

Journal of the Senate

FRIDAY, MARCH 22, 2024

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 33

A message was received from the House of Representatives by Ms. Courtney Reckord, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 173. An act relating to prohibiting manipulating a child for the purpose of sexual contact.

H. 233. An act relating to licensure and regulation of pharmacy benefit managers.

H. 279. An act relating to the Uniform Trust Decanting Act.

H. 350. An act relating to the Uniform Directed Trust Act.

H. 606. An act relating to professional licensure and immigration status.

H. 614. An act relating to land improvement fraud and timber trespass.

H. 644. An act relating to access to records by individuals who were in foster care.

H. 664. An act relating to designating a State Mushroom.

H. 667. An act relating to the creation of the Vermont-Ireland Trade Commission.

H. 741. An act relating to health insurance coverage for colorectal cancer screening.

H. 794. An act relating to services provided by the Vermont Veterans' Home.

H. 867. An act relating to miscellaneous amendments to the laws governing alcoholic beverages and the Board of Liquor and Lottery.

H. 868. An act relating to the fiscal year 2025 Transportation Program and miscellaneous changes to laws related to transportation.

In the passage of which the concurrence of the Senate is requested.

The House has considered Senate proposal of amendment to House proposal of amendment to Senate bill of the following title:

H. 518. An act relating to the approval of amendments to the charter of the Town of Essex.

And has concurred therein.

The House has considered joint resolution originating in the Senate of the following title:

J.R.S. 49. Joint resolution relating to weekend adjournment on March 22, 2024.

And has adopted the same in concurrence.

Bills Referred to Committee on Appropriations

Senate bills of the following titles, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule were severally referred to the Committee on Appropriations:

S. 259. An act relating to climate change cost recovery.

S. 310. An act relating to natural disaster government response, recovery, and resiliency.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 173.

An act relating to prohibiting manipulating a child for the purpose of sexual contact.

To the Committee on Judiciary.

H. 233.

An act relating to licensure and regulation of pharmacy benefit managers.

To the Committee on Health and Welfare.

H. 279.

An act relating to the Uniform Trust Decanting Act.

To the Committee on Judiciary.

H. 350.

An act relating to the Uniform Directed Trust Act.

To the Committee on Judiciary.

H. 606.

An act relating to professional licensure and immigration status.

To the Committee on Government Operations.

H. 614.

An act relating to land improvement fraud and timber trespass.

To the Committee on Judiciary.

H. 644.

An act relating to access to records by individuals who were in foster care.

To the Committee on Government Operations.

H. 664.

An act relating to designating a State Mushroom.

To the Committee on Agriculture.

H. 667.

An act relating to the creation of the Vermont-Ireland Trade Commission.

To the Committee on Government Operations.

H. 741.

An act relating to health insurance coverage for colorectal cancer screening.

To the Committee on Health and Welfare.

H. 794.

An act relating to services provided by the Vermont Veterans' Home.

To the Committee on Government Operations.

H. 867.

An act relating to miscellaneous amendments to the laws governing alcoholic beverages and the Board of Liquor and Lottery.

To the Committee on Economic Development, Housing and General Affairs.

H. 868.

An act relating to the fiscal year 2025 Transportation Program and miscellaneous changes to laws related to transportation.

To the Committee on Transportation.

Bill Amended; Third Reading Ordered**S. 258.**

Senator Bray, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

An act relating to the management of fish and wildlife.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Fish and Wildlife Board; Governance * * *

Sec. 1. 10 V.S.A. §§ 4041 and 4042 are amended to read:

§ 4041. DEPARTMENT OF FISH AND WILDLIFE; FISH AND WILDLIFE BOARD; MEMBERS, TERM, CHAIR

(a) There is hereby established a Department of Fish and Wildlife ~~that shall be administered by the Commissioner.~~ The Department shall be under the direction and supervision of a Commissioner appointed by the Secretary as provided in 3 V.S.A. § 2851. In addition to the duties and powers provided under this chapter, the Commissioner shall have the powers and duties specified in 3 V.S.A. § 2852 and such additional duties as may be assigned to the Commissioner by the Secretary under 3 V.S.A. § 2853. The Commissioner shall implement the policy and purposes specified in section 4081 of this title where appropriate and to the extent that resources of the Department permit.

(b)(1) There is hereby established a Fish and Wildlife Board. The purpose of the Board shall be to serve in an advisory capacity to the Department of Fish and Wildlife in the establishment of Department rules and any policies therein regarding the management and conservation of wildlife in the State, except for establishment of rules and policies related to wildlife regulated under chapter 123 of this title.

(2) The Board shall consist of 44 15 members, one from each county, appointed by the Governor with the advice and consent of the Senate and one at large member. Five members of the Board shall be appointed by the Commissioner, five members of the Board shall be appointed by the Speaker of the House, and five members of the Board shall be appointed by the Committee on Committees. The members of the Board shall be appointed for

a term of six years, or the unexpired portion thereof, and during their terms the 14 members appointed by county shall reside in the county from which they are appointed. In the event a member resigns or no longer resides in the county from which he or she the member was appointed, the ~~Governor~~ authority that appointed the member shall appoint a new member from that county for the unexpired portion of the term. Appointments shall be made in ~~such~~ a manner that either two or three terms shall expire each year. A member ~~-serving a full six-year term shall not be eligible for reappointment shall be eligible to serve a maximum of two full six-year terms~~. ~~The Governor Commissioner shall biennially designate a chair~~.

(3) In order to be appointed to the Board, a person shall apply in writing to the appointing authority. The appointing authority shall acknowledge, in writing, the receipt of each application.

(4) In considering applicants to the Board, the appointing authority shall give due consideration to:

(A) the need for the Board members to have a history of involvement with and dedication to fish and wildlife, including a knowledge of fish and wildlife biology, ecology, and the ethics of fish and wildlife management;

(B) the need for the Board to have a balanced representation and include members of the public representing an approximately equal number of licensed users and nonlicensed users of wildlife; and

(C) coordinating their appointments to ensure the appropriate composition of the board as required by this subsection (b).

(5) As used in this subsection:

(A) “licensed user of wildlife” means a person who has held a Vermont hunting, fishing, or trapping license in each of the previous five years prior to appointment; and

(B) “nonlicensed user of wildlife” means a person who has not held a Vermont hunting, fishing, or trapping license in any of the previous five years prior to appointment.

(c) Upon appointment, each Board member shall receive training from the Department on wildlife management and hunting ethics, such as the North American Model of Wildlife Conservation; wildlife biology; coexistence with wildlife; the reduction of conflict between humans and wildlife; and the impacts of climate change on fish and wildlife.

(d) Upon the filing of a proposed rule with the Secretary of State pursuant to 3 V.S.A. § 838, the Department shall submit the proposed rule to the Board for its review. After a public hearing and an opportunity for the public to

submit written comments, the Board shall consider whether a proposed rule is designed to maintain the best health, population, viewing opportunities, and utilization levels of the regulated species and of other necessary or desirable species that are ecologically related to the regulated species and whether the rules are adequately supported by investigation and research conducted by the Department. If the Board, by majority vote, determines that a proposed rule should be revised, it shall submit a written report to the Department setting forth its recommended revisions, and the reasons therefore, within 60 days following its receipt of a proposed rule. The Board shall include with its report the public comments it received. The Department shall consider fully any recommendations by the Board. If the Board's recommendations are not included in the rule, the Department shall issue a written explanation of why it did not include the Board's recommendations in the rule. The Board's written report and the Department's response thereto shall be included with the materials submitted to the Legislative Committee on Administrative Rules under 3 V.S.A. § 841.

§ 4042. COMMISSIONER; APPOINTMENT

~~The Commissioner shall be appointed pursuant to the provisions of 3 V.S.A. § 2851. The Commissioner shall also be Executive Secretary of the Board. [Repealed.]~~

Sec. 2. 10 V.S.A. § 4081 is amended to read:

§ 4081. POLICY

(a)(1) As provided by Chapter II, § 67 of the Constitution of the State of Vermont, the fish and wildlife of Vermont are held in trust by the State for the benefit of the citizens of Vermont and shall not be reduced to private ownership. The State of Vermont, in its sovereign capacity as a trustee for the citizens of the State, shall have ownership, jurisdiction, and control of all of the fish and wildlife of Vermont.

