

Senate Calendar

TUESDAY, FEBRUARY 22, 2011

SENATE CONVENES AT: 10:00 A.M.

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ACTION CALENDAR

UNFINISHED BUSINESS OF THURSDAY, FEBRUARY 17, 2011

Second Reading

Favorable

S. 31.

An act relating to the Agreement Among the States to Elect the President by National Popular Vote.

Reported favorably by Senator White for the Committee on Government Operations.

(Committee vote: 4-1-0)

NEW BUSINESS

Second Reading

Favorable with Recommendation of Amendment

S. 37.

An act relating to expungement of a nonviolent misdemeanor criminal history record.

Reported favorably with recommendation of amendment by Senator Sears for the Committee on Judiciary.

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

Sec. 1. 13 V.S.A. chapter 230 is added to read:

CHAPTER 230. CRIMINAL HISTORY RECORD EXPUNGEMENT

§ 7601. DEFINITIONS

As used in this subchapter:

(1) "Court" means the criminal division of the superior court.

(2) "Criminal history record" means all information documenting an individual's contact with the criminal justice system, including data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

(3) “Predicate offense” means a criminal offense that can be used to enhance a sentence levied for a later conviction, and includes operating a vehicle under the influence of intoxicating liquor or other substance in violation of 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and stalking in violation of section 1062 of this title.

(4) “Qualifying misdemeanor” means a misdemeanor offense which is not a listed crime as defined in subdivision 5301(7) of this title, an offense involving sexual exploitation of children in violation of chapter 64 of this title, an offense involving violation of a protection order in violation of section 1030 of this title, or predicate offense.

§ 7602. PROCEDURE; CONVICTION

(a)(1) Except as provided in subdivision (2) of this subsection, a person who was convicted of a qualifying misdemeanor or qualifying misdemeanors arising out of the same incident or occurrence may file a petition with the court requesting expungement of the criminal history record related to the conviction. The state attorney or attorney general shall be the respondent in the matter.

(2) The petitioner and the respondent may stipulate to an expungement of a qualifying misdemeanor or qualifying misdemeanors arising out of the same incident or occurrence. The respondent shall file the stipulation with the court, and the court shall issue the petitioner a certificate and provide notice of the expungement in accordance with section 7606 of this title.

(b) The court shall grant the petition if the following conditions are met:

(1) At least 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction.

(2) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted for the qualifying misdemeanor as defined in subdivision 7601(4) of this title on which the expungement petition is based.

(3) Any restitution ordered by the court has been paid in full.

(4) It is the opinion of the court that expungement of the criminal history record serves the interest of justice.

§ 7603. PROCEDURE; CITATION AND ARREST

(a) At any time, a person who was cited or arrested for a qualifying misdemeanor may petition the court to expunge the criminal history record related to the citation or arrest if:

(1) No criminal charge is filed by the state, and the statute of limitations has expired.

(2) The court does not make a determination of probable cause at the time of arraignment or dismisses the charge at the time of arraignment, and the statute of limitations has expired.

(3) The defendant is acquitted after a trial of all charges related to the arrest.

(b) The court shall grant the petition if it finds that expungement of the criminal history record serves the interest of justice.

§ 7604. NEW CHARGE

If a person is charged with a criminal offense after he or she has filed a petition for expungement pursuant to this chapter, the court shall not act on the petition until disposition of the new charge.

§ 7605. DENIAL OF PETITION

If a petition for expungement is denied by the court pursuant to this chapter, no further petition shall be brought for at least five years.

§ 7606. EFFECT OF EXPUNGEMENT

(a) Upon entry of an expungement order, the person whose record is expunged shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. The court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence. The court shall provide notice of the expungement to the respondent, Vermont crime information center (VCIC), the arresting agency, and any other entity that may have a record related to the expungement order.

(b) In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous criminal history record only with respect to arrests or convictions that have not been expunged.

