

Senate Calendar

FRIDAY, APRIL 9, 2021

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ACTION CALENDAR

NEW BUSINESS

Proposed Amendments to the Vermont Constitution

Pursuant to Rule 83 of the Senate Rules, notice is hereby given that proposed amendments to the Constitution, set forth below, will be read the third time and acted upon, on the seventh legislative day commencing Wednesday, March 31, 2021. At that time, the following question shall be presented: "Shall the Senate concur in the proposal and request the concurrence of the House?" [majority of whole Senate is required for passage]

PROPOSAL 2

**(Third Reading per Chapter II, § 72, Vermont Constitution
and Senate Rule 83)**

Subject: Declaration of rights; clarifying the prohibition on slavery and indentured servitude

PENDING ACTION: Third reading of the proposal (second biennium)

PROPOSAL 2

Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont to clarify that slavery and indentured servitude in any form are prohibited.

Sec. 2. Article 1 of Chapter I of the Vermont Constitution is amended to read:

Article 1. [All persons born free; their natural rights; slavery and indentured servitude prohibited]

That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; therefore ~~no person born in this country, or brought from over sea, ought to be holden by law, to serve any person as a servant, slave or apprentice, after arriving to the age of twenty-one years, unless bound by the person's own consent, after arriving to such age, or bound by law for the payment of debts, damages, fines, costs, or the like~~ slavery and indentured servitude in any form are prohibited.

Sec. 3. EFFECTIVE DATE

The amendment set forth in Sec. 2 shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2022 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

PROPOSAL 5

**(Third Reading per Chapter II, § 72, Vermont Constitution
and Senate Rule 83)**

Subject: Declaration of rights; right to personal reproductive liberty

PENDING ACTION: Third reading of the proposal (second biennium)

PROPOSAL 5

Sec. 1. PURPOSE

(a) This proposal would amend the Constitution of the State of Vermont to ensure that every Vermonter is afforded personal reproductive liberty. The Constitution is our founding legal document stating the overarching values of our society. This amendment is in keeping with the values espoused by the current Vermont Constitution. Chapter I, Article 1 declares “That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights.” Chapter I, Article 7 states “That government is, or ought to be, instituted for the common benefit, protection, and security of the people.” The core value reflected in Article 7 is that all people should be afforded all the benefits and protections bestowed by the government, and that the government should not confer special advantages upon the privileged. This amendment would reassert the principles of equality and personal liberty reflected in Articles 1 and 7 and ensure that government does not create or perpetuate the legal, social, or economic inferiority of any class of people. This proposed constitutional amendment is not intended to limit the scope of rights and protections afforded by Article 7 or any other provision in the Vermont Constitution.

(b) The right to reproductive liberty is central to the exercise of personal autonomy and involves decisions people should be able to make free from compulsion of the State. Enshrining this right in the Constitution is critical to ensuring equal protection and treatment under the law and upholding the right of all people to health, dignity, independence, and freedom.

Sec. 2. Article 22 of Chapter I of the Vermont Constitution is added to read:

Article 22. [Personal reproductive liberty]

That an individual's right to personal reproductive autonomy is central to the liberty and dignity to determine one's own life course and shall not be denied or infringed unless justified by a compelling State interest achieved by the least restrictive means.

Sec. 3. EFFECTIVE DATE

The amendment set forth in Sec. 2 shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2022 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

NOTICE CALENDAR

Committee Bill for Second Reading

S. 135.

An act relating to separating the individual and small group health insurance markets for plan year 2022.

By the Committee on Finance. (Senator Cummings for the Committee.)

Second Reading

Favorable

H. 151.

An act relating to vital records, mausoleums and columbaria, and emergency health orders.

Reported favorably by Senator Clarkson for the Committee on Government Operations.

(Committee vote: 5-0-0)

(No House amendments)

Favorable with Recommendation of Amendment

S. 99.

An act relating to repealing the statute of limitations for civil actions based on childhood physical abuse.

