

Act No. 1
(S.13)

Crimes; criminal procedure; corrections; human services; education; sex offenders

This act is divided into several topics addressing sexual violence: Prevention, Investigation and Prosecution, Sentencing, Corrections and Supervision, and Systemwide Changes.

**** Prevention ****
Secs. 2-15

Charges the appropriate legislative committees with developing a comprehensive statewide approach to the prevention of child sexual abuse.

Extends the sunset for the Sexual Violence Prevention Task Force from 2012 to 2014.

Includes a sexual abuse prevention component in all school health curricula and directs the commissioner of education to convene a working group to prepare technical assistance materials that support instruction of the sexual abuse prevention component and to provide training on this topic.

Requires the commissioner of education to check the child protection registry and vulnerable adult abuse, neglect, and exploitation registry prior to issuing a new license or reinstating a lapsed license for a professional educator.

Requires school districts to check the child protection registry and vulnerable adult abuse, neglect, and exploitation registry prior to hiring staff and to conduct periodic rechecks of the registries and criminal history records.

Requires the commissioner of education to report to the senate and house committees on education and on judiciary by January 15, 2010 on ways to ensure the safety of students without creating barriers that make it impossible or impractical for volunteers to assist school staff.

Requires school boards' policies to ensure that superintendents, headmasters of recognized or approved schools, and their contractors check the names and birth dates of any work study students with the Vermont Internet sex offender registry prior to allowing work study students unsupervised contact with schoolchildren. A person who is on the Vermont Internet sex offender registry would not be eligible to be a work study student.

Permits criminal record checks and registry checks to be done through a subscription service with the Vermont criminal information center.

Requires school boards to ensure that all school employees receive orientation on the prevention, identification, and reporting of child abuse, and that parents and caregivers receive information and education about child sexual abuse.

Requires that licensed child care facilities ensure that all employees receive orientation on the prevention, identification, and reporting of child abuse.

Directs appropriate administrative agencies to conduct outreach efforts to raise awareness of families and communities about child sexual abuse.

Formally establishes the Center for the Prevention and Treatment of Sexual Abuse and its mission.

Establishes a new crime of sexual exploitation of a minor, prohibiting sexual conduct between a minor and a person who is at least 48 months older than the minor; and who is in a position of power, authority, or supervision over the minor by virtue of the actor's undertaking the responsibility, professionally or voluntarily, to provide for the health or welfare of minors, or guidance, leadership, instruction, or organized recreational activities for minors.

Adds aggravated sexual assault on a child to the definition of "listed crimes" and to the list of crimes for which an offender must register as a sex offender.

Requires registered sex offenders to report if they are living in a household with a child under the age of 18.

Requires the department of corrections (DOC) to follow protocol in coordinating with the department for children and families (DCF) if DOC has a role in approving housing for an offender.

Requires the department of public safety (DPS) to notify DCF if an offender reports that the residence in which the offender is living contains a child.

** * * Investigation and Prosecution * * **

Secs. 16-29

Funds and staffs special investigation units fully and places responsibility for sex offender registry compliance with the units.

Requires participation by DOC in child protection response teams and special investigation units.

On passage of the act, requires collection of DNA from any person convicted of a misdemeanor domestic violence or a misdemeanor sex offense for which registration as a sex offender is required (applies retroactively to convictions as of April 29, 1998 and people incarcerated or under supervision for such a conviction as of that date).

As of July 1, 2011, requires collection of DNA from any person arraigned for a felony offense.

As a general rule, prohibits taking pretrial depositions of child victims in sexual abuse cases, but permits such depositions in special circumstances under a protective order that sets forth procedures for shielding the victim from emotional harm, unnecessary annoyance, embarrassment, oppression, invasion of privacy, or undue burden of expense or waste of time.

Amends the age requirement for admissibility of prior statements of child victims to 12 years of age at the time the statements were made, instead of 10 years of age at the time of trial.

Amends the evidentiary requirements for human services board child abuse and neglect substantiation proceedings to limit the application of the Rules of Evidence with respect to hearsay.

* * * *Sentencing* * * *
Secs. 30–37

Establishes a new crime of aggravated sexual assault of a child with a mandatory 25-year-to-life sentence.

Eliminates the option of a deferred sentence for a person charged with aggravated sexual assault of a child.

Permits a deferred sentence for other sexually based crimes against a child, but expunges only the record of the adjudication upon successful completion of the sentence while permitting all agencies to retain their own records and files related to the arrest, citation, investigation, and charge which led to the deferred sentence, and to share such records and files with other investigating agencies in accordance with state and federal law.

Establishes an index for deferred sentences and permits DOC access for the purpose of preparing a presentence report for the sentencing court for most sex offenses.

Mandates presentence reports for most sex offenses and adds new crimes for which the reports are required.

