

# Senate Calendar

TUESDAY, FEBRUARY 28, 2012

SENATE CONVENES AT: 9:30 A.M.

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**ACTION CALENDAR  
UNFINISHED BUSINESS**

**Third Reading**

**H. 630.**

An act relating to reforming Vermont's mental health system.

**PROPOSAL OF AMENDMENT TO H. 630 TO BE OFFERED BY  
SENATOR SEARS BEFORE THIRD READING**

Senator Sears, on behalf of the Committee on Appropriations, moves that the Senate proposal of amendment be amended in Sec. 9, subdivision (a)(2), by striking out the number "10" and inserting in lieu thereof the number four.

**PROPOSAL OF AMENDMENT TO H. 630 TO BE OFFERED BY  
SENATOR SEARS, ON BEHALF OF THE COMMITTEE ON  
APPROPRIATIONS, BEFORE THIRD READING**

Senator Sears, on behalf of the Committee on Appropriations, moves that the Senate proposal of amendment be amended in Sec. 33, subdivision (b)(2), by striking out subparagraph (B) in its entirety and inserting in lieu thereof the following:

(B)(i) the number of declined referrals to inpatient psychiatric hospitals due to lack of capacity; and

(ii) the number of declined referrals to inpatient psychiatric hospitals due to patient or unit acuity;

**PROPOSAL OF AMENDMENT TO H. 630 TO BE OFFERED BY  
SENATORS BARUTH AND ASHE BEFORE THIRD READING**

Senators Ashe and Baruth move that the Senate proposal of amendment be amended in Sec. 9, subdivision (b)(1), by striking out the following: "16-bed" and inserting in lieu thereof the following: 25-bed

**PROPOSAL OF AMENDMENT TO H. 630 TO BE OFFERED BY  
SENATOR BENNING BEFORE THIRD READING**

Senator Benning moves that the Senate proposal of amendment be amended in Sec. 9, Inpatient Hospital Beds, subdivision (b)(1), after the first sentence, by inserting the following: The design shall include the capacity for expansion to 25 beds, including the infrastructure needed in the first phase of construction to support such a future expansion. Permitting shall be based on a 25-bed design. The administration shall take no action nor fail to take action that

would preclude a decision of the general assembly in 2013 or thereafter to expand the hospital to 25 beds if deemed necessary.

**PROPOSAL OF AMENDMENT TO H. 630 TO BE OFFERED BY  
SENATOR ASHE BEFORE THIRD READING**

Senator Ashe moves that the Senate proposal of amendment be amended in Sec. 9, in subdivision (a)(2), by striking out the period at the end of subdivisions (a)(2)(F) and (a)(2)(G) and inserting a semicolon in lieu thereof, and by adding subdivisions (a)(2)(H) and (a)(2)(I) to read as follows:

(H) Thirty days prior to hiring, participating hospitals shall provide the department of human resources with a description of all positions that shall provide care to individuals with mental health conditions pursuant to the contract and application processes, which the department of human resources shall immediately add to its regular job postings. Participating hospitals shall hire former or existing Vermont State Hospital staff applying for posted positions, provided the applicant meets all required qualifications; and

(I) Contracts shall comply with 3 V.S.A. §§ 341–344.

**PROPOSAL OF AMENDMENT TO H. 630 TO BE OFFERED BY  
SENATOR ASHE BEFORE THIRD READING**

Senator Ashe moves that the Senate proposal of amendment be amended in Sec. 9, in subdivision (a)(2), by striking the period at the end of subdivision (a)(2)(F) and inserting in lieu thereof a semicolon, and by striking the period at the end of subdivision (a)(2)(G) and inserting in lieu thereof ; and, and by adding a subdivision (a)(2)(H) to read as follows:

(H) Participating hospitals shall be required to identify the number and type of new positions needed to care for patients under the custody of the commissioner of mental health. Thirty days prior to hiring for these positions, participating hospitals shall provide the department of human resources with a description of all positions that shall provide care to individuals with mental health conditions pursuant to the contract and application processes, which the department of human resources shall immediately list with its regular job postings. Participating hospitals shall hire former or existing Vermont State Hospital staff applying for posted positions at the time the positions are first being filled, provided the applicant meets all required qualifications. After initially filling the positions according to the process described in this subdivision, the participating hospital shall no longer be required to affirmatively offer employment to current or former Vermont State Hospital employees.

