

# Legislative Wrap-up CLE

Judiciary- and Law Enforcement-Related Updates

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# Update Overview

- Act 103 (S.265): An act relating to expanding criminal threatening to include threats to third persons
- Act 104 (H.399): An act relating to incarceration terms for criminal defendants who are primary caretakers of dependent children
- Act 124 (S.127): An act relating to clarifying community supervision furlough appeals and the powers of the Corrections Monitoring Commission
- Act 126 (S.254): An act relating to maintaining records of judgments and settlements paid by law enforcement agencies and a legal analysis of qualified immunity
- Act 161 (S.250): An act relating to law enforcement data collection and interrogation

# Act 103 (S.265): An act relating to expanding criminal threatening to include threats to third persons

- Act 103 expands Vermont's criminal threatening statute within constitutional limits to ensure that there are fewer barriers to prosecute various forms of true threats.
- Under prior law, 13 V.S.A. § 1702 criminalized true threats made to another person that placed them in reasonable apprehension of death or serious bodily harm.
- Act 103 expands the law to include true threats made to groups of particular people and people other than the person receiving the threat
- Act 103 expands the type of harm threatened to include sexual assault
- Act 103 eliminates the statutory affirmative defense that the person making the threat did not have the ability to carry out the threat
- Act 103 creates enhanced penalties for threats to be carried out in enumerated locations, against specific individuals, or to prevent certain types of government action.

# Act 103 cont'd: Enhanced penalties; juveniles

- Enhanced penalty of imprisonment of not more than two years or a fine of not more than \$2,000.00, or both, if a person makes a threat:
  - intending to prevent a person from reporting suspected abuse or neglect of a child to DCF;
  - to be carried out in a public or private school; postsecondary institution; place of worship; polling place during election activities; the Vermont State House; or any federal, State, or municipal building;
  - intending to terrify, intimidate, or unlawfully influence a person to prevent compliance with State laws or rules, State court or administrative orders, or State executive orders; or
  - intending to terrify, intimidate, or unlawfully influence the conduct of a candidate for public office, a public servant, an election official, or a public employee for action taken in such capacity or to retaliate for action already taken.
- Aligns the statute with Vermont's "Raise the Age" initiative for the prosecution of juveniles.

## Act 104 (H.399):

An act relating to incarceration terms for criminal defendants who are primary caretakers of dependent children

- Aims to prevent unnecessary harm to, and ensure fair and compassionate treatment of, children whose caregivers are involved in the criminal justice system
- Amends 13 V.S.A. § 7030 by explicitly requiring criminal courts to consider a defendant's family circumstances, relationships, and the impact of any sentence upon the defendant's minor children
- Also amends 28 V.S.A. § 204 by requiring any presentence investigation report to set forth information concerning the defendant's custodial relationships

# Act 124 (S.127): An act relating to clarifying community supervision furlough appeals and the powers of the Corrections Monitoring Commission

- Act 124 amends 28 V.S.A. § 724 by streamlining the court procedures and standards concerning appeals of community supervision furlough revocation or interruptions.
- The Act clarifies that offenders whose community supervision furlough is revoked or interrupted for 90 days or longer for a *technical violation* have the right to appeal the DOC's determination to the Civil Division of the Superior Court.
- The statutory changes add clarifying procedures to certify the court's subject matter jurisdiction on appeal, to hear additional evidence, to clarify the scope of appellate review, and to ensure proper venue.
- The Act also amends 28 V.S.A. § 123 by clarifying the oversight role that the Corrections Monitoring Commission has with the DOC, which provides legal assistance to the Commission, and the confidentiality provisions for Commission review of DOC misconduct or disciplinary records.

# Act 126 (S.254): An act relating to maintaining records of judgments and settlements paid by law enforcement agencies and a legal analysis of qualified immunity

- The bill formerly known as “qualified immunity”.
- Act 126 mandates that the Office of Legislative Counsel draft a legal analysis of the impact of the doctrine of qualified immunity on access to civil justice remedies in Vermont and the U.S. Court of Appeals for the Second Circuit.
- The Act also creates a new statute designated as 20 V.S.A. § 2370 mandating law enforcement agencies to maintain a record of all final judgments and settlements paid for claims related to violations of Vermont constitutional rights.
- The judgments, settlements, and their underlying complaints are subject to public disclosure unless an exemption applies pursuant to the Vermont Public Records Act. Any record disclosed must include the agency’s name and amount paid.

# Act 161 (S.250): An act relating to law enforcement data collection and interrogation

- Act 161 amends 20 V.S.A. § 2366 by adding statutory requirements that specify the contents of an annual report on roadside stop data collection submitted to various legislative committees and the Executive Director of Racial Equity.
- Act 161 mandates that DPS submit a report by November 1, 2023, evaluating the ability of law enforcement agencies to collect data from all law enforcement encounters.
- Act 161 creates the Giglio Database Study Committee to study the creation and administration of a law enforcement officer information database designed to facilitate the disclosure of potential impeachment information by prosecutors.
- Act 161 adds U.S. Department of Veterans Affairs' special agents, inspectors, and police force members to the list of "certified federal law enforcement officers" under 20 V.S.A. § 2222.



# Act 161 cont'd: Electronic recording of interrogations

- Act 161 expands the requirements of law enforcement to electronically record interrogations under 13 V.S.A. § 5585.
- All felony and misdemeanor custodial interrogations occurring in a place of detention must now be recorded.
- Act 161 also requires that felony and misdemeanor custodial interrogations occurring outside a place of detention must be electronically recorded, unless impracticable.

Any questions?