

# Senate Calendar

THURSDAY, JANUARY 20, 2022

SENATE CONVENES AT: 1:00 P.M.

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**ACTION CALENDAR**

**CONSIDERATION POSTPONED UNTIL FEBRUARY 1, 2022**

**GOVERNOR'S VETO**

**S. 79.**

An act relating to improving rental housing health and safety.

**Pending question (to be voted by call of the roll):** Shall the bill pass, notwithstanding the Governor's refusal to approve the bill? (Two-thirds of the members present required to override the Governor's veto.)

(For text of the Governor's Veto Message, see Senate Journal for June 24, 2021, page 1454)

**UNFINISHED BUSINESS OF TUESDAY, JANUARY 4, 2022**

**GOVERNOR'S VETO**

**S. 107.**

An act relating to confidential information concerning the initial arrest and charge of a juvenile.

**Pending question (to be voted by call of the roll):** Shall the bill pass, notwithstanding the Governor's refusal to approve the bill? (Two-thirds of the members present required to override the Governor's veto.)

The text of the Communication from His Excellency, The Governor, whereby he *vetoed* and returned unsigned **Senate Bill No. S. 107** to the Senate is as follows:

**Text of Communication from Governor**

"May 20, 2021

The Honorable John Bloomer, Jr.  
Secretary of the Senate  
115 State House  
Montpelier, VT 05633-5401

Dear Mr. Bloomer:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I am returning S.107, *An act relating to confidential information concerning the initial arrest and charge of a juvenile*, without my signature, because of concerns with the policy to automatically raise the age of accountability for

crimes, and afford young adults protections meant for juveniles, without adequate tools or systems in place.

Three years ago, I signed legislation intended to give young adults who had become involved in the criminal justice system certain protections meant for juveniles. At the time, I was assured that, prior to the automatic increases in age prescribed in the bill, plans would be in place to provide access to the rehabilitation, services, housing and other supports needed to both hold these young adults accountable and help them stay out of the criminal justice system in the future.

This has not yet been the case. In addition to ongoing housing challenges, programs designed and implemented for children under 18 are often not appropriate for those over 18. Disturbingly, there are also reports of some young adults being used – and actively recruited – by older criminals, like drug traffickers, to commit crimes because of reduced risk of incarceration, potentially putting the young people we are trying to protect deeper into the criminal culture and at greater risk.

I want to be clear: I’m not blaming the Legislature or the Judiciary for these gaps. All three branches of government need to bring more focus to this issue if we are going to provide the combination of accountability, tools and services needed to ensure justice and give young offenders a second chance.

For these reasons, I believe we need to take a step back and assess Vermont’s “raise the age” policy, the gaps that exist in our systems and the unintended consequences of a piecemeal approach on the health and safety of our communities, victims and the offenders we are attempting to help. I see S.107 as deepening this piecemeal approach.

I also remain concerned with the lack of clarity in S.107 regarding the disparity in the public records law between the Department of Public Safety and the Department of Motor Vehicles.

Based on the objections outlined above, I am returning this legislation without my signature pursuant to Chapter II, Section 11 of the Vermont Constitution. I believe this presents an opportunity to start a much-needed conversation about the status of our juvenile justice initiatives and make course corrections where necessary, in the interest of public safety and the young Vermonters we all agree need an opportunity to get back on the right path.

Sincerely,

/s/Philip B. Scott  
Governor

PBS/kp”

**Text of bill as passed by Senate and House**

The text of the bill as passed by the Senate and House of Representatives is as follows:

**S.107** An act relating to confidential information concerning the initial arrest and charge of a juvenile

It is hereby enacted by the General Assembly of the State of Vermont:

\* \* \* Exemption; records of arrest or charge of a juvenile \* \* \*

Sec. 1. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS; EXEMPTIONS

\* \* \*

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(5)(A) Records dealing with the detection and investigation of crime, but only to the extent that the production of such records:

\* \* \*

(B)(i) Notwithstanding subdivision (A) of this subdivision (5), records relating to management and direction of a law enforcement agency; records reflecting the initial arrest of a person, including any ticket, citation, or complaint issued for a traffic violation, as that term is defined in 23 V.S.A. § 2302; and records reflecting the charge of a person shall be public.

