

Senate Calendar

THURSDAY, FEBRUARY 26, 2015

SENATE CONVENES AT: 1:00 P.M.

TABLE OF CONTENTS

Page No.

ACTION CALENDAR

NEW BUSINESS

Third Reading

- S. 9** An act relating to improving Vermont's system for protecting children from abuse and neglect
Amendment - Sens. Sirotkin, Mullin and Balint 169

Committee Bill for Second Reading

- S. 108** An act relating to repealing the sunset on provisions pertaining to patient choice at end of life 171
By Committee on Health and Welfare (Sen. Ayer for the committee)

Second Reading

Favorable

- S. 71** An act relating to governance of the Vermont State Colleges
Education Report - Sen. Degree 171
- S. 97** An act relating to taxation of prewritten software
Finance Report - Sen. Ashe 172
- H. 194** An act relating to approval of amendments to the charter of the Town of St. Johnsbury
Government Operations Report - Sen. Benning 172

Favorable with Recommendation of Amendment

- S. 7** An act relating to bail determinations concerning a defendant charged with lewd and lascivious conduct with a child
Judiciary Report - Sen. Benning 172
- S. 13** An act relating to the Vermont Sex Offender Registry
Judiciary Report - Sen. Sears 175

CONCURRENT RESOLUTIONS FOR NOTICE

S.C.R. 4 (For text of Resolution, see Addendum to Senate Calendar
for February 26, 2015)..... 181

H.C.R. 47-59 (For text of Resolutions, see Addendum to House
Calendar for February 26, 2015) 181

ORDERS OF THE DAY

ACTION CALENDAR

NEW BUSINESS

Third Reading

S. 9.

An act relating to improving Vermont's system for protecting children from abuse and neglect.

**Amendment to S. 9 to be offered by Senators Sirotkin, Mullin and Balint
before Third Reading**

Senators Sirotkin, Mullin and Balint move to amend the bill by striking out Sec. 21 in its entirety and inserting in lieu thereof four new sections to be numbered Secs. 21, 22, 23 and 24 to read as follows:

* * * Establishing the Office of the Child Protection Advocate * * *

Sec. 21. 3 V.S.A. chapter 45, subchapter 4 is redesignated to read:

Subchapter 4. Departments, Divisions, Offices, and Boards

Sec. 22. 3 V.S.A. § 2284 is added to read:

§ 2284. OFFICE OF THE CHILD PROTECTION ADVOCATE

(a) The Office of the Child Protection Advocate is created in the Agency of Administration.

(b) The Office shall be headed by the Child Protection Advocate, who shall be an individual with expertise and experience relevant to protecting children from abuse and neglect. The Vermont Child Protection Advocate shall be appointed:

(1) by the Governor subject to the advice and consent of the Senate; and

(2) for a term of four years and until his or her successor is appointed and qualified.

(c) The Child Protection Advocate shall:

(1) investigate and resolve complaints on behalf of persons involved in the child protection system;

(2) analyze and monitor the development and implementation of federal, State, and local laws, and of regulations and policies relating to child protection and to the Department for Children and Families, and make recommendations as he or she deems appropriate;

(3) provide information to the public, agencies, legislators, and others regarding problems and concerns of persons involved in the child protection system, including recommendations relating to such problems and concerns;

(4) promote the development and involvement of citizen organizations in the work of the Office and in protecting children from abuse and neglect;

(5) train persons and organizations in advocating for the interests of children and persons involved in the protecting children from abuse and neglect;

(6) develop and implement a reporting system to collect and analyze information relating to complaints by persons involved in the child protection system; and

(7) submit to the General Assembly and the Governor on or before January 15 of each year a report on the Office's activities and recommendations.

(d) The Child Protection Advocate may:

(1) hire or contract with persons to fulfill the purposes of this chapter;

(2) have appropriate access to review the records of State agencies;

(3) pursue administrative, judicial, or other remedies on behalf of persons involved in the child protection system;

(4) delegate to employees of the Office any part of his or her authority;

(5) adopt rules, policies, and procedures necessary to carry out the provisions of this chapter, including prohibiting any employee or immediate family member of any employee from having any interest which creates a conflict of interest in carrying out the Advocate's responsibilities under this chapter;

(6) take any other action necessary to fulfill the purposes of this chapter.

(e) All State agencies shall comply with reasonable requests of the Child Protection Advocate for records, information, and assistance.

