

Miscellaneous Criminal Procedure Amendments (NOT H.858)

Sec. 39. This section simply corrects an inaccurate cross reference to federal law in the human trafficking statute.

Sec. 40. This section removes language from the public defender statute that prosecutors, public defenders, and the court all agree is unconstitutional. The language requires that a person who is assigned a public defender must pay the required co-payment before the defendant is provided with the attorney. Since this requirement violates the constitutional right to an attorney, the language is struck in Section 2 of the bill. Section 2 also permits the co-payment to be included in the reimbursement order the court issues that contains the expenses the defendant will be responsible for later.

Sec. 41 and Sec. 42. These sections provide that the legal effect of an expungement order shall occur immediately.

Sec. 43. This section corrects an inaccurate cross reference in the definition of “listed crime.”

Sec. 44. This section corrects an unintended consequence of the Internet Sex Offender Registry statute. The language currently provides that an offender’s name is posted on the Registry upon the offender’s “release from confinement.” However, some offenders serve sentences that do not involve Department of Corrections confinement, such as probation. As a result, at least one court decision ruled that an offender’s name was not required to be placed on the Registry because he was never incarcerated, even though the offense would otherwise have required it. Section 1 corrects this situation by making clear that an offender’s name must be placed on the Registry if there is a conviction of a registrable offense, regardless of whether the offender is incarcerated. If the offender is subject to DOC confinement, his or her name is placed on the Registry upon the offender’s release; if the offender is not subject to confinement, his or her name is placed on the Registry upon the offender’s conviction.

Secs. 45 and 46. These sections relate to the Innocence Protection Act. Section 41 provides that a person exonerated after being incarcerated on account of a wrongful conviction may bring a claim for compensation, so long as the person shows that he or she was actually innocent. There has been some confusion over whether compensation is available only for exonerations based on DNA evidence, and this section makes clear that a person is entitled to compensation whether his or her innocence is demonstrated by DNA evidence or by some other means. Section 46 applies this compensation remedy

retroactively, so that a person may file for compensation for any covered exoneration that occurs on or after July 1, 2007 (which is the date that the Innocence Protection Act was originally enacted).

Sec. 47. This section adds 2 items for the Joint Legislative Justice Oversight Committee to study during the 2016 interim: (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.

H.533 VICTIM NOTIFICATION

Sec. 48. Notice to victims

- 13 V.S.A. § 5305 sets out the information victims are entitled to request from agencies having the custody of a defendant.
- Sec. 1 changes the title of the section from Information Concerning Release from Confinement to Information Concerning Release from Custody to more accurately reflect when victims are entitled to information about an offender's status. *Confinement occurs once a person has been convicted of a crime and sentenced to a term of confinement; custody is a broader term referring to the care or control of a person.*
- Adds "upon termination or discharge of probation" to the list of circumstances triggering the right of a victim to request notification before the defendant is released.

Sec. 49. Information from law enforcement agency

- 13 V.S.A § 5314 sets out the information law enforcement is obligated to provide for victims of all crimes and of listed crimes specifically.
- New subsection (b)(6) directs law enforcement to provide victims of listed crimes with information concerning bail or conditions of release imposed on the defendant prior to arraignment. Typically, bail or conditions are imposed on a defendant pre-arraignment if it is a weekend or another time the judge is unavailable, and they are imposed by a clerk of the court prior to an initial court appearance.

Sec. 50. Appearance by victim

- 13 V.S.A. § 5321 sets forth the rights of the victim to be notified and to appear and be heard at a sentencing proceeding involving the defendant.
- Sec. 3 adds a provision to the statute requiring notice and the opportunity to appear and be heard at a change of plea hearing in which the court is considering a deferred sentence. The court shall consider the victim's views (if offered) in determining whether to defer the sentence.
- Subsection (e) adds a provision requiring the prosecutor to instruct victims of listed crimes about the significance of a deferred sentence and the potential consequences of violation of any conditions imposed by the court prior to the change of plea hearing.