

# Senate Calendar

THURSDAY, FEBRUARY 02, 2012

SENATE CONVENES AT: 1:30 P.M.

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**ACTION CALENDAR**

**NEW BUSINESS**

**Third Reading**

**S. 181.**

An act relating to school resource officers.

**H. 258.**

An act relating to public participation in environmental enforcement proceedings.

**PROPOSAL OF AMENDMENT TO H. 258 TO BE OFFERED BY  
SENATOR LYONS ON BEHALF OF THE COMMITTEE ON  
NATURAL RESOURCES AND ENERGY BEFORE THIRD READING**

Senator Lyons on behalf of the Committee on Natural Resources and Energy moves that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, 10 V.S.A. § 8002, by striking out subdivisions 13 and 14 in their entirety and inserting in lieu thereof the following:

(13) “Civil complaint” means an environmental citation issued by the secretary or the board for a violation of a statute listed under subsection 8003(a) of this title.

(14) “Federally authorized or delegated program” means an area of environmental regulation where the U.S. Environmental Protection Agency has authorized or delegated to Vermont primary regulatory responsibility, including the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act.

(15) “Post” means:

(A) placing a draft administrative order, assurance of discontinuance, or civil complaint or a final administrative order, assurance of discontinuance, or civil complaint on the website of the secretary if he or she initiates an enforcement action under this chapter or on the website of the board if it initiates an enforcement action; and

(B) providing public notice about the opportunity to:

(i) submit written comments regarding a draft administrative order, assurance of discontinuance, or civil complaint; or

(ii) request intervention in a final administrative order, assurance of discontinuance, or civil complaint.

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

Sec. 7. 10 V.S.A. § 8021 is added to read:

§ 8021. COST RECOVERY

(a) In addition to any existing authority, the secretary, in issuing an administrative order, emergency order, or assurance of discontinuance under this chapter, may recover monies expended from a special fund for a cleanup related to an environmental violation, provided that such recovered monies not exceed \$20,000.00.

(b) When monies are recovered under this section, they shall be deposited into the special fund from which they were expended.

### **Second Reading**

#### **Favorable with Recommendation of Amendment**

#### **S. 245.**

An act relating to requiring cardiovascular care instruction as a secondary school graduation requirement.

**Reported favorably with recommendation of amendment by Senator Baruth for the Committee on Education.**

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. 16 V.S.A. § 906 is amended to read:

§ 906. COURSE OF STUDY

(a) In public schools, approved and recognized independent schools, and in home study programs, learning experiences shall be provided for pupils in the minimum course of study.

(b) For purposes of this title, the minimum course of study means learning experiences adapted to a pupil's age and ability in the fields of:

\* \* \*

(3) Physical education and comprehensive health education pursuant to §§ 131–135 of this title, including the effects of tobacco, alcoholic drinks, and drugs on the human system and on society and including instruction in cardiopulmonary resuscitation and the use of automated external defibrillators;

\* \* \*

Sec. 2. 16 V.S.A. § 131 is amended to read:

§ 131. DEFINITIONS

For the purposes of this subchapter, “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 the study of:

\* \* \*

(3) Safety including:

(A) first aid, disaster prevention, and accident prevention; and

(B) cardiopulmonary resuscitation and the use of automated external defibrillators;

\* \* \*

Sec. 3. 16 V.S.A. § 133 is amended to read:

§ 133. SUPERVISOR; CURRICULA

(a) The commissioner with the approval of the state board may appoint one qualified person to supervise the preparation of appropriate curricula for use in the public schools, to promote programs for the preparation of teachers to teach these curricula, and to assist in the development of comprehensive health education programs.

~~(b) The commissioner shall evaluate and report the status of the comprehensive health education program as defined above to the board of education and to the chairmen of the house and senate committees on education no later than January 15, 1979.~~

(c) Vermont school districts may include a module within the secondary school health class curricula relating to cervical cancer and the human papillomavirus. The department of education shall work with relevant medical authorities to update the current model module to reflect up-to-date information and practices for health education in this area.

(d) Instruction in cardiopulmonary resuscitation and the use of automated external defibrillators shall be offered to all students at the secondary school level and:

(1) shall be a program based on current, nationally recognized guidelines and developed by the American Heart Association, the American Red Cross, or another nationally recognized entity;

(2) shall include practical, skills-based experiences and assessments to support cognitive learning; and

(3) if successful completion of the program will result in certification of the student to perform cardiopulmonary resuscitation or to use an automated external defibrillator, shall be taught by a certified instructor.

