

Journal of the Senate

FRIDAY, JANUARY 30, 2015

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 12

A message was received from the House of Representatives by Ms. Melissa Kucserik, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 4. An act relating to prohibiting the manufacture or sale of personal care products and over-the-counter drugs containing microbeads.

H. 17. An act relating to identification and notification of Public Records Act exemptions in administrative rules.

In the passage of which the concurrence of the Senate is requested.

Message from the House No. 13

A message was received from the House of Representatives by Ms. Melissa Kucserik, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 16. An act relating to requiring an inmate to report to the Sex Offender Registry prior to release from a correctional facility.

In the passage of which the concurrence of the Senate is requested.

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 15. House concurrent resolution honoring Frank A. Silfies.

H.C.R. 16. House concurrent resolution congratulating the Rutland Senior High School students whose petition persuaded Apple to remove the After School iPhone App from its iTunes Store.

H.C.R. 17. House concurrent resolution designating the week of January 21–25 as National Nurse Anesthetists Week in Vermont.

In the adoption of which the concurrence of the Senate is requested.

Senate Resolution Referred

S.R. 4.

Senate resolution of the following title was offered, read the first time and is as follows:

By Senators Ashe and Westman,

S.R. 4. Senate resolution relating to amending the permanent rules of the Senate relating to the jurisdiction of the Committee on Institutions.

Resolved by the Senate:

In Rule 24, ninth paragraph, after the words “public buildings” by striking out the comma and inserting the following: ; the acquisition, operation, and management of information technology in state government and in the General Assembly;

Thereupon, the President, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Rules.

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

S. 51.

By Senators Bray, Ayer, Balint, Lyons, McAllister, McCormack, Pollina and Zuckerman,

An act relating to establishing a renewable energy standard and energy transformation program.

To the Committee on Natural Resources & Energy.

S. 52.

By Senator Sears,

An act relating to the Uniform Interstate Family Support Act.

To the Committee on Judiciary.

S. 53.

By Senators Ayer, Collamore, Lyons and Pollina,
An act relating to reportable disease registries and data.
To the Committee on Health & Welfare.

S. 54.

By Senators Ashe and Kitchel,
An act relating to the assignment of payment for dental benefits.
To the Committee on Health & Welfare.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 4.

An act relating to prohibiting the manufacture or sale of personal care products and over-the-counter drugs containing microbeads.
To the Committee on Natural Resources & Energy.

H. 16.

An act relating to requiring an inmate to report to the Sex Offender Registry prior to release from a correctional facility.
To the Committee on Judiciary.

H. 17.

An act relating to identification and notification of Public Records Act exemptions in administrative rules.
To the Committee on Government Operations.

Bill Amended; Third Reading Ordered**S. 6.**

Senator Sears, for the Committee on Judiciary, to which was referred Senate bill entitled:

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

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

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

§ 1501. ESCAPE AND ATTEMPTS TO ESCAPE

* * *

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

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

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

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

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

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

* * *

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

§ 5321. APPEARANCE BY VICTIM

* * *

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

(d) At or before the sentencing hearing, the prosecutor's office shall instruct the victim of a listed crime, in all cases where the ~~court~~ Court imposes a sentence which includes a period of incarceration, that a sentence of incarceration is to the custody of the ~~commissioner~~ Commissioner of

~~corrections~~ Corrections and that the ~~commissioner~~ Commissioner of ~~corrections~~ Corrections has the authority to affect the actual time the defendant shall serve in incarceration through good time credit, furlough, work-release, and other early release programs. ~~in~~ In addition, the prosecutor's office shall explain the significance of a minimum and maximum sentence to the victim and shall also explain the function of parole and how it may affect the actual amount of time the defendant may be incarcerated.

* * *

Sec. 3. 13 V.S.A. § 5574 is amended to read:

§ 5574. BURDEN OF PROOF; JUDGMENT; DAMAGES

(a) A claimant shall be entitled to judgment in an action under this subchapter if the claimant establishes each of the following by clear and convincing evidence:

* * *

(2)(A) ~~The~~ the complainant's conviction was reversed or vacated, the complainant's information or indictment was dismissed, or the complainant was acquitted after a second or subsequent trial; ~~or~~

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

* * *

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

§ 4230. MARIJUANA

(a) Possession and cultivation.

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

* * *

(b) Selling or dispensing.

