

Journal of the Senate

TUESDAY, APRIL 25, 2017

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Rules Suspended; Placed on Action Calendar

H. 516.

Pending entry on the Calendar for notice, on motion of Senator Ashe, the rules were suspended and House bill entitled:

An act relating to miscellaneous tax changes.

Was taken up for immediate consideration and placed on the action Calendar for the next legislative day.

Joint Senate Resolution Adopted on the Part of the Senate

J.R.S. 32.

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Ashe,

J.R.S. 32. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, April 28, 2017, it be to meet again no later than Tuesday, May 2, 2017.

**Consideration Resumed; Action Reconsidered; Substitute Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment;
Rules Suspended; Bill Messaged**

H. 513.

Consideration was resumed on House bill entitled:

An act relating to making miscellaneous changes to education law.

Thereupon, the pending question, Shall the Senate reconsider it's action?, was agreed to.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senators Baruth, Ashe, Balint, Benning, Campion, Degree, Ingram, Kitchel, Mullin, Rodgers, Sears and Starr?, Senator Bray moved to substitute the proposal of amendment of Senators Baruth, Ashe, Balint, Benning, Campion, Degree, Ingram, Kitchel, Mullin, Rodgers, Sears and Starr by striking out Sec. 1 in its entirety and inserting in lieu thereof the following:

Sec. 1. APPROVED INDEPENDENT SCHOOLS STUDY COMMITTEE

(a) Legislative intent. It is the intent of the General Assembly to resolve the issues raised by the State Board of Education's proposed amendments to the 2200 Series of the Rules and Practices of the State Board of Education, initiated by the State Board on November 13, 2015, after taking into account the report of the Approved Independent Schools Study Committee required under subsection (f) of this section.

(b) Creation. There is created the Approved Independent Schools Study Committee to consider and make recommendations on the criteria to be used by the State Board of Education for designation as an "approved" independent school.

(c) Membership. The Committee shall be composed of the following ten members:

(1) one current member of the House of Representatives who shall be appointed by the Speaker of the House;

(2) one current member of the Senate who shall be appointed by the Committee on Committees;

(3) the Chair of the State Board of Education or designee;

(4) the Secretary of Education or designee;

(5) the Executive Director of the Vermont Superintendent's Association or designee;

(6) the Executive Director of the Vermont School Boards Association or designee;

(7) the Executive Director of the Vermont Independent Schools Association or designee;

(8) two representatives of approved independent schools, who shall be

chosen by the Executive Director of the Vermont Independent Schools Association; and

(9) the Executive Director of the Vermont Council of Special Education Administrators or designee.

(d) Powers and duties. The Committee shall consider and make recommendations on the criteria to be used by the State Board of Education for designation as an “approved” independent school, including the following criteria:

(1) the school’s enrollment policy and any limitation on a student’s ability to enroll;

(2) how the school should be required to deliver special education services and which categories of these services; and

(3) the scope and nature of financial information and special education information that should be required to be reported by the school to the State Board or Agency of Education.

(e) Assistance. The Committee shall have the administrative, technical, and legal assistance of the Agency of Education.

(f) Report. On or before December 1, 2017, the Committee shall submit a written report to the House and Senate Committees on Education and the State Board of Education with its findings and any recommendations, including recommendations for any amendments to legislation.

(g) Initiation of Rulemaking. Notwithstanding any provision to the contrary under 16 V.S.A. § 164, the State Board of Education’s proposed amendments to the 2200 Series of the Rules and Practices of the State Board of Education, initiated by the State Board on November 13, 2015, shall be null, void, and of no effect. On or before March 1, 2018, and prior to prefilings of rule amendments under 3 V.S.A. § 837, the State Board shall consider the Committee’s report required under subsection (f) of this section and submit to the House and Senate Committees on Education new draft amendments to the 2200 Series of its Rules and Practices.

(h) Meetings.

(1) The Secretary of Education shall call the first meeting of the Committee to occur on or before May 30, 2017.

(2) The Committee shall select a chair from among its members at the first meeting.

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

(4) The Committee shall cease to exist on January 16, 2018.

(i) Reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, legislative members of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for no more than seven meetings.

(2) Other members of the Committee who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for no more than seven meetings.

Which was agreed to.

Thereupon, the proposal of amendment of Senators Baruth, Ashe, Balint, Benning, Campion, Degree, Ingram, Kitchel, Mullin Rodgers, Sears and Starr as substituted was agreed to.

Thereupon, the bill was read the third time and pass in concurrence with proposal of amendment.

Thereupon, on motion of Senator Ashe, the rules were suspended, and the bill was ordered messaged to the House forthwith.

Bill Amended; Third Reading Rejected

S. 88.

Senate bill entitled:

An act relating to increasing the smoking age from 18 to 21 years of age.

Having been called up, was taken up.

Thereupon, pending the question Shall the recommendation of amendment of Health and Welfare be amended as recommended by Senator Ingram?, Senator Ingram requested and was granted leave to withdraw her amendment.

Thereupon, Senator Ingram moved to amend the recommendation of amendment of the Committee on Health and Welfare as follow:

First: By striking out Sec. 3, 7 V.S.A. § 1005, in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

Sec. 3. 7 V.S.A. § 1005 is amended to read:

§ 1005. PERSONS UNDER ~~18~~ 21 YEARS OF AGE; POSSESSION OF TOBACCO PRODUCTS; MISREPRESENTING AGE OR PURCHASING TOBACCO PRODUCTS; PENALTY

~~(a) A person under 18 years of age shall not possess, purchase, or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia unless the person is an employee of a holder of a tobacco license and is in possession of tobacco products, tobacco substitutes, or tobacco paraphernalia to effect a sale in the course of employment.~~

~~(b)(1) A person under 21 years of age shall not purchase or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia.~~

~~(2)(A) A person under 18 21 years of age shall not misrepresent his or her age to purchase or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia. A person who possesses tobacco products, tobacco substitutes, or tobacco paraphernalia in violation of this subsection shall be subject to having the tobacco products, tobacco substitutes, or tobacco paraphernalia immediately confiscated and shall be further subject to a civil penalty of \$25.00. An action under this subsection shall be brought in the same manner as a traffic violation pursuant to 23 V.S.A. chapter 24.~~

~~(b)(B) A person under 18 21 years of age who misrepresents his or her age by presenting false identification to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia shall be fined not more than \$50.00 or provide up to 10 hours of community service, or both.~~

Second: By adding a new section to be Sec. 8 to read as follows:

Sec. 8. EXEMPTIONS; PERSONS ATTAINING 18 YEARS OF AGE ON OR BEFORE JULY 1, 2017

(a) Notwithstanding any provision of this act to the contrary, the prohibition on the sale or furnishing of tobacco products, tobacco substitutes, or tobacco paraphernalia to a person under 21 years of age shall not apply to any person who attained 18 years of age on or before July 1, 2017.

(b) Notwithstanding any provision of this act to the contrary, the prohibition on the purchase of or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia by a person under 21 years of age shall not apply to any person who attained 18 years of age on or before July 1, 2017.

And by renumbering the remaining section to be numerically correct

Thereupon, the recommendation of amendment of the Committee on Health and Welfare was amended as recommended by Senator Ingram.

Thereupon, the question, Shall the bill be amended as recommended by the Committee on Health and Welfare, as amended?, was agreed to.

Thereupon, third reading of the bill was rejected on a roll call, Yeas 13,

Nays 16.

Senator Starr having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ayer, Balint, Baruth, Brooks, Clarkson, Cummings, Ingram, Lyons, McCormack, Pollina, Rodgers, Sirotkin, White.

Those Senators who voted in the negative were: Ashe, Benning, Branagan, Bray, Campion, Collamore, Degree, Flory, Kitchel, MacDonald, Mullin, Nitka, Pearson, Sears, Starr, Westman.

The Senator excused and not voting was: Mazza.

House Proposal of Amendment Concurred In with Amendment

S. 22.

House proposal of amendment to Senate bill entitled:

An act relating to increased penalties for possession, sale, and dispensation of fentanyl.

Was taken up.

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

Sec. 1. LEGISLATIVE FINDINGS

The General Assembly finds:

(1) According to Michael Botticelli, former Director of the Office of National Drug Control Policy, the National Drug Control Strategy recommends treating “addiction as a public health issue, not a crime.” Further, the strategy “rejects the notion that we can arrest and incarcerate our way out of the nation’s drug problem.”