Sec. 4. 16 V.S.A. § 212 is amended to read:

§ 212. COMMISSIONER'S DUTIES GENERALLY

The commissioner shall execute those policies adopted by the state board in the legal exercise of its powers and shall:

\* \* \*

(18) Annually inform superintendents and principals of regional resources available to assist schools to provide instruction in cardiopulmonary resuscitation and the use of automated external defibrillators.

Sec. 5. EFFECTIVE DATE; IMPLEMENTATION

(a) This act shall take effect on passage.

(b) Schools shall begin providing instruction in cardiopulmonary resuscitation and the use of automated external defibrillators as required in this act no later than the 2013–2014 academic year.

**AMENDMENT TO S. 245 TO BE OFFERED BY SENATOR BARUTH  
ON BEHALF OF THE COMMITTEE ON EDUCATION**

Senator Baruth, on behalf of the Committee on Education, moves that the recommendation of amendment of the Committee on Education, be amended by striking out Sec. 1 in its entirety.

**Joint Resolutions For Action**

**J.R.S. 41.**

Joint resolution providing for a Joint Assembly for the election of two legislative Trustees of the Vermont State Colleges Corporation.

(For text of resolution, see Senate Journal of January 31, 2012, page 81.)

**J.R.S. 42.**

Joint resolution relating to establishing a procedure for the conduct of the election of two legislative trustees of the Vermont State Colleges Corporation by plurality vote by the General Assembly in 2012.

(For text of resolution, see Senate Journal of January 31, 2012, page 82.)

**NOTICE CALENDAR**

**Second Reading**

**S. 106.**

An act relating to miscellaneous changes to municipal government law.

**Reported favorably with recommendation of amendment by Senator Flory 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:

\* \* \* Violations; Penalties \* \* \*

Sec. 1. 10 V.S.A. § 2675 is amended to read:

§ 2675. PENALTIES

A person who commits a violation under subsection 2645(a) or 2648(a) of this title shall be subject to a fine of not more than ~~\$25.00~~ \$75.00 per violation. In the case of a violation which continues after the issuance of a fire prevention complaint, each day's continuance may be deemed a separate violation.

Sec. 2. 24 V.S.A. § 1974a is amended to read:

§ 1974a. ENFORCEMENT OF CIVIL ORDINANCE VIOLATIONS

(a) A civil penalty of not more than ~~\$500.00~~ \$800.00 may be imposed for a violation of a civil ordinance. Each day the violation continues shall constitute a separate violation.

(b) All civil ordinance violations, except municipal parking violations, and all continuing civil ordinance violations, where the penalty is ~~\$500.00~~ \$800.00 or less, shall be brought before the judicial bureau pursuant to Title 4 and this chapter. If the penalty for all continuing civil ordinance violations is greater than ~~\$500.00~~ \$800.00, or injunctive relief, other than as provided in subsection (c) of this section, is sought, the action shall be brought in the criminal division of the superior court, unless the matter relates to enforcement under chapter 117 of this title, in which instance the action shall be brought in the environmental division of the superior court.

\* \* \*

Sec. 3. 24 V.S.A. § 4451 is amended to read:

§ 4451. ENFORCEMENT; PENALTIES

(a) Any person who violates any bylaw after it has been adopted under this chapter or who violates a comparable ordinance or regulation adopted under prior enabling laws shall be fined not more than ~~\$100.00~~ \$300.00 for each

offense. No action may be brought under this section unless the alleged offender has had at least seven days' warning notice by certified mail. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation of the bylaw or ordinance after the seven-day notice period and within the next succeeding 12 months. The seven-day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. In default of payment of the fine, the person, the members of any partnership, or the principal officers of the corporation shall each pay double the amount of the fine. Each day that a violation is continued shall constitute a separate offense. All fines collected for the violation of bylaws shall be paid over to the municipality whose bylaw has been violated.

(b) Any person who, being the owner or agent of the owner of any lot, tract, or parcel of land, lays out, constructs, opens, or dedicates any street, sanitary sewer, storm sewer, water main, or other improvements for public use, travel, or other purposes or for the common use of occupants of buildings abutting thereon, or sells, transfers, or agrees or enters into an agreement to sell any land in a subdivision or land development whether by reference to or by other use of a plat of that subdivision or land development or otherwise, or erects any structure on that land, unless a final plat has been prepared in full compliance with this chapter and the bylaws adopted under this chapter and has been recorded as provided in this chapter, shall be fined not more than ~~\$100.00~~ \$300.00, and each lot or parcel so transferred or sold or agreed or included in a contract to be sold shall be deemed a separate violation. All fines collected for these violations shall be paid over to the municipality whose bylaw has been violated. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the seller or transferor from these penalties or from the remedies provided in this chapter.