(f) No civil liability shall attach to the Child Protection Advocate or any employee of the Office of the Child Protection Advocate for good faith performance of the duties imposed by this chapter.

(g) A person who intentionally hinders the Child Protection Advocate or a representative of the Office of the Child Protection Advocate acting pursuant to this chapter shall be imprisoned not more than one year or fined not more than \$5,000.00, or both.

(h) A person who takes discriminatory, disciplinary, or retaliatory action against any person for any communication made, or information disclosed, to the Child Protection Advocate or to a representative of the Office of the Child Protection Advocate to aid the Advocate in carrying out his or her duties, unless the communication or disclosure was done maliciously or without good faith, shall be imprisoned not more than one year or fined not more than \$5,000.00, or both.

Sec. 23. AGENCY OF HUMAN SERVICES; FUNDING THE OFFICE OF THE CHILD PROTECTION ADVOCATE

In the event the FY16 Appropriations Act does not fund the Office of the Child Protection Advocate as set forth in 3 V.S.A. § 2284, the Secretary of the Agency of Human Services shall identify and secure federal, private, or non-state resources to fund the Office of the Child Protection Advocate.

* * * Effective Dates * * *

Sec. 24. EFFECTIVE DATES

This act shall take effect on July 1, 2015, except:

(1) this section, Sec. 17 (Joint Legislative Child Protection Oversight Committee) and Sec. 18 (Department for Children and Families; policies, procedures, and practices) shall take effect on passage; and

(2) in the event that the FY16 Appropriations Act does not fund the Office of the Child Protection Advocate created in sections 21-22 of this Act, sections 21-22 shall take effect upon the Secretary of the Agency of Human Services identifying and securing at least \$100,000 in federal, private, or non-state sourced resources to fund the Office of the Child Protection Advocate.

Committee Bill for Second Reading

S. 108.

An act relating to repealing the sunset on provisions pertaining to patient choice at end of life.

By the Committee on Health & Welfare. (Senator Ayer for the committee.)

Second Reading

Favorable

S. 71.

An act relating to governance of the Vermont State Colleges.

Reported favorably by Senator Degree for the Committee on Education.

(Committee vote: 6-0-0)

S. 97.

An act relating to taxation of prewritten software.

Reported favorably by Senator Ashe for the Committee on Finance.

(Committee vote: 6-0-1)

H. 194.

An act relating to approval of amendments to the charter of the Town of St. Johnsbury.

Reported favorably by Senator Benning for the Committee on Government Operations.

(Committee vote: 4-0-1)

(No House amendments)

Favorable with Recommendation of Amendment

S. 7.

An act relating to bail determinations concerning a defendant charged with lewd and lascivious conduct with a child.

Reported favorably with recommendation of amendment by Senator Benning 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. § 2602(f) is added to read:

(f) Conduct constituting the offense of lewd and lascivious conduct with a child under this section shall be considered a violent act for the purpose of determining bail under chapter 229 of this title.

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

§ 7554. RELEASE PRIOR TO TRIAL

(a) Any person charged with an offense, other than a person held without bail under section 7553 or 7553a of this title, shall at his or her appearance before a judicial officer be ordered released pending trial in accordance with this section.

(1) The ~~person~~ defendant shall be ordered released on personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the judicial officer determines that such a release will not reasonably ~~assure~~ ensure the appearance of the person as required. In determining whether the ~~person~~ defendant presents a

risk of nonappearance, the judicial officer shall consider, in addition to any other factors, the seriousness of the offense charged and the number of offenses with which the person is charged. If the officer determines that such a release will not reasonably ~~assure~~ ensure the appearance of the ~~person~~ defendant as required, the officer shall, either in lieu of or in addition to the above methods of release, impose the least restrictive of the following conditions or the least restrictive combination of the following conditions ~~which that~~ will reasonably ~~assure~~ ensure the appearance of the ~~person~~ defendant as required:

(A) ~~place the person~~ Place the defendant in the custody of a designated person or organization agreeing to supervise him or her if the defendant is charged with an offense that is not a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301;

(B) ~~place~~ Place restrictions on the travel, association, or place of abode of the ~~person~~ defendant during the period of release;

(C) ~~require the person~~ Require the defendant to participate in an alcohol or drug treatment program. The judicial officer shall take into consideration the defendant's ability to comply with an order of treatment and the availability of treatment resources;

(D) ~~require~~ Require the execution of a secured appearance bond in a specified amount and the deposit with the clerk of the Court, in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the appearance of the ~~person~~ defendant as required;

(E) ~~require~~ Require the execution of a surety bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;

(F) ~~impose~~ Impose any other condition found reasonably necessary to ~~assure~~ ensure appearance as required, including a condition requiring that the ~~person~~ defendant return to custody after specified hours.