(ii) A public agency shall not release any information within a record reflecting the initial arrest or charge of a person under 19 years of age that would reveal the identity of the person. However, a public agency may disclose identifying information relating to the initial arrest of a person under 19 years of age in order to protect the health and safety of any person.

\* \* \*

\* \* \* Effective July 1, 2022 \* \* \*

Sec. 2. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS; EXEMPTIONS

\* \* \*

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(5)(A) Records dealing with the detection and investigation of crime, but only to the extent that the production of such records:

\* \* \*

(B)(i) Notwithstanding subdivision (A) of this subdivision (5), records relating to management and direction of a law enforcement agency; records reflecting the initial arrest of a person, including any ticket, citation, or complaint issued for a traffic violation, as that term is defined in 23 V.S.A. § 2302; and records reflecting the charge of a person shall be public.

(ii) A public agency shall not release any information within a record reflecting the initial arrest or charge of a person under ~~19~~ 20 years of age that would reveal the identity of the person. However, a public agency may disclose identifying information relating to the initial arrest of a person under ~~19~~ 20 years of age in order to protect the health and safety of any person.

\* \* \*

### Sec. 3. APPLICATION OF PUBLIC RECORDS ACT EXEMPTION REVIEW

Notwithstanding 1 V.S.A. § 317(e), the Public Records Act exemption amended in Sec. 1 shall continue in effect and shall not be reviewed for repeal.

\* \* \* Custodian of records relating to a person  
under court jurisdiction \* \* \*

Sec. 4. 33 V.S.A. § 5117 is amended to read:

### § 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

(a)(1) Except as otherwise provided, court and law enforcement reports and files concerning a person subject to the jurisdiction of the court shall be maintained separate from the records and files of other persons. Unless a charge of delinquency is transferred for criminal prosecution under chapter 52 of this title or the court otherwise orders in the interests of the child, such records and files shall not be open to public inspection nor their contents disclosed to the public by any person. However, upon a finding that a child is a delinquent child by reason of commission of a delinquent act ~~which~~ that would have been a felony if committed by an adult, the court, upon request of the victim, shall make the child's name available to the victim of the

delinquent act. If the victim is incompetent or deceased, the child's name shall be released, upon request, to the victim's guardian or next of kin.

(2) When a person is subject to the jurisdiction of the court, the court shall become the sole records custodian for purposes of responding to any request for court or law enforcement records concerning the person. A public agency shall direct any request for these records to the courts for response.

(3) When a person is subject to the jurisdiction of the Criminal Division of the Superior Court pursuant to chapter 52 or 52A of this title, the Criminal Division of the Superior Court shall become the sole records custodian for purposes of responding to any request for court or law enforcement records concerning the person. A public agency shall direct any request for these records to the courts for response.

\* \* \*

\* \* \* Effective Dates \* \* \*

Sec. 5. EFFECTIVE DATES

This act shall take effect on July 1, 2021, except that Sec. 2 (2022 amendment to 1 V.S.A. § 317(c)(5)(B)(ii) (public records; exemptions; records relating to the initial arrest and charge of a person)) shall take effect on July 1, 2022.

**NOTICE CALENDAR**

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 74.**

An act relating to modifications to Vermont's patient choice at end of life laws.

**Reported favorably with recommendation of amendment by Senator Hardy for the Committee on Health and Welfare.**

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. 18 V.S.A. § 5281 is amended to read:

§ 5281. DEFINITIONS

As used in this chapter:

\* \* \*

(11) “Health care services” means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(12) “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, Pub. L. No. 104-191.

Sec. 2. 18 V.S.A. § 5283 is amended to read:

§ 5283. REQUIREMENTS FOR PRESCRIPTION AND DOCUMENTATION; IMMUNITY

(a) A physician shall not be subject to any civil or criminal liability or professional disciplinary action if the physician prescribes to a patient with a terminal condition medication to be self-administered for the purpose of hastening the patient’s death and the physician affirms by documenting in the patient’s medical record that all of the following occurred:

(1) The patient made an oral request to the physician in the physician’s physical presence or by telemedicine, if the physician determines the use of telemedicine to be clinically appropriate, for medication to be self-administered for the purpose of hastening the patient’s death.