(2) The Commissioner of Fish and Wildlife shall manage and regulate the fish and wildlife of Vermont in accordance with the requirements of this part ~~and the rules of the Fish and Wildlife Board, including the Department of Fish and Wildlife rules on Non-game Management as set forth in Code of Vermont Rules 12-010-028. The protection, propagation control, management, and conservation of fish, wildlife, and fur-bearing animals in this State are in the interest of the public welfare. It is in the public welfare to protect, manage, and conserve the fish and wildlife of the State and the habitats in which they reside.~~ The State, through the Commissioner of Fish and Wildlife, shall safeguard the fish, and wildlife, and fur-bearing animals of the State for the people of the State, and the State shall fulfill this duty with a constant and continual vigilance.

~~(b)~~ Notwithstanding the provisions of 3 V.S.A. § 2803, the Fish and Wildlife Board shall be the State agency charged with carrying out the purposes of this subchapter.

~~(e)~~ A healthy deer herd is a primary goal one of the most important goals of fish and wildlife management. The use of a limited unit open season on antlerless deer shall be implemented only after a scientific game management study by the Department of Fish and Wildlife supports such a season.

~~(d)~~(c) Annually, the Department shall update a scientific management study of the State deer herd. The study shall consider data provided by Department biologists and citizen testimony taken under subsection ~~(f)~~(e) of this section.

~~(e)~~(d) Based on the results of the updated management study and citizen testimony, the ~~Board~~ Department shall decide whether an antlerless deer hunting season is necessary and, if so, how many permits are to be issued. If the ~~Board~~ Department determines that an antlerless season is necessary, it shall adopt a rule creating one and the Department shall then administer an antlerless program.

~~(f)~~(e) Annually, the Department shall hold regional public hearings to receive testimony and data from concerned citizens about their knowledge and concerns about the deer herd. The ~~Board~~ Department shall identify the regions by rule.

~~(g)~~(f) If the ~~Board~~ Department finds that an antlerless season is necessary to maintain the health and size of the herd, the Department shall administer an antlerless deer program. Annually, the ~~Board~~ Department shall determine how many antlerless permits to issue in each wildlife management unit. For a nonrefundable fee of \$10.00 for residents and \$25.00 for nonresidents, a person may apply for a permit. Each person may submit only one application for a permit. The Department shall allocate the permits in the following manner:

(1) A Vermont landowner, as defined in section 4253 of this title, who owns 25 or more contiguous acres and who applies shall receive a permit for antlerless hunting in the management unit on which the land is located before any are given to people eligible under subdivision (2) of this subsection. If the land is owned by more than one individual, corporation, or other entity, only one permit shall be issued. Landowners applying for antlerless permits under this subdivision shall not, at the time of application or thereafter during the regular hunting season, post their lands except under the provisions of section 4710 of this title. As used in this section, “post” means any signage that would

lead a reasonable person to believe that hunting is restricted on the land. If the number of landowners who apply exceeds the number of permits for that district, the Department shall award all permits in that district to landowners by lottery.

(2) Permits remaining after allocation pursuant to subdivision (1) of this subsection shall be issued by lottery.

(3) Any permits remaining after permits have been allocated pursuant to subdivisions (1) and (2) of this subsection shall be issued by the Department for a \$10.00 fee for residents. Ten percent of the remaining permits may be issued to nonresident applicants for a \$25.00 fee.

Sec. 3. 10 V.S.A. § 4082 is amended to read:

§ 4082. VERMONT FISH AND WILDLIFE REGULATIONS

(a) ~~The Board~~ Department may adopt rules, under 3 V.S.A. chapter 25, to be known as the “Vermont Fish and Wildlife Regulations” for the management of all wildlife and the regulation of fish and wild game and the taking thereof except as otherwise specifically provided by law. The rules shall be designed to maintain the best health, population, and utilization levels of ~~the regulated species and of other necessary or desirable species that are ecologically related to the regulated species~~ all wildlife. The rules shall be supported by ~~investigation and research conducted by the Department on behalf of the Board~~ the best science available through Department and peer reviewed research.

(b)(1) Except as provided for under subdivision (2) of this subsection, the ~~Board~~ Department annually may adopt rules relating to the management of migratory game birds, and shall follow the procedures for rulemaking contained in 3 V.S.A. chapter 25. For each ~~such~~ rule, the ~~Board~~ Department shall conduct a hearing but, when necessary, may schedule the hearing for a day before the terms of the rule are expected to be determined.

(2) Beginning with the 2015 hunting season, the ~~Board~~ Department may set by procedure the daily bag and possession limits of migratory game birds that may be harvested in each Waterfowl Hunting Zone annually without following the procedures for rulemaking contained in 3 V.S.A. chapter 25. The annual daily bag and possession limits of migratory game birds shall be consistent with federal requirements. Prior to setting the migratory game bird daily bag and possession limits, the ~~Board~~ Department shall provide a period of not less than 30 days of public notice and shall conduct at least two public informational hearings. The final migratory game bird daily bag and possession limits shall be enforceable by the Department under its enforcement authority in part 4 of this title.

(c) The ~~Board~~ Department may set by procedure the annual number of antlerless deer that can be harvested in each Wildlife Management Unit and the annual number of moose that can be harvested in each Wildlife Management Unit without following the procedures for rulemaking contained in 3 V.S.A. chapter 25. The annual numbers of antlerless deer and moose that can be harvested shall be supported by investigation and research conducted by the Department ~~on behalf of the Board~~. Prior to setting the antlerless deer and moose permit numbers, the ~~Board~~ Department shall provide a period of not less than 30 days of public notice and shall conduct at least three public informational hearings. The public informational hearings may be conducted simultaneously with the regional antlerless deer meetings required by 10 V.S.A. App. § 2b. The final annual antlerless deer and moose harvest permit numbers shall be enforceable by the Department under its enforcement authority in part 4 of this title. The final annual antlerless deer and moose harvest permit numbers shall be reported to the House Committee on Environment and Energy and the Senate Committee on Natural Resources and Energy as part of the annual deer report required under section 4084 of this title. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

Sec. 4. 10 V.S.A. § 4048(d) is amended to read:

(d) The Commissioner of Fish and Wildlife, according to the provisions of 3 V.S.A. chapter 25 and after consultation with the Fish and Wildlife Board and the Endangered Species Committee, shall adopt a rule establishing a plan for nongame wildlife. The rule may be amended from time to time, and shall be reviewed, after public hearings, at least every five years. The plan shall contain:

- (1) strategies to manage, inventory, preserve, protect, perpetuate, and enhance all nongame wildlife in the State, including identification of wildlife species in need of protection and information on their population distributions, habitat requirements, limiting factors, and other pertinent biological and ecological data on nongame wildlife species in need of protection;
- (2) estimates of resources available for these strategies; and
- (3) plans for research and education in nongame wildlife.

Sec. 5. 10 V.S.A. § 4601 is amended to read:

§ 4601. TAKING FISH; POSSESSION

A person shall not take fish, except in accordance with this part and regulations of the ~~Board~~ Department, or possess a fish taken in violation of this part or regulations of the ~~Board~~ Department.

Sec. 6. 3 V.S.A. § 2803 is amended to read:

§ 2803. ADVISORY CAPACITY

(a) All boards, committees, councils, activities, and departments ~~which that~~ under this chapter are a part of the Agency shall be advisory only, except as hereinafter provided, and the powers and duties of such boards, committees, councils, activities, and departments, including administrative, policy making, rulemaking, and regulatory functions, shall vest in and be exercised by the Secretary of the Agency.

(b) Notwithstanding subsection (a) of this section or any other provision of this chapter, ~~the Fish and Wildlife Board and~~ the Natural Resources Board shall retain and exercise all powers and functions given to ~~them~~ it by law ~~which that~~ are of regulatory or quasi-judicial nature, including the power to adopt, amend, and repeal rules and regulations; to conduct hearings; to adjudicate controversies; and to issue and enforce orders, in the manner and to the extent to which those powers are given to ~~those respective boards~~ the Board by law.

Sec. 7. CONFORMING REVISIONS

When preparing the Vermont Statutes Annotated for publication, the Office of Legislative Counsel shall make the following revisions throughout the statutes as needed for consistency with Secs. 1–6 of this act, provided the revisions have no other effect on the meaning of the affected statutes:

(1) replace “Board” with “Department” in 10 V.S.A. §§ 4605, 4701, 4702, 4742a, 4828, 4830, 4861, 4902, and 5001; and

(2) revisions that are substantially similar to those described in subdivision (1) of this section.

