

Senate Calendar

THURSDAY, APRIL 21, 2016

SENATE CONVENES AT: 1:00 P.M.

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ACTION CALENDAR

CONSIDERATION POSTPONED TO APRIL 21, 2016

Second Reading

Proposed Amendment to the Constitution

PROPOSAL 1

(On Action Calendar for Second Reading pursuant to Rule 77)

Offered by Senator Benning

Subject: Declaration of rights; right to privacy.

PROPOSAL 1

Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont to specifically provide that each person has a right to privacy, including the right to keep personal information private; to communicate with others privately; and to make decisions concerning his or her body.

Sec. 2. Article 22 of Chapter I of the Vermont Constitution is added to read:

Article 22. [RIGHT TO PRIVACY]

That each person has a right to privacy, including the right to keep personal information private; to communicate with others privately; and to make decisions concerning his or her body.

Sec. 3. EFFECTIVE DATE

The amendment set forth in Sec. 2 shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2018 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

Reported favorably with recommendation of amendment by Senator Benning for the Committee on Government Operations.

The Committee recommends that the proposal be amended by striking out the proposal in its entirety and inserting in lieu thereof the following:

PROPOSAL 1

Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont specifically to provide that each individual has a right to privacy, including the right to keep personal information private; to communicate with others privately; and to make decisions concerning his or her body.

Sec. 2. Chapter I, Article 22 of the Vermont Constitution is added to read:

Article 22. [RIGHT TO PRIVACY]

That each individual has a right to privacy that shall not be infringed without the showing of a compelling State interest. This right includes the individual's right to keep personal information private; to communicate with others privately; and to make decisions concerning his or her body. This section shall not be construed to modify the public's right of access to public records and open meetings as provided by law.

Sec. 3. EFFECTIVE DATE

The amendment set forth in Sec. 2 shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2018 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

(Committee vote: 5-0-0)

NEW BUSINESS

Third Reading

H. 112.

An act relating to access to financial records in adult protective services investigations.

H. 171.

An act relating to restrictions on the use of electronic cigarettes.

Proposal of amendment to H. 171 to be offered by Senators Ashe and White before Third Reading

Senators Ashe and White move to amend the Senate proposal of amendment as follows

First: In Sec. 2, 18 V.S.A. § 1421, in subdivision (b)(4), by designating the existing language to be subdivision (A) and by adding a subdivision (B) to read as follows:

(B) The prohibition on possession of lighted tobacco products and use of tobacco substitutes in a workplace shall not apply to the sleeping quarters and adjoining rooms of an owner-operated lodging establishment that does not have employees who work inside the building.

Second: In Sec. 4, 18 V.S.A. § 1742, in subdivision (a)(2), following the word “guests”, by inserting before the semicolon “; provided, however, that possession of lighted tobacco products and use of tobacco substitutes is permitted in the sleeping quarters and adjoining rooms of an owner-operated lodging establishment that have employees who work inside the building”

Third: In Sec. 4, 18 V.S.A. § 1742, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) ~~The possession of lighted tobacco products in any form is prohibited on the grounds of any hospital or secure residential recovery facility owned or operated by the state, including all enclosed places in the hospital or facility and the surrounding outdoor property.~~

(1) The possession of lighted tobacco products and use of tobacco substitutes is prohibited in all enclosed indoor areas of hospitals and secure residential recovery facilities owned or operated by the State and residential facilities with which the State contracts to provide mental health services.

(2) Notwithstanding any provision of subsection (a) of this section to the contrary, the possession of lighted tobacco products and use of tobacco substitutes is permitted on the outdoor property surrounding hospitals and secure residential recovery facilities owned or operated by the State and residential facilities with which the State contracts to provide mental health services.

H. 280.

An act relating to amending the State Board of Education rules on school lighting requirements.

H. 595.

An act relating to potable water supplies from surface waters.

H. 608.

An act relating to solid waste management.

H. 622.

An act relating to obligations for reporting child abuse and neglect and cooperating in investigations of child abuse and neglect.

H. 677.

An act relating to the Restitution Unit.

H. 690.

An act relating to the practice of acupuncture by physicians, osteopaths, and physician assistants.

H. 829.

An act relating to water quality on small farms.

Second Reading

Favorable

H. 580.

An act relating to conservation easements.

Reported favorably by Senator MacDonald for the Committee on Natural Resources and Energy.

(Committee vote: 3-0-2)

(No House amendments)

Favorable with Proposal of Amendment

H. 95.

An act relating to jurisdiction over delinquency proceedings by the Family Division of the Superior Court.

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

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Effective July 1, 2018 * * *

Sec. 1. 33 V.S.A. § 5280 is added to read:

§ 5280. COMMENCEMENT OF YOUTHFUL OFFENDER PROCEEDINGS IN THE FAMILY DIVISION

(a) A proceeding under this subchapter shall be commenced by:

(1) the filing of a youthful offender petition by a State's Attorney; or

(2) transfer to the Family Court of a proceeding from the Criminal Division of the Superior Court as provided in section 5281 of this title.

(b) A State's Attorney may commence a proceeding in the Family Division of the Superior court concerning a child who is alleged to have committed an offense after attaining 16 years of age, but not 22 years of age that could otherwise be filed in the Criminal Division.

(c) If a State's Attorney files a petition under subdivision (a)(1) of this section, the case shall proceed as provided under subsection 5281(b) of this title.

Sec. 2. 33 V.S.A. § 5281 is amended to read:

§ 5281. MOTION IN CRIMINAL DIVISION OF SUPERIOR COURT

(a) A motion may be filed in the Criminal Division of the Superior Court requesting that a defendant under ~~18~~ 22 years of age in a criminal proceeding who had attained ~~the age of 10~~ 12 years of age but not ~~the age of 18~~ 22 years of age at the time the offense is alleged to have been committed be treated as a youthful offender. The motion may be filed by the State's Attorney, the defendant, or the Court on its own motion.

(b) Upon the filing of a motion under this section ~~and the entering of a conditional plea of guilty by the youth, the Criminal Division shall enter an order deferring the sentence and transferring the case to~~ or the filing of a youthful offender petition pursuant to § 5280 of this title, the Family Division for shall hold a hearing on the motion pursuant to § 5283 of this title. Copies of all records relating to the case shall be forwarded to the Family Division. Conditions of release and any Department of Corrections supervision or custody shall remain in effect until the Family Division ~~approves the motion~~ accepts the case for treatment as a youthful offender and orders conditions of juvenile probation pursuant to section 5284 of this title, or the case is otherwise concluded.

(c) ~~A plea of guilty entered by the youth pursuant to subsection (b) of this section shall be conditional upon the Family Division granting the motion for youthful offender status.~~

~~(d)(1) If the Family Division denies the motion rejects the case for youthful offender treatment pursuant to subsection 5284 of this title, the case shall be returned transferred to the Criminal Division, and the youth shall be permitted to withdraw the plea.~~ The conditions of release imposed by the Criminal Division shall remain in effect, and the case shall proceed as though the motion for youthful offender treatment or youthful offender petition had not been ~~made filed.~~

(2) Subject to Rule 11 of the Vermont Rules of Criminal Procedure and Rule 410 of the Vermont Rules of Evidence, the Family Division's denial of

the motion for youthful offender treatment and any information related to the youthful offender proceeding shall be inadmissible against the youth for any purpose in the subsequent Criminal Division proceeding.

(d) If the Family Division accepts the case for youthful offender treatment, the case shall proceed to a confidential merits hearing or admission pursuant to sections 5227–5229 of this title. If the youth is adjudicated, the Court will create a criminal case reflecting the charge and conviction.

Sec. 3. 33 V.S.A. § 5282 is amended to read:

§ 5282. REPORT FROM THE DEPARTMENT

(a) Within 30 days after the case is transferred to the Family Division or a youthful offender petition is filed in the Family Division, unless the Court extends the period for good cause shown, the Department shall file a report with the Family Division of the Superior Court.

(b) A report filed pursuant to this section shall include the following elements:

(1) a recommendation as to whether youthful offender status is appropriate for the youth;

(2) a disposition case plan including proposed services and proposed conditions of juvenile probation in the event youthful offender status is approved and the youth is adjudicated;

(3) a description of the services that may be available for the youth when he or she reaches 18 years of age.