\* \* \* Damages by Dogs \* \* \*

#### Sec. 4. REPEAL

20 V.S.A. §§ 3741 (election of remedy), 3742 (notice of damage; appraisal); 3743 (examination of certificate), 3744 (fees and travel expenses), 3745 (identification and killing of dogs), 3746 (action against town), and 3747 (action by town against owner of dogs) are repealed.



\* \* \* Taxes \* \* \*

Sec. 5. 24 V.S.A. § 1535 is amended to read:

§ 1535. ABATEMENT

(a) The board may abate in whole or part taxes, interest, ~~and~~ or collection fees, other than those arising out of a corrected classification of homestead or nonresidential property, accruing to the town in the following cases:

\* \* \*

\* \* \* Municipal Powers and Duties \* \* \*

Sec. 6. 24 V.S.A. § 1571 is amended to read:

§ 1571. ACCOUNTS

(a) The town treasurer shall keep an account of moneys, bonds, notes, and evidences of debt paid or delivered to him or her, and of moneys paid out by him or her for the town and the town school district, which accounts shall at all times be open to the inspection of persons interested.

(b) Moneys received by the town treasurer on behalf of the town may be invested and reinvested by the treasurer with the approval of the legislative body.

(c) The town treasurer shall file quarterly reports with the legislative body regarding his or her actions described in subsections (a) and (b) of this section.

Sec. 7. 24 V.S.A. § 1972 is amended to read:

§ 1972. PROCEDURE

(a)(1) The legislative body of a municipality desiring to adopt an ordinance or rule may adopt it subject to the petition set forth in section 1973 of this title and shall cause it to be entered in the minutes of the municipality and posted in at least five conspicuous places within the municipality. ~~The full text of the ordinance or rule, or a concise summary of it including a statement of purpose, principal provisions, and table of contents or list of section headings, shall be published~~ legislative body shall arrange for one formal publication of the ordinance or rule in a newspaper circulating in the municipality on a day not more than 14 days following the date when the proposed provision is so adopted. Along with the concise summary shall be published a reference to a place within the municipality where the full text may be examined. When the text or concise summary of an ordinance is published, the information included in the publication shall be the name of the municipality; the name of the municipality's website, if the municipality actively updates its website on a regular basis; the title or subject of the ordinance or rule; the name, telephone number, and mailing address of a municipal official designated to answer

questions and receive comments on the proposal; and where the full text may be examined. The same notice shall explain citizens' rights to petition for a vote on the ordinance or rule at an annual or special meeting as provided in section 1973 of this title, ~~and shall also contain the name, address and telephone number of a person with knowledge of the ordinance or rule who is available to answer questions about it.~~

(2) Unless a petition is filed in accordance with section 1973 of this title, the ordinance or rule shall become effective 60 days after the date of its adoption, or at such time following the expiration of 60 days from the date of its adoption as is determined by the legislative body. If a petition is filed in accordance with section 1973 of this title, the taking effect of the ordinance or rule shall be governed by ~~section~~ subsection 1973(e) of this title.

\* \* \*

(c) The procedure herein provided shall apply to the adoption of any ordinance or rule by a municipality unless another procedure is provided by charter, special law, or particular statute.

Sec. 8. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

\* \* \*

(4) To regulate the operation and use of vehicles of every kind including the power: to erect traffic signs and signals; to regulate the speed of vehicles subject to 23 V.S.A. §§ ~~1141-1147~~ chapter 13, subchapter 12; to regulate or exclude the parking of all vehicles; and to provide for waiver of the right of appearance and arraignment in court by persons charged with parking violations by payment of specified fines within a stated period of time.

\* \* \*

(6) To regulate the location, installation, maintenance, repair, and removal of utility poles, wires and conduits, water pipes or mains, or gas mains and sewers, upon, under, or above public highways or public property of the municipality.

(7) To regulate or prohibit the erection, size, structure, contents, and location of signs, posters, or displays on or above any public highway, sidewalk, lane, or alleyway of the municipality and to regulate the use, size, structure, contents, and location of signs on private buildings or structures.

(8) To regulate or prohibit the use or discharge, but not possession of, firearms within the municipality or specified portions thereof, provided that an ordinance adopted under this subdivision shall be consistent with section 2295 of this title and shall not prohibit, reduce, or limit discharge at any existing sport shooting range, as that term is defined in 10 V.S.A. § 5227.

(9) To license or regulate itinerant vendors, peddlers, door-to-door salesmen, and those selling goods, wares, merchandise, or services who engage in a transient or temporary business, or who sell from an automobile, truck, wagon, or other conveyance, excepting persons selling fruits, vegetables, or other farm produce.

\* \* \*

(11) To regulate, license, tax, or prohibit circuses, carnivals and menageries, and all plays, concerts, entertainments, or exhibitions of any kind for which money is received.