Sec. 8. TRANSITION

(a) The Vermont Fish and Wildlife regulations adopted by the Fish and Wildlife Board and in effect as of the effective date of this act shall remain in effect and have the full force and effect of law until such time as they are repealed or amended by the General Assembly by legislative act or by the Department of Fish and Wildlife pursuant to 3 V.S.A. chapter 25.

(b) The members of the Fish and Wildlife Board as of the effective date of this act shall continue to serve as members of the Board until all new members of the Board are appointed under 10 V.S.A. § 4041(b) or 90 days after the effective date of this act, whichever occurs first.

(c) The Commissioner of Fish and Wildlife shall commence rulemaking to develop the nongame wildlife plan required by 10 V.S.A. § 4048(d) not later

than July 1, 2024 and shall complete rulemaking not later than September 1, 2025. In so doing, the Commissioner shall work to harmonize provisions of all Fish and Wildlife rules to realize the public interest in the sound management of game and nongame species according to ecological principles supported by the best science available through Department and peer-reviewed research.

Sec. 9. 10 V.S.A. § 4001 is amended to read:

§ 4001. DEFINITIONS

Words and phrases used in this part, unless otherwise provided, shall be construed to mean as follows:

* * *

(14) Fur-bearing animals: beaver, otter, marten, mink, raccoon, fisher, fox, skunk, coyote, bobcat, weasel, opossum, lynx, wolf, and muskrat.

* * *

(15) Wild animals or wildlife: all animals, including birds, fish, amphibians, and reptiles, other than domestic animals, domestic fowl, or domestic pets.

* * *

(23) Take and taking: pursuing, shooting, hunting, killing, capturing, trapping, snaring, and netting fish, birds, and quadrupeds and all lesser acts, such as disturbing, harrying, worrying, or wounding or placing, setting, drawing, or using any net or other device commonly used to take fish or wild animals, whether they result in the taking or not; and shall include every attempt to take and every act of assistance to every other person in taking or attempting to take fish or wild animals, provided that when taking is allowed by law, reference is had to taking by lawful means and in a lawful manner.

* * *

(42) “Trapping” means to take or attempt to take fur-bearing animals with traps including the dispatching of lawfully trapped fur-bearing animals.

Sec. 10. 10 V.S.A. § 4866 is added to read:

§ 4866. SETBACKS; TRAPPING

(a) As used in this section:

(1) “Public highway,” means any highway, as that term is defined in 24 V.S.A. § 4, including Class 4 roads, shown on the highway maps of the respective towns made by the Agency of Transportation, but shall not include trails.

(2) "Trail" means a path or corridor open to the public, including all areas used for nonmotorized recreational purposes such as hiking, walking, bicycling, cross-country skiing, horseback riding, and other similar activities.

(b) No foothold trap or body-gripping trap shall be set:

(1) on or within 50 feet of a trail or a public highway, including when the trap is set in water or under the ice.

(2) on or within 100 feet of a building, parking lot, visitor center, park, playground, picnic area, shelter, pavilion, school, camp or campground, recreational facility, or any other area where persons may reasonably be expected to recreate, including when the trap is set in water or under the ice.

(c) The requirements of subsection (b) of this section shall not apply to a resident or nonresident owner of land, the owner's spouse, and the owner's minor children when trapping on the owner's land, regardless of whether the land is posted under section 4710 of this title.

Sec. 11. REPEAL; FISH AND WILDLIFE REGULATIONS; TRAPPING

The following subsections of 10 V.S.A. App. § 44 (furbearing species) are repealed:

- (1) subsection 3.20 (definition of trapping);
- (2) subsection 3.11 (definition of legal trail);
- (3) subsection 3.14 (definition of public trail); and
- (4) subsection 4.15 (trapping setbacks).

* * * Hunting Coyote * * *

Sec. 12. 10 V.S.A. § 5008 is amended to read:

§ 5008. ~~HUNTING COYOTE WITH AID OF DOGS; PERMIT; USE OF BAIT~~

~~(a) No person shall pursue coyote with the aid of dogs, either for training or taking purposes, without a permit issued by the Commissioner.~~

~~(1) The Commissioner may deny any permit at the Commissioner's discretion. The Commissioner shall not issue more than 100 permits annually.~~

~~(2) The number of permits that the Commissioner issues to nonresidents in any given year shall not exceed 10 percent of the number of permits issued to residents in the preceding year. The Commissioner shall establish a process and standards for determining which nonresidents are to receive a permit, including who will receive a permit if there are more nonresident applicants than nonresident permits.~~

~~(3) A nonresident may train dogs to pursue coyote only while the training season is in effect in the nonresident's home state and subject to the requirements of this part and rules adopted under this part.~~

~~(b)(1) The Commissioner shall issue permits under this section to a resident for a fee of \$50.00.~~

~~(2) The application fee for a nonresident permit issued under this section shall be \$10.00, and the fee for a nonresident permit issued under this section shall be \$200.00 for a successful applicant. No person shall pursue coyote with the aid of dogs, either for the purposes of training a dog or taking a coyote.~~

~~(b) A person shall not take coyote by using bait, except as authorized pursuant to a trapping license issued under this part. As used in this subsection, "bait" means any animal, vegetable, fruit, or mineral matter placed with the intention of attracting wildlife.~~

Sec. 13. REPEAL; HUNTING COYOTE WITH AID OF DOGS;
ISSUANCE OF PERMITS

~~(a) 10 V.S.A. § 5009, as enacted under 2021 Acts and Resolves No. 165, Sec. 1 (hunting coyote with aid of dogs), is repealed.~~

~~(b) The following subsections of 10 V.S.A. App. § 44(furbearing species) are repealed:~~

- ~~(1) 3.1 (definition of accompany for purpose of pursuing coyote);~~
- ~~(2) 3.6 (definition of control of dogs; taking of coyote);~~
- ~~(3) 3.7 (definition of coyote dog permit);~~
- ~~(4) 3.9 (definition of Department registered dog);~~
- ~~(5) 3.12 (definition of pack of dogs);~~
- ~~(6) 3.15 (definition of relaying packs and dogs);~~
- ~~(7) 3.16 (definition of subpermittee);~~
- ~~(8) 3.17 (definition of taking coyote with the aid of dogs);~~
- ~~(9) 3.19 (definition of training/control collar);~~
- ~~(10) 3.22 (definition of unregistered dog); and~~
- ~~(11) 4.20 (taking coyote with the aid of dogs).~~

~~(e) The Commissioner of Fish and Wildlife shall not issue a permit to hunt or take coyote with the aid of dogs after the effective date of this act. If a person submitted an application to hunt or take coyote with the aid of dogs as~~

of the effective date of this act but has not been awarded a permit, the Commissioner of Fish and Wildlife shall not issue a permit and shall refund to the permit applicant any fees submitted as part of the application.

* * * Effective Date * * *

Sec. 14. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Senator Lyons, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass when so amended.

Thereupon, the bill was read a second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Natural Resources?, Senator Bray moved to amend the recommendation of amendment of the Committee on Natural Resources and Energy as follows:

First: By striking out Sec. 1, 10 V.S.A. §§ 4041 and 4042, in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

§ 4041. DEPARTMENT OF FISH AND WILDLIFE; FISH AND WILDLIFE BOARD; MEMBERS, TERM, CHAIR

(a) There is hereby established a Department of Fish and Wildlife that shall be administered by the Commissioner.

(b)(1) There is hereby established a Fish and Wildlife Board. The purpose of the Board shall be to serve in an advisory capacity to the Department of Fish and Wildlife in the establishment of Department rules and any policies therein regarding the regulation and conservation of fish and wild game and the taking thereof, except as otherwise specifically provided by law.