(2) Vermont Chief Justice Paul Reiber has declared that “the classic approach of ‘tough on crime’ is not working in [the] area of drug policy” and that treatment-based models are proving to be a more effective approach for dealing with crime associated with substance abuse.

(3) A felony conviction record is a significant impediment to gaining and maintaining employment and housing, yet we know that stable employment and housing are an essential element to recovery from substance abuse and desistance of criminal activity that often accompanies addiction.

(4) In a 2014 study by the PEW Research Center, 67 percent of people

polled said government should focus more on providing treatment to people who use illicit drugs and less on punishment. The Center later reported that states are leading the way in reforming drug laws to reflect this opinion. State-level actions have included lowering penalties for possession and use of illegal drugs, shortening mandatory minimums or curbing their applicability, removing automatic sentence enhancements, and establishing or extending the jurisdiction of drug courts and other alternatives to the regular criminal justice system.

(5) Vermont must look at alternative approaches to the traditional criminal justice model for addressing low-level illicit drug use if it is going to reduce the effects of addiction and addiction-related crime in this State.

Sec. 2. STUDY

(a) The Office of Legislative Council shall examine the issue of a public health approach to low-level possession and use of illicit and regulated drugs, including fentanyl, in Vermont as an alternative to the traditional criminal justice model, looking to trends both nationally and internationally, with a goal of providing policymakers a range of approaches to consider during the 2018 legislative session.

(b) The Office of Legislative Council shall report its findings to the General Assembly on or before November 15, 2017.

Sec. 3. 18 V.S.A. § 4234b is amended to read:

§ 4234b. EPHEDRINE AND PSEUDOEPHEDRINE

* * *

(c) Electronic registry system.

(1)(A) Retail establishments shall use an electronic registry system to record the sale of products made pursuant to subsection (b) of this section. The electronic registry system shall have the capacity to block a sale of nonprescription drug products containing ephedrine base, pseudoephedrine base, or phenylpropanolamine base that would result in a purchaser exceeding the lawful daily or monthly amount. The system shall contain an override function that may be used by an agent of a retail establishment who is dispensing the drug product and who has a reasonable fear of imminent bodily harm to his or her person or to another person if the transaction is not completed. The system shall create a record of each use of the override mechanism.

(B) The electronic registry system shall be available free of charge to the State of Vermont, retail establishments, and local law enforcement agencies.

(C) The electronic registry system shall operate in real time to enable communication among in-state users and users of similar systems in neighboring states.

(D) The State shall use the National Precursor Log Exchange (NPLEx) online portal or its equivalent to host Vermont's electronic registry system.

(2)(A) Prior to completing a sale under subsection (b) of this section, a retail establishment shall require the person purchasing the drug product to present a current, valid government-issued identification document. The retail establishment shall record in the electronic registry system:

(i) the name and address of the purchaser;

(ii) the name of the drug product and quantity of ephedrine, pseudoephedrine, and phenylpropanolamine base sold in grams;

(iii) the date and time of purchase;

(iv) the form of identification presented, the issuing government entity, and the corresponding identification number; and

(v) the name of the person selling or furnishing the drug product.

(B)(i) If the retail establishment experiences an electronic or mechanical failure of the electronic registry system and is unable to comply with the electronic recording requirement, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until the retail establishment is able to comply fully with this subsection (c).

(ii) If the region of the State where the retail establishment is located does not have broadband Internet access, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until broadband Internet access becomes accessible in that region. At that time, the retail establishment shall come into compliance with this subsection (c).

(C) A retail establishment shall maintain all records of drug product purchases made pursuant to this subsection (c) for a minimum of two years.

(3) A retail establishment shall display a sign at the register provided by NPLEx or its equivalent to notify purchasers of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine base that:

(A) the purchase of the drug product or products shall result in the purchaser's identity being listed on a national database; and

(B) the purchaser has the right to request the transaction number for

any purchase that was denied pursuant to this subsection (c).

(4) Except as provided in subdivision (5) of this subsection (c), a person or retail establishment that violates this subsection shall:

(A) for a first violation be assessed a civil penalty of not more than \$100.00; and

(B) for a second or subsequent violation be assessed a civil penalty of not more than \$500.00.

(d) This section shall not apply to a manufacturer ~~which~~ that has obtained an exemption from the Attorney General of the United States under Section 711(d) of the federal Combat Methamphetamine Epidemic Act of 2005.

(e) As used in this section:

(1) “Distributor” means a person, other than a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes a drug product to any person who is not the ultimate user or consumer of the product.

(2) “Knowingly” means having actual knowledge of the relevant facts.

(3) “Manufacturer” means a person who produces, compounds, packages, or in any manner initially prepares a drug product for sale or use.

(4) “Wholesaler” means a person, other than a manufacturer, who sells, transfers, or in any manner furnishes a drug product to any other person for the purpose of being resold.

Sec. 5. EFFECTIVE DATES

This section and Sec. 3 (ephedrine and pseudoephedrine) shall take effect on passage. The remaining sections shall take effect on July 1, 2017.

And that after passage the title of the bill be amended to read: “An act relating to alternative approaches to addressing low-level illicit drug use and the ephedrine and pseudoephedrine registry

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Sears moved that the Senate concur in the House proposal of amendment with a further proposal of amendment by striking out Secs. 1 and 2 in their entirety and inserting in lieu thereof four new sections to be Secs. 1a, 1b, 2a, and 2b to read as follows:

Sec. 1a. 18 V.S.A. § 4233a is added to read:

§ 4233a. FENTANYL

(a) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing fentanyl shall be

imprisoned not more than three years or fined not more than \$75,000.00, or both. A person knowingly and unlawfully selling fentanyl shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of four milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 10 years or fined not more than \$250,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of 20 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both.

(4) In lieu of a charge under this subsection, but in addition to any other penalties provided by law, a person knowingly and unlawfully selling or dispensing any regulated drug containing a detectable amount of fentanyl shall be imprisoned not more than five years or fined not more than \$250,000.00, or both.

(b) Trafficking. A person knowingly and unlawfully possessing fentanyl in an amount consisting of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl with the intent to sell or dispense the fentanyl shall be imprisoned not more than 30 years or fined not more than \$1,000,000.00, or both. There shall be a permissive inference that a person who possesses fentanyl in an amount of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl intends to sell or dispense the fentanyl. The amount of possessed fentanyl under this subsection to sustain a charge of conspiracy under 13 V.S.A. § 1404 shall be not less than 70 milligrams in the aggregate.

(c) Transportation into the State. In addition to any other penalties provided by law, a person knowingly and unlawfully transporting more than 20 milligrams of fentanyl into Vermont with the intent to sell or dispense the fentanyl shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

Sec. 1b. 18 V.S.A. § 4234 is amended to read:

§ 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

* * *

(b) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be imprisoned not more than three years or fined not more than \$75,000.00, or

both. A person knowingly and unlawfully selling a depressant, stimulant, or narcotic drug, other than fentanyl, cocaine, or heroin, shall be imprisoned not more than five years or fined not more than \$25,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 100 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 1,000 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both.

Sec. 2a. 13 V.S.A. § 1404 is amended to read:

§ 1404. CONSPIRACY

(a) A person is guilty of conspiracy if, with the purpose that an offense listed in subsection (c) of this section be committed, that person agrees with one or more persons to commit or cause the commission of that offense, and at least two of the co-conspirators are persons who are neither law enforcement officials acting in official capacity nor persons acting in cooperation with a law enforcement official.

(b) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the defendant or by a co-conspirator, other than a law enforcement official acting in an official capacity or a person acting in cooperation with a law enforcement official, and subsequent to the defendant's entrance into the conspiracy. Speech alone may not constitute an overt act.

(c) This section applies only to a conspiracy to commit or cause the commission of one or more of the following offenses:

- (1) murder in the first or second degree;
- (2) arson under sections 501-504 and 506 of this title;
- (3) sexual exploitation of children under sections 2822, 2823, and 2824 of this title;
- (4) receiving stolen property under sections 2561-2564 of this title; or
- (5) an offense involving the sale, delivery, manufacture, or cultivation of a regulated drug or an offense under:

- (A) 18 V.S.A. § 4230(c), relating to trafficking in marijuana;
- (B) 18 V.S.A. § 4231(c), relating to trafficking in cocaine;
- (C) 18 V.S.A. § 4233(c), relating to trafficking in heroin;
- (D) 18 V.S.A. § 4234(b)(3), relating to unlawful selling or dispensing of a depressant, stimulant, or narcotic drug, other than heroin or cocaine; ~~or~~
- (E) 18 V.S.A. § 4234a(c), relating to trafficking in methamphetamine; or
- (F) 18 V.S.A. § 4233a(c), relating to trafficking in fentanyl.