(2) ~~Not~~ Not fewer than 15 days after the first oral request, the patient made a second oral request to the physician in the physician’s physical presence or by telemedicine, if the physician determines the use of telemedicine to be clinically appropriate, for medication to be self-administered for the purpose of hastening the patient’s death.

\* \* \*

(5) The physician determined that the patient:

(A) was suffering a terminal condition, based on the physician’s ~~physical examination of the patient and~~ review of the patient’s relevant medical records and a physician’s physical examination of the patient;

(B) was capable;

(C) was making an informed decision;

(D) had made a voluntary request for medication to hasten ~~his or her~~ the patient’s own death; and

(E) was a Vermont resident.



(6) The physician informed the patient in person or by telemedicine, both verbally and in writing, of all the following:

\* \* \*

(12) The physician wrote the prescription ~~no fewer than 48 hours~~ after the last to occur of the following events:

(A) the patient's written request for medication to hasten ~~his or her~~ the patient's own death;

(B) the patient's second oral request; ~~or~~ and

(C) the physician's offering the patient an opportunity to rescind the request.

(13) The physician either:

(A) dispensed the medication directly, provided that at the time the physician dispensed the medication, ~~he or she~~ the physician was licensed to dispense medication in Vermont, had a current Drug Enforcement Administration certificate, and complied with any applicable administrative rules; or

\* \* \*

(14) The physician recorded and filed the following in the patient's medical record:

(A) the date, time, and wording of all oral requests of the patient for medication to hasten ~~his or her~~ the patient's own death;

(B) all written requests by the patient for medication to hasten ~~his or her~~ the patient's own death;

(C) the physician's diagnosis, prognosis, and basis for the determination that the patient was capable, was acting voluntarily, and had made an informed decision;

(D) the second physician's diagnosis, prognosis, and verification that the patient was capable, was acting voluntarily, and had made an informed decision;

(E) the physician's attestation that the patient was enrolled in hospice care at the time of the patient's oral and written requests for medication to hasten ~~his or her~~ the patient's own death or that the physician informed the patient of all feasible end-of-life services;

\* \* \*

Sec. 3. 18 V.S.A. § 5285 is amended to read:

§ 5285. LIMITATIONS ON ACTIONS

\* \* \*

(c) No physician, nurse, pharmacist, or other person licensed, certified, or otherwise authorized by law to deliver health care services in this State shall be subject to civil or criminal liability or professional disciplinary action for acting in good faith compliance with the provisions of this chapter.

(d) Except as otherwise provided in this section and sections 5283, 5289, and 5290 of this title, nothing in this chapter shall be construed to limit liability for civil damages resulting from negligent conduct or intentional misconduct by any person.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 4-1-0)

**S. 183.**

An act relating to midpoint probation review.

**Reported favorably with recommendation of amendment by Senator White 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. 28 V.S.A. § 252 is amended to read:

§ 252. CONDITIONS OF PROBATION AND MIDPOINT REVIEW

\* \* \*

(d) Review and recommendation for discharge.

(1) The Commissioner shall review the record of each probationer serving a specified term during the month prior to the midpoint of that probationer's specified term and shall file a motion requesting the sentencing court to dismiss the probationer from probation if the offender:

(A) has not been found by the court to have violated the conditions of probation in the six months prior to the review;

(B) is not serving a sentence for committing a crime specified in 13 V.S.A. chapter 19, subchapters 6 and 7; 13 V.S.A. chapter 72, subchapter 1; or 13 V.S.A. § 2602; and

(C) has completed those rehabilitative or risk reduction services required as a condition of probation that have a duration that is set and knowable at the outset of probation.

(2) If the probationer does not meet the criteria set forth in subdivision (1) of this subsection, ~~or if the court denies the Commissioner's motion to discharge,~~ the Commissioner shall file a motion requesting the sentencing court to discharge the probation term once the probationer meets the criteria set forth in subdivision (1) of this subsection.

(3) If a probationer meets the criteria set forth in subdivision (1) of this subsection and is subject to a pending criminal charge or violation of probation complaint, the Commissioner may file a motion requesting the sentencing court to dismiss the probationer from probation pursuant to this subsection. The motion shall identify the pending criminal charge or probation violation. After any pending criminal charges and probation violations are resolved, and if the probationer still meets the criteria set forth in subdivisions (1) of this subsection, the Commissioner shall file the motion requesting the sentencing court to dismiss the probationer from probation.