(2) If the judicial officer determines that conditions of release imposed to ~~assure~~ ensure appearance will not reasonably protect the public, the judicial officer may ~~in addition~~ impose in addition the least restrictive of the following conditions or the least restrictive combination of the following conditions ~~which that~~ will reasonably ~~assure~~ ensure protection of the public:

(A) ~~place the person~~ Place the defendant in the custody of a designated person or organization agreeing to supervise him or her; if the defendant is charged with an offense that is not a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301.

(B) ~~place~~ Place restrictions on the travel, association, or place of abode of the ~~person~~ defendant during the period of release;

(C) ~~require the person~~ Require the defendant to participate in an alcohol or drug treatment program. The judicial officer shall take into consideration the defendant's ability to comply with an order of treatment and the availability of treatment resources;

(D) ~~impose~~ Impose any other condition found reasonably necessary to protect the public, except that a physically restrictive condition may only be imposed in extraordinary circumstances;

(E) ~~if the person~~ If the defendant is a State, county, or municipal officer charged with violating section 2537 of this title, the Court may suspend the officer's duties in whole or in part, if the Court finds that it is necessary to protect the public.

* * *

Sec. 3. 28 V.S.A. § 808(f) is amended to read:

(f) While appropriate community housing is an important consideration in release of offenders, the Department ~~of Corrections~~ shall not use lack of housing as the sole factor in denying furlough to offenders who have served at least their minimum sentence for a nonviolent misdemeanor or nonviolent felony provided that public safety and the best interests of the offender will be served by reentering the community on furlough. The Department shall adopt rules to implement this subsection.

Sec. 4. COMMUNITY HOUSING PLAN

On or before October 15, 2015, the Department of Corrections shall report to the Joint Legislative Corrections Oversight Committee regarding a plan for reducing the growing number of nonviolent offenders being held past their minimum sentence because of the lack of community housing and regarding its proposal for rulemaking. The report shall include data for offenders who are held past their minimum sentence for lack of housing, the offenders' risk levels, and whether they were released and reincarcerated due to violating conditions.

Sec. 5. EFFECTIVE DATES

(a) Secs. 1 and 2 shall take effect on July 1, 2015.

(b) This section and Secs. 3 and 4 shall take effect on passage.

(Committee vote: 5-0-0)

S. 13.

An act relating to the Vermont Sex Offender Registry.

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. § 5401(10)(B)(viii) is amended to read:

(viii) sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in ~~13 V.S.A. § 2635a~~ 13 V.S.A. § 2652;

Sec. 2. 13 V.S.A. § 5403 is amended to read:

§ 5403. ~~REPORTING UPON CONVICTION TO DEPARTMENT OF~~
PUBLIC SAFETY

(a) Upon conviction and prior to sentencing, the ~~court~~ Court shall order the sex offender to provide the ~~court~~ Court with the following information, which the ~~court~~ Court shall forward to the ~~department~~ Department forthwith:

- (1) name;
- (2) date of birth;
- (3) ~~general physical description~~;
- (4) current address;
- (5)(4) Social Security number;
- (6) ~~fingerprints~~;
- (7) ~~current photograph~~;
- (8)(5) current employment; and

(9)(6) name and address of any postsecondary educational institution at which the sex offender is enrolled as a student.

(b) Within 10 days after sentencing, the ~~court~~ Court shall forward to the ~~department~~ Department:

(1) the sex offender's conviction record, including offense, date of conviction, sentence and any conditions of release or probation;

(2) an order issued pursuant to section 5405a of this title, on a form developed by the Court Administrator, that the defendant comply with Sex Offender Registry requirements.

(c) The Departments of Corrections and of Public Safety shall jointly develop a process for the Department of Corrections to notify the Department of Public Safety when an offender who is under Department of Corrections supervision is required to be placed on the Sex Offender Registry because of a conviction that occurred in another jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court. The report shall include the offense of which the defendant was convicted that requires the placement of his or her name on the Registry.