(c) Nothing in this section shall affect any right of the person whose record has been expunged to appeal from the conviction or sentence or to rely on it in bar of any subsequent proceedings for the same offense.

Sec. 2. SUNSET

On July 1, 2014, this act is repealed.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

(Committee vote: 5-0-0)

House Proposal of Amendment

J.R.S. 16

Joint resolution requesting that penalties under the No Child Left Behind Act be suspended until the Elementary and Secondary Education Act is reauthorized in a revised form.

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

Whereas, the No Child Left Behind Act (NCLB) is incorporated into the Elementary and Secondary Education Act (ESEA), and

Whereas, in accordance with the provisions of NCLB, public schools must focus on math and reading, and

Whereas, in a 2007 study, the Center for Education Policy found that 44 percent of United States school districts have reduced the amount of time spent on science, social studies, and the arts, and

Whereas, focusing only on math and reading will not adequately prepare Vermont students for the responsibilities of citizens in a democracy, and

Whereas, the test score gains on the National Assessment of Educational Progress have been lower since the enactment of NCLB, and

Whereas, NCLB measures are narrow and imprecise, and they ignore other factors in student academic performance, and

Whereas, many Vermont schools are forced to choose between losing highly qualified and effective principals and teachers or reject substantial funding, due to punitive sanctions for their failure to make adequate yearly progress under NCLB, and

Whereas, it is the responsibility of the United States Congress periodically to evaluate the effectiveness of this legislation and reauthorize ESEA, and

Whereas, Congress has not thoroughly evaluated the impact of ESEA-NCLB on schools and the educational process since NCLB was first enacted in 2001, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to suspend immediately the punitive sanctions under the No Child Left Behind Act until the act is reauthorized in a revised form, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vermont Congressional Delegation

NOTICE CALENDAR

Second Reading

Favorable with Recommendation of Amendment

S. 14.

An act relating to display of POW/MIA flag.

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

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

Sec. 1. 1 V.S.A. § 374 is amended to read:

§ 374. ~~POW-MIA RECOGNITION DAY~~ DISPLAY OF POW/MIA FLAG

(a) ~~The third Friday in the month of September is designated as POW-MIA~~
“POW/MIA Recognition Day.”

The National League of Families POW/MIA flag, as designated in 36 U.S.C. § 189, shall be displayed, where practicable, on state-owned flagpoles, and at superior courts and city or town halls, provided the flag is donated, on the following dates:

- (1) Memorial day, the last Monday in May.
- (2) Armed forces day; the third Saturday in May.
- (3) Flag day, the fourteenth day of June.
- (4) Independence day, the fourth of July.
- (5) Veterans’ day, the eleventh day of November.
- (6) POW/MIA recognition day, the third Friday in the month of September.

(Committee vote: 5-0-0)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given

to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Kate Duffy of Williston – Commissioner of the Department of Human Resources– By Sen. Flory for the Committee on Government Operations. (1/25/11)

Jim Reardon of Essex Junction – Commissioner of the Department of Finance and Management – By Sen. White for the Committee on Government Operations. (1/28/11)

Chuck Ross of Hinesburg – Secretary of the Agency of Agriculture – By Sen. Kittell for the Committee on Agriculture. (1/28/11)

Robert D. Ide of Peacham – Commissioner of the Department of Motor Vehicles – By Sen. Kitchel for the Committee on Transportation. (1/28/11)

Jeb Spaulding of Montpelier – Secretary of the Agency of Administration – By Sen. Pollina for the Committee on Government Operations. (1/28/11)

Mary Peterson of Williston – Commissioner of the Department of Taxes – By Sen. Westman for the Committee on Finance. (1/28/11)

Steve Kimbell of Tunbridge – Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration – By Sen. Cummings for the Committee on Finance. (1/28/11)

Brian Searles of Burlington – Secretary of the Agency of Transportation – By Sen. Mazza for the Committee on Transportation. (2/1/11)

Bruce Post of Essex Junction – Member of the Board of Libraries – By Sen. Baruth for the Committee on Education. (2/4/11)