\* \* \*

(14) To define what constitutes a public nuisance, and to provide procedures and take action for its abatement or removal as the public health, safety, or welfare may require.

\* \* \*

(16) To name and rename streets and to number and renumber lots pursuant to section ~~4421~~ 4463 of this title.

\* \* \*

\* \* \* Poor Relief \* \* \*

Sec. 9. 24 V.S.A. § 1236 is amended to read:

§ 1236. POWERS AND DUTIES IN PARTICULAR

The manager shall have authority and it shall be his or her duty:

\* \* \*

(2) To perform all duties now conferred by law upon the ~~selectmen~~ selectboard, except that he or she shall not prepare tax bills, sign orders on the general fund of the town, ~~other than orders for poor relief~~, call special or annual town meetings, lay out highways, establish and lay out public parks, make assessments, award damages, act as member of the board of civil authority, nor make appointments to fill vacancies which the ~~selectmen are~~ selectboard is now authorized by law to fill; but he or she shall, in all matters herein excepted, render the ~~selectmen~~ selectboard such assistance as ~~they~~ it shall require;

\* \* \*

(4) To have charge and supervision of all public town buildings, repairs thereon, and repairs of buildings of the town school district upon requisition of the school directors; and all building done by the town or town school district, unless otherwise specially voted, shall be done under his or her charge and supervision;

(5) To perform all the duties now conferred by law upon the road commissioner of the town, including the signing of orders; provided, however, that when an incorporated village lies within the territorial limits of a town which is operating under a town manager, and such village fails to pay to such town for expenditure on the roads of the town outside the village, at least ~~fifteen~~ 15 percent of the last highway tax levied in such village, the legal voters residing in such town, outside such village, may elect one or two road commissioners who shall have and exercise all powers of road commissioner within that part of such town as lies outside such village;

\* \* \*

Sec. 10. 24 V.S.A. § 1762 is amended to read:

§ 1762. LIMITS

(a) A municipal corporation shall not incur an indebtedness for public improvements which, with its previously contracted indebtedness, shall, in the aggregate, exceed ten times the amount of the last grand list of such municipal corporation. Bonds or obligations given or created in excess of the limit authorized by this subchapter and contrary to its provisions shall be void.

(b) However, the provisions of this subchapter as to the debt limit shall not apply to bonds issued under sections 1752; or 1754 ~~and 1769~~ of this title, relating to the ordinary expenses of a municipality, ~~nor to bonds issued for poor relief.~~

Sec. 11. REPEAL

24 V.S.A. §§ 1769 (notes and bonds for poor relief) and 1770 (application) are repealed.

\* \* \* Glebe Lands \* \* \*

Sec. 12. REPEAL

24 V.S.A. §§ 2404 (rents of other lands, how divided and applied) and 2405 (contract under previous law not affected) are repealed.

\* \* \* Municipal Planning and Development \* \* \*

Sec. 13. 24 V.S.A. § 4303 is amended to read:

§ 4303. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context otherwise requires:

\* \* \*

(33) “Public road” means a state highway as defined in 19 V.S.A. § 1 or a class 1, 2, or 3 town highway as defined in 19 V.S.A. § 302(a). A municipality may, at its discretion, define a public road to also include a class 4 town highway as defined in 19 V.S.A. § 302(a).

Sec. 14. 24 V.S.A. § 4442 is amended to read:

§ 4442. ADOPTION OF BYLAWS AND RELATED REGULATORY TOOLS; AMENDMENT OR REPEAL

\* \* \*

(c) Routine adoption.

(1) A bylaw, bylaw amendment, or bylaw repeal shall be adopted by a majority of the members of the legislative body at a meeting that is held after the final public hearing, and shall be effective 21 days after adoption unless, by action of the legislative body, the bylaw, bylaw amendment, or bylaw repeal is warned for adoption by the municipality by Australian ballot at a special or regular meeting of the municipality.

(2) However, a rural town ~~with a population of fewer than 2,500 persons as defined in section 4303 of this chapter~~, by vote of that town at a special or regular meeting duly warned on the issue, may elect to require that bylaws, bylaw amendments, or bylaw repeals shall be adopted by vote of the town by Australian ballot at a special or regular meeting duly warned on the issue. That procedure shall then apply until rescinded by the voters at a regular or special meeting of the town.

\* \* \*

\* \* \* Property; Filing of Land Plats \* \* \*

Sec. 15. 27 V.S.A. § 1404(b) is amended to read:

(b) Survey plats prepared and filed in accordance with ~~section 4416 of Title 24 V.S.A. § 4463~~ shall be exempt from subdivision 1403(b)(6) of this title. Survey plats or plans filed under this exemption shall contain a title area, the location of the land and scale expressed in engineering units. In addition, they shall include inscriptions and data required by zoning and planning boards.