(c) A report filed pursuant to this section is privileged and shall not be disclosed to any person other than the Department, the Court, the State's Attorney, the youth, the youth's attorney, the youth's guardian ad litem, the Department of Corrections, or any other person when the Court determines that the best interests of the youth would make such a disclosure desirable or helpful.

Sec. 4. 33 V.S.A. § 5283 is amended to read:

§ 5283. HEARING IN FAMILY DIVISION

(a) Timeline. A hearing on the motion for youthful offender status shall be held no later than 35 days after the transfer of the case from the Criminal Division or filing of a youthful offender petition in the Family Division.

(b) Notice. Notice of the hearing shall be provided to the State's Attorney; the youth; the youth's parent, guardian, or custodian; the Department; and the Department of Corrections.

(c) Hearing procedure.

(1) If the motion is contested, all parties shall have the right to present evidence and examine witnesses. Hearsay may be admitted and may be relied on to the extent of its probative value. If reports are admitted, the parties shall be afforded an opportunity to examine those persons making the reports, but sources of confidential information need not be disclosed.

(2) Hearings under subsection 5284(a) of this title shall be open to the public. All other youthful offender proceedings shall be confidential.

(d) The burden of proof shall be on the moving party to prove by a preponderance of the evidence that a child should be granted youthful offender status. If the Court makes the motion, the burden shall be on the youth.

(e) Further hearing. On its own motion or the motion of a party, the Court may schedule a further hearing to obtain reports or other information necessary for the appropriate disposition of the case.

Sec. 5. 33 V.S.A. § 5284 is amended to read:

§ 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION ORDER

(a) In a hearing on a motion for youthful offender status, the Court shall first consider whether public safety will be protected by treating the youth as a youthful offender. If the Court finds that public safety will not be protected by treating the youth as a youthful offender, the Court shall deny the motion and ~~return~~ transfer the case to the Criminal Division of the Superior Court pursuant to subsection 5281(d) of this title. If the Court finds that public safety will be protected by treating the youth as a youthful offender, the Court shall proceed to make a determination under subsection (b) of this section.

(b)(1) The Court shall deny the motion if the Court finds that:

(A) the youth is not amenable to treatment or rehabilitation as a youthful offender; or

(B) there are insufficient services in the juvenile court system and the Department to meet the youth's treatment and rehabilitation needs.

(2) The Court shall grant the motion if the Court finds that:

(A) the youth is amenable to treatment or rehabilitation as a youthful offender; and

(B) there are sufficient services in the juvenile court system and the Department to meet the youth's treatment and rehabilitation needs.

(c) If the Court approves the motion for youthful offender treatment after an adjudication pursuant to subsection 5281(d) of this title, the Court:

(1) shall approve a disposition case plan and impose conditions of juvenile probation on the youth; and

(2) may transfer legal custody of the youth to a parent, relative, person with a significant relationship with the youth, or Commissioner, provided that any transfer of custody shall expire on the youth's 18th birthday.

(d) The Department shall be responsible for supervision of and providing services to the youth until he or she reaches ~~the age of 18 years of age~~. A lead case manager shall be designated who shall have final decision-making authority over the case plan and the provision of services to the youth. The youth shall be eligible for appropriate community-based programming and services provided by the Department.

(e) The youth shall not be permitted to withdraw his or her plea of guilty after youthful offender status is approved except to correct manifest injustice pursuant to Rule 32(d) of the Vermont Rules of Criminal Procedure.

* * * Effective January 1, 2018 * * *

Sec. 6. 33 V.S.A. § 5103 is amended to read:

§ 5103. JURISDICTION

(a) The Family Division of the Superior Court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

(b) Orders issued under the authority of the juvenile judicial proceedings chapters shall take precedence over orders in other Family Division proceedings and any order of another court of this State, to the extent they are inconsistent. This section shall not apply to child support orders in a divorce, parentage, or relief from abuse proceedings until a child support order has been issued in the juvenile proceeding.

(c)(1) Except as otherwise provided by this title and by subdivision (2) of this subsection, jurisdiction over a child shall not be extended beyond the child's 18th birthday.

(2)(A) Jurisdiction over a child who has been adjudicated delinquent may be extended until six months beyond the child's ~~18th~~ 19th birthday if ~~the offense for which the child has been adjudicated delinquent is a nonviolent~~

~~misdemeanor~~ and the child was 16 or 17 years old when he or she committed the offense.

(B) In no case shall custody of a child ~~aged~~ 18 years of age or older be retained by or transferred to the Commissioner for Children and Families.

(C) Jurisdiction over a child in need of care or supervision shall not be extended beyond the child's 18th birthday.

~~(D) As used in this subdivision, "nonviolent misdemeanor" means a misdemeanor offense which is not a listed crime as defined in 13 V.S.A. § 5301(7), an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64, or an offense involving violation of a protection order in violation of 13 V.S.A. § 1030.~~

(d) The Court may terminate its jurisdiction over a child prior to the child's 18th birthday by order of the Court. If the child is not subject to another juvenile proceeding, jurisdiction shall terminate automatically in the following circumstances:

(1) upon the discharge of a child from juvenile probation, providing the child is not in the legal custody of the Commissioner;

(2) upon an order of the Court transferring legal custody to a parent, guardian, or custodian without conditions or protective supervision;

(3) upon the adoption of a child following a termination of parental rights proceeding.

Sec. 7. 33 V.S.A. § 5201 is amended to read:

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

(a) Proceedings under this chapter shall be commenced by:

(1) transfer to the Court of a proceeding from another court as provided in section 5203 of this title; or

(2) the filing of a delinquency petition by a State's Attorney.

(b) If the proceeding is commenced by transfer from another court, no petition need be filed; however, the State's Attorney shall provide to the Court the name and address of the child's custodial parent, guardian, or custodian and the name and address of any noncustodial parent if known.

(c) Any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining 14 years of age, but not 18 years of age, shall originate in the Criminal Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter.

(d) Any proceeding concerning a child who is alleged to have committed a misdemeanor offense before attaining ~~17~~ 18 years of age shall originate in the Family Division of the Superior Court.

(e) Any proceeding concerning a child who is alleged to have committed a felony offense other than those specified in subsection 5204(a) of this title before attaining ~~17~~ 18 years of age shall originate in the Family Division of the Superior Court provided that jurisdiction may be transferred in accordance with this chapter.

* * *

Sec. 8. 33 V.S.A. § 5203 is amended to read:

§ 5203. TRANSFER FROM OTHER COURTS

(a) If it appears to a Criminal Division of the Superior Court that the defendant was under ~~17~~ 18 years of age at the time the offense charged was alleged to have been committed and the offense charged is a misdemeanor, that Court shall forthwith transfer the case to the Family Division of the Superior Court under the authority of this chapter.

(b) If it appears to a Criminal Division of the Superior Court that the defendant was under ~~17~~ 18 years of age at the time a felony offense not listed in subsection 5204(a) of this title was alleged to have been committed, that Court shall forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the minor shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

(c) If it appears to the State's Attorney that the defendant was ~~16~~ under 18 years of age at the time the felony offense charged was alleged to have been committed and the felony charged is not an offense specified in subsection 5204(a) of this title, the State's Attorney shall file charges in the Family Division of the Superior Court.

* * *

* * * Effective January 1, 2017 * * *

Sec. 9. 33 V.S.A. § 5201 is amended to read:

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

(a) Proceedings under this chapter shall be commenced by:

(1) transfer to the Court of a proceeding from another court as provided in section 5203 of this title; or

(2) the filing of a delinquency petition by a State's Attorney.

(b) If the proceeding is commenced by transfer from another court, no petition need be filed; however, the State's Attorney shall provide to the Court the name and address of the child's custodial parent, guardian, or custodian and the name and address of any noncustodial parent if known.

(c) ~~Consistent with applicable provisions of Title 4, any~~ Any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining ~~the age of 14~~ years of age, but not ~~the age of 18~~ years of age, shall originate in the Criminal Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter.

(d) Any proceeding concerning a child who is alleged to have committed a misdemeanor offense before attaining 17 years of age shall originate in the Family Division of the Superior Court.

