

# Senate Calendar

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FRIDAY, FEBRUARY 27, 2015

SENATE CONVENES AT: 9:00 A.M.

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## TABLE OF CONTENTS

Page No.

### ACTION CALENDAR

#### CONSIDERATION POSTPONED UNTIL MARCH 11, 2015

##### Committee Bill for Second Reading

- S. 108** An act relating to repealing the sunset on provisions pertaining to patient choice at end of life ..... 183  
By the Committee on Health and Welfare

### NEW BUSINESS

#### Third Reading

- S. 7** An act relating to bail determinations concerning a defendant charged with lewd and lascivious conduct with a child ..... 183
- S. 13** An act relating to the Vermont Sex Offender Registry ..... 183
- S. 71** An act relating to governance of the Vermont State Colleges ..... 183
- S. 97** An act relating to taxation of prewritten software..... 183
- H. 194** An act relating to approval of amendments to the charter of the Town of St. Johnsbury ..... 183

### NOTICE CALENDAR

#### Second Reading

##### Favorable with Recommendation of Amendment

- S. 105** An act relating to home improvement contracts  
Econ. Dev., Housing and General Affairs Report - Sen. Cummings ..... 184

##### House Proposal of Amendment

- S. 6** An act relating to technical corrections to civil and criminal procedure statutes ..... 187

**CONCURRENT RESOLUTIONS FOR ACTION**

**S.C.R. 4** (For text of Resolution, see Addendum to Senate Calendar  
for February 26, 2015)..... 189

**H.C.R. 47-59** (For text of Resolutions, see Addendum to House  
Calendar for February 26, 2015) ..... 189

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**ORDERS OF THE DAY**

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**ACTION CALENDAR**

**CONSIDERATION POSTPONED UNTIL MARCH 11, 2015**

**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 and Welfare.

**PENDING ACTION:** Second Reading.

**NEW BUSINESS**

**Third Reading**

**S. 7.**

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

**S. 13.**

An act relating to the Vermont Sex Offender Registry.

**S. 71.**

An act relating to governance of the Vermont State Colleges.

**S. 97.**

An act relating to taxation of prewritten software.

**H. 194.**

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

## NOTICE CALENDAR

### Second Reading

#### Favorable with Recommendation of Amendment

#### S. 105.

An act relating to home improvement contracts.

**Reported favorably with recommendation of amendment by Senator Cummings for the Committee on Economic Development, Housing & General Affairs.**

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. 9 V.S.A. chapter 102 is amended to read:

#### CHAPTER 102. CONSTRUCTION CONTRACTS

#### § 4001. DEFINITIONS

As used in this chapter:

(1) “Contractor” means a person or entity which contracts with an owner to perform work, or provide materials or machinery necessary to perform work on real property.

(2) “Work” means:

(A) to build, alter, repair, or demolish any improvement on, connected with, or on or beneath the surface of any real property, or to excavate, clear, grade, fill, or landscape any real property or to construct driveways, private roadways, highways and bridges, drilled wells, septic, sewage systems, utilities, including trees and shrubbery, or to furnish materials, for any of such purposes, or to perform any labor upon real property; ~~and. “Work” also includes~~

(B) to provide any design or other professional or skilled services rendered by architects, engineers, land surveyors, landscape architects, and construction managers.

(3) “Owner” means a person or entity having an interest in real property on which work is performed, if the person or entity has agreed to or requested such work. “Owner” includes successors in interest of the owner and agents of the owner acting within their authority. “Owner” shall also include the State of Vermont and instrumentalities and subdivisions of the State of Vermont including municipalities and school districts having an interest in such real property.

(4) “Real property” means real estate, including lands, leaseholds, tenements and hereditaments, and improvements placed thereon.

(5) “Construction contract” means any agreement, whether written or oral, to perform work on any real property located within the State of Vermont.

(6) “Subcontractor” means any person or entity which has contracted to perform work, or provide materials or machinery necessary to perform work for a contractor or another subcontractor in connection with a construction contract.

(7) “Delivery” means receipt by addressee, including first class, registered, or certified mail, hand delivered or transmitted by facsimile machine. Mail, properly addressed, shall be deemed delivered three days from the day it was sent.

(8) “Billing period” means the period agreed to by the parties or, in the absence of an agreement, the calendar month within which work is performed.

(9) “Residential home improvement contract” means a contract between a contractor and an owner for work on residential real estate where the estimated value of the work and materials exceeds \$5,000.00.

(10) “Residential real estate” means a residential structure with one to four dwelling units and the real property on which it is constructed.

\* \* \*

#### § 4010. RESIDENTIAL HOME IMPROVEMENT CONTRACTS

(a) Writing required. A residential home improvement contract, and any amendment to the contract, shall be in writing.

(b) Required provisions. A residential home improvement contract shall include the following:

(1) Contract price. One of the following provisions for the price of the contract:

(A) a maximum price for all work and materials;

(B) a statement that billing and payment will be made on a time and materials basis, not to exceed a maximum price; or

(C) a statement that billing and payment will be made on a time and materials basis and that there is no maximum price.

(2) Work dates. A start date and a completion date for work.

(3) Scope of work. A description of the work to be performed and a description of the materials to be used.

(4) Warranty. A provision that reads: “In addition to any additional warranties agreed to by the parties, the contractor warrants that his or her work is free from faulty materials and is performed in a skillful manner according to the standards of the building code applicable for this location.”

(5) Change order.

(A) Unless a residential home improvement contract specifies that billing and payment will be made on a time and materials basis and that there is no maximum price, subject to subdivision (5)(B) of this subsection, a provision that the contractor shall not perform any work or procure materials in excess of the maximum price of the contract without prior written approval of the owner.

(B) The contract may provide that an owner can approve a change order verbally or by electronic communication, provided that the owner and contractor shall memorialize the approval in a signed writing within three days of the approval.

(c) Down payment. Unless a residential home improvement contract specifies that billing and payment will be made on a time and materials basis and that there is no maximum price, the contract may require a down payment of up to one-third of the maximum price of the contract, or the price of materials, whichever is greater.

(d) Enforcement and remedies.

(1) A residential home improvement contract shall not include a binding arbitration requirement or any other provision under which an owner waives his or her right to pursue civil remedies to enforce the contract or resolve a dispute with the contractor.

(2) A contract that does not comply with the provisions of this section shall be unenforceable against an owner.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on January 1, 2016.

(Committee vote: 5-0-0)

## House Proposal of Amendment

### S. 6.

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

The House proposes to the Senate to amend the bill by striking all out 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 elope or attempt to escape elope~~ from the Vermont ~~State Hospital, or its successor in interest~~ Psychiatric Care Hospital 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.

\* \* \*

(d) As used in this section:

\* \* \*

~~(3) "Successor in interest" shall mean the mental health hospital owned and operated by the State that provides acute inpatient care and replaces the Vermont State Hospital. [Repealed.]~~

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 of corrections~~ Commissioner of Corrections and that the ~~commissioner of corrections~~ Commissioner of 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. 33 V.S.A. § 5308(a)(4) is amended to read:

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



Sec. 5. 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. 6. EFFECTIVE DATE

This act shall take effect on passage.

**CONCURRENT RESOLUTIONS FOR ACTION**

**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).**