Sec. 3. 13 V.S.A. § 5405a is added to read:

§ 5405a. COURT DETERMINATION OF SEX OFFENDER REGISTRY REQUIREMENTS

(a)(1) The Court shall determine at sentencing whether Sex Offender Registry requirements apply to the defendant.

(2) If the State and the defendant do not agree as to the applicability of Sex Offender Registry requirements to the defendant, the State shall file a motion setting forth the Sex Offender Registry requirements applicable to the defendant within 10 days of the entry of a guilty plea. To the extent the defendant opposes the motion, the State and the defendant shall present evidence at the sentencing as to the applicability of Sex Offender Registry requirements to the defendant.

(b) The Court shall consider the following when determining under this section whether Sex Offender Registry requirements apply to the defendant:

(1) the report issued pursuant to subsection 5403(c) of this title;

(2) the presentence investigation report regarding the offense for which the defendant is being sentenced;

(3) the Court's own judgment of conviction and any evidence that was presented at trial; and

(4) any other evidence admitted at sentencing and deemed relevant by the Court to the defendant's registry status.

(c) The State shall bear the burden of proving by a preponderance of the evidence the applicability of Sex Offender Registry requirements to the defendant under this section.

(d) Within 10 days after the sentencing or the hearing held pursuant to subdivision (a)(2) of this section, the Court shall issue an order determining whether Sex Offender Registry requirements apply to the defendant. The order shall include:

(1) the offense of which the defendant was convicted that requires the placement of his or her name on the Sex Offender Registry;

(2) any prior convictions that affect:

(A) the defendant's Sex Offender Registry Status;

(B) the length of time that the defendant is required to register as a sex offender; or

(C) whether information regarding the defendant is required to be electronically posted on the Internet under section 5411a of this title;

(3) the length of time that the defendant is required to register as a sex offender;

(4) whether the defendant is designated as a sexually violent predator under section 5405 of this title;

(5) whether the defendant was immediately released or remanded to the custody of the Department of Corrections; and

(6) whether information regarding the defendant is required to be electronically posted on the Internet under section 5411a of this title.

Sec. 4. 13 V.S.A. § 5407 is amended to read:

§ 5407. SEX OFFENDER'S RESPONSIBILITY TO REPORT

* * *

(f) A person required to register as a sex offender under this subchapter shall continue to comply with this section for the life of that person, except during periods of incarceration, if that person:

* * *

(2) has been convicted of a sexual assault as defined in section 3252 of this title or aggravated sexual assault as defined in section 3253 of this title, or a comparable offense in another jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court; however, if a person convicted under section 3252 is not more than six years older than the victim of the assault and if the victim is 14 years of age or older, then the offender shall not be required to register for life if the age of the victim was the basis for the conviction;

* * *

Sec. 5. 13 V.S.A. § 5416 is added to read:

§ 5416. PERSONS SUBJECT TO ERRONEOUS SEX OFFENDER
REGISTRY REQUIREMENTS; PETITION TO CORRECT

(a) A person may petition the Court for an order declaring that the person has been inadvertently subject to erroneous Sex Offender Registry requirements and directing the Department of Public Safety to correct the error. The petitioner shall provide notice of the petition to the State's Attorney or the Attorney General, who shall be the respondent in the matter.

(b) A petition filed under this section shall include:

(1) the Court's order issued under subdivision 5403(b)(2) of this title to comply with Sex Offender Registry requirements, if available; and

(2) the factual basis for the petitioner's allegation that he or she was subject to an erroneous sex offender registry requirement.

(c) The Court shall grant a petition filed under this section if it finds that the petitioner has demonstrated by a preponderance of the evidence that he or she was by Court order subject to an erroneous sex offender registry requirement. As used in this subsection, "erroneous sex offender registry requirement" includes the person's name being erroneously placed on the Sex Offender Registry or the Internet Sex Offender Registry, or the person being erroneously subject to lifetime registration under subsection 5407(f) of this title.

(d) If a petition filed under this section is granted, the Court shall enter an order declaring that the person had been inadvertently subject to erroneous Sex Offender Registry requirements. The Court shall provide the order to the Department of Public Safety and direct the Department to take any action necessary to correct the error, including, if appropriate, removing the person's name from the Sex Offender Registry and the Internet Sex Offender Registry.

(e)(1) If the Court denies a petition filed under this section, no further petition shall be filed by the person with respect to the alleged error.