Sec. 16. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

**S. 203.**

An act relating to child support enforcement.

**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. 15 V.S.A. § 603 is amended to read:

§ 603. CONTEMPT

~~(a) A person who disobeys a lawful order or decree of a court or judge, made under the provisions of this chapter, may be proceeded against for contempt as provided by 12 V.S.A. § 122. The department for children and families may institute such proceedings in all cases in which a party or dependent children of the parties are the recipients of financial assistance from the department~~ Nonfinancial obligations. If a person disobeys a lawful order of the family division made under the provisions of this chapter and the order does not relate to payment of a financial obligation, the person may be subject to proceedings for civil contempt as provided by 12 V.S.A. § 122.

~~(b) For contempt of an order or decree made under the provisions of this chapter, the court may:~~

~~(1) order restitution to the department;~~

~~(2) order payments be made to the department for distribution;~~

~~(3) order a party to serve not more than 30 days of preapproved furlough as provided in 28 V.S.A. § 808(a)(7); or~~

~~(4) make such other orders or conditions as it deems proper~~

Financial obligations. If a person disobeys a lawful order of the family division made under the provisions of this chapter and the order creates a financial obligation, including payment of child support, spousal maintenance, or a lump sum property settlement, the person may be subject to proceedings for civil contempt as provided by 12 V.S.A. § 122 and the provisions set forth herein.

(c) Parties. The office of child support may institute such proceedings in all cases in which the office provides services under Title IV-D of the Social Security Act to either or both parties.

(d) Notice of hearing. The person against whom the contempt proceedings are brought shall be served with a notice of a hearing ordering the person to appear at the hearing to show cause why he or she should not be held in contempt. The notice shall inform the person that:

(1) failure to appear at the hearing may result in the issuance of an arrest warrant directing a law enforcement officer to transport the person to court; and

(2) the person has a right to be represented by counsel and that counsel may be appointed for the person if the person is financially needy.

(e) Rebuttable presumption of ability to comply. A person who is subject to a court-ordered financial obligation and who has received notice of such obligation shall be presumed to have the ability to comply with the order. In a contempt proceeding, the noncomplying party may overcome the presumption by demonstrating that, due to circumstances beyond his or her control, he or she did not have the ability to comply with the court-ordered obligation.

(f) Finding of contempt. A person may be held in contempt of court if the court finds all of the following:

(1) The person knew or reasonably should have known that he or she was subject to a court-ordered obligation.

(2) The person has failed to comply with the court order. If the failure to comply involves a failure to pay child support or spousal maintenance, the person who brings the action has the burden to establish the total amount of the obligation, the amount unpaid, and any unpaid surcharges or penalties.

(3) The person has willfully violated the court order in that he or she had the ability to comply with the order and failed to do so.

(g) Findings of fact. The court shall make findings of fact on the record based on the evidence presented which may include direct or circumstantial evidence.

(h) Order upon finding of contempt. Upon a finding of contempt, the court shall determine appropriate sanctions to obtain compliance with the court order. The court shall be authorized to order:

(1) The person to perform a work search and report the results of his or her search to the court or to the office of child support, or both.

(2) The person to appear before a reparative board. The person shall return to court for further orders if:

(A) the reparative board does not accept the case; or

(B) the person fails to complete the reparative board program to the satisfaction of the board in a time deemed reasonable by the board.

(3) Incarceration of the person unless he or she complies with purge conditions established by the court. A court may order payment of all or a portion of the unpaid financial obligation as a purge condition, providing that the court finds that the person has the present ability to pay the amount ordered and sets a date certain for payment. If the purge conditions are not met by the date established by the court and the date set for payment is within 30 days of finding of ability to pay, the court may issue a mittimus placing the contemnor in the custody of the commissioner of corrections.

(A) As long as the person remains in the custody of the commissioner of corrections, the court shall schedule the case for a review hearing every 15 days.

(B) The commissioner shall immediately release such a person from custody upon the contemnor's compliance with the purge conditions ordered by the court.

(C) The commissioner may, in his or her sole discretion, place the contemnor on home confinement furlough or work crew furlough without prior approval of the court.

(4) Orders and conditions as the court deems appropriate.

(i) Finding of present ability to pay. A finding of present ability to pay a purge condition shall be effective for up to 30 days from the date of the finding. In determining present ability to pay for purposes of imposing necessary and appropriate coercive sanctions to bring the noncomplying person into compliance and purge the contempt, the court may consider:

(1) A person's reasonable ability to use or access available funds or other assets to make all or a portion of the amount due by a date certain set by the court.