Permits information from the child protection registry and the vulnerable adult abuse, neglect, and exploitation registry to be used for the purpose of preparing a presentence report.

Permits DCF access to presentence investigations.

Permits the commissioner of DOC to inspect confidential juvenile court records that are not sealed if it would be helpful in preparing a presentence investigation (PSI), determining placement, or developing a treatment plan for a person convicted of a registrable sex offense.

Permits a sentencing court access to its sealed juvenile records of a person convicted of a sexual offense.

Directs a sentencing court to determine if sealed juvenile records of court proceedings exist for a person convicted of a registrable offense, and, if so, to release records to the commissioner of DOC to be used for a PSI, determining placement, or developing a treatment plan. The commissioner shall consider only information relating to adjudications that may be considered precursor offenses to the sex offense conviction.

* * * *Corrections and Supervision* * * *
Secs. 38–48

Permits courts to review and amend conditions of probation for sex offenders prior to release on probation when a split sentence is imposed and the offender has not complied with conditions of incarceration.

Permits periodic polygraph examinations and supervision of computer activities as special conditions of probation.

Requires a judicial hearing prior to discharging a sex offender from probation.

Directs DOC to establish a systems approach of community supervision of sex offenders and assigns specialized probation officers to work only with sex offenders.

Requires an independent review of probation and parole caseloads as they relate to supervision of sex offenders.

Requires high-risk sex offenders to serve at least 70 percent of their maximum sentence.

Adds all agency of human services' employees, contractors, and grantees who have contact with clients to the list of mandatory reporters of suspected child abuse or neglect and requires the agency of human services (AHS) to develop protocols for determining which of its employees, contractors, and grantees are mandatory reporters and to train those employees appropriately. AHS is required to report to the senate and house committees on judiciary, the senate committee on health and welfare, the house committee on human services, and the house committee on corrections and institutions no later than September 15, 2009 regarding its efforts to ensure that its employees are properly trained.

Mandates a prehearing detention for sex offenders who violate risk-related conditions of probation or parole.

**** Systemwide Changes ****
Secs. 49–52a

Requires on or before November 15, 2011, and every five years thereafter, the auditor of accounts to submit to the senate and house committees on judiciary, the house committees on corrections and institutions, on appropriations, on education, and on human services, and the senate committee on health and welfare an independent audit which assesses the status of the state's sexual abuse response system, including prevention, criminal investigations, presentence investigations and sentencing of offenders, supervision and treatment of offenders, victim and family assistance and treatment, and training for those working in the system.

Fully complies with federal law that requires DCF to release information to the public about child fatalities to include release of information about "near fatalities".

Urges local communities not to enact sex offender residency restrictions and requests that the Vermont League of Cities and Towns, Inc. work with communities to ensure they are receiving accurate information about the potential pitfalls of such laws and to encourage communities to focus on prevention and other strategies to improve public safety.

Requires DOC to report to the general assembly on:

- protocols for permitting a sex offender to live in a home with children and plans to notify DCF;
- criteria and centralized review or release recommendations made by the department with respect to sex offenders;
- a plan to improve training and oversight of department employees who work with sex offenders; and

- an update on the implementation of this act.

Adds a representative of the Vermont sheriffs' association and a representative of the Vermont association of chiefs of police to the specialized investigative unit grants board.

Date Signed by the Governor: March 4, 2009

Effective Dates: There are various effective dates for the act.

Secs. 1 (legislative intent), 2 (comprehensive statewide approach to the prevention of child sexual abuse), 2a (sexual violence prevention task force), 11–13b (community outreach; center for the prevention and treatment of sexual abuse; sexual exploitation of a minor; listed crime definition; sex offender definition), 16–22 (special investigation units; multidisciplinary teams; DNA), 30 (aggravated sexual assault of a child), 46 (training AHS employees regarding mandatory reporting), and 49–52a (audit; child near fatality; DOC report; special investigation units) of the act take effect on passage. (Passage was March 4, 2009, the date on which the governor signed the bill.)

Secs. 10 (child care facilities), 14–15 (reporting to sex offender registry), 26–29 (depositions; hearsay exceptions; human services board hearings), 33–44 (deferred sentences; juvenile records; probation conditions; discharge from probation audit of DOC sex offender caseloads, high-risk sex offenders), 45 (mandatory reporting of child abuse and neglect), 47 (parole), and 48 (modification of probation) of the act take effect July 1, 2009.

Sec. 8 (subscription service) of the act takes effect July 1, 2010.

Secs. 23–25 (DNA taken at arraignment) of the act take effect July 1, 2011.

Sec. 33b (prohibition of deferred sentences for certain offenses) of the act takes effect July 1, 2014.

All other sections of the act take effect as explicitly set forth in Secs. 3b (comprehensive health education), 6c (licensing and employment), 7a (volunteers, work study students, and community-based learning), and 9a (information for school employees and the public).