

Journal of the Senate

TUESDAY, FEBRUARY 22, 2011

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Father Kevin Rooney of Northfield.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 45.

An act relating to the Winhall school district's budget.
To the Committee on Education.

H. 52.

An act relating to the definition of poultry products.
To the Committee on Agriculture.

Third Reading Ordered

S. 31.

Senator White, for the Committee on Government Operations, to which was referred Senate bill entitled:

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

Reported that the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered on a roll call, Yeas 20, Nays 10.

Senator Campbell having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Campbell, Carris, Fox, Galbraith, Giard, Hartwell, Kittell, Lyons, Mazza, McCormack, Miller, Nitka, Pollina, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: Benning, Brock, Cummings, Doyle, Flory, Illuzzi, Kitchel, MacDonald, Mullin, Westman.

Bill Amended; Third Reading Ordered

S. 37.

Senator Sears, for the Committee on Judiciary, to which was referred Senate bill entitled:

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

Reported recommending 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.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Consideration Postponed

Senate Resolution entitled:

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.

Was taken up.

Thereupon, without objection consideration of the resolution was postponed until the next legislative day.

Adjournment

On motion of Senator Campbell, the Senate adjourned until four o'clock and thirty minutes in the afternoon.

Called to Order

At four o'clock and thirty minutes the Senate was called to order by the President.

Message from the House No. 25

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 114. An act relating to electrical installations.

H. 153. An act relating to human trafficking.

H. 236. An act relating to limitation of prosecutions for sexual abuse of a vulnerable adult.

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

Bill Introduced

Senate bill of the following title was introduced, read the first time and referred:

S. 78.

By Senators Illuzzi, Ashe, Carris, Doyle and Galbraith,

An act relating to the advancement of cellular, broadband, smart grid, and other technology infrastructure in Vermont.

To the Committee on Economic Development, Housing and General Affairs.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 114.

An act relating to electrical installations.

To the Committee on Economic Development, Housing and General Affairs.

H. 153.

An act relating to human trafficking.

To the Committee on Judiciary.

H. 236.

An act relating to limitation of prosecutions for sexual abuse of a vulnerable adult.

To the Committee on Judiciary.

Recess

On motion of Senator Illuzzi the Senate recessed until the fall of the gavel.

Called to Order

At four o'clock and forty-five minutes the Senate was called to order by the President.

Rules Suspended; Bill Committed

S. 78.

Pending entry on the Calendar for notice, on motion of Senator Lyons, the rules were suspended and Senate bill entitled:

An act relating to the advancement of cellular, broadband, smart grid, and other technology infrastructure in Vermont.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Economic Development, Housing and General Affairs, Senator Lyons moved

that Senate Rule 49 be suspended in order to commit the bill to the Committee on Natural Resources and Energy with the report of the Committee on Economic Development, Housing and General Affairs *intact*,

Which was agreed to.

Adjournment

On motion of Senator Mazza, the Senate adjourned until one o'clock and fifteen minutes in the afternoon on Wednesday, February 23, 2011.