House Calendar

Wednesday, April 30, 2014

114th DAY OF THE ADJOURNED SESSION

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Action Postponed Until April 30, 2014

Favorable with Amendment

S. 252

An act relating to financing for Green Mountain Care

Rep. Fisher of Lincoln, for the Committee on **Health Care,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Intent and Principles * * *

Sec. 1. LEGISLATIVE INTENT; FINDINGS; PURPOSE

(a)(1) It is the intent of the General Assembly to continue moving forward toward implementation of Green Mountain Care, a publicly financed program of universal and unified health care.

(2) It is the intent of the General Assembly not to change in any way the benefits provided to Vermont residents by Medicare, the Federal Employees Health Benefit Program, TRICARE, a retiree health program, or any other health benefit program beyond the regulatory authority of the State of Vermont.

(b) The General Assembly finds that:

(1) It has been three years since the passage of 2011 Acts and Resolves No. 48 (Act 48), which established the Green Mountain Care Board, authorized payment reform initiatives, and created the framework for the Vermont Health Benefit Exchange and Green Mountain Care.

(2) The Green Mountain Care Board currently regulates health insurance rates, hospital budgets, and certificates of need. In 2013, the Green Mountain Care Board's hospital budget review limited hospital growth to 2.7 percent, the lowest annual growth rate in Vermont for at least the last 15 years. The Green Mountain Care Board issued four certificates of need and one conceptual development phase certificate of need. It also issued 31 health insurance rate decisions and reduced by approximately five percent the rates proposed by insurers in the Vermont Health Benefit Exchange.

(3) In 2013, Vermont was awarded a three-year State Innovation Model (SIM) grant of $45 million to improve health and health care and to lower costs for Vermont residents. The grant funds the creation of a sustainable

model of multi-payer payment and delivery reform, encouraging providers to change the way they do business in order to deliver the right care at the right time in the right setting. The State has created a 300-person public-private stakeholder group to work collaboratively on creating appropriate payment and delivery system models. Through this structure, care management models are being coordinated across State agencies and health care providers, including the Blueprint for Health, the Vermont Chronic Care Initiative, and accountable care organizations.

(4) From the SIM grant funds, the State recently awarded $2.6 million in grants to health care providers for innovative pilot programs improving care delivery or for creating the capacity and infrastructure for care delivery reforms.

(5) Three accountable care organizations (ACOs) have formed in Vermont: one led by hospitals, one led by federally qualified health centers, and one led by independent physicians. The Green Mountain Care Board has approved payment and quality measures for ACOs, which create substantial uniformity across payers and will provide consistent measurements for health care providers.

(6) The Vermont Health Benefit Exchange has completed its first open enrollment period. Vermont has more people enrolled through its Exchange per capita than are enrolled in any other state-based Exchange, but many Vermonters experienced difficulties during the enrollment period and not all aspects of Vermont's Exchange are fully functional.

(7) According to the 2013 Blueprint for Health Annual Report, Vermont residents receiving care from a patient-centered medical home and community health team had favorable outcomes over comparison groups in reducing expenditures and reducing inpatient hospitalizations. As of December 31, 2013, 121 primary care practices were participating in the Blueprint for Health, serving approximately 514,385 Vermonters.

(8) The Agency of Human Services has adopted the modified adjusted gross income standard under the Patient Protection and Affordable Care Act, further streamlining the Medicaid application process.

(9) Vermonters currently spend over $2.5 billion per year on private funding of health care through health insurance premiums and out-of-pocket expenses. Act 48 charts a course toward replacing that spending with a publicly financed system.

(10) There is no legislatively determined time line in Act 48 for the implementation of Green Mountain Care. A set of triggers focusing on decisions about financing, covered services, benefit design, and the impacts of

Green Mountain Care must be satisfied, and a federal waiver received, before launching Green Mountain Care. In addition, the Green Mountain Care Board must be satisfied that reimbursement rates for providers will be sufficient to recruit and retain a strong health care workforce to meet the needs of all Vermonters.

(11) Act 48 required the Secretary of Administration to provide a financing plan for Green Mountain Care by January 15, 2013. The financing plan delivered on January 24, 2013 did not "recommend the amounts and necessary mechanisms to finance Green Mountain Care and any systems improvements needed to achieve a public-private universal health care system," or recommend solutions to cross-border issues, as required by Sec. 9 of Act 48. The longer it takes the Secretary to produce a complete financing plan, the longer it will be until Green Mountain Care can be implemented.

(c) In order to implement the next steps envisioned by Act 48 successfully, it is appropriate to update the assumptions and cost estimates that formed the basis for that act, evaluate the success of existing health care reform efforts, and obtain information relating to key outstanding policy decisions. It is the intent of the General Assembly to obtain a greater understanding of the impact of health care reform efforts currently under way and to take steps toward implementation of the universal and unified health system envisioned by Act 48.

(d) Before making final decisions about the financing for Green Mountain Care, the General Assembly must have accurate data on how Vermonters currently pay for health care and how the new system will impact individual decisions about accessing care.

(e) The General Assembly also must consider the benefits and risks of a new health care system on Vermont's businesses when there are new public financing mechanisms in place, when businesses no longer carry the burden of providing health coverage, when employees no longer fear losing coverage when they change jobs, and when business start-ups no longer have to consider health coverage.

(f) The General Assembly must ensure that Green Mountain Care does not go forward if doing so is not cost-effective for the residents of Vermont and for the State.

(g) The General Assembly must be satisfied that an appropriate plan of action is in place in order to accomplish the financial and health care operational transitions needed for successful implementation of Green Mountain Care.

Sec. 2. PRINCIPLES FOR HEALTH CARE FINANCING

The General Assembly adopts the following principles to guide the financing of health care in Vermont:

(1) All Vermont residents have the right to high-quality health care.

(2) All Vermont residents shall contribute to the financing for Green Mountain Care.

(3) Vermont residents shall finance Green Mountain Care through taxes that are levied equitably, taking into account an individual's ability to pay and the value of the health benefits provided so that access to health care will not be limited by cost barriers. The financing system shall maximize opportunities to pay for health care using pre-tax funds.

(4) As provided in 33 V.S.A. § 1827, Green Mountain Care shall be the payer of last resort for Vermont residents who continue to receive health care through plans provided by an employer, by a federal health benefit plan, by Medicare, by a foreign government, or as a retirement benefit.

(5) Vermont's system for financing health care shall raise revenue sufficient to provide medically necessary health care services to all Vermont residents, including:

(A) ambulatory patient services;

(B) emergency services;

(C) hospitalization;

(D) maternity and newborn care;

(E) mental health and substance use disorder services, including behavioral health treatment;

(F) prescription drugs;

(G) rehabilitative and habilitative services and devices;

(H) laboratory services;

(I) preventive and wellness services and chronic care management; and

(J) pediatric services, including oral and vision care.

(6) The financing system for Green Mountain Care shall include an indexing mechanism that adjusts the level of individuals' and businesses' financial contributions to meet the health care needs of Vermont residents and that ensures the sufficiency of funding in accordance with the principle expressed in 18 V.S.A. § 9371(11).

* * * Vermont Health Benefit Exchange * * *

Sec. 3. 33 V.S.A. § 1803 is amended to read:

§ 1803. VERMONT HEALTH BENEFIT EXCHANGE

* * *

(b)(1)(A) The Vermont Health Benefit Exchange shall provide qualified individuals and qualified employers with qualified health benefit plans, including the multistate plans required by the Affordable Care Act, with effective dates beginning on or before January 1, 2014. The Vermont Health Benefit Exchange may contract with qualified entities or enter into intergovernmental agreements to facilitate the functions provided by the Vermont Health Benefit Exchange.

* * *

(4) To the extent permitted by the U.S. Department of Health and Human Services, the Vermont Health Benefit Exchange shall permit qualified employers to purchase qualified health benefit plans through the Exchange website, through navigators, by telephone, or directly from a health insurer under contract with the Vermont Health Benefit Exchange.

* * *

Sec. 4. 33 V.S.A. § 1811(b) is amended to read:

(b)(1) No person may provide a health benefit plan to an individual ~~or small employer~~ unless the plan is offered through the Vermont Health Benefit Exchange ~~and complies with the provisions of this subchapter~~.

(2) To the extent permitted by the U.S. Department of Health and Human Services, a small employer or an employee of a small employer may purchase a health benefit plan through the Exchange website, through navigators, by telephone, or directly from a health insurer under contract with the Vermont Health Benefit Exchange.

(3) No person may provide a health benefit plan to an individual or small employer unless the plan complies with the provisions of this subchapter.

Sec. 5. PURCHASE OF SMALL GROUP PLANS DIRECTLY FROM CARRIERS

To the extent permitted by the U.S. Department of Health and Human Services and notwithstanding any provision of State law to the contrary, the Department of Vermont Health Access shall permit employers purchasing qualified health benefit plans on the Vermont Health Benefit Exchange to purchase the plans through the Exchange website, through navigators, by

telephone, or directly from a health insurer under contract with the Vermont Health Benefit Exchange.

Sec. 6. OPTIONAL EXCHANGE COVERAGE FOR EMPLOYERS WITH UP TO 100 EMPLOYEES

(a)(1) If permitted under federal law and notwithstanding any provision of Vermont law to the contrary, prior to January 1, 2016, health insurers may offer health insurance plans through or outside the Vermont Health Benefit Exchange to employers that employed an average of at least 51 but not more than 100 employees on working days during the preceding calendar year. Calculation of the number of employees shall not include a part-time employee who works fewer than 30 hours per week or a seasonal worker as defined in 26 U.S.C. § 4980H(c)(2)(B).

(2) Health insurers may make Exchange plans available to an employer described in subdivision (1) of this subsection if the employer:

(A) has its principal place of business in this State and elects to provide coverage for its eligible employees through the Vermont Health Benefit Exchange, regardless of where an employee resides; or

(B) elects to provide coverage through the Vermont Health Benefit Exchange for all of its eligible employees who are principally employed in this State.

(3) Beginning on January 1, 2016, health insurers may only offer health insurance plans to the employers described in this subsection through the Vermont Health Benefit Exchange in accordance with 33 V.S.A. chapter 18, subchapter 1.

(b)(1) As soon as permitted under federal law and notwithstanding any provision of Vermont law to the contrary, prior to January 1, 2016, employers may purchase health insurance plans through or outside the Vermont Health Benefit Exchange if they employed an average of at least 51 but not more than 100 employees on working days during the calendar year. Calculation of the number of employees shall not include a part-time employee who works fewer than 30 hours per week or a seasonal worker as defined in 26 U.S.C. § 4980H(c)(2)(B).

(2) An employer of the size described in subdivision (1) of this subsection may purchase coverage for its employees through the Vermont Health Benefit Exchange if the employer:

(A) has its principal place of business in this State and elects to provide coverage for its eligible employees through the Vermont Health Benefit Exchange, regardless of where an employee resides; or

(B) elects to provide coverage through the Vermont Health Benefit Exchange for all of its eligible employees who are principally employed in this State.

* * * Green Mountain Care * * *

Sec. 7. UPDATES ON TRANSITION TO GREEN MOUNTAIN CARE

(a) The Secretary of Administration or designee shall provide updates at least quarterly to the House Committees on Health Care and on Ways and Means and the Senate Committees on Health and Welfare and on Finance regarding the Agency's progress to date on:

(1) determining the elements of Green Mountain Care, such as claims administration and provider relations, for which the Agency plans to solicit bids for administration pursuant to 33 V.S.A. § 1827(a), and preparing a description of the job or jobs to be performed, the bid qualifications, and the criteria by which bids will be evaluated; and

(2) developing a proposal to transition to and fully implement Green Mountain Care as required by Sec. 26 of this act.

(b) The Green Mountain Care Board shall provide updates at least quarterly to the House Committees on Health Care and on Ways and Means and the Senate Committees on Health and Welfare and on Finance regarding the Board's progress to date on:

(1) defining the Green Mountain Care benefit package;

(2) deciding whether to include dental, vision, hearing, and long-term care benefits in Green Mountain Care;

(3) determining whether and to what extent to impose cost-sharing requirements in Green Mountain Care; and

(4) making the determinations required for Green Mountain Care implementation pursuant to 33 V.S.A. § 1822(a)(5).

Sec. 8. 33 V.S.A. § 1825 is amended to read:

§ 1825. HEALTH BENEFITS

(a)(1) Green Mountain Care shall include primary care, preventive care, chronic care, acute episodic care, and hospital services and shall include at least the same covered services as ~~those included in the benefit package in effect for the lowest cost Catamount Health plan offered on January 1, 2011~~ are available in the benchmark plan for the Vermont Health Benefit Exchange.

(2) It is the intent of the General Assembly that Green Mountain Care provide a level of coverage that includes benefits that are actuarially equivalent

to at least 87 percent of the full actuarial value of the covered health services.

(3) The Green Mountain Care Board shall consider whether to impose cost-sharing requirements; if so, ~~whether~~ how to make the cost-sharing requirements income-sensitized; and the impact of any cost-sharing requirements on an individual's ability to access care. The Board shall consider waiving any cost-sharing requirement for evidence-based primary and preventive care; for palliative care; and for chronic care for individuals participating in chronic care management and, where circumstances warrant, for individuals with chronic conditions who are not participating in a chronic care management program.

(4)(A) The Green Mountain Care Board established in 18 V.S.A. chapter 220 shall consider whether to include dental, vision, and hearing benefits in the Green Mountain Care benefit package.

(B) The Green Mountain Care Board shall consider whether to include long-term care benefits in the Green Mountain Care benefit package.

(5) Green Mountain Care shall not limit coverage of preexisting conditions.

(6) The Green Mountain Care ~~board~~ Board shall approve the benefit package and present it to the General Assembly as part of its recommendations for the Green Mountain Care budget.

(b)(1)(A) For individuals eligible for Medicaid or CHIP, the benefit package shall include the benefits required by federal law, as well as any additional benefits provided as part of the Green Mountain Care benefit package.

(B) Upon implementation of Green Mountain Care, the benefit package for individuals eligible for Medicaid or CHIP shall also include any optional Medicaid benefits pursuant to 42 U.S.C. § 1396d or services covered under the State plan for CHIP as provided in 42 U.S.C. § 1397cc for which these individuals are eligible on January 1, 2014. Beginning with the second year of Green Mountain Care and going forward, the Green Mountain Care Board may, consistent with federal law, modify these optional benefits, as long as at all times the benefit package for these individuals contains at least the benefits described in subdivision (A) of this subdivision (b)(1).

(2) For children eligible for benefits paid for with Medicaid funds, the benefit package shall include early and periodic screening, diagnosis, and treatment services as defined under federal law.

(3) For individuals eligible for Medicare, the benefit package shall include the benefits provided to these individuals under federal law, as well as

any additional benefits provided as part of the Green Mountain Care benefit package.

Sec. 9. 33 V.S.A. § 1827 is amended to read:

§ 1827. ADMINISTRATION; ENROLLMENT

(a)(1) The Agency shall, under an open bidding process, solicit bids from and award contracts to public or private entities for administration of certain elements of Green Mountain Care, such as claims administration and provider relations.

(2) The Agency shall ensure that entities awarded contracts pursuant to this subsection do not have a financial incentive to restrict individuals' access to health services. The Agency may establish performance measures that provide incentives for contractors to provide timely, accurate, transparent, and courteous services to individuals enrolled in Green Mountain Care and to health care professionals.

(3) When considering contract bids pursuant to this subsection, the Agency shall consider the interests of the State relating to the economy, the location of the entity, and the need to maintain and create jobs in Vermont. The ~~agency~~ Agency may utilize an econometric model to evaluate the net costs of each contract bid.

* * *

(e) [Repealed.]

(f) Green Mountain Care shall be the ~~secondary~~ payer of last resort with respect to any health service that may be covered in whole or in part by any other health benefit plan, including Medicare, private health insurance, retiree health benefits, or federal health benefit plans offered by ~~the Veterans' Administration, by~~ the military~~,~~ or to federal employees.

* * *

Sec. 10. CONCEPTUAL WAIVER APPLICATION

On or before November 15, 2014, the Secretary of Administration or designee shall submit to the federal Center for Consumer Information and Insurance Oversight a conceptual waiver application expressing the intent of the State of Vermont to pursue a Waiver for State Innovation pursuant to Sec. 1332 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, and the State's interest in commencing the application process.

Sec. 11. 21 V.S.A. § 2003(b) is amended to read:

(b) For any quarter in ~~fiscal years 2007 and 2008~~ calendar year 2014, the amount of the Health Care Fund contribution shall be ~~$ 91.25~~ $119.12 for each full-time equivalent employee in excess of ~~eight~~ four. For each ~~fiscal~~ calendar year after ~~fiscal year 2008, the number of excluded full-time equivalent employees shall be adjusted in accordance with subsection (a) of this section, and~~ calendar year 2014, the amount of the Health Care Fund contribution shall be adjusted by a percentage equal to any percentage change in premiums for the second lowest cost silver-level plan in the Vermont Health Benefit Exchange.

* * * Green Mountain Care Board * * *

Sec. 12. 18 V.S.A. § 9375(b) is amended to read:

(b) The Board shall have the following duties:

* * *

(4) Review the Health Resource Allocation Plan created in chapter 221 of this title, including conducting regular assessments of the range and depth of health needs among the State's population and developing a plan for allocating resources over a reasonable period of time to meet those needs.

* * *

Sec. 13. 18 V.S.A. § 9375(d) is amended to read:

(d) Annually on or before January 15, the Board shall submit a report of its activities for the preceding calendar year to the House Committee on Health Care ~~and~~, the Senate Committee on Health and Welfare, and the Joint Fiscal Committee.

* * *

Sec. 14. 2000 Acts and Resolves No. 152, Sec. 117b, as amended by 2013 Acts and Resolves No. 79, Sec, 42, is further amended to read:

Sec. 117b. MEDICAID COST SHIFT REPORTING

* * *

(b) Notwithstanding 2 V.S.A. § 20(d), annually on or before ~~December~~ January 15, the ~~chair~~ Chair of the Green Mountain Care Board, the Commissioner of Vermont Health Access, and each acute care hospital shall file with the Joint Fiscal Committee, the House Committee on Health Care, and the Senate Committee on Health and Welfare, in the manner required by the Joint Fiscal Committee, such information as is necessary to carry out the purposes of this section. Such information shall pertain to the provider

delivery system to the extent it is available. The Green Mountain Care Board may satisfy its obligations under this section by including the information required by this section in the annual report required by 18 V.S.A. § 9375(d).

* * *

Sec. 15. 2013 Acts and Resolves No. 79, Sec. 5b is amended to read:

Sec. 5b. STANDARDIZED HEALTH INSURANCE CLAIMS AND EDITS

(a)(1) As part of moving away from fee-for-service and toward other models of payment for health care services in Vermont, the Green Mountain Care Board, in consultation with the Department of Vermont Health Access, health care providers, health insurers, and other interested stakeholders, shall develop a complete set of standardized edits and payment rules based on Medicare or on another set of standardized edits and payment rules appropriate for use in Vermont. The Board and the Department shall adopt by rule the standards and payment rules that health care providers, health insurers, Medicaid, and other payers shall use beginning on ~~January 1, 2015 and that Medicaid shall use beginning on~~ January 1, 2017.

* * *

* * * Pharmacy Benefit Managers * * *

Sec. 16. 18 V.S.A. § 9472 is amended to read:

§ 9472. PHARMACY BENEFIT MANAGERS; REQUIRED PRACTICES WITH RESPECT TO HEALTH INSURERS

* * *

(d) At least annually, a pharmacy benefit manager that provides pharmacy benefit management for a health plan shall disclose to the health insurer, the Department of Financial Regulation, and the Green Mountain Care Board the aggregate amount the pharmacy benefit manager retained on all claims charged to the health insurer for prescriptions filled during the preceding calendar year in excess of the amount the pharmacy benefit manager reimbursed pharmacies.

(e) Compliance with the requirements of this section is required for pharmacy benefit managers entering into contracts with a health insurer in this ~~state~~ State for pharmacy benefit management in this ~~state~~ State.

Sec. 17. 18 V.S.A. § 9473 is redesignated to read:

§ ~~9473~~ 9474. ENFORCEMENT

Sec. 18. 18 V.S.A. § 9473 is added to read:

§ 9473. PHARMACY BENEFIT MANAGERS; REQUIRED PRACTICES

WITH RESPECT TO PHARMACIES

(a) Within 14 calendar days following receipt of a pharmacy claim, a pharmacy benefit manager or other entity paying pharmacy claims shall do one of the following:

(1) Pay or reimburse the claim.

(2) Notify the pharmacy in writing that the claim is contested or denied. The notice shall include specific reasons supporting the contest or denial and a description of any additional information required for the pharmacy benefit manager or other payer to determine liability for the claim.

(b) A pharmacy benefit manager or other entity paying pharmacy claims shall:

(1) make available, in a format that is readily accessible and understandable by a pharmacist, a list of the drugs subject to maximum allowable cost, the actual maximum allowable cost for each drug, and the source used to determine the maximum allowable cost; and

(2) update the maximum allowable cost list at least once every seven calendar days.

(c) A pharmacy benefit manager or other entity paying pharmacy claims shall not:

(1) impose a higher co-payment for a prescription drug than the co-payment applicable to the type of drug purchased under the insured's health plan;

(2) impose a higher co-payment for a prescription drug than the maximum allowable cost for the drug; or

(3) require a pharmacy to pass through any portion of the insured's co-payment to the pharmacy benefit manager or other payer.

Sec. 19. 9 V.S.A. § 2466a is amended to read:

§ 2466a. CONSUMER PROTECTIONS; PRESCRIPTION DRUGS

(a) A violation of 18 V.S.A. § 4631 shall be considered a prohibited practice under section 2453 of this title.

(b) As provided in 18 V.S.A. § ~~9473~~ 9474, a violation of 18 V.S.A. § 9472 or 9473 shall be considered a prohibited practice under section 2453 of this title.

* * *

* * * Adverse Childhood Experiences * * *

Sec. 20. FINDINGS AND PURPOSE

(a) It is the belief of the General Assembly that controlling health care costs requires consideration of population health, particularly Adverse Childhood Experiences (ACEs).

(b) The ACE Questionnaire contains ten categories of questions for adults pertaining to abuse, neglect, and family dysfunction during childhood. It is used to measure an adult's exposure to traumatic stressors in childhood. Based on a respondent's answers to the Questionnaire, an ACE Score is calculated, which is the total number of ACE categories reported as experienced by a respondent.

(c) In a 1998 article entitled "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults" published in the American Journal of Preventive Medicine, evidence was cited of a "strong graded relationship between the breadth of exposure to abuse or household dysfunction during childhood and multiple risk factors for several of the leading causes of death in adults."

(d) The greater the number of ACEs experienced by a respondent, the greater the risk for the following health conditions and behaviors: alcoholism and alcohol abuse, chronic obstructive pulmonary disease, depression, obesity, illicit drug use, ischemic heart disease, liver disease, intimate partner violence, multiple sexual partners, sexually transmitted diseases, smoking, suicide attempts, and unintended pregnancies.

(e) ACEs are implicated in the ten leading causes of death in the United States and with an ACE score of six or higher, an individual has a 20-year reduction in life expectancy.

(f) An individual with an ACE score of two is twice as likely to experience rheumatic disease. An individual with an ACE score of four has a three-to-four-times higher risk of depression; is five times more likely to become an alcoholic; is eight times more likely to experience sexual assault; and is up to ten times more likely to attempt suicide. An individual with an ACE score of six or higher is 2.6 times more likely to experience chronic obstructive pulmonary disease; is three times more likely to experience lung cancer; and is 46 times more likely to abuse intravenous drugs. An individual with an ACE score of seven or higher is 31 times more likely to attempt suicide.

(g) Physical, psychological, and emotional trauma during childhood may result in damage to multiple brain structures and functions.

(h) ACEs are common in Vermont. In 2011, the Vermont Department of

Health reported that 58 percent of Vermont adults experienced at least one adverse event during their childhood, and that 14 percent of Vermont adults have experienced four or more adverse events during their childhood. Seventeen percent of Vermont women have four or more ACEs.

(i) The impact of ACEs is felt across all socioeconomic boundaries.

(j) The earlier in life an intervention occurs for an individual with ACEs, the more likely that intervention is to be successful.

(k) ACEs can be prevented where a multigenerational approach is employed to interrupt the cycle of ACEs within a family, including both prevention and treatment throughout an individual's lifespan.

(l) It is the belief of the General Assembly that people who have experienced adverse childhood experiences can be resilient and can succeed in leading happy, healthy lives.

Sec. 21. VERMONT FAMILY BASED APPROACH PILOT

(a) The Agency of Human Services, through the Integrated Family Services initiative, within available Agency resources and in partnership with the Vermont Center for Children, Youth, and Families at the University of Vermont, shall implement the Vermont Family Based Approach in one pilot region. Through the Vermont Family Based Approach, wellness services, prevention, intervention, and, where indicated, treatment services shall be provided to families throughout the pilot region in partnership with other human service and health care programs. The pilot shall be fully implemented by January 1, 2015 to the extent resources are available to support the implementation.

(b)(1) In the pilot region, the Agency of Human Services, community partner organizations, schools, and the Vermont Center for Children, Youth, and Families shall identify individuals interested in being trained as Family Wellness Coaches and Family Focused Coaches.

(2) Each Family Wellness Coach and Family Focused Coach shall:

(A) complete the training program provided by the Vermont Family Based Approach;

(B) conduct outreach activities for the pilot region; and

(C) serve as a resource for family physicians within the pilot region.

Sec. 22. REPORT; BLUEPRINT FOR HEALTH

On or before December 15, 2014, the Director of the Blueprint for Health shall submit a report to the House Committee on Health Care and to the Senate Committee on Health and Welfare containing recommendations as to how

screening for adverse childhood experiences and trauma-informed care may be incorporated into Blueprint for Health medical practices and community health teams, including any proposed evaluation measures and approaches, funding constraints, and opportunities.

Sec. 23. RECOMMENDATION; UNIVERSITY OF VERMONT'S COLLEGE OF MEDICINE AND SCHOOL OF NURSING CURRICULUM

The General Assembly recommends to the University of Vermont's College of Medicine and School of Nursing that they consider adding or expanding information to their curricula about the Adverse Childhood Experience Study and the impact of adverse childhood experiences on lifelong health.

Sec. 24. TRAUMA-INFORMED EDUCATIONAL MATERIALS

(a) On or before January 1, 2015, the Vermont Board of Medical Practice, in collaboration with the Vermont Medical Society Education and Research Foundation, shall develop educational materials pertaining to the Adverse Childhood Experience Study, including available resources and evidence-based interventions for physicians, physician assistants, and advanced practice registered nurses.

(b) On or before July 1, 2016, the Vermont Board of Medical Practice and the Office of Professional Regulation shall disseminate the materials prepared pursuant to subsection (a) of this section to all physicians licensed pursuant to 26 V.S.A. chapters 23 and 33, naturopathic physicians licensed pursuant to 26 V.S.A. chapter 81, physician assistants licensed pursuant to 26 V.S.A. chapter 31, and advanced practice registered nurses licensed pursuant to 26 V.S.A. chapter 28, subchapter 3.

Sec. 25. REPORT; DEPARTMENT OF HEALTH; GREEN MOUNTAIN CARE BOARD

(a) On or before November 1, 2014, the Department of Health, in consultation with the Department of Mental Health, shall submit a written report to the Green Mountain Care Board containing:

(1) recommendations for incorporating education, treatment, and prevention of adverse childhood experiences into Vermont's medical practices and the Department of Health's programs;

(2) recommendations on the availability of appropriate screening tools and evidence-based interventions for individuals throughout their lives, including expectant parents; and

(3) recommendations on additional security protections that may be used for information related to a patient's adverse childhood experiences.

(b) The Green Mountain Care Board shall review the report submitted pursuant to subsection (a) of this section and attach comments to the report regarding the report's implications on population health and health care costs. On or before January 1, 2015, the Board shall submit the report with its comments to the Senate Committees on Education and on Health and Welfare and to the House Committees on Education, on Health Care, and on Human Services.

* * * Reports * * *

Sec. 26. GREEN MOUNTAIN CARE FINANCING AND COVERAGE; REPORT

(a) Notwithstanding the January 15, 2013 date specified in 2011 Acts and Resolves No. 48, Sec. 9, on or before February 3, 2015, the Secretary of Administration shall submit to the House Committees on Health Care and on Ways and Means and the Senate Committees on Health and Welfare and on Finance a proposal to transition to and fully implement Green Mountain Care. The report shall include the following elements, as well as any other topics the Secretary deems appropriate:

(1) a detailed analysis of how much individuals and businesses currently spend on health care, including the average percentage of income spent on health care premiums for plans in the Vermont Health Benefit Exchange by Vermont residents purchasing Exchange plans as individuals and by Vermont residents whose employers provide health coverage as an employment benefit, as well as data necessary to compare the proposal to the various ways health care is currently paid for, including as a percentage of employers' payroll;

(2) recommendations for the amounts and necessary mechanisms to finance Green Mountain Care, including:

(A) proposing the amounts to be contributed by individuals and businesses;

(B) recommending financing options for wraparound coverage for individuals with other primary coverage, including evaluating the potential for using financing tiers based on the level of benefits provided by Green Mountain Care; and

(C) addressing cross-border financing issues;

(3) wraparound benefits for individuals for whom Green Mountain Care will be the payer of last resort pursuant to 33 V.S.A. § 1827(f), including individuals covered by the Federal Employees Health Benefit Program, TRICARE, Medicare, retiree health benefits, or an employer health plan;

(4) a thorough economic analysis of the impact of changing from a

health care system financed through premiums to the system recommended in the financing proposal, taking into account the effect on wages and job growth and the impact on various wage levels;

(5) recommendations for addressing cross-border health care delivery issues;

(6) establishing provider reimbursement rates in Green Mountain Care;

(7) developing estimates of administrative savings to health care providers and payers from Green Mountain Care; and

(8) information regarding Vermont's efforts to obtain a Waiver for State Innovation pursuant to Section 1332 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, including submission of a conceptual waiver application as required by Sec. 10 of this act.

(b) If the Secretary of Administration does not submit the Green Mountain Care financing and coverage proposal required by this section to the General Assembly by February 3, 2015, no portion of the unencumbered funds remaining as of that date in the fiscal year 2015 appropriation to the Agency of Administration for the planning and the implementation of Green Mountain Care shall be expended until the Secretary submits to the General Assembly a plan recommending the specific amounts and necessary mechanisms to finance Green Mountain Care.

Sec. 27. CHRONIC CARE MANAGEMENT; BLUEPRINT; REPORT

On or before October 1, 2014, the Secretary of Administration or designee shall provide to the House Committees on Health Care and on Human Services and the Senate Committees on Health and Welfare and on Finance a proposal for modifications of the payment structure to health care providers and community health teams for their participation in the Blueprint for Health; a recommendation on whether to expand the Blueprint to include additional services or chronic conditions such as obesity, mental conditions, and oral health; and recommendations on ways to strengthen and sustain advanced practice primary care.

Sec. 28. HEALTH INSURER SURPLUS; LEGAL CONSIDERATIONS; REPORT

The Department of Financial Regulation, in consultation with the Office of the Attorney General, shall identify the legal and financial considerations involved in the event that a private health insurer offering major medical insurance plans, whether for-profit or nonprofit, ceases doing business in this State, including appropriate disposition of the insurer's surplus funds. On or

before July 15, 2014, the Department shall report its findings to the House Committees on Health Care, on Commerce, and on Ways and Means and the Senate Committees on Health and Welfare and on Finance.

Sec. 29. TRANSITION PLAN FOR UNION EMPLOYEES

The Commissioners of Labor and of Human Resources, in consultation with the Vermont League of Cities and Towns, Vermont School Boards Association, a coalition of labor organizations active in Vermont, and other interested stakeholders, shall develop a plan for transitioning all union employees with collectively bargained health benefits from their existing health insurance plans to Green Mountain Care, with the goal that all union employees shall be enrolled in Green Mountain Care upon implementation, which is currently targeted for 2017. The Commissioners shall address the role of collective bargaining on the transition process and shall propose methods to mitigate the impact of the transition on employees' health care coverage and on their total compensation.

Sec. 30. FINANCIAL IMPACT OF HEALTH CARE REFORM INITIATIVES

(a) The Secretary of Administration or designee shall consult with the Joint Fiscal Office in collecting data and developing methodologies, assumptions, analytic models, and other factors related to the following:

(1) the distribution of current health care spending by individuals, businesses, and municipalities, including comparing the distribution of spending by individuals by income class with the distribution of other taxes;

(2) the costs of and savings from current health care reform initiatives; and

(3) updated cost estimates for Green Mountain Care, the universal and unified health care system established in 33 V.S.A. chapter 18, subchapter 2.

(b) The Secretary or designee and the Joint Fiscal Committee shall explore ways to collaborate on the estimates required pursuant to subsection (a) of this section and may contract jointly, to the extent feasible, in order to use the same analytic models, data, or other resources.

(c) On or before December 1, 2014, the Secretary of Administration shall present his or her analysis to the General Assembly. On or before January 15, 2015, the Joint Fiscal Office shall evaluate the analysis and indicate areas of agreement and disagreement with the data, assumptions, and results.

Sec. 31. [Deleted.]

Sec. 32. INCREASING MEDICAID RATES; REPORT

On or before January 15, 2015, the Secretary of Administration or designee, in consultation with the Green Mountain Care Board, shall report to the House Committees on Health Care and on Ways and Mean and the Senate Committees on Health and Welfare and on Finance regarding the impact of increasing Medicaid reimbursement rates to providers to match Medicare rates. The issues to be addressed in the report shall include:

(1) the amount of State funds needed to effect the increase;

(2) the level of a payroll tax that would be necessary to generate the revenue needed for the increase;

(3) the projected impact of the increase on health insurance premiums; and

(4) to the extent that premium reductions would likely result in a decrease in the aggregate amount of federal premium tax credits for which Vermont residents would be eligible, whether there are specific timing considerations for the increase as it relates to Vermont's application for a Waiver for State Innovation pursuant to Section 1332 of the Patient Protection and Affordable Care Act.