(e) Any proceeding concerning a child who is alleged to have committed a felony offense other than those specified in subsection 5204(a) of this title before attaining 17 years of age shall originate in the Family Division of the Superior Court provided that jurisdiction may be transferred in accordance with this chapter.

(f) If the State requests that custody of the child be transferred to the Department, a temporary care hearing shall be held as provided in subchapter 3 of this chapter.

~~(e)~~(g) A petition may be withdrawn by the State's Attorney at any time prior to the hearing thereon, in which event the child shall be returned to the custodial parent, guardian, or custodian, the proceedings under this chapter terminated, and all files and documents relating thereto sealed under section 5119 of this title.

Sec. 10. 33 V.S.A. § 5203 is amended to read:

§ 5203. TRANSFER FROM OTHER COURTS

(a) If it appears to a Criminal Division of the Superior Court that the defendant was under ~~the age of 16~~ 17 years of age at the time the offense charged was alleged to have been committed and the offense charged is ~~not one of those specified in subsection 5204(a) of this title~~ a misdemeanor, that Court shall forthwith transfer the case to the Family Division of the Superior Court under the authority of this chapter.

(b) If it appears to a Criminal Division of the Superior Court that the defendant was ~~over the age of 16 years and under the age of 18~~ 17 years of age at the time ~~the~~ a felony offense ~~charged~~ not specified in subsection 5204(a) of this title was alleged to have been committed, ~~or that the defendant had~~

~~attained the age of 14 but not the age of 16 at the time an offense specified in subsection 5204(a) of this title was alleged to have been committed, that Court may~~ shall forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the minor shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

(c) If it appears to the State's Attorney that the defendant was ~~over the age of 16 years of age and under the age of 18~~ at the time the ~~offense felony~~ charged was alleged to have been committed and the ~~offense felony~~ charged is not an offense specified in subsection 5204(a) of this title, the State's Attorney ~~may~~ shall file charges in the Family ~~or Criminal~~ Division of the Superior Court. ~~If charges in such a matter are filed in the Criminal Division of the Superior Court, the Criminal Division of the Superior Court may forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the person shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.~~

(d) ~~Any such~~ A transfer under this section shall include a transfer and delivery of a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case. Upon any such transfer, that court shall order that the defendant be taken forthwith to a place of detention designated by the Family Division of the Superior Court or to that court itself, or shall release the child to the custody of his or her parent or guardian or other person legally responsible for the child, to be brought before the Family Division of the Superior Court at a time designated by that court. The Family Division of the Superior Court shall then proceed as provided in this chapter as if a petition alleging delinquency had been filed with the Court under section 5223 of this title on the effective date of such transfer.

(e) Motions to transfer a case to the Family Division of the Superior Court for youthful offender treatment shall be made under section 5281 of this title.

Sec. 11. 33 V.S.A. § 5204 is amended to read:

§ 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR COURT

(a) After a petition has been filed alleging delinquency, upon motion of the State's Attorney and after hearing, the Family Division of the Superior Court may transfer jurisdiction of the proceeding to the Criminal Division of the Superior Court, if the child had attained 16 years of age but not 18 years of age at the time the act was alleged to have occurred and the delinquent act set forth in the petition ~~was not one of those specified in subdivisions (1)-(12) of this subsection~~ is a felony not specified in subdivisions (1)-(12) of this subsection

or if the child had attained 12 years of age but not 14 years of age at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

- (1) arson causing death as defined in 13 V.S.A. § 501;
- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301;
- (6) manslaughter as defined in 13 V.S.A. § 2304;
- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- (12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

* * *

(i) If a juvenile 16 years of age or older has been prosecuted as an adult for an offense not listed in subsection (a) of this section and is not convicted of a felony, but is convicted of a lesser included misdemeanor, jurisdiction shall be transferred to the Family Division of the Superior Court for disposition. A conviction under this subsection shall be considered an adjudication of delinquency and not a conviction of a crime, and the entire matter shall be treated as if it had remained in the Family Division throughout. In case of an acquittal for a matter specified in this subsection and in case of a transfer to the Family Division under this subsection, the court shall order the sealing of all applicable files and records of the court, and such order shall be carried out as provided in subsection 5119(e) of this title.

(j) The record of a hearing conducted under subsection (c) of this section and any related files shall be open to inspection only by persons specified in subsections 5117(b) and (c) of this title in accordance with section 5119 of this title and by the attorney for the child.

* * * Effective July 1, 2016 * * *

Sec. 12. 33 V.S.A. § 5204 is amended to read:

§ 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR COURT

(a) After a petition has been filed alleging delinquency, upon motion of the State's Attorney and after hearing, the Family Division of the Superior Court may transfer jurisdiction of the proceeding to the Criminal Division of the Superior Court, if the child had attained ~~the age of 16 years of age~~ but not ~~the age of 18 years of age~~ at the time the act was alleged to have occurred and the delinquent act set forth in the petition was not one of those specified in subdivisions (1)-(12) of this subsection or if the child had attained ~~the age of 14 years of age~~ but not ~~the age of 14 years of age~~ at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

- (1) arson causing death as defined in 13 V.S.A. § 501;
- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301;
- (6) manslaughter as defined in 13 V.S.A. § 2304;
- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- (12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

(b) The State's Attorney of the county where the juvenile petition is pending may move in the Family Division of the Superior Court for an order transferring jurisdiction under subsection (a) of this section at any time prior to adjudication on the merits. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of

this title, which stay shall remain in effect until such time as the Family Division of the Superior Court may deny the motion to transfer jurisdiction.

(c) Upon the filing of a motion to transfer jurisdiction under subsection (b) of this section, the Family Division of the Superior Court shall conduct a hearing in accordance with procedures specified in subchapter 2 of this chapter to determine whether:

(1) there is probable cause to believe that the child committed ~~an act listed in subsection (a) of this section~~ the charged offense; and

(2) public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to the Family Division of the Superior Court and delinquent children.

* * *

(g) The order granting or denying transfer of jurisdiction shall ~~not~~ constitute a final ~~judgment or~~ order within the meaning of Rules 3 and 4 of the Vermont Rules of Appellate Procedure.

(h) If a person who has not attained ~~the age of~~ 16 years of age at the time of the alleged offense has been prosecuted as an adult and is not convicted of one of the acts listed in subsection (a) of this section but is convicted only of one or more lesser offenses, jurisdiction shall be transferred to the Family Division of the Superior Court for disposition. A conviction under this subsection shall be considered an adjudication of delinquency and not a conviction of crime, and the entire matter shall be treated as if it had remained in the Family Division throughout. In case of an acquittal for a matter specified in this subsection and in case of a transfer to the Family Division under this subsection, the Court shall order the sealing of all applicable files and records of the Court, and such order shall be carried out as provided in subsection 5119(e) of this title.

* * *

Sec. 13. 33 V.S.A. § 5106 is amended to read:

§ 5106. POWERS AND DUTIES OF COMMISSIONER

Subject to the limitations of the juvenile judicial proceedings chapters or those imposed by the Court, and in addition to any other powers granted to the Commissioner under the laws of this State, the Commissioner has the following authority with respect to a child who is or may be the subject of a petition brought under the juvenile judicial proceedings chapters:

(1) To undertake assessments and make reports and recommendations to the Court as authorized by the juvenile judicial proceedings chapters.

(2) To investigate complaints and allegations that a child is in need of care or supervision for the purpose of considering the commencement of proceedings under the juvenile judicial proceedings chapters.

(3) To supervise and assist a child who is placed under the Commissioner's supervision or in the Commissioner's legal custody by order of the Court, and to administer sanctions in accordance with graduated sanctions established by policy and that are consistent with the juvenile probation certificate.

* * *

Sec. 14. 33 V.S.A. § 5225 is amended to read:

§ 5225. PRELIMINARY HEARING; RISK ASSESSMENT

(a) A preliminary hearing shall be held at the time and date specified on the citation or as otherwise ordered by the Court. If a child is taken into custody prior to the preliminary hearing, the preliminary hearing shall be at the time of the temporary care hearing.