~~(3)~~(4) The prosecutor shall make a reasonable effort to notify any victim of record of a motion filed to reduce a probationer's term pursuant to this subsection. "Reasonable effort" means attempting to contact the victim by first-class mail at the victim's last known address and by telephone at the victim's last known phone number.

(5) Notwithstanding 1 V.S.A. § 214, and notwithstanding the requirement in subdivision (1) of this subsection that the Commissioner review the probationer's record during the month prior to the midpoint of that probationer's specified term, this subsection shall apply retroactively to any probationer serving a specified term of probation. If the probationer has already reached the midpoint of that probationer's specified term on or before the effective date of this act, the Commissioner shall review the probationer's record as soon as possible for purposes of filing a motion pursuant to this section.

Sec. 2. 28 V.S.A. § 251 is amended to read:

#### § 251. DURATION OF PROBATION

(a) The court placing a person on probation may terminate the period of probation and discharge the person at any time if such termination is warranted by the conduct of the offender and the ends of justice.

(b)(1) Upon the Commissioner's motion to discharge pursuant to subsection 252(d) of this title, the sentencing court shall terminate the period of probation and discharge the person at the midpoint of the probation term unless the prosecutor seeks a continuation of probation within 21 days of following receipt of notice of the Commissioner's motion; and:

(A) the court finds by a preponderance of the evidence that termination and discharge will present a risk of danger to the victim of the offense or to the community; or

(B) the court finds by clear and convincing evidence that the probationer is not substantially in compliance with the conditions of probation that are related to the probationer's rehabilitation or to victim or community safety.

(2) If the court grants the prosecutor's motion to continue probation, it may continue probation for the full term or any portion thereof. The court shall also review the conditions of probation and remove any conditions that are no longer necessary for the remainder of the term.

(3) Notwithstanding 1 V.S.A. § 214, this subsection shall apply retroactively to any probationer serving a specified term of probation.

(c) A probationer shall not be deemed ineligible for discharge or term reduction due to unpaid restitution, fees, or surcharges.

### Sec. 3. EFFECTIVE DATE

This act shall take effect on March 31, 2022.

(Committee vote: 5-0-0)

## CONCURRENT RESOLUTIONS FOR NOTICE

### Concurrent Resolutions For Notice 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 of the next legislative day. Requests for floor consideration should be communicated to the Secretary's Office.

**S.C.R. 11** (For text of Resolution, see Addendum to Senate Calendar for January 20, 2022)

**H.C.R. 86 - 87** (For text of Resolutions, see Addendum to House Calendar for January 20, 2022)

## 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.

Matthew Valerio of Proctor – Defender General – By Sen. Benning for the Committee on Judiciary. (1/14/22)

## PUBLIC HEARINGS

**January 20, 2022 - 6:00 - 8:00 p.m.** - House Chamber - Re: Proposal 2 - Proposed amendment to the Constitution of the State of Vermont - Declaration of rights; clarifying the prohibition on slavery and indentured servitude - House Committee on Government Operations.

**January 26, 2022 - 6:00 - 8:00 p.m.** - House Chamber - Re: Proposal 5 - Proposed amendment to the Constitution of the State of Vermont - Right to personal reproductive freedom. - House Committee on Human Services.

## 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 #3085** – Two (2) limited-service positions to the VT Department of Disabilities, Aging and Independent Living, Division of Vocational Rehabilitation from the Centers for Medicare and Medicaid Services. One (1) VR Program Coordinator to oversee at statewide scholarship, and mentor program for personal care attendants. One (1) VR Assistive Technology Specialist for vocational rehabilitation clients including transition age youth (high school students). Both positions funded through 9/30/2025 by previously approved grant JFO #2510.

*[Received January 4, 2022]*

**JFO #3086** – \$925,840 to the VT Agency of Education from the U.S. Department of Agriculture Food and Nutrition Services. The grant will be used to fund two projects: Phase II of a current IT systems upgrade to improve interconnectivity and data transfer functionalities of the system; and a pilot of the Ed-Fi data model to explore improvements for data transfers between local education agencies, child nutrition programs and other state agencies. Edfi is a national data standard in education. Please see this link for more information on the data system: <https://www.ed-fi.org/>.

*[Received January 4, 2022]*