

# Senate Calendar

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FRIDAY, JANUARY 30, 2015

**SENATE CONVENES AT: 11:30 A.M.**

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**ACTION CALENDAR**

**NEW BUSINESS**

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 6.**

An act relating to technical corrections to civil and criminal procedure statutes.

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

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

Sec. 1. 13 V.S.A. § 1501 is amended to read:

§ 1501. ESCAPE AND ATTEMPTS TO ESCAPE

\* \* \*

(b)(1) A person ~~who~~ shall not, while in lawful custody:

~~(1) fails (A) fail~~ to return from work release to the correctional facility at the specified time, or visits other than the specified place, as required by the order issued in accordance with 28 V.S.A. § 753;

~~(2) fails (B) fail~~ to return from furlough to the correctional facility at the specified time, or visits other than the specified place, as required by the order issued in accordance with 28 V.S.A. § 808, 808a, 808b, or 808c;

~~(3) escapes or attempts (C) escape or attempt~~ to escape while on release from a correctional facility to do work in the service of such facility or of the Department of Corrections in accordance with 28 V.S.A. § 758; or

~~(4) escapes or attempts (D) escape or attempt~~ to escape from the Vermont State Hospital, or its successor in interest or a participating hospital, when confined by court order pursuant to chapter 157 of this title, or when transferred there pursuant to 28 V.S.A. § 703 and while still serving a sentence; ~~shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.~~

(2) A person who violates this subsection shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.

\* \* \*

Sec. 2. 13 V.S.A. § 5321 is amended to read:

§ 5321. APPEARANCE BY VICTIM

\* \* \*

(c) In accordance with ~~court~~ Court rules, at the sentencing hearing, the ~~court~~ Court shall ask if the victim is present and, if so, whether the victim would like to be heard regarding sentencing. ~~in~~ In imposing sentence, the ~~court~~ Court shall consider any views offered at the hearing by the victim. ~~if~~ If the victim is not present, the ~~court~~ Court shall ask whether the victim has expressed, either orally or in writing, views regarding sentencing and shall take those views into consideration in imposing sentence.

(d) At or before the sentencing hearing, the prosecutor's office shall instruct the victim of a listed crime, in all cases where the ~~court~~ Court imposes a sentence which includes a period of incarceration, that a sentence of incarceration is to the custody of the ~~commissioner~~ Commissioner of ~~corrections~~ Corrections and that the ~~commissioner~~ Commissioner of ~~corrections~~ Corrections has the authority to affect the actual time the defendant shall serve in incarceration through good time credit, furlough, work-release, and other early release programs. ~~in~~ In addition, the prosecutor's office shall explain the significance of a minimum and maximum sentence to the victim and shall also explain the function of parole and how it may affect the actual amount of time the defendant may be incarcerated.

\* \* \*

Sec. 3. 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 clear and convincing evidence:

\* \* \*

(2)(A) ~~The~~ 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~~ the complainant was pardoned for the crime for which he or she was sentenced.

\* \* \*

Sec. 4. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

(a) Possession and cultivation.

(1)(A) No person shall knowingly and unlawfully possess more than one ounce of marijuana or more than five grams of hashish or cultivate marijuana. For a first offense under this subdivision (A), a person shall be provided the opportunity to participate in the Court Diversion Program unless the prosecutor states on the record why a referral to the Court Diversion Program would not serve the ends of justice. A person convicted of a first offense under this subdivision shall be imprisoned not more than six months or fined not more than \$500.00, or both.

\* \* \*

(b) Selling or dispensing.

(1) A person knowingly and unlawfully selling marijuana or hashish shall be imprisoned not more than two years or fined not more than \$10,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing ~~one-half more than one~~ ounce ~~or more~~ of marijuana or ~~2.5 more than five~~ grams ~~or more~~ of hashish shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing one pound or more of marijuana or 2.8 ounces of hashish shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both.

\* \* \*

Sec. 5. 33 V.S.A. § 5308(a)(4) is amended to read:

(4) The custodial parent, guardian, or ~~guardian~~ custodian has abandoned the child.

Sec. 6. 2014 Acts and Resolves No. 126, Sec. 7 is amended to read:

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2014 and shall apply to restitution orders issued after that date; provided, however, that notwithstanding 1 V.S.A. § 214, Secs. 1, 3, 4, 5, and 6 shall also apply retroactively to restitution orders issued on or before July 1, 2014.

Sec. 7. 18 V.S.A. § § 4230a, 4230b, and 4230c are amended to read:

§ 4230a. MARIJUANA POSSESSION BY A PERSON 21 YEARS OF AGE OR OLDER; CIVIL VIOLATION

(a) A person 21 years of age or older who knowingly and unlawfully possesses or dispenses one ounce or less of marijuana or five grams or less of hashish commits a civil violation and shall be assessed a civil penalty as follows:

- (1) not more than \$200.00 for a first offense;
- (2) not more than \$300.00 for a second offense;
- (3) not more than \$500.00 for a third or subsequent offense.

(b)(1) Except as otherwise provided in this section, a person 21 years of age or older who possesses or dispenses one ounce or less of marijuana or five grams or less of hashish or who possesses paraphernalia for marijuana use shall not be penalized or sanctioned in any manner by the State or any of its political subdivisions or denied any right or privilege under State law.

(2) A violation of this section shall not result in the creation of a criminal history record of any kind.

\* \* \*

§ 4230b. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS OF AGE; FIRST OR SECOND OFFENSE; CIVIL VIOLATION

(a) Offense. Except as otherwise provided in section 4230c of this title, a person under 21 years of age who knowingly and unlawfully possesses or dispenses one ounce or less of marijuana or five grams or less of hashish commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance Abuse Safety Program. A person who fails to complete the program successfully shall be subject to:

(1) a civil penalty of \$300.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 90 days, for a first offense; and

(2) a civil penalty of not more than \$600.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 180 days, for a second offense.

\* \* \*

§ 4230c. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS OF AGE; THIRD OR SUBSEQUENT OFFENSE; CRIME

No person shall knowingly and unlawfully possess or dispense marijuana. A person under 21 years of age who knowingly and unlawfully possesses one ounce or less of marijuana or five grams or less of hashish commits a crime if the person has been adjudicated at least twice previously in violation of section 4230b of this title and shall be imprisoned not more than 30 days or fined not more than \$600.00, or both.

Sec. 8. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 4-1-0)

**CONCURRENT RESOLUTIONS FOR ACTION**

**H.C.R. 15 - 17** (For text of Resolutions, see Addendum to House Calendar for January 29, 2015)

**CONFIRMATIONS**

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Hal Cohen of North Middlesex – Secretary of the Agency of Human Services – By Sen. Lyons for the Committee on Health and Welfare. (1/22/15)

Maribeth Spellman of Richmond – Commissioner, Vermont Department of Human Resources – By Sen. Collamore for the Committee on Government Operations. (1/27/15)

James Kiehle of Brattleboro – Member of the State Labor Relations Board – By Sen. Balint for the Committee on Econ. Dev., Housing and General Affairs. (1/30/15)

Joshua Laughlin of Putney – Member of the Vermont Housing and Conservation Board – By Sen. Balint for the Committee on Econ. Dev., Housing and General Affairs. (1/30/15)

Sue Minter of Waterbury – Secretary, Agency of Transportation – By Sen. Westman for the Committee on Transportation. (2/3/15)

**PUBLIC HEARINGS**

**Tuesday, February 10, 2015** – House Chambers – 5:30 P.M. – 8:00 P.M. –  
Re: S. 31 Firearms; criminal background checks - Senate Committees on  
Judiciary and Health and Welfare.