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

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

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

* * *

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

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

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

Sec. 7. EFFECTIVE DATE

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

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

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

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

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

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

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

* * *

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

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

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

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

* * *

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

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

Sec. 8. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Appointments Confirmed

Under suspension of the rules (and particularly, Senate Rule 93), as moved by Senator White, the following Gubernatorial appointments were confirmed together as a group by the Senate, without reports given by the Committees to which they were referred and without debate:

Kiehle, James of Brattleboro - Member, State Labor Relations Board – July 1, 2014, to June 30, 2020.

Laughlin, Joshua of Putney - Member, Vermont Housing and Conservation Board - May 9, 2014, to January 31, 2017.

Appointment of Senate Members to the Emergency Board

Pursuant to the provisions of 32 V.S.A. §131, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Emergency Board for terms of two years:

Senator Kitchel, *ex officio*

Senator Ashe, *ex officio*

**Appointment of Senate Members to Green Mountain Care Board
Nominating Committee**

Pursuant to the provisions of 18 V.S.A. §9390, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Green Mountain Care Board Nominating Committee, for a term of two years:

Senator Mullin

Senator Ayer

Dr. Louis A. Kazal, Jr.

**Appointment of Senate Members to Government Accountability
Committee**

Pursuant to the provisions of Sec. 5(b) of No. 206 of the Acts of 2008, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Legislative Government Accountability for the current biennium:

Senator White

Senator Pollina

Senator Snelling

Senator Doyle

Appointment of Senate Members to Health Reform Oversight Committee

Pursuant to the provisions of Act No. 179, Sec. E 306.3 (2014), the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Health Reform Oversight Committee:

Senator Kitchel

Senator Ashe

Senator Ayer

Appointment of Senate Members to the Joint Committee on Judicial Retention

Pursuant to the provisions of 4 V.S.A. §607, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Committee on Judicial Retention during this biennium:

Senator Nitka
Senator Flory
Senator Benning
Senator Sirotkin

Appointment of Senate Members to Joint Rules Committee

The President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Rules Committee for terms of two years pursuant to the provisions of Joint Rule No. 5:

Senator Campbell, *ex officio*
Senator Mazza
Senator Baruth
Senator Benning

Appointment of Senate Members to the Joint Transportation Oversight Committee

Pursuant to the provisions of 19 V.S.A. §12b the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Transportation Oversight Committee for terms of two years:

Senator Mazza, *ex officio*
Senator Kitchel, *ex officio*
Senator Ashe, *ex officio*

Appointment of Senate Members to Legislative Council

Pursuant to the provisions of 2 V.S.A. §402, the President announced the appointment by the President of the following Senators to serve on the Legislative Council for terms of two years:

Senator Campbell, *ex officio*
Senator Sears
Senator Mazza
Senator Snelling

Appointment of Senate Members to Legislative Oversight Committee on Information Technology

Pursuant to the provisions of 2 V.S.A. §751, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Legislative Oversight Committee on Information Technology for the current biennium:

Senator Bray
Senator Baruth
Senator Westman
Senator Campion

Appointment of Senate Members to the Senate Sexual Harassment Panel

Pursuant to the provisions of Senate Rule 101, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Senate Sexual Harassment Panel (SSHP) during this biennium: (6 Members)

Senator Baruth
Senator Kitchel
Senator Benning
Senator Zuckerman
Senator Lyons
Senator White

Appointment of Senate Member to Vermont Economic Progress Council

Pursuant to the provisions of 32 V.S.A. §5930a, the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Vermont Economic Progress Council for a term of two years:

Senator Mullin

Standing Committee Appointed

The President, on behalf of the Committee on Committees, reported the appointment of the following standing committee, as follows:

Senate Rules

At Call

Senator Campbell, Chair
Baruth, Vice-Chair
Mazza
Benning
Flory

House Concurrent Resolutions

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, were severally adopted in concurrence:

By Representatives Huntley and Sweaney,

H.C.R. 15.

House concurrent resolution honoring Frank A. Silfies.

By Representative Cupoli and others,

By Senators Collamore, Flory and Mullin,

H.C.R. 16.

House concurrent resolution congratulating the Rutland Senior High School students whose petition persuaded Apple to remove the After School iPhone App from its iTunes Store.

By Representative Keenan and others,

H.C.R. 17.

House concurrent resolution designating the week of January 21–25 as National Nurse Anesthetists Week in Vermont.

Adjournment

On motion of Senator Campbell, the Senate adjourned, to reconvene on Tuesday, February 3, 2015, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 11.