Sec. 2b. USE OF U.S. FOOD AND DRUG ADMINISTRATION-
APPROVED DRUGS CONTAINING CANNABIDIOL

(a) Upon approval by the U.S. Food and Drug Administration (FDA) of one or more prescription drugs containing cannabidiol, the following activities shall be lawful in Vermont:

(1) the clinically appropriate prescription for a patient of an FDA-approved prescription drug containing cannabidiol by a health care provider licensed to prescribe medications in this State and acting within his or her authorized scope of practice;

(2) the dispensing, pursuant to a valid prescription, of an FDA-approved prescription drug containing cannabidiol to a patient or a patient's authorized representative by a pharmacist or by another health care provider licensed to dispense medications in this State and acting within his or her authorized scope of practice;

(3) the possession and transportation of an FDA-approved prescription drug containing cannabidiol by a patient to whom a valid prescription was issued or by the patient's authorized representative;

(4) the possession and transportation of an FDA-approved prescription drug containing cannabidiol by a licensed pharmacy or wholesaler in order to facilitate the appropriate dispensing and use of the drug; and

(5) the use of an FDA-approved prescription drug containing cannabidiol by a patient to whom a valid prescription was issued, provided the patient uses the drug only for legitimate medical purposes in conformity with instructions from the prescriber and dispenser.

(b) Upon approval by the U.S. Food and Drug Administration of one or more prescription drugs containing cannabidiol, the Department of Health shall amend its rules to conform to the provisions of subsection (a) of this section.

Which was agreed to.

Bill Passed in Concurrence with Proposal of Amendment

H. 167.

House bill of the following title was read the third time and passed in concurrence with proposal of amendment:

An act relating to alternative approaches to addressing low-level illicit drug use.

House Proposal of Amendment Not Concurred In; Committee of Conference Requested

S. 50.

House proposal of amendment to Senate bill entitled:

An act relating to insurance coverage for telemedicine services delivered in or outside a health care facility.

Was taken up.

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

Sec. 1. 8 V.S.A. § 4100k is amended to read:

§ 4100k. COVERAGE OF HEALTH CARE SERVICES DELIVERED THROUGH TELEMEDICINE SERVICES

(a) All health insurance plans in this State shall provide coverage for telemedicine health care services delivered through telemedicine by a health care provider at a distant site to a patient in a health care facility at an originating site to the same extent that the services would be covered plan would cover the services if they were provided through in-person consultation.

(b) A health insurance plan may charge a deductible, co-payment, or coinsurance for a health care service provided through telemedicine so long as it does not exceed the deductible, co-payment, or coinsurance applicable to an in-person consultation.

(c) A health insurance plan may limit coverage to health care providers in the plan's network and may require originating site health care providers to document the reason the services are being provided by telemedicine rather than in person. A health insurance plan shall not impose limitations on the number of telemedicine consultations a covered person may receive that exceed limitations otherwise placed on in-person covered services.

(d) Nothing in this section shall be construed to prohibit a health insurance

plan from providing coverage for only those services that are medically necessary and are clinically appropriate for delivery through telemedicine, subject to the terms and conditions of the covered person's policy.

(e) A health insurance plan may reimburse for teleophthalmology or teledermatology provided by store and forward means and may require the distant site health care provider to document the reason the services are being provided by store and forward means.

(f) Nothing in this section shall be construed to require a health insurance plan to reimburse the distant site health care provider if the distant site health care provider has insufficient information to render an opinion.

(g) In order to facilitate the use of telemedicine in treating substance use disorder, when the originating site is a health care facility, health insurers and the Department of Vermont Health Access shall ensure that ~~both the treating clinician and the hosting facility~~ the health care provider at the distant site and the health care facility at the originating site are both reimbursed for the services rendered, unless the health care providers at both the ~~host and service~~ distant and originating sites are employed by the same entity.

(h) As used in this subchapter:

(1) "Distant site" means the location of the health care provider delivering services through telemedicine at the time the services are provided.

(2) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, as well as Medicaid and any other public health care assistance program offered or administered by the State or by any subdivision or instrumentality of the State. The term does not include policies or plans providing coverage for specified disease or other limited benefit coverage.

~~(2)~~(3) "Health care facility" shall have the same meaning as in 18 V.S.A. § 9402.

~~(3)~~(4) "Health care provider" means a person, partnership, or corporation, other than a facility or institution, that is licensed, certified, or otherwise authorized by law to provide professional health care service in this State to an individual during that individual's medical care, treatment, or confinement.

(5) "Originating site" means the location of the patient, whether or not accompanied by a health care provider, at the time services are provided by a health care provider through telemedicine, including a health care provider's office, a hospital, or a health care facility, or the patient's home or another nonmedical environment such as a school-based health center, a university-

based health center, or the patient's workplace.

(6) "Store and forward" means an asynchronous transmission of medical information to be reviewed at a later date by a health care provider at a distant site who is trained in the relevant specialty and by which the health care provider at the distant site reviews the medical information without the patient present in real time.

~~(4)~~(7) "Telemedicine" means the delivery of health care services such as diagnosis, consultation, or treatment through the use of live interactive audio and video over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. Telemedicine does not include the use of audio-only telephone, e-mail, or facsimile.

Sec. 2. 18 V.S.A. § 9361 is amended to read:

§ 9361. HEALTH CARE PROVIDERS PROVIDING DELIVERING
HEALTH CARE SERVICES THROUGH TELEMEDICINE OR BY
STORE AND FORWARD SERVICES MEANS

(a) As used in this section, "distant site," "health care provider," "originating site," "store and forward," and "telemedicine" shall have the same meanings as in 8 V.S.A. § 4100k.

(b) Subject to the limitations of the license under which the individual is practicing, a health care provider licensed in this state may prescribe, dispense, or administer drugs or medical supplies, or otherwise provide treatment recommendations to a patient after having performed an appropriate examination of the patient either in person, through telemedicine, or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically. Treatment recommendations made via electronic means, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional provider-patient settings. ~~For purposes of this subchapter, "telemedicine" shall have the same meaning as in 8 V.S.A. § 4100k.~~

(c)(1) A health care provider delivering health care services through telemedicine shall obtain and document a patient's oral or written informed consent prior to delivering services to the patient. The provider shall include the written consent in the patient's medical record or document the patient's oral consent in the patient's medical record.

(2)(A) Informed consent for telemedicine services shall include, in language that patients can easily understand:

(i) an explanation of the differences between telemedicine and in-person delivery of health care services, including:

(I) that the patient may experience a qualitative difference in care based on potential differences in a patient's ability to establish a therapeutic rapport with the provider in-person and through telemedicine; and

(II) that telemedicine provides different opportunities and challenges for provider-patient interaction than in-person consultation, including the potential for differences in the degree and manner of the provider's visual observations of the patient;

(ii) informing the patient of the patient's right to exclude any individual from participating in or observing the patient's consultation with the provider at both the originating site and the distant site;

(iii) informing the patient that the patient may stop telemedicine services at any time and may request a referral for in-person services; and

(iv) assurance that all services the health care provider delivers to the patient through telemedicine will be delivered over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

(B) For services delivered through telemedicine on an ongoing basis, the health care provider shall be required to obtain consent only at the first episode of care.

(3) A health care provider delivering telemedicine services through a contract with a third-party vendor shall comply with the provisions of subdivision (2) of this subsection (c) to the extent permissible under the terms of the contract. If the contract requires the health care provider to use the vendor's own informed consent provisions instead of those set forth in subdivision (2) of this subsection (c), the health care provider shall be deemed to be in compliance with the requirements of this subsection (c) if he or she adheres to the terms of the vendor's informed consent policies.

(4) Notwithstanding any provision of this subsection (c) to the contrary, a health care provider shall not be required to obtain a patient's informed consent for the use of telemedicine in the following circumstances:

(A) for the second certification of an emergency examination determining whether an individual is a person in need of treatment pursuant to section 7508 of this title; or

(B) for a psychiatrist's examination to determine whether an individual is in need of inpatient hospitalization pursuant to 13 V.S.A. § 4815(g)(3).