(b) Prior to the preliminary hearing, the child shall be afforded an opportunity to undergo a risk and needs screening, which shall be conducted by the Department or by a community provider that has contracted with the Department to provide risk and need screenings for children alleged to have committed delinquent acts. If the child participates in such a screening, the Department or the community provider shall report the risk level result of the screening to the State's Attorney. In lieu of filing a charge, the State's Attorney may refer a child directly to a youth-appropriate community-based provider that has been approved by the Department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subdivision shall not require the State's Attorney to file a charge. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child's case shall return to the State's Attorney for charging consideration. If a charge is brought in the Family Division, the risk level result shall be provided to the child's attorney. Except on agreement of the parties, the results shall not be provided to the Court until after a merits finding has been made.

(c) Counsel for the child shall be assigned prior to the preliminary hearing.

(d) At the preliminary hearing, the Court shall appoint a guardian ad litem for the child. The guardian ad litem may be the child's parent, guardian, or custodian. On its own motion or motion by the child's attorney, the Court may appoint a guardian ad litem other than a parent, guardian or custodian.

(e) At the preliminary hearing, a denial shall be entered to the allegations of the petition, unless the juvenile, after adequate consultation with the guardian ad litem and counsel, enters an admission. If the juvenile enters an admission, the disposition case plan required by section 5230 of this title may be waived and the Court may proceed directly to disposition, provided that the juvenile, the custodial parent, the State's Attorney, the guardian ad litem, and the Department agree.

(f) The Court may order the child to abide by conditions of release pending a merits or disposition hearing.

Sec. 15. 33 V.S.A. § 5285 is amended to read:

§ 5285. MODIFICATION OR REVOCATION OF DISPOSITION

(a) If it appears that the youth has violated the terms of juvenile probation ordered by the Court pursuant to subdivision 5284(c)(1) of this title, a motion for modification or revocation of youthful offender status may be filed in the Family Division of the Superior Court. The Court shall set the motion for hearing as soon as practicable. The hearing may be joined with a hearing on a violation of conditions of probation under section 5265 of this title. A supervising juvenile or adult probation officer may detain in an adult facility a youthful offender who has attained ~~the age of 18~~ years of age for violating conditions of probation.

(b) A hearing under this section shall be held in accordance with section 5268 of this title.

(c) If the Court finds after the hearing that the youth has violated the terms of his or her probation, the Court may:

(1) maintain the youth's status as a youthful offender, with modified conditions of juvenile probation if the Court deems it appropriate;

(2) revoke the youth's status as a youthful offender status and return the case to the Criminal Division for sentencing; or

(3) transfer supervision of the youth to the Department of Corrections with all of the powers and authority of the Department and the Commissioner under Title 28, including graduated sanctions and electronic monitoring.

(d) If a youth's status as a youthful offender is revoked and the case is returned to the Criminal Division under subdivision (c)(2) of this section, the Court shall hold a sentencing hearing and impose sentence. When determining an appropriate sentence, the Court may take into consideration the youth's degree of progress toward rehabilitation while on youthful offender status. The Criminal Division shall have access to all Family Division records of the proceeding.

Sec. 16. 28 V.S.A. § 1101 is amended to read:

§ 1101. POWERS AND RESPONSIBILITIES OF THE COMMISSIONER
REGARDING JUVENILE SERVICES

The Commissioner is charged with the following powers and responsibilities regarding the administration of juvenile services:

(1) to provide appropriate, separate facilities for the custody and treatment of ~~children~~ offenders under 25 years of age committed to his or her custody in accordance with the laws of the State;

* * *

Sec. 17. 33 V.S.A. § 5206 is added to read:

§ 5206. CITATION OF 16- AND 17-YEAR-OLDS

(a)(1) If a child was over 16 years of age and under 18 years of age at the time the offense was alleged to have been committed and the offense is not specified in subsection (b) of this section, law enforcement shall cite the child to the Family Division of the Superior Court.

(2) If, after the child is cited to the Family Division, the State's Attorney chooses to file the charge in the Criminal Division of the Superior Court, the State's Attorney shall state in the information the reason why filing in the Criminal Division is in the interest of justice.

(b) Offenses for which a law enforcement officer is not required to cite a child to the Family Division of the Superior Court shall include:

(1) 23 V.S.A. §§ 674 (driving while license suspended or revoked); 1128 (accidents—duty to stop); and 1133 (eluding a police officer).

(2) Fish and wildlife offenses that are not minor violations as defined by 10 V.S.A. § 4572.

(3) A listed crime as defined in 13 V.S.A. § 5301.

(4) An offense listed in subsection 5204(a) of this title.

Sec. 18. 13 V.S.A. § 7554 is amended to read:

§ 7554. RELEASE PRIOR TO TRIAL

* * *

(j) Any juvenile between 14 and 16 years of age who is charged with a listed crime as defined in subdivision 5301(7) of this title shall appear before a judicial officer and be ordered released pending trial in accordance with this section within 24 hours of the juvenile's arrest.

Sec. 19. 4 V.S.A. § 33 is amended to read:

§ 33. JURISDICTION; FAMILY DIVISION

(a) Notwithstanding any other provision of law to the contrary, the Family Division shall have exclusive jurisdiction to hear and dispose of the following proceedings filed or pending on or after October 1, 1990:

* * *

(b) The Family Division has nonexclusive jurisdiction to hear and dispose of proceedings involving misdemeanor motor vehicle offenses filed or pending on or after July 1, 2016, pursuant to 33 V.S.A. §§ 5201, 5203, and 5280. The Family Division of the Superior Court shall forward a record of any conviction for violation of a law related to motor vehicle traffic control, other than a parking violation, to the Commissioner of Motor Vehicles pursuant to 23 V.S.A. § 1709.

Sec. 20. 33 V.S.A. § 5102 is amended to read:

§ 5102. DEFINITIONS AND PROVISIONS OF GENERAL APPLICATION

* * *

(28) “Victim” shall have the same meaning as in 13 V.S.A. § 5301(4).

(29) “Youth” shall mean a person who is the subject of a motion for youthful offender status or who has been granted youthful offender status.

Sec. 21. 33 V.S.A. § 5234 is amended to read:

§ 5234. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS INVOLVING A LISTED CRIME

(a) The victim in a delinquency proceeding involving a listed crime shall have the following rights:

(1) To be notified by the prosecutor’s office in a timely manner of the following:

(A) when a delinquency petition has been filed, the name of the child and any conditions of release initially ordered for the child or modified by the Court that are related to the victim or a member of the victim’s family or current household;

(B) his or her rights as provided by law, information regarding how a case proceeds through a delinquency proceeding, the confidential nature of delinquency proceedings, and that it is unlawful to disclose confidential information concerning the proceedings to another person;

(C) when a predispositional or dispositional court proceeding is scheduled to take place and when a court proceeding of which he or she has been notified will not take place as scheduled; and

~~(2)(D) To be notified by the prosecutor's office as to whether delinquency has been found and disposition has occurred, including and any conditions of release or conditions of probation that are related to the victim or a member of the victim's family or current household and any restitution relevant to the victim, when ordered.~~

(2) To file with the Court a written or recorded statement of the impact of the delinquent act on the victim and the need for restitution.

(3) To attend the disposition hearing and to present a victim's victim impact statement at the disposition hearing in accordance with subsection 5233(b) of this title, including testimony in support of his or her claim for restitution pursuant to section 5235 of this title, and to be notified as to the disposition pursuant to subsection 5233(d) of this title, including probation. The court shall consider the victim's statement when ordering disposition. The victim shall not be personally present at any portion of the disposition hearing except to present a victim impact statement or to testify in support of his or her claim for restitution unless the court finds that the victim's presence is necessary in the interest of justice.

(4) Upon request, to be notified by the agency having custody of the delinquent child before he or she is discharged from a secure or staff-secured residential facility. The name of the facility shall not be disclosed. An agency's inability to give notification shall not preclude the release. However, in such an event, the agency shall take reasonable steps to give notification of the release as soon thereafter as practicable. Notification efforts shall be deemed reasonable if the agency attempts to contact the victim at the address or telephone number provided to the agency in the request for notification.

~~(5) To obtain the name of the child in accordance with sections 5226 and 5233 of this title. To have the Court take his or her views into consideration in the Court's disposition order. If the victim is not present, the Court shall consider whether the victim has expressed, either orally or in writing, views regarding disposition and shall take those views into account when ordering disposition.~~

~~(6) To be notified by the Court of the victim's rights under this section. [Repealed.]~~

(b) The prosecutor's office shall keep the victim informed and consult with the victim through the delinquency proceedings.