Reported favorably with recommendation of amendment by Senator Baruth for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 12 V.S.A. § 522 is amended to read:

§ 522. ACTIONS BASED ON CHILDHOOD SEXUAL OR PHYSICAL ABUSE

(a) A civil action brought by any person for recovery of damages for injury suffered as a result of childhood sexual or physical abuse may be commenced at any time after the act alleged to have caused the injury or condition. The victim need not establish which act in a series of continuing physical abuse or sexual abuse or exploitation incidents caused the injury.

(b) If a complaint is filed alleging an act of childhood sexual or physical abuse, the complaint shall immediately be sealed by the clerk of the court. The complaint shall remain sealed until the answer is served or, if the defendant files a motion to dismiss under Rule 12(b) of the Vermont Rules of Civil Procedure, until the court rules on that motion. If the complaint is dismissed, the complaint and any related papers or pleadings shall remain sealed. Any hearing held in connection with the motion to dismiss shall be in camera.

(c) As used in this section:

(1) “~~childhood~~ Childhood sexual abuse” means any act committed by the defendant against a complainant who was ~~less than~~ under 18 years of age at the time of the act and which act would have constituted a violation of a statute prohibiting lewd and lascivious conduct, lewd or lascivious conduct with a child, felony sexual exploitation of a minor in violation of 13 V.S.A. § 3258(c), sexual assault, or aggravated sexual assault in effect at the time the act was committed.

(2) “Childhood physical abuse” means any act other than an attempt committed by the defendant against a complainant who was under 18 years of age at the time of the act and which act would have constituted a violation of a statute prohibiting aggravated assault in effect at the time the act was committed.

(d) Notwithstanding 1 V.S.A. § 214, this section shall apply retroactively to childhood sexual abuse that occurred prior to July 1, 2019, irrespective of any statute of limitations in effect at the time the abuse occurred. In an action based on childhood sexual abuse that would have been barred by any statute of limitations in effect on June 30, 2019, damages may be awarded against an entity that employed, supervised, or had responsibility for the person allegedly committing the sexual abuse only if there is a finding of gross negligence on the part of the entity.

(e) Notwithstanding 1 V.S.A. § 214, this section shall apply retroactively to childhood physical abuse that occurred prior to July 1, 2021, irrespective of any statute of limitations in effect at the time the abuse occurred. In an action based on childhood physical abuse that would have been barred by any statute of limitations in effect on June 30, 2021, damages may be awarded against an entity that employed, supervised, or had responsibility for the person allegedly committing the physical abuse only if there is a finding of gross negligence on the part of the entity.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2021.

(Committee vote: 5-0-0)

House Proposal of Amendment

S. 18

An act relating to limiting earned good time sentence reductions for offenders convicted of certain crimes.

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

Sec. 1. 13 V.S.A. § 5321 is amended to read:

§ 5321. APPEARANCE BY VICTIM

* * *

(d) At or before the sentencing hearing, the prosecutor's office shall instruct the victim of a listed crime, in all cases where the court imposes a sentence that includes a period of incarceration, that a sentence of incarceration is to the custody of the Commissioner of Corrections and that the Commissioner of Corrections has the authority to affect the actual time the defendant shall serve in incarceration through ~~good~~ earned time credit, furlough, work-release, and other early release programs. In addition, the prosecutor's office shall explain the significance of a minimum and maximum

sentence to the victim ~~and shall also~~, explain the function of parole and how it may affect the actual amount of time the defendant may be incarcerated, and inform the victim of the maximum amount of earned time that the defendant could accrue and that earned time only affects when a defendant is eligible for parole consideration but does not necessarily result in the defendant's release.

* * *

Sec. 2. 28 V.S.A. § 818 is amended to read:

§ 818. EARNED ~~GOOD~~ TIME; REDUCTION OF TERM

(a) On or before September 1, 2020, the Department of Corrections shall file a proposed rule pursuant to 3 V.S.A. chapter 25 implementing an earned ~~good~~ time program to become effective on January 1, 2021. The Commissioner shall adopt rules to carry out the provisions of this section as an emergency rule and concurrently propose them as a permanent rule. The emergency rule shall be deemed to meet the standard for the adoption of emergency rules pursuant to 3 V.S.A. § 844(a).