(d) Neither a health care provider nor a patient shall create or cause to be created a recording of a provider's telemedicine consultation with a patient.

~~(b)~~(e) A patient receiving teleophthalmology or teledermatology by store and forward means shall be informed of the right to receive a consultation with the distant site health care provider and shall receive a consultation with the distant site health care provider upon request. If requested, the consultation with the distant site health care provider may occur either at the time of the initial consultation or within a reasonable period of time of following the patient's notification of the results of the initial consultation. Receiving teledermatology or teleophthalmology by store and forward means shall not preclude a patient from receiving real time telemedicine or face-to-face services with the distant site health care provider at a future date. Originating site health care providers involved in the store and forward process shall ensure obtain informed consent from the patient as described in subsection (c) of this section. ~~For purposes of this subchapter, "store and forward" shall have the same meaning as in 8 V.S.A. § 4100k.~~

Sec. 3. REPEAL

33 V.S.A. § 1901i (Medicaid coverage for primary care telemedicine) is repealed.

Sec. 4. EFFECTIVE DATES

(a) Secs. 1 (health insurance coverage) and 3 (repeal) shall take effect on October 1, 2017 and shall apply to Medicaid on that date and to all other health insurance plans on or after October 1, 2017 on the date a health insurer issues, offers, or renews the health insurance plan, but in no event later than October 1, 2018.

(b) Sec. 2 (health care providers providing telemedicine) and this section shall take effect on passage.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Ayer, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

Third Reading Ordered

H. 50.

Senator Sirotkin, for the Committee on Finance, to which was referred House bill entitled:

An act relating to the telecommunications siting law.

Reported that the bill ought to pass in concurrence.

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

Proposal of Amendment; Third Reading Ordered

H. 219.

Senator Clarkson, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to the Vermont spaying and neutering program.

Reported recommending 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. 20 V.S.A. § 3815(a) is amended to read:

(a) ~~The agency of human services~~ Agency of Human Services shall administer a dog, cat, and wolf-hybrid spaying and neutering program providing reduced-cost spaying and neutering services and presurgical immunization for dogs, cats, and wolf-hybrids owned or cared for by ~~low income~~ individuals with low income. ~~The agency~~ Agency shall implement the program through an agreement with a qualified organization ~~consistent with the applicable administrative rules, except that the Agency may implement the program if the Commissioner determines that there is no qualified organization capable of implementing the program based on review of overall program success, financial resources of the organization, viability of the organization, or the organization's prior performance in implementing the program.~~

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

And that the bill ought to pass in concurrence with such proposal of amendment.

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

Proposal of Amendment; Third Reading Ordered

H. 503.

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

An act relating to bail.

Reported recommending 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:

* * *Release Prior to Trial * * *

Sec. 1. 13 V.S.A. § 7551 is amended to read:

§ 7551. APPEARANCE BONDS; GENERALLY

(a) A bond given by a person charged with a criminal offense or by a witness in a criminal prosecution under section 6605 of this title, conditioned for the appearance of the person or witness before the court in cases where the offense is punishable by fine or imprisonment, and in appealed cases, shall be taken to the ~~district or superior court~~ Criminal Division of the Superior Court where the prosecution is pending, and shall remain binding upon parties until discharged by the court or until sentencing. The person or witness shall appear at all required court proceedings.

(b) No bond may be imposed at the initial appearance of a person charged with a misdemeanor if the person was cited for the offense in accordance with Rule 3 of the Vermont Rules of Criminal Procedure. This subsection shall not be construed to restrict the court's ability to impose conditions on an individual reasonably to ensure his or her appearance at future proceedings or reasonably to protect the public in accordance with section 7554 of this title.

Sec. 2. 13 V.S.A. § 7554 is amended to read:

§ 7554. RELEASE PRIOR TO TRIAL

(a) Any person charged with an offense, other than a person held without bail under section 7553 or 7553a of this title, shall at his or her appearance before a judicial officer be ordered released pending trial in accordance with this section.

* * *

(3) A judicial officer may order that a defendant not harass or contact or cause to be harassed or contacted a victim or potential witness. This order shall take effect immediately, regardless of whether the defendant is incarcerated or released.

(4) A judicial officer may order that a defendant not possess firearms or other weapons. This order shall take effect immediately, regardless of whether the defendant is incarcerated or released.

Sec. 3. 28 V.S.A. § 301 is amended to read:

§ 301. SUMMONS OR ARREST OF PROBATIONER

* * *

(2) Arrest or citation of person on probation. Any correctional officer may arrest a probationer without a warrant if, in the judgment of the correctional officer, the probationer has violated a condition or conditions of his or her probation other than a condition that the probationer pay restitution; or may deputize any other law enforcement officer to arrest a probationer without a warrant by giving him or her a written statement setting forth that the probationer has, in the judgment of the correctional officer, violated a condition or conditions of his or her probation other than a condition that the probationer pay restitution. The written statement delivered with the person by the arresting officer to the supervising officer of the correctional facility to which the person is brought for detention shall be sufficient warrant for detaining him or her. In lieu of arrest, a correctional officer may issue a probationer a citation to appear for arraignment. In deciding whether to arrest or issue a citation, an officer shall consider whether issuance of a citation will reasonably ensure the probationer's appearance at future proceedings and reasonably protect the public.

* * *

(4) Detention pending hearing for probationer. Pending arraignment for any charge of violation, the probationer shall ~~continue to~~ be detained at a correctional facility unless issued a citation by a correctional officer. Thereafter, the court may release the probationer pursuant to 13 V.S.A. § 7554. There shall be no right to bail or release, unless the person is on probation for a nonviolent misdemeanor or nonviolent felony ~~and the probation violation did not constitute a new crime.~~ As used in this subdivision:

(A) "Nonviolent felony" means a felony offense which is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64.

(B) "Nonviolent misdemeanor" means a misdemeanor offense which is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64 or 13 V.S.A. § 1030.

* * * Regulated Drugs * * *

Sec. 4. 18 V.S.A. § 4233a is added to read:

§ 4233a. FENTANYL

(a) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing fentanyl shall be imprisoned not more than three years or fined not more than \$75,000.00, or both. A person knowingly and unlawfully selling fentanyl shall be imprisoned

not more than five years or fined not more than \$100,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of four milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 10 years or fined not more than \$250,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of 20 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both.

(4) In lieu of a charge under this subsection, but in addition to any other penalties provided by law, a person knowingly and unlawfully selling or dispensing any regulated drug containing a detectable amount of fentanyl shall be imprisoned not more than five years or fined not more than \$250,000.00, or both.

(b) Trafficking. A person knowingly and unlawfully possessing fentanyl in an amount consisting of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl with the intent to sell or dispense the fentanyl shall be imprisoned not more than 30 years or fined not more than \$1,000,000.00, or both. There shall be a permissive inference that a person who possesses fentanyl in an amount of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl intends to sell or dispense the fentanyl. The amount of possessed fentanyl under this subsection to sustain a charge of conspiracy under 13 V.S.A. § 1404 shall be not less than 70 milligrams in the aggregate.

(c) Transportation into the State. In addition to any other penalties provided by law, a person knowingly and unlawfully transporting more than 20 milligrams of fentanyl into Vermont with the intent to sell or dispense the fentanyl shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

Sec. 5. 18 V.S.A. § 4234 is amended to read:

§ 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

* * *

(b) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be imprisoned not more than three years or fined not more than \$75,000.00, or both. A person knowingly and unlawfully selling a depressant, stimulant, or narcotic drug, other than fentanyl, cocaine, or heroin, shall be imprisoned not

more than five years or fined not more than \$25,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 100 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 1,000 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both.

Sec. 6. 13 V.S.A. § 1404 is amended to read:

§ 1404. CONSPIRACY

(a) A person is guilty of conspiracy if, with the purpose that an offense listed in subsection (c) of this section be committed, that person agrees with one or more persons to commit or cause the commission of that offense, and at least two of the co-conspirators are persons who are neither law enforcement officials acting in official capacity nor persons acting in cooperation with a law enforcement official.

(b) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the defendant or by a co-conspirator, other than a law enforcement official acting in an official capacity or a person acting in cooperation with a law enforcement official, and subsequent to the defendant's entrance into the conspiracy. Speech alone may not constitute an overt act.