Sec. 22. 33 V.S.A. § 5234a is added to read:

§ 5234a. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS
INVOLVING A NONLISTED CRIME

(a) The victim in a delinquency proceeding involving an offense that is not a listed crime shall have the following rights:

(1) To be notified by the prosecutor's office in a timely manner of the following:

(A) his or her rights as provided by law, information regarding how a delinquency proceeding is adjudicated, the confidential nature of juvenile proceedings, and that it is unlawful to disclose confidential information concerning the proceedings;

(B) when a delinquency petition is filed, and any conditions of release initially ordered for the child or modified by the Court that relate to the victim or a member of the victim's family or current household; and ~~Notification regarding conditions of release or conditions of probation shall include the child's name.~~

(C) when a dispositional court proceeding is scheduled to take place and when a court proceeding of which he or she has been notified will not take place as scheduled.

(2) That delinquency has been found and disposition has occurred, and any conditions of release or conditions of probation that are related to the victim or a member of the victim's family or current household and any restitution ordered.

(3) To file with the Court a written or recorded statement of the impact of the delinquent act on the victim and any need for restitution.

(4) To attend the disposition hearing for the sole purpose of presenting to the Court a victim impact statement, including testimony in support of his or her claim for restitution pursuant to section 5235 of this title. The victim shall not be personally present at any portion of the disposition hearing except to present a victim impact statement or to testify in support of his or her claim for restitution unless the Court finds that the victim's presence is necessary in the interest of justice.

(5) To have the Court take his or her views into consideration in the Court's disposition order. If the victim is not present, the Court shall consider whether the victim has expressed, either orally or in writing, views regarding disposition and shall take those views into account when ordering disposition. The Court shall order that the victim be notified as to the identity of the child upon disposition if the Court finds that release of the child's identity to the

victim is in the best interests of both the child and the victim and serves the interests of justice.

(b) The prosecutor's office shall keep the victim informed and consult with the victim through the delinquency proceedings.

Sec. 23. 14 V.S.A. § 2666 is amended to read:

§ 2666. MODIFICATION; TERMINATION

* * *

(b) Where the permanent guardianship is terminated by the ~~probate division of the superior court~~ Probate Division of the Superior Court order or the death of the permanent guardian, the custody and guardianship of the child shall not revert to the parent, but to the ~~commissioner for children and families~~ Commissioner for Children and Families as if the child had been abandoned.

(1) Upon the death of the permanent guardian or when the permanent guardianship is otherwise terminated by order of the Probate Division, the Probate Division shall issue an order placing the child in the custody of the Commissioner and shall immediately notify the Department for Children and Families, the State's Attorney, and the Family Division.

(2) The order transferring the child's legal custody to the Commissioner shall have the same legal effect as a similar order issued by the Family Division under the authority of 33 V.S.A. chapters 51-53.

(3) After the Probate Division issues the order transferring legal custody of the child, the State shall commence proceedings under the authority of 33 V.S.A. chapters 51-53 as if the child were abandoned.

* * *

Sec. 24. 14 V.S.A. § 2667 is amended to read:

§ 2667. ORDER FOR VISITATION, CONTACT, OR INFORMATION;
IMMEDIATE HARM TO THE MINOR

(a) The ~~probate division of the superior court~~ Probate Division of the Superior Court shall have exclusive jurisdiction to hear any action to enforce, modify, or terminate the initial order issued by the ~~family division of the superior court~~ Family Division of the Superior Court for visitation, contact, or information.

(b) Upon a showing by affidavit of immediate harm to the child, the ~~probate division of the superior court~~ Probate Division of the Superior Court may temporarily stay the order of visitation or contact on an ex parte basis until a hearing can be held, or stay the order of permanent guardianship and

~~assign parental rights and responsibilities~~ transfer legal custody of the child to the commissioner for children and families Commissioner for Children and Families.

(1) The order transferring the child's legal custody to the Commissioner shall have the same legal effect as a similar order issued by the Family Division under the authority of 33 V.S.A. chapters 51-53.

(2) The Probate Division shall then immediately notify the Department for Children and Families, the State's Attorney, and the Family Division when it has issued an order transferring the child's legal custody to the Commissioner, and nothing in this subsection shall prohibit the State from commencing proceedings under 33 V.S.A. chapters 51-53.

* * *

Sec. 25. 33 V.S.A. § 5223 is amended to read:

§ 5223. FILING OF PETITION

(a) When notice to the child is provided by citation, the State's Attorney shall file the petition and supporting affidavit at least 10 business days prior to the date for the preliminary hearing specified in the citation.

(b) The Court shall send or deliver a copy of the petition and affidavit to the Commissioner after a finding of probable cause. A copy of the petition and affidavit shall be made available at the State's Attorney's office to all persons required to receive notice, including the noncustodial parent, as soon as possible after the petition is filed and at least five business days prior to the date set for the preliminary hearing.

Sec. 26. 33 V.S.A. § 5229 is amended to read:

§ 5229. MERITS ADJUDICATION

* * *

(g) If, based on the child's admission or the evidence presented, the Court finds beyond a reasonable doubt that the child has committed a delinquent act, the Court shall order the Department to prepare a disposition case plan ~~within 28 days of the merits adjudication and shall set the matter for a~~ not later than seven business days before the disposition hearing. In no event, shall a disposition hearing be held later than 35 days after a finding that a child is delinquent.

(h) The Court may proceed directly to disposition providing that the child, the custodial parent, the State's Attorney, and the Department agree.

Sec. 27. 33 V.S.A. § 5230 is amended to read:

§ 5230. DISPOSITION CASE PLAN

(a) Filing of case plan. The Following the finding by the Court that a child is delinquent, the Department shall file a disposition case plan ~~no~~ not later than 28 days from the date of the finding by the Court that a child is delinquent seven business days before the scheduled disposition hearing. The disposition case plan shall not be used or referred to as evidence prior to a finding that a child is delinquent.

* * *

Sec. 28. 33 V.S.A. § 5315 is amended to read:

§ 5315. MERITS ADJUDICATION

* * *

(f) If the Court finds that the allegations made in the petition have not been established, the Court shall dismiss the petition and vacate any temporary orders in connection with this proceeding. A dismissal pursuant to this subsection is a final order subject to appeal.

(g) If the Court finds that the allegations made in the petition have been established based on the stipulation of the parties or on the evidence if the merits are contested, the Court shall order the Department to prepare a disposition case plan within 28 days of the merits hearing and shall set the matter for a not later than seven business days before a scheduled disposition hearing. An adjudication pursuant to this subsection is not a final order subject to appeal separate from the resulting disposition order.

* * *

Sec. 29. 33 V.S.A. § 5315a is added to read:

§ 5315a. MERITS STIPULATION

(a) At any time after the filing of the CHINS petition and prior to an order of adjudication on the merits, the court may approve a written stipulation to the merits of the petition and any or all elements of the disposition plan, including the permanency goal, placement, visitation, or services.

(b) The court may approve a written stipulation if:

(1) the parties to the petition, as defined in subdivision 5102(22) of this title, agree to the terms of the stipulation; and

(2) the court determines that:

(A) the agreement between the parties is voluntary;

(B) the parties to the agreement understand the nature of the allegation; and

(C) the parties to the agreement understand the rights waived if the court approves of and issues an order based upon the stipulation.

Sec. 30. 33 V.S.A. § 5316 is amended to read:

§ 5316. DISPOSITION CASE PLAN

(a) The Following a finding by the court that a child is in need of care or supervision, the Department shall file a disposition case plan ordered pursuant to subsection 5315(g) of this title no not later than 28 days from the date of the finding by the Court that a child is in need of care or supervision seven business days before the scheduled disposition hearing.

* * *

Sec. 31. 15 V.S.A. § 1103 is amended to read:

§ 1103. REQUESTS FOR RELIEF

(a) Any family or household member may seek relief from abuse by another family or household member on behalf of ~~him~~ him- or herself or his or her children by filing a complaint under this chapter. A minor 16 years of age or older, or a minor of any age who is in a dating relationship as defined in §1101(2) of this chapter, may file a complaint under this chapter seeking relief on his or her own behalf. The plaintiff shall submit an affidavit in support of the order.