(2) A person's reasonable ability to obtain sufficient funds necessary to pay all or a portion of the amount due by a date certain set by the court, as demonstrated by the person's prior payment history and ability to comply with previous contempt orders.

Sec. 2. 15 V.S.A. § 653 is amended to read:

#### § 653. DEFINITIONS

As used in this subchapter:

(1) "Available income" means gross income, less:



(A) the amount of spousal support or preexisting child support obligations, including any court-ordered periodic repayment toward arrearages, actually paid;

\* \* \*

(7) “Self-support reserve” means the needs standard established annually ~~by the commissioner for children and families which shall be an amount sufficient to provide a reasonable subsistence compatible with decency and health. The needs standard shall take into account the available income of the parent responsible for payment of child support, and calculated at 120 percent of the United States Department of Health and Human Services poverty guideline per year for a single individual.~~

\* \* \*

Sec. 3. 15 V.S.A. § 658 is amended to read:

§ 658. SUPPORT

\* \* \*

(d) The court or magistrate may order ~~a parent who is in default of a child support order, an obligor or a parent who will become the obligor pending an anticipated child support order~~ to participate in employment, educational, or ~~training-related~~ training-related activities if the court finds that participation in such activities would assist in providing support for a child, or in addressing the causes of the default. The court may also order the parent to participate in substance abuse or other counseling if the court finds that such counseling may assist the parent to achieve stable employment. Activities ordered under this section shall ~~not be inconsistent~~ consistent with, and may be more rigorous than, any requirements of a state or federal program in which the parent is participating. For the purpose of this subsection, “employment, educational, or ~~training-related~~ training-related activities” shall mean:

- (1) unsubsidized employment;
- (2) subsidized private sector employment;
- (3) subsidized public sector employment;
- (4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- (5) on-the-job training;
- (6) job search and job readiness assistance;
- (7) community service programs;

(8) vocational educational training (not to exceed 12 months with respect to any individual);

(9) job skills training directly related to employment;

(10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and

(12) the provision of child care services to an individual who is participating in a community service program.

\* \* \*

Sec. 4. 15 V.S.A. § 660 is amended to read:

§ 660. MODIFICATION

(a)(1) On motion of either parent ~~or, the office of child support,~~ any other person to whom support has previously been granted, or any person previously charged with support, and upon a showing of a real, substantial and unanticipated change of circumstances, the court may annul, vary, or modify a child support order, whether or not the order is based upon a stipulation or agreement. If the child support order has not been modified by the court for at least three years, the court may waive the requirement of a showing of a real, substantial, and unanticipated change of circumstances.

(2) The office of child support may independently file a motion to modify child support or change payee if providing services under Title IV-D of the Social Security Act, if a party is or will be incarcerated for more than one year, if the family has reunited or is living together, if the child is no longer living with the payee, or if a party receives means-tested benefits.

(b) A child support order, including an order in effect prior to adoption of the support guideline, which varies more than ten percent from the amounts required to be paid under the support guideline, shall be considered a real, substantial, and unanticipated change of circumstances.

~~(c) Receipt of workers' compensation, unemployment compensation or disability benefits~~ The following shall be considered a real, substantial, and unanticipated change of circumstances:

(1) Receipt of workers' compensation, disability benefits, or means-tested public assistance benefits.

(2) Unemployment compensation, unless the period of unemployment was considered when the child support order was established.

(3) Incarceration for more than 90 days, unless incarceration is for failure to pay child support.

(d) A motion to modify a support order under subsection (b) ~~or (c)~~ of this section shall be accompanied by an affidavit setting forth calculations demonstrating entitlement to modification and shall be served on other parties and filed with the court. Upon proof of service, and if the calculations demonstrate cause for modification, the ~~clerk of the court~~ magistrate shall enter an order modifying the support award in accordance with the calculations provided, unless within 15 days of service of, or receipt of, the request for modification, either party requests a hearing. The court shall conduct a hearing within 20 days of the request. No order shall be modified without a hearing if one is requested.

(e) An order may be modified only as to future support installments and installments which accrued subsequent to the date of notice of the motion to the other party or parties. The date the motion for modification is filed shall be deemed to be the date of notice to the opposing party or parties.

Sec. 5. 15 V.S.A. § 662 is amended to read:

§ 662. INCOME STATEMENTS

(a) A party to a proceeding under this subchapter shall file an affidavit of income and assets which shall be in a form prescribed by the court administrator. Upon request of either party, or the court, the other party shall furnish information documenting the affidavit. The court may require a party who fails to comply with this section to pay an economic penalty to the other party.