(c) This section applies only to a conspiracy to commit or cause the commission of one or more of the following offenses:

- (1) murder in the first or second degree;
- (2) arson under sections 501-504 and 506 of this title;
- (3) sexual exploitation of children under sections 2822, 2823, and 2824 of this title;
- (4) receiving stolen property under sections 2561-2564 of this title; or
- (5) an offense involving the sale, delivery, manufacture, or cultivation of a regulated drug or an offense under:
 - (A) 18 V.S.A. § 4230(c), relating to trafficking in marijuana;
 - (B) 18 V.S.A. § 4231(c), relating to trafficking in cocaine;

(C) 18 V.S.A. § 4233(c), relating to trafficking in heroin;

(D) 18 V.S.A. § 4234(b)(3), relating to unlawful selling or dispensing of a depressant, stimulant, or narcotic drug, other than heroin or cocaine; or

(E) 18 V.S.A. § 4234a(c), relating to trafficking in methamphetamine; or

(F) 18 V.S.A. § 4233a(c), relating to trafficking in fentanyl.

Sec. 7. 18 V.S.A. § 4234b is amended to read:

§ 4234b. EPHEDRINE AND PSEUDOEPHEDRINE

* * *

(c) Electronic registry system.

(1)(A) Retail establishments shall use an electronic registry system to record the sale of products made pursuant to subsection (b) of this section. The electronic registry system shall have the capacity to block a sale of nonprescription drug products containing ephedrine base, pseudoephedrine base, or phenylpropanolamine base that would result in a purchaser exceeding the lawful daily or monthly amount. The system shall contain an override function that may be used by an agent of a retail establishment who is dispensing the drug product and who has a reasonable fear of imminent bodily harm to his or her person or to another person if the transaction is not completed. The system shall create a record of each use of the override mechanism.

(B) The electronic registry system shall be available free of charge to the State of Vermont, retail establishments, and local law enforcement agencies.

(C) The electronic registry system shall operate in real time to enable communication among in-state users and users of similar systems in neighboring states.

(D) The State shall use the National Precursor Log Exchange (NPLEx) online portal or its equivalent to host Vermont's electronic registry system.

(2)(A) Prior to completing a sale under subsection (b) of this section, a retail establishment shall require the person purchasing the drug product to present a current, valid government-issued identification document. The retail establishment shall record in the electronic registry system:

(i) the name and address of the purchaser;

(ii) the name of the drug product and quantity of ephedrine,

pseudoephedrine, and phenylpropanolamine base sold in grams;

(iii) the date and time of purchase;

(iv) the form of identification presented, the issuing government entity, and the corresponding identification number; and

(v) the name of the person selling or furnishing the drug product.

(B)(i) If the retail establishment experiences an electronic or mechanical failure of the electronic registry system and is unable to comply with the electronic recording requirement, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until the retail establishment is able to comply fully with this subsection (c).

(ii) If the region of the State where the retail establishment is located does not have broadband Internet access, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until broadband Internet access becomes accessible in that region. At that time, the retail establishment shall come into compliance with this subsection (c).

(C) A retail establishment shall maintain all records of drug product purchases made pursuant to this subsection (c) for a minimum of two years.

(3) A retail establishment shall display a sign at the register provided by NPLEx or its equivalent to notify purchasers of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine base that:

(A) the purchase of the drug product or products shall result in the purchaser's identity being listed on a national database; and

(B) the purchaser has the right to request the transaction number for any purchase that was denied pursuant to this subsection (c).

(4) Except as provided in subdivision (5) of this subsection (c), a person or retail establishment that violates this subsection shall:

(A) for a first violation be assessed a civil penalty of not more than \$100.00; and

(B) for a second or subsequent violation be assessed a civil penalty of not more than \$500.00.

(d) This section shall not apply to a manufacturer ~~which~~ that has obtained an exemption from the Attorney General of the United States under Section 711(d) of the federal Combat Methamphetamine Epidemic Act of 2005.

(e) As used in this section:

(1) "Distributor" means a person, other than a manufacturer or

wholesaler, who sells, delivers, transfers, or in any manner furnishes a drug product to any person who is not the ultimate user or consumer of the product.

(2) “Knowingly” means having actual knowledge of the relevant facts.

(3) “Manufacturer” means a person who produces, compounds, packages, or in any manner initially prepares a drug product for sale or use.

(4) “Wholesaler” means a person, other than a manufacturer, who sells, transfers, or in any manner furnishes a drug product to any other person for the purpose of being resold.

Sec. 8. USE OF U.S. FOOD AND DRUG ADMINISTRATION-
APPROVED DRUGS CONTAINING CANNABIDIOL

(a) Upon approval by the U.S. Food and Drug Administration (FDA) of one or more prescription drugs containing cannabidiol, the following activities shall be lawful in Vermont:

(1) the clinically appropriate prescription for a patient of an FDA-approved prescription drug containing cannabidiol by a health care provider licensed to prescribe medications in this State and acting within his or her authorized scope of practice;

(2) the dispensing, pursuant to a valid prescription, of an FDA-approved prescription drug containing cannabidiol to a patient or a patient’s authorized representative by a pharmacist or by another health care provider licensed to dispense medications in this State and acting within his or her authorized scope of practice;

(3) the possession and transportation of an FDA-approved prescription drug containing cannabidiol by a patient to whom a valid prescription was issued or by the patient’s authorized representative;

(4) the possession and transportation of an FDA-approved prescription drug containing cannabidiol by a licensed pharmacy or wholesaler in order to facilitate the appropriate dispensing and use of the drug; and

(5) the use of an FDA-approved prescription drug containing cannabidiol by a patient to whom a valid prescription was issued, provided the patient uses the drug only for legitimate medical purposes in conformity with instructions from the prescriber and dispenser.

(b) Upon approval by the U.S. Food and Drug Administration of one or more prescription drugs containing cannabidiol, the Department of Health shall amend its rules to conform to the provisions of subsection (a) of this section.

* * * Impaired Driving * * *

Sec. 9. 23 V.S.A. § 1202 is amended to read:

§ 1202. CONSENT TO TAKING OF TESTS TO DETERMINE BLOOD
ALCOHOL CONTENT OR PRESENCE OF OTHER DRUG

(a)(1) Implied consent. Every person who operates, attempts to operate, or is in actual physical control of any vehicle on a highway in this State is deemed to have given consent to an evidentiary test of that person's breath for the purpose of determining the person's alcohol concentration or the presence of other drug in the blood. The test shall be administered at the direction of a law enforcement officer.

(2) Blood test. If breath testing equipment is not reasonably available or if the officer has reason to believe that the person is unable to give a sufficient sample of breath for testing or if the law enforcement officer has reasonable grounds to believe that the person is under the influence of a drug other than alcohol, the person is deemed to have given consent to the taking of an evidentiary sample of blood. If in the officer's opinion the person is incapable of decision or unconscious or dead, it is deemed that the person's consent is given and a sample of blood shall be taken. A blood test sought pursuant to this subdivision (2) shall be obtained pursuant to subsection (f) of this section.

(3) Evidentiary test. The evidentiary test shall be required of a person when a law enforcement officer has reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title.

(4) Fatal collision or incident resulting in serious bodily injury. The evidentiary test shall also be required if the person is the surviving operator of a motor vehicle involved in a fatal incident or collision or an incident or collision resulting in serious bodily injury and the law enforcement officer has reasonable grounds to believe that the person has any amount of alcohol or other drug in his or her system.

~~(b) If the person refuses to submit to an evidentiary test it shall not be given, except as provided in subsection (f) of this section, but the A refusal to take a breath test may be introduced as evidence in a criminal proceeding.~~

* * *

(f) If a blood test is sought from a person pursuant to subdivision (a)(2) of this section, or if a person who has been involved in an accident or collision resulting in serious bodily injury or death to another refuses an evidentiary test, a law enforcement officer may apply for a search warrant pursuant to Rule 41 of the Vermont Rules of Criminal Procedure to obtain a sample of blood for an evidentiary test. If a blood sample is obtained by search warrant, the fact of the refusal may still be introduced in evidence, in addition to the

results of the evidentiary test. Once a law enforcement official begins the application process for a search warrant, the law enforcement official is not obligated to discontinue the process even if the person later agrees to provide an evidentiary breath sample. The limitation created by Rule 41(g) of the Vermont Rules of Criminal Procedure regarding blood specimens shall not apply to search warrants authorized by this section.