(2) This subsection shall not apply if the petition is based on:

(A) newly discovered evidence;

(B) an expungement order issued under chapter 230 of this title;

(C) a successful petition under chapter 182 of this title (innocence protection); or

(D) a successful petition for postconviction relief.

Sec. 6. 2009 Acts and Resolves No. 58, Sec. 28 is amended to read:

Sec. 28. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except as follows:

~~(1) that~~ Secs. 22 and 26 of this act shall take effect on July 2, 2009.

~~(2) Sec. 14 of this act shall take effect July 1, 2010, provided that Sec. 14 shall not take effect until the state auditor, in consultation with the department of public safety and the department of information and innovation technology, has provided a favorable performance audit regarding the Internet sex offender registry to the senate and house committees on judiciary, the house committee on corrections and institutions, and the joint committee on corrections oversight.~~

Sec. 7. REPEAL

2009 Acts and Resolves No. 58, Sec. 14 (electronic posting of offender addresses on Sex Offender Registry) is repealed.

Sec. 8. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

* * *

(b) The Department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

- (1) the offender's name and any known aliases;
- (2) the offender's date of birth;
- (3) a general physical description of the offender;
- (4) a digital photograph of the offender;
- (5) the offender's town of residence;

(6) the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:

(A) the Department determines that all the information to be electronically posted about the offender is correct; and

(B)(i) the offender has been designated as high-risk by the department of corrections pursuant to section 5411b of this title;

(ii) the offender has not complied with sex offender treatment;

(iii) there is an outstanding warrant for the offender's arrest;

(iv) the offender is subject to the registry for a conviction of a sex offense against a child under 13 years of age; or

(v) the offender's name has been electronically posted for an offense committed in another jurisdiction which required the person's address to be electronically posted in that jurisdiction;

~~(6)~~(7) the date and nature of the offender's conviction;

~~(7)~~(8) if the offender is under the supervision of the Department of Corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;

~~(8)~~(9) whether the offender complied with treatment recommended by the department of corrections;

~~(9)~~(10) a statement that there is an outstanding warrant for the offender's arrest, if applicable; and

~~(10)~~(11) the reason for which the offender information is accessible under this section.

* * *

~~(d) An offender's street address shall not be posted electronically. The identity of a victim of an offense that requires registration shall not be released.~~

* * *

Sec. 9. EFFECTIVE DATES

(a) This act shall take effect on July 1, 2015, except as provided in subsection (b) of this section.

(b)(1) Sec. 8 of this act shall take effect on the date the Department of Public Safety reports to the General Assembly that the Sex Offender Registry has:

(A) no critical errors; and

(B) an error rate of ten percent or less for errors that are not critical errors.

(2) As used in this subsection, "critical error" means one of the following errors:

(A) An offender's name should be on the Sex Offender Registry or the Internet Sex Offender Registry but it is not.

(B) An offender's name should not be on the Sex Offender Registry or the Internet Sex Offender Registry but it is.

(C) An offender's name is scheduled to be posted on the Sex Offender Registry or the Internet Sex Offender Registry for an incorrect length of time.

(Committee vote: 5-0-0)

CONCURRENT RESOLUTIONS FOR NOTICE

S.C.R. 4 (For text of Resolution, see Addendum to Senate Calendar for February 26, 2015)

H.C.R. 47-59 (For text of Resolutions, see Addendum to House Calendar for February 26, 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.

Harold Eaton, Jr. of Woodstock – Associate Justice, Vermont Supreme Court – By Sen. Nitka for the Committee on Judiciary. (2/27/15)

FOR INFORMATION ONLY

CROSSOVER DEADLINES

The Senate Rules Committee established the following Crossover deadlines:

(1) All **Senate** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 13, 2015**, and filed with the Secretary of the Senate so that they may be placed on the Calendar for Notice the next legislative day.

(2) All **Senate** bills referred pursuant to Senate Rule 31 to the Committees on Appropriations and Finance must be reported out by the last of those committees on or before **Friday, March 20, 2015**, and filed with the Secretary of the Senate so that they may be placed on the Calendar for Notice the next legislative day.

These deadlines may be waived for any bill or committee only with the consent of the Committee on Rules.

Note: Pursuant to Senate Rule 44A, the Senate will not act on House bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

Exceptions to the foregoing deadlines include the major money bills (Appropriations “Big Bill”, Transportation Spending Bill, Capital Construction Bill, and Miscellaneous Tax Bill).