Sec. 33. HEALTH CARE EXPENSES IN OTHER FORMS OF INSURANCE

The Secretary of Administration or designee, in consultation with the Departments of Labor and of Financial Regulation, shall collect the most recent available data regarding health care expenses paid for by workers' compensation, automobile, property and casualty, and other forms of non-medical insurance, including the amount of money spent on health care-related goods and services and the percentage of the premium for each type of policy that is attributable to health care expenses. The Secretary of Administration or designee shall consolidate the data and provide it to the General Assembly on or before December 1, 2014.

* * * Health Care Workforce Symposium * * *

Sec. 34. HEALTH CARE WORKFORCE SYMPOSIUM

On or before November 15, 2014, the Secretary of Administration or designee, in collaboration with the Vermont Medical Society, the Vermont Association of Hospitals and Health Systems, and the Vermont Assembly of Home Health and Hospice Agencies, shall organize and conduct a symposium to address the impacts of moving toward universal health care coverage on Vermont's health care workforce and on its projected workforce needs.

* * * Repeal * * *

Sec. 35. REPEAL

3 V.S.A. § 635a (legislators and session-only legislative employees eligible to purchase State Employees Health Benefit Plan at full cost) is repealed.

* * * Effective Dates * * *

Sec. 36. EFFECTIVE DATES

This act shall take effect on passage, except that:

(1) Notwithstanding 1 V.S.A. § 214, Sec. 35 (repeal of legislator eligibility to purchase State Employees Health Benefit Plan) shall take effect on passage and shall apply retroactively to January 1, 2014, except that members and session-only employees of the General Assembly who were enrolled in the State Employees Health Benefit Plan on January 1, 2014 may continue to receive coverage under the plan through the remainder of the 2014 plan year; and

(2) Sec. 18 (18 V.S.A. § 9473; pharmacy benefit managers) shall take effect on July 1, 2014 and shall apply to contracts entered into or renewed on or after that date.

(Committee vote: 7-2-2)

(For text see Senate Journal 3/27/2014 &3/28/2014)

Rep. Ancel of Calais, for the Committee on **Ways and Means,** recommends the bill ought to pass when amended as recommended by the Committee on **Health Care** and when further amended as follows:

First: In Sec. 1, legislative intent; findings; purpose, by striking out subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

(d) Before making final decisions about the financing for Green Mountain Care, the General Assembly must have accurate data on the direct and indirect costs of the current health care system and how the new system will impact individual decisions about accessing care.

Second: In Sec. 1, legislative intent; findings; purpose, by striking out subsections (f) and (g) in their entirety and inserting in lieu thereof new subsections (f) and (g) to read as follows:

(f) The General Assembly must ensure that Green Mountain Care does not go forward if the financing is not sufficient, fair, predictable, transparent, sustainable, and shared equitably.

(g) The General Assembly must be satisfied that an appropriate plan of action is in place in order to accomplish the transitions needed for successful

implementation of Green Mountain Care.

Third: By striking out Sec. 2, principles for health care financing, and inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. PRINCIPLES FOR HEALTH CARE FINANCING

The General Assembly adopts the following principles to guide the financing of health care in Vermont:

(1) All Vermont residents have the right to high-quality health care.

(2) All Vermont residents shall contribute to the financing for Green Mountain Care through taxes that are levied equitably, taking into account an individual's ability to pay and the value of the health benefits provided so that access to health care will not be limited by cost barriers.

(3) The financing system shall maximize opportunities to take advantage of federal tax credits and deductions.

(4) As provided in 33 V.S.A. § 1827, Green Mountain Care shall be the payer of last resort for Vermont residents who continue to receive health care through plans provided by an employer, by a federal health benefit plan, by Medicare, by a foreign government, or as a retirement benefit.

(5) Vermont's system for financing health care shall raise revenue sufficient to provide medically necessary health care services to all Vermont residents, including:

(A) ambulatory patient services;

(B) emergency services;

(C) hospitalization;

(D) maternity and newborn care;

(E) mental health and substance use disorder services, including behavioral health treatment;

(F) prescription drugs;

(G) rehabilitative and habilitative services and devices;

(H) laboratory services;

(I) preventive and wellness services and chronic care management; and

(J) pediatric services, including oral and vision care.

Fourth: By striking out Sec. 11, 21 V.S.A. § 2003(b), in its entirety and inserting in lieu thereof a new Sec. 11 to read as follows:

Sec. 11. 21 V.S.A. § 2003(b) is amended to read:

(b) For ~~any~~ each quarter in fiscal ~~years 2007 and 2008~~ year 2015, the amount of the Health Care Fund contribution shall be ~~$ 91.25~~ $133.30 for each full-time equivalent employee in excess of ~~eight~~ four. For each fiscal year after fiscal year ~~2008, the number of excluded full-time equivalent employees shall be adjusted in accordance with subsection (a) of this section, and~~ 2015, the amount of the Health Care Fund contribution shall be adjusted by a percentage equal to any percentage change in premiums for the second lowest cost silver-level plan in the Vermont Health Benefit Exchange.

Fifth: By striking out Sec. 26, Green Mountain Care financing and coverage; report, in its entirety and inserting in lieu thereof a new Sec. 26 to read as follows:

Sec. 26. GREEN MOUNTAIN CARE FINANCING AND COVERAGE; REPORT

(a) Notwithstanding the January 15, 2013 date specified in 2011 Acts and Resolves No. 48, Sec. 9, no later than January 15, 2015, the Secretary of Administration shall submit to the House Committees on Health Care and on Ways and Means and the Senate Committees on Health and Welfare and on Finance a proposal to transition to and fully implement Green Mountain Care. The report shall include the following elements, as well as any other topics the Secretary deems appropriate:

(1) a detailed analysis of the direct and indirect financial impacts of moving from the current health care system to a publicly financed system, including the impact by income class and family size for individuals and by business size, economic sector, and total sales or revenue for businesses, as well as the effect on various wage levels and job growth;

(2) recommendations for the amounts and necessary mechanisms to finance Green Mountain Care, including:

(A) proposing the amounts to be contributed by individuals and businesses;

(B) recommending financing options for wraparound coverage for individuals with other primary coverage, including evaluating the potential for using financing tiers based on the level of benefits provided by Green Mountain Care; and

(C) addressing cross-border financing issues;

(3) wraparound benefits for individuals for whom Green Mountain Care will be the payer of last resort pursuant to 33 V.S.A. § 1827(f), including individuals covered by the Federal Employees Health Benefit Program,

TRICARE, Medicare, retiree health benefits, or an employer health plan;

(4) recommendations for addressing cross-border health care delivery issues;

(5) establishing provider reimbursement rates in Green Mountain Care;

(6) developing estimates of administrative savings to health care providers and payers from Green Mountain Care; and

(7) information regarding Vermont's efforts to obtain a Waiver for State Innovation pursuant to Section 1332 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, including submission of a conceptual waiver application as required by Sec. 10 of this act.

(b) If the Secretary of Administration does not submit the Green Mountain Care financing and coverage proposal required by this section to the General Assembly by January 15, 2015, no portion of the unencumbered funds remaining as of that date in the fiscal year 2015 appropriation to the Agency of Administration for the planning and the implementation of Green Mountain Care shall be expended until the Secretary submits the required proposal.

Sixth: By striking out Sec. 29, transition plan for union employees, in its entirety and inserting in lieu thereof a new Sec. 29 to read as follows:

Sec. 29. TRANSITION PLAN FOR UNION EMPLOYEES

The Commissioners of Labor and of Human Resources; one representative each from the Vermont League of Cities and Towns, the Vermont School Boards Association, and the Vermont School Board Insurance Trust; and five representatives from a coalition of labor organizations active in Vermont, in consultation with other interested stakeholders, shall develop a plan for transitioning employees with collectively bargained health benefits from their existing health insurance plans to Green Mountain Care, with the goal that union employees shall be enrolled in Green Mountain Care upon implementation, which is currently targeted for 2017. The transition plan shall be consistent with State and federal labor relations laws and public and private sector collective bargaining agreements and shall ensure that total employee compensation does not decrease significantly, nor financial costs to employers increase significantly, as a result of the transition of employees to Green Mountain Care.

Seventh: By striking out Sec. 30, financial impact of health care reform initiatives, in its entirety and inserting in lieu thereof a new Sec. 30 to read as follows:

Sec. 30. FINANCIAL IMPACT OF HEALTH CARE REFORM

INITIATIVES

The Joint Fiscal Committee shall:

(1) determine the distribution of current health care spending by individuals, businesses, and municipalities, including the direct and indirect costs by income class, family size, and other demographic factors for individuals and by business size, economic sector, and total sales or revenue for businesses;

(2) for each proposal for health care system reform, evaluate the direct and indirect impacts on individuals, businesses, and municipalities, including the direct and indirect costs by income class, family size, and other demographic factors for individuals and by business size, economic sector, and total sales or revenue for businesses;

(3) estimate the costs of and savings from current health care reform initiatives; and

(4) update the cost estimates for Green Mountain Care, the universal and unified health care system established in 33 V.S.A. chapter 18, subchapter 2.

Eighth: In Sec. 36, effective dates, by inserting a new subdivision (1) to read as follows:

(1) Sec. 11, 21 V.S.A. § 2003(b), shall take effect on passage and shall apply beginning with the calculation of the Health Care Fund contributions payable in the first quarter of fiscal year 2015, which shall be based on the number of an employer's uncovered employees in the fourth quarter of fiscal year 2014.

and by renumbering the remaining subdivisions to be numerically correct.

(Committee Vote: 8-3-0)

Amendment to be offered by Rep. Fisher of Lincoln to the recommendation of amendment of the Committee on Health Care to S. 252

First: By adding a Sec. 6a to read as follows:

* * * Health Insurance Rate Review * * *

Sec. 6a. 8 V.S.A. § 4062(h) is amended to read:

(h)(1) ~~This~~ The authority of the Board under this section shall apply only to the rate review process for policies for major medical insurance coverage and shall not apply to the policy forms for major medical insurance coverage or to the rate and policy form review process for policies for specific disease, accident, injury, hospital indemnity, dental care, vision care, disability income,

long-term care, student health insurance coverage, or other limited benefit coverage~~; to Medicare supplemental insurance;~~, or to benefit plans that are paid directly to an individual insured or to his or her assigns and for which the amount of the benefit is not based on potential medical costs or actual costs incurred.

(2) The policy forms for major medical insurance coverage, as well as the policy forms, premium rates, and rules for the classification of risk for the other lines of insurance described in subdivision (1) of this subsection shall be reviewed and approved or disapproved by the Commissioner. In making his or her determination, the Commissioner shall consider whether a policy form, premium rate, or rule is affordable and is not unjust, unfair, inequitable, misleading, or contrary to the laws of this State. The Commissioner shall make his or her determination within 30 days after the date the insurer filed the policy form, premium rate, or rule with the Department. At the expiration of the 30-day period, the form, premium rate, or rule shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by the Commissioner or found to be incomplete. The Commissioner shall notify an insurer in writing if the insurer files any form, premium rate, or rule containing a provision that does not meet the standards expressed in this subsection. In such notice, the Commissioner shall state that a hearing will be granted within 20 days upon the insurer's written request.

(3) Medicare supplemental insurance policies shall be exempt only from the requirement in subdivisions (a)(1) and (2) of this section for the Green Mountain Care Board's approval on rate requests and shall be subject to the remaining provisions of this section.

Second: By adding Secs. 15a–15c to read as follows:

* * * Certificates of Need * * *

Sec. 15a. 18 V.S.A. § 9432 is amended to read:

§ 9432. DEFINITIONS

As used in this subchapter:

* * *

(8) "Health care facility" means all persons or institutions, including mobile facilities, whether public or private, proprietary or not for profit, which offer diagnosis, treatment, inpatient, or ambulatory care to two or more unrelated persons, and the buildings in which those services are offered. The term shall not apply to any institution operated by religious groups relying solely on spiritual means through prayer for healing, but shall include ~~but is not limited to~~:

(A) hospitals, including general hospitals, mental hospitals, chronic disease facilities, birthing centers, maternity hospitals, and psychiatric facilities including any hospital conducted, maintained, or operated by the ~~state~~ State of Vermont, or its subdivisions, or a duly authorized agency thereof; and

(B) nursing homes, health maintenance organizations, home health agencies, outpatient diagnostic or therapy programs, kidney disease treatment centers, mental health agencies or centers, diagnostic imaging facilities, independent diagnostic laboratories, cardiac catheterization laboratories, radiation therapy facilities, ~~or~~ and any inpatient or ambulatory surgical, diagnostic, or treatment center, including non-emergency walk-in centers.

* * *

(15) "Non-emergency walk-in center" means an outpatient or ambulatory diagnostic or treatment center at which a patient without making an appointment may receive medical care that is not of an emergency, life-threatening nature. The term includes facilities that are self-described as urgent care centers, retail health clinics, and convenient care clinics.

Sec. 15b. 18 V.S.A. § 9434 is amended to read:

§ 9434. CERTIFICATE OF NEED; GENERAL RULES

(a) A health care facility other than a hospital shall not develop, or have developed on its behalf a new health care project without issuance of a certificate of need by the board. ~~For purposes of~~ As used in this subsection, a "new health care project" includes the following:

* * *

(6) The construction, development, purchase, lease, or other establishment of an ambulatory surgical center or non-emergency walk-in center.

* * *

Sec. 15c. 18 V.S.A. § 9435 is amended to read:

§ 9435. EXCLUSIONS

(a) Excluded from this subchapter are offices of physicians, dentists, or other practitioners of the healing arts, meaning the physical places which are occupied by such providers on a regular basis in which such providers perform the range of diagnostic and treatment services usually performed by such providers on an outpatient basis unless they are subject to review under subdivision 9434(a)(4) of this title.

* * *

(c) The provisions of subsection (a) of this section shall not apply to offices owned, operated, or leased by a hospital or its subsidiary, parent, or holding company, outpatient diagnostic or therapy programs, kidney disease treatment centers, independent diagnostic laboratories, cardiac catheterization laboratories, radiation therapy facilities, ambulatory surgical centers, non-emergency walk-in centers, and diagnostic imaging facilities and similar facilities owned or operated by a physician, dentist, or other practitioner of the healing arts.

* * *

Third: By striking out Sec. 16, 18 V.S.A. § 9472, in its entirety and inserting in lieu thereof a new Sec. 16 to read as follows:

Sec. 16. 18 V.S.A. § 9472 is amended to read:

§ 9472. PHARMACY BENEFIT MANAGERS; REQUIRED PRACTICES WITH RESPECT TO HEALTH INSURERS

(c) ~~Unless the contract provides otherwise, a~~ A pharmacy benefit manager that provides pharmacy benefit management for a health plan shall:

(1) Provide all financial and utilization information requested by a health insurer relating to the provision of benefits to beneficiaries through that health insurer's health plan and all financial and utilization information relating to services to that health insurer. A pharmacy benefit manager providing information under this subsection may designate that material as confidential. Information designated as confidential by a pharmacy benefit manager and provided to a health insurer under this subsection may not be disclosed by the health insurer to any person without the consent of the pharmacy benefit manager, except that disclosure may be made by the health insurer:

(A) in a court filing under the consumer protection provisions of 9 V.S.A. chapter 63, provided that the information shall be filed under seal and that prior to the information being unsealed, the court shall give notice and an opportunity to be heard to the pharmacy benefit manager on why the information should remain confidential;

(B) when authorized by 9 V.S.A. chapter 63;

(C) when ordered by a court for good cause shown; or

(D) when ordered by the ~~commissioner~~ Commissioner as to a health insurer as defined in subdivision 9471(2)(A) of this title pursuant to the provisions of Title 8 and this title.

(2) Notify a health insurer in writing of any proposed or ongoing

activity, policy, or practice of the pharmacy benefit manager that presents, directly or indirectly, any conflict of interest with the requirements of this section.

(3) With regard to the dispensation of a substitute prescription drug for a prescribed drug to a beneficiary in which the substitute drug costs more than the prescribed drug and the pharmacy benefit manager receives a benefit or payment directly or indirectly, disclose to the health insurer the cost of both drugs and the benefit or payment directly or indirectly accruing to the pharmacy benefit manager as a result of the substitution.

(4) ~~If~~ Unless the contract provides otherwise, if the pharmacy benefit manager derives any payment or benefit for the dispensation of prescription drugs within the ~~state~~ State based on volume of sales for certain prescription drugs or classes or brands of drugs within the ~~state~~ State, pass that payment or benefit on in full to the health insurer.

(5) Disclose to the health insurer all financial terms and arrangements for remuneration of any kind that apply between the pharmacy benefit manager and any prescription drug manufacturer that relate to benefits provided to beneficiaries under or services to the health insurer's health plan, including formulary management and drug-switch programs, educational support, claims processing, and pharmacy network fees charged from retail pharmacies and data sales fees. A pharmacy benefit manager providing information under this subsection may designate that material as confidential. Information designated as confidential by a pharmacy benefit manager and provided to a health insurer under this subsection may not be disclosed by the health insurer to any person without the consent of the pharmacy benefit manager, except that disclosure may be made by the health insurer:

(A) in a court filing under the consumer protection provisions of 9 V.S.A. chapter 63, provided that the information shall be filed under seal and that prior to the information being unsealed, the court shall give notice and an opportunity to be heard to the pharmacy benefit manager on why the information should remain confidential;

(B) when authorized by 9 V.S.A. chapter 63;

(C) when ordered by a court for good cause shown; or

(D) when ordered by the ~~commissioner~~ Commissioner as to a health insurer as defined in subdivision 9471(2)(A) of this title pursuant to the provisions of Title 8 and this title.

(d) At least annually, a pharmacy benefit manager that provides pharmacy benefit management for a health plan shall disclose to the health insurer, the

Department of Financial Regulation, and the Green Mountain Care Board the aggregate amount the pharmacy benefit manager retained on all claims charged to the health insurer for prescriptions filled during the preceding calendar year in excess of the amount the pharmacy benefit manager reimbursed pharmacies.

(e) Compliance with the requirements of this section is required for pharmacy benefit managers entering into contracts with a health insurer in this ~~state~~ State for pharmacy benefit management in this ~~state~~ State.

Fourth: In Sec. 22, report; Blueprint for Health, by striking out the remainder of the section following the words "including any" and inserting in lieu thereof proposed evaluation measures and approaches; funding constraints; opportunities; availability of appropriate screening tools and evidence-based interventions for individuals; the additional resources, if any, that would be necessary to ensure adequate access to the interventions identified as needed as a result of the use of the screening tools; and additional security protections that may be necessary for information related to a patient's adverse childhood experiences.

Fifth: In Sec. 25, report; Department of Health; Green Mountain Care Board, by striking out subdivisions (a)(2) and (3) in their entirety and inserting in lieu thereof new subdivisions (2) and (3) to read:

(2) recommendations on the availability of appropriate screening tools and evidence-based interventions for individuals throughout their lives, including expectant parents, and the additional resources, if any, that would be necessary to ensure adequate access to the interventions identified as needed as a result of the use of the screening tools; and

(3) information about the costs and availability of, and recommendations on, additional security protections that may be necessary for information related to a patient's adverse childhood experiences.

Sixth: In Sec. 26, Green Mountain Care financing and coverage; report, in subdivision (a)(7), following the semicolon, by striking out the word "and", in subdivision (a)(8), following "Sec. 10 of this act", by inserting a semicolon and the word and, and by adding before the period a subdivision (a)(9) to read as follows:

(9) proposals for enhancing loan forgiveness programs and other opportunities and incentives for health care workforce development and enhancement

Seventh: By adding a Sec. 26a to read as follows:

Sec. 26a. 18 V.S.A. § 9491 is amended to read:

§ 9491. HEALTH CARE WORKFORCE; STRATEGIC PLAN

* * *

(b) The director or designee shall collaborate with the area health education centers, the ~~workforce development council~~ Workforce Development Council established in 10 V.S.A. § 541, the ~~prekindergarten-16 council~~ Prekindergarten-16 Council established in 16 V.S.A. § 2905, the ~~department of labor, the department of health, the department of Vermont health access~~ Department of Labor, the Department of Health, the Department of Vermont Health Access, and other interested parties, to develop and maintain the plan. The ~~director of health care reform~~ Director of Health Care Reform shall ensure that the strategic plan includes recommendations on how to develop Vermont's health care workforce, including:

* * *

(3) how ~~state~~ State government, universities and colleges, the ~~state's~~ State's educational system, entities providing education and training programs related to the health care workforce, and others may develop the resources in the health care workforce and delivery system to educate, recruit, and retain health care professionals to achieve Vermont's health care reform principles and purposes, including proposals for enhancing loan forgiveness programs and other opportunities and incentives for health care workforce development and enhancement.

* * *

Eighth: In Sec. 26, Green Mountain Care financing and coverage; report, in subsection (a), following "Health Care" by inserting , on Appropriations, and following "Health and Welfare" by inserting , on Appropriations,

Ninth: In Sec. 32, increasing Medicaid rates; report, following "Health Care" by striking out "Ways and Mean" and inserting in lieu thereof , on Appropriations, and on Ways and Means and following "Health and Welfare" by inserting , on Appropriations,

Tenth: In Sec. 34, health care workforce symposium, following the words "On or before", by striking out "November 15, 2014" and inserting in lieu thereof January 15, 2015

S. 295

An act relating to pretrial services, risk assessments, and criminal justice programs

Rep. Haas of Rochester, for the Committee on **Human Services,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE FINDINGS

(a) It is the intent of the General Assembly that law enforcement officials

and criminal justice professionals develop and maintain programs at every stage of the criminal justice system to provide alternatives to a traditional punitive criminal justice response for people who, consistent with public safety, can effectively and justly benefit from those alternative responses. These programs shall be reflective of the goals and principles of restorative justice pursuant to 28 V.S.A. § 2a. Commonly referred to as the sequential intercept model, this approach was designed to identify five points within the criminal justice system where innovative approaches to offenders and offending behavior could be taken to divert individuals away from a traditional criminal justice response to crime. These intercept points begin in the community with law enforcement interaction with citizens, proceed through arrest, the judicial process, and sentencing, and conclude with release back into communities. Alternative justice programs may include the employment of police-social workers, community-based restorative justice programs, community-based dispute resolution, precharge programs, pretrial services and case management, recovery support, DUI and other drug treatment courts, suspended fine programs, and offender reentry programs.

(b) Research shows the risk-need-responsivity model approach to addressing criminal conduct is successful at reducing recidivism. The model's premise is that the risk and needs of a person charged with or convicted of a criminal offense should determine the strategies appropriate for addressing the person's criminogenic factors.

(c) Some studies show that incarceration of low-risk offenders or placement of those offenders in programs or supervision designed for high-risk offenders may increase the likelihood of recidivism.

(d) The General Assembly recommends use of evidence-based risk assessments and needs screening tools for eligible offenses to provide information to the Court for the purpose of determining bail and appropriate conditions of release and informing decisions by the State's Attorney and the Court related to a person's participation and level of supervision in an alternative justice program.

(e) As used in this act:

(1) "Clinical assessment" means, after a client has been screened, the procedures by which a licensed or otherwise approved counselor identifies and evaluates an individual's strengths, weaknesses, problems, and needs for the development of a treatment plan.

(2) "Needs screening" means a preliminary systematic procedure to evaluate the likelihood that an individual has a substance abuse or a mental health condition.

(3) "Risk assessment" means a pretrial assessment that is predictive of a person's failure to appear in court and risk of violating pretrial conditions of release with a new alleged offense.

(f) The General Assembly intends this act to be a continuation of justice reinvestment efforts initiated in 2007 by the Legislative, Judicial, and Executive Branches. Justice reinvestment is a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and strengthen communities.

(g) Buprenorphine/Naloxone (Suboxone or Subutex) is a well-known medication used in the treatment of opioid addiction. Vermont spends $8.3 million in Medicaid funds annually on these drugs. As medicated-assisted treatment for opiate addiction has increased substantially in the last several years, so has illegal diversion of these drugs and their misuse. Suboxone is currently the number one drug smuggled into Vermont correctional facilities and evidence suggests that the nonmedical use of such drugs is gaining in popularity. The General Assembly urges the administration to prioritize efforts to ensure that people with opiate addictions are provided access to necessary medication, while taking all possible measures to prevent the diversion and misuse of these drugs, including working with drug manufacturers.

(h) Approximately 54,000 Vermonters have abused, or been dependent on, alcohol or illicit drugs in the past year, according to the current National Survey on Drug Use and Health. More people abuse or are dependent on alcohol (approximately 39,000) than all illicit drugs combined (18,000). Many Vermonters struggle with both alcohol and illicit drugs. Substance abuse is expensive, and not solely due to the cost of providing treatment. Research indicates that $1.00 invested in addiction treatment saves between $4.00 and $7.00 in reduced drug-related crime, criminal justice costs, and theft. Earlier intervention to provide services before major problems develop can save even more.

(i) According to the Agency of Human Services' Report on Substance Abuse Continuum of Services and Recommendations, dated January 15, 2014, despite the number of people with substance use disorders, this condition is significantly undertreated for many reasons. In addition, it reports that one of the challenges associated with attracting and retaining qualified individuals to the field of substance abuse treatment and prevention is that there are insufficient training opportunities, no opportunities for private practitioner Licensed Alcohol and Drug Counselors (LADC) to receive payment for providing services to Medicaid-eligible patients, and low wages for LADCs working in community provider settings.

Sec. 2. 13 V.S.A. § 7554c is added to read:

§ 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

(a)(1) The objective of a pretrial risk assessment is to provide information to the Court for the purpose of determining whether a person presents a risk of nonappearance or a threat to public safety, so the Court can make an appropriate order concerning bail and conditions of pretrial release.

(2) The objective of a pretrial needs screening is to obtain a preliminary indication of whether a person has a substantial substance abuse or mental health issue that would warrant a subsequent court order for a more detailed clinical assessment.

(3) Participation in a risk assessment or needs screening pursuant to this section does not create any entitlement for the assessed or screened person.

(b)(1) A person whose offense or status falls into any of the following categories shall be offered a risk assessment and, if deemed appropriate by the pretrial monitor, a needs screening prior to arraignment:

(A) misdemeanor drug offenses cited into court;

(B) felony drug offenses cited into court;

(C) felonies that are not listed crimes cited into court;

(D) persons who are arrested and lodged and unable to post bail within 24 hours of lodging, excluding persons who are charged with an offense for which registration as a sex offender is required upon conviction pursuant to subchapter 3 of chapter 167 of this title or an offense punishable by up to life imprisonment; and

(E) persons not charged with a listed crime who are identified by law enforcement, the prosecution, the defense, probation and parole, the Court, a treatment provider, or a family member or friend as having a substantial substance abuse or mental health issue.

(2) Participation in an assessment or screening shall be voluntary.

(3) In the event an assessment or screening cannot be obtained prior to arraignment, the Court shall direct the assessment and screening to be conducted as soon as practicable.

(4) A person who qualifies pursuant to subdivision (1)(A)–(E) of this subsection and who has an additional pending charge or a violation of probation shall not be excluded from being offered a risk assessment or needs screening unless the other charge is a listed crime as defined in section 5301 of this title.

(5) Nothing in this section shall be construed to limit the Court's authority to order an assessment or screening as a condition of release under section 7554 of this title.

(6) The Administrative Judge and Court Administrator, in consultation with the Secretary of Human Services and the Commissioner of Corrections, shall develop a statewide plan for the phased, consistent rollout of the categories identified in subdivisions (1)(A) through (E) of this subsection. All persons whose offense or status falls into one of the categories shall be eligible for a risk assessment or needs screening on or before January 1, 2016. Prior to that date, a person shall not be guaranteed the offer of a risk assessment or needs screening solely because the person's offense or status falls into one of the categories. Criminal justice professionals charged with implementation shall adhere to the plan.

(c) The results of the assessment and screening shall be provided to the prosecutor who, upon filing a criminal charge against the person, shall provide the results to the person and his or her attorney and the Court.

(d)(1) In consideration of the assessment and screening, the Court may order the person to comply with any of the following conditions:

(A) meet with a pretrial monitor on a schedule set by the Court;

(B) participate in a clinical assessment by a substance abuse treatment provider;

(C) comply with any level of treatment or recovery support recommended by the provider;

(D) provide confirmation to the pretrial monitor of the person's attendance and participation in the clinical assessment and any recommended treatment; and

(E) provide confirmation to the pretrial monitor of the person's compliance with any other condition of release.

(2) If possible, the Court shall set the date and time for the assessment at arraignment. In the alternative, the pretrial monitor shall coordinate the date, time, and location of the clinical assessment and advise the Court, the person and his or her attorney, and the prosecutor.

(3) The conditions authorized in subdivision (1) of this subsection shall be in addition to any other conditions of release permitted by law and shall not limit the Court in any way.

(e)(1) Information obtained from the person during the risk assessment or needs screening shall be exempt from public inspection and copying under the

Public Records Act and, except as provided in subdivision (2) of this subsection, only may be used for determining bail, conditions of release, and appropriate programming for the person in the pending case. The immunity provisions of this subsection apply only to the use and derivative use of information gained as a proximate result of the risk assessment or needs screening.

(2) The person shall retain all of his or her due process rights throughout the assessment and screening process and may release his or her records at his or her discretion.

(3) The Vermont Supreme Court and the Department of Corrections shall adopt rules related to the custody, control, and preservation of information consistent with the confidentiality requirements of this section.

(f) The Vermont Supreme Court or its designee shall develop guidelines for the appropriate use of court-ordered pretrial monitoring services based upon the risk and needs of the defendant.

Sec. 3. RISK ASSESSMENT AND NEEDS SCREENING TOOLS AND SERVICES

(a) The Department of Corrections shall select risk and needs assessment and screening tools for use in the various decision points in the criminal justice system, including pretrial, community supervision screening, community supervision, prison screening, prison intake, and reentry. The Department shall validate the selected tools for the population in Vermont.

(b) In selection and implementation of the tools, the Department shall consider tools being used in other states and shall consult with and have the cooperation of all criminal justice agencies.

(c) The Department shall have the tools available for use on or before September 1, 2014. The Department, the Judiciary, the Defender General, and the Executive Director and the Department of State's Attorneys and Sheriffs shall conduct training on the risk assessment tools on or before December 15, 2014.

(d) The Department, in consultation with law enforcement agencies and the courts, shall contract for or otherwise provide pretrial services described in this section, including performance of risk assessments, needs screenings, and pretrial monitoring.

(e) Pretrial monitoring may include:

(1) reporting to the Court concerning the person's compliance with conditions of release;

(2) supporting the person in meeting the conditions imposed by the Court, including the condition to appear in Court as directed;

(3) identifying community-based treatment, rehabilitative services, recovery supports, and restorative justice programs; and

(4) supporting a prosecutor's precharge program.

(f) The Department, in consultation with the Judiciary and the Center for Criminal Justice Research, shall develop and implement a system to evaluate performance of the pretrial services described in this section and report to the General Assembly annually on or before December 15.

(g) The Secretary of Human Services, with staff and administrative support from the Criminal Justice Capable Core Team, shall map services and assess the impact of court referrals and the capacity of the current service provision system in each region. The Secretary, in collaboration with service providers and other stakeholders, shall consider regional resources, including services for assessment, early intervention, treatment, and recovery support. Building on existing models and data, the Secretary and the Criminal Justice Capable Core Team shall develop recommendations for a system for referral based on the appropriate level of need, identifying existing gaps to optimize successful outcomes. Funding models for those services shall be examined by the appropriate State departments. The recommendation for the system for referral shall be inclusive of all initiatives within the Agency of Human Services, including those within the Blueprint for Health and Screening, Brief Intervention, and Referral for Treatment (SBIRT), as well as initiatives within the Green Mountain Care Board and the State Innovation Model (SIM) grant.

* * * Alternative Justice Programs * * *

Sec. 4. PROSECUTOR PRECHARGE PROGRAM GUIDELINES AND REPORTING

(a) The Department of State's Attorneys and Sheriffs, in consultation with the Judiciary and the Attorney General, shall develop broad guidelines for precharge programs to ensure there is probable cause and that there are appropriate opportunities for victim input and restitution.

(b) On or before October 1, 2014, and annually thereafter, the Executive Director of the Department of State's Attorneys and Sheriffs shall report to the General Assembly detailing the alternative justice programs that exist in each county together with the protocols for each program, the annual number of persons served by the program, and a plan for how a sequential intercept model can be employed in the county. The report shall be prepared in cooperation with the Director of Court Diversion, a co-chair of the Community Justice

Network of Vermont, and State, municipal, and county law enforcement officials.

Sec. 5. [Deleted.]

Sec. 6. 13 V.S.A. § 5362(c) is amended to read:

(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 or alternative justice 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 or an alternative justice program contract pursuant to section 7554c of this title or a prosecutor precharge program.

Sec. 7. 13 V.S.A. § 5363(d)(2) is amended to read:

(2) The Restitution Unit may make advances of up to ~~$10,000.00~~ $5,000.00 under this subsection to the following persons or entities:

* * *

(B) A victim who is a natural person or the natural person's legal representative in a case where the defendant, before or after an adjudication of guilt, enters into a drug court contract or an alternative justice program contract pursuant to section 7554c of this title or a prosecutor precharge program requiring payment of restitution.

* * * Criminal Provisions * * *

Sec. 8. 18 V.S.A. § 4235b is added to read:

§ 4235b. TRANSPORTATION OF DRUGS INTO THE STATE; AGGRAVATING FACTOR

When imposing a sentence for a felony violation of dispensing or selling a regulated drug in violation of this chapter, the Court shall consider whether the person knowingly and unlawfully transported the regulated drug into Vermont with the intent to sell or dispense the drug.

Sec. 9. 13 V.S.A. § 1201 is amended to read:

§ 1201. BURGLARY

(a) A person is guilty of burglary if he or she enters any building or structure knowing that he or she is not licensed or privileged to do so, with the intent to commit a felony, petit larceny, simple assault, or unlawful mischief. This provision shall not apply to a licensed or privileged entry, or to an entry

that takes place while the premises are open to the public, unless the person, with the intent to commit a crime specified in this subsection, surreptitiously remains in the building or structure after the license or privilege expires or after the premises no longer are open to the public.