(2) The Board shall consist of ~~14~~ 16 members, one from each ~~county~~ of the 14 counties in the State, appointed by the Governor with the advice and consent of the Senate and two at large members, one appointed by the Speaker of the House, and one appointed by the Committee on Committees. The members of the Board shall be appointed for a term of six years, or the unexpired portion thereof, and during their terms the 14 members appointed by the Governor by county shall reside in the county from which they are appointed. In the event a member resigns or no longer resides in the county from which ~~he or she~~ the member was appointed, the ~~Governor~~ authority that appointed the member shall appoint a new member ~~from that county~~ for the unexpired portion of the term. Appointments shall be made in ~~such~~ a manner that either two or three terms shall expire each year. A member ~~servng~~ servng a full

six-year term shall not be eligible for reappointment shall be eligible to serve a maximum of two full six-year terms. The Governor Board shall biennially designate elect a chair.

(3) In order to be appointed to the Board, a person shall apply in writing to the appointing authority.

(4) The appointing authority shall give due consideration to appointing persons who:

(A) have a history of involvement with and dedication to fish and wildlife, including a knowledge of fish and wildlife biology, ecology, and the ethics of fish and wildlife management;

(B) provide balanced viewpoints; and

(C) recognize the challenges to wildlife and habitat caused by climate change, including an unprecedented loss of biodiversity, and prioritize the value of science in the work to conserve, protect, and restore natural ecosystems.

(c) Upon appointment, each Board member shall receive training from the Department on wildlife management and hunting ethics, such as the North American Model of Wildlife Conservation; wildlife biology; coexistence with wildlife; the reduction of conflict between humans and wildlife; and the impacts of climate change on fish and wildlife.

(d) Upon the filing of a proposed rule regarding the regulation and conservation of fish and wild game and the taking thereof with the Secretary of State pursuant to 3 V.S.A. § 838, the Department shall submit the proposed rule to the Board for its review. After a public hearing and an opportunity for the public to submit written comments, the Board shall consider whether a proposed rule is designed to maintain the best health, population, viewing opportunities, and utilization levels of the regulated species and of other necessary or desirable species that are ecologically related to the regulated species and whether the rules are adequately supported by investigation and research conducted by the Department. If the Board, by majority vote, determines that a proposed rule should be revised, it shall submit a written report to the Department setting forth its recommended revisions, and the reasons therefore, within 60 days following its receipt of a proposed rule. The Board shall include with its report the public comments it received. The Department shall consider fully any recommendations by the Board. If the Board's recommendations are not included in the rule, the Department shall issue a written explanation of why it did not include the Board's recommendations in the rule. The Board's written report and the

Department's response thereto shall be included with the materials submitted to the Legislative Committee on Administrative Rules under 3 V.S.A. § 841.

Second: In Sec. 3, 10 V.S.A. § 4082, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) ~~The Board~~ Department may adopt rules, under 3 V.S.A. chapter 25, to be known as the "Vermont Fish and Wildlife Regulations" for the regulation of fish and wild game and the taking thereof except as otherwise specifically provided by law. The rules shall be designed to maintain the best health, population, and utilization levels of the regulated species and of other necessary or desirable species that are ecologically related to the regulated species. The rules shall be supported by ~~investigation and research conducted by the Department on behalf of the Board~~ the best science available through Department and peer reviewed research.

Third: In Sec. 4, 10 V.S.A. § 4048(d), by striking out the first sentence in its entirety and inserting in lieu thereof the following:

The Commissioner of Fish and Wildlife, according to the provisions of 3 V.S.A. chapter 25 and after consultation with the Endangered Species Committee, shall adopt a rule establishing a plan for nongame wildlife.

Fourth: By striking out Secs. 9, 10, and 11, Trapping, definitions, and setbacks, in their entireties

and by renumbering the remaining sections of the bill to be numerically correct

Which was agreed to, on a roll call, Yeas 21, Nays 8.

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

Roll Call

Those Senators who voted in the affirmative were: Baruth, Bray, Brock, Campion, Chittenden, Clarkson, Cummings, Gulick, Hardy, Harrison, Hashim, Kitchel, Lyons, MacDonald, McCormack, Perchlik, Ram Hinsdale, Sears, Vyhovsky, Watson, White.

Those Senators who voted in the negative were: Collamore, Ingalls, Norris, Starr, Weeks, Westman, Williams, Wrenner.

The Senator absent and not voting was: Mazza.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Natural Resources, as amended?, was agreed to.

Thereupon, third reading of the bill was ordered, on a roll call, Yeas 21, Nays 8.

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

Roll Call

Those Senators who voted in the affirmative were: Baruth, Bray, Champion, Chittenden, Clarkson, Cummings, Gulick, Hardy, Harrison, Hashim, Kitchel, Lyons, MacDonald, McCormack, Perchlik, Ram Hinsdale, Sears, Vyhovsky, Watson, White, Wrenner.

Those Senators who voted in the negative were: Brock, Collamore, Ingalls, Norris, Starr, Weeks, Westman, Williams.

The Senator absent and not voting was: Mazza.

Bill Amended; Third Reading Ordered

S. 184.

Senator Perchlik, for the Committee on Transportation, to which was referred Senate bill entitled:

An act relating to the use of automated traffic law enforcement (ATLE) systems.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 23 V.S.A. chapter 15 is amended to read:

CHAPTER 15. POWERS OF ENFORCEMENT OFFICERS

Subchapter 1. General Provisions

§ 1600. DEFINITION

Notwithstanding subdivision 4(4) of this title, as used in this chapter, "Commissioner" means the Commissioner of Public Safety.

* * *

Subchapter 2. Automated Law Enforcement

§ 1605. DEFINITIONS

As used in this subchapter:

(1) "Active data" is distinct from historical data as defined in subdivision (5) of this section and means data uploaded to individual automated license plate recognition system units before operation as well as

data gathered during the operation of an ALPR system. Any data collected by an ALPR system in accordance with section 1607 of this subchapter shall be considered collected for a legitimate law enforcement purpose.

(2) “Automated license plate recognition system” or “ALPR system” means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration number plates into computer-readable data.

(3) “Automated traffic law enforcement system” or “ATLE system” means a device with one or more sensors working in conjunction with a speed measuring device to produce recorded images of the rear registration number plates of motor vehicles traveling at more than five miles above the speed limit.

(4) “Calibration laboratory” means an International Organization for Standardization (ISO) 17025 accredited testing laboratory that is approved by the Commissioner of Public Safety.

(5) “Historical data” means any data collected by an ALPR system and stored on the statewide automated law enforcement server operated by the Vermont Justice Information Sharing System of the Department of Public Safety. Any data collected by an ALPR system in accordance with section 1607 of this subchapter shall be considered collected for a legitimate law enforcement purpose.

(6) “Law enforcement officer” means a State Police officer, municipal police officer, motor vehicle inspector, Capitol Police officer, constable, sheriff, or deputy sheriff certified by the Vermont Criminal Justice Council as a Level II or Level III law enforcement officer under 20 V.S.A. § 2358.

(7) “Legitimate law enforcement purpose” applies to access to active or historical data and means investigation, detection, analysis, or enforcement of a crime or of a commercial motor vehicle violation or a person’s defense against a charge of a crime or commercial motor vehicle violation, or operation of AMBER alerts or missing or endangered person searches.

(8) “Owner” means the first- or only listed registered owner of a motor vehicle or the first- or only listed lessee of a motor vehicle under a lease of one year or more.

(9) “Recorded image” means a photograph, microphotograph, electronic image, or electronic video that shows, clearly enough to identify, the rear registration number plate of a motor vehicle that has activated the radar component of an ATLE system by traveling past the ATLE system at more than 10 miles above the speed limit.

(10) “Vermont Intelligence Center analyst” means any sworn or civilian employee who through employment with the Vermont Intelligence Center (VIC) has access to secure storage systems that support law enforcement investigations.

§ 1606. AUTOMATED TRAFFIC LAW ENFORCEMENT SYSTEMS;
SPEEDING

(a) Use. Deployment of ATLE systems on behalf of the Agency of Transportation by a third-party pursuant to subsection (b) of this section is intended to provide automated law enforcement for speeding violations in instances of insufficient staffing or inherent on-site difficulties in such a way so as to improve work crew safety and reduce traffic crashes resulting from an increased adherence to traffic laws achieved by effective deterrence of potential violators, which could not be achieved by traditional law enforcement methods or traffic calming measures, or both. Deployment of ATLE systems on behalf of the Agency is not intended to replace law enforcement personnel, nor is it intended to mitigate problems caused by deficient road design, construction, or maintenance.