(b) If a party fails to provide information as required under subsection (a) of this section, the court shall use the available evidence to estimate the noncomplying parent's income. Failure to provide the information required under subsection (a) of this section ~~shall~~ may create a presumption that the noncomplying parent's gross income is ~~the greater of:~~

~~(1) 150 percent of the most recently available annual average covered wage for all employment as calculated by the department of labor; or~~

~~(2) the gross income indicated by the evidence.~~

(c)(1) Upon a motion filed by either party or the office of child support, the court may relieve a party from a final judgment or child support order upon a showing that the income used in a default child support order was inaccurate by at least 10 percent. A showing that the court used incorrect financial

information shall be considered a mistake for the purposes of Rule 60 of the Vermont Rules of Civil Procedure.

(2) The motion in subdivision (1) of this subsection shall be filed within one year of the date of service of the child support order being contested.

Sec. 6. 15 V.S.A. § 795 is amended to read:

§ 795. LICENSES OR GOVERNMENTAL CONTRACTS; MOTOR VEHICLE REGISTRATIONS

(a) As used in this section:

(1) “Agency” means any unit of state government, including agencies, departments, boards, commissions, authorities, or public corporations.

(2) “License” means any license, certification or registration issued by an agency:

(A) to conduct a trade or business, including a license;

(B) to practice a profession or occupation, or a license required;

(C) to engage in recreational activities, including the license to hunt, fish, or trap; or

(D) to operate a motor vehicle or a commercial vehicle.

(3) “Contract” means a contract for the provision of goods, services, or real estate space.

(4) “Vehicle registration” means the certificate or number plate issued by the commissioner of motor vehicles pursuant to the provisions of 23 V.S.A. chapters 7, 29, and 31.

(b) Every applicant for a license or vehicle registration shall sign a statement that the applicant is not subject to a child support order, or if subject to a child support order is in good standing with respect thereto or in full compliance with a plan to pay any and all child support payable under a support order as of the date the application is filed. A license or vehicle registration may not be issued or renewed without such a statement.

\* \* \*

Sec. 7. 28 V.S.A. § 2a(a) is amended to read:

(a) State policy. It is the policy of this state that principles of restorative justice be included in shaping how the criminal justice system responds to persons charged with or convicted of criminal offenses, and how the state responds to persons who are in contempt of child support orders. The policy goal is a community response to a person’s wrongdoing at its earliest onset,

and a type and intensity of sanction tailored to each instance of wrongdoing. Policy objectives are to:

(1) Resolve conflicts and disputes by means of a nonadversarial community process.

(2) Repair damage caused by criminal acts to communities in which they occur, and to address wrongs inflicted on individual victims.

(3) Reduce the risk of an offender committing a more serious crime in the future, that would require a more intensive and more costly sanction, such as incarceration.

Sec. 8. 28 V.S.A. § 3 is amended to read:

### § 3. GENERAL DEFINITIONS

Whenever used in this title:

\* \* \*

(8) “Offender” means any person convicted of a crime or offense under the laws of this state, and, for purposes of work crew, a person found in civil contempt under 15 V.S.A. § 603.

\* \* \*

Sec. 9. 28 V.S.A. § 352 is amended to read:

### § 352. SUPERVISED COMMUNITY SENTENCE

(a) At the request of the court, the commissioner of corrections shall prepare a preliminary assessment to determine whether an offender should be considered for a supervised community sentence.

(b) Upon adjudication of guilt, ~~or~~ a finding of violation of probation, or a finding of civil contempt, and only after the filing of a recommendation for supervised community sentence by the commissioner of corrections, the court may impose a sentence of imprisonment and order that all or part of the term of imprisonment be served in the community subject to the provisions of this chapter. Such a sentence shall not limit the court’s authority to place a person on probation and to establish conditions of probation.

\* \* \*

Sec. 10. 28 V.S.A. § 910 is amended to read:

### § 910. RESTORATIVE JUSTICE PROGRAM ~~FOR PROBATIONERS~~

This chapter establishes a program of restorative justice for use with offenders required to participate in such a program as a condition of a sentence of probation or as ordered for civil contempt of a child support order under

15 V.S.A. § 603. The program shall be carried out by community reparative boards under the supervision of the commissioner, as provided by this chapter.

Sec. 11. 28 V.S.A. § 910a is amended to read:

§ 910a. REPARATIVE BOARDS; FUNCTIONS

\* \* \*

(d) Each board shall conduct its meetings in a manner that promotes safe interactions among ~~a probationer~~ an offender, victim or victims, and community members, and shall:

(1) In collaboration with the department, municipalities, the courts, and other entities of the criminal justice system, implement the restorative justice program of seeking to obtain ~~probationer~~ offender accountability, repair harm and compensate a victim or victims and the community, increase a ~~probationer's~~ an offender's awareness of the effect of his or her behavior on a victim or victims and the community, and identify ways to help ~~a probationer~~ an offender comply with the law.