Jason Gibbs of Duxbury – Member of the Community High School of Vermont Board – By Sen. Doyle for the Committee on Education. (2/15/11)

John Fitzhugh of West Berlin – Member of the Board of Libraries – By Sen. Doyle for the Committee on Education. (2/15/11)

Susan Wehry of Burlington – Commissioner of the Department of Disabilities, Aging and Independent Living – By Sen. Pollina for the Committee on Health and Welfare. (2/15/11)

Dave Yacavone of Morrisville – Commissioner of the Department of Children and Families – By Sen. Fox for the Committee on Health and Welfare. (2/15/11)

Christine Oliver of Montpelier – Commissioner of the Department of

Mental Health – By Sen. Mullin for the Committee on Health and Welfare. (2/15/11)

Doug Racine of Richmond – Secretary of the Agency of Human Services – By Sen. Ayer for the Committee on Health and Welfare. (2/15/11)

Michael Obuchowski of Montpelier – Commissioner of the Department of Buildings and General Services – By Sen. Hartwell for the Committee on Institutions. (2/17/11)

Susan Besio of Jericho – Commissioner of the Department of Vermont Health Access – By Sen. Miller for the Committee on Health and Welfare. (2/18/11)

Susan Besio of Jericho – Commissioner of the Department of Vermont Health Access – By Sen. Miller for the Committee on Health and Welfare. (2/18/11)

Harry Chen of Mendon – Commissioner of the Department of Health – By Sen. Mullin for the Committee on Health and Welfare. (2/18/11)

Andrew Pallito of Jericho – Commissioner of the Department of Corrections – By Sen. Hartwell for the Committee on Institutions. (2/18/11)

Keith Flynn of Derby Line – Commissioner of the Department of Public Safety – By Sen. Flory for the Committee on Transportation. (2/22/11)

PUBLIC HEARINGS

Tuesday, February 22, 2011 – Room 10 – 2:30–4:30 P.M. – Re: Governor’s Proposed FY2012 State Budget – House Committee on Appropriations.

Wednesday, February 23, 2011 – Room 11 – 9:00-11:00 A.M. – Re: Governor’s Proposed FY2012 State Budget – House Committee on Appropriations.

Thursday, February 24, 2011 – Room 11 – 7:00 P.M. – Re: Retention of Judges – Joint Committee on Judicial Retention.

Wednesday, March 9, 2011 – Room 11 – 5:30-7:30 P.M. – Re: Gubernatorial appointment of the Secretary of Education and the structure of the State Board of Education – House Committee on Education.

CROSSOVER DEADLINES

The following bill reporting deadlines are established for the 2011 session:

(1) From the standing committee of last reference (excluding the Committees on Appropriations and Finance), all Senate bills must be reported out of committee on or before March 11, 2011.

(2) Senate bills referred pursuant to Senate Rule 31, must be reported out of the Committees on Appropriations and Finance on or before March 18, 2011.

(3) These deadlines may be waived for any bill or committee **only** by consent given by the Committee on Rules.

Exceptions to the foregoing deadlines include the major money bills (Appropriations, Transportation, Capital, and Miscellaneous Taxes).

REPORTS ON FILE

Pursuant to the provisions of 2 V.S.A. §20(c), one (1) hard copy of the following reports is on file in the office of the Secretary of the Senate. Effective January 2010, pursuant to Act No. 192, Adj. Sess. (2008) §5.005(g) some reports will automatically be sent by electronic copy only and can be found on the State of Vermont webpage.

15. Vermont Coalition of Runaway & Homeless Youth Programs Annual Report. (February 2011).

16. Uniform Enforcement Act 2010 Report. (Agency of Natural Resources, Department of Environmental Conservation Compliance & Enforcement Division) (February 2011).

17. Vermont Center for Geographic Information 2010 Annual Report. (February 2011).

18. Management of Stormwater Impaired Waters Annual Report. (Agency of Natural Resources, Department of Environmental Conservation) (February 2011).