(b) Vendor. The Agency of Transportation shall enter into a contract with a third party for the operation and deployment of ATLE systems on behalf of the Agency.

(c) Locations. An ATLE system may only be utilized at a location in the vicinity of a work zone on a limited-access highway under the jurisdiction of the Agency of Transportation and selected by the Agency, in consultation with the Department of Public Safety, upon determination that it may be impractical or unsafe to utilize traditional law enforcement methods or traffic calming measures, or both, or that the use of law enforcement personnel or traffic calming measures, or both, has failed to deter violators, provided that:

(1) the Agency confirms, through a traffic engineering analysis of the proposed location, that the location meets highway safety standards;

(2) the ATLE system is not used as a means of combating deficiencies in roadway design or environment;

(3) at least two signs notifying members of the traveling public of the use of an ATLE system are in place before any recorded images or other data is collected by the ATLE system;

(4) there is a sign at the end of the work zone;

(5) the ATLE system is only in operation when workers are present in the work zone and at least one of the signs required under subdivision (3) of

this subsection indicates whether the ATLE system is currently in operation; and

(6) there is notice of the use of the ATLE system on the Agency's website, including the location and typical hours when workers are present and the ATLE system is in operation.

(d) Daily log.

(1) The vendor that deploys an ATLE system in accordance with this section must maintain a daily log for each deployed ATLE system that includes:

(A) the date, time, and location of the ATLE system setup; and

(B) the name of the employee who performed any self-tests required by the ATLE system manufacturer and the results of those self-tests.

(2) The daily log shall be retained in perpetuity by the Agency and admissible in any proceeding for a violation involving ATLE systems deployed on behalf of the Agency.

(e) Annual calibration. All ATLE systems shall undergo an annual calibration check performed by a calibration laboratory. The calibration laboratory shall issue a signed certificate of calibration after the annual calibration check, which shall be retained in perpetuity by the Agency and admissible in any proceeding for a violation involving the ATLE system.

(f) Penalty.

(1) The owner of the motor vehicle bearing the rear registration number plate captured in a recorded image shall be liable for one of the following civil penalties unless, for the violation in question, the owner is convicted of exceeding the speed limit under chapter 13 of this title or has a defense under subsection (h) of this section:

(A) \$0.00, which shall be exempt from surcharges under 13 V.S.A. § 7282(a), for a first violation within 12 months;

(B) \$80.00 for a second violation within 12 months; provided, however, that a violation shall be considered a second violation for purposes of this subdivision only if it has occurred at least 30 days after the date on which the notice of the first violation was mailed; and

(C) \$160.00 for a third or subsequent violation within 12 months.

(2) The owner of the motor vehicle bearing the rear registration number plate captured in a recorded image shall not be deemed to have committed a crime or moving violation unless otherwise convicted under another section of

this title, and a violation of this section shall not be made a part of the operating record of the owner or considered for insurance purposes.

(g) Notice and complaint.

(1) An action to enforce this section shall be initiated by issuing a Vermont civil violation complaint to the owner of a motor vehicle bearing the rear registration number plate captured in a recorded image and mailing the Vermont civil violation complaint to the owner by U.S. mail.

(2) The civil violation complaint shall:

(A) be based on an inspection of recorded images and data produced by one or more ATLE systems or one or more ATLE and ALPR systems;

(B) be issued, sworn, and affirmed by the law enforcement officer who inspected the recorded images and data;

(C) enclose copies of applicable recorded images and at least one recorded image showing the rear registration number plate of the motor vehicle;

(D) include the date, time, and place of the violation;

(E) include the applicable civil penalty amount and the dates, times, and places for any prior violations from the prior 12 months;

(F) include written verification that the ATLE system was operating correctly at the time of the violation and the date of the most recent inspection that confirms the ATLE system to be operating properly; and

(G) in compliance with 4 V.S.A. § 1105(f), include an affidavit that the issuing officer has determined the owner's military status to the best of the officer's ability by conducting a search of the available Department of Defense Manpower Data Center (DMDC) online records, together with a copy of the record obtained from the DMDC that is the basis for the issuing officer's affidavit.

(3) In the case of a violation involving a motor vehicle registered under the laws of this State, the civil violation complaint shall be mailed within 30 days after the violation to the address of the owner as listed in the records of the Department of Motor Vehicles.

(4) In the case of a violation involving a motor vehicle registered under the laws of a jurisdiction other than this State, the notice of violation shall be mailed within 30 days after the discovery of the identity of the owner to the address of the owner as listed in the records of the official in the jurisdiction having charge of the registration of the motor vehicle. A notice of violation

issued under this subdivision shall be issued not more than 90 days after the date of the violation. A notice issued after 90 days is void.

(h) Defenses. The following shall be defenses to a violation under this section:

(1) that the motor vehicle or license plates shown in one or more recorded images was in the care, custody, or control of another person at the time of the violation; and

(2) that the radar component of the ATLE system was not properly calibrated or tested at the time of the violation.

(i) Proceedings before the Judicial Bureau.

(1) To the extent not inconsistent with this section, the provisions for the adjudication of a Vermont civil violation complaint, the payment of a Vermont civil violation complaint, and the collection of civil penalties associated with a civil violation complaint in 4 V.S.A. chapter 29 shall apply to civil violation complaints issued under this section.

(2) Notwithstanding an owner's failure to request a hearing, a Vermont civil violation complaint issued pursuant to this section shall be dismissed, without consequence, upon showing by the owner that the motor vehicle in question was not in the care, custody, or control of the owner at the time of the violation because, at the time, the owner was a person in military service as defined in 50 U.S.C. § 3911.

(j) Retention.

(1) All recorded images shall be retained by the vendor pursuant to the requirements of subdivision (2) of this subsection.

(2) A recorded image shall only be retained for 12 months after the date it was obtained or until the resolution of the applicable violation and the appeal period if the violation is contested. When the retention period has expired, the vendor and any law enforcement agency with custody of the recorded image shall destroy it and cause to have destroyed any copies or backups made of the original recorded image.

(k) Review process and annual report.

(1) The Department of Public Safety, in consultation with the Agency of Transportation, shall establish a review process to ensure that recorded images are used only for the purposes permitted by this section. The Department of Public Safety shall report the results of this review annually on or before January 15 to the Senate and House Committees on Judiciary and on

Transportation. The report shall contain the following information based on prior calendar year data:

(A) the total number of ATLE systems units being operated on behalf of the Agency in the State;

(B) the terms of any contracts entered into with any vendors for the deployment of ATLE on behalf of the Agency;

(C) all of the locations where an ATLE system was deployed along with the dates and hours that the ATLE system was in operation;

(D) the number of violations issued based on recorded images and the outcomes of those violations by category, including first, second, and third and subsequent violations and contested violations;

(E) the number of recorded images the Agency submitted to the automated traffic law enforcement storage system;

(F) the total amount paid in civil penalties; and

(G) any recommended changes for the use of ATLE systems in Vermont.

(2) Notwithstanding 2 V.S.A. § 20(d), the annual report required under this section shall continue to be required if an ATLE system is deployed in the State unless the General Assembly takes specific action to repeal the report requirement.

(l) Limitations.

(1) ATLE systems shall only record violations of this section and shall not be used for any other surveillance purposes.

(2) Recorded images shall only be accessed to determine if a violation of this section was committed in the prior 12 months.

(3)(A) Recorded images are exempt from public inspection and copying under the Public Records Act.

(B) Notwithstanding 1 V.S.A. § 317(e), the Public Records Act exemption created in subdivision (A) of this subdivision (3) shall continue in effect and shall not be repealed through operation of 1 V.S.A. § 317(e).

(m) Rulemaking. The Department of Public Safety may adopt rules pursuant to 3 V.S.A. chapter 25 to implement this section.

