

1 The Committee on Judiciary to which was referred Senate Bill No. 13 entitled
2 “An act relating to the Vermont Sex Offender Registry” respectfully reports
3 that it has considered the same and recommends that the House propose to the
4 Senate that the bill be amended by striking out all after the enacting clause and
5 inserting in lieu thereof the following:

6 Sec. 1. 13 V.S.A. § 5401(10)(B)(viii) is amended to read:

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

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

10 § 5403. ~~REPORTING UPON CONVICTION TO~~ DEPARTMENT OF
11 PUBLIC SAFETY

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

- 15 (1) name;
- 16 (2) date of birth;
- 17 (3) ~~general physical description~~;
- 18 (4) current address;
- 19 (5)(4) Social Security number;
- 20 (6) ~~fingerprints~~;
- 21 (7) ~~current photograph~~;

1 ~~(8)~~(5) current employment; and
2 ~~(9)~~(6) name and address of any postsecondary educational institution at
3 which the sex offender is enrolled as a student.

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

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

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

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

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

2 § 5405a. COURT DETERMINATION OF SEX OFFENDER REGISTRY

3 REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

10 (2) any prior convictions that affect:

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

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

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

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

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

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

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

2 § 5416. PERSONS SUBJECT TO ERRONEOUS SEX OFFENDER

3 REGISTRY REQUIREMENTS; PETITION TO CORRECT

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

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

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

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

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

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

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

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

10 (A) newly discovered evidence;

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

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

14 (D) a successful petition for postconviction relief.

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

16 Sec. 28. EFFECTIVE DATE

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

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

19 ~~(2) Sec. 14 of this act shall take effect July 1, 2010, provided that~~

20 ~~Sec. 14 shall not take effect until the state auditor, in consultation with the~~

21 ~~department of public safety and the department of information and innovation~~

1 ~~technology, has provided a favorable performance audit regarding the Internet~~
2 ~~sex offender registry to the senate and house committees on judiciary, the~~
3 ~~house committee on corrections and institutions, and the joint committee on~~
4 ~~corrections oversight.~~

5 Sec. 7. REPEAL

6 2009 Acts and Resolves No. 58, Sec. 14 (electronic posting of offender
7 addresses on Sex Offender Registry) is repealed.

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

9 § 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

10 * * *

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

13 (1) the offender's name and any known aliases;

14 (2) the offender's date of birth;

15 (3) a general physical description of the offender;

16 (4) a digital photograph of the offender;

17 (5) the offender's town of residence;

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

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

1 (i) An offender’s name should be on the Sex Offender Registry or
2 the Internet Sex Offender Registry but it is not.

3 (ii) An offender’s name should not be on the Sex Offender
4 Registry or the Internet Sex Offender Registry but it is.

5 (iii) There is an error in the offender’s address.

6 (iv) An offender’s name is scheduled to be posted on the Sex
7 Offender Registry or the Internet Sex Offender Registry for an incorrect length
8 of time.

9 (3) The date that the State Auditor provides a report to the House and
10 Senate Committees on Judiciary finding that the Department of Public Safety
11 has complied with subdivision (b)(2) of this section.

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14 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE

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