* * *

Sec. 32. 15 V.S.A. § 1104 is amended to read:

§ 1104. EMERGENCY RELIEF

(a) In accordance with the Vermont Rules of Civil Procedure, temporary orders under this chapter may be issued ex parte, without notice to the defendant, upon motion and findings by the Court that the defendant has abused the plaintiff or his or her children, or both. The plaintiff shall submit an affidavit in support of the order. A minor 16 years of age or older, or a minor of any age who is in a dating relationship as defined in §1101(2) of this chapter, may seek relief on his or her own behalf. Relief under this section shall be limited as follows:

* * *

Sec. 33. DEPARTMENT OF CHILDREN AND FAMILIES; DEPARTMENT OF CORRECTIONS; YOUTHFUL OFFENDERS; REPORT

The Commissioners for Children and Families and of Corrections shall consider the implications of adjudicating as youthful offenders all defendants who have attained 18 years of age, but not 21 years of age, who have not been charged with an offense specified in 33 V.S.A. § 5204(a). The Commissioners shall report their findings and any associated recommendations or proposed legislation to the Joint Legislative Justice Oversight Committee on or before November 1, 2016.

Sec. 34. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE;
2016 LEGISLATIVE INTERIM

During the 2016 legislative interim, the Joint Legislative Justice Oversight Committee shall:

(1) evaluate the fiscal implications of adjudicating in the Family Division of the Superior Court all offenders 18–20 years of age who are not charged with an offense specified in 33 V.S.A. § 5204(a);

(2) consider whether the creation of an Office for Youth Justice or similar with jurisdiction to coordinate supervision and services for youth adjudicated juvenile delinquents and youthful offenders 25 years of age and younger would improve outcomes for youth in the justice system;

(3) consider expanding youthful offender status eligibility to offenders 24 years of age and younger, while requiring offenders 22–24 years of age to be under Department of Corrections supervision;

(4) consider whether State’s Attorneys should have the discretion to bring charges against 14 and 15 year olds alleged to have committed an act specified in subsection 5204(a) in either the Criminal or Family Division of the Superior Court;

(5) explore options for housing offenders 16 and 17 years of age serving a sentence for an offense specified in 33 V.S.A. § 5204(a);

(6) evaluate the resources necessary to expand the jurisdiction of the juvenile courts for offenders 21 years of age and younger as contemplated by other state legislatures; and

(7) evaluate the resources necessary to expand youthful offender treatment for offenders 24 years of age and younger.

Sec. 35. AGENCY OF EDUCATION; RESTORATIVE JUSTICE
PRACTICES

The Agency of Education shall explore the use of restorative and similar practices regarding school climate and culture, truancy, bullying and harassment, and school discipline. The Agency shall consider the research that demonstrates that restorative approaches lead to reductions in absenteeism, suspensions, and expulsions and to improved educational outcomes.

Sec. 36. REPEAL

33 V.S.A. §§ 5226 (notification of conditions of release) and 5233 (victim's statement at disposition) are repealed.

Sec. 37. EFFECTIVE DATES

(a) Secs. 9 (Commencement of Delinquency Proceedings), 10 (Transfer from the Courts), and 11 (transfer from Family Division of the Superior Court) shall take effect on January 1, 2017.

(b) Secs. 6 (Jurisdiction), 7 (commencement of delinquency proceedings), and 8 (Transfer from other Courts) shall take effect on January 1, 2018.

(c) Secs. 1 (Commencement of Youthful Offender Proceedings in the Family Division), 2 (Motion in Criminal Division of Superior Court), 3 (Report from the Department), 4 (Hearing in Family Division), and 5 (Youthful Offender Determination and Disposition Order) shall take effect on July 1, 2018.

(c) The remaining sections shall take effect on July 1, 2016.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 18, 2015, page 448)

H. 183.

An act relating to security in the Capitol Complex.

Reported favorably with recommendation of proposal of amendment by Senator Flory for the Committee on Institutions.

The Committee recommends that the Senate propose to the House to amend the bill in Sec. 1, 2 V.S.A. chapter 30, § 991, in subsection (b), subdivision (2), by striking out subsection (b), subdivision (2) in its entirety and inserting in lieu thereof the following:

(2) In the first year, the Chair of the House Committee on Corrections and Institutions shall serve as Chair of the Committee and the Chair of the Senate Committee on Institutions shall serve as Vice Chair. Annually thereafter, the offices of Chair and Vice Chair shall rotate between the Chairs of the House Committee on Corrections and Institutions and the Senate Committee on Institutions.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 17, 2016, pages 491-494)

Reported favorably by Senator Sears for the Committee on Appropriations.

The Committee recommends that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Institutions.

(Committee vote: 6-0-1)

H. 367.

An act relating to miscellaneous revisions to the municipal plan adoption, amendment, and update process.

Reported favorably with recommendation of proposal of amendment by Senator Bray for the Committee on Natural Resources and Energy.

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 24 V.S.A. § 4350 is amended to read:

§ 4350. REVIEW AND CONSULTATION REGARDING MUNICIPAL PLANNING EFFORT

(a) A regional planning commission shall consult with its municipalities with respect to the municipalities' planning efforts, ascertaining the municipalities' needs as individual municipalities and as neighbors in a region, and identifying the assistance that ought to be provided by the regional planning commission. As a part of this consultation, the regional planning commission, after public notice, shall review the planning process of its member municipalities at least twice during an eight-year period, or more frequently on request of the municipality, and shall so confirm when a municipality:

(1) is engaged in a continuing planning process that, within a reasonable time, will result in a plan ~~which~~ that is consistent with the goals contained in section 4302 of this title; ~~and~~

(2) is engaged in a process to implement its municipal plan, consistent with the program for implementation required under section 4382 of this title; and

(3) is maintaining its efforts to provide local funds for municipal and regional planning purposes.

(b)(1) As part of the consultation process, the commission shall consider whether a municipality has adopted a plan. In order to obtain or retain confirmation of the planning process ~~after January 1, 1996~~, a municipality must have an approved plan. A regional planning commission shall review and approve plans of its member municipalities, when approval is requested and warranted. Each review shall include a public hearing which is noticed at least 15 days in advance by posting in the office of the municipal clerk and at least one public place within the municipality and by publication in a newspaper or newspapers of general publication in the region affected. The commission shall approve a plan if it finds that the plan:

(A) is consistent with the goals established in section 4302 of this title;

(B) is compatible with its regional plan;

(C) is compatible with approved plans of other municipalities in the region; and

(D) contains all the elements included in subdivisions 4382(a)(1)-~~(10)~~(12) of this title.

~~(2) Prior to January 1, 1996, if a plan contains all the elements required by subdivisions 4382(a)(1)-(10) and is submitted to the regional planning commission for approval but is not approved, it shall be conditionally approved.~~

~~(2)~~ A commission shall give approval or disapproval to a municipal plan or amendment within two months of its receipt following a final hearing held pursuant to section 4385 of this title. The fact that the plan is approved after the deadline shall not invalidate the plan. If the commission disapproves the plan or amendment, it shall state its reasons in writing and, if appropriate, suggest acceptable modifications. Submissions for approval that follow a disapproval shall receive approval or disapproval within 45 days.

~~(3)~~ The commission shall file any adopted plan or amendment with the Department of Housing and Community Development within two weeks of receipt from the municipality. Failure on the part of the commission to file the plan shall not invalidate the plan.

(c) In order to retain confirmation of the planning process, a municipality shall document that it has reviewed and is actively engaged in a process to implement its adopted plan.

(1) When assessing whether a municipality has been actively engaged in a process to implement its adopted plan, the regional planning commission shall consider the activities of local boards and commissions with regard to the

preparation or adoption of bylaws and amendments; capital budgets and programs; supplemental plans; or other actions, programs, or measures undertaken or scheduled to implement the adopted plan. The regional planning commission shall also consider factors that may have hindered or delayed municipal implementation efforts.

(2) The consultation may include guidance by the regional planning commission with regard to resources and technical support available to the municipality to implement its adopted plan and recommendations by the regional planning commission for plan amendments and for updating the plan prior to re adoption under section 4387 of this title.

~~(e)~~(d) During the period of time when a municipal planning process is confirmed:

(1) The municipality's plan will not be subject to review by the Commissioner of Housing and Community Development under section 4351 of this title.