(b) As used in this section~~, the words "building," "structure," and "premises"~~:

(1) "Building," "premises," and "structure" shall, in addition to their common meanings, include and mean any portion of a building, structure, or premises which differs from one or more other portions of such building, structure, or premises with respect to license or privilege to enter, or to being open to the public.

(2) "Occupied dwelling" means a building used as a residence, either full-time or part-time, regardless of whether someone is actually present in the building at the time of entry.

(c)(1) A person convicted of burglary into an occupied dwelling shall be imprisoned not more than 25 years or fined not more than $1,000.00, or both. Otherwise, a person convicted of burglary shall be imprisoned not more than 15 years or fined not more than $1,000.00, or both.

(2) When imposing a sentence under this section, the Court shall consider whether, during commission of the offense, the person:

(A) entered the building when someone was actually present;

(B) used or threatened to use force against the occupant; or

(C) carried a dangerous or deadly weapon, openly or concealed, during the commission of the offense, and the person has not been convicted of a violation of section 4005 of this title in connection with the offense.

Sec. 10. DEPARTMENT OF PUBLIC SAFETY REPORT

The Department of Public Safety, in consultation with the Department of Health, shall examine 18 V.S.A. § 4234 (depressant, stimulant, narcotic drug) for the purpose of establishing clear dosage amounts for narcotics as they relate to unlawful possession, dispensing, and sale. The Department shall consider section 4234 in relation to 18 V.S.A. § 4233 (heroin). The Department shall report its recommendations to the Senate and House Committees on Judiciary on or before December 15, 2014.

* * * Regulation of Opiates * * *

Sec. 11. DVHA AUTHORITY; USE OF AVAILABLE SANCTIONS

The Department of Vermont Health Access shall use its authority to

sanction Medicaid-participating prescribers, whether practicing in or outside the State of Vermont, operating in bad faith or not in compliance with State or federal requirements.

Sec. 12. CONTINUED MEDICATION-ASSISTED TREATMENT FOR INCARCERATED PERSONS

(a) The Department of Corrections, in consultation with the Medication-Assisted Treatment for Inmates Work Group created by 2013 Acts and Resolves No. 67, Sec. 11, shall develop and implement a one-year demonstration project to pilot the continued use of medication-assisted treatment within Department facilities for detainees and sentenced inmates.

(b) The pilot project shall offer continued medication-assisted treatment for opioid dependence with methadone or buprenorphine to incarcerated persons who were participating in medication-assisted treatment in the community immediately prior to incarceration as follows:

(1) for a period of 180 days from the date of incarceration for a person held on detainee status, followed by a prescribed taper; or

(2) for a period of one year from the date of incarceration for a person serving a sentence, followed by a prescribed taper.

(c) As used in this section, "prescribed taper" means a clinically appropriate medication taper that is designed to minimize withdrawal symptoms and limit avoidable suffering.

(d) The Commissioner of Corrections shall publish an interim revision memorandum to replace Directive 363.01. The Medication-Assisted Treatment for Inmates Work Group shall provide details of the demonstration project, including:

(1) an update on the implementation of the recommendations provided in the "Medication-Assisted Treatment for Inmates: Work Group Report and Recommendations" submitted to the Vermont General Assembly on November 26, 2013;

(2) medication-assisted treatment time frames;

(3) Department protocols for detainees and inmates transitioning in and out of treatment settings, or between correctional facilities and treatment services;

(4) protocols regarding medical tapers, detoxification, and withdrawal;

(5) plans and timing for expansion of the pilot project; and

(6) an evaluation plan that includes appropriate metrics for determining

treatment efficacy, reincarceration episodes, Department- and community-based collaboration challenges, and system costs.

(e) On or before July 30, 2014, the Department shall enter into memoranda of understanding with the Department of Health and with hub treatment providers regarding ongoing medication-assisted treatment for persons in the custody of the Department.

(f) The Department shall collaborate with the Department of Health to facilitate the provision of opioid overdose prevention training for persons who are incarcerated and distribution of overdose rescue kits with naloxone at correctional facilities to persons who are transitioning from incarceration back into the community.

(g) The Departments of Corrections and of Health shall continue the Medication-Assisted Treatment for Inmates Work Group created by 2013 Acts and Resolves No. 67, Sec. 11 to inform and monitor implementation of the demonstration project. The Departments shall evaluate the demonstration project and provision of medication-assisted treatment to persons who are incarcerated in Vermont and report their findings, including a proposed schedule of expansion, to the House Committees on Corrections and Institutions, on Human Services, and on Judiciary and the Senate Committees on Health and Welfare and on Judiciary on or before January 1, 2015.

Sec. 13. VPMS QUERY; RULEMAKING

The Secretary of Human Services shall adopt rules requiring:

(1) All Medicaid participating providers, whether licensed in or outside Vermont, who prescribe buprenorphine or a drug containing buprenorphine to a Vermont Medicaid beneficiary to query the Vermont Prescription Monitoring System the first time they prescribe buprenorphine or a drug containing buprenorphine for the patient and at regular intervals thereafter. Regular intervals shall exceed the requirements for other Schedule III pharmaceuticals, and queries shall be done prior to prescribing a replacement prescription. The rules shall also include dosage thresholds, which may be exceeded only with prior approval from the Chief Medical Officer of the Department of Vermont Health Access or designee.

(2) All providers licensed in Vermont who prescribe buprenorphine or a drug containing buprenorphine to a Vermont patient who is not a Medicaid beneficiary to query the Vermont Prescription Monitoring System the first time they prescribe buprenorphine or a drug containing buprenorphine for the patient and at regular intervals thereafter. Regular intervals shall exceed the requirements for other Schedule III pharmaceuticals and queries shall be done prior to prescribing a replacement prescription. The rules shall also include

dosage thresholds.

Sec. 14. MEDICATION-ASSISTED THERAPY; RULEMAKING

The Commissioner of Health shall adopt rules relating to medication-assisted therapy for opioid dependence for physicians treating fewer than 30 patients, which shall include a requirement that such physicians ensure that their patients are screened or assessed to determine their need for counseling and that patients who are determined to need counseling or other support services are referred for appropriate counseling from a licensed clinical professional or for other services as needed.

Sec. 15. 26 V.S.A. chapter 36, subchapter 8 is added to read:

Subchapter 8. Naloxone Hydrochloride

§ 2080. NALOXONE HYDROCHLORIDE; DISPENSING OR FURNISHING

(a) The Board of Pharmacy shall adopt protocols for licensed pharmacists to dispense or otherwise furnish naloxone hydrochloride to patients who do not hold an individual prescription for naloxone hydrochloride. Such protocols shall be consistent with rules adopted by the Commissioner of Health.

(b) Notwithstanding any provision of law to the contrary, a licensed pharmacist may dispense naloxone hydrochloride to any person as long as the pharmacist complies with the protocols adopted pursuant to subsection (a) of this section.

Sec. 16. 33 V.S.A. § 813 is added to read:

§ 813. MEDICAID PARTICIPATING PROVIDERS

The Department of Vermont Health Access shall grant authorization to a licensed alcohol and drug abuse counselor to participate as a Medicaid provider to deliver clinical and case coordination services to Medicaid beneficiaries, regardless of whether the counselor is a preferred provider.

Sec. 16a. DEPARTMENT OF CORRECTIONS AND HEALTH CARE REFORM

(a) The Agency of Human Services and its departments shall assist the Department of Corrections in fully enacting the provisions of the Affordable Care Act and Vermont's health care reform initiatives as they pertain to persons in the criminal justice population, including access to health information technology, the Blueprint for Health, Medicaid enrollment, health benefit exchange, health plans, and other components under the Department of Vermont Health Access that support and ensure a seamless process for reentry

to the community or readmission to a correctional facility.

(b) The Department of Corrections shall include substance abuse services in its request for proposal (RFP) process for inmate health services. Through the RFP, the Department shall require that substance abuse services be provided to persons while incarcerated.

Sec. 17. 18 V.S.A. § 4254 is amended to read:

§ 4254. IMMUNITY FROM LIABILITY

* * *

(d) A person who seeks medical assistance for a drug overdose or is the subject of a good faith request for medical assistance pursuant to subsection (b) or (c) of this section shall not be subject to any of the penalties for violation of 13 V.S.A. § 1030 (violation of a protection order), for a violation of this chapter or 7 V.S.A §§ 656 and 657, for being at the scene of the drug overdose, or for being within close proximity to any person at the scene of the drug overdose.

(e) A person who seeks medical assistance for a drug overdose or is the subject of a good faith request for medical assistance pursuant to subsection (b) or (c) of this section shall not be subject to any sanction for a violation of a condition of pretrial release, probation, furlough, or parole for a violation of this chapter or 7 V.S.A §§ 656 and 657, for being at the scene of the drug overdose, or for being within close proximity to any person at the scene of the drug overdose.

* * *

Sec. 18. AGENCY OF HUMAN SERVICES POSITION

One exempt position is created within the Agency of Human Services for the purpose of overseeing the implementation of the pretrial services of this act.

Sec. 19. EFFECTIVE DATES

(a) Secs. 2, 6, and 7 shall take effect on January 1, 2015.

(b) This section and Secs. 1 (legislative intent), 3 (risk assessment and needs screening tools), 4 (prosecutor precharge programs and reporting), 10 (Department of Public Safety report), 13 (VPMS query; rulemaking), 14 (medication assisted therapy, rulemaking), and 17 (immunity from liability) shall take effect on passage.

(c) The remaining sections shall take effect on July 1, 2014.

(Committee vote: 10-0-1)

(For text see Senate Journal 3/12/2014)

Rep. Lippert of Hinesburg, for the Committee on **Judiciary,** recommends the bill ought to pass when amended as recommended by the Committee on **Human Services** and when further amended as follows:

Sec. 1. LEGISLATIVE FINDINGS

(a) It is the intent of the General Assembly that law enforcement officials and criminal justice professionals develop and maintain programs at every stage of the criminal justice system to provide alternatives to a traditional punitive criminal justice response for people who, consistent with public safety, can effectively and justly benefit from those alternative responses. These programs shall be reflective of the goals and principles of restorative justice pursuant to 28 V.S.A. § 2a. Commonly referred to as the sequential intercept model, this approach was designed to identify five points within the criminal justice system where innovative approaches to offenders and offending behavior could be taken to divert individuals away from a traditional criminal justice response to crime. These intercept points begin in the community with law enforcement interaction with citizens, proceed through arrest, the judicial process, and sentencing, and conclude with release back into communities. Alternative justice programs may include the employment of police-social workers, community-based restorative justice programs, community-based dispute resolution, precharge programs, pretrial services and case management, recovery support, DUI and other drug treatment courts, suspended fine programs, and offender reentry programs.

(b) Research shows the risk-need-responsivity model approach to addressing criminal conduct is successful at reducing recidivism. The model's premise is that the risk and needs of a person charged with or convicted of a criminal offense should determine the strategies appropriate for addressing the person's criminogenic factors.

(c) Some studies show that incarceration of low-risk offenders or placement of those offenders in programs or supervision designed for high-risk offenders may increase the likelihood of recidivism.

(d) The General Assembly recommends use of evidence-based risk assessments and needs screening tools for eligible offenses to provide information to the Court for the purpose of determining bail and appropriate conditions of release and informing decisions by the State's Attorney and the Court related to a person's participation and level of supervision in an alternative justice program.

(e) As used in this act:

(1) "Clinical assessment" means the procedures, to be conducted after a client has been screened, by which a licensed or otherwise approved counselor

identifies and evaluates and individual's strengths, weaknesses, problems, and needs for the development of a treatment plan.

(2) "Needs screening" means a preliminary systematic procedure to evaluate the likelihood that an individual has a substance abuse or a mental health condition.

(3) "Risk assessment" means a pretrial assessment that is designed to be predictive of a person's failure to appear in court and risk of violating pretrial conditions of release with a new alleged offense.

(f) The General Assembly intends this act to be a continuation of justice reinvestment efforts initiated in 2007 by the Legislative, Judicial, and Executive Branches. Justice reinvestment is a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and strengthen communities.

(g) Buprenorphine/Naloxone (Suboxone or Subutex) is a well-known medication used in the treatment of opioid addiction. Vermont spends $8.3 million in Medicaid funds annually on these drugs. As medicated-assisted treatment for opiate addiction has increased substantially in the last several years, so has illegal diversion of these drugs and their misuse. Suboxone is currently the number one drug smuggled into Vermont correctional facilities and evidence suggests that the nonmedical use of such drugs is gaining in popularity. The General Assembly urges the administration to prioritize efforts to ensure that people with opiate addictions are provided access to necessary medication, while taking all possible measures to prevent the diversion and misuse of these drugs, including working with drug manufacturers.

(h) Approximately 54,000 Vermonters have abused or been dependent on alcohol or illicit drugs in the past year, according to the current National Survey on Drug Use and Health. More people abuse or are dependent on alcohol (approximately 39,000) than all illicit drugs combined (18,000). Many Vermonters struggle with both alcohol and illicit drugs. Substance abuse is expensive, and not solely due to the cost of providing treatment. Research indicates that $1.00 invested in addiction treatment saves between $4.00 and $7.00 in reduced drug-related crime, criminal justice costs, and theft. Earlier intervention to provide services before major problems develop can save even more.

(i) According to the Agency of Human Services' Report on Substance Abuse Continuum of Services and Recommendations, dated January 15, 2014, despite the number of people with substance use disorders, this condition is significantly under-treated for many reasons. In addition, it reports that one of

the challenges associated with attracting and retaining qualified individuals to the field of substance abuse treatment and prevention is that there are insufficient training opportunities, no opportunities for private practitioner Licensed Alcohol and Drug Counselors (LADC) to receive payment for providing services to Medicaid eligible patients, and low wages for LADCs working in community provider settings.

Sec. 2. 13 V.S.A. § 7554c is added to read:

§ 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

(a)(1) The objective of a pretrial risk assessment is to provide information to the Court for the purpose of determining whether a person presents a risk of nonappearance or a threat to public safety, so the Court can make an appropriate order concerning bail and conditions of pretrial release.

(2) The objective of a pretrial needs screening is to obtain a preliminary indication of whether a person has a substantial substance abuse or mental health issue that would warrant a subsequent court order for a more detailed clinical assessment.

(3) Participation in a risk assessment or needs screening pursuant to this section does not create any entitlement for the assessed or screened person.

(b)(1) A person whose offense or status falls into any of the following categories shall be offered a risk assessment and, if deemed appropriate by the pretrial monitor, a needs screening prior to arraignment:

(A) misdemeanor drug offenses cited into court;

(B) felony drug offenses cited into court;

(C) felonies that are not listed crimes cited into court;

(D) persons who are arrested and lodged and unable to post bail within 24 hours of lodging, excluding persons who are charged with an offense for which registration as a sex offender is required upon conviction pursuant to subchapter 3 of chapter 167 of this title or an offense punishable by up to life imprisonment; and

(E) persons not charged with a listed crime who are identified by law enforcement, the prosecution, the defense, probation and parole personnel, the Court, a treatment provider, or a family member or friend as having a substantial substance abuse or mental health issue.

(2) Participation in an assessment or screening shall be voluntary.

(3) In the event an assessment or screening cannot be obtained prior to arraignment, the Court shall direct the assessment and screening to be

conducted as soon as practicable.

(4) A person who qualifies pursuant to subdivision (1)(A)–(E) of this subsection and who has an additional pending charge or a violation of probation shall not be excluded from being offered a risk assessment or needs screening unless the other charge is a listed crime as defined in section 5301 of this title.

(5) Nothing in this section shall be construed to limit the Court's authority to order an assessment or screening as a condition of release under section 7554 of this title.

(6) The Administrative Judge and Court Administrator, in consultation with the Secretary of Human Services and the Commissioner of Corrections, shall develop a statewide plan for the phased, consistent rollout of the categories identified in subdivisions (1)(A) through (E) of this subsection. All persons whose offense or status falls into one of the categories shall be eligible for a risk assessment or needs screening on or before January 1, 2016. Prior to that date, a person shall not be guaranteed the offer of a risk assessment or needs screening solely because the person's offense or status falls into one of the categories. Criminal justice professionals charged with implementation shall adhere to the plan.

(c) The results of the assessment and screening shall be provided to the prosecutor who, upon filing a criminal charge against the person, shall provide the results to the person and his or her attorney and the Court.

(d)(1) In consideration of the assessment and screening, the Court may order the person to comply with any of the following conditions:

(A) meet with a pretrial monitor on a schedule set by the Court;

(B) participate in a clinical assessment by a substance abuse treatment provider;

(C) comply with any level of treatment or recovery support recommended by the provider;

(D) provide confirmation to the pretrial monitor of the person's attendance and participation in the clinical assessment and any recommended treatment; and

(E) provide confirmation to the pretrial monitor of the person's compliance with any other condition of release.

(2) If possible, the Court shall set the date and time for the assessment at arraignment. In the alternative, the pretrial monitor shall coordinate the date, time, and location of the clinical assessment and advise the Court, the person

and his or her attorney, and the prosecutor.

(3) The conditions authorized in subdivision (1) of this subsection shall be in addition to any other conditions of release permitted by law and shall not limit the Court in any way.

(e)(1) Information obtained from the person during the risk assessment or needs screening shall be exempt from public inspection and copying under the Public Records Act and, except as provided in subdivision (2) of this subsection, only may be used for determining bail, conditions of release, and appropriate programming for the person in the pending case. The immunity provisions of this subsection apply only to the use and derivative use of information gained as a proximate result of the risk assessment or needs screening.

(2) The person shall retain all of his or her due process rights throughout the assessment and screening process and may release his or her records at his or her discretion.

(3) The Vermont Supreme Court in accordance with judicial rulemaking as provided in 12 V.S.A. § 1 shall promulgate and the Department of Corrections in accordance with the Vermont Administrative Procedure Act pursuant to 3 V.S.A. chapter 25 shall adopt rules related to the custody, control, and preservation of information consistent with the confidentiality requirements of this section. Emergency rules adopted prior to January 1, 2015 pursuant to this section shall be considered to meet the "imminent peril" standard under 3 V.S.A. § 844(a).

(f) The Administrative Judge shall develop guidelines for the appropriate use of court-ordered pretrial monitoring services based upon the risk and needs of the defendant.

Sec. 3. RISK ASSESSMENT AND NEEDS SCREENING TOOLS AND SERVICES

(a) The Department of Corrections shall select risk and needs assessment and screening tools for use in the various decision points in the criminal justice system, including pretrial, community supervision screening, community supervision, prison screening, prison intake, and reentry.

(b) In selection and implementation of the tools, the Department shall consider tools being used in other states and shall consult with and have the cooperation of all criminal justice agencies.

(c) The Department shall have the tools available for use on or before September 1, 2014. The Department, the Judiciary, the Defender General, and the Executive Director and the Department of State's Attorneys and Sheriffs

shall conduct training on the risk assessment tools on or before December 15, 2014.

(d) The Department, in consultation with law enforcement agencies and the courts, shall contract for or otherwise provide pretrial services described in this section, including performance of risk assessments, needs screenings, and pretrial monitoring. The contract shall include requirements to comply with data collection and evaluation procedures.

(e) Pretrial monitoring may include:

(1) reporting to the Court concerning the person's compliance with conditions of release;

(2) supporting the person in meeting the conditions imposed by the Court, including the condition to appear in Court as directed;

(3) identifying community-based treatment, rehabilitative services, recovery supports, and restorative justice programs; and

(4) supporting a prosecutor's precharge program.

(f)(1) The Department, in consultation with the Judiciary and the Crime Research Group, shall develop and implement a system to evaluate goals and performance of the pretrial services described in this section and report to the General Assembly annually on or before December 15.

(2) The Agency of Human Services, in consultation with the Judiciary, shall ensure that a study is conducted to include an outcome study, process evaluation and cost benefit analysis.

(g) The Secretary of Human Services, with staff and administrative support from the Criminal Justice Capable Core Team, shall map services and assess the impact of court referrals and the capacity of the current service provision system in each region. The Secretary, in collaboration with service providers and other stakeholders, shall consider regional resources, including services for assessment, early intervention, treatment, and recovery support. Building on existing models and data, the Secretary and the Criminal Justice Capable Core Team shall develop recommendations for a system for referral based on the appropriate level of need, identifying existing gaps to optimize successful outcomes. Funding models for those services shall be examined by the appropriate State departments. The recommendation for the system for referral shall be inclusive of all initiatives within the Agency of Human Services, including those within the Blueprint for Health and Screening, Brief Intervention, and Referral for Treatment (SBIRT), as well as initiatives within the Green Mountain Care Board and the State Innovation Model (SIM) grant.

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(a) The Department of State's Attorneys and Sheriffs, in consultation with the Judiciary and the Attorney General, shall develop broad guidelines for precharge programs to ensure there is probable cause and that there are appropriate opportunities for victim input and restitution.

(b) On or before October 1, 2014, and annually thereafter, the Executive Director of the Department of State's Attorneys and Sheriffs shall report to the General Assembly detailing the alternative justice programs that exist in each county together with the protocols for each program, the annual number of persons served by the program, and a plan for how a sequential intercept model can be employed in the county. The report shall be prepared in cooperation with the Director of Court Diversion, a co-chair of the Community Justice Network of Vermont, and State, municipal, and county law enforcement officials.

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Sec. 6. 13 V.S.A. § 5362(c) is amended to read:

(c) The Restitution Unit shall have the authority to:

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(7) Enter into a repayment contract with a juvenile or adult accepted into a diversion program or alternative justice 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 or an alternative justice program contract pursuant to section 7554c of this title or a prosecutor precharge program.

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(2) The Restitution Unit may make advances of up to ~~$10,000.00~~ $5,000.00 under this subsection to the following persons or entities:

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* * * Criminal Provisions * * *

Sec. 8. 18 V.S.A. § 4235b is added to read:

§ 4235b. TRANSPORTATION OF DRUGS INTO THE STATE;

AGGRAVATING FACTOR

When imposing a sentence for a felony violation of dispensing or selling a regulated drug in violation of this chapter, the Court shall consider as an aggravating factor whether the person knowingly and unlawfully transported the regulated drug into Vermont.

Sec. 9. 13 V.S.A. § 1201 is amended to read:

§ 1201. BURGLARY

(a) A person is guilty of burglary if he or she enters any building or structure knowing that he or she is not licensed or privileged to do so, with the intent to commit a felony, petit larceny, simple assault, or unlawful mischief. This provision shall not apply to a licensed or privileged entry, or to an entry that takes place while the premises are open to the public, unless the person, with the intent to commit a crime specified in this subsection, surreptitiously remains in the building or structure after the license or privilege expires or after the premises no longer are open to the public.

(b) As used in this section~~, the words "building," "structure," and "premises"~~:

(1) "Building," "premises," and "structure" shall, in addition to their common meanings, include and mean any portion of a building, structure, or premises which differs from one or more other portions of such building, structure, or premises with respect to license or privilege to enter, or to being open to the public.

(2) "Occupied dwelling" means a building used as a residence, either full-time or part-time, regardless of whether someone is actually present in the building at the time of entry.

(c)(1) A person convicted of burglary into an occupied dwelling shall be imprisoned not more than 25 years or fined not more than $1,000.00, or both. Otherwise, a person convicted of burglary shall be imprisoned not more than 15 years or fined not more than $1,000.00, or both.

(2) When imposing a sentence under this section, the Court shall consider as an aggravating factor whether, during commission of the offense, the person:

(A) entered the building when someone was actually present;

(B) used or threatened to use force against the occupant; or

(C) carried a dangerous or deadly weapon, openly or concealed,

during the commission of the offense, and the person has not been convicted of a violation of section 4005 of this title in connection with the offense.

Sec. 10. DEPARTMENT OF PUBLIC SAFETY REPORT

The Department of Public Safety, in consultation with the Department of Health, shall examine 18 V.S.A. § 4234 (depressant, stimulant, narcotic drug) for the purpose of establishing clear dosage amounts for narcotics as they relate to unlawful possession, dispensing, and sale. The Department shall consider section 4234 in relation to 18 V.S.A. § 4233 (heroin). The Department shall report its recommendations to the Senate and House Committees on Judiciary on or before December 15, 2014.

* * * Regulation of Opiates * * *

Sec. 11. DVHA AUTHORITY; USE OF AVAILABLE SANCTIONS

The Department of Vermont Health Access shall use its authority to sanction Medicaid-participating prescribers, whether practicing in or outside the State of Vermont, operating in bad faith or not in compliance with State or federal requirements.

Sec. 12. CONTINUED MEDICATION-ASSISTED TREATMENT FOR INCARCERATED PERSONS

(a) The Department of Corrections, in consultation with the Medication-Assisted Treatment for Inmates Work Group created by 2013 Acts and Resolves No. 67, Sec. 11, shall develop and implement a one-year demonstration project to pilot the continued use of medication-assisted treatment within Department facilities for detainees and sentenced inmates.

(b) The pilot project shall offer continued medication-assisted treatment for opioid dependence with methadone or buprenorphine and a prescribed taper as appropriate to incarcerated persons who were participating in medication-assisted treatment in the community immediately prior to incarceration.

(c) As used in this section, "prescribed taper" means a clinically appropriate medication taper that is designed to minimize withdrawal symptoms and limit avoidable suffering.

(d) The Commissioner of Corrections shall publish an interim revision memorandum to replace Directive 363.01 as recommended by the Medication-Assisted Treatment for Inmates Work Group.

(e) On or before July 30, 2014, the Department shall enter into memoranda of understanding with the Department of Health and with hub treatment providers regarding ongoing medication-assisted treatment for persons in the

custody of the Department.

(f) The Department shall collaborate with the Department of Health to facilitate the provision of opioid overdose prevention training for pilot project participants who are incarcerated and the distribution of overdose rescue kits with naloxone at correctional facilities to persons who are transitioning from incarceration back into the community.

(g) The Departments of Corrections and of Health shall continue the Medication-Assisted Treatment for Inmates Work Group created by 2013 Acts and Resolves No. 67, Sec. 11 to inform and monitor implementation of the demonstration project. The Departments shall evaluate the demonstration project and provision of medication-assisted treatment to persons who are incarcerated in Vermont and report their findings, including a proposed schedule of expansion, to the House Committees on Corrections and Institutions, on Human Services, and on Judiciary, the Senate Committees on Health and Welfare and on Judiciary, and the Joint Committee on Corrections Oversight on or before January 1, 2015.

Sec. 13. VPMS QUERY; RULEMAKING

The Secretary of Human Services shall adopt rules requiring:

(1) All Medicaid participating providers, whether licensed in or outside Vermont, who prescribe buprenorphine or a drug containing buprenorphine to a Vermont Medicaid beneficiary to query the Vermont Prescription Monitoring System the first time they prescribe buprenorphine or a drug containing buprenorphine for the patient and at regular intervals thereafter. Regular intervals shall exceed the requirements for other Schedule III pharmaceuticals, and queries shall be done prior to prescribing a replacement prescription. The rules shall also include dosage thresholds, which may be exceeded only with prior approval from the Chief Medical Officer of the Department of Vermont Health Access or designee.

(2) All providers licensed in Vermont who prescribe buprenorphine or a drug containing buprenorphine to a Vermont patient who is not a Medicaid beneficiary to query the Vermont Prescription Monitoring System the first time they prescribe buprenorphine or a drug containing buprenorphine for the patient and at regular intervals thereafter. Regular intervals shall exceed the requirements for other Schedule III pharmaceuticals, and queries shall be done prior to prescribing a replacement prescription. The rules shall also include dosage thresholds.

Sec. 14. MEDICATION-ASSISTED THERAPY; RULEMAKING

The Commissioner of Health shall adopt rules relating to

medication-assisted therapy for opioid dependence for physicians treating fewer than 30 patients, which shall include a requirement that such physicians ensure that their patients are screened or assessed to determine their need for counseling and that patients who are determined to need counseling or other support services are referred for appropriate counseling from a licensed clinical professional or for other services as needed.

Sec. 15. 26 V.S.A. chapter 36, subchapter 8 is added to read:

Subchapter 8. Naloxone Hydrochloride

§ 2080. NALOXONE HYDROCHLORIDE; DISPENSING OR FURNISHING

(a) The Board of Pharmacy shall adopt protocols for licensed pharmacists to dispense or otherwise furnish naloxone hydrochloride to patients who do not hold an individual prescription for naloxone hydrochloride. Such protocols shall be consistent with rules adopted by the Commissioner of Health.

(b) Notwithstanding any provision of law to the contrary, a licensed pharmacist may dispense naloxone hydrochloride to any person as long as the pharmacist complies with the protocols adopted pursuant to subsection (a) of this section.

Sec. 16. 33 V.S.A. § 813 is added to read:

§ 813. MEDICAID PARTICIPATING PROVIDERS

The Department of Vermont Health Access shall grant authorization to a licensed alcohol and drug abuse counselor to participate as a Medicaid provider to deliver clinical and case coordination services to Medicaid beneficiaries, regardless of whether the counselor is a preferred provider.

Sec. 16a. DEPARTMENT OF CORRECTIONS AND HEALTH CARE REFORM

(a) The Agency of Human Services and its departments shall assist the Department of Corrections in fully enacting the provisions of the Affordable Care Act and Vermont's health care reform initiatives as they pertain to persons in the criminal justice population, including access to health information technology, the Blueprint for Health, Medicaid enrollment, the health benefit exchange, health plans, and other components under the Department of Vermont Health Access that support and ensure a seamless process for reentry to the community or readmission to a correctional facility.

(b) The Department of Corrections shall include substance abuse and mental health services in its request for proposal (RFP) process for inmate health services. Through the RFP, the Department shall require that substance

abuse and mental health services be provided to persons while incarcerated.

Sec. 17. 18 V.S.A. § 4254 is amended to read:

§ 4254. IMMUNITY FROM LIABILITY

* * *

(d) A person who seeks medical assistance for a drug overdose or is the subject of a good faith request for medical assistance pursuant to subsection (b) or (c) of this section shall not be subject to any of the penalties for violation of 13 V.S.A. § 1030 (violation of a protection order), for a violation of this chapter or 7 V.S.A §§ 656 and 657, for being at the scene of the drug overdose, or for being within close proximity to any person at the scene of the drug overdose.

(e) A person who seeks medical assistance for a drug overdose or is the subject of a good faith request for medical assistance pursuant to subsection (b) or (c) of this section shall not be subject to any sanction for a violation of a condition of pretrial release, probation, furlough, or parole for a violation of this chapter or 7 V.S.A §§ 656 and 657~~,~~ for being at the scene of the drug overdose~~,~~ or for being within close proximity to any person at the scene of the drug overdose.

* * *

(g) The immunity provisions of this section apply only to the use and derivative use of evidence gained as a proximate result of the person's seeking medical assistance for a drug overdose, being the subject of a good faith request for medical assistance, being at the scene, or being within close proximity to any person at the scene of the drug overdose for which medical assistance was sought and do not preclude prosecution of the person on the basis of evidence obtained from an independent source.

Sec. 18. EFFECTIVE DATES

(a) Secs. 2, 6, and 7 shall take effect on January 1, 2015.

(b) This section and Secs. 1 (legislative intent), 3 (risk assessment and needs screening tools), 4 (prosecutor precharge programs and reporting), 10 (Department of Public Safety report), 13 (VPMS query; rulemaking), 14 (medication assisted therapy, rulemaking), and 17 (immunity from liability) shall take effect on passage.

(c) The remaining sections shall take effect on July 1, 2014.

(Committee Vote: 9-0-2)

Rep. O'Brien of Richmond, for the Committee on **Appropriations,** recommends the bill ought to pass when amended as recommended by the Committees on **Human Services and Judiciary** and when further amended as follows:

First: In Sec. 1, by striking out subsection (i) in its entirety

Second: By striking out Secs. 6, 7, and 16 in their entirety

Third: In Sec. 18 (effective dates), in subsection (a), by striking out "Secs. 2, 6, and 7" and inserting in lieu thereof Sec. 2

(Committee Vote: 10-1-0)

Senate Proposal of Amendment

H. 890

An act relating to approval of amendments to the charter of the City of Burlington regarding the redistricting of City election areas

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

The Senate proposes to the House to amend the bill in Sec. 2, 24 App. V.S.A. chapter 3, in § 2 (election boundaries), in subsection (a) (City districts described), in subdivision (2) (Central District), in the geographic description of the district, after "Central Vermont Railway bridge downstream of the Lower Winooski Falls and Salmon Hole; thence southerly along the East District", by striking out in its entirety "eastern boundary" and inserting in lieu thereof western boundary to its intersection with the centerline of Main Street; continuing southerly along the centerline of South Winooski Avenue.

(No House Amendments)

NEW BUSINESS

Third Reading

H. 883

An act relating to expanded prekindergarten–grade 12 school districts

Amendment to be offered by Rep. Buxton of Tunbridge to H. 883

* * * Prekindergarten Education * * *

Sec. 13. 16 V.S.A. § 829 is amended to read:

§ 829. PREKINDERGARTEN EDUCATION~~; RULES~~

(a) Definitions. As used in this section:

(1) "Prekindergarten child" means a child who, as of the date

established by the district of residence for kindergarten eligibility, is three or four years of age or is five years of age but is not yet enrolled in kindergarten.

(2) "Prekindergarten education" means services designed to provide to prekindergarten children developmentally appropriate early development and learning experiences based on Vermont's early learning standards.

(3) "Prequalified private provider" means a private provider of prekindergarten education that is qualified pursuant to subsection (c) of this section.

(b) Access to publicly funded prekindergarten education.

(1) No fewer than ten hours per week of publicly funded prekindergarten education shall be available for 35 weeks annually to each prekindergarten child whom a parent or guardian wishes to enroll in an available, prequalified program operated by a public school or a private provider.

(2) If a parent or guardian chooses to enroll a prekindergarten child in an available, prequalified program, then, pursuant to the parent or guardian's choice, the school district of residence shall:

(A) pay tuition pursuant to subsections (d) and (h) of this section upon the request of the parent or guardian to:

(i) a prequalified private provider; or

(ii) a public school located outside the district that operates a prekindergarten program that has been prequalified pursuant to subsection (c) of this section; or

(B) enroll the child in the prekindergarten education program that it operates.