* * *

* * * Electronic Monitoring * * *

Sec. 10. ELECTRONIC MONITORING

(a) The Commissioner of Corrections shall establish an active electronic monitoring program with real-time enforcement. The Electronic Monitoring Program shall be administered by the Department of State's Attorneys and Sheriffs and enforced by the Department of Corrections.

(b) The Electronic Monitoring Program described in subsection (a) of this section may be used to monitor, in lieu of incarcerating in a facility, the following populations:

(1) offenders in the custody of the Commissioner who are eligible for the Home Detention Program described in 13 V.S.A. § 7554b; and

(2) offenders in the custody of the Commissioner, including the following target populations:

(A) offenders who are eligible for home confinement furlough, as described in 28 V.S.A. § 808b;

(B) offenders who are past their minimum sentence and are deemed appropriate for the Program by the Commissioner of Corrections; or

(C) offenders who are eligible for reintegration furlough, as described in 28 V.S.A. § 808c.

(c) An offender shall only be eligible for the Electronic Monitoring Program described in subsection (a) of this section if electronic monitoring equipment is fully functional in the geographic area where the offender will be located.

Sec. 11. EFFECTIVE DATES

This section and Secs. 7 (ephedrine and pseudoephedrine), 9 (impaired driving), and 10 (electronic monitoring) shall take effect on passage. The remaining sections shall take effect on July 1, 2017.

And that after passage the title of the bill be amended to read:

An act relating to criminal justice.

And that the bill ought to pass in concurrence with such proposal of amendment.

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

**House Proposal of Amendment Not Concurred In; Committee of
Conference Requested**

S. 12.

House proposal of amendment to Senate bill entitled:

An act relating to increasing the maximum prison sentence for first, second, and subsequent offenses of aggravated animal cruelty.

Was taken up.

The House proposes to the Senate 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. chapter 8 is amended to read:

CHAPTER 8. HUMANE AND PROPER TREATMENT OF ANIMALS

Subchapter 1. Cruelty to Animals

§ 351. DEFINITIONS

As used in this chapter:

(1) "Animal" means all living sentient creatures, not human beings.

* * *

(19) "Sexual conduct" means:

(A) any act between a person and animal that involves contact between the mouth, sex organ, or anus of a person and the mouth, sex organ, or anus of an animal; or

(B) without a bona fide veterinary or animal husbandry purpose, the insertion, however slight, of any part of a person's body or of any instrument, apparatus, or other object into the vaginal or anal opening of an animal.

* * *

§ 352. CRUELTY TO ANIMALS

A person commits the crime of cruelty to animals if the person:

(1) intentionally kills or attempts to kill any animal belonging to another person without first obtaining legal authority or consent of the owner, or

engages in a reckless course of conduct that results in the death of an animal;

* * *

(10) uses a live animal as bait or lure in a race, game, or contest, or in training animals in a manner inconsistent with 10 V.S.A. Part 4 of Title 10 or the rules adopted thereunder;

(11)(A) engages in sexual conduct with an animal;

(B) possesses, sells, transfers, purchases, or otherwise obtains an animal with the intent that it be used for sexual conduct;

(C) organizes, promotes, conducts, aids, abets, or participates in as an observer an act involving any sexual conduct with an animal;

(D) causes, aids, or abets another person to engage in sexual conduct with an animal;

(E) permits sexual conduct with an animal to be conducted on premises under his or her charge or control; or

(F) advertises, offers, or accepts the offer of an animal with the intent that it be subject to sexual conduct in this State.

§ 352a. AGGRAVATED CRUELTY TO ANIMALS

A person commits the crime of aggravated cruelty to animals if the person:

(1) kills an animal by intentionally causing the animal undue pain or suffering;

(2) intentionally, maliciously, and without just cause tortures, mutilates, or cruelly beats an animal; or

(3) intentionally injures or kills an animal that is in the performance of official duties while under the supervision of a law enforcement officer.

* * *

§ 353. DEGREE OF OFFENSE; SENTENCING UPON CONVICTION

(a) Penalties.

(1) Except as provided in subdivision (3) ~~or~~ (4), or (5) of this subsection, cruelty to animals under section 352 of this title shall be punishable by a sentence of imprisonment of not more than one year, or a fine of not more than \$2,000.00, or both. Second and subsequent convictions shall be punishable by a sentence of imprisonment of not more than two years or a fine of not more than \$5,000.00, or both.

(2) Aggravated cruelty under section 352a of this title shall be

punishable by a sentence of imprisonment of not more than three years or a fine of not more than \$5,000.00, or both. Second and subsequent offenses shall be punishable by a sentence of imprisonment of not more than five years or a fine of not more than \$7,500.00, or both.

* * *

(5) A person who violates subdivision 352(1) of this title by intentionally killing or attempting to kill an animal belonging to another or subdivision 352(2) of this title by torturing, administering poison to, or cruelly beating or mutilating an animal shall be imprisoned not more than two years or fined not more than \$5,000.00, or both.

* * *

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2017.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Ashe, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

House Proposal of Amendment Not Concurred In; Committee of Conference Requested

S. 75.

House proposal of amendment to Senate bill entitled:

An act relating to aquatic nuisance species control.

Was taken up.

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

Sec. 1. 10 V.S.A. § 1452 is amended to read:

§ 1452. DEFINITIONS

As used in this chapter:

(1) "Agency" means the ~~agency of natural resources~~ Agency of Natural Resources.

(2) "Aquatic nuisance" means undesirable or excessive substances or populations that interfere with the recreational potential or aquatic habitat of a body of water, including rooted aquatic plants and animal and algal populations. Aquatic nuisances include ~~rooted aquatic plants and animal and algal populations~~ zebra mussels (*Dreissena polymorpha*), quagga mussels

(Dreissena bugensis), Asian clam (Corbicula fluminea), fishhook waterflea (Cercopagis pengoi), rusty crayfish (Orconectes rusticus), spiny waterflea (Bythotrephes longimanus), or other species identified by the Secretary by rule.

(3) “Aquatic plant” means a plant that naturally grows in water, saturated soils, or seasonally saturated soils, including algae and submerged, floating-leafed, floating, or emergent plants.

(4) “Biological controls” ~~mean~~ means multi-cellular organisms.

(5) “Board” ~~means the water resources panel of the natural resources board.~~ [Repealed.]

* * *

(9) “Secretary” means the ~~secretary of natural resources~~ Secretary of Natural Resources.

(10) “Water resources” means the waters and the values inherent or potential in waters and their uses.

(11) “Waters” means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, and springs and all bodies of surface waters, artificial or natural, ~~which that~~ are contained within, flow through, or border upon the state State or any portion of it.

(12) “Baitbox” means a receptacle, not exceeding 25 cubic feet in volume, used for holding or keeping baitfish alive for personal use.

(13) “Live well” means a well for keeping fish alive in a vessel by allowing water to circulate through the well.

(14) “Ballast tank” means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(15) “Bilge area” means the lowest point in the vessel where water can collect when the vessel is in its static floating position.

(16) “Decontaminate” means a process used to kill, destroy, or remove aquatic nuisance species and other organic material that may be present in or on a vessel, motor vehicle transporting the vessel, trailer, or other equipment. Decontamination may include washing a vessel, motor vehicle transporting the vessel, trailer, or other equipment with water at a sufficiently high temperature to kill or remove aquatic nuisance species.

(17) “Lake association” means a lake protection organization registered with the Secretary of Natural Resources on a form provided by the Secretary.

(18) “Marina” means a property, other than a public access or landing

area regulated under section 4145 of this title, on the shoreline of a water of the State that contains a dock, basin, or ramp that, at no cost or for remuneration, provides to the public secure moorings or vessel access to the water.

(19) "Motor vehicle" means any vehicle propelled or drawn by power other than muscular power, including a snowmobile, motorcycle, all-terrain vehicle, farm tractor, or tracked vehicle.

(20) "Personal watercraft" shall have the same meaning as set forth in 23 V.S.A. § 3302.

(21) "Transport" means to move motor vehicles, vessels, personal watercraft, seaplanes, trailers, and other equipment over land, but does not include movement within the immediate area required for loading and preparing vehicles, vessels, personal watercraft, seaplanes, trailers, and other equipment prior to movement into or away from a body of water.

(22) "Vessel" means every description of watercraft used or capable of being used as a means of transportation on water, including personal watercraft.