(b) The earned ~~good~~ time program implemented pursuant to this section shall comply with the following standards:

(1) The program shall be available for all sentenced offenders, including furloughed offenders, provided that the program shall not be available to offenders on probation or parole, to offenders eligible for a reduction of term pursuant to section 811 of this title, to offenders sentenced to serve an interrupted sentence, or to offenders sentenced to life without parole. Offenders currently serving a sentence shall be eligible to begin earning a reduction in term when the earned ~~good~~ time program becomes effective. Notwithstanding this subdivision (1), when an offender has been convicted of a disqualifying offense, the offender's ability to participate and earn time in the program shall be determined pursuant to subdivision (5) of this subsection.

(2) Offenders shall earn a reduction of seven days in the minimum and maximum sentence for each month during which the offender:

(A) is not adjudicated of a major disciplinary rule violation; and

(B) is not reincarcerated from the community for a violation of release conditions, provided that an offender who loses a residence for a reason other than fault on the part of the offender shall not be deemed reincarcerated under this subdivision.

(3) An offender who receives post-adjudication treatment in a residential setting for a substance use disorder shall earn a reduction of one day in the minimum and maximum sentence for each day that the offender

receives the inpatient treatment. While a person is in residential substance abuse treatment, he or she shall not be eligible for good earned time except as provided in this subsection.

(4) The Department shall:

(A) ensure that all victims of record are notified of the earned good time program at its outset and made aware of the option to receive notifications from the Department pursuant to this subdivision;

(B) provide timely notice not less frequently than every 90 days to the offender any time the offender receives a reduction in his or her term of supervision pursuant to this section;

(C) maintain a system that documents and records all such reductions in each offender's permanent record; and

(D) record any reduction in an offender's term of supervision pursuant to this section on a monthly basis and ensure that victims who want information regarding changes in scheduled release dates have access to such information.

(5) Notwithstanding 1 V.S.A. § 214, an offender who was serving a sentence for a disqualifying offense on January 1, 2021 shall not earn any earned time sentence reductions under this section after the effective date of this act. This subdivision (5) shall not be construed to limit or affect earned time that an offender has earned on or before the effective date of this act.

(c) As used in this section:

(1) "Disqualifying offense" means:

(A) murder in violation of 13 V.S.A. § 2301;

(B) voluntary manslaughter in violation of 13 V.S.A. § 2304;

(C) kidnapping in violation of 13 V.S.A. § 2405;

(D) lewd and lascivious conduct with a child in violation of 13 V.S.A. § 2602, provided that the offense shall not be considered a disqualifying offense if the offender is under 18 years of age, the child is at least 12 years of age, and the conduct is consensual;

(E) sexual assault in violation of 13 V.S.A. § 3252(a) or (b);

(F) aggravated sexual assault in violation of 13 V.S.A. § 3253; or

(G) aggravated sexual assault of a child in violation of 13 V.S.A. § 3253a.

(2) “Interrupted sentence” means a sentence that is not served continuously, including a sentence to be served in intervals or a sentence to the work crew.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

ORDERED TO LIE

S. 100.

An act relating to universal school breakfast and lunch for all public school students and to creating incentives for schools to purchase locally produced foods.

CONCURRENT RESOLUTIONS FOR ACTION

Concurrent Resolutions For Action Under Joint Rule 16

The following joint concurrent resolutions have been introduced for approval by the Senate and House. They will be adopted by the Senate unless a Senator requests floor consideration before the end of the session. Requests for floor consideration should be communicated to the Secretary’s Office.

H.C.R. 35 - 41 (For text of Resolutions, see Addendum to House Calendar for April 8, 2021)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Utility Commission shall be fully and separately acted upon.