(3) If requested by the parent or guardian of a prekindergarten child, the school district of residence shall pay tuition to a prequalified program operated by a private provider or a public school in another district even if the district of residence operates a prekindergarten education program.

(4) If the supply of prequalified private and public providers is insufficient to meet the demand for publicly funded prekindergarten education in any region of the State, nothing in this section shall be construed to require a district to begin or expand a program to satisfy that demand; but rather, in collaboration with the Agencies of Education and of Human Services, the local Building Bright Futures Council shall meet with school districts and private providers in the region to develop a regional plan to expand capacity.

(c) Prequalification. Pursuant to rules jointly developed and overseen by

the Secretaries of Education and of Human Services and adopted by the State Board pursuant to 3 V.S.A. chapter 25, the Agencies jointly may determine that a private or public provider of prekindergarten education is qualified for purposes of this section and include the provider in a publicly accessible database of prequalified providers. At a minimum, the rules shall define the process by which a provider applies for and maintains prequalification status, shall identify the minimum quality standards for prequalification, and shall include the following requirements:

(1) A program of prekindergarten education, whether provided by a school district or a private provider, shall have received:

(A) National Association for the Education of Young Children (NAEYC) accreditation; or

(B) at least four stars in the Department for Children and Families STARS system with at least two points in each of the five arenas; or

(C) three stars in the STARS system if the provider has developed a plan, approved by the Commissioner for Children and Families and the Secretary of Education, to achieve four or more stars in no more than two years with at least two points in each of the five arenas, and the provider has met intermediate milestones.

(2) A licensed provider shall employ or contract for the services of at least one teacher who is licensed and endorsed in early childhood education or in early childhood special education under chapter 51 of this title.

(3) A registered home provider that is not licensed and endorsed in early childhood education or early childhood special education shall receive regular, active supervision and training from a teacher who is licensed and endorsed in early childhood education or in early childhood special education under chapter 51 of this title.

(d) Tuition, budgets, and average daily membership.

(1) On behalf of a resident prekindergarten child, a district shall pay tuition for prekindergarten education for ten hours per week for 35 weeks annually to a prequalified private provider or to a public school outside the district that is prequalified pursuant to subsection (c) of this section; provided, however, that the district shall pay tuition for weeks that are within the district's academic year. Tuition paid under this section shall be at a statewide rate, which may be adjusted regionally, that is established annually through a process jointly developed and implemented by the Agencies of Education and of Human Services. A district shall pay tuition upon:

(A) receiving notice from the child's parent or guardian that the child

is or will be admitted to the prekindergarten education program operated by the prequalified private provider or the other district; and

(B) concurrent enrollment of the prekindergarten child in the district of residence for purposes of budgeting and determining average daily membership.

(2) In addition to any direct costs of operating a prekindergarten education program, a district of residence shall include anticipated tuition payments and any administrative, quality assurance, quality improvement, transition planning, or other prekindergarten-related costs in its annual budget presented to the voters.

(3) Pursuant to subdivision 4001(1)(C) of this title, the district of residence may include within its average daily membership any prekindergarten child for whom it has provided prekindergarten education or on whose behalf it has paid tuition pursuant to this section.

(4) A prequalified private provider may receive additional payment directly from the parent or guardian only for prekindergarten education in excess of the hours paid for by the district pursuant to this section or for child care services, or both. The provider is not bound by the statewide rate established in this subsection when determining the rates it will charge the parent or guardian.

(e) Rules. The ~~commissioner of education and the commissioner for children and families~~ Secretary of Education and the Commissioner for Children and Families shall jointly develop and agree to rules and present them to the ~~state board of education~~ State Board for adoption under 3 V.S.A. chapter 25 as follows:

(1) ~~To ensure that, before a school district begins or expands a prekindergarten education program that intends to enroll students who are included in its average daily membership, the district engage the community in a collaborative process that includes an assessment of the need for the program in the community and an inventory of the existing service providers; provided, however, if a district needs to expand a prekindergarten education program in order to satisfy federal law relating to the ratio of special needs children to children without special needs and if the law cannot be satisfied by any one or more qualified service providers with which the district may already contract, then the district may expand an existing school-based program without engaging in a community needs assessment.~~ To permit private providers that are not prequalified pursuant to subsection (c) of this section to create new or continue existing partnerships with school districts through which the school district provides supports that enable the provider to fulfill the requirements of

subdivision (c)(2) or (3), and through which the district may or may not make in-kind payments as a component of the statewide tuition established under this section.

(2) ~~To ensure that, if a school district begins or expands a prekindergarten education program that intends to include any of the students in its average daily membership, the district shall use existing qualified service providers to the extent that existing qualified service providers have the capacity to meet the district's needs effectively and efficiently.~~ To authorize a district to begin or expand a school-based prekindergarten education program only upon prior approval obtained through a process jointly overseen by the Secretaries of Education and of Human Services, which shall be based upon analysis of the number of prekindergarten children residing in the district and the availability of enrollment opportunities with prequalified private providers in the region. Where the data are not clear or there are other complex considerations, the Secretaries may choose to conduct a community needs assessment.

(3) To require that the school district provides opportunities for effective parental participation in the prekindergarten education program.

(4) To establish a process by which:

(A) a parent or guardian ~~residing in the district or a provider, or both, may request a school district to enter into a contract with a provider located in or outside the district~~ notifies the district that the prekindergarten child is or will be admitted to a prekindergarten education program not operated by the district and concurrently enrolls the child in the district pursuant to subdivision (d)(1) of this section;

(B) a district:

(i) pays tuition pursuant to a schedule that does not inhibit the ability of a parent or guardian to enroll a prekindergarten child in a prekindergarten education program or the ability of a prequalified private provider to maintain financial stability; and

(ii) enters into an agreement with any provider to which it will pay tuition regarding quality assurance, transition, and any other matters; and

(C) a provider that has received tuition payments under this section on behalf of a prekindergarten child notifies a district that the child is no longer enrolled.

(5) ~~To identify the services and other items for which state funds may be expended when prekindergarten children are counted for purposes of average daily membership, such as tuition reduction, quality improvements, or~~

~~professional development for school staff or private providers.~~ To establish a process to calculate an annual statewide tuition rate that is based upon the actual cost of delivering ten hours per week of prekindergarten education that meets all established quality standards and to allow for regional adjustments to the rate.

(6) ~~To ensure transparency and accountability by requiring private providers under contract with a school districts to report costs for prekindergarten programs to the school district and by requiring school districts to report these costs to the commissioner of education.~~ [Repealed.]

(7) To require ~~school districts~~ a district to include identifiable costs for prekindergarten programs and essential early education services in ~~their~~ its annual budgets and reports to the community.

(8) To require ~~school districts~~ a district to report to the ~~departments their~~ Agency of Education annual expenditures made in support of prekindergarten ~~care and~~ education, with distinct figures provided for expenditures made from the ~~general fund~~ General Fund, from the ~~education fund~~ Education Fund, and from all other sources, which shall be specified.

(9) To provide an ~~appeal~~ administrative process for:

(A) a parent, guardian, or provider to challenge an action of ~~the~~ a school district or the State when the ~~appellant~~ complainant believes that the district or State is in violation of state statute or rules regarding prekindergarten education; and

(B) a school district to challenge an action of a provider or the State when the district believes that the provider or the State is in violation of state statute or rules regarding prekindergarten education.

(10) ~~To establish the minimum quality standards necessary for a district to include prekindergarten children within its average daily membership. At a minimum, the standards shall include the following requirements:~~

~~(A) The prekindergarten education program, whether offered by or through the district, shall have received:~~

~~(i) National Association for the Education of Young Children (NAEYC) accreditation; or~~

~~(ii) At least four stars in the department for children and families STARS system with at least two points in each of the five arenas; or~~

~~(iii) Three stars in the STARS system if the provider has developed a plan, approved by the commissioner for children and families and the commissioner of education, to achieve four or more stars within three years~~

~~with at least two points in each of the five arenas, and the provider has met intermediate milestones; and~~

~~(B) A licensed center shall employ or contract for the services of at least one teacher who is licensed and endorsed in early childhood education or in early childhood special education under chapter 51 of this title; and~~

~~(C) A registered home shall receive regular, active supervision and training from a teacher who is licensed and endorsed in early childhood education or in early childhood special education under chapter 51 of this title.~~ To establish a system by which the Agency of Education and Department for Children and Families shall jointly monitor prekindergarten education programs to promote optimal outcomes for children and to collect data that will inform future decisions. The Agency and Department shall be required to report annually to the General Assembly in January. At a minimum, the system shall monitor and assess:

(A) programmatic details, including the number of children served, the number of private and public programs operated, and the public financial investment made to ensure access to quality prekindergarten education;

(B) the quality of public and private prekindergarten education programs and efforts to ensure continuous quality improvements through mentoring, training, technical assistance, and otherwise; and

(C) the outcomes for children, including school readiness and proficiency in numeracy and literacy.

(11) To establish a process for documenting the progress of children enrolled in prekindergarten education programs and to require public and private providers to use the process to:

(A) help individualize instruction and improve program practice; and

(B) collect and report child progress data to the ~~commissioner of education~~ Secretary of Education on an annual basis.

(f) Other provisions of law. Section 836 of this title shall not apply to this section.

(g) Limitations. Nothing in this section shall be construed to permit or require payment of public funds to a private provider of prekindergarten education in violation of Chapter I, Article 3 of the Vermont Constitution or in violation of the Establishment Clause of the U.S. Constitution.

(h) Geographic limitations.

(1) Notwithstanding the requirement that a district pay tuition to any prequalified public or private provider in the State, a school board may choose

to limit the geographic boundaries within which the district shall pay tuition by paying tuition solely to those prequalified providers in which parents and guardians choose to enroll resident prekindergarten children that are located within the district's "prekindergarten region" as determined in subdivision (2) of this subsection.

(2) For purposes of this subsection, upon application from the school board, a district's prekindergarten region shall be determined jointly by the Agencies of Education and of Human Services in consultation with the school board, private providers of prekindergarten education, parents and guardians of prekindergarten children, and other interested parties pursuant to a process adopted by rule under subsection (e) of this section. A prekindergarten region:

(A) shall not be smaller than the geographic boundaries of the school district;

(B) shall be based in part upon the estimated number of prekindergarten children residing in the district and in surrounding districts, the availability of prequalified private and public providers of prekindergarten education, commuting patterns, and other region-specific criteria; and

(C) shall be designed to support existing partnerships between the school district and private providers of prekindergarten education.

(3) If a school board chooses to pay tuition to providers solely within its prekindergarten region, and if a resident prekindergarten child is unable to access publicly funded prekindergarten education within that region, then the child's parent or guardian may request and in its discretion the district may pay tuition at the statewide rate for a prekindergarten education program operated by a prequalified provider located outside the prekindergarten region.

(4) Except for the narrow exception permitting a school board to limit geographic boundaries under subdivision (1) of this subsection, all other provisions of this section and related rules shall continue to apply.

Sec. 14. PREKINDERGARTEN EDUCATION; CALCULATION OF EQUALIZED PUPILS; EXCLUSION FROM EDUCATION SPENDING

If a school district did not provide or pay for prekindergarten education pursuant to 16 V.S.A. § 829 in fiscal year 2015, then:

(1) for purposes of determining the equalized pupil count for the fiscal year 2016 budget, the long-term membership of prekindergarten children shall be the number of prekindergarten children for whom the district anticipates it will provide prekindergarten education or pay tuition, or both, in fiscal year 2016; and

(2) for purposes of determining the equalized pupil count for the fiscal year 2017 budget, the long-term membership of prekindergarten children shall be the total number of prekindergarten children for whom the district provided prekindergarten education or paid tuition, or both, in fiscal year 2016, adjusted to reflect the difference between the estimated and actual count for that fiscal year.

Sec. 15. QUALITY STANDARDS

(a) The Agencies of Education and of Human Services shall review existing quality standards for prekindergarten education programs and may initiate rulemaking under 3 V.S.A. chapter 25 to require higher standards of quality; provided, however, that no new standards shall take effect earlier than July 1, 2015. Changes to the quality standards shall be designed to ensure that programs are based on intentional, evidence-based practices that create a developmentally appropriate environment and support the delivery of an engaging program that supports the social, emotional, intellectual, language, literacy, and physical development of prekindergarten children.

(b) In January of the 2015, 2016, and 2017 legislative sessions, the Agencies shall report to the House and Senate Committees on Education and on Appropriations, the House Committee on Human Services, and the Senate Committee on Health and Welfare regarding the quality of prekindergarten education in the State.

Sec. 16. REPORT ON ENROLLMENT AND ACCESS

The Agencies of Education and of Human Services and the Building Bright Futures Council shall monitor and evaluate access to and enrollment in prekindergarten education programs under Sec. 13 of this act. On or before January 1, 2018, they shall report to the House and Senate Committees on Education and on Appropriations, the House Committee on Ways on Means, and the Senate Committee on Finance regarding their evaluation, conclusions, and any recommendations for amendments to statute or related rule.

Sec. 17. PREKINDERGARTEN REGIONS; PROCESS AND CRITERIA

The Agencies of Education and of Human Services, in consultation with the Vermont Superintendents Association, the Vermont School Boards Association, the Vermont Principals' Association, the Vermont-NEA, and the Building Bright Futures Council created in 33 V.S.A. chapter 46, shall develop a detailed proposal outlining the process and criteria by which the Agencies will determine the prekindergarten region of a school district if requested to do so pursuant to Sec. 1, 16 V.S.A. § 829(h)(2), of this act. The Agencies shall present the proposal to the House and Senate Committees on Education on or before January 15, 2015. The Agencies shall also present any

recommendations for amendments to statute, including repeal of or amendments to subsection (h).

Sec. 18. CONSTITUTIONALITY

On or before July 1, 2014, the Secretary of Education shall identify the private prekindergarten education programs to which school districts are paying tuition on behalf of resident prekindergarten children, determine the extent to which any program provides religious prekindergarten education, and establish the steps the Agency will take to ensure that public funds are not expended in violation of Chapter I, Article 3 of the Vermont Constitution and the Vermont Supreme Court's decision in Chittenden Town School District v. Vermont Department of Education, 169 Vt. 310 (1999) or in violation of the Establishment Clause of the U.S. Constitution.

Sec. 19. IMPLEMENTATION

Sec. 13 shall apply to enrollments on July 1, 2015 and after.

and by renumbering the remaining section to be numerically correct.

Amendment to be offered by Rep. Donovan of Burlington to H. 883

By adding a new Section to be Sec. 13 and a related reader assistance heading to read:

* * * Analysis * * *

Sec. 13. REGIONAL EDUCATION DISTRICTS; ANALYSIS; REPORT

(a) The State Board of Education, in consultation with the Agency of Education, the Vermont School Boards Association, and school districts, shall identify at least three groups of school districts (Test Sites) in different regions of the State for an analysis of potential regional education district (RED) formation pursuant to 2010 Acts and Resolves No. 153, as amended by 2012 Acts and Resolves No. 156. Both the school districts consulted and those analyzed shall be diversely representative of geography, size, socioeconomics, and other factors, including extreme complexity.

(b) The State Board shall comprehensively analyze the educational and financial benefits and detriments of consolidation in each of the three Test Sites, including a review of curriculum, course offerings, special programs, budgets, class sizes and student-to-adult ratios, collective bargaining agreements, district educational policies, relationships between schools and the community, and other important factors identified during the process. When analyzing financial costs, and for the purposes of modeling only, the State Board shall assume that employees within a RED bargaining unit shall receive compensation pursuant to the highest-paying fiscal year 2015 compensation

schedule of the original districts. The State Board shall develop a possible administrative structure and budget for the RED, as well as an estimate of a unified education property tax rate for each of the Test Sites using data from fiscal year 2015 district budgets. The State Board shall also explore alternative governance structures for the REDs and shall consider constitutionally sound alternatives, such as weighted and nonweighted voting board members.

(c) When it has finished its analysis, but before it has issued a final report, the State Board shall meet with the communities analyzed under this section to present and discuss the results of its work.

(d) The State Board shall provide a final report of its analysis to the House and Senate Committees on Education, the House Committee on Ways and Means, and the Senate Committee on Finance on or before January 15, 2015. The final report shall serve to inform future legislation related to the consolidation of existing school districts into larger prekindergarten–grade 12 REDs.

and by renumbering the remaining section to be numerically correct.

Amendment to be offered by Reps. Cross of Winooski, Johnson of Canaan, Manwaring of Wilmington, Martin of Wolcott, Toleno of Brattleboro, and Woodward of Johnson to H. 883

By striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. REGIONAL EDUCATION DISTRICTS; SIMULATION; REPORT

(a) The State Board of Education, in consultation with the Agency of Education, the Vermont School Boards Association, and school districts, shall identify at least three groups of school districts (Test Sites) in different regions of the State for a simulated analysis of regional education district (RED) formation pursuant to 2010 Acts and Resolves No. 153, as amended by 2012 Acts and Resolves No. 156. Both the school districts consulted and those analyzed shall be diversely representative of geography, size, socioeconomics, and other factors.

(b) The simulation shall comprehensively analyze the educational and financial benefits and detriments of consolidation in each of the three Test Sites, including a review of curriculum, course offerings, special programs, budgets, class sizes and student-to-adult ratios, collective bargaining agreements, district educational policies, relationships between schools and the community, and other important factors identified during the process. When analyzing financial costs, the simulation shall assume that employees within a RED bargaining unit shall receive compensation pursuant to the highest-paying

fiscal year 2015 compensation schedule of the original districts. The simulation shall develop a possible administrative structure and budget for the RED, as well as an estimate of a unified education property tax rate for each of the Test Sites using data from fiscal year 2015 district budgets. The simulation shall also explore alternative governance structures for the REDs and shall consider constitutionally sound alternatives, such as weighted and nonweighted voting board members.

(c) When it has finished its analysis, but before it has issued a final report, the State Board shall meet with the communities analyzed under this section to present and discuss the results of its work.

(d) The State Board shall provide an interim report regarding the work required by this section to the House and Senate Committees on Education, the House Committee on Ways and Means, and the Senate Committee on Finance on or before January 15, 2015.

(e) The State Board shall provide a final report of its analysis to the committees identified in subsection (d) of this section on or before November 15, 2015. The final report shall provide the comprehensive data needed to inform future legislation related to the consolidation of existing school districts into larger prekindergarten–grade 12 REDs.

Sec. 2 POSITION; AGENCY OF EDUCATION

The General Assembly authorizes the establishment of one new limited service position in the Agency of Education in fiscal year 2015 to coordinate the activities and prepare the report required in Sec. 1 of this act on behalf of the State Board of Education.

Sec. 3. APPROPRIATION

The sum of $85,250.00 is appropriated from the Supplemental Property Tax Relief Fund created by 32 V.S.A. § 6075 to the Agency of Education in fiscal year 2015 to hire the limited services employee authorized in Sec. 2 of this act.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: "An act relating to requiring a simulation of regional education district formation".

J.R.H. 23

Joint resolution relating to the cleanup of Lake Champlain

S. 208

An act relating to solid waste management

S. 220

An act relating to furthering economic development

Amendment to be offered by Rep. Pugh of South Burlington to S. 220

That the House Proposal of Amendment be amended in Sec. 34, in 16 V.S.A. § 2888(b)(1)(A), following "the Vermont Student Assistance Corporation," by adding the Secretary of Human Services,

Amendment to be offered by Rep. Johnson of Canaan to S. 220

That the House Proposal of Amendment be amended by adding four new sections to be Secs. 20g–20j to read:

Sec. 20g. 23 V.S.A. § 4(82) is amended to read:

(82) "Portable electronic device" means a portable electronic or computing device, including a cellular telephone, personal digital assistant (PDA), or laptop computer. "Portable electronic device" does not include a two-way or Citizens Band radio, or equipment used by a licensed Amateur Radio operator in accordance with 47 C.F.R. part 97.

Sec. 20h. 23 V.S.A. § 1095b is amended to read:

§ 1095b. HANDHELD USE OF PORTABLE ELECTRONIC DEVICE ~~IN WORK ZONE~~ PROHIBITED

(a) Definition. As used in this section, "hands-free use" means the use of a portable electronic device without use of either hand ~~and outside the immediate proximity of the user's ear,~~ by employing an internal feature of, or an attachment to, the device.

(b) Use of handheld portable electronic device ~~in work zone~~ prohibited. A person shall not use a portable electronic device while operating a moving motor vehicle ~~within~~ on a highway ~~work zone~~ in this State. The prohibition of this subsection shall not apply ~~unless the work zone is properly designated with warning devices in accordance with subdivision 4(5) of this title, and shall not apply~~:

(1) to hands-free use; ~~or~~

(2) to activation or deactivation of hands-free use as long as the device is in a cradle or otherwise securely mounted in the vehicle;

~~(2)~~(3) when use of a portable electronic device is necessary for a person to communicate with law enforcement or emergency service personnel under emergency circumstances;

(4) to communications of law enforcement or emergency service

personnel in the performance of their official duties;

(5) to use of an ignition interlock device, as defined in section 1200 of this title; or

(6) to use of a portable electronic device by an operator of a registered farm truck or a farm truck or farm tractor not required to be registered, if:

(A) the farm truck or farm tractor is being used in connection with the operation of a farm; and

(B) the device is used to receive a communication relating to the dispatch of the farm truck or farm tractor to a work location.

(c) Penalty. A person who violates this section commits a traffic violation and shall be subject to a penalty of not less than $100.00 and not more than $200.00 ~~upon adjudication of~~ for a first violation, and of not less than $250.00 and not more than $500.00 ~~upon adjudication of~~ for a second or subsequent violation within any two-year period.

(d)(1) Operators of commercial motor vehicles shall be governed by the provisions of chapter 39 of this title (Commercial Driver License Act) instead of the provisions of this chapter with respect to the handheld use of mobile telephones and texting while operating a commercial motor vehicle.

(2) A person shall not be issued more than one complaint for any violation of this section, section 1095a of this title (junior operator use of portable electronic devices), or section 1099 of this title (texting prohibited) that arises from the same conduct.

Sec. 20i. 23 V.S.A. § 2502 is amended to read:

§ 2502. POINT ASSESSMENT; SCHEDULE

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

(1) Two points assessed for:

* * *

(LL)(i)	§ 1095.	Entertainment picture visible to operator;
(ii)	§ 1095b.	Use of portable electronic device ~~in work zone —~~ first offense;

* * *

(4) Five points assessed for:

* * *

(D) § 1095b. Use of portable electronic device ~~in work zone~~ — second and subsequent offenses;

* * *

Sec. 20j. 23 V.S.A. § 1095a is amended to read:

§ 1095a. JUNIOR OPERATOR USE OF PORTABLE ELECTRONIC DEVICES

A person under 18 years of age shall not use any portable electronic device as defined in subdivision 4(82) of this title while operating a moving motor vehicle on a highway. This prohibition shall not apply ~~if it is necessary to place an emergency 911 call~~:

(1) when use of a portable electronic device is necessary for a person to communicate with law enforcement or emergency service personnel under emergency circumstances; or

(2) to communications of law enforcement or emergency service personnel in the performance of their official duties.

S. 239

An act relating to the regulation of toxic substances

Amendment to be offered by Reps. Komline of Dorset and Wright of Burlington to S. 239

By striking out Sec. 4, effective date, in its entirety and inserting in lieu thereof two new sections to be Secs. 4–5 to read as follows:

Sec. 4. 7 V.S.A. § 1012 is added to read:

§ 1012. LIQUID NICOTINE; PACKAGING

(a) Unless specifically preempted by federal law, no person shall manufacture, regardless of location, for sale in; offer for sale in; sell in or into the stream of commerce in; or otherwise introduce into the stream of commerce in Vermont any liquid or gel substance containing nicotine unless that product is contained in child-resistant packaging.

(b) As used in this section, "child-resistant packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults

to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

Sec. 5. EFFECTIVE DATES

(a) Secs. 1–3 and this section shall take effect on passage.

(b) Sec. 4 (liquid nicotine; packaging) shall take effect on January 1, 2015.

Amendment to be offered by Rep. Deen of Westminster to S. 239

That the House Proposal of Amendment be amended in Sec. 2, in 18 V.S.A. § 1775, by striking out subdivision (b)(3) in its entirety and inserting in lieu thereof the following to read:

(3) the amount of the chemical contained in each unit of the product or product component, reported by weight or parts per million as authorized by the Commissioner;

and in subdivision (d)(2), after "the Interstate Chemicals Clearinghouse," and before "or other independent third party" by inserting a federal governmental agency

Amendment to be offered by Rep. Marcotte of Coventry to S. 239

First: In Sec. 2, in 18 V.S.A. § 1775, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) Notice requirement. Beginning July 1, 2015, and biennially thereafter, a manufacturer of a children's product or a trade association representing a manufacturer of a children's product shall, according to the requirements for phased-in reporting adopted under subsection 1776(f) of this title, submit to the Department the notice described in subsection (b) of this section if a chemical of high concern to children is:

(1) intentionally added to a children's product at a level above the PQL produced by the manufacturer; or

(2) present in a children's product produced by the manufacturer as a contaminant at a concentration of 100 parts per million or greater.

Second: In Sec. 2, in 18 V.S.A. § 1776, by adding a new subsection (f) to read as follows:

(f) Phased-in reporting. On or before January 1, 2015, the Commissioner shall adopt by rule phased-in reporting requirements for chemicals of high concern to children in children's products based on the size of the manufacturer, aggregate sales of children's products, the exposure profile of the chemical of high concern to children in the children's product, or other criteria determined to be appropriate.

and by releterring the remaining subsections to be alphabetically correct.

and in subsection (g), as relettered, by striking subdivision (3) in its entirety.

S. 241

An act relating to binding arbitration for State employees

S. 291

An act relating to the establishment of transition units at State correctional facilities

S. 293

An act relating to reporting on population-level outcomes and indicators and on program-level performance measures

Amendment to be offered by Reps. Donahue of Northfield, French of Randolph, Haas of Rochester, and Pugh of South Burlington to S. 293

That the House Proposal of Amendment be amended in Sec. 3 (initial population-level indicators), in subdivision (7) (Vermont's elders and people with disabilities and people with mental conditions live with dignity and independence in settings they prefer), by striking out subdivisions (A) and (B) and inserting in lieu thereof the following:

(A) rate of confirmed reports of abuse and neglect of vulnerable adults per 1,000 vulnerable adults;

(B) percent of elders living in institutions versus receiving home care; and

(C) number of people with disabilities and people with mental conditions receiving State services living in each of the following: institutions, residential or group facilities, or independently.

Favorable with Amendment

S. 184

An act relating to eyewitness identification policy

Rep. Grad of Moretown, for the Committee on **Judiciary,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. chapter 182, subchapter 3 is added to read:

Subchapter 3. Law Enforcement Practices

§ 5581. EYEWITNESS IDENTIFICATION POLICY

(a) On or before January 1, 2015, every State, county, and municipal law enforcement agency and every constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with 20 V.S.A. § 2358 shall adopt an eyewitness identification policy.

(b) The written policy shall contain, at a minimum, the following essential elements as identified by the Law Enforcement Advisory Board:

(1) Protocols guiding the use of a show-up identification procedure.

(2) The photo or live lineup shall be conducted by a blind administrator who does not know the suspect's identity. For law enforcement agencies with limited staff, this can be accomplished through a procedure in which photographs are placed in folders, randomly numbered and shuffled, and then presented to an eyewitness such that the administrator cannot see or track which photograph is being presented to the witness until after the procedure is completed.

(3) Instructions to the eyewitness, including that the perpetrator may or may not be among the persons in the identification procedure.

(4) In a photo or live lineup, fillers shall possess the following characteristics:

(A) All fillers selected shall resemble the eyewitness's description of the perpetrator in significant features such as face, weight, build, or skin tone, including any unique or unusual features such as a scar or tattoo.

(B) At least five fillers shall be included in a photo lineup, in addition to the suspect.

(C) At least four fillers shall be included in a live lineup, in addition to the suspect.

(5) If the eyewitness makes an identification, the administrator shall seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified in a given identification procedure is the perpetrator.

(c) The model policy issued by the Law Enforcement Advisory Board shall encourage ongoing law enforcement training in eyewitness identification procedures for State, county, and municipal law enforcement agencies and constables who exercise law enforcement authority pursuant to 24 V.S.A. § 1936a and are trained in compliance with 20 V.S.A. § 2358.

(d) If a law enforcement agency does not adopt a policy by January 1, 2015 in accordance with this section, the model policy issued by the Law

Enforcement Advisory Board shall become the policy of that law enforcement agency or constable.

Sec. 2. REPORTING EYEWITNESS IDENTIFICATION POLICIES

The Vermont Criminal Justice Training Council shall report to the General Assembly on or before April 15, 2015 regarding law enforcement's compliance with Sec. 1 of this act.

Sec. 3. 20 V.S.A. § 2366 is amended to read:

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

(a) ~~No later than January 1, 2013~~ On or before September 1, 2014, every State, local, county, and municipal law enforcement agency ~~that employs one or more certified law enforcement officers~~, and every law enforcement officer who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with section 2358 of this title, shall adopt a bias-free policing policy. The policy shall contain ~~the following essential~~ substantially the same elements of ~~such a policy as determined by the Law Enforcement Advisory Board after its review of~~ either the current Vermont State Police ~~Policy and~~ bias-free policing policy or the most current model policy issued by the Office of the Attorney General.

(b) ~~The policy shall encourage ongoing bias-free law enforcement training for State, local, county, and municipal law enforcement agencies~~ If a law enforcement agency or officer that is required to adopt a policy pursuant to subsection (a) of this section fails to do so on or before September 1, 2014, that agency or officer shall be deemed to have adopted, and shall follow and enforce, the model policy issued by the Office of the Attorney General.

(c) On or before September 7, 2014, and annually thereafter as part of their annual training report to the Council, every State, local, county, and municipal law enforcement agency, and every law enforcement officer who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with section 2358 of this title, shall report to the Council whether the agency or officer has adopted a bias-free policing policy in accordance with subsections (a) and (b) of this section and which policy has been adopted. The Criminal Justice Training Council shall determine, as part of the Council's annual certification of training requirements, if current officers have received training on bias-free policing.

(d) On or before October 15, 2014, and annually thereafter on April 1, the Criminal Justice Training Council shall report to the House and Senate Committees on Judiciary which departments and officers have adopted a

bias-free policing policy, which policy has been adopted, and whether officers have received training on bias-free policing.

(e) On or before September 1, 2014, every State, local, county, and municipal law enforcement ~~agencies that employ one or more certified law enforcement officers are encouraged to work with the Vermont Association of Chiefs of Police to extend the collection of roadside stop race data uniformly throughout state law enforcement agencies, with the goal of obtaining uniform roadside stop race data for analysis~~ agency shall collect roadside stop data, including the age, gender, race, and ethnicity of drivers. Law enforcement agencies shall work with the Vermont Criminal Justice Training Council with the goals of collecting uniform data, adopting uniform storage methods and periods, and ensuring that data can be analyzed. Roadside stop data shall be public.

Sec. 4. 13 V.S.A. chapter 182, subchapter 3 of is added to read:

Subchapter 3. Law Enforcement Practices

§ 5581. ELECTRONIC RECORDING OF A CUSTODIAL INTERROGATION

(a) As used in this section:

(1) "Custodial interrogation" means any interrogation:

(A) involving questioning by a law enforcement officer that is reasonably likely to elicit an incriminating response from the subject; and

(B) in which a reasonable person in the subject's position would consider himself or herself to be in custody, starting from the moment a person should have been advised of his or her Miranda rights and ending when the questioning has concluded.

(2) "Electronic recording" or "electronically recorded" means an audio and visual recording that is an authentic, accurate, unaltered record of a custodial interrogation, or if law enforcement does not have the current capacity to create a visual recording, an audio recording of the interrogation.

(3) "Place of detention" means a building or a police station that is a place of operation for the State police, a municipal police department, county sheriff department, or other law enforcement agency that is owned or operated by a law enforcement agency at which persons are or may be questioned in connection with criminal offenses or detained temporarily in connection with criminal charges pending a potential arrest or citation.

(4) "Statement" means an oral, written, sign language, or nonverbal communication.

(b)(1) A custodial interrogation that occurs in a place of detention concerning the investigation of a felony violation of chapter 53 (homicide) or 72 (sexual assault) of this title shall be electronically recorded in its entirety.

(2) In consideration of best practices, law enforcement shall strive to record simultaneously both the interrogator and the person being interrogated.

(c)(1) The following are exceptions to the recording requirement in subsection (b) of this section:

(A) exigent circumstances;

(B) a person's refusal to be electronically recorded;

(C) interrogations conducted by other jurisdictions;

(D) a reasonable belief that the person being interrogated did not commit a felony violation of chapter 53 (homicide) or 72 (sexual assault) of this title and, therefore, an electronic recording of the interrogation was not required;

(E) the safety of a person or protection of his or her identity; and

(F) equipment malfunction.

(2) If law enforcement does not make an electronic recording of a custodial interrogation as required by this section, the prosecution shall prove by a preponderance of the evidence that one of the exceptions identified in subdivision (1) of this subsection applies. If the prosecution does not meet the burden of proof, the evidence is still admissible, but the Court shall provide cautionary instructions to the jury regarding the failure to record the interrogation.

Sec. 5. LAW ENFORCEMENT ADVISORY BOARD

(a) The Law Enforcement Advisory Board (LEAB) shall develop a plan for the implementation of Sec. 1 of this act, 13 V.S.A. § 5581 (electronic recording of a custodial interrogation).

(b) The LEAB, in consultation with practitioners and experts in recording interrogations, including the Innocence Project, shall:

(1) assess the scope and location of the current inventory of recording equipment in Vermont;

(2) develop recommendations, including funding options, regarding how to equip adequately law enforcement with the recording devices necessary to carry out Sec. 1 of this act, 13 V.S.A. § 5581 (electronic recording of a custodial interrogation); and

(3) develop recommendations for expansion of recordings to questioning by a law enforcement officer that is reasonably likely to elicit an incriminating response from the subject regarding any felony offense.