§ 1607. AUTOMATED LICENSE PLATE RECOGNITION SYSTEMS

(a) Definitions. As used in this section:

~~(1) “Active data” is distinct from historical data as defined in subdivision (3) of this subsection and means data uploaded to individual automated license plate recognition system units before operation as well as data gathered during the operation of an ALPR system. Any data collected by an ALPR system in accordance with this section shall be considered collected for a legitimate law enforcement purpose.~~

~~(2) “Automated license plate recognition system” or “ALPR system” means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration plates into computer-readable data.~~

~~(3) “Historical data” means any data collected by an ALPR system and stored on the statewide ALPR server operated by the Vermont Justice Information Sharing System of the Department of Public Safety. Any data collected by an ALPR system in accordance with this section shall be considered collected for a legitimate law enforcement purpose.~~

~~(4) “Law enforcement officer” means a State Police officer, municipal police officer, motor vehicle inspector, Capitol Police officer, constable, sheriff, or deputy sheriff certified by the Vermont Criminal Justice Council as a level II or level III law enforcement officer under 20 V.S.A. § 2358.~~

~~(5) “Legitimate law enforcement purpose” applies to access to active or historical data, and means investigation, detection, analysis, or enforcement of a crime or of a commercial motor vehicle violation or a person’s defense against a charge of a crime or commercial motor vehicle violation, or operation of AMBER alerts or missing or endangered person searches.~~

~~(6) “Vermont Intelligence Center analyst” means any sworn or civilian employee who through his or her employment with the Vermont Intelligence Center (VIC) has access to secure databases that support law enforcement investigations.~~

~~(b) Operation. A Vermont law enforcement officer shall be certified in ALPR operation by the Vermont Criminal Justice Council in order to operate an ALPR system.~~

~~(e)(b) ALPR use and data access; confidentiality.~~

(1)(A) Deployment of ALPR equipment by Vermont law enforcement agencies is intended to provide access to law enforcement reports of wanted or stolen vehicles and wanted persons and to further other legitimate law enforcement purposes. Use of ALPR systems by law enforcement officers and access to active data are restricted to legitimate law enforcement purposes.

(B) Active data may be accessed by a law enforcement officer operating the ALPR system only if ~~he or she~~ the law enforcement officer has a legitimate law enforcement purpose for the data. Entry of any data into the system other than data collected by the ALPR system itself must be approved by a supervisor and shall have a legitimate law enforcement purpose.

(C)(i) Requests to access active data shall be in writing and include the name of the requester, the law enforcement agency the requester is employed by, if any, and the law enforcement agency's Originating Agency Identifier (ORI) number. To be approved, the request must provide specific and articulable facts showing that there are reasonable grounds to believe that the data are relevant and material to an ongoing criminal, missing person, or commercial motor vehicle investigation or enforcement action. The written request and the outcome of the request shall be transmitted to VIC and retained by VIC for not less than three years.

(ii) In each department operating an ALPR system, access to active data shall be limited to designated personnel who have been provided account access by the department to conduct authorized ALPR stored data queries. Access to active data shall be restricted to data collected within the past seven days.

(2)(A) A VIC analyst shall transmit historical data only to a Vermont or out-of-state law enforcement officer or person who has a legitimate law enforcement purpose for the data. A law enforcement officer or other person to whom historical data are transmitted may use such data only for a legitimate law enforcement purpose. Entry of any data onto the ~~statewide ALPR server~~ automated traffic law enforcement storage system other than data collected by an ALPR system itself must be approved by a supervisor and shall have a legitimate law enforcement purpose.

(B) Requests for historical data within six months ~~of~~ after the date of the data's creation, whether from Vermont or out-of-state law enforcement officers or other persons, shall be made in writing to a VIC analyst. The request shall include the name of the requester, the law enforcement agency the requester is employed by, if any, and the law enforcement agency's ORI number. To be approved, the request must provide specific and articulable facts showing that there are reasonable grounds to believe that the data are relevant and material to an ongoing criminal, missing person, or commercial motor vehicle investigation or enforcement action. VIC shall retain all requests and shall record in writing the outcome of the request and any information that was provided to the requester or, if applicable, why a request was denied or not fulfilled. VIC shall retain the information described in this subdivision ~~(e)(2)(B)~~ (b)(2)(B) for ~~no~~ not fewer than three years.

(C) After six months from the date of its creation, VIC may only disclose historical data:

(i) pursuant to a warrant if the data are not sought in connection with a pending criminal charge; or

(ii) to the prosecution or the defense in connection with a pending criminal charge and pursuant to a court order issued upon a finding that the data are reasonably likely to be relevant to the criminal matter.

(3) Active data and historical data shall not be subject to subpoena or discovery, or be admissible in evidence, in any private civil action.

(4) Notwithstanding any contrary provisions of subdivision (2) of this subsection, in connection with commercial motor vehicle screening, inspection, and compliance activities to enforce the Federal Motor Carrier Safety Regulations, the Department of Motor Vehicles (DMV):

(A) may maintain or designate a server for the storage of historical data that is separate from the ~~statewide server~~ automated traffic law enforcement storage system;

(B) may designate a DMV employee to carry out the same responsibilities as a VIC analyst and a supervisor as specified in subdivision (2) of this subsection (b); and

(C) shall have the same duties as the VIC with respect to the retention of requests for historical data.

~~(d)~~(c) Retention.

(1) Any ALPR information gathered by a Vermont law enforcement agency shall be sent to the Department of Public Safety to be retained pursuant to the requirements of subdivision (2) of this subsection. The Department of Public Safety shall maintain the ~~ALPR~~ automated traffic law enforcement storage system for Vermont law enforcement agencies.

(2) Except as provided in this subsection and section 1608 of this title, information gathered by a law enforcement officer through use of an ALPR system shall only be retained for 18 months after the date it was obtained. When the permitted 18-month period for retention of the information has expired, the Department of Public Safety and any local law enforcement agency with custody of the information shall destroy it and cause to have destroyed any copies or backups made of the original data. Data may be retained beyond the 18-month period pursuant to a preservation request made or disclosure order issued under section 1608 of this title or pursuant to a warrant issued under Rule 41 of the Vermont or Federal Rules of Criminal Procedure.

(e)(d) Oversight; rulemaking.

(1) The Department of Public Safety, in consultation with the Department of Motor Vehicles, shall establish a review process to ensure that information obtained through use of ALPR systems is used only for the purposes permitted by this section. The Department of Public Safety shall report the results of this review annually on or before January 15 to the Senate and House Committees on Judiciary and on Transportation. The report shall contain the following information based on prior calendar year data:

(A) the total number of ALPR units being operated by government agencies in the State, the number of such units that are stationary, and the number of units submitting data to the ~~statewide ALPR database~~ automated traffic law enforcement storage system;

(B) the number of ALPR readings each agency submitted, and the total number of all such readings submitted, to the ~~statewide ALPR database~~ automated traffic law enforcement storage system;

(C) the 18-month cumulative number of ALPR readings being housed on the ~~statewide ALPR database~~ automated traffic law enforcement storage system as of the end of the calendar year;

(D) the total number of requests made to VIC for historical data, the average age of the data requested, and the number of these requests that resulted in release of information from the ~~statewide ALPR database~~ automated traffic law enforcement storage system;

(E) the total number of out-of-state requests to VIC for historical data, the average age of the data requested, and the number of out-of-state requests that resulted in release of information from the ~~statewide ALPR database~~ automated traffic law enforcement storage system;

(F) the total number of alerts generated on ALPR systems operated by law enforcement officers in the State by a match between an ALPR reading and a plate number on an alert ~~database~~ storage system and the number of these alerts that resulted in an enforcement action;

(G) the total number of criminal, missing person, and commercial motor vehicle investigations and enforcement actions to which active data contributed, and a summary of the nature of these investigations and enforcement actions;

(H) the total number of criminal, missing person, and commercial motor vehicle investigations and enforcement actions to which historical data contributed, and a summary of the nature of these investigations and enforcement actions; and

(I) the total annualized fixed and variable costs associated with all ALPR systems used by Vermont law enforcement agencies and an estimate of the total of such costs per unit.

(2) ~~Before January 1, 2018, the~~ The Department of Public Safety shall ~~may~~ adopt rules to implement this section.

§ 1608. PRESERVATION OF DATA

(a) Preservation request.

(1) A law enforcement agency or the Department of Motor Vehicles or other person with a legitimate law enforcement purpose may apply to the Criminal Division of the Superior Court for an extension of up to 90 days of the 18-month retention period established under subdivision 1607~~(d)~~(c)(2) of this ~~title subchapter~~ if the agency or Department offers specific and articulable facts showing that there are reasonable grounds to believe that the captured plate data are relevant and material to an ongoing criminal or missing persons investigation or to a pending court or Judicial Bureau proceeding involving enforcement of a crime or of a commercial motor vehicle violation. Requests for additional 90-day extensions or for longer periods may be made to the Superior Court subject to the same standards applicable to an initial extension request under this subdivision.