Sec. 2. 10 V.S.A. § 1454 is amended to read:

§ 1454. TRANSPORT OF AQUATIC PLANTS AND AQUATIC NUISANCE SPECIES

(a) ~~No~~ Transport of aquatic nuisance species; prohibition. A person shall not transport an aquatic plant or aquatic plant part, zebra mussels (*Dreissena polymorpha*), quagga mussels (*Dreissena bugensis*), or other aquatic nuisance species identified by the Secretary by rule to or from any Vermont waters on the outside of a vehicle, boat, personal watercraft, trailer, or other equipment water. This section shall not restrict:

(1) proper harvesting or other control activities undertaken for the purpose of eliminating or controlling the growth or propagation of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species; or

(2) proper collection of water samples for the purpose of water quality monitoring.

(b) Inspection of vessel entering or leaving water. A person transporting a vessel to or from a water shall, prior to launching the vessel and upon leaving a water, inspect the vessel, the motor vehicle transporting the vessel, the trailer, and other equipment, and shall remove and properly dispose of any aquatic plants, aquatic plant parts, and aquatic nuisance species.

(c) Aquatic nuisance species inspection station. It shall be a violation of

this section for a person transporting a vessel to or from a water to not have the vessel, the motor vehicle transporting the vessel, the trailer, and other equipment inspected and, if determined necessary, decontaminated at an approved aquatic nuisance species inspection station prior to launching the vessel and upon leaving a water if:

(1) an aquatic nuisance species inspection station is maintained at the area where the vessel is entering or leaving the water;

(2) the aquatic nuisance species inspection station is open; and

(3) an individual operating the aquatic nuisance species inspection station identifies the vessel for inspection or decontamination.

(d) Draining of vessel; transport.

(1)(A) When leaving a water of the State and prior to transport away from the area where the vessel left the water, a person operating a vessel shall drain the vessel, trailer, and other equipment of water, including water in live wells, ballast tanks, and bilge areas. A person is not required to drain:

(i) baitboxes when authorized under 10 App. V.S.A. § 122(5) to transport bait in a baitbox away from a water; or

(ii) vehicles and trailers specifically designed and used for water hauling.

(B) A person operating a vessel shall drain the vessel, trailer, and other equipment of water in a manner to avoid a discharge to the water of the State. This subdivision (d)(1) does not authorize a person to discharge waste, as defined in section 1251 of this title, to waters of the State. A person shall dispose of waste in the manner required by law.

(2) When a person transports a vessel, the person shall remove or open the drain plugs, bailers, valves, and other devices that are used to control the draining of water from ballast tanks, bilge areas, and live wells of the vessel, trailer, and other equipment, except for vehicles and trailers specifically designed and used for water hauling and emergency response vehicles and equipment.

(e) Presumption of compliance; Aquatic nuisance species inspection station. A person transporting a vessel to or from a water will be presumed to have not violated subsections (a), (b), and (d) of this section if, upon launching a vessel and upon leaving a water, the vessel is decontaminated at an approved aquatic nuisance inspection station. If staff of an approved aquatic nuisance inspection station observe a violation of subsection (a), (b), or (d) of this section, staff shall notify the person transporting the vessel.

(f) Exceptions to transport prohibition. The Secretary may grant exceptions to persons to allow the transport of aquatic plants, zebra mussels, quagga mussels, aquatic plant parts, or other aquatic nuisance species for scientific or purposes, educational purposes, or other purposes specifically authorized by the Secretary. When granting exceptions allowing the transport of aquatic plants, aquatic plant parts, or aquatic nuisance species under this subsection, the Secretary shall take into consideration both the value of the scientific or educational purpose and the risk to Vermont surface waters posed by the transport and ultimate use of the specimens. A letter from the Secretary authorizing the transport must accompany the specimens during transport.

(e)(g) Signage; access areas and marinas. Signage shall be posted at all public access and landing areas regulated under section 4145 of this title and at all marinas regarding the requirements of subsections (a)–(d) of this section relating to aquatic nuisance transport and inspection and decontamination of vessels, motor vehicles transporting vessels, trailers, or other equipment. The Secretary shall provide marinas with the signs required under this section.

(h) Violations. A Pursuant to 4 V.S.A. § 1102, a violation of this section may be brought in the Judicial Bureau by any law enforcement officer, as that term is defined in 23 V.S.A. § 3302(2), or, pursuant to section 8007 or 8008 of this title, a violation of this section may be brought in the Environmental Division of the Superior Court. When a violation is brought by an enforcement officer other than an environmental enforcement officer employed by the Agency of Natural Resources, the enforcement officer shall submit to the Secretary a copy of the citation for purposes of compliance with the public participation requirements of section 8020 of this title. If a violation of this section is adjudicated in the Judicial Bureau or the Environmental Division, the violation shall not be addressed or adjudicated a second time in the other court.

Sec. 3. 10 V.S.A. § 1455(a) is amended to read:

(a) ~~No~~ A person may ~~shall not~~ use pesticides, chemicals other than pesticides, biological controls, bottom barriers, structural barriers, structural controls, or powered mechanical devices in waters of the State to control nuisance aquatic plants, insects, or other aquatic nuisances, including lamprey, unless that person has been issued a permit by the ~~secretary~~ Secretary.

Sec. 4. 10 V.S.A. § 1461 is added to read:

§ 1461. AQUATIC NUISANCE INSPECTION STATIONS; TRAINING PROGRAM

(a) The Secretary of Natural Resources shall establish a training program regarding how to conduct inspection of vessels, motor vehicles, trailers, and

other equipment for the presence of aquatic plants, aquatic plant parts, and aquatic nuisance species. The training program shall include online training, recorded material, training manuals, or other material that allows a person to complete training remotely.

(b) The Secretary of Natural Resources shall establish a training program regarding how to decontaminate vessels, motor vehicles, trailers, and other equipment to prevent the spread of aquatic plants, aquatic plant parts, and aquatic nuisance species. The training program shall:

(1) require a person operating aquatic nuisance decontamination equipment to complete in-person training conducted by the Secretary or an entity approved by the Secretary; and

(2) instruct participants regarding how to address noncompliance with the requirements of section 1454 of this title, including how to report a violation to law enforcement, if a violation needs to be reported, and how operators of the inspection station do not have law enforcement authority to mandate compliance with the requirements of section 1454 of this title.

(c) In order to establish an aquatic nuisance species inspection station for the purposes of the vessel inspection and decontamination requirements of subsection 1454(c) of this title, a lake association, municipality, or the Commissioner of Environmental Conservation shall apply to the Secretary for approval. As a condition of approval, a representative of a lake association or municipality shall complete the training programs established under subsections (a) and (b) of this section. A lake association or municipality seeking to operate an aquatic nuisance species inspection station shall designate a representative to complete the training programs established under subsections (a) and (b) of this section.

(d) A lake association or municipality approved to operate an aquatic nuisance species inspection station under subsection (b) of this section shall provide persons who will operate the aquatic nuisance species inspection station with training materials furnished by the Secretary regarding how to:

(1) conduct the inspection of vessels, motor vehicles, trailers, and other equipment for the presence of aquatic plants, aquatic plant parts, and aquatic nuisance species; and

(2) complete the in-person training required under subsection (b) of this section in order to operate decontamination equipment.

(e) The Secretary may adopt rules under section 1460 of this title to implement the training requirements of this section, including an annual schedule of available training.

Sec. 5. 4 V.S.A. § 1102(b) is amended to read:

(b) The Judicial Bureau shall have jurisdiction of the following matters:

* * *

(27) Violations of 10 V.S.A. § 1454(a)–(d) relating to the transport of aquatic plants and aquatic nuisance species.

Sec. 6. 23 V.S.A. § 3317(b) is amended to read:

(b) A person who violates a requirement under 10 V.S.A. § 1454 shall be subject to enforcement under 10 V.S.A. ~~chapter 201 § 8007 or 8008~~ or a fine under this chapter, provided that the person shall be assessed a penalty or fine of not more than \$1,000.00 for each violation. A person who violates a rule adopted under 10 V.S.A. § 1424 shall be subject to enforcement under 10 V.S.A. chapter 201, provided that the person shall be assessed a penalty of not more than \$300.00 for each violation. A person who violates any of the following sections of this title shall be subject to a penalty of not more than \$300.00 for each violation:

§ 3306(e) marine toilet

§ 3312a operation of personal watercraft

Sec. 7. USE OF BOTTOM BARRIERS WITHOUT PERMIT

The Secretary of Natural Resources shall not require an aquatic nuisance control permit under 10 V.S.A. § 1455 for the use of up to 15 bottom barriers on an inland lake to control nonnative aquatic nuisance species, provided that:

(1) the bottom barriers are managed and controlled by a lake association;

(2) each bottom barrier shall be of no greater size than 14 feet by 14 feet;

(3) the bottom barriers are not installed in an area where they:

(A) create a hazard to public health; or

(B) unreasonably impede boating or navigation;

(4) the lake association notifies the Secretary of the use of the barriers three days prior to placement of the barriers in a water; and

(5) the Secretary may require the removal of the bottom barriers upon a determination that the barriers pose a threat to a threatened or endangered species.