(c) On or before October 1, 2014, the LEAB shall submit a written report to the Senate and House Committees on Judiciary with its recommendations for the implementation of Sec. 1 of this act, 13 V.S.A. § 5581 (electronic recording of a custodial interrogation).

Sec. 6. EFFECTIVE DATES

This act shall take effect on passage except for Sec. 4 which shall take effect on October 1, 2015.

and that after passage the title of the bill be amended to read: "An act relating to law enforcement policies on eyewitness identification and bias-free policing and on recording of custodial interrogations in homicide and sexual assault cases".

(Committee vote: 7-0-4)

(For text see Senate Journal 2/5/2014)

S. 287

An act relating to involuntary treatment and medication

Rep. Koch of Barre Town, for the Committee on **Judiciary,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 7101(9) is amended to read:

(9) "Interested party" means a guardian, spouse, parent, adult child, close adult relative, a responsible adult friend, or person who has the individual in his or her charge or care. It also means a mental health professional, a law enforcement officer, a licensed physician, or a head of a hospital~~, a selectman, a town service officer, or a town health officer~~.

Sec. 2. 18 V.S.A. § 7256 is amended to read:

§ 7256. REPORTING REQUIREMENTS

Notwithstanding 2 V.S.A. § 20(d), the ~~department of mental health~~ Department of Mental Health shall report annually on or before January 15 to the ~~senate committee on health and welfare and the house committee on human services~~ Senate Committee on Health and Welfare and the House Committee on Human Services regarding the extent to which individuals with mental health conditions receive care in the most integrated and least restrictive setting available. The Department shall consider measures from a variety of sources,

including the Joint Commission, the National Quality Forum, the Centers for Medicare and Medicaid Services, the National Institute of Mental Health, and the Substance Abuse and Mental Health Services Administration. The report shall address:

(1) ~~Utilization~~ use of services across the continuum of mental health services;

(2) ~~Adequacy~~ adequacy of the capacity at each level of care across the continuum of mental health services;

(3) ~~Individual~~ individual experience of care and satisfaction;

(4) ~~Individual~~ individual recovery in terms of clinical, social, and legal outcomes; ~~and~~

(5) ~~Performance~~ performance of the ~~state's~~ State's mental health system of care as compared to nationally recognized standards of excellence;

(6) ways in which patient autonomy and self-determination are maximized within the context of involuntary treatment and medication;

(7) outcome measures and other data on individuals for whom petitions for involuntary medication are filed; and

(8) progress on alternative treatment options across the system of care for individuals seeking to avoid or reduce reliance on medications, including supported withdrawal from medications.

Sec. 3. 18 V.S.A. § 7257 is amended to read:

§ 7257. REPORTABLE ADVERSE EVENTS

(a) An acute inpatient hospital, an intensive residential recovery facility, a designated agency, or a secure residential facility shall report to the ~~department of mental health~~ Department of Mental Health instances of death or serious bodily injury to individuals with a mental health condition in the custody or temporary custody of the ~~commissioner~~ Commissioner.

(b) An acute inpatient hospital shall report to the Department of Mental Health any staff injuries caused by a person in the custody or temporary custody of the Commissioner that are reported to both the Department of Labor and to the hospital's workers' compensation carrier.

Sec. 4. 18 V.S.A. § 7259 is amended to read:

§ 7259. MENTAL HEALTH CARE OMBUDSMAN

(a) The ~~department of mental health~~ Department of Mental Health shall establish the ~~office of the mental health care ombudsman~~ Office of the Mental

Health Care Ombudsman within the agency designated by the ~~governor~~ Governor as the protection and advocacy system for the ~~state~~ State pursuant to 42 U.S.C. § 10801 et seq. The agency may execute the duties of the ~~office of the mental health care ombudsman~~ Office of the Mental Health Care Ombudsman, including authority to assist individuals with mental health conditions and to advocate for policy issues on their behalf; provided, however, that nothing in this section shall be construed to impose any additional duties on the agency in excess of the requirements under federal law.

(b) The agency may provide a report annually to the ~~general assembly~~ General Assembly regarding the implementation of this section.

(c) In the event the protection and advocacy system ceases to provide federal funding to the agency for the purposes described in this section, the ~~general assembly~~ General Assembly may allocate sufficient funds to maintain the ~~office of the mental health care ombudsman~~ Office of the Mental Health Care Ombudsman.

(d) The Department of Mental Health shall provide a copy of the certificate of need for all emergency involuntary procedures performed on a person in the custody or temporary custody of the Commissioner to the Office of the Mental Health Care Ombudsman on a monthly basis.

Sec. 5. 18 V.S.A. § 7504 is amended to read:

§ 7504. APPLICATION AND CERTIFICATE FOR EMERGENCY EXAMINATION

(a) ~~A~~ Upon written application by an interested party made under the pains and penalties of perjury and accompanied by a certificate by a licensed physician who is not the applicant, a person shall be ~~admitted to a designated~~ held for admission to a hospital for an emergency examination to determine if he or she is a person in need of treatment ~~upon written application by an interested party accompanied by a certificate by a licensed physician who is not the applicant~~. The application and certificate shall set forth the facts and circumstances ~~which~~ that constitute the need for an emergency examination and ~~which~~ that show that the person is a person in need of treatment.

(b) The application and certificate shall be authority for transporting the person to a ~~designated~~ hospital for an emergency examination, as provided in section 7511 of this title.

(c) For the purposes of admission of an individual to a designated hospital for care and treatment under this section, a head of a hospital, as provided in subsection (a) of this section, may include a person designated in writing by

the head of the hospital to discharge the authority granted in this section. A designated person must be an official hospital administrator, supervisory personnel, or a licensed physician on duty on the hospital premises other than the certifying physician under subsection (a) of this section.

Sec. 6. 18 V.S.A. § 7505 is amended to read:

§ 7505. WARRANT AND CERTIFICATE FOR ~~IMMEDIATE~~ EMERGENCY EXAMINATION

(a) In emergency circumstances where ~~a~~ certification by a physician is not available without serious and unreasonable delay, and when personal observation of the conduct of a person constitutes reasonable grounds to believe that the person is a person in need of treatment, and he or she presents an immediate risk of serious injury to himself or herself or others if not restrained, a law enforcement officer or mental health professional may make an application, not accompanied by a physician's certificate, to any ~~district or superior~~ Superior judge for a warrant for an ~~immediate~~ emergency examination.

(b) The law enforcement officer or mental health professional may take the person into temporary custody and shall apply to the ~~court~~ Court without delay for the warrant.

(c) If the judge is satisfied that a physician's certificate is not available without serious and unreasonable delay, and that probable cause exists to believe that the person is in need of an ~~immediate~~ emergency examination, he or she may order the person to submit to an ~~immediate examination at a designated hospital~~ evaluation by a physician for that purpose.

(d) If necessary, the ~~court~~ Court may order the law enforcement officer or mental health professional to transport the person to a ~~designated~~ hospital for an ~~immediate examination~~ evaluation by a physician to determine if the person should be certified for an emergency examination.

(e) ~~Upon admission to a designated hospital, the person shall be immediately examined by a~~ A person transported pursuant to subsection (d) of this section shall be evaluated as soon as possible after arrival at the hospital. If after evaluation the licensed physician determines that the person is a person in need of treatment, he or she shall issue an initial certificate that sets forth the facts and circumstances constituting the need for an emergency examination and showing that the person is a person in need of treatment. ~~If the physician certifies that the person is a person in need of treatment~~ Once the physician has issued the initial certificate, the person shall be held for an emergency examination in accordance with section 7508 of this title. If the physician does not certify that the person is a person in need of treatment, he or she shall

immediately discharge the person and cause him or her to be returned to the place from which he or she was taken, or to such place as the person reasonably directs.

Sec. 7. 18 V.S.A. § 7508 is amended to read:

§ 7508. EMERGENCY EXAMINATION AND SECOND CERTIFICATION

(a) When ~~a person is admitted to a designated hospital~~ an initial certification is issued for an emergency examination of a person in accordance with section 7504 or subsection 7505(e) of this title, he or she shall be examined and certified by a psychiatrist as soon as practicable, but not later than ~~one working day~~ 24 hours after ~~admission~~ initial certification.

(b) If the person is ~~admitted~~ held for admission on an application and physician's certificate, the examining psychiatrist shall not be the same physician who signed the certificate.

(c) If the psychiatrist does not ~~certify~~ issue a second certification stating that the person is a person in need of treatment, he or she shall immediately discharge or release the person and cause him or her to be returned to the place from which he or she was taken or to such place as the person reasonably directs.

(d) If the psychiatrist does ~~certify~~ issue a second certification that the person is a person in need of treatment, the ~~person's hospitalization~~ person may continue to be held for an additional 72 hours, at which time ~~hospitalization shall terminate~~ the person shall be discharged or released, unless within that period:

(1) the person has ~~been~~ accepted ~~for~~ voluntary admission under section 7503 of this title; or

(2) an application for involuntary treatment is filed with the appropriate court under section 7612 of this title, in which case the patient shall ~~remain hospitalized~~ continue to be held pending the ~~court's decision on the application~~ Court's finding of probable cause on the application.

(e)(1)(A) A person shall be deemed to be in the temporary custody of the Commissioner when the first of the following occurs:

(i) a physician files an initial certification for the person while the person is in a hospital; or

(ii) a person is certified by a psychiatrist to be a person in need of treatment during an emergency examination.

(B) Temporary custody under this subsection shall continue until the Court issues an order pursuant to subsection 7617(b) of this title or the person

is discharged or released.

(2) The Commissioner shall make every effort to ensure that a person held for an emergency examination pending a hospital admission is receiving temporary care and treatment that:

(A) uses the least restrictive manner necessary to protect the safety of both the person and the public;

(B) respects the privacy of the person and other patients; and

(C) prevents physical and psychological trauma.

(3) All persons admitted or held for admission shall receive a notice of rights as provided for in section 7701 of this title, which shall include contact information for Vermont Legal Aid, the Office of the Mental Health Care Ombudsman, and the mental health patient representative. The Department of Mental Health shall develop and regularly update informational material on available peer-run support services, which shall be provided to all persons admitted or held for admission.

(4) A person held for an emergency examination may be admitted at an appropriate hospital at any time after the second certification occurs.

Sec. 8. 18 V.S.A. § 7509 is amended to read:

§ 7509. TREATMENT; RIGHT OF ACCESS

(a) Upon admission to the hospital pursuant to section 7503, 7508, 7617, or 7624 of this title, the person shall be treated with dignity and respect and shall be given such medical and psychiatric treatment as is indicated.

(b) ~~The person~~ All persons admitted or held for admission shall be given the opportunity, subject to reasonable limitations, to communicate with others, including visits by a peer support person designated by the person, presence of the presence the peer support person at all treatment team meetings the person is entitled to attend, the reasonable use of a telephone, and the reasonable use of electronic mail and the Internet.

(c) The person shall be requested to furnish the names of persons he or she may want notified of his or her hospitalization and kept informed of his or her status. The head of the hospital shall see that such persons are notified of the status of the patient, how he or she may be contacted and visited, and how they may obtain information concerning him or her.

Sec. 9. 18 V.S.A. § 7612 is amended to read:

§ 7612. APPLICATION FOR INVOLUNTARY TREATMENT

(a) An interested party may, by filing a written application, commence

proceedings for the involuntary treatment of an individual by judicial process.

(b) The application shall be filed in the ~~criminal division of the superior court of the proposed patient's residence or, in the case of a nonresident, in any district court~~ Family Division of the Superior Court.

(c) If the application is filed under section 7508 or 7620 of this title, it shall be filed in the ~~criminal division of the superior court~~ unit of the Family Division of the Superior Court in which the hospital is located. In all other cases, it shall be filed in the unit in which the proposed patient resides. In the case of a nonresident, it may be filed in any unit. The Court may change the venue of the proceeding to the unit in which the proposed patient is located at the time of the trial.

(d) The application shall contain:

(1) The name and address of the applicant~~; and~~.

(2) A statement of the current and relevant facts upon which the allegation of mental illness and need for treatment is based. The application shall be signed by the applicant under penalty of perjury.

(e) The application shall be accompanied by:

(1) ~~A~~ a certificate of a licensed physician, which shall be executed under penalty of perjury stating that he or she has examined the proposed patient within five days of the date the petition is filed, and is of the opinion that the proposed patient is a person in need of treatment, including the current and relevant facts and circumstances upon which the physician's opinion is based; or

(2) ~~A~~ a written statement by the applicant that the proposed patient refused to submit to an examination by a licensed physician.

(f) Before an examining physician completes the certificate of examination, he or she shall consider available alternative forms of care and treatment that might be adequate to provide for the person's needs, without requiring hospitalization. The examining physician shall document on the certificate the specific alternative forms of care and treatment that he or she considered and why those alternatives were deemed inappropriate, including information on the availability of any appropriate alternatives.

Sec. 10. 18 V.S.A. § 7612a is added to read:

§ 7612a. PROBABLE CAUSE REVIEW

(a) Within three days after an application for involuntary treatment is filed, the Family Division of the Superior Court shall conduct a review to determine whether there is probable cause to believe that the person was a person in need

of treatment at the time of his or her admission. The review shall be based solely on the application for an emergency examination and accompanying certificate by a licensed physician and the application for involuntary treatment.

(b) If, based on a review conducted pursuant to subsection (a) of this section the Court finds probable cause to believe that the person was a person in need of treatment at the time of his or her admission, the person shall be ordered held for further proceedings in accordance with Part 8 of this title. If probable cause is not established, the person shall be ordered discharged or released from the hospital and returned to the place from which he or she was transported or to such place as the person may reasonably direct.

(c) An application for involuntary treatment shall not be dismissed solely because the probable cause review is not completed within the time period required by this section if there is good cause for the delay.

Sec. 11. 18 V.S.A. § 7615 is amended to read:

§ 7615. HEARING ON APPLICATION FOR INVOLUNTARY TREATMENT

(a)(1) Upon receipt of the application, the ~~court~~ Court shall set a date for the hearing to be held within 10 days from the date of the receipt of the application or 20 days from the date of the receipt of the application if a psychiatric examination is ordered under section 7614 of this title unless the hearing is continued by the ~~court~~ Court pursuant to subsection (b) of this section.

(2)(A) The applicant or a person who is certified as a person in need of treatment pursuant to section 7508 may file a motion to expedite the hearing. The motion shall be supported by an affidavit, and the Court shall rule on the motion on the basis of the filings without holding a hearing. After viewing the evidence in the light most favorable to the moving party:

(i) The Court shall grant the motion if it finds that the person demonstrates a significant risk of causing the person or others serious bodily injury as defined in 13 V.S.A. § 1021 even while hospitalized and clinical interventions have failed to address the risk of harm to the person or others.

(ii) The Court may grant the motion if it finds that the person has received involuntary medication pursuant to section 7624 of this title during the past two years and, based upon the person's response to previous and ongoing treatment, there is good cause to believe that additional time will not result in the person establishing a therapeutic relationship with providers or regaining competence.

(B) If the Court grants the motion for expedited hearing pursuant to this subdivision, the hearing shall be held within ten days from the date of the order for expedited hearing.

(b)(1) ~~The court~~ For hearings held pursuant to subdivision (a)(1) of this section, the Court may grant ~~either~~ each party ~~an~~ a onetime extension ~~of time~~ of up to seven days for good cause.

(2) The Court may grant one or more additional seven-day continuances if:

(A) the Court finds that the proceeding or parties would be substantially prejudiced without a continuance; or

(B) the parties stipulate to the continuance.

(c) The hearing shall be conducted according to the ~~rules of evidence~~ Vermont Rules of Evidence ~~applicable in civil actions in the criminal division of the superior courts of the state~~, and to an extent not inconsistent with this part, the ~~rules of civil procedure of the state~~ Vermont Rules of Civil Procedure shall be applicable.

(d) The applicant and the proposed patient shall have a right to appear at the hearing to testify. The attorney for the ~~state~~ State and the proposed patient shall have the right to subpoena, present, and cross-examine witnesses, and present oral arguments. The ~~court~~ Court may, at its discretion, receive the testimony of any other person.

(e) The proposed patient may at his or her election attend the hearing, subject to reasonable rules of conduct, and the ~~court~~ Court may exclude all persons, except a peer support person designated by the proposed patient, not necessary for the conduct of the hearing.

Sec. 12. 18 V.S.A. § 7624 is amended to read:

§ 7624. PETITION FOR INVOLUNTARY MEDICATION

(a) The ~~commissioner~~ Commissioner may commence an action for the involuntary medication of a person who is refusing to accept psychiatric medication and meets any one of the following ~~three~~ five conditions:

(1) has been placed in the ~~commissioner's~~ Commissioner's care and custody pursuant to section 7619 of this title or subsection 7621(b) of this title;

(2) has previously received treatment under an order of hospitalization and is currently under an order of nonhospitalization, including a person on an order of nonhospitalization who resides in a secure residential recovery facility; ~~or~~

(3) has been committed to the custody of the ~~commissioner of corrections~~ Commissioner of Corrections as a convicted felon and is being held in a correctional facility which is a designated facility pursuant to section 7628 of this title and for whom the ~~department of corrections~~ Departments of Corrections and ~~the department of mental health~~ of Mental Health have ~~jointly~~ determined jointly that involuntary medication would be appropriate pursuant to 28 V.S.A. § 907(4)(H);

(4) has an application for involuntary treatment pending for which the Court has granted a motion to expedite pursuant to subdivision 7615(a)(2)(A)(i) of this title; or

(5)(A) has an application for involuntary treatment pending;

(B) waives the right to a hearing on the application for involuntary treatment until a later date; and

(C) agrees to proceed with an involuntary medication hearing without a ruling on whether he or she is a person in need of treatment.

(b)(1) ~~A~~ Except as provided in subdivision (2) and (3) of this subsection, a petition for involuntary medication shall be filed in the ~~family division of the superior court~~ Family Division of the Superior Court in the county in which the person is receiving treatment.

(2) If the petition for involuntary medication is filed pursuant to subdivision (a)(4) of this section:

(A) the petition shall be filed in the county in which the application for involuntary treatment is pending; and

(B) the Court shall consolidate the application for involuntary treatment with the petition for involuntary medication and rule on the application for involuntary treatment before ruling on the petition for involuntary medication.

(3) If the petition for involuntary medication is filed pursuant to subdivision (a)(5) of this section, the petition shall be filed in the county in which the application for involuntary treatment is pending.

(c) The petition shall include a certification from the treating physician, executed under penalty of perjury, that includes the following information:

(1) the nature of the person's mental illness;

(2) that the person is refusing medication proposed by the physician;

(3) that the person lacks the competency to decide to accept or refuse medication and appreciate the consequences of that decision;

(4) the necessity for involuntary medication~~, including the person's competency to decide to accept or refuse medication~~;

~~(3)~~(5) any proposed medication, including the method, dosage range, and length of administration for each specific medication;

~~(4)~~(6) a statement of the risks and benefits of the proposed medications, including the likelihood and severity of adverse side effects and its effect on:

(A) the person's prognosis with and without the proposed medications; and

(B) the person's health and safety, including any pregnancy;

~~(5)~~(7) the current relevant facts and circumstances, including any history of psychiatric treatment and medication, upon which the physician's opinion is based;

~~(6)~~(8) what alternate treatments have been proposed by the doctor, the patient, or others, and the reasons for ruling out those alternatives, including information on the availability of any appropriate alternatives; and

~~(7)~~(9) whether the person has executed ~~a durable power of attorney for health care~~ an advance directive in accordance with the provisions of ~~18 V.S.A. chapter 111, subchapter 2~~ chapter 231 of this title, and the identity of the ~~health care~~ agent or agents designated by the ~~durable power of attorney~~ advance directive.

(d) A copy of the ~~durable power of attorney~~ advance directive, if available, shall be attached to the petition.

Sec. 13. 18 V.S.A. § 7625 is amended to read:

§ 7625. HEARING ON PETITION FOR INVOLUNTARY MEDICATION; BURDEN OF PROOF

(a) ~~A~~ Unless consolidated with an application for involuntary treatment pursuant to subdivision 7624(b)(2) of this title, a hearing on a petition for involuntary medication shall be held within seven days of filing and shall be conducted in accordance with sections 7613, 7614, ~~7615(b)–(e),~~ and 7616 and subsections 7615(b)–(e) of this title.

(b) In a hearing conducted pursuant to this section, section 7626, or section 7627 of this title, the ~~commissioner~~ Commissioner has the burden of proof by clear and convincing evidence.

(c) In determining whether or not the person is competent to make a decision regarding the proposed treatment, the ~~court~~ Court shall consider whether the person is able to make a decision and appreciate the consequences

of that decision.

Sec. 14. 18 V.S.A. § 7626 is amended to read:

§ 7626. ~~DURABLE POWER OF ATTORNEY~~ ADVANCE DIRECTIVE

(a) If a person who is the subject of a petition filed under section 7624 of this title has executed ~~a durable power of attorney~~ an advance directive in accordance with the provisions of ~~18 V.S.A. chapter 111~~ chapter 231 of this title, ~~subchapter 2 for health care,~~ the ~~court~~ Court shall suspend the hearing and enter an order pursuant to subsection (b) of this section, if the ~~court~~ Court determines that:

(1) the person is refusing to accept psychiatric medication;

(2) the person is not competent to make a decision regarding the proposed treatment; and

(3) the decision regarding the proposed treatment is within the scope of the valid, duly executed ~~durable power of attorney for health care~~ advance directive.

(b) An order entered under subsection (a) of this section shall authorize the ~~commissioner~~ Commissioner to administer treatment to the person, including involuntary medication in accordance with the direction set forth in the ~~durable power of attorney~~ advance directive or provided by the ~~health care~~ agent or agents acting within the scope of authority granted by the ~~durable power of attorney~~ advance directive. If hospitalization is necessary to effectuate the proposed treatment, the ~~court~~ Court may order the person to be hospitalized.

(c) ~~In the case of a person subject to an order entered pursuant to subsection (a) of this section, and upon the certification by the person's treating physician to the court that the person has received treatment or no treatment consistent with the durable power of attorney for health care for 45 days after the order under subsection (a) of this section has been entered, then the court shall reconvene the hearing on the petition.~~

~~(1) If the court concludes that the person has experienced, and is likely to continue to experience, a significant clinical improvement in his or her mental state as a result of the treatment or nontreatment directed by the durable power of attorney for health care, or that the patient has regained competence, then the court shall enter an order denying and dismissing the petition.~~

~~(2) If the court concludes that the person has not experienced a significant clinical improvement in his or her mental state, and remains incompetent then the court shall consider the remaining evidence under the factors described in subdivisions 7627(c)(1)-(5) of this title and render a decision on whether the person should receive medication.~~ [Repealed.]

(d)(1) The Commissioner of Mental Health shall develop a protocol for use by designated hospitals for the purpose of educating hospital staff on the use and applicability of advance directives pursuant to chapter 231 of this title and other written or oral expressions of treatment preferences pursuant to subsection 7627(b) of this title.

(2) Prior to a patient's discharge or release, a hospital shall provide information to a patient in the custody or temporary custody of the Commissioner regarding advance directives, including relevant information developed by the Vermont Ethics Network and Office of the Mental Health Care Ombudsman.

Sec. 15. 18 V.S.A. § 7627 is amended to read:

§ 7627. COURT FINDINGS; ORDERS

* * *

(b) If a person who is the subject of a petition filed under section 7625 of this title has not executed ~~a durable power of attorney~~ an advance directive, the ~~court~~ Court shall follow the person's competently expressed written or oral preferences regarding medication, if any, unless the ~~commissioner~~ Commissioner demonstrates that the person's medication preferences have not led to a significant clinical improvement in the person's mental state in the past within an appropriate period of time.

(c) If the ~~court~~ Court finds that there are no medication preferences or that the person's medication preferences have not led to a significant clinical improvement in the person's mental state in the past within an appropriate period of time, the ~~court~~ Court shall consider at a minimum, in addition to the person's expressed preferences, the following factors:

(1) ~~The~~ the person's religious convictions and whether they contribute to the person's refusal to accept medication~~.~~;

(2) ~~The~~ the impact of receiving medication or not receiving medication on the person's relationship with his or her family or household members whose opinion the ~~court~~ Court finds relevant and credible based on the nature of the relationship~~.~~;

(3) ~~The~~ the likelihood and severity of possible adverse ~~side effects~~ side effects from the proposed medication~~.~~;

(4) ~~The~~ the risks and benefits of the proposed medication and its effect on:

(A) the person's prognosis; and

(B) the person's health and safety, including any pregnancy~~.~~; and

(5) ~~The~~ the various treatment alternatives available, which may or may not include medication.

(d) As a threshold matter, the Court shall consider the person's competency. If the ~~court~~ Court finds that the person is competent to make a decision regarding the proposed treatment or that involuntary medication is not supported by the factors in subsection (c) of this section, the ~~court~~ Court shall enter a finding to that effect and deny the petition.

(e) As a threshold matter, the Court shall consider the person's competency. If the ~~court~~ Court finds that the person is incompetent to make a decision regarding the proposed treatment and that involuntary medication is supported by the factors in subsection (c) of this section, the ~~court~~ Court shall make specific findings stating the reasons for the involuntary medication by referencing those supporting factors.

(f)(1) If the ~~court~~ Court grants the petition, in whole or in part, the ~~court~~ Court shall enter an order authorizing the ~~commissioner~~ Commissioner to administer involuntary medication to the person. The order shall specify the types of medication, the permitted dosage range, length of administration, and method of administration for each. The order for involuntary medication shall not include electric convulsive therapy, surgery, or experimental medications. Long-acting injections and nasogastric intubation shall not be ordered without clear and convincing evidence, particular to the patient, that these treatments are appropriate.

(2) The order shall require the person's treatment provider to conduct ~~monthly~~ weekly reviews of the medication to assess the continued need for involuntary medication, the effectiveness of the medication, the existence of any side effects, and whether the patient has become competent pursuant to subsection 7625(c) of this title, and shall document this review in detail in the patient's chart and provide the person's attorney with a copy of the documentation within five days of its production.

(g) For a person receiving treatment pursuant to an order of hospitalization, the ~~commissioner~~ Commissioner may administer involuntary medication as authorized by this section to the person for up to 90 days, unless the ~~court~~ Court finds that an order is necessary for a longer period of time. Such an order shall not be longer than the duration of the current order of hospitalization. If at any time a treatment provider finds that a person subject to an order for involuntary medication has become competent pursuant to subsection 7625(c) of this title, the order shall no longer be in effect.

* * *

Sec. 16. 18 V.S.A. § 7629 is amended to read:

§ 7629. LEGISLATIVE INTENT

(a) ~~It is the intention of the general assembly to recognize the right of a legally competent person to determine whether or not to accept medical treatment, including involuntary medication, absent an emergency or a determination that the person is incompetent and lacks the ability to make a decision and appreciate the consequences.~~ The State of Vermont recognizes the fundamental right of an adult to determine the extent of health care the individual will receive, including treatment provided during periods of lack of competency that the individual expressed a desire for when he or she was competent.

(b) ~~This act protects this right through a judicial proceeding prior to the use of nonemergency involuntary medication and by limiting the duration of an order for involuntary treatment to no more than one year. The least restrictive conditions consistent with the person's right to adequate treatment shall be provided in all cases.~~ The General Assembly adopts the goal of high-quality, patient-centered health care, which the Institute of Medicine defines as "providing care that is respectful of and responsive to individual patient preferences, needs, and values and ensuring that patient values guide all clinical decisions."

(c) It is the policy of the ~~general assembly~~ General Assembly to work ~~towards~~ toward a mental health system that does not require coercion or the use of involuntary medication when a person is opposing it. The distress and insult to human dignity that results from compelling a person to participate in medical procedures against his or her will are real regardless of how poorly the person may understand the procedures or how confused or mistaken the person may be about the procedures.

(d) ~~This act will render the J. L. v. Miller consent judgment no longer applicable.~~ This chapter protects the rights and values described in this section through a judicial process to determine competence prior to an order for nonemergency involuntary medication and by limiting the duration of an order for involuntary treatment to no more than one year. The least restrictive order consistent with the person's right to adequate treatment shall be provided in all cases.

Sec. 17. 18 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

As used in this chapter:

* * *

(21) "Ombudsman" means an individual appointed as a long-term care

ombudsman under the Program contracted through the Department of Disabilities, Aging, and Independent Living pursuant to the Older Americans Act of 1965, as amended or the agency designated as the Office of the Mental Health Care Ombudsman Pursuant to section 7259 of this title.

* * *

(32) "Patient representative" means the mental health patient representative established by section 7253 of this title.

Sec. 18. 18 V.S.A. § 9703 is amended to read:

§ 9703. FORM AND EXECUTION

* * *

(d) An advance directive shall not be effective if, at the time of execution, the principal is being admitted to or is a resident of a nursing home as defined in 33 V.S.A. § 7102 or a residential care facility unless an ombudsman, a patient representative, a recognized member of the clergy, an attorney licensed to practice in this ~~state~~ State, or a ~~probate division of the superior court~~ Probate Division of the Superior Court designee signs a statement affirming that he or she has explained the nature and effect of the advance directive to the principal. It is the intent of this subsection to ensure that residents of nursing homes and residential care facilities are willingly and voluntarily executing advance directives.

(e) An advance directive shall not be effective if, at the time of execution, the principal is being admitted to or is a patient in a hospital, unless an ombudsman, a patient representative, a recognized member of the clergy, an attorney licensed to practice in this ~~state~~ State, a ~~probate division of the superior court~~ Probate Division of the Superior Court designee, or an individual designated under subsection 9709(c) of this title by the hospital signs a statement that he or she has explained the nature and effect of the advance directive to the principal.

* * *

Sec. 19. 18 V.S.A. § 9706(c) is amended to read:

(c) Upon a determination of need by the principal's clinician, or upon the request of the principal, agent, guardian, ombudsman, a patient representative, health care provider, or any interested individual, the principal's clinician, another clinician, or a clinician's designee shall reexamine the principal to determine whether the principal has capacity. The clinician shall document the results of the reexamination in the principal's medical record and shall make reasonable efforts to notify the principal and the agent or guardian, as well as the individual who initiated the new determination of capacity, of the results of

the reexamination, if providing such notice is consistent with the requirements of HIPAA.

Sec. 20. 18 V.S.A. § 9707(h) is amended to read:

(h)(1) An advance directive executed in accordance with section 9703 of this title may contain a provision permitting the agent, in the event that the principal lacks capacity, to authorize or withhold health care over the principal's objection. In order to be valid, the provision shall comply with the following requirements:

(A) An agent shall be named in the provision.

(B) The agent shall accept in writing the responsibility of authorizing or withholding health care over the principal's objection in the event the principal lacks capacity.

(C) A clinician for the principal shall sign the provision and affirm that the principal appeared to understand the benefits, risks, and alternatives to the health care being authorized or rejected by the principal in the provision.

(D)(i) An ombudsman, a patient representative ~~recognized member of the clergy~~, attorney licensed to practice law in this ~~state~~ State, or ~~probate division of the superior court~~ Probate Division of the Superior Court designee shall sign a statement affirming that he or she has explained the nature and effect of the provision to the principal, and that the principal appeared to understand the explanation and be free from duress or undue influence.

(ii) If the principal is a patient in a hospital when the provision is executed, the ombudsman, patient representative ~~recognized member of the clergy~~, attorney, or ~~probate division of the superior court~~ Probate Division of the Superior Court designee shall be independent of the hospital and not an interested individual.

(E) The provision shall specify the treatments to which it applies, and shall include an explicit statement that the principal desires or does not desire the proposed treatments even over the principal's objection at the time treatment is being offered or withheld. The provision may include a statement expressly granting to the health care agent the authority to consent to the principal's voluntary hospitalization~~, and to agree that the principal's discharge from the hospital may be delayed, pursuant to section 8010 of this title~~.

(F) The provision shall include an acknowledgment that the principal is knowingly and voluntarily waiving the right to refuse or receive treatment at a time of incapacity, and that the principal understands that a clinician will determine capacity.

(2) A provision executed in compliance with subdivision (1) of this

subsection shall be effective when the principal's clinician and a second clinician have determined pursuant to subdivision 9706(a)(1) of this title that the principal lacks capacity.

(3) If an advance directive contains a provision executed in compliance with this section:

(A) The agent may, in the event the principal lacks capacity, make health care decisions over the principal's objection, provided that the decisions are made in compliance with subsection 9711(d) of this title.

(B) A clinician shall follow instructions of the agent authorizing or withholding health care over the principal's objection.

Sec. 21. 18 V.S.A. § 9718(a) is amended to read:

(a) A petition may be filed in ~~probate division of the superior court~~ Probate Division of the Superior Court under this section by:

(1) a principal, guardian, agent, ombudsman, a patient representative, or interested individual other than one identified in an advance directive, pursuant to subdivision 9702(a)(10) of this title, as not authorized to bring an action under this section;

(2) a social worker or health care provider employed by or directly associated with the health care provider, health care facility, or residential care facility providing care to the principal;

(3) the ~~defender general~~ Defender General if the principal is in the custody of the ~~department of corrections~~ Department of Corrections;

(4) a representative of the ~~state-designated~~ State-designated protection and advocacy system if the principal is in the custody of the ~~department of health~~ Department of Health; or

(5) an individual or entity identified in an advance directive, pursuant to subdivision 9702(a)(10) of this title, as authorized to bring an action under this section.

Sec. 22. Rule 12 of the Vermont Rules for Family Proceedings is amended to read:

Rule 12. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Automatic Stay Prior to Appeal; Exceptions.

(1) Automatic Stay. Except as provided in paragraph (2) of this subdivision and in subdivision (c), no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 30 days after its entry or until the time for appeal from the judgment as

extended by Appellate Rule 4 has expired.