(2) A governmental entity making a preservation request under this section shall submit an affidavit stating:

(A) the particular camera or cameras for which captured plate data must be preserved or the particular license plate for which captured plate data must be preserved; and

(B) the date or dates and time frames for which captured plate data must be preserved.

(b) Destruction. Captured plate data shall be destroyed on the schedule specified in section 1607 of this ~~title subchapter~~ if the preservation request is denied or 14 days after the denial, whichever is later.

Sec. 2. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(a) The Judicial Bureau is created within the Judicial Branch under the supervision of the Supreme Court.

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

(1) Traffic violations alleged to have been committed on or after July 1, 1990.

* * *

(33) Automated traffic law enforcement violations issued pursuant to 23 V.S.A. § 1606.

* * *

Sec. 3. IMPLEMENTATION; OUTREACH

(a) The Agency shall develop an implementation plan and secure federal funding from the Federal Highway Administration for a work zone ATLE pilot program to run in locations throughout Vermont from July 1, 2025 until October 1, 2026.

(b) The Department of Public Safety, in consultation with the Agency of Transportation, shall implement a public outreach campaign not later than January 1, 2025 that, at a minimum, addresses:

(1) the use of automated traffic law enforcement (ATLE) systems in work zones throughout the State;

(2) what recorded images captured by ATLE systems will show;

(3) the legal significance of recorded images captured by ATLE systems; and

(4) the process to challenge and defenses to a Vermont civil violation complaint issued based on a recorded image captured by an ATLE system.

(c) The public outreach campaign shall disseminate information on ATLE systems through the Department of Public Safety's web page and through other mediums such as social media platforms, community posting websites, radio, television, and printed materials.

Sec. 4. REPEAL OF CURRENT PROSPECTIVE REPEAL

2013 Acts and Resolves No. 69, Sec. 3(b), as amended by 2015 Acts and Resolves No. 32, Sec. 1, 2016 Acts and Resolves No. 169, Sec. 6, 2018 Acts and Resolves No. 175, Sec. 1, 2020 Acts and Resolves No. 134, Sec. 3, and 2022 Acts and Resolves No. 147, Sec. 34 (July 1, 2024 repeal of Automated License Plate Recognition system standards), is repealed.

Sec. 5. PROSPECTIVE REPEAL

4 V.S.A. § 1102(b)(33) (Vermont Judicial Bureau jurisdiction over automated traffic law enforcement violations) and 23 V.S.A. §§ 1606–1608 (automated law enforcement) are repealed on July 1, 2027; provided, however, if the Agency is unable to secure federal funding for a work zone ATLE pilot program by June 30, 2025, then 4 V.S.A. § 1102(b)(33) and 23 V.S.A. §§ 1606–1608 are repealed on July 2, 2025.

Sec. 6. 23 V.S.A. § 1605 is amended to read:

§ 1605. DEFINITIONS

As used in this subchapter:

(1) ~~“Active data” is distinct from historical data as defined in subdivision (5) of this section and means data uploaded to individual automated license plate recognition system units before operation as well as data gathered during the operation of an ALPR system. Any data collected by an ALPR system in accordance with section 1607 of this subchapter shall be considered collected for a legitimate law enforcement purpose. [Repealed.]~~

(2) “Automated license plate recognition system” or “ALPR system” means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration number plates into computer-readable data.

(3) “Automated traffic law enforcement system” or “ATLE system” means a device with one or more sensors working in conjunction with a speed measuring device to produce recorded images of the rear registration number plates of motor vehicles traveling at more than five miles above the speed limit.

(4) ~~“Calibration laboratory” means an International Organization for Standardization (ISO) 17025 accredited testing laboratory that is approved by the Commissioner of Public Safety. [Repealed.]~~

(5) ~~“Historical data” means any data collected by an ALPR system and stored on the statewide automated law enforcement server operated by the Vermont Justice Information Sharing System of the Department of Public Safety. Any data collected by an ALPR system in accordance with section 1607 of this subchapter shall be considered collected for a legitimate law enforcement purpose. [Repealed.]~~

(6) ~~“Law enforcement officer” means a State Police officer, municipal police officer, motor vehicle inspector, Capitol Police officer, constable, sheriff, or deputy sheriff certified by the Vermont Criminal Justice Council as a level II or level III law enforcement officer under 20 V.S.A. § 2358. [Repealed.]~~

(7) ~~“Legitimate law enforcement purpose” applies to access to active or historical data, and means investigation, detection, analysis, or enforcement of a crime or of a commercial motor vehicle violation or a person’s defense against a charge of a crime or commercial motor vehicle violation, or operation of AMBER alerts or missing or endangered person searches. [Repealed.]~~

~~(8) “Owner” means the first or only listed registered owner of a motor vehicle or the first or only listed lessee of a motor vehicle under a lease of one year or more. [Repealed.]~~

~~(9) “Recorded image” means a photograph, microphotograph, electronic image, or electronic video that shows, clearly enough to identify, the rear registration number plate of a motor vehicle that has activated the radar component of an ATLE system by traveling past the ATLE system at more than five miles above the speed limit. [Repealed.]~~

~~(10) “Vermont Intelligence Center analyst” means any sworn or civilian employee who through his or her employment with the Vermont Intelligence Center (VIC) has access to storage systems that support law enforcement investigations. [Repealed.]~~

Sec. 7. 23 V.S.A. § 1609 is added to read:

§ 1609. PROHIBITION ON USE OF AUTOMATED LAW ENFORCEMENT

No State agency or department or any political subdivision of the State shall use automated license plate recognition systems or automated traffic law enforcement systems.

Sec. 8. EFFECTIVE DATES

(a) Secs. 1 (powers of enforcement officers; 23 V.S.A. chapter 15) and 2 (Judicial Bureau jurisdiction; 4 V.S.A. § 1102) shall take effect on July 1, 2025.

(b) Secs. 6 (amended automated law enforcement definitions; 23 V.S.A. § 1605) and 7 (prohibition on the use of automated law enforcement; 23 V.S.A. § 1609) shall take effect upon the repeal of 4 V.S.A. § 1102(b)(33) (Vermont Judicial Bureau jurisdiction over automated traffic law enforcement violations) and 23 V.S.A. §§ 1606–1608 (automated law enforcement) pursuant to the provisions of Sec. 5.

(c) All other sections shall take effect on passage.

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

An act relating to the temporary use of automated traffic law enforcement (ATLE) systems

And that when so amended the bill ought to pass.

Senator Chittenden, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass when so amended.

Senator Perchlick, for the Committee on Appropriations, to which the bill was referred reported the bill ought to pass when so amended.

The President *pro tempore* Assumes the Chair

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Transportation?, Senators Perchlik, Chittenden, Ingalls, Kitchel and Mazza moved to amend the recommendation of amendment of the Committee on Transportation as follows:

First: In Sec. 1, 23 V.S.A. chapter 15, in section 1605, in subdivision (3), by striking out the word “five” and inserting in lieu thereof the numeral 10

Second: In Sec. 1, 23 V.S.A. chapter 15, in section 1606, in subsection (a), by striking out the words “to provide automated law enforcement for speeding violations in instances of insufficient staffing or inherent on-site difficulties in such a way so as” and inserting in lieu thereof the words to investigate the benefits of automated law enforcement for speeding violations as a way

Third: In Sec. 1, 23 V.S.A. chapter 15, in section 1606, in subsection (c), by striking out “, upon determination that it may be impractical or unsafe to utilize traditional law enforcement methods or traffic calming measures, or both, or that the use of law enforcement personnel or traffic calming measures, or both, has failed to deter violators,” and inserting in lieu thereof a ;

Fourth: In Sec. 1, 23 V.S.A. chapter 15, in section 1606, in subdivision (d)(2), by striking out the words “in perpetuity” and inserting in lieu thereof the words for not fewer than three years

Fifth: In Sec.1, 23 V.S.A. chapter 15, in section 1606, in subsection (e), by striking out the words “in perpetuity” and inserting in lieu thereof the words for not fewer than three years

Sixth: In Sec. 1, 23 V.S.A. chapter 15, in section 1606, by striking out subdivision (l)(3) (Public Records Act exemption) in its entirety

The President Resumes the Chair

Which was agreed to.