Sec. 8. REPEAL; BOTTOM BARRIERS

Sec. 7 of this act (bottom barriers for aquatic nuisance control) shall be repealed on March 1, 2018.

Sec. 9. AQUATIC NUISANCE CONTROL GENERAL PERMIT

On or before February 1, 2018, the Secretary of Natural Resources shall issue a general permit for aquatic nuisance control activities. The general permit shall allow for nonchemical aquatic nuisance control activities and any other management or control measures that the Secretary considers appropriate and for which the Secretary has general permit authority under 10 V.S.A. chapter 50. The general permit shall authorize rapid response activities that an individual or lake association may take to control aquatic nuisance species. The provisions of 10 V.S.A. § 1456(a) and (c)–(f) related to the rapid response permits for aquatic nuisance control shall apply to the rapid response activities authorized in the permit required under this section.

Sec. 10. ANR PUBLIC OUTREACH REGARDING AQUATIC NUISANCE SPECIES TRANSPORT AND INSPECTION REQUIREMENTS

Beginning on July 1, 2017, the Secretary of Natural Resources shall provide education and outreach to the public regarding the transport and inspection requirements in 10 V.S.A chapter 50 for the reduction of the spread of aquatic nuisance species. The education and outreach shall include a notification in the Department of Fish and Wildlife guides to hunting and fishing in Vermont regarding the aquatic nuisance transport prohibition and the requirements to inspect vessels for aquatic nuisance species when entering or leaving a water.

Sec. 11. ANR REPORT; AQUATIC NUISANCE TRANSPORT; LAKE CHAMPLAIN

(a) On or before November 15, 2017, the Secretary of Natural Resources shall submit to the Senate Committee on Natural Resources and Energy and the House Committee on Natural Resources, Fish and Wildlife a report regarding how to control the transport of aquatic nuisances to and from Lake Champlain. The report shall include:

(1) an inventory of the boat decontamination facilities or other aquatic nuisance control measures currently employed at boat launches, marinas, or other areas on Lake Champlain;

(2) a summary of whether the current measures to control aquatic nuisance transport to and from Lake Champlain are adequate;

(3) a proposal for siting boat decontamination facilities or other comparable aquatic nuisance control measures at boat launches, marinas, or other areas on Lake Champlain, including where proposed facilities or other aquatic nuisance control measures would be located;

(4) a summary of how proposed boat decontamination facilities or comparable aquatic nuisance control measures would be staffed, including whether staff would possess sufficient authority to inspect a vessel entering or leaving Lake Champlain in order to require boat decontamination or another aquatic nuisance control measure;

(5) an estimate of the cost to implement proposed boat decontamination facilities or other aquatic nuisance control measures on Lake Champlain; and

(6) a recommendation of whether and how vessels leaving Lake Champlain should be quarantined from entering other waters of the State for a defined time period or until a specific condition is satisfied; and

(7) draft legislation that the Secretary determines is necessary to implement any boat decontamination facility or other aquatic nuisance control measure proposed in the report.

(b) As used in this section, “aquatic nuisance” and “vessel” shall have the same meanings as set forth in 10 V.S.A. § 1452.

Sec. 12. 10 V.S.A. § 1264b is amended to read:

§ 1264b. ~~STORMWATER-IMPAIRED WATERS RESTORATION~~
STORMWATER FUND

(a) A fund to be known as the stormwater-impaired waters restoration fund Stormwater Fund is created in the state treasury State Treasury to be expended by the secretary of natural resources Secretary of Natural Resources. The fund Fund shall be administered by the secretary of natural resources through the facilities engineering division Secretary of Natural Resources. The fund Fund shall consist of:

(1) Stormwater stormwater impact fees paid by permittees in order to meet applicable permitting standards for the discharges of regulated stormwater runoff to the stormwater-impaired waters of the state State and Lake Champlain and waters that contribute to the impairment of Lake Champlain;

(2) Such such sums as may be appropriated or transferred to the fund Fund by the general assembly, the state emergency board, or the joint fiscal committee General Assembly, the State Emergency Board, or the Joint Fiscal Committee during such times when the general assembly General Assembly is not in session;

(3) Principal principal and interest received from the repayment of loans made from the fund Fund;

(4) Private private gifts, bequests, and donations made to the state State

for any of the purposes for which the ~~fund~~ Fund was established; and

(5) ~~Other~~ other funds from any public or private source intended for use for any of the purposes for which the ~~fund~~ Fund has been established.

(b) The ~~fund~~ Fund shall maintain separate accounts for each stormwater-impaired water and each phosphorus-impaired lake segment of Lake Champlain and the monies in each account may only be used to fund offsets in the designated water. Offsets shall be designed to reduce the sediment load, phosphorus load, or hydrologic impact of regulated stormwater runoff in ~~stormwater-impaired waters~~ the receiving water. All balances in the ~~fund~~ Fund at the end of any fiscal year shall be carried forward and remain a part of the ~~fund~~ Fund. Interest earned by the ~~fund~~ Fund shall be deposited into the ~~fund~~ Fund.

(c) The ~~facilities—engineering—division~~ Secretary may authorize disbursements from the ~~fund~~ Fund to offsets that meet the requirements of the rule adopted pursuant to subsection 1264a(e) 1264(f) of this title. The public funds used to capitalize the ~~stormwater-impaired waters restoration fund~~ Fund shall:

(1) ~~Be~~ be disbursed only to an offset that is owned or operated by a municipality or a governmental subdivision, agency, or instrumentality; and

(2) ~~Be~~ be disbursed only to reimburse a municipality or a governmental subdivision, agency, or instrumentality for those funds provided by the municipality or governmental subdivision, agency, or instrumentality to complete or construct an offset.

(d) A municipality or governmental subdivision, agency, or instrumentality may, on an annual basis, reserve capacity in an offset that the municipality or governmental subdivision, agency, or instrumentality operates or owns and that meets the requirements of ~~subsection 1264a(e)~~ the rule adopted pursuant to subsection 1264(f) of this title. A municipality or governmental subdivision, agency, or instrumentality reserving offset capacity shall inform the ~~secretary of natural resources~~ Secretary of the offset capacity for which the offset will not receive disbursements from the ~~stormwater-impaired waters restoration fund~~ Fund for nonmunicipal discharges. ~~A municipality that reserves capacity as an offset may receive disbursements from the fund to mitigate the uncontrolled sediment load or hydrologic impact in discharges for which the municipality is issued a permit for the discharge of regulated stormwater runoff under subdivision 1264a(b)(1) of this title.~~

(e) Eligible persons may apply for a grant from the ~~fund~~ Fund to design and implement an offset. The ~~fund~~ Fund may be used to match other public and private sources of funding for such projects. ~~The funds may also be used~~

~~to match federal funds otherwise available to capitalize the fund created by 24 V.S.A. § 4753(a)(8).~~

(f) A discharger that pays a stormwater impact fee to the ~~stormwater-impaired waters restoration fund under section 1264a of this title~~ Fund in order to receive a permit for the discharge of regulated stormwater runoff may receive reimbursement of that fee if the discharger fails to discharge under the stormwater discharge permit, if the discharger notifies the ~~secretary~~ Secretary of the abandonment of the discharge permit, and if the ~~secretary~~ Secretary determines that unobligated monies for reimbursement remain in the ~~stormwater-impaired restoration fund~~ Fund.

Sec. 13. REPEAL; INTERIM STORMWATER PERMITTING

10 V.S.A. § 1264a(e) (interim stormwater permitting authority) is repealed.

Sec. 14. EFFECTIVE DATES

(a) This section and Secs. 1–11 (aquatic nuisance species control) shall take effect on passage.

(b) Secs. 12 and 13 (stormwater management) shall take effect on July 1, 2017.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Bray, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

Adjournment

On motion of Senator Ashe, the Senate adjourned until ten o'clock in the morning.