(2) Educate the public about, and promote community support for, the restorative justice program.

(e) Each board shall have access to the central file of any ~~probationer~~ offender required to participate with that board in the restorative justice program.

\* \* \*

Sec. 12. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee vote: 5-0-0)

**CONCURRENT RESOLUTIONS FOR NOTICE**

**H.C.R. 252-253** (For text of Resolutions, see Addendum to House Calendar for February 1, 2012)

**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.

David Luce of Waterbury Center – Member of the Community High School of Vermont Board- By Sen. Kittell for the Committee on Education. (1/13/12)

Beth Robinson of Ferrisburgh – Associate Justice, Vermont Supreme Court – By Sen. Snelling for the Committee on Judiciary. (1/25/12)

Lamont Barnett of Rockingham – Member of the Vermont Housing Finance Agency – by Sen. McCormack for the Committee on Finance (1/31/12)

## **PUBLIC HEARINGS**

### **Joint Public Hearing on Fiscal Year 2013 state budget on Vermont Interactive Television House and Senate Committees on Appropriations**

**Monday, February 13, 2012, 4:00 - 6:30 p.m.** – The House and Senate Committees on Appropriations will hold a joint public hearing on Vermont Interactive Television (V.I.T.) to give Vermonters throughout the state an opportunity to express their views about the state budget for fiscal year 2013. All 14 V.I.T. sites will be available for the hearing: Bennington, Brattleboro, Castleton, Johnson, Lyndonville, Middlebury, Montpelier, Newport, Randolph Center, Rutland, Springfield, St. Albans, White River Junction and Williston. V.I.T.'s web site has an up-to-date location listing, including driving directions, addresses and telephone numbers, <http://www.vitlink.org/>.

**For the first time, the budget hearing will be VIEWABLE via the Internet if your computer has Flash-based streaming capabilities.**

Go to [www.vitlink.org/streamingmedia/vtcvitopen.php](http://www.vitlink.org/streamingmedia/vtcvitopen.php).

**Some mobile devices may require additional software.**

The Governor's budget proposal can be viewed at the Department of Finance's website: [http://finance.vermont.gov/state\\_budget/rec](http://finance.vermont.gov/state_budget/rec). For information about the format of this event or to submit written testimony, call the House Appropriations Committee office at 802/828-5767 or email [tutton@leg.state.vt.us](mailto:tutton@leg.state.vt.us). Requests for interpreters should be made to the office by 12:00 noon on Monday, January 30, 2012.

## **REPORTS ON FILE**

### **Reports 2012**

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.

1. Certificate of Need Application of Bio-Medical Applications of New Hampshire, Inc. (BISHCA Docket No. 11004.H). (January 2012).
2. Joint Legislative Corrections Oversight Committee. (January 2012).
3. Vermont Center for Geographic Information 2012 Annual Report. (January 2012).
4. Report of the Travel Information Council. (Agency of Commerce and Community Development). (January 2012)
5. Report Re: Sec. 71. Study; net cost of government contracting; economic modeling. (Office of the Secretary of Administration). (January 2012)

### **NOTICE OF JOINT ASSEMBLY**

**Thursday, February 16, 2012 - 10:30 A.M.** - Election of two (2) trustees for the Vermont State Colleges Corporation.

Candidates for the positions of trustee must notify the Secretary of State **in writing** not later than Thursday, February 9, 2012, by 5:00 P.M. pursuant to the provisions of 2 V.S.A. §12(b). Otherwise their names will not appear on the ballots for these positions.

The following rules shall apply to the conduct of these elections:

**First:** All nominations for these offices will be presented in alphabetical order prior to voting.

**Second:** There will be only one nominating speech of not more than three (3) minutes and not more than two seconding speeches of not more than one (1) minute each for each nominee.

### **JFO NOTICE**

#### **INFORMATION NOTICE**

The following items were recently received by the Joint Fiscal Committee:

**JFO #2551** – \$262,756 grant from the U.S. Department of Agriculture to the Vermont Department of Education. This grant will be used to provide training for school food service and child care staff in the areas of nutrition education, and for implementation of wellness policies. [*JFO received 1/19/12*]

**JFO #2552** – \$600,000 grant from the U.S. Department of Justice to the Vermont Department of Corrections. This grant will be used to implement prevention, identification and response mechanisms aimed at reducing the incidence of sexual abuse in prison facilities. One (1) limited service position is included with this request. [*JFO received 1/19/12*]