(2) State agency plans adopted under 3 V.S.A. chapter 67 shall be compatible with the municipality's approved plan. ~~This provision shall not apply to plans that are conditionally approved under this chapter.~~

(3) The municipality may levy impact fees on new development within its borders, according to the provisions of chapter 131 of this title.

(4) The municipality shall be eligible to receive additional funds from the municipal and regional planning fund.

~~(f)~~(e) Confirmation and approval decisions under this section shall be made by majority vote of the commissioners representing municipalities, in accordance with the bylaws of the regional planning commission.

Sec. 2. 24 V.S.A. § 4385 is amended to read:

§ 4385. ADOPTION AND AMENDMENT OF PLANS; HEARING BY
LEGISLATIVE BODY

* * *

(d) Plans may be reviewed from time to time and may be amended in the light of new developments and changed conditions affecting the municipality. An amendment to a plan does not affect or extend the plan's expiration date.

Sec. 3. 24 V.S.A. § 4387 is amended to read:

§ 4387. READOPTION OF PLANS

(a) All plans, including all prior amendments, shall expire every five eight years unless they are readopted according to the procedures in section 4385 of this title.

(b)(1) A municipality may readopt any plan that has expired or is about to expire. Prior to any readoption, the planning commission shall review and update the information on which the plan is based, and shall consider this information in evaluating the continuing applicability of the plan. In its review, the planning commission shall:

(A) consider the recommendations of the regional planning commission provided pursuant to subdivision 4350(c)(2) of this title;

(B) engage in community outreach and involvement in updating the plan;

(C) consider consistency with the goals established in section 4302 of this title;

(D) address the required plan elements under section 4382 of this title;

(E) evaluate the plan for internal consistency among plan elements, goals, objectives, and community standards;

(F) address compatibility with the regional plan and the approved plans of adjoining municipalities; and

(G) establish a program and schedule for implementing the plan.

(2) The readopted plan shall remain in effect for the ensuing five eight years unless earlier readopted.

(c) Upon the expiration of a plan, all bylaws and capital budgets and programs then in effect shall remain in effect, but shall not be amended until a plan is in effect.

(d) The fact that a plan has not been approved shall not make it inapplicable, except as specifically provided by this chapter. Bylaws, capital budgets, and programs shall remain in effect, even if the plan has not been approved.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2016. The eight-year expiration date for municipal plans applies to plans adopted or readopted on or after July 1, 2015.

Plans adopted or readopted before July 1, 2015 shall expire in accordance with section 4387 of this title as it existed on the date of adoption or readoption.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for April 2, 2015, page 934)

H. 858.

An act relating to miscellaneous criminal procedure amendments.

Reported favorably with recommendation of proposal of amendment by Senator Ashe for the Committee on Judiciary.

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 2651(6) is amended to read;

(6) “Human trafficking” means:

* * *

(B) “severe form of trafficking” as defined by ~~21 U.S.C. § 7105~~
22 U.S.C. § 7105.

* * *

Sec. 2. 13 V.S.A. § 5238 is amended to read:

§ 5238. CO-PAYMENT AND REIMBURSEMENT ORDERS

* * *

(d) To the extent that the Court finds that the eligible person has income or assets available to enable payment of an immediate co-payment, it shall order such a co-payment to cover in whole or in part the amount of the costs of representation to be borne by the eligible person. ~~When a co-payment is ordered, the assignment of counsel shall be contingent on prior payment of the co-payment.~~ The co-payment shall be paid to the clerk of the Court. Any portion of the co-payment not paid to the clerk may be included in a reimbursement order.

* * *

Sec. 3. 13 V.S.A. § 5301 is amended to read:

§ 5301. DEFINITIONS

As used in this chapter:

* * *

(7) ~~For the purpose of this chapter, “listed~~ “Listed crime” means any of the following offenses:

* * *

(W) operating vehicle under the influence of intoxicating liquor or other substance with either death or serious bodily injury resulting as defined in 23 V.S.A. § 1210~~(e)(f)~~ and ~~(f)(g)~~;

* * *

Sec. 4. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding 20 V.S.A. §§ 2056a-2056e, the Department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon ~~their~~ the offender’s release from confinement or, if the offender was not subject to confinement, upon the offender’s conviction:

* * *

Sec. 5. 13 V.S.A. § 5572(a) is amended to read:

(a) A person convicted and imprisoned for a crime of which the person was exonerated pursuant to ~~subchapter 1 of this chapter~~ shall have a cause of action for damages against the ~~state~~ State.

Sec. 6. 13 V.S.A. § 5578 is added to read:

§ 5578. APPLICABILITY; RETROACTIVITY

Notwithstanding 1 V.S.A. § 214(b), this subchapter and any amendments thereto shall apply to any exoneration that occurs on or after July 1, 2007.

Sec. 7. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

(a) Possession and cultivation.

* * *

~~(5) Prior to accepting a plea of guilty or a plea of nolo contendere from a defendant charged with a violation of this subsection, the court shall address the defendant personally in open court, informing the defendant and determining that the defendant understands that admitting to facts sufficient to warrant a finding of guilt or pleading guilty or nolo contendere to the charge may have collateral consequences such as loss of education financial aid, suspension or revocation of professional licenses, and restricted access to~~

~~public benefits such as housing.~~ If ~~the~~ a court fails to provide the defendant with notice of collateral consequences in accordance with ~~this subdivision~~ 13 V.S.A. § 8005(b) and the defendant later at any time shows that the plea and conviction for a violation of this subsection may have or has had a negative consequence, the court, upon the defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea or admission and enter a plea of not guilty. Failure of the court to advise the defendant of a particular collateral consequence shall not support a motion to vacate.

* * *

Sec. 8. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE

During 2016 the Joint Legislative Justice Oversight Committee shall study:

(1) how a criminal defendant's credit for time served is determined with respect to time that the defendant was in Department of Corrections custody on nonincarcerative status or conditions of release; and

(2) when the name of an offender who has committed a qualifying offense is posted on the Internet Sex Offender Registry if the offender was in Department of Corrections custody on nonincarcerative status.

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

(No House amendments)

NOTICE CALENDAR

Second Reading

Favorable

H. 529.

An act relating to State aid for school construction repayment obligations.

Reported favorably by Senator Balint for the Committee on Institutions.

(Committee vote: 5-0-0)

(For House amendments, see House Journal of March 11, 2016, page 353)

Reported favorably by Senator Starr for the Committee on Appropriations.

(Committee vote: 7-0-0)

H. 805.

An act relating to employment rights for members of the National Guard and Reserve Components of the U.S. Armed Forces.

Reported favorably by Senator Balint for the Committee on Economic Development, Housing and General Affairs.

(Committee vote: 4-0-1)

(For House amendments, see House Journal of March 16, 2016, page 439-441)

Reported favorably by Senator Starr for the Committee on Appropriations.

(Committee vote: 7-0-0)

Favorable with Proposal of Amendment

H. 610.

An act relating to clarifying the Clean Water State Revolving Fund and Water Pollution Control Grant Programs.

Reported favorably with recommendation of proposal of amendment by Senator Rodgers for the Committee on Natural Resources and Energy.

The Committee recommends that the Senate propose to the House to amend the bill in subsection (a), by striking out “Committee on Institutions” and inserting in lieu thereof Committees on Institutions and on Natural Resources and Energy.

(Committee vote: 4-0-1)

(For House amendments, see House Journal for March 17, 2016, page 496)

Reported favorably by Senator Nitka for the Committee on Appropriations.

The Committee recommends that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Natural Resources and Energy.

(Committee vote: 7-0-0)

H. 629.

An act relating to a study committee to examine laws related to the administration and issuance of vital records.

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

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 17, 2016, page 534)

Reported favorably with recommendation of proposal of amendment by Senator Sears for the Committee on Appropriations.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, in subsection (a), by striking out subdivisions (1)–(5) in their entirety and inserting in lieu thereof the following:

(1) the Commissioner of Health or designee, who shall serve as Chair of the Committee;

(2) the State Archivist or designee;

(3) a Probate judge appointed by the Chief Justice of the Vermont Supreme Court;

(4) two town clerks appointed by the Vermont Municipal Clerks' and Treasurers' Association.