**PROPOSAL OF AMENDMENT TO H. 630 TO BE OFFERED BY  
SENATOR ASHE BEFORE THIRD READING**

Senator Ashe moves that the Senate proposal of amendment be amended in Sec. 9, in subdivision (a)(2), by striking out the period at the end of subdivision (a)(2)(F) and inserting in lieu thereof a semicolon, and by striking out the period at the end of subdivision (a)(2)(G) and inserting in lieu thereof ; and, and by adding a new subdivision (a)(2)(H) to read as follows:

(H) Contracts shall comply with 3 V.S.A. §§ 341–344.

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 189.**

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

**Reported favorably with recommendation of amendment by Senator Snelling 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. 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 state's 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 files held by the court, the state's 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 state's attorney recalls the referral to diversion.

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

§ 164a. RESTITUTION

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 section 164a of Title 3.

\* \* \*

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. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee vote: 5-0-0)

**Reported favorably by Senator Snelling for the Committee on Appropriations.**

(Committee vote: 5-0-2)

## **NEW BUSINESS**

### **Third Reading**

#### **S. 112.**

An act relating to bail for persons charged with lewd and lascivious conduct with a child.

**S. 217.**

An act relating to closely held benefit corporations.

**S. 237.**

An act relating to the genuine progress indicator.

**H.C.R. 255.**

House concurrent resolution urging the restoration of intercity bus service to Rutland City.

**Second Reading**

**Favorable**

**H. 365.**

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

**Reported favorably by Senator Galbraith for the Committee on Economic Development, Housing and General Affairs.**

(Committee vote: 5-0-0)

**Report of Committee of Conference**

**H. 558.**

An act relating to fiscal year 2012 budget adjustment.

To the Senate and House of Representatives:

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

**H. 558. An act relating to fiscal year 2012 budget adjustment.**

**(For text of Committee of Conference Report, see Addendum to Senate Calendar for Friday, February 24, 2012)**

**NOTICE CALENDAR**

**Committee Bill for Second Reading**

**S. 251.**

An act relating to miscellaneous amendments to laws pertaining to motor vehicles.

By the Committee on Transportation.

**Second Reading**

**Favorable**

**S. 129.**

An act relating to recognition of the Koasek Abenaki of the Koas as a Native American Indian tribe.

**Reported favorably by Senator Ashe for the Committee on Economic Development, Housing and General Affairs.**

(Committee vote: 5-0-0)

**Favorable with Recommendation of Amendment**

**S. 197.**

An act relating to hospital-based outpatient fees.

**Reported favorably with recommendation of amendment by Senator Mullin for the Committee on Health and Welfare.**

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. 18 V.S.A. § 9458 is added to read:

§ 9458. HOSPITAL-ACQUIRED MEDICAL PRACTICES

(a) Beginning January 1, 2011, whenever a hospital acquires a medical practice, the hospital shall, for a period of 30 months following the date of acquisition, provide written notice as described in subsection (b) of this section to each patient and prospective patient prior to performing the first outpatient service after April 1, 2012 for which such patient or prospective patient may incur an increased out-of-pocket expense.

(b) The written notice provided to a patient pursuant to this section shall notify the patient that the hospital's acquisition of the medical practice may result in changes to the patient's out-of-pocket expenses for an outpatient visit or ancillary service, including the potential for cost-sharing requirements in excess of the typical office visit co-payment under the patient's health insurance plan.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage and shall apply to any medical practice acquired by a hospital on or after January 1, 2011 for a period of 30 months following the date of acquisition.

(Committee vote: 4-0-1)

**S. 244.**

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

**Reported favorably with recommendation of amendment by Senator Nitka 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. 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 pursuant to 23 V.S.A. §§ 674 or 676 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 department shall reinstate the person's operator's license 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) 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 April 1, 2013 and again on or before January 15, 2014 on the implementation of the DLS diversion program and the advisability of implementing the program through roadside stops for driving without a license and extending the program to persons who are currently prohibited from participation pursuant to subdivision (b)(2) of this section.

### Sec. 3. 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 subsection (h) of Sec. 2 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. 4. Sec. 4 of No. 41 of the Acts of 2011 is amended to read:

### Sec. 4. NONVIOLENT MISDEMEANOR SENTENCE REVIEW COMMITTEE

\* \* \*

(d) Report. ~~By December 1, 2011, the~~ The committee shall report annually to the general assembly on its findings and any recommendations for legislative action.

(e) Number of meetings; term of committee; reimbursement. The committee may meet no more than five times annually and shall cease to exist on January 1, ~~2012~~ 2014.