(2) Exceptions. Unless otherwise ordered by the court, none of the following orders shall be stayed during the period after its entry and until an appeal is taken:

(A) In an action under Rule 4 of these rules, an order relating to parental rights and responsibilities and support of minor children or to separate support of a spouse (including maintenance) or to personal liberty or to the dissolution of marriage;

(B) An order of involuntary treatment, involuntary medication, nonhospitalization, or hospitalization, in an action pursuant to 18 V.S.A. ~~§§ 7611-7623~~ chapter 181;

(C) Any order of disposition in a juvenile case, including an order terminating residual parental rights; or

(D) Any order in an action under Rule 9 of these rules for prevention of abuse, including such an action that has been consolidated or deemed consolidated with a proceeding for divorce or annulment pursuant to Rule 4(n).

The provisions of subdivision (d) of this rule govern the modification or enforcement of the judgment in an action under Rule 4 of these rules, during the pendency of an appeal.

* * *

(d) Stay Pending Appeal.

(1) Automatic Stay. In any action in which automatic stay prior to appeal is in effect pursuant to paragraph (1) or subdivision (a) of this rule, the taking of an appeal from a judgment shall operate as a stay of execution upon the judgment during the pendency of the appeal, and no supersedeas bond or other security shall be required as a condition of such stay.

(2) Other Actions.

(A) When an appeal has been taken from judgment in an action under Rule 4 of these rules in which no stay pursuant to paragraph (1) of subdivision (a) of this rule is in effect, the court in its discretion may, during the pendency of the appeal, grant or deny motions for modification or enforcement of that judgment.

(B)(i) When an appeal has been taken from an order for involuntary treatment, nonhospitalization, or hospitalization ~~or involuntary treatment~~, in an action pursuant to ~~chapter 181 of Title~~ 18 V.S.A. chapter 181, the court in its discretion may, during the pendency of the appeal, grant or deny applications for continued treatment, modify its order, or discharge the patient, as provided

in 18 V.S.A. §§ 7617, 7618, 7620, and 7621.

(ii)(I) If an order of involuntary medication is appealed, the appellant may file a motion in the Family Division to stay the order during the pendency of the appeal. A motion to stay filed under this subdivision shall stay the involuntary medication order while the motion to stay is pending.

(II) The Family Division's ruling on a motion to stay filed under subdivision (I) of this subdivision (ii) may be modified or vacated by the Supreme Court upon motion by a party filed within seven days after the ruling is issued. If the appellant is the moving party, the order for involuntary medication shall remain stayed until the Supreme Court rules on the motion to vacate or modify the stay. A motion to vacate or modify a stay under this subdivision shall be determined by a single Justice of the Supreme Court, who may hear the matter or at his or her discretion refer it to the entire Supreme Court for hearing. No further appeal may lie from the ruling of a single Justice in matters to which this subdivision applies. The motion shall be determined as soon as practicable and to the extent possible shall take priority over other matters.

* * *

Sec. 23. REPORT; EMERGENCY INVOLUNTARY PROCEDURES

On or before January 15, 2015, the Office of Legislative Council shall submit a report to the House Committee on Human Services and to the Senate Committee on Health and Welfare that:

(1) identifies provisions in 2012 Acts and Resolves No. 79 which require that protections for psychiatric hospital patients meet or exceed those at the former Vermont State Hospital; and

(2) identifies policies that may require clarification of legislative intent in order for the Department of Mental Health to proceed with rulemaking pursuant to 2012 Acts and Resolves No.79, Sec. 33a.

Sec. 24. AVAILABILITY OF PSYCHIATRISTS FOR EXAMINATIONS

The Agency of Human Services shall ensure that Vermont Legal Aid's Mental Health Law Project has a sufficient number of psychiatrists to conduct psychiatric examinations pursuant to 18 V.S.A. § 7614 in the time frame established by 18 V.S.A. § 7615.

Sec. 25. LEGISLATIVE COUNCIL STATUTORY REVISION AUTHORITY

The Office of Legislative Council, in its statutory revision capacity, is authorized and directed to make such amendments to the Vermont Statutes

Annotated as are necessary to effect the purpose of this act, including, where applicable, substituting the words "application for involuntary medication" and "application," as appropriate, for the words "petition for involuntary medication" and "petition."

Sec. 26. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

(Committee vote: 8-0-3)

(For text see Senate Journal 2/26/2014 & 2/27/2014)

Amendment to be offered by Reps. Donahue of Northfield, Batchelor of Derby, French of Randolph, Haas of Rochester, McFaun of Barre Town, and Pugh of South Burlington to the recommendation of amendment of the Committee on Judiciary to S. 287

First: By striking Sec. 1 in its entirety and inserting in lieu thereof a new Sec. 1 as follows:

Sec. 1. 18 V.S.A. § 7101 is amended to read;

§ 7101. DEFINITIONS

As used in this part of this title, the following words, unless the context otherwise requires, shall have the following meanings:

* * *

(9) "Interested party" means a guardian, spouse, parent, adult child, close adult relative, a responsible adult friend, or person who has the individual in his or her charge or care. It also means a mental health professional, a law enforcement officer, a licensed physician, or a head of a hospital~~, a selectman, a town service officer, or a town health officer~~.

* * *

(29) "Peer" means an individual who has a personal experience of living with a mental health condition or psychiatric disability.

(30) "Peer services" means support services provided by trained peers or peer-managed organizations focused on helping individuals with mental health and other co-occurring conditions to support recovery.

Second: By adding a new Sec. 2 after Sec. 1 to read as follows:

Sec. 2. 18 V.S.A. § 7252 is amended to read:

§ 7252. DEFINITIONS

As used in this chapter:

* * *

(10) ~~"Peer" means an individual who has a personal experience of living with a mental health condition or psychiatric disability.~~ [Repealed.]

(11) ~~"Peer services" means support services provided by trained peers or peer-managed organizations focused on helping individuals with mental health and other co-occurring conditions to support recovery.~~ [Repealed.]

* * *

and by renumbering the remaining sections accordingly

Third: In the new Sec. 8, 18 V.S.A. § 7508, by striking out subdivision (e)(4) in its entirety and inserting in lieu thereof the following:

(4) A person held for an emergency examination may be admitted to an appropriate hospital at any time.

Fourth: In the new Sec. 9, 18 V.S.A. § 7509, in subsection (b), by striking out "the presence" before "the peer support person".

Fifth: In the new Sec. 12, 18 V.S.A. § 7615, by striking subdivision (a)(2)(A) in its entirety and inserting in lieu thereof the following:

(2)(A) The applicant or a person who is certified as a person in need of treatment pursuant to section 7508 of this title may file a motion to expedite the hearing. The motion shall be supported by an affidavit, and the Court shall rule on the motion on the basis of the filings without holding a hearing. The Court:

(i) shall grant the motion if it finds that the person demonstrates a significant risk of causing the person or others serious bodily injury as defined in 13 V.S.A. § 1021 even while hospitalized, and clinical interventions have failed to address the risk of harm to the person or others;

(ii) may grant the motion if it finds that the person has received involuntary medication pursuant to section 7624 of this title during the past two years and, based upon the person's response to previous and ongoing treatment, there is good cause to believe that additional time will not result in the person establishing a therapeutic relationship with providers or regaining competence.

Sixth: In the new Sec. 13, 18 V.S.A. § 7624, in subdivision (c)(3), by striking out "competency" and inserting in lieu thereof competence.

Seventh: In the new Sec. 16, 18 V.S.A. § 7627, in subdivision (f)(1), by striking out the last sentence and inserting in lieu thereof the following:

A long-acting injection shall not be ordered without clear and convincing

evidence, particular to the patient, that this treatment is the most appropriate under the circumstances.

Eighth: In the new Sec. 17, 18 V.S.A. § 7629, in subsection (c), in the first sentence, by striking out "involuntary" before "medication".

Ninth: In the new Sec. 18, 18 V.S.A. § 9701, in subdivision (21), by striking out "Pursuant" and inserting in lieu thereof pursuant.

Tenth: By inserting a new Sec. 27 after Sec. 26 to read as follows:

Sec. 27. 1998 Acts and Resolves No. 114, Sec. 6 is amended to read:

Sec. 6. STUDY AND REPORT

(a) An annual independent study shall be commissioned by the ~~department of developmental and mental health services~~ Department of Mental Health which shall:

(1) evaluate and critique the performance of the institutions and staff of those institutions that are implementing the provisions of this act;

(2) include interviews with persons ~~subjected to orders of involuntary medication~~ subject to proceedings under 18 V.S.A. § 7624, regardless of whether involuntarily medicated, and their families on the outcome and effects of the order;

(3) include the steps taken by the ~~department~~ Department to achieve a mental health system free of coercion; and

(4) include any recommendations to change current practices or statutes.

(b) The person who performs the study shall prepare a report of the results of the study, which shall be filed with the ~~general assembly~~ General Assembly and the ~~department~~ Department annually on or before January 15.

(c) Interviews with patients pursuant to this section may be conducted with the assistance of the mental health patient representative established in 18 V.S.A. § 7253.

and by renumbering the remaining section to be Sec. 28.

Eleventh: By striking out renumbered Sec. 28 in its entirety and inserting in lieu thereof the following:

Sec. 28. EFFECTIVE DATES

(a) Except for Secs. 6 (application and certificate for emergency examination), 7 (warrant and certificate for emergency examination), and 8 (emergency examination and second certification), this act shall take effect on July 1, 2014.

(b) Secs. 6–8 shall take effect on November 1, 2014.

Action Postponed Until May 1, 2014

Senate Proposal of Amendment

H. 758

An act relating to notice of potential layoffs

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

Sec. 1. FINDINGS

The General Assembly finds:

(1) The 21st century workplace is fundamentally different from the 20th century workplace. Along with a changing workplace comes a different workforce. Policies and resources must be updated to reflect the changing workplace and workforce.

(2) Businesses retain sensitive information for proprietary and competitive reasons.

(3) When the State requires this information, the sensitivity of this information must be respected and protected.

(4) The Department, as well as other agencies, are able to access federal and State resources to mitigate adverse employment impacts affecting employers, employees, communities, and the Unemployment Insurance Trust Fund.

(5) The Department and the Agency of Commerce and Community Development, as well as other agencies, must be able to respond to and assist with economic and workforce training and retention initiatives in a timely fashion.

(6) Municipalities, school districts, and local for-profit and nonprofit businesses are all affected by plant closings and mass layoffs. In order to mitigate adverse impacts, communities and stakeholders need timely information pertaining to plant closings and mass layoffs. Private and public sectors need to work together to reduce the volatility and disruptions that come with layoffs.

Sec. 2. 21 V.S.A. chapter 5, subchapter 3A is added to read:

Subchapter 3A. Notice of Potential Layoffs Act

§ 411. DEFINITIONS

As used in this subchapter:

(1) "Affected employees" means employees who may be expected to experience an employment loss as a consequence of a proposed or actual business closing or mass layoff by their employer.

(2) "Business closing" means:

(A) the permanent shutdown of a facility;

(B) the permanent cessation of operations at one or more worksites in the State that results in the layoff of 50 or more employees over a 90-day period; or

(C) the cessation of work or operations not scheduled to resume within 90 days that affects 50 or more employees.

(3) "Commissioner" means the Commissioner of Labor.

(4) "Department" means the Department of Labor.

(5) "Employer" means any person that employs:

(A) 50 or more full-time employees;

(B) 50 or more part-time employees who work at least 1,040 hours per employee per year; or

(C) a combination of 50 or more:

(i) full-time employees; and

(ii) part-time employees who work at least 1,040 hours per employee per year.

(6) "Employment loss" means the termination of employment that is the direct result of a business closing or mass layoff. An employee will not be considered to have suffered an employment loss if the employee is offered a transfer to a different site of employment within 35 miles; or if prior to the layoff notice to the employee, the employee voluntarily separates or retires or was separated by the employer for unsatisfactory performance or misconduct.

(7) "Mass layoff" means a permanent employment loss of at least 50 employees at one or more worksites in Vermont during any 90-day period. In determining whether a mass layoff has occurred or will occur, employment losses for two or more groups of employees, each of which is below this threshold but which in the aggregate exceed this threshold and which occur within any 90-day period shall be considered to be a mass layoff unless the employer demonstrates that the employment losses are the result of separate and distinct actions and causes.

(8) "Representative" means an exclusive bargaining agent as legally recognized under State or federal labor laws.

§ 412. EDUCATION AND OUTREACH

The Department and the Agency of Commerce and Community Development shall prepare information and materials for the purpose of informing and educating Vermont employers with regard to programs and resources that are available to assist with economic and workforce retention initiatives in order to avoid business closings and mass layoffs. The Department and the Agency of Commerce and Community Development shall also inform Vermont employers of the employers' obligations that will be required for proper notice under the provisions of this act.

§ 413. NOTICE AND WAGE PAYMENT OBLIGATIONS

(a) An employer who will engage in a closing or mass layoff shall provide notice to the Secretary of Commerce and Community Development and the Commissioner in accordance with this section to enable the State to present information on potential support for the employer and separated employees.

(b) Notwithstanding subsection (a) of this section, an employer who will engage in a closing or mass layoff shall provide notice to the Secretary of Commerce and Community Development and the Commissioner 45 days prior to the effective date of the closing or layoffs that reach the thresholds defined in section 411 of this subchapter, and shall provide 30-days' notice to the local chief elected official or administrative officer of the municipality, affected employees, and bargaining agent, if any.

(c) The employer shall send to the Commissioner and the Secretary the approximate number and job titles of affected employees, the anticipated date of the employment loss, and the affected worksites within the time allotted for notice to the Commissioner and Secretary under subsection 413(b) or 414(b) of this subchapter. Concurrent with the notification to the affected employees, in accordance with subsection 413(b) of this subchapter, the employer shall send to the Commissioner in writing the actual number of layoffs, job titles, date of layoff, and other information as the Commissioner deems necessary for the purposes of unemployment insurance benefit processing and for accessing federal and State resources to mitigate adverse employment impacts affecting employers, employees, and communities.

(d) In the case of a sale of part or all of an employer's business where mass layoffs will occur, the seller and the purchaser are still required to comply with the notice requirements under subsection (b) of this section.

(e) Nothing in this subchapter shall abridge, abrogate, or restrict the right of

the State to require an employer that is receiving State economic development funds or incentives from being required to provide additional or earlier notice as a condition for the receipt of such funds or incentives.

(f) An employer is required to pay all unpaid wage and compensation owed to any laid-off worker, as required under this title.

(g) This section shall not apply to a nursing home in situations where Rules 2.8 and 3.14 of the Vermont Licensing and Operating Rules for Nursing Homes apply or where the CMS Requirements for Long-Term Care Facilities apply, pursuant to 42 C.F.R. §§ 483.12 and 483.75.

§ 414. EXCEPTIONS

(a) In the case of a business closing or mass layoff, an employer is not required to comply with the notice requirement in subsection 413 of this subchapter and may delay notification to the Department if:

(1) the business closing or mass layoff results from a strike or a lockout;

(2) the employer is actively attempting to secure capital or investments in order to avoid closing or mass layoffs; and the capital or investments sought, if obtained, would have enabled the employer to avoid or postpone the business closing or mass layoff, and the employer reasonably and in good faith believed that giving the notice would have precluded the employer from securing the needed capital or investment;

(3) the business closing or mass layoff is caused by business circumstances that were not reasonably foreseeable at the time the 45-day notice would have been required;

(4) the business closing or mass layoff is due to a disaster beyond the control of the employer; or

(5)(A) the business closing or the mass layoff is the result of the conclusion of seasonal employment or the completion of a particular project or undertaking; or

(B) the affected employees were hired with the understanding that their employment was limited to the duration of the season, facility, project, or undertaking.

(b) An employer that is unable to provide the notice otherwise required by this subchapter as a result of circumstances described in subsection (a) of this section shall provide as much notice as is practicable and at that time shall provide a brief statement to the Commissioner regarding the basis for failure to meet the notification period. In such situations, the mailing of the notice by certified mail or any other method approved by the Commissioner shall be

considered acceptable in the fulfillment of the employer's obligation to give notice to each affected employee under this subchapter. At the time of notice to the Commissioner, the employer shall provide the required information under subdivisions 413(c) of this subchapter.

§ 415. VIOLATIONS

(a) An employer who violates subsection 413(b) or 414(b) of this subchapter is liable to each employee who lost his or her employment for:

(1) one day of severance pay for each day after the first day in the 45 - day notice period required in subsection 413(b) of this subchapter, up to a maximum of ten days severance pay; and

(2) the continuation, not to exceed one month after an employment loss, of existing medical or dental coverage under an employment benefit plan, if any, necessary to cover any delay in an employee's eligibility for obtaining alternative coverage resulting directly from the employer's violation of notice requirements.

(b) The amount of an employer's liability under subsection (a) of this section shall be reduced by the following:

(1) any voluntary and unconditional payments made by the employer to the employee that were not required to satisfy any legal obligation;

(2) any payments by the employer to a third party or trustee, such as premiums for health benefits or payments to a defined contribution pension plan, on behalf of and attributable to the employee for the period of the violation; and

(3) any liability paid by the employer under any applicable federal law governing notification of mass layoffs, business closings, or relocations.

(c) If an employer proves to the satisfaction of the Commissioner that the act or omission that violated this subchapter was in good faith, the Commissioner may reduce the amount of liability provided for in this section. In determining the amount of such a reduction, the Commissioner shall consider any efforts by the employer to mitigate the violation.

(d) If, after an administrative hearing, the Commissioner determines that an employer has violated any of the requirements of this subchapter, the Commissioner shall issue an order including any penalties assessed by the Commissioner under sections 415 and 417 of this subchapter. The employer may appeal a decision of the Commissioner to the Superior Court within 30 days of the date of the Commissioner's order.

§ 416. POWERS OF THE COMMISSIONER

(a) The Commissioner may adopt rules as necessary, pursuant to 3 V.S.A. chapter 25, to carry out this subchapter. The rules shall include provisions that allow the parties access to administrative hearings for any actions of the Department under this subchapter.

(b) In any investigation or proceeding under this subchapter, the Commissioner has, in addition to all other powers granted by law, the authority to subpoena and examine information of an employer necessary to determine whether a violation of this subchapter has occurred, including to determine the validity of any defense.

(c) Information obtained through administration of this subchapter by the Commissioner and the Secretary of Commerce and Community Development shall be confidential, except that the number of layoffs, the types of jobs affected, and work locations affected shall cease to be confidential after local government and the affected employees have been notified. The Department may provide the information collected pursuant to subsection 413(c) of this subchapter to the U.S. Department of Labor and any other governmental entities for the purposes of securing benefits for the affected employees.

(d) Neither the Commissioner nor any court shall have the authority to enjoin a business closing, relocation, or mass layoff under this subchapter.

§ 417. ADMINISTRATIVE PENALTY

An employer who fails to give notice as required by subsection 413(b) or 414(b) of this subchapter shall be subject to an administrative penalty of $500.00 for each day that the employer was deficient in the notice to the Department. The Commissioner may waive the administrative penalty if the employer:

(1) demonstrates good cause under subsection 414(b) of this subchapter;

(2) pays to all affected employees the amounts for which the employer is liable under section 415 of this title within 30 days from the date the employer enacts the business closing or mass layoff; and

(3) pays to all affected employees any unpaid wage and compensation owed to any laid-off worker, as required under this title.

§ 418. OTHER RIGHTS

The rights and remedies provided to employees by this subchapter do not infringe upon or alter any other contractual or statutory rights and remedies of the employees. Nothing in this section is intended to alter or diminish or replace any federal or State regulatory mandates for a shutdown or closure of a regulated business or entity.

Sec. 3. EFFECTIVE DATES

(a) This section, Sec. 1, and in Sec. 2, 21 V.S.A. §§ 412 (education and outreach) and 416(a) shall take effect on passage.

(b) Sec. 2, except for 21 V.S.A. §§ 412 and 416(a), shall take effect on January 15, 2015.

(For text see House Journal 3/19/2014)

NOTICE CALENDAR

Favorable with Amendment

S. 281

An act relating to vision riders and a choice of providers for vision and eye care services

Rep. Dakin of Chester, for the Committee on **Health Care,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. § 4088j is added to read:

§ 4088j. CHOICE OF PROVIDERS FOR VISION CARE AND MEDICAL EYE CARE SERVICES

(a) To the extent a health insurance plan provides coverage for vision care or medical eye care services, it shall cover those services whether provided by a licensed optometrist or by a licensed ophthalmologist, provided the health care professional is acting within his or her authorized scope of practice and participates in the plan's network.

(b) A health insurance plan shall impose no greater co-payment, coinsurance, or other cost-sharing amount for services when provided by an optometrist than for the same service when provided by an ophthalmologist.

(c) A health insurance plan shall provide to a licensed health care professional acting within his or her scope of practice the same level of reimbursement or other compensation for providing vision care and medical eye care services that are within the lawful scope of practice of the professions of medicine, optometry, and osteopathy, regardless of whether the health care professional is an optometrist or an ophthalmologist.

(d)(1) A health insurer shall permit a licensed optometrist to participate in plans or contracts providing for vision care or medical eye care to the same extent as it does an ophthalmologist.

(2) A health insurer shall not require a licensed optometrist or

ophthalmologist to provide discounted materials benefits or to participate as a provider in another medical or vision care plan or contract as a condition or requirement for the optometrist's or ophthalmologist's participation as a provider in any medical or vision care plan or contract.

(e)(1) An agreement between a health insurer or an entity that writes vision insurance and an optometrist or ophthalmologist for the provision of vision services to plan members or subscribers in connection with coverage under a stand-alone vision plan or other health insurance plan shall not require that an optometrist or ophthalmologist provide services or materials at a fee limited or set by the plan or insurer unless the services or materials are reimbursed as covered services under the contract.

(2) An optometrist or ophthalmologist shall not charge more for services and materials that are noncovered services under a vision plan than his or her usual and customary rate for those services and materials.

(3) Reimbursement paid by a vision plan for covered services and materials shall be reasonable and shall not provide nominal reimbursement in order to claim that services and materials are covered services.

(f) As used in this section:

(1) "Covered services" means services and materials for which reimbursement from a vision plan or other health insurance plan is provided by a member's or subscriber's plan contract, or for which a reimbursement would be available but for application of the deductible, co-payment, or coinsurance requirements under the member's or subscriber's health insurance plan.

(2) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer or a subcontractor of a health insurer, as well as Medicaid and any other public health care assistance program offered or administered by the State or by any subdivision or instrumentality of the State. The term includes vision plans but does not include policies or plans providing coverage for a specified disease or other limited benefit coverage.

(3) "Health insurer" shall have the same meaning as in 18 V.S.A. § 9402.

(4) "Materials" includes lenses, devices containing lenses, prisms, lens treatments and coatings, contact lenses, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye or its adnexa.

(5) "Ophthalmologist" means a physician licensed pursuant to 26 V.S.A. chapter 23 or an osteopathic physician licensed pursuant to 26 V.S.A. chapter 33 who has had special training in the field of ophthalmology.

(6) "Optometrist" means a person licensed pursuant to 26 V.S.A.

chapter 30.

Sec. 2. EFFECTIVE DATE

This act shall take effect on January 1, 2015.

(Committee vote: 9-0-2)

(For text see Senate Journal 2/28/2014)

Favorable

J.R.S. 27

Joint resolution relating to an application of the General Assembly for Congress to call a convention for proposing amendments to the U.S. Constitution

Rep. Townsend of South Burlington, for the Committee on **Government Operations**, recommends that the bill ought to pass in concurrence.

(Committee Vote: 9-2-0)

(For text see Senate Journal March 20, 2014)

Senate Proposal of Amendment

H. 297

An act relating to duties and functions of the Department of Public Service

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

* * * Legislative Purpose; Intent * * *

Sec. 1. LEGISLATIVE PURPOSE; FINDINGS

It is the intent of the General Assembly to maintain a robust and modern telecommunications network in Vermont by making strategic investments in improved technology for all Vermonters. To achieve that goal, it is the purpose of this act to upgrade the State's telecommunications objectives and reorganize government functions in a manner that results in more coordinated and efficient State programs and policies, and, ultimately, produces operational savings that may be invested in further deployment of broadband and mobile telecommunications services for the benefit of all Vermonters. In addition, it is the intent of the General Assembly to update and provide for a more equitable application of the Universal Service Fund (USF) surcharge. Together, these operational savings and additional USF monies will raise at least $1.45 million annually, as follows:

(1) $650,000.00 from an increase in the USF charge to a flat two

percent;

(2) $500,000.00 from application of the USF charge to prepaid wireless telecommunications service providers; and

(3) $300,000.00 in operational savings from the transfer and consolidation of State telecommunications functions.

* * * USF; Connectivity Fund; Prepaid Wireless; Rate of Charge * * *

Sec. 2. 30 V.S.A. § 7511 is amended to read:

§ 7511. DISTRIBUTION GENERALLY

(a) As directed by the ~~public service board,~~ Public Service Board funds collected by the fiscal agent, and interest accruing thereon, shall be distributed as follows:

(1) ~~To~~ to pay costs payable to the fiscal agent under its contract with the ~~public service board.~~ Board;

(2) ~~To~~ to support the Vermont telecommunications relay service in the manner provided by section 7512 of this title~~.~~;

(3) ~~To~~ to support the Vermont ~~lifeline~~ Lifeline program in the manner provided by section 7513 of this title~~.~~;

(4) ~~To~~ to support ~~enhanced 911~~ Enhanced-911 services in the manner provided by section 7514 of this title~~.~~; and

(5) ~~To reduce the cost to customers of basic telecommunications service in high-cost areas, in the manner provided by section 7515 of this title~~ to support the Connectivity Fund established in section 7516 of this chapter.

(b) If insufficient funds exist to support all of the purposes contained in subsection (a) of this section, the ~~public service board~~ Board shall conduct an expedited proceeding to allocate the available funds, giving priority in the order listed in subsection (a).

Sec. 3. 30 V.S.A. § 7516 is added to read:

§ 7516. CONNECTIVITY FUND

(a) There is created a Connectivity Fund for the purpose of providing access to Internet service that is capable of speeds of at least 4 Mbps download and 1 Mbps upload to every E-911 business and residential location in Vermont, beginning with locations not served as of December 31, 2013 according to the minimum technical service characteristic objectives applicable at that time. Within this category of unserved Vermonters, priority shall be given to locations having access to only satellite or dial-up Internet service.

Any new services funded in whole or in part by monies in this Fund shall be capable of being continuously upgraded to reflect the best available, most economically feasible service capabilities.

(b) The fiscal agent shall determine annually, on or before September 1, the amount of funds available to the Connectivity Fund. The Department of Public Service shall publish annually a list of census blocks eligible for funding based on the Department's most recent broadband mapping data. The Department annually shall solicit proposals from service providers, the Vermont Telecommunications Authority, and the Division for Connectivity to deploy broadband to eligible census blocks. The Department shall give priority to proposals that reflect the lowest cost of providing services to unserved locations; however, the Department also shall consider:

(1) the proposed data transfer rates and other data transmission characteristics of services that would be available to consumers;

(2) the price to consumers of services;

(3) the proposed cost to consumers of any new construction, equipment installation service, or facility required to obtain service;

(4) whether the proposal would use the best available technology that is economically feasible;

(5) the availability of service of comparable quality and speed; and

(6) the objectives of the State's Telecommunications Plan.

Sec. 4. 30 V.S.A. § 7521 is amended to read:

§ 7521. CHARGE IMPOSED; WHOLESALE EXEMPTION

(a) A universal service charge is imposed on all retail telecommunications service provided to a Vermont address. Where the location of a service and the location receiving the bill differ, the location of the service shall be used to determine whether the charge applies. The charge is imposed on the person purchasing the service, but shall be collected by the telecommunications provider. Each telecommunications service provider shall include in its tariffs filed at the ~~public service board~~ Public Service Board a description of its billing procedures for the universal service fund charge.

(b) The universal service charge shall not apply to wholesale transactions between telecommunications service providers where the service is a component part of a service provided to an end user. This exemption includes~~, but is not limited to,~~ network access charges and interconnection charges paid to a local exchange carrier.

(c) In the case of mobile telecommunications service, the universal service

charge is imposed when the customer's place of primary use is in Vermont. The terms "customer," "place of primary use," and "mobile telecommunications service" have the meanings given in 4 U.S.C. § 124. All provisions of 32 V.S.A. § 9782 shall apply to the imposition of the universal service charge under this section.

(d)(1) Notwithstanding any other provision of law to the contrary, in the case of prepaid wireless telecommunications services, the universal service charge shall be imposed on the provider in the manner determined by the Public Service Board pursuant to subdivision (3) of this section.

(2) For purposes of this subsection, "prepaid wireless telecommunications service" means a telecommunications service as defined in section 203(5) of this title that a consumer pays for in advance and that is sold in predetermined units or dollars that decline with use.

(3) The Public Service Board shall establish a formula to ensure the universal service charge imposed on prepaid wireless telecommunications service providers reflects two percent of retail prepaid wireless telecommunications service in Vermont beginning on September 1, 2014.

Sec. 5. 30 V.S.A. § 7523 is amended to read:

§ 7523. RATE ~~ADJUSTED ANNUALLY~~ OF CHARGE

(a) ~~Annually, after considering the probable expenditures for programs funded pursuant to this chapter, the probable service revenues of the industry and seeking recommendations from the department, the public service board shall establish a rate of charge to apply during the 12 months beginning on the following September 1. However, the rate so established shall not at any time exceed two percent of retail telecommunications service. The board's decision shall be entered and announced each year before July 15. However, if the general assembly does not enact an authorization amount for E-911 before July 15, the board may defer decision until 30 days after the E-911 authorization is established, and the existing charge rate shall remain in effect until the board establishes a new rate~~ Beginning on July 1, 2014, the annual rate of charge shall be two percent of retail telecommunications service.

(b) Universal service charges imposed and collected by the fiscal agent under this subchapter shall not be transferred to any other fund or used to support the cost of any activity other than in the manner authorized by section 7511 of this title.

Sec. 6. 30 V.S.A. § 7524 is amended to read:

§ 7524. PAYMENT TO FISCAL AGENT

(a) Telecommunications service providers shall pay to the fiscal agent all

universal service charge receipts collected from customers. A report in a form approved by ~~the public service board~~ Public Service Board shall be included with each payment.

(b) Payments shall be made monthly, by the 15th day of the month, and shall be based upon amounts collected in the preceding month. If the amount is small, the ~~board~~ Board may allow payment to be made less frequently, and may permit payment on an accrual basis.

(c) Telecommunications service providers shall maintain records adequate to demonstrate compliance with the requirements of this chapter. The ~~board~~ Board or the fiscal agent may examine those records in a reasonable manner.

(d) When a payment is due under this section by a telecommunications service provider who has provided customer credits under the ~~lifeline~~ Lifeline program, the amount due may be reduced by the amount of credit granted.

(e) The fiscal agent shall examine the records of telecommunications service providers to determine whether their receipts reflect application of the universal service charge on all assessable telecommunications services under this chapter, including the federal subscriber line charge, directory assistance, enhanced services unless they are billed as separate line items, and toll-related services.

* * * State Telecommunications Plan; Division for Connectivity; VTA * * *

Sec. 7. 30 V.S.A. § 202c is amended to read:

§ 202C. STATE TELECOMMUNICATIONS; POLICY AND PLANNING

(a) The General Assembly finds that advances in telecommunications technology and changes in federal regulatory policy are rapidly reshaping telecommunications services, thereby promising the people and businesses of the State communication and access to information, while creating new challenges for maintaining a robust, modern telecommunications network in Vermont.

(b) Therefore, to direct the benefits of improved telecommunications technology to all Vermonters, it is the purpose of this section and section 202d of this title to:

(1) Strengthen the State's role in telecommunications planning.

(2) Support the universal availability of appropriate infrastructure and affordable services for transmitting voice and high-speed data.

(3) Support the availability of modern mobile wireless telecommunications services along the State's travel corridors and in the State's communities.

(4) Provide for high-quality, reliable telecommunications services for Vermont businesses and residents.

(5) Provide the benefits of future advances in telecommunications technologies to Vermont residents and businesses.

(6) Support competitive choice for consumers among telecommunications service providers and promote open access among competitive service providers on nondiscriminatory terms to networks over which broadband and telecommunications services are delivered.

(7) Support~~, to the extent practical and cost effective,~~ the application of telecommunications technology to maintain and improve governmental and public services, public safety, and the economic development of the State.

(8) Support deployment of broadband infrastructure that:

(A) Uses the best commercially available technology.

(B) Does not negatively affect the ability of Vermont to take advantage of future improvements in broadband technology or result in widespread installation of technology that becomes outmoded within a short period after installation.

(9) In the deployment of broadband infrastructure, encourage the use of existing facilities, such as existing utility poles and corridors and other structures, in preference to the construction of new facilities or the replacement of existing structures with taller structures.

(10) Support measures designed to ensure that by the end of the year 2024 every E-911 business and residential location in Vermont has infrastructure capable of delivering Internet access with service that has a minimum download speed of 100 Mbps and is symmetrical.

Sec. 8. 30 V.S.A. § 202d is amended to read:

§ 202D. TELECOMMUNICATIONS PLAN

(a) The ~~department of public service~~ Department of Public Service shall constitute the responsible planning agency of the ~~state~~ State for the purpose of obtaining for all consumers in the ~~state~~ State stable and predictable rates and a technologically advanced telecommunications network serving all service areas in the ~~state~~ State. The ~~department of public service~~ Department shall be responsible for the provision of plans for meeting emerging trends related to telecommunications technology, markets, financing, and competition.

(b) The ~~department of public service~~ Department shall prepare a ~~telecommunications plan~~ Telecommunications Plan for the ~~state~~ State. The ~~department of innovation and information~~ Department of Innovation and

Information, the Division for Connectivity and the ~~agency of commerce and community development~~ Agency of Commerce and Community Development shall assist the ~~department of public service~~ Department of Public Service in preparing the ~~plan~~ Plan. The ~~plan~~ Plan shall be for a ~~seven-year~~ ten-year period and shall serve as a basis for ~~state~~ State telecommunications policy. Prior to preparing the ~~plan~~ Plan, the ~~department of public service~~ Department shall prepare:

(1) an overview, looking ~~seven~~ ten years ahead, of future requirements for telecommunications services, considering services needed for economic development, technological advances, and other trends and factors which, as determined by the ~~department of public service~~ Department of Public Service, will significantly affect ~~state~~ State telecommunications policy and programs;

(2) a survey of Vermont residents and businesses, conducted in cooperation with the ~~agency of commerce and community development~~ Agency of Commerce and Community Development and the Division for Connectivity, to determine what telecommunications services are needed now and in the succeeding ~~seven~~ ten years;

(3) an assessment of the current state of telecommunications infrastructure;

(4) an assessment, conducted in cooperation with the ~~department of innovation and information~~ Department of Innovation and Information and the Division for Connectivity, of the current ~~state~~ State telecommunications system and evaluation of alternative proposals for upgrading the system to provide the best available and affordable technology for use by government; and

(5) an assessment of the state of telecommunications networks and services in Vermont relative to other states, including price comparisons for key services and comparisons of the state of technology deployment.