Second: In Sec. 1, in subsection (c), by striking out the second sentence in its entirety and inserting in lieu thereof the following: The Committee may consult with and shall have the assistance of the Office of Legislative Council.

Third: In Sec. 1, in subsection (e), by striking out subdivisions (1)–(3) in their entirety and inserting in lieu thereof the following:

(1) The Chair shall call the first meeting of the Committee to occur on or before June 15, 2016.

(2) A majority of the membership shall constitute a quorum.

Fourth: In Sec. 1, by striking out subsection (g) in its entirety

(Committee vote: 7-0-0)

H. 853.

An act relating to setting the nonresidential property tax rate, the property dollar equivalent yield, and the income dollar equivalent yield for fiscal year 2017, and other education changes.

Reported favorably with recommendation of proposal of amendment by Senator Cummings for the Committee on Education.

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Yields and Nonresidential Tax Rate * * *

Sec. 1. PROPERTY DOLLAR EQUIVALENT YIELD AND INCOME DOLLAR EQUIVALENT YIELD FOR FISCAL YEAR 2017

Pursuant to 32 V.S.A. § 5402b(b), for fiscal year 2017 only:

- (1) the property dollar equivalent yield is \$9,654.00; and
- (2) the income dollar equivalent yield is \$10,803.00.

Sec. 2. NONRESIDENTIAL PROPERTY TAX RATE FOR FISCAL YEAR 2017

For fiscal year 2017 only, the nonresidential education property tax imposed under 32 V.S.A. § 5402(a)(2) shall be reduced from the rate of \$1.59 and instead be \$1.539 per \$100.00.

* * * Transfer of Debt of Merged Districts * * *

Sec. 3. TRANSFER OF DEBT OF MERGED DISTRICTS

(a) Notwithstanding any other provision of law, in the process of forming a union school district under 16 V.S.A. chapter 11, a study committee report under 16 V.S.A. § 706b may provide terms for transferring, either in whole or part, the liability for any indebtedness held by a merging district, from the merging district to the town or towns within the merging district.

(b) As used in this section, a union school district established under 16 V.S.A. chapter 11 includes a school district voluntarily created pursuant to 2015 Acts and Resolves No. 46, Sec. 6 or 7, or a regional education district, or any other district eligible to receive incentives pursuant to 2010 Acts and Resolves No. 153, as amended by 2012 Acts and Resolves No. 156 and 2013 Acts and Resolves No. 56.

* * * Duties of Secretary * * *

Sec. 4. 16 V.S.A. § 212 is amended to read:

§ 212. SECRETARY'S DUTIES GENERALLY

The Secretary shall execute those policies adopted by the State Board in the legal exercise of its powers and shall:

* * *

(9) Establish requirements for information to be submitted by school districts, including necessary statistical data and other information and ensure, to the extent possible, that data are reported in a uniform way. Data collected under this subdivision shall include budget surplus amounts, reserve fund amounts, and information concerning the purpose and use of any reserve funds.

* * *

* * * Study on Aggregate Common Level of Appraisal * * *

Sec. 5. COMMON LEVEL OF APPRAISAL; MERGED SCHOOL DISTRICT; STUDY COMMITTEE; REPORT

(a) Creation. There is created a Common Level of Appraisal (CLA) Study Committee to study the use of an aggregate common level of appraisal in a merged school district to determine the statewide education tax for each municipality in that district.

(b) Membership. The Committee shall be composed of the following five members:

(1) the Director of Property Valuation and Review or designee, who shall chair the Committee;

(2) two town listers appointed by the Vermont Association of Listers and Assessors;

(3) one school board member from a merged district, appointed by the Vermont School Board Association; and

(4) one member from the Vermont League of Cities and Towns, appointed by the Board of Directors of that organization.

(c) Powers and duties. The Committee shall study the impact of aggregating the common level of appraisal in a merged school district, including the following issues:

(1) how to determine and calculate the aggregate CLA; and

(2) the potential impacts of aggregating the CLA, including any advantages or disadvantages.

(d) Report. On or before December 15, 2016, the Committee shall submit a written report to the House Committees on Ways and Means and on Education and the Senate Committees on Finance and on Education with its findings and any recommendations for legislative action.

(e) Assistance. For purposes of scheduling meetings and preparing recommended legislation, the Committee shall have the assistance of Department of Taxes.

(f) Meetings.

(1) The Director of Property Valuation and Review or designee shall call the first meeting of the Committee to occur on or before August 1, 2016.

(2) A majority of the membership shall constitute a quorum.

(3) The Committee shall cease to exist on January 31, 2017.

(g) Compensation. Nonlegislative members of the Committee shall be entitled to compensation as provided under 32 V.S.A. § 1010.

Sec. 6. REPORT ON THE IMPACT OF H.846 OF 2016

(a) On or before November 15, 2016, the Joint Fiscal Office, with the assistance of the Office of Legislative Council and the Department of Taxes, shall issue a report analyzing the impact of H.846 of 2016, an act related to making changes to the calculation of the statewide education property tax. The analysis shall be based on the statutory language presented to the House Committee on Education on March 11, 2016. The report shall be delivered to the Senate Committees on Finance and on Education and the House Committees on Ways and Means and on Education.

(b) The report shall address:

(1) the impact of the proposed changes on education spending growth, both at the district level and the State level;

(2) the impact of the proposed changes on school districts by spending levels, size, location, and operating structure;

(3) the impact on homestead tax rates, income sensitivity percentages, and nonresidential tax rates across the State;

(4) the impact of the proposed changes on the Education Fund balance;

(5) the funding stability of the proposed changes based on variable economic conditions;

(6) any transition issues created by the proposed changes; and

(7) any related issues identified by the Joint Fiscal Office.

Sec. 7. REPORT ON THE IMPACT OF H.656 OF 2016

(a) On or before November 15, 2016, the Joint Fiscal Office, with the assistance of the Office of Legislative Council and the Department of Taxes, shall issue a report analyzing the impact of H.656 of 2016, an act relating to creating an education tax that is adjusted by income for all taxpayers. The report shall be delivered to the Senate Committees on Finance and on Education and the House Committees on Ways and Means and on Education.

(b) The report shall address:

(1) the impact of the proposed changes on current groups of taxpayers, including taxpayers who pay an education property tax based on property value, those who pay based on income, and renters;

(2) the impact of imposing a cap, of various amounts, on the total amount of taxes paid by a taxpayer under the proposal, but at least including an analysis of a cap of \$25,000.00;

(3) the impact of the proposed changes on towns and the State, including administrative issues resulting from the proposed changes;

(4) how the proposed changes to the current definition of housesite impact taxpayers at different levels of income and different levels of property values and how the changes would affect property owners with different configurations of property ownership;

(5) any transition issues created by the proposed changes;

(6) the impact of the proposed changes on taxpayer confidentiality; and

(7) any related issues identified by the Joint Fiscal Office.

* * * Effective Dates * * *

Sec. 8. EFFECTIVE DATES

This act shall take effect on July 1, 2016, except for Sec. 4 (data collection) which shall take effect on July 1, 2019.

(Committee vote: 4-0-1)

(For House amendments, see House Journal for March 29, 2016, page 697-702 and March 30, 2016, page 718)

ORDERED TO LIE

H. 74.

An act relating to safety protocols for social and mental health workers.

PENDING ACTION: Third Reading.

CONCURRENT RESOLUTIONS FOR NOTICE

Concurrent Resolutions for Notice under Joint Rule 16

The following joint concurrent resolutions have been introduced for approval by the Senate and House and will be adopted by the Senate unless a Senator requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration should be communicated to the Secretary's Office.

H.C.R. 345-362 (For text of Resolutions, see Addendum to House Calendar for April 19, 2016)

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.

Lynn Roberto of Springfield – Alternate member of the Vermont Parole Board – By Sen. Balint for the Committee on Institutions. (4/20/16)

FOR INFORMATION ONLY

CROSS OVER DATES

The Joint Rules Committee established the following Crossover deadlines:

(1) All **Senate/House** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance/Ways and Means, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 11, 2016**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

(2) All **Senate/House** bills referred pursuant to Senate Rule 31 or House Rule 35(a) to the Committees on Appropriations and Finance/Ways and Means must be reported out by the last of those committees on or before **Friday, March 18, 2016**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

Note: The Senate will not act on 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).