\* \* \*

#### Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee vote: 5-0-0)

#### CONCURRENT RESOLUTIONS FOR NOTICE

**S.C.R. 39** (For text of Resolution, see Page 260 of Senate Calendar for February 28, 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)

Patrick Flood of East Calais – Commissioner of the Department of Mental Health – By Sen. Mullin for the Committee on Health and Welfare. (2/8/12)

John Snow of Charlotte – Member of the Vermont Economic Development Authority – By Sen. Fox for the Committee on Finance. (2/8/12)

Martin Maley of Colchester – Superior Court Judge – By Sen. Sears for the Committee on Judiciary. (2/9/12)

Alison Arms of South Burlington – Superior Court Judge – By Sen. Snelli8ng for the Committee on Judiciary. (2/16/12)

Robert Bishop of St. Johnsbury – Member of the State Infrastructure Bank Board – By Sen. MacDonald for the Committee on Finance. (2/21/12)

John Valente of Rutland – Member of the Vermont Municipal Bond Bank – By Sen. McCormack for the Committee on Finance. (2/21/12)

James Volz of Plainfield – Chair of the Public Service Board – By Sen. Cummings for the Committee on Finance. (2/21/12)

Ed Amidon of Charlotte – Member of the Valuation Appeals Board – By Sen. Ashe for the Committee on Finance. (2/21/12)

### **PUBLIC HEARINGS**

**Tuesday, February 28, 2012** – Room 11 – 7:00 P.M. – Re Judicial Retention of Superior Court Judge Karen Carroll, Superior Court Judge Dennis Pearson, and Superior Court Judge Barry Peterson – By the Joint Committee on Judicial Retention.

### **FOR INFORMATION ONLY**

#### **Senate Concurrent Resolution for Notice**

#### **S.C.R. 39**

By All Members of the Senate,

By All Members of the House,

**S.C.R. 39.** Senate concurrent resolution honoring former Representative and Senator Robert T. Gannett on his 95th birthday.

*Whereas*, Robert (Bob) Gannett's presence graced the General Assembly during his four terms in the House of Representatives as the member from Brattleboro (1953–1960) and later for ten terms as the senator from Windham County (1973–1992), and

*Whereas*, when the newly elected Representative Bob Gannett arrived in Montpelier in January 1953, his legal expertise as a respected attorney was acknowledged with his assignment to the Committee on Judiciary, and

*Whereas*, in 1955, Representative Bob Gannett was appointed to the Committee on Appropriations, and his rapid mastery of budgetary minutiae was a prelude to his service as committee chair during the 1957 and 1959 biennia, and

*Whereas*, a keen observer of the parliamentary process, in 1957 he served as Speaker Pro Tempore while presiding over the House's deliberations, and

*Whereas*, near the close of the 1960 Adjourned Session, Representative Bob Gannett's final year in the House of Representatives, his colleagues voted him President of the House of 1959, an organization the members formed for the purpose of holding reunions, and

*Whereas*, in 1972, the voters of Windham County elected Robert Gannett as their new senator, and he became one of the Senate's most esteemed members, and

*Whereas*, in his initial senatorial biennium, Senator Bob Gannett sat on the Finance, General and Military, and Highway Traffic committees, and

*Whereas*, in 1975, he resumed his role as a legislative budget scrutinizer with his appointment as Vice Chair of the Committee on Appropriations, and he subsequently earned the rare distinction of chairing this all-important committee in both the House and the Senate, and

*Whereas*, the Committee on General and Military Affairs also benefited from his astute leadership as vice chair and chair, and while serving as Chair of the Committee on Institutions, Senator Bob Gannett was a strong advocate, as was his late wife Sarah Alden (Aldie) Derby Gannett, of state financial assistance for the establishment of a permanent corridor for the Long Trail, helping to create a legacy that will endure for generations to come, and

*Whereas*, during his senatorial career, his committee assignments also included Senate Government Operations, Senate Transportation, and Joint Fiscal, and his wise parliamentary counsel proved invaluable on both the committees on Senate Rules and Joint Rules, and

*Whereas*, on the morning of Sunday, April 26, 1992, Senator Bob Gannett concluded his long and illustrious legislative service when he offered the final motion of the 1992 Adjourned Session directing that the President of the Senate appoint a committee to inform the Governor that the Senate was ready to adjourn sine die, and

*Whereas*, his wealth of common sense, wise judgment, and concern for the well-being of Vermonters was always drawn upon in his decision-making process, and his service in the General Assembly, as an attorney, and in the community at large epitomized the work of a genuine statesman, *now therefore be it*

***Resolved by the Senate and House of Representatives:***

That the General Assembly honors former Representative and Senator Robert T. Gannett on his 95th birthday and extends to him best wishes on this special occasion, *and be it further*

***Resolved:*** That the Secretary of State be directed to send a copy of this resolution to Robert Gannett in Brattleboro.