(c) In developing the ~~plan~~ Plan, the ~~department~~ Department shall take into account the policies and goals of section 202c of this title.

(d) In establishing plans, public hearings shall be held and the ~~department of public service~~ Department shall consult with members of the public, representatives of telecommunications utilities, other providers, and other interested ~~state~~ State agencies, particularly the ~~agency of commerce and community development~~ Agency of Commerce and Community Development, the Division for Connectivity, and the ~~department of innovation and information~~ Department of Innovation and Information, whose views shall be considered in preparation of the ~~plan~~ Plan. To the extent necessary, the ~~department of public service~~ Department shall include in the ~~plan~~ Plan surveys

to determine existing, needed, and desirable plant improvements and extensions, access and coordination between telecommunications providers, methods of operations, and any change that will produce better service or reduce costs. To this end, the ~~department of public service~~ Department may require the submission of data by each company subject to supervision by the ~~public service board~~ Public Service Board.

(e) Before adopting a ~~plan~~ Plan, the ~~department~~ Department shall conduct public hearings on a final draft and shall consider the testimony presented at such hearings in preparing the final ~~plan~~ Plan. At least one hearing shall be held jointly with ~~committees~~ Committees of the ~~general assembly~~ General Assembly designated by the ~~general assembly~~ General Assembly for this purpose. The ~~plan~~ Plan shall be adopted by ~~September 1, 2004~~ September 1, 2014.

(f) The ~~department~~ Department, from time to time, but in no event less than every three years, institute proceedings to review a ~~plan~~ Plan and make revisions, where necessary. The three-year major review shall be made according to the procedures established in this section for initial adoption of the ~~plan~~ Plan. For good cause or upon request by a ~~joint resolution~~ Joint Resolution passed by the ~~general assembly~~ General Assembly, an interim review and revision of any section of the ~~plan~~ Plan may be made after conducting public hearings on the interim revision. At least one hearing shall be held jointly with ~~committees~~ Committees of the ~~general assembly~~ General Assembly designated by the ~~general assembly~~ General Assembly for this purpose.

(g) The Department shall review and update the minimum technical service characteristic objectives not less than every three years beginning in 2017. In the event such review is conducted separately from an update of the Plan, the Department shall issue revised minimum technical service characteristic objectives as an amendment to the Plan.

Sec. 9. 3 V.S.A. § 2225 is added to read:

§ 2225. DIVISION FOR CONNECTIVITY

(a) Creation. The Division for Connectivity is created within the Agency of Administration as the successor in interest to and the continuation of the Vermont Telecommunications Authority. A Director for Connectivity shall be appointed by the Secretary of Administration. The Division shall receive administrative support from the Agency.

(b) Purposes. The purposes of the Division are to promote:

(1) access to affordable broadband service to all residences and

businesses in all regions of the State, to be achieved in a manner that is consistent with the State Telecommunications Plan;

(2) universal availability of mobile telecommunication services, including voice and high-speed data along roadways, and near universal availability statewide;

(3) investment in telecommunications infrastructure in the State that creates or completes the network for service providers to create last-mile connection to the home or business and supports the best available and economically feasible service capabilities;

(4) the continuous upgrading of telecommunications and broadband infrastructure in all areas of the State is to reflect the rapid evolution in the capabilities of available mobile telecommunications and broadband technologies, and in the capabilities of mobile telecommunications and broadband services needed by persons, businesses, and institutions in the State; and

(5) the most efficient use of both public and private resources through State policies by encouraging the development of open access telecommunications infrastructure that can be shared by multiple service providers.

(c) Duties. To achieve its purposes, the Division shall:

(1) provide resources to local, regional, public, and private entities in the form of grants, technical assistance, coordination, and other incentives;

(2) prioritize the use of existing buildings and structures, historic or otherwise, as sites for visually-neutral placement of mobile telecommunications and wireless broadband antenna facilities; and

(3) inventory and assess the potential to use federal radio frequency licenses held by instrumentalities of the State to enable broadband service in unserved areas of the State; take steps to promote the use of those licensed radio frequencies for that purpose; and recommend to the General Assembly any further legislative measures with respect to ownership, management, and use of these licenses as would promote the general good of the State.

(4) coordinate telecommunications initiatives among Executive Branch agencies, departments, and offices.

(5) from information reasonably available after public notice to and written requests made of mobile telecommunications and broadband service providers, develop and maintain an inventory of locations at which mobile telecommunications and broadband services are not available within the State, develop and maintain an inventory of infrastructure that is available or

reasonably likely to be available to support the provision of services to unserved areas, and develop and maintain an inventory of infrastructure necessary for the provision of these services to the unserved areas;

(6) identify the types and locations of infrastructure and services needed to carry out the purposes stated in subsection (b) of this section;

(7) formulate an action plan that conforms with the State Telecommunications Plan and carries out the purposes stated in subsection (b) of this section;

(8) coordinate the agencies of the State to make public resources available to support the extension of mobile telecommunications and broadband infrastructure and services to all unserved areas;

(9) support and facilitate initiatives to extend the availability of mobile telecommunications and broadband services, and promote development of the infrastructure that enables the provision of these services; and

(10) through the Department of Innovation and Information, aggregate and broker access at reduced prices to services and facilities required to provide wireless telecommunications and broadband services; and waive or reduce State fees for access to State-owned rights-of-way in exchange for comparable value to the State, unless payment for use is otherwise required by federal law.

(11) receive all technical and administrative assistance as deemed necessary by the Director for Connectivity.

(d)(1) Deployment. The Director may request voluntary disclosure of information regarding deployment of broadband, telecommunications facilities, or advanced metering infrastructure that is not publicly funded. Such information may include data identifying projected coverage areas, projected average speed of service, service type, and the anticipated date of completion in addition to identifying the location and routes of proposed cables, wires, and telecommunications facilities.

(2) The Director may enter into a nondisclosure agreement with respect to any voluntary disclosures under this subsection and the information disclosed pursuant thereto shall remain confidential. Alternatively, entities that voluntarily provide information requested under this subsection may select a third party to be the recipient of such information. The third party may aggregate information provided by the entities, but shall not disclose the information it has received to any person, including the Director. The third party shall only disclose the aggregated information to the Director. The Director may publicly disclose aggregated information based upon the

information provided under this subsection. The confidentiality requirements of this subsection shall not affect whether information provided to any agency of the State or a political subdivision of the State pursuant to other laws is or is not subject to disclosure.

(e) Minimum technical service characteristics. The Division only shall promote the expansion of broadband services that offer actual speeds that meet or exceed the minimum technical service characteristic objectives contained in the State's Telecommunications Plan.

(f) Annual Report. Notwithstanding 2 V.S.A. § 20(d), on or before January 15 of each year, the Director shall submit a report of its activities for the preceding fiscal year to the General Assembly. Each report shall include an operating and financial statement covering the Division's operations during the year, including a summary of all grant awards and contracts and agreements entered into by the Division, as well as the action plan required under subdivision (c)(7) of this section. In addition, the report shall include an accurate map and narrative description of each of the following:

(1) the areas served and the areas not served by wireless communications service, as identified by the Department of Public Service, and cost estimates for providing such service to unserved areas;

(2) the areas served and the areas not served by broadband that has a download speed of at least 0.768 Mbps and an upload speed of at least 0.2 Mbps, as identified by the Department of Public Service, and cost estimates for providing such service to unserved areas;

(3) the areas served and the areas not served by broadband that has a combined download and upload speed of at least 5 Mbps, as identified by the Department of Public Service, and the costs for providing such service to unserved areas; and

(4) the areas served and the areas not served by broadband that has a download speed of at least 100 Mbps and is symmetrical, as identified by the Department of Public Service, and the costs for providing such service to unserved areas.

Sec. 10. REPEAL

3 V.S.A. § 2222b (Secretary of Administration responsible for coordination and planning); 3 V.S.A. § 2222c (Secretary of Administration to prepare deployment report); 30 V.S.A. § 8077 (minimum technical service characteristics); and 30 V.S.A. § 8079 (broadband infrastructure investment) are repealed.

Sec. 11. CREATION OF POSITIONS; TRANSFER OF VACANT

POSITIONS; REEMPLOYMENT RIGHTS

(a) The following exempt positions are created within the Division for Connectivity: one full-time Director and up to six additional full-time employees as deemed necessary by the Secretary of Administration.

(b) The positions created under subsection (a) of this section shall only be filled to the extent there are existing vacant positions in the Executive Branch available to be transferred and converted to the new positions in the Division for Connectivity, as determined by the Secretary of Administration and the Commissioner of Human Resources, so that the total number of authorized positions in the State shall not be increased by this act.

(c) All full-time personnel of the Vermont Telecommunications Authority employed by the Authority on the day immediately preceding the effective date of this act, who do not obtain a position in the Division for Connectivity pursuant to subsection (a) of this section, shall be entitled to the same reemployment or recall rights available to non-management State employees under the existing collective bargaining agreement entered into between the State and the Vermont State Employees' Association.

Sec. 12. TRANSITIONAL PROVISIONS

(a) Personnel. The Secretary of Administration shall determine where the offices of the Division for Connectivity shall be housed.

(b) Assets and liabilities. The assets and liabilities of the Vermont Telecommunications Authority (VTA) shall become the assets and liabilities of the Agency of Administration.

(c) Legal and contractual obligations. The Executive Director of the VTA, in consultation with the Secretary of Administration, shall identify all grants and contracts of the VTA and create a plan to redesignate the Agency of Administration as the responsible entity. The plan shall ensure that all existing grantors, grantees, and contractors are notified of the redesignation.

* * * Conduit Standards; Public Highways * * *

Sec. 13. 3 V.S.A. § 2226 is added to read:

§ 2226. PUBLIC HIGHWAYS; CONDUIT STANDARDS

(a) Intent. The intent of this section is to provide for the construction of infrastructure sufficient to allow telecommunications service providers seeking to deploy communication lines in the future to do so by pulling the lines through the conduit and appurtenances installed pursuant to this section. This section is intended to require those constructing public highways, including State, municipal, and private developers, to provide and install such conduit

and appurtenances as may be necessary to accommodate future telecommunications needs within public highways and rights-of-way without further excavation or disturbance.

(b) Rules; standards. On or before January 1, 2015, the Secretary of Administration, in consultation with the Commissioner of Public Service, the Secretary of Transportation, and the Vermont League of Cities and Towns, shall adopt rules requiring the installation of conduit and such vaults and other appurtenances as may be necessary to accommodate installation and connection of telecommunications lines within the conduit during highway construction projects. The rules shall specify construction standards with due consideration given to existing and anticipated technologies and industry standards. The standards shall specify the minimum diameter of the conduit and interducts to meet the requirements of this section. All conduit and appurtenances installed by private parties under this section shall be conveyed and dedicated to the State or the municipality, as the case may be, with the dedication and conveyance of the public highway or right-of-way. Any and all installation costs shall be the responsibility of the party constructing the public highway.

* * * Extension of 248a; Automatic Party Status * * *

Sec. 14. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS FACILITIES

(a) Certificate. Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the Public Service Board under this section, which the Board may grant if it finds that the facilities will promote the general good of the State consistent with ~~subsection 202c(b) of this title~~ the State Telecommunications Plan. A single application may seek approval of one or more telecommunications facilities. An application under this section shall include a copy of each other State and local permit, certificate, or approval that has been issued for the facility under a statute, ordinance, or bylaw pertaining to the environment or land use.

* * *

(i) Sunset of Board authority. Effective July 1, ~~2014~~ 2016, no new applications for certificates of public good under this section may be considered by the Board.

* * *

(m) Municipal bodies; participation. The legislative body and the planning commission for the municipality in which a telecommunications facility is located shall have the right to appear and participate on any application under this section seeking a certificate of public good for the facility.

Sec. 15. 10 V.S.A. § 1264(j) is amended to read:

(j) Notwithstanding any other provision of law, if an application to discharge stormwater runoff pertains to a telecommunications facility as defined in 30 V.S.A. § 248a and is filed before July 1, ~~2014~~ 2016 and the discharge will be to a water that is not principally impaired by stormwater runoff:

(1) The Secretary shall issue a decision on the application within 40 days of the date the Secretary determines the application to be complete, if the application seeks authorization under a general permit.

(2) The Secretary shall issue a decision on the application within 60 days of the date the Secretary determines the application to be complete, if the application seeks or requires authorization under an individual permit.

Sec. 16. 10 V.S.A. § 8506 is amended to read:

§ 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS FACILITY; APPEALS

(a) Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the ~~secretary~~ Secretary, under the provisions of law listed in section 8503 of this title, or any party by right may appeal to the ~~public service board~~ Public Service Board if the act or decision concerns a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248 or a telecommunications facility for which the applicant has applied or has served notice under 30 V.S.A. § 248a(e) that it will apply for approval under 30 V.S.A. § 248a. This section shall not apply to a facility that is subject to section 1004 (dams before the Federal Energy Regulatory Commission) or 1006 (certification of hydroelectric projects) or chapter 43 (dams) of this title. This section shall not apply to an appeal of an act or decision of the ~~secretary~~ Secretary regarding a telecommunications facility made on or after July 1, ~~2014~~ 2016.

* * *

Sec. 17. 2011 Acts and Resolves No. 53, Sec. 14d is amended to read:

Sec. 14d. PROSPECTIVE REPEALS; EXEMPTIONS FROM MUNICIPAL BYLAWS AND ORDINANCES

Effective July 1, ~~2014~~ 2016:

(1) 24 V.S.A. § 4413(h) (limitations on municipal bylaws) shall be repealed; and

(2) 24 V.S.A. § 2291(19) (municipal ordinances; wireless telecommunications facilities) is amended to read:

* * *

Sec. 18. 3 V.S.A. § 2809 is amended to read:

§ 2809. REIMBURSEMENT OF AGENCY COSTS

(a)(1) The Secretary may require an applicant for a permit, license, certification, or order issued under a program that the Secretary enforces under 10 V.S.A. § 8003(a) to pay for the cost of research, scientific, programmatic, or engineering expertise provided by the Agency of Natural Resources, provided:

(A) ~~the~~ The Secretary does not have such expertise or services and such expertise is required for the processing of the application for the permit, license, certification, or order~~; or.~~

(B) ~~the~~ The Secretary does have such expertise but has made a determination that it is beyond the ~~agency's~~ Agency's internal capacity to effectively utilize that expertise to process the application for the permit, license, certification, or order. In addition, the Secretary shall determine that such expertise is required for the processing of the application for the permit, license, certification, or order.

(2) The Secretary may require an applicant under 10 V.S.A. chapter 151 to pay for the time of Agency of Natural Resources personnel providing research, scientific, or engineering services or for the cost of expert witnesses when ~~agency~~ Agency personnel or expert witnesses are required for the processing of the permit application.

(3) In addition to the authority set forth under 10 V.S.A. chapters 59 and 159 and ~~§~~ section 1283, the Secretary may require a person who caused the ~~agency~~ Agency to incur expenditures or a person in violation of a permit, license, certification, or order issued by the Secretary to pay for the time of ~~agency~~ Agency personnel or the cost of other research, scientific, or engineering services incurred by the ~~agency~~ Agency in response to a threat to public health or the environment presented by an emergency or exigent circumstance.

* * *

(g) Concerning an application for a permit to discharge stormwater runoff

from a telecommunications facility as defined in 30 V.S.A. § 248a that is filed before July 1, ~~2014~~ 2016:

(1) Under subdivision (a)(1) of this section, the ~~agency~~ Agency shall not require an applicant to pay more than $10,000.00 with respect to a facility.

(2) The provisions of subsection (c) (mandatory meeting) of this section shall not apply.

* * * Administration Report; E-911; Vermont USF Fiscal Agent; Vermont Communications Board; FirstNet * * *

Sec. 19. ADMINISTRATION REPORT; TRANSFERS AND CONSOLIDATION; VERMONT USF FISCAL AGENT

(a) On January 1, 2015, after receiving input from State and local agencies potentially impacted, the Secretary of Administration shall submit a report to the General Assembly proposing a plan for transferring the responsibilities and powers of the Enhanced 911 Board, including necessary positions, to the Division for Connectivity, the Department of Public Service, or the Department of Public Safety, as he or she deems appropriate. The plan shall include budgetary recommendations and shall strive to achieve annual operational savings of at least $300,000.00, as well as enhanced coordination and efficiency, and reductions in operational redundancies. The report shall include draft legislation implementing the Secretary's plan. In addition, the report shall include findings and recommendations on whether it would be cost effective to select an existing State agency to serve as fiscal agent to the Vermont Universal Service Fund.

(b) As part of the report required in subsection (a) of this section, the Secretary shall also make findings and recommendations regarding the status of the Vermont Communications Board, Department of Public Safety, and the Vermont Public Safety Broadband Network Commission (Vermont FirstNet). If not prohibited by federal law, the Secretary shall propose draft legislation creating an advisory board within the Division for Connectivity or the Department of Public Safety comprised of 15 members appointed by the Governor to assume functions of the current Enhanced 911 Board, the Vermont Communications Board, and Vermont FirstNet, as the Secretary deems appropriate. Upon establishment of the new advisory board and not later than July 1, 2015, the E-911 Board and the Vermont Communications Board shall cease to exist.

* * * DPS Deployment Report * * *

Sec. 20. DEPARTMENT OF PUBLIC SERVICE; DEPLOYMENT REPORT

On July 15, 2015, the Commissioner of Public Service shall submit to the

General Assembly a report, including maps, indicating the service type and average speed of service of mobile telecommunications and broadband services available within the State by census block as of June 30, 2015.

* * * VTA; Dormant Status * * *

Sec. 21. 30 V.S.A. § 8060a is added to read:

§ 8060a. PERIOD OF DORMANCY

On July 1, 2015, the Division for Connectivity established under 3 V.S.A. § 2225 shall become the successor in interest to and the continuation of the Vermont Telecommunications Authority, and the Authority shall cease all operations and shall not resume its duties as specified under this chapter or under any other Vermont law unless directed to do so by enactment of the General Assembly or, if the General Assembly is not in session, by order of the Joint Fiscal Committee. The Joint Fiscal Committee shall issue such order only upon finding that, due to an unforeseen change in circumstances, implementation of the Authority's capacity to issue revenue bonds would be the most effective means of furthering the State's telecommunications goals and policies. Upon the effective date of such enactment or order, the duties of the Executive Director and the Board of Directors of the Authority shall resume in accordance with 30 V.S.A. chapter 91 and the Director for Connectivity shall be the acting Executive Director of the Authority, until the position is filled pursuant to 30 V.S.A. § 8061(e).

* * * Telecommunications; CPGs; Annual Renewals;
Retransmission Fees * * *

Sec. 22. 30 V.S.A. § 231 is amended to read:

§ 231. CERTIFICATE OF PUBLIC GOOD; ABANDONMENT OF SERVICE; HEARING

(a) A person, partnership, unincorporated association, or previously incorporated association, which desires to own or operate a business over which the ~~public service board~~ Public Service Board has jurisdiction under the provisions of this chapter shall first petition the ~~board~~ Board to determine whether the operation of such business will promote the general good of the ~~state,~~ State and conforms with the State Telecommunications Plan, if applicable, and shall at that time file a copy of any such petition with the ~~department~~ Department. The ~~department~~ Department, within 12 days, shall review the petition and file a recommendation regarding the petition in the same manner as is set forth in subsection 225(b) of this title. Such recommendation shall set forth reasons why the petition shall be accepted without hearing or shall request that a hearing on the petition be scheduled. If

the ~~department~~ Department requests a hearing on the petition, or, if the ~~board~~ Board deems a hearing necessary, it shall appoint a time and place in the county where the proposed corporation is to have its principal office for hearing the petition, and shall make an order for the publication of the substance thereof and the time and place of hearing two weeks successively in a newspaper of general circulation in the county to be served by the petitioner, the last publication to be at least seven days before the day appointed for the hearing. The ~~director for public advocacy~~ Director for Public Advocacy shall represent the public at such hearing. If the ~~board~~ Board finds that the operation of such business will promote the general good of the ~~state,~~ State and will conform with the State Telecommunications Plan, if applicable, it shall give such person, partnership, unincorporated association or previously incorporated association a certificate of public good specifying the business and territory to be served by such petitioners. For good cause, after opportunity for hearing, the ~~board~~ Board may amend or revoke any certificate awarded under the provisions of this section. If any such certificate is revoked, the person, partnership, unincorporated association, or previously incorporated association shall no longer have authority to conduct any business which is subject to the jurisdiction of the ~~board~~ Board whether or not regulation thereunder has been reduced or suspended, under section 226a or 227a of this title.

(b) A company subject to the general supervision of the ~~public service board~~ Public Service Board under section 203 of this title may not abandon or curtail any service subject to the jurisdiction of the ~~board~~ Board or abandon all or any part of its facilities if it would in doing so effect the abandonment, curtailment or impairment of the service, without first obtaining approval of the ~~public service board~~ Board, after notice and opportunity for hearing, and upon finding by the ~~board~~ Board that the abandonment or curtailment is consistent with the public interest and the State Telecommunications Plan, if applicable; provided, however, this section shall not apply to disconnection of service pursuant to valid tariffs or to rules adopted under section 209(b) and (c) of this title.

Sec. 23. 30 V.S.A. § 504 is amended to read:

§ 504. CERTIFICATES OF PUBLIC GOOD

(a) Certificates of public good granted under this chapter shall be for a period of 11 years.

(b) Issuance of a certificate shall be after opportunity for hearing and findings by the ~~board~~ Board that the applicant has complied or will comply with requirements adopted by the ~~board~~ Board to ensure that the system provides:

(1) designation of adequate channel capacity and appropriate facilities for public, educational, or governmental use;

(2) adequate and technically sound facilities and equipment, and signal quality;

(3) a reasonably broad range of public, educational, and governmental programming;

(4) the prohibition of discrimination among customers of basic service; ~~and~~

(5) basic service in a competitive market, and if a competitive market does not exist, that the system provides basic service at reasonable rates determined in accordance with section 218 of this title; and

(6) service that conforms with the relevant provisions of the State Telecommunications Plan.

(c) In addition to the requirements set forth in subsection (b) of this section, the ~~board~~ Board shall ~~insure~~ ensure that the system provides or utilizes:

(1) a reasonable quality of service for basic, premium or otherwise, having regard to available technology, subscriber interest, and cost;

(2) construction, including installation, which conforms to all applicable ~~state~~ State and federal laws and regulations and the National Electric Safety Code;

(3) a competent staff sufficient to provide adequate and prompt service and to respond quickly and comprehensively to customer and ~~department~~ Department complaints and problems;

(4) unless waived by the ~~board~~ Board, an office which shall be open during usual business hours, have a listed toll-free telephone so that complaints and requests for repairs or adjustments may be received; and

(5) reasonable rules and policies for line extensions, disconnections, customer deposits, and billing practices.

(d) A certificate granted to a company shall represent nonexclusive authority of that company to build and operate a cable television system to serve customers only within specified geographical boundaries. Extension of service beyond those boundaries may be made pursuant to the criteria in ~~section 504 of this title~~ this section, and the procedures in section 231 of this title.

(e) Subdivision (b)(6) of this section (regarding conformity with the State Telecommunications Plan) shall apply only to certificates that expire or new

applications that are filed after the year 2014.

Sec. 24. 30 V.S.A. § 518 is added to read:

§ 518. DISCLOSURE OF RETRANSMISSION FEES

A retransmission agreement entered into between a commercial broadcasting station and a cable company pursuant to 47 U.S.C. § 325 shall not include terms prohibiting the company from disclosing to its subscribers any fees incurred for program content retransmitted on the cable network under the retransmission agreement.

* * * Statutory Revision Authority * * *

Sec. 25. LEGISLATIVE COUNCIL STATUTORY REVISION AUTHORITY; LEGISLATIVE INTENT

(a) The staff of the Office of the Legislative Council in its statutory revision capacity is authorized and directed to amend the Vermont Statutes Annotated as follows:

(1) deleting all references to "by the end of the year 2013" in 30 V.S.A. chapter 91; and

(2) during the interim of the 2015 biennium of the General Assembly, in 30 V.S.A. § 227e, replacing every instance of the words "Secretary of Administration" and "Secretary" with the words "Director for Connectivity" and "Director," respectively.

(b) Any duties and responsibilities that arise by reference to the Division for Connectivity in the Vermont Statutes Annotated shall not be operative until the Division is established pursuant to 3 V.S.A. § 2225.

* * * Effective Dates * * *

Sec. 26. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 9, 10, and 11 (regarding the Division for Connectivity) shall take effect on July 1, 2015.

And that after passage the title of the bill be amended to read: "An act relating to Vermont telecommunications policy"

(For text see House Journal April 4, 2013)

H. 325

An act relating to a bill of rights for children of arrested and incarcerated parents

The Senate proposes to the House to amend the bill by striking all after the

enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE FINDINGS

(a) Children of incarcerated parents have committed no crime, yet they pay a steep penalty. They often forfeit their homes, their safety, their public status and private self-image, and their primary source of comfort and affection.

(b) The General Assembly and the State have a strong interest in assuring that children of incarcerated parents are provided with the services and support necessary to thrive despite the hardship they face due to their parent's status.

Sec. 2. REPORT

(a) The Secretary of Human Services, Commissioner of Corrections, and the Commissioner for Children and Families shall study and develop recommendations, within the Integrated Family Services Initiative (IFS), on the following issues:

(1) the capacity needed to identify and connect children and families of incarcerated individuals to appropriate services within the Integrated Family Services Initiative;

(2) existing services available to children with incarcerated parents and the need for any additional services to:

(A) build and maintain healthy relationships between children and incarcerated parents, including parent-child visits, parenting classes, and supervised visits;

(B) develop child- and family-centered tools or strategies that can be used throughout the criminal justice system to mitigate unintended consequences on children; and

(C) support children and their families or caregivers by including the use of Family Impact Statements in the Court process;

(3) appropriate physical settings for children to visit incarcerated parents and services while the parent is incarcerated;

(4) a mechanism to ensure that coordinated services are provided to children of incarcerated parents by the Department for Children and Families and the Department of Corrections;

(5) agency data systems to track and coordinate services for children of incarcerated parents; and

(6) the cost of services necessary to implement a comprehensive system of care addressing the unique needs of children of incarcerated parents.

(b) Recommendations shall be developed in consultation with the following stakeholders:

(1) the Department of Corrections;

(2) the Department for Children and Families;

(3) the Department of Mental Health;

(4) the Prisoners' Rights Office;

(5) LUND;

(6) the Parent Child Center Network; and

(7) kinship organizations.

(c) The Secretary and Commissioners shall consider the Inmate Family Survey Project and its recommendations for best practices.

(d) On or before January 15, 2015, the Secretary shall submit a report and recommendations to the Senate Committee on Health and Welfare, Senate Committee on Institutions, House Committee on Human Services, and House Committee on Corrections and Institutions.

Sec. 3. 28 V.S.A. § 204(d) is amended to read:

(d) Any presentence report, pre-parole report, or supervision history prepared by any employee of the Department in the discharge of the employee's official duty, except as provided in subdivision 204a(b)(5) and section 205 of this title, is privileged and shall not be disclosed to anyone outside the Department other than the judge or the Parole Board, except that the Court or Board may in its discretion permit the inspection of the report or parts thereof by the state's attorney, the defendant or inmate, or his or her attorney, or other persons having a proper interest therein, whenever the best interest or welfare of the defendant or inmate makes that action desirable or helpful. Nothing in this section shall prohibit the Department for Children and Families from accessing the supervision history of probationers or parolees for the purpose of child protection.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

(For text see House Journal March 19, 2014)

H. 350

An act relating to the posting of medical unprofessional conduct decisions and to investigators of alleged unprofessional conduct

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

First: In Sec. 2, 26 V.S.A. § 1368, in subdivision (a)(4)(B), at the end of the subdivision following "within five business days of the expiration of the appeal period", by inserting or within five business days of the request of the licensee, whichever is later.

Second: By adding a new section to be numbered Sec. 5a to read as follows:

Sec. 5a. 18 V.S.A. § 4631a is amended to read:

§ 4631a. EXPENDITURES BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a) As used in this section:

(1) "Allowable expenditures" means:

* * *

(H) Sponsorship of an educational program offered by a medical device manufacturer at a national or regional professional society meeting at which programs accredited by the Accreditation Council for Continuing Medical Education, or a comparable professional accrediting entity, are also offered, provided:

(i) no payment is made directly to a health care professional or pharmacist; and

(ii) the funding is used solely for bona fide educational purposes, except that the manufacturer may provide meals and other food for program participants.

(I) Other reasonable fees, payments, subsidies, or other economic benefits provided by a manufacturer of prescribed products at fair market value.

* * *

(7)(C) "Regularly practices" means to practice at least periodically under contract with, as an employee of, or as the owner of, a medical practice, health care facility, nursing home, hospital, or university located in Vermont.

* * *

(12) "Prescribed product" means a drug ~~or device~~ as defined in section 201 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321, a compound drug or drugs, a medical device as defined in this subsection, a biological product as defined in section 351 of the Public Health Service Act, 42 U.S.C. § 262, for human use, or a combination product as defined in 21 C.F.R. § 3.2(e), but shall not include prescription eyeglasses, prescription sunglasses, or other prescription eyewear.

* * *

(15) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is:

(A) recognized in the official National Formulary or the United States Pharmacopeia, or any supplement to them;

(B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in humans or other animals; or

(C) intended to affect the structure or any function of the body of humans or other animals, and which does not achieve its primary intended purposes through chemical action within or on such body and which is not dependent upon being metabolized for the achievement of its primary intended purposes.

Third: By striking out Sec. 6 (Effective Dates) in its entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

Sec. 6. EFFECTIVE DATES

This act shall take effect on passage, except:

(1) Secs. 1 (amending 26 V.S.A. § 1318), 3 (amending 26 V.S.A. § 1351), and 5a (amending 18 V.S.A. § 4631a) shall take effect on July 1, 2014; and

(2) Sec. 2 (amending 26 V.S.A. § 1368) shall take effect on July 1, 2015.

(For text see House Journal January 23, 2014)

H. 581

An act relating to guardianship of minors

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

Sec. 1. 14 V.S.A. chapter 111, subchapter 2, article 1 is amended to read:

Article 1. Guardians of Minors

§ 2621. POLICY; PURPOSES

This article shall be construed in accordance with the following purposes and policies:

(1) It is presumed that the interests of minor children are best promoted in the child's own home. However, when parents are temporarily unable to care for their children, guardianship provides a process through which parents can arrange for family members or other parties to care for the children.

(2) Family members can make better decisions about minor children when they understand the consequences of those decisions and are informed about the law and the available supports.

(3) Decisions about raising a child made by a person other than the child's parent should be based on the informed consent of the parties unless there has been a finding of parental unsuitability.

(4) When the informed consent of the parents cannot be obtained, parents have a fundamental liberty interest in raising their children unless a proposed guardian can show parental unsuitability by clear and convincing evidence.

(5) Research demonstrates that timely reunification between parents and their children is more likely when children have safe and substantial contact with their parents.

(6) It is in the interests of all parties, including the children, that parents and proposed guardians have a shared understanding about the length of time that they expect the guardianship to last, the circumstances under which the parents will resume care for their children, and the nature of the supports and services that are available to assist them.

§ 2622. DEFINITIONS

As used in this article:

(1) "Child" means an individual who is under 18 years of age and who is the subject of a petition for guardianship filed pursuant to section 2623 of this title.

(2) "Child in need of guardianship" means:

(A) A child who the parties consent is in need of adult care because of any one of the following:

(i) The child's custodial parent has a serious or terminal illness.

(ii) A custodial parent's physical or mental health prevents the parent from providing proper care and supervision for the child.

(iii) The child's home is no longer habitable as the result of a natural disaster.

(iv) A custodial parent of the child is incarcerated.

(v) A custodial parent of the child is on active military duty.

(vi) The parties have articulated and agreed to another reason that guardianship is in the best interests of the child.

(B) A child who is:

(i) abandoned or abused by the child's parent;

(ii) without proper parental care, subsistence, education, medical, or other care necessary for the child's well-being; or

(iii) without or beyond the control of the child's parent.

(3) "Custodial parent" means a parent who, at the time of the commencement of the guardianship proceeding, has the right and responsibility to provide the routine daily care and control of the child. The rights of the custodial parent may be held solely or shared and may be subject to the court-ordered right of the other parent to have contact with the child. If physical parental rights and responsibilities are shared pursuant to court order, both parents shall be considered "custodial parents" for purposes of this subdivision.

(4) "Nonconsensual guardianship" means a guardianship with respect to which:

(A) a parent is opposed to establishing the guardianship; or

(B) a parent seeks to terminate a guardianship that the parent previously agreed to establish.

(5) "Noncustodial parent" means a parent who is not a custodial parent at the time of the commencement of the guardianship proceeding.

(6) "Parent" means a child's biological or adoptive parent, including custodial parents; noncustodial parents; parents with legal or physical responsibilities, or both; and parents whose rights have never been adjudicated.

(7) "Parent-child contact" means the right of a parent to have visitation with the child by court order.

