or her license if not for unmet financial obligations.

(2) A person whose operator's license is suspended for a violation of 23 V.S.A. §§ 1091(b), 1094(b), 1128(b) or (c), or 1201 or 1205 shall not be eligible to participate in the DLS diversion program with respect to the suspension for such violation.

(3) The notice shall provide that:

(A) The program is designed to assist the person to get his or her driver's license reinstated prior to completion of payment of any debt related to the suspension.

(B) The person may be eligible for a reduction in the amount of the person's financial obligation to the state or may be permitted to establish a reasonable payment plan to discharge the debt.

(C) The program is voluntary but agreeing to participate would include certain requirements including:

(i) meeting with diversion staff to assess the person's risks and to identify factors that contributed to previous violations leading to license suspension.

(ii) completing all conditions related to the offense and indicated by the screening process that are imposed by the diversion program.

(4) The court administrator may charge the cost of preparing and sending the notice against revenues collected pursuant to this subsection.

(c) Upon receiving a request from a person who has been issued a notice pursuant to subsection (b) of this section, the diversion program shall register the person in the DLS diversion program. The program staff shall meet with the person to assess the person's risks and to identify factors that contributed to previous violations leading to license suspension. Based upon the assessment, the program shall develop a contract with the person that may include:

(1) Adherence to a plan to pay fines and fees required to reinstate a driver's license.

(2) Acquiring and showing proof of auto insurance.

(3) Performance of community service.

(4) Completion of a driving education program.

(5) Any other conditions related to the reasons for the violation that led to license suspension.

(d) A person with fewer than five violations of 23 V.S.A. § 676 may apply to the DLS diversion program. Upon receipt of an application and determination of eligibility, the diversion program shall send the person a notice to report to the diversion program. The notice to report shall provide that the person is required to meet with diversion staff for the purposes of assessment and to complete all conditions of the diversion contract as provided in subsection (c) of this section.

(e) The diversion program shall notify the judicial bureau of acceptance of a person into the DLS diversion program and that a contract has been agreed to by the parties. Upon approval of the contract and any related payment plan, the judicial bureau shall notify the department of motor vehicles of compliance with the contract and the person shall be eligible to have his or her license reinstated, provided the person remains in compliance with the diversion contract. The department of motor vehicles may suspend a person's license for failure to comply with the diversion contract.

(f) The DLS diversion program shall work cooperatively with the judicial bureau to establish a reasonable payment plan for fines and fees owed by a person enrolled in the program. In addition to any remedies already provided, the judicial bureau may do the following in cases involving a person enrolled in the DLS diversion program:

(1) Reduce the amount of fines or fees owed in exchange for community service or education, or both, as provided in a diversion contract.

(2) Withdraw any debt placed for collection with a collection agency or the department of taxes.

(g) The court diversion program, in cooperation with the judiciary, shall adopt standards for operating the DLS diversion program, including determining whether a person is in compliance with conditions as set forth in this section. The standards shall specifically identify circumstances, such as additional violations or accumulation of points, which shall require additional contract conditions and circumstances that will result in dismissal from the program. Such standards shall be applicable in all county diversion programs.

(h) Each participant shall pay a fee to the local adult court diversion project. The amount of the fee shall be determined by the program using a sliding-scale fee based on financial means of the participant. The fee shall not exceed \$300.00. Notwithstanding 32 V.S.A. § 502(a), fees collected under this subsection shall be retained and used solely for the purpose of the DLS diversion program.

(i) The court administrator shall begin notification as provided in subsection (b) of this section by January 15, 2013, at which time the DLS

diversion program shall be operational. Priority shall be given to persons determined to be at highest risk of acquiring a criminal DLS pursuant to 23 V.S.A. § 674 due to an accumulation of civil suspensions violation pursuant to 23 V.S.A. § 674.

(j) The department of motor vehicles and the court administrator shall coordinate a method for determining the appropriate mechanism to inform people about the DLS diversion program.

(k) The court administrator, the director of the court diversion program, and the commissioner of motor vehicles shall jointly report to the general assembly on or before December 15, 2014 on the following:

- (1) implementation of the DLS diversion program;
- (2) the number of people enrolled in the program;
- (3) the number of people who have successfully completed the program;
- (4) the number of licenses reinstated;
- (5) the number of fines and amounts modified;
- (6) additional money collected by the state as a result of the program;
- (7) the advisability of implementing the program through roadside stops for driving without a license; and
- (8) extending the program to persons who are currently prohibited from participation pursuant to subdivision (b)(2) of this section.

Sec. 3. 23 V.S.A. § 674(a)(3) is added to read:

(3) Violations of section 676 of this title that occurred prior to the date a person successfully completes the driving with license suspended diversion program shall not be counted as prior offenses under subdivision (2) of this subsection.

Sec. 4. 23 V.S.A. § 2502 is amended to read:

§ 2502. POINT ASSESSMENT; SCHEDULE

(a) Any person operating a motor vehicle shall have points assessed against his or her driving record for convictions for moving violations of the indicated motor vehicle statutes in accord with the following schedule: (All references are to Title 23 of the Vermont Statutes Annotated.)

\* \* \*

(4) Five points assessed for:

\* \* \*

(D) § ~~676.~~

~~Operating after  
suspension, revocation or  
refusal—civil violation;~~

(5) Ten points assessed for:

(A) § ~~674.~~

~~Operating after suspension  
or revocation of license;~~

\* \* \*

Sec. 5. 23 V.S.A. § 2506 is amended to read:

§ 2506. PROCEDURE

When a sufficient number of points ~~have~~ has been acquired, the commissioner shall suspend the license of an operator or the privilege of an unlicensed person, or nonresident to operate a motor vehicle, upon not less than 10 days' notice, and upon hearing, if requested for verification of the conviction records. The suspension shall be for 10 days for an accumulation of 10 points, 30 days for 15 points, 90 days for 20 points and for a period increasing by 30 days for each additional 5 points; except the suspension period for a conviction for first offense of sections ~~674~~, 1091, 1094, 1128, and 1133 of this title shall be 30 days; for a second conviction 90 days and for a third or subsequent six months, or the suspension period under the point values, whichever is greater. If a fatality occurs, the suspension shall be for a period of one year in addition to the suspension under the point values. For purposes of this section, a month shall be considered as 30 days and one year shall equal 365 days.

Sec. 6. DLS DIVERSION SPECIAL FUND

There is established the DLS diversion program special fund to be administered by the attorney general. The fund shall be used to fund the requirements of this act. Administrative fees collected pursuant to Sec. 2(h) of this act shall be deposited and credited to this fund. The fund shall be available to the attorney general to enter into memorandums of understanding with diversion programs to pay for contractual and operating expenses and project-related staffing related to the implementation and continuing operations of the DLS diversion program.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

Rep. Maxine Grad

Rep. Linda Waite-Simpson

Rep. Gerald Reis

*Committee on the part of the House*

Sen. Richard Sears

Sen. Margaret Flory

Sen. Alice Nitka

*Committee on the part of the Senate*

**Ordered to Lie**

**H. 775**

An act relating to allowed interest rates for installment loans.

Pending Action: Second Reading of the bill.