Joseph Flynn of South Hero – Secretary, Agency of Transportation – By Sen. Mazza for the Committee on Transportation. (3/19/21)

Wanda L. Minoli of Montpelier – Commissioner, Department of Motor Vehicles – By Sen. Ingalls for the Committee on Transportation. (3/19/21)

Jennifer M. Fitch of Montpelier – Commissioner, Department of Buildings and General Services – By Sen. Benning for the Committee on Institutions. (3/26/21)

Michael Schirling of Burlington – Commissioner, Department of Public Safety – By Senator Ingalls for the Committee on Transportation. (3/26/21)

Sarah Squirrell of Waterbury Center – Commissioner, Department of Mental Health – Sen. Hooker for the Committee on Health and Welfare. (4/2/21)

Cory G. Gustafson of Montpelier – Commissioner, Department of Vermont Health Access – By Sen. Cummings for the Committee on Health and Welfare. (4/6/21)

Michael K. Smith of Westford – Secretary, Agency of Human Services – By Sen. Lyons for the Committee on Health and Welfare. (4/6/21)

Sean P. Brown of Washington – Commissioner, Department for Children and Families – By Sen. Hooker for the Committee on Health and Welfare. (4/7/21)

Dr. Jessica Holmes of Cornwall – Member, Green Mountain Care Board – Sen. Hardy for the Committee on Health and Welfare. (4/7/21)

Mark A. Levine, MD of Shelburne – Commissioner, Department of Health – By Sen. Hardy for the Committee on Health and Welfare. (4/7/21)

Susanne R. Young of Northfield - Secretary, Agency of Administration - By Sen. Collamore for the Committee on Government Operations. (4/13/21)

JFO NOTICE

Grants and Positions that have been submitted to the Joint Fiscal Committee by the Administration, under 32 V.S.A. §5(b)(3):

JFO #3043 - \$4,284,369 from the US Dept of Education to the VT Agency of Education for assistance to VT's approved and recognized non-profit independent schools to address educational disruptions caused by COVID-19. Funds will be managed by the VT Agency of Education. *[NOTE: Funds will be used with the GEER EANS program: Governor's Emergency Education Relief (GEER) Emergency Assistance to Non-public Schools (EANS). This program is replacing Equitable Services in ESSER II and III. Please see this [overview](#) of how the funds will be used by the AOE to support independent schools.]*

[JFO received 4/5/2021]

JFO #3044 – One (1) limited service position to the VT Dept. of Disabilities, Aging and Independent Living to develop a Northeast Network of mental health counselors familiar with farmer related stressors. Total first year amount of \$146,766 from the U.S. Department of Agriculture. Position has been approved for 1 year and is expected to be approved for 2 additional years.

[JFO received 4/05/2021]

FOR INFORMATION ONLY

CROSSOVER DATES

The Joint Rules Committee established the following Crossover deadlines:

(1) All **Senate/House** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance/Ways and Means, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 12, 2021**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day – Committee bills must be voted out of Committee by Friday March 12, 2021.

(2) All **Senate/House** bills referred pursuant to Senate Rule 31 or House Rule 35(a) to the Committees on Appropriations and Finance/Ways and Means must be reported out by the last of those committees on or before **Friday, March 19, 2021**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

Note: The Senate will not act on bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

Exceptions to the foregoing deadlines include the major money bills (the general Appropriations bill (“The Big Bill”), the Transportation Capital bill, the Capital Construction bill and the Fee/Revenue bills).

FOR INFORMATIONAL PURPOSES

CONSTITUTIONAL AMENDMENTS

The 2021-2022 Biennium is the Third Reading of two proposals of amendment. They were read the second time during the 2019-2020 Biennium.

The proposals are on the Notice Calendar for six (6) days and will be up for action for Third Reading on the seventh day.

Each proposal is acted upon separately. Senate Rule 83.

At Third Reading:

1. The vote on any constitutional proposal is by roll call. Senate Rule 83.

2. The questions is: "Shall the Senate concur in proposal #, and request the concurrence of the House? Senate Rule 83.
3. For this question to pass, 16 members of the Senate must vote in the affirmative. The Vermont Constitution requires an affirmative vote of a majority of the members of the Senate. Vermont Constitution §72.

There are no amendments at Third Reading of a constitutional amendment.