§ 2623. PETITION FOR GUARDIANSHIP OF MINOR; SERVICE

(a) A parent or a person interested in the welfare of a minor may file a petition with the Probate Division of the Superior Court for the appointment of a guardian for a child. The petition shall state:

(1) the names and addresses of the parents, the child, and the proposed guardian;

(2) the proposed guardian's relationship to the child;

(3) the names of all members of the proposed guardian's household and each person's relationship to the proposed guardian and the child;

(4) that the child is alleged to be a child in need of guardianship;

(5) specific reasons with supporting facts why guardianship is sought;

(6) whether the parties agree that the child is in need of guardianship and that the proposed guardian should be appointed as guardian;

(7) the child's current school and grade level;

(8) if the proposed guardian intends to change the child's current school, the name and location of the proposed new school and the estimated date when the child would enroll;

(9) the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period; and

(10) any prior or current court proceedings, child support matters, or parent-child contact orders involving the child.

(b)(1) A petition for guardianship of a child under this section shall be served on all parties and interested persons as provided by Rule 4 of the Vermont Rules of Probate Procedure.

(2)(A) The Probate Division may waive the notice requirements of subdivision (1) of this subsection (c) with respect to a parent if the Court finds that:

(i) the identity of the parent is unknown; or

(ii) the location of the parent is unknown and cannot be determined with reasonable effort.

(B) After a guardianship for a child is created, the Probate Division shall reopen the proceeding at the request of a parent of the child who did not receive notice of the proceeding as required by this subsection.

§ 2624. JURISDICTION; TRANSFER TO FAMILY DIVISION

(a) Except as provided in subsection (b) of this section, the Probate Division shall have exclusive jurisdiction over proceedings under this article involving guardianship of minors.

(b)(1)(A) A custodial minor guardianship proceeding brought in the Probate Division under this article shall be transferred to the Family Division if there is an open proceeding in the Family Division involving custody of the same child who is the subject of the guardianship proceeding in the Probate Division.

(B) A minor guardianship proceeding brought in the Probate Division under this article may be transferred to the Family Division on motion of a party or on the court's own motion if any of the parties to the probate proceeding was a party to a closed divorce proceeding in the Family Division involving custody of the same child who is the subject of the guardianship proceeding in the Probate Division.

(2)(A) When a minor guardianship proceeding is transferred from the Probate Division to the Family Division pursuant to subdivision (1) of this subsection (b), the Probate judge and a Superior judge assigned to the Family Division shall confer regarding jurisdiction over the proceeding. Except as provided in subdivision (B) of this subdivision (2), all communications concerning jurisdiction between the Probate judge and the Superior judge under this subsection shall be on the record. Whenever possible, a party shall be provided notice of the communication and an opportunity to be present when it occurs. A party who is unable to be present for the communication shall be provided access to the record.

(B) It shall not be necessary to inform the parties about or make a record of a communication between the Probate judge and the Superior judge under this subsection (b) if the communication involves scheduling, calendars, court records, or other similar administrative matters.

(C) After the Superior judge and Probate judge confer under subdivision (2)(A) of this subsection (b), the Superior judge may:

(i) consolidate the minor guardianship case with the pending matter in the Family Division and determine whether a guardianship should be established under this article; or

(ii) transfer the guardianship petition back to the Probate Division for further proceedings after the pending matter in the Family Division has been adjudicated.

(D) If a guardianship is established by the Family Division pursuant to subdivision (2)(C)(i) of this subsection, the guardianship case shall be

transferred back to the Probate Division for ongoing monitoring pursuant to section 2631 of this title.

§ 2625. HEARING; COUNSEL; GUARDIAN AD LITEM

(a) The Probate Division shall schedule a hearing upon the filing of the petition and shall provide notice of the hearing to all parties and interested persons who were provided notice under subdivision 2623(c)(1) of this title.

(b) The child shall attend the hearing if he or she is 14 years of age or older unless the child's presence is excused by the Court for good cause. The child may attend the hearing if he or she is less than 14 years of age.

(c) The Court shall appoint counsel for the child if the child will be called as a witness. In all other cases, the Court may appoint counsel for the child.

(d)(1) The child may be called as a witness only if the Court finds after hearing that:

(A) the child's testimony is necessary to assist the Court in determining the issue before it;

(B) the probative value of the child's testimony outweighs the potential detriment to the child; and

(C) the evidence sought is not reasonably available by any other means.

(2) The examination of a child called as a witness may be conducted by the Court in chambers in the presence of such other persons as the Court may specify and shall be recorded.

(e) The Court may appoint a guardian ad litem for the child on motion of a party or on the Court's own motion.

(f)(1) The Court may grant an emergency guardianship petition filed ex parte by the proposed guardian if the Court finds that:

(A) both parents are deceased or medically incapacitated; and

(B) the best interests of the child require that a guardian be appointed without delay and before a hearing is held.

(2) If the Court grants an emergency guardianship petition pursuant to subdivision (1) of this subsection (e), it shall schedule a hearing on the petition as soon as practicable and in no event more than 72 hours after the petition is filed.

§ 2626. CONSENSUAL GUARDIANSHIP

(a) If the petition requests a consensual guardianship, the petition shall

include a consent signed by the custodial parent or parents verifying that the parent or parents understand the nature of the guardianship and knowingly and voluntarily consent to the guardianship. The consent required by this subsection shall be on a form approved by the Court Administrator.

(b) On or before the date of the hearing, the parties shall file an agreement between the proposed guardian and the parents. The agreement shall address:

(1) the responsibilities of the guardian;

(2) the responsibilities of the parents;

(3) the expected duration of the guardianship, if known; and

(4) parent-child contact and parental involvement in decision making.

(c) Vermont Rule of Probate Procedure 43 (relaxed rules of evidence in probate proceedings) shall apply to hearings under this section.

(d) The Court shall grant the petition if it finds after the hearing by clear and convincing evidence that:

(1) the child is a child in need of guardianship as defined in subdivision 2622(2)(A) of this title;

(2) the child's parents had notice of the proceeding and knowingly and voluntarily consented to the guardianship;

(3) the agreement is voluntary;

(4) the proposed guardian is suitable; and

(5) the guardianship is in the best interests of the child.

(e) If the Court grants the petition, it shall approve the agreement at the hearing and issue an order establishing a guardianship under section 2628 of this title. The order shall be consistent with the terms of the parties' agreement unless the Court finds that the agreement was not reached voluntarily or is not in the best interests of the child.

§ 2627. NONCONSENSUAL GUARDIANSHIP

(a) If the petition requests a nonconsensual guardianship, the burden shall be on the proposed guardian to establish by clear and convincing evidence that the child is a child in need of guardianship as defined in subdivision 2622(2)(B) of this title.

(b) The Vermont Rules of Evidence shall apply to a hearing under this section.

(c) The Court shall grant the petition if it finds after the hearing by clear

and convincing evidence that the proposed guardian is suitable and that the child is a child in need of guardianship as defined in subdivision 2622(2)(B) of this title.

(d) If the Court grants the petition, it shall issue an order establishing a guardianship under section 2628 of this title.

§ 2628. GUARDIANSHIP ORDER

(a) If the Court grants a petition for guardianship of a child under subsection 2626(d) or 2627(d) of this title, the Court shall enter an order establishing a guardianship and naming the proposed guardian as the child's guardian.

(b) A guardianship order issued under this section shall include provisions addressing the following matters:

(1) the powers and duties of the guardian consistent with section 2629 of this title;

(2) the expected duration of the guardianship, if known;

(3) a family plan on a form approved by the Court Administrator that:

(A) in a consensual case is consistent with the parties' agreement; or

(B) in a nonconsensual case includes, at a minimum, provisions that address parent-child contact consistent with section 2630 of this title; and

(4) the process for reviewing the order consistent with section 2631 of this title.

§ 2629. POWERS AND DUTIES OF GUARDIAN

(a) The Court shall specify the powers and duties of the guardian in the guardianship order.

(b) The duties of a custodial guardian shall include the duty to:

(1) take custody of the child and establish his or her place of residence, provided that a guardian shall not change the residence of the child to a location outside the State of Vermont without prior authorization by the Court following notice to the parties and an opportunity for hearing;

(2) make decisions related to the child's education;

(3) make decisions related to the child's physical and mental health, including consent to medical treatment and medication;

(4) make decisions concerning the child's contact with others, provided that the guardian shall comply with all provisions of the guardianship order

regarding parent-child contact and contact with siblings;

(5) receive funds paid for the support of the child, including child support and government benefits; and

(6) file an annual status report to the Probate Division, with a copy to each parent at his or her last known address, including the following information:

(A) the current address of the child and each parent;

(B) the child's health care and health needs, including any medical and mental health services the child received;

(C) the child's educational needs and progress, including the name of the child's school, day care, or other early education program, the child's grade level, and the child's educational achievements;

(D) contact between the child and his or her parents, including the frequency and duration of the contact and whether it was supervised;

(E) how the parents have been involved in decision making for the child;

(F) how the guardian has carried out his or her responsibilities and duties, including efforts made to include the child's parents in the child's life;

(G) the child's strengths, challenges, and any other areas of concern; and

(H) recommendations with supporting reasons as to whether the guardianship order should be continued, modified, or terminated.

§ 2630. PARENT-CHILD CONTACT

(a) The Court shall order parent-child contact unless it finds that denial of parent-child contact is necessary to protect the physical safety or emotional well-being of the child. Except for good cause shown, the order shall be consistent with any existing parent-child contact order. The order should permit the child to have contact of reasonable duration and frequency with the child's siblings, if appropriate.

(b) The Court may determine the reasonable frequency and duration of parent-child contact and may set conditions for parent-child contact that are in the child's best interests.

(c) The Court may modify the parent-child contact order upon motion of a party or upon the Court's own motion, or if the parties stipulate to the modification.

§ 2631. REPORTS; REVIEW HEARING

(a) The guardian shall file an annual status report to the Probate Division pursuant to subdivisions 2629(b)(4) and 2629(c)(5) of this title, and shall provide copies of the report to each parent at his or her last known address. The Court may order that a status report be filed more frequently than once per year.

(b) The Probate Division may set a hearing to review a report required by subsection (a) of this section or to determine progress with the family plan required by subdivision 2628(b)(3) of this title. The Court shall provide notice of the hearing to all parties and interested persons.

§ 2632. TERMINATION

(a) A parent may file a motion to terminate a guardianship at any time. The motion shall be filed with the Probate Division that issued the guardianship order and served on all parties and interested persons.

(b)(1) If the motion to terminate is made with respect to a consensual guardianship established under section 2626 of this title, the Court shall grant the motion and terminate the guardianship unless the guardian files a motion to continue the guardianship within 30 days after the motion to terminate is served.

(2) If the guardian files a motion to continue the guardianship, the matter shall be set for hearing and treated as a nonconsensual guardianship proceeding under section 2627 of this title. The parent shall not be required to show a change in circumstances, and the Court shall not grant the motion to continue the guardianship unless the guardian establishes by clear and convincing evidence that the minor is a child in need of guardianship under subdivision 2622(2)(B) of this title.

(3) If the Court grants the motion to continue, it shall issue an order establishing a guardianship under section 2628 of this title.

(c)(1) If the motion to terminate the guardianship is made with respect to a nonconsensual guardianship established under section 2627 or subdivision 2632(b)(3) of this title, the Court shall dismiss the motion unless the parent establishes that a change in circumstances has occurred since the previous guardianship order was issued.

(2) If the Court finds that a change in circumstances has occurred since the previous guardianship order was issued, the Court shall grant the motion to terminate the guardianship unless the guardian establishes by clear and convincing evidence that the minor is a child in need of guardianship under subdivision 2622(2)(B) of this title.

§ 2633. APPEALS

Notwithstanding 12 V.S.A. § 2551 or 2553, the Vermont Supreme Court shall have appellate jurisdiction over orders of the Probate Division issued under this article.

§ 2634. DEPARTMENT FOR CHILDREN AND FAMILIES POLICY

The Department for Children and Families shall adopt a policy defining its role with respect to families who establish a guardianship under this article. The policy shall be consistent with the following principles:

(1) The Family Services Division shall maintain a policy ensuring that when a child must be removed from his or her home to ensure the child's safety, the Division will pursue a CHINS procedure promptly if there are sufficient grounds under 33 V.S.A. § 5102.

(2) When the Family Services Division is conducting an investigation or assessment related to child safety and the child may be a child in need of care and supervision as defined in 33 V.S.A. § 5102(3), the Division shall not make any recommendation regarding whether a family should pursue a minor guardianship. The staff may provide referrals to community-based resources for information regarding minor guardianships.

(3) In response to a request from the Probate judge, the Family Services Division social worker shall attend a minor guardianship hearing and provide information relevant to the proceeding.

(4) If a minor guardianship is established during the time that the Family Services Division has an open case involving the minor, the social worker shall inform the guardian and the parents about services and supports available to them in the community and shall close the case within a reasonable time unless a specific safety risk is identified.

Sec. 2. 14 V.S.A. chapter 111, subchapter 2, article 1A is added to read:

Article 1A. Financial Guardians of Minors

§ 2659. FINANCIAL GUARDIANSHIP; MINORS

(a) The Probate Division may appoint a financial guardian for a minor pursuant to this section if the minor is the owner of real or personal property. A financial guardian appointed pursuant to this section shall have the care and management of the estate of the minor but shall not have custody of the minor.

(b)(1) A parent or a person interested in the welfare of a minor may file a petition with the Probate Division of the Superior Court for the appointment of a guardian for a child. The petition shall state:

(A) the names and addresses of the parents, the child, and the proposed guardian;

(B) the proposed guardian's relationship to the child; and

(C) any real and personal property owned by the minor.

(2) A petition for financial guardianship of a minor under this section shall be served on all parties and interested persons as provided by Rule 4 of the Vermont Rules of Probate Procedure.

(c) The Probate Division shall schedule a hearing upon the filing of the petition and shall provide notice of the hearing to all parties.

(d) If the Court grants the petition for financial guardianship of the minor, the Court shall enter an order establishing a financial guardianship, naming the proposed guardian as the child's financial guardian, and specifying the powers and duties of the guardian.

(e) The duties of a financial guardian shall include the duty to:

(1) pursue, receive, and manage any property right of the minor's, including inheritances, insurance benefits, litigation proceeds, or any other real or personal property, provided the benefits or property shall not be expended without prior court approval;

(2) deposit any cash resources of the minor in accounts established for the guardianship, provided the cash resources of the minor shall not be comingled with the guardian's assets;

(3) responsibly invest and re-invest the cash resources of the minor;

(4) obtain court approval for expenditures of funds to meet extraordinary needs of the minor which cannot be met with other family resources;

(5) establish special needs trusts with court approval; and

(6) file an annual financial accounting with the Probate Division stating the funds received, managed, and spent on behalf of the minor.

Sec. 3. 14 V.S.A. chapter 111, subchapter 2, article 1A is redesignated as article 1B to read:

Article 1B. Permanent Guardianship for Minors

Sec. 4. 4 V.S.A. § 22 is amended to read:

§ 22. DESIGNATION AND SPECIAL ASSIGNMENT OF JUDICIAL OFFICERS AND RETIRED JUDICIAL OFFICERS

(a)(1) The ~~chief justice~~ Chief Justice may appoint and assign a retired ~~justice~~ Justice or judge with his or her consent or a ~~superior~~ Superior or Probate judge to a special assignment on the ~~supreme court~~ Supreme Court. The ~~chief justice~~ Chief Justice may appoint, and the ~~administrative judge~~ Administrative Judge shall assign, an active or retired ~~justice~~ Justice or a retired judge, with his or her consent, to any special assignment in the ~~superior court~~ Superior Court or the ~~judicial bureau~~ Judicial Bureau.

(2) The ~~administrative judge shall~~ Administrative Judge may appoint and assign a judge to any special assignment in the ~~superior court~~ Superior Court. As used in this subdivision, a judge shall include a Superior judge, a Probate judge, a Family Division magistrate, or a judicial hearing officer.

(b) The ~~administrative judge~~ Administrative Judge may appoint and assign a member of the Vermont ~~bar~~ Bar residing within the ~~state~~ State of Vermont to serve temporarily as:

(1) an acting judge in ~~superior court~~ Superior Court;

(2) an acting magistrate; ~~or~~

(3) an acting Probate judge; or

(4) an acting hearing officer to hear cases in the ~~judicial bureau~~ Judicial Bureau.

* * *

Sec. 5. 4 V.S.A. § 455 is amended to read:

§ 455. TRANSFER OF PROBATE PROCEEDINGS

(a) Any guardianship action filed in the ~~probate division of the superior court~~ Probate Division of the Superior Court pursuant to 14 V.S.A. chapter 111, subchapter 2, article 1 ~~of Title 14~~ and any adoption action filed in the ~~probate division~~ Probate Division pursuant to Title 15A may be transferred to the ~~family division of the superior court as provided in this section~~ Family Division of the Superior Court.

(b) ~~The family division~~ In an adoption action filed in the Probate Division pursuant to Title 15A, the Family Division shall order the transfer of the proceeding on motion of a party or on its own motion if it finds that the identity of the parties, issues, and evidence are so similar in nature to the parties, issues, and evidence in a proceeding pending in the ~~family division~~ Family Division that transfer of the probate action to the ~~family division~~ Family Division would expedite resolution of the issues or would best serve the interests of justice.

Sec. 6. REPEAL

14 V.S.A. §§ 2645 (appointment of guardian), 2651 (when minor refuses to choose), and 2653 (extent of guardian's control) are repealed.

Sec. 7. 13 V.S.A. § 4501 is amended to read:

§ 4501. LIMITATION OF PROSECUTIONS FOR CERTAIN CRIMES

* * *

(c) Prosecutions for any of the following offenses alleged to have been committed against a child under 18 years of age shall be commenced within 40 years after the commission of the offense, and not after:

(1) sexual assault;

(2) lewd and lascivious conduct;

(3) sexual exploitation of a minor as defined in subsection 3258(c) of this title~~; and~~

(4) lewd or lascivious conduct with a child; and

(5) manslaughter.

* * *

Sec. 8. EFFECTIVE DATE

This act shall take effect on September, 1, 2014.

(For text see House Journal February 20, 2014)

H. 690

An act relating to the definition of serious functional impairment

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

In Sec. 2, by striking out "July 1, 2014" and inserting in lieu thereof passage

(For text see House Journal March 14, 2014)

H. 699

An act relating to temporary housing

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

Sec. 1. 33 V.S.A. § 2103 is amended to read:

§ 2103. ELIGIBILITY

* * *

(f) An eligible participant for temporary housing shall not be required to furnish more than 30 percent of his or her income toward the cost of temporary

housing. The Secretary of Human Services may adopt rules as necessary, pursuant to 3 V.S.A. chapter 25, to implement this subsection.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(For text see House Journal March 19, 2014)

H. 795

An act relating to victim's compensation and restitution procedures

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

Sec. 1. 13 V.S.A. § 5362 is amended to read:

§ 5362. RESTITUTION UNIT

(a) A Restitution Unit is created within the Center for Crime Victim Services for purposes of ~~assuring~~ ensuring that crime victims receive restitution when it is ordered by the Court.

(b) The Restitution Unit shall administer the Restitution Fund established under section 5363 of this title.

(c) The Restitution Unit shall have the authority to:

(1) Collect restitution from the offender when it is ordered by the ~~court~~ Court under section 7043 of this title.

(2) ~~Bring an action to enforce~~ Enforce a restitution obligation as a civil judgment under section 7043 of this title. The Restitution Unit shall enforce restitution orders issued prior to July 1, 2004 pursuant to the law in effect on the date the order is issued.

(3)(A) Share and access information, including information maintained by the National Criminal Information Center, consistent with Vermont and federal law, from the Court, the Department of Corrections, the Department of Motor Vehicles, the Department of Taxes, ~~and~~ the Department of Labor, and law enforcement agencies in order to carry out its collection and enforcement functions. The Restitution Unit, for purposes of establishing and enforcing restitution payment obligations, is designated as a law enforcement agency for the sole purpose of requesting and obtaining access to information needed to identify or locate a person, including access to information maintained by the National Criminal Information Center.

(B) Provide information to the Department of Corrections concerning supervised offenders, including an offender's restitution payment history and

balance, address and contact information, employment information, and information concerning the Restitution Unit's collection efforts.

(C) The Restitution Unit is specifically authorized to collect, record, use, and disseminate Social Security numbers as needed for the purpose of collecting restitution and enforcing restitution judgment orders issued by the Court, provided that the Social Security number is maintained on a separate form that is confidential and exempt from public inspection and copying under the Public Records Act.

(4) Investigate and verify losses as determined by the Restitution Unit, including losses that may be eligible for advance payment from the Restitution Special Fund, and verify the amount of insurance or other payments paid to or for the benefit of a victim, and reduce the amount collected or to be collected from the offender or disbursed to the victim from the Crime Victims' Restitution Special Fund accordingly. The Restitution Unit, when appropriate, shall submit to the ~~court~~ Court a proposed revised restitution order ~~stipulated to by the victim and the unit~~, with copies provided to the victim and the offender. No hearing shall be required~~, and the Court shall amend the judgment order to reflect the amount stipulated to by the victim and the Restitution Unit~~.

(5) Adopt such administrative rules as are reasonably necessary to carry out the purposes set forth in this section.

(6)(A) Report offenders' payment histories to credit reporting agencies~~, provided that the Unit shall not report information regarding offenders who are incarcerated~~. The Unit shall not make a report under this subdivision (6) until after it has notified the offender of the proposed report by first class mail or other like means to give actual notice, and provided the offender a period not to exceed 20 days to contest the accuracy of the information with the Unit. The Unit shall immediately notify each credit bureau organization to which information has been furnished of any increases or decreases in the amount of restitution owed by the offender.

(B) Obtain offenders' credit reports from credit reporting agencies. The Unit shall not obtain a report under this subdivision (6) until after it has notified the offender by first class mail or other means likely to give actual notice of its intent to obtain the report.

(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.

(8) Contract with one or more sheriff's departments for the purposes of serving process, warrants, demand letters, and mittimuses in restitution cases, and contract with one or more law enforcement agencies or other investigators

for the purpose of investigating and locating offenders and enforcing restitution judgment orders.

(9) Collect from an offender subject to a restitution judgment order all fees and direct costs, including reasonable attorney's fees, incurred by the Restitution Unit as a result of enforcing the order and investigating and locating the offender.

Sec. 2. 13 V.S.A. § 5363 is amended to read:

§ 5363. CRIME VICTIM'S RESTITUTION SPECIAL FUND

* * *

(d)(1) The Restitution Unit is authorized to advance up to ~~$10,000.00~~ $5,000.00 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;

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

(D) is a natural person and has been referred to the Restitution Unit by a diversion program pursuant to 3 V.S.A. § 164a.

(2) The Restitution Unit may make advances of up to ~~$10,000.00~~ $5,000.00 under this subsection to the following persons or entities:

(A) A victim service agency approved by the Restitution Unit if the agency has advanced monies which would have been payable to a victim under subdivision (1) of this subsection.

(B) A victim who is a natural person or the natural person's legal representative in a case where the defendant, before or after an adjudication of guilt, enters into a drug court contract requiring payment of restitution.

(3) An advance under this subsection shall not be made to the government or to any governmental subdivision or agency.

(4) An advance under this subsection shall not be made to a victim who:

(A) fails to provide the Restitution Unit with the documentation necessary to support the victim's claim for restitution; ~~or~~

(B) violated a criminal law of this State which caused or contributed to the victim's material loss; or

(C) has crime-related losses that are eligible for payment from the Victim Compensation Special Fund.

(5) An advance under this subsection shall not be made for the amount of cash loss included in a restitution judgment order.

(6) An advance under this subsection shall not be made for:

(A) jewelry or precious metals; or

(B) luxury items or collectibles identified in rules adopted by the Unit pursuant to subdivision 5362(c)(5) of this title.

* * *

Sec. 3. 13 V.S.A. § 7043 is amended to read:

§ 7043. RESTITUTION

* * *

(e)(1) An order of restitution shall establish the amount of the material loss incurred by the victim, which shall be the restitution judgment order. In the event the offender is unable to pay the restitution judgment order at the time of sentencing, the Court shall establish a restitution payment schedule for the offender based upon the offender's current and reasonably foreseeable ability to pay, subject to modification under subsection ~~(k)~~(l) of this section. Notwithstanding 12 V.S.A. chapter 113 or any other provision of law, interest shall not accrue on a restitution judgment.

(2)(A) Every order of restitution shall:

(i) include the offender's name, address, telephone number, and Social Security number, provided that the Social Security number is redacted pursuant to the Vermont Rules for Public Access to Court Records;

(ii) include the name, address, and telephone number of the offender's employer; and

(iii) require the offender, until his or her restitution obligation is satisfied, to notify the Restitution Unit within 30 days if the offender's address, telephone number, or employment changes, including providing the name, address, and telephone number of each new employer.

(B) [Repealed.]

(3) An order of restitution may require the offender to pay restitution for an offense for which the offender was not convicted if the offender knowingly and voluntarily executes a plea agreement which provides that the offender pay restitution for that offense. A copy of the plea agreement shall be attached to

the restitution order.

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

(2) The Department of Corrections shall work collaboratively with the Restitution Unit to assist with the collection of restitution. The Department shall provide the Restitution Unit with information about the location and employment status of the offender.

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

(2)(A) If restitution was not requested at the time of sentencing as the result of an error by the State, or if expenses arose after the entry of a restitution order, ~~the State may file a motion with the sentencing court to reopen the restitution case in order to consider a~~ the victim may request ~~for~~ restitution payable from the Restitution Fund. Restitution ~~ordered~~ paid under this subdivision shall be payable from the Restitution Fund and shall not be payable by the offender. If the restitution is for expenses that arose after the entry of a restitution order, the restitution shall be capped at $1,000.00.

(B) A ~~motion~~ request under this subdivision shall be filed with the Restitution Unit within one year after the imposition of sentence or the entry of the restitution order.

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

(i)(1) The ~~court~~ Court shall transmit a copy of a restitution order and the plea agreement, if any, to the Restitution Unit, which shall make payment to the victim in accordance with section 5363 of this title.

(2) To the extent that the Victims Compensation Board has made payment to or on behalf of the victim in accordance with chapter 167 of this title, restitution, if imposed, shall be paid to the Restitution Unit, which shall make payment to the Victims Compensation Fund.

(j) The Restitution Unit may bring an action, including a small claims procedure, on a form approved by the Court Administrator, to enforce a

restitution judgment order entered by the Criminal Division of the Superior Court. The action shall be brought against ~~an~~ the offender in the Civil Division of the Superior Court of the unit where the offender resides or in the unit where the order was issued. In an action under this subsection, a restitution order issued by the Criminal Division of the Superior Court shall be enforceable in the Civil Division of the Superior Court or in a small claims procedure in the same manner as a civil judgment. Superior and Small Claims Court filing fees shall be waived for an action brought under this subsection~~, and for an action to renew a restitution judgment~~.

* * *

(m)(1) ~~If the offender fails to pay restitution as ordered by the court, the Restitution Unit may file an action to enforce the restitution order in Superior or Small Claims Court.~~ After an enforcement action is filed pursuant to subsection (j) of this section, any further proceedings related to the action shall be heard in the ~~court~~ Court where it was filed. The ~~court~~ Court shall set the matter for hearing and shall provide notice to the Restitution Unit, the victim, and the offender. Upon filing of a motion for financial disclosure, the Court may order the offender to appear at the hearing and disclose assets and liabilities and produce any documents the Court deems relevant.

(2) If the ~~court~~ Court determines the offender has failed to comply with the restitution order, the ~~court~~ Court may take any action the Court deems necessary to ensure the offender will make the required restitution payment, including:

~~(1)~~(A) amending the payment schedule of the restitution order;

~~(2)~~(B) ordering, in compliance with the procedures required in Rule 4.1 of the Vermont Rules of Civil Procedure, the disclosure, attachment, and sale of assets and accounts owned by the offender;

~~(3)~~(C) ordering trustee process against the offender's wages ~~withheld pursuant to subsection (n) of this section~~; or

~~(4)~~(D) ordering the suspension of any recreational licenses owned by the offender.

(3) If the Court finds that the offender has an ability to pay and willfully refuses to do so, the offender may be subject to civil contempt proceedings under 12 V.S.A. chapter 5.

* * *

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

(1) nondischargeable in the United States Bankruptcy Court to the

maximum extent provided under 11 U.S.C. §§ 523 and 1328; ~~and~~

(2) not subject to any statute of limitations; and

(3) not subject to the renewal of judgment requirements of 12 V.S.A. § 506.

* * *

Sec. 4. 13 V.S.A. § 5573 is amended to read:

§ 5573. COMPLAINT

(a) A complaint filed under this subchapter shall be supported by facts and shall allege that:

(1) the complainant has been convicted of a felony crime, been sentenced to a term of imprisonment, and served ~~all or any part~~ at least six months of the sentence in a correctional facility; and

(2) the complainant was exonerated ~~pursuant to subchapter 1 of this chapter~~ through the complainant's conviction being reversed or vacated, the information or indictment being dismissed, the complainant being acquitted after a second or subsequent trial, or the granting of a pardon.

(b) The court may dismiss the complaint, upon its own motion or upon motion of the ~~state~~ State, if it determines that the complaint does not state a claim for which relief may be granted.

Sec. 5. 13 V.S.A. § 5574 is amended to read:

§ 5574. BURDEN OF PROOF; JUDGMENT; DAMAGES

(a) A claimant shall be entitled to judgment in an action under this subchapter if the claimant establishes each of the following by ~~a preponderance of the~~ clear and convincing evidence:

(1) The complainant was convicted of a felony crime, was sentenced to a term of imprisonment, and served ~~all or any part~~ at least six months of the sentence in a correctional facility.

(2) ~~As a result of DNA evidence:~~

(A) The complainant's conviction was reversed or vacated, the complainant's information or indictment was dismissed, or the complainant was acquitted after a second or subsequent trial~~; or~~.

(B) The complainant was pardoned for the crime for which he or she was sentenced.

(3) ~~DNA evidence establishes that the complainant did not commit the~~

~~crime for which he or she was sentenced~~ The complainant is actually innocent of the felony or felonies that are the basis for the claim. As used in this chapter, a person is "actually innocent" of a felony or felonies if he or she did not engage in any illegal conduct alleged in the charging documents for which he or she was charged, convicted, and imprisoned.

(4) The complainant did not fabricate evidence or commit or suborn perjury during any proceedings related to the crime with which he or she was charged.

* * *

Sec. 6. VICTIM'S COMPENSATION FUND; BILLING OF HEALTH CARE FACILITIES IN FY 2015; SUNSET

(a) Notwithstanding 13 V.S.A. § 5356(c) and 32 V.S.A. § 1407, during fiscal year 2015, the Victim's Compensation Fund shall reimburse health care facilities and health care providers at 50 percent of the billed charges for compensation. The health care facility or health care provider shall not bill any balance to the crime victim.

(b) This section shall be repealed on July 1, 2015.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2014 and shall apply to restitution orders issued after that date.

(For text see House Journal March 11, 2014)

H. 809

An act relating to designation of new town centers and growth centers

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

First: In Sec. 3, 24 V.S.A. § 2793c, by striking out subdivisions (c)(5)(A) and (B) and inserting in lieu thereof two new subdivisions to be (c)(5)(A) and (B) to read:

(5) Each application for designation as a growth center shall include:

(A) a description from the regional planning commission in which each applicant municipality is located of the role of the proposed growth center in the region, and the relationship between the proposed growth center and neighboring communities;

(B) written confirmation from the applicable regional planning commission that the proposed growth center conforms with the regional plan for the region in which each applicant municipality is located;

Second: In Sec. 3, 24 V.S.A. § 2793c, in subdivision (c)(5)(D)(iii), by striking out "25" and inserting in lieu thereof 20.

Third: In Sec. 3, 24 V.S.A. § 2793c, in subdivision (d)(1)(A), by striking out "subdivision (B) of this subdivision (1)" and inserting in lieu thereof subsection (c) of this section.

Fourth: In Sec. 3, 24 V.S.A. § 2793c, by striking out subdivision (d)(6) in its entirety and inserting in lieu thereof a new subdivision (d)(6) to read:

(6) Designation decision. Within 90 days of the receipt of a completed application, after providing notice as required in the case of a proposed municipal plan or amendment to each person listed under subsection 4384(e) of this title and to the executive director of each adjacent regional planning commission, and after providing an opportunity for the public to be heard, the State Board formally shall designate a growth center if the State Board finds, in a written decision, that the growth center proposal meets the requirements of subsection (b) of this section. An application that complies with all of the requirements of subsection (b) of this section other than the size requirement set forth in subdivision (b)(1) may be approved by the State Board if the applicant presents compelling justification for deviating from the size requirement and provided that at least two-thirds but no fewer than seven of the members of the State Board present vote in favor of the application.

Fifth: In Sec. 6, 24 V.S.A. § 4382, by striking out subdivision (a)(2) in its entirety and inserting in lieu thereof a new subdivision (a)(2) to read:

(2) A land use plan:

(A) consisting of a map and statement of present and prospective land uses, indicating those areas proposed for forests, recreation, agriculture (using the agricultural lands identification process established in 6 V.S.A. § 8), residence, commerce, industry, public, and semi-public uses and open spaces reserved for flood plain, wetland protection, or other conservation purposes; ~~and~~

(B) setting forth the present and prospective location, amount, intensity, and character of such land uses and the appropriate timing or sequence of land development activities in relation to the provision of necessary community facilities and service; and

(C) identifying those areas, if any, proposed for designation under chapter 76A of this title, together with, for each area proposed for designation, an explanation of how the designation would further the plan's goals and the goals of section 4302 of this title, and how the area meets the requirements for the type of designation to be sought;

Sixth: By inserting a new Sec. 10 to read as follows:

Sec. 10. 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 $200.00 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.

(1) 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.

(2) A notice of violation issued under this chapter also shall state:

(A) the bylaw or municipal land use permit condition alleged to have been violated;

(B) the facts giving rise to the alleged violation;

(C) to whom appeal may be taken and the period of time for taking an appeal; and

(D) that failure to file an appeal within that period will render the notice of violation the final decision on the violation addressed in the notice.

(3) 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 $200.00, 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.

And by renumbering the remaining section to be numerically correct.

(For text see House Journal February 4, 2014)

Ordered to Lie

S. 91

An act relating to privatization of public schools.

Pending Question: Shall the House propose to the Senate to amend the bill as offered by Rep. Turner of Milton?