Thereupon, the recommendation of amendment, as amended, was agreed to and third reading of the bill was ordered.

Bill Amended; Third Reading Ordered

S. 192.

Senator Lyons, for the Committee on Health and Welfare, to which was referred Senate bill entitled:

An act relating to forensic facility admissions criteria and processes.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Purpose and Legislative Intent * * *

Sec. 1. PURPOSE AND LEGISLATIVE INTENT

It is the purpose of this act to enable the Commissioners of Mental Health and of Disabilities, Aging, and Independent Living to seek treatment and programming for certain individuals in a forensic facility as anticipated by the passage of 2023 Acts and Resolves No. 27. It is the intent of the General Assembly that an initial forensic facility be authorized and operational beginning on July 1, 2025.

* * * Human Services Community Safety Panel * * *

Sec. 2. 3 V.S.A. § 3098 is added to read:

§ 3098. HUMAN SERVICES COMMUNITY SAFETY PANEL

(a) There is hereby created the Human Services Community Safety Panel within the Agency of Human Services. The Panel shall be designated as the entity responsible for assessing the potential placement of individuals at a forensic facility pursuant to 13 V.S.A. § 4821 for individuals who:

(1) present a significant risk of danger to self or others if not held in a secure setting; and

(2)(A) are charged with a crime for which there is no right to bail pursuant to 13 V.S.A. §§ 7553 and 7553a and are found not competent to stand trial due to mental illness or intellectual disability; or

(B) were charged with a crime for which bail is not available and adjudicated not guilty by reason of insanity.

(b)(1) The Panel shall comprise the following members:

(A) the Secretary of Human Services;

(B) the Commissioner of Mental Health;

(C) the Commissioner of Disabilities, Aging, and Independent Living; and

(D) the Commissioner of Corrections.

(2) The Panel shall have the technical, legal, fiscal, and administrative support of the Agency of Human Services and the Departments of Mental Health; of Disabilities, Aging, and Independent Living; and of Corrections.

(c) As used in this section, “forensic facility” has the same meaning as in 18 V.S.A. § 7101.

Sec. 3. 13 V.S.A. § 4821 is amended to read:

§ 4821. NOTICE OF HEARING; PROCEDURES

(a) The person who is the subject of the proceedings, his or her; the person’s attorney; the person’s legal guardian, if any; the Commissioner of Mental Health or the Commissioner of Disabilities, Aging, and Independent Living; and the State’s Attorney or other prosecuting officer representing the State in the case shall be given notice of the time and place of a hearing under section 4820 of this title. Procedures for hearings for persons with a mental illness shall be as provided in 18 V.S.A. chapter 181. Procedures for hearings for persons with an intellectual disability shall be as provided in 18 V.S.A. chapter 206, subchapter 3.

(b)(1) Once a report concerning competency or sanity is completed or disclosed to the opposing party, the Human Services Community Safety Panel established in 3 V.S.A. § 3098 may conduct a review on its own initiative regarding whether placement of the person who is the subject of the report is appropriate in a forensic facility. The review shall inform either the Commissioner of Mental Health’s or Commissioner of Disabilities, Aging, and Independent Living’s decision as to whether to seek placement of the person in a forensic facility.

(2)(A) If the Panel does not initiate its own review, a party to a hearing under section 4820 of this chapter may file a written motion to the court requesting that the Panel conduct a review within seven days after receiving a report under section 4816 of this chapter or within seven days after being adjudicated not guilty by reason of insanity.

(B) A motion filed pursuant to this subdivision (2) shall specify that the person who is the subject of the proceedings is charged with a crime for which there is no right to bail pursuant to sections 7553 and 7553a of this title, and may include a person adjudicated not guilty by reason of insanity, and that the person presents a significant risk of danger to themselves or the public if not held in a secure setting.

(C) The court shall rule on a motion filed pursuant to this subdivision (2) within five days. A Panel review ordered pursuant to this subdivision (2) shall be completed and submitted to the court at least three days prior to a hearing under section 4820 of this title.

(c) In conducting a review as whether to seek placement of a person in a forensic facility, the Human Services Community Safety Panel shall consider the following criteria:

(1) clinical factors, including:

(A) that the person is served in the least restrictive setting necessary to meet the needs of the person; and

(B) that the person's treatment and programming needs dictate that the treatment or programming be provided at an intensive residential level; and

(2) risk of harm factors, including:

(A) whether the person has inflicted or attempted to inflict serious bodily injury on another, attempted suicide or serious self-injury, or committed an act that would constitute sexual conduct with a child as defined in section 2821 of this title or lewd and lascivious conduct with a child as provided in section 2602 of this title, and there is reasonable probability that the conduct will be repeated if admission to a forensic facility is not ordered;

(B) whether the person has threatened to inflict serious bodily injury to the person or others and there is reasonable probability that the conduct will occur if admission to a forensic facility is not ordered;

(C) whether the results of any applicable evidence-based violence risk assessment tool indicates that the person's behavior is deemed a significant risk to others;

(D) the position of the parties to the criminal case as well as that of any victim as defined in subdivision 5301(4) of this title; and

(E) any other factors the Human Services Community Safety Panel determines to be relevant to the assessment of risk.

(d) As used in this chapter, "forensic facility" has the same meaning as in 18 V.S.A. § 7101.

* * * Admission to Forensic Facility for Persons in Need of Treatment or Continued Treatment * * *

Sec. 4. 13 V.S.A. § 4822 is amended to read:

§ 4822. FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS

(a)(1) If the court finds that the person is a person in need of treatment or a patient in need of further treatment as defined in 18 V.S.A. § 7101, the court shall issue an order of commitment directed to the Commissioner of Mental Health that shall admit the person to the care and custody of the Department of Mental Health for an ~~indefinite~~ indeterminate a period of 90 days. In any case involving personal injury or threat of personal injury, the committing court may issue an order requiring a court hearing before a person committed under this section may be discharged from custody.

(2) If the Commissioner seeks to have a person receive treatment in a forensic facility pursuant to an order of nonhospitalization under subdivision (1) of this subsection, the Commissioner shall submit a petition to the court expressly stating that such treatment is being sought, including:

(A) a statement setting forth the reasons for the Commissioner's determination that clinically appropriate treatment for the person's condition can be provided safely only in a forensic facility; and

(B) the recommendation of the Human Services Community Safety Panel pursuant to section 4821 of this title.

(3) If the Commissioner determines that treatment at a forensic facility is appropriate, and the court finds that treatment at a forensic facility is the least restrictive setting adequate to meet the person's needs, the court shall order the person to receive treatment at a forensic facility for a period of 90 days. The court may, at any time following the issuance of an order, on its own motion or on motion of an interested party, review whether treatment at the forensic facility continues to be the least restrictive treatment option.

* * *

Sec. 5. 18 V.S.A. § 7101 is amended to read:

§ 7101. DEFINITIONS

As used in this part of this title, the following words, unless the context otherwise requires, shall have the following meanings:

* * *

(31)(A) "Forensic facility" means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S.A. § 7102(11), for an individual initially committed pursuant to:

(i) 13 V.S.A. § 4822 who is in need of treatment or continued treatment pursuant to chapter 181 of this title within a secure setting for an extended period of time; or

(ii) 13 V.S.A. § 4823 who is in need of custody, care, and habilitation or continued custody, care, and habilitation pursuant to chapter 206 of this title within a secure setting for an extended period of time.

(B) A forensic facility shall not be used for any purpose other than the purposes permitted by this part or chapter 206 of this title. As used in this subdivision (31), "secure" has the same meaning as in section 7620 of this title.

Sec. 6. 18 V.S.A. § 7620 is amended to read:

§ 7620. APPLICATION FOR CONTINUED TREATMENT

(a) If, prior to the expiration of any order issued in accordance with section 7623 of this title, the Commissioner believes that the condition of the patient is such that the patient continues to require treatment, the Commissioner shall apply to the court for a determination that the patient is a patient in need of further treatment and for an order of continued treatment.

(b) An application for an order authorizing continuing treatment shall contain a statement setting forth the reasons for the Commissioner's determination that the patient is a patient in need of further treatment, a statement describing the treatment program provided to the patient, and the results of that course of treatment.

(c) Any order of treatment issued in accordance with section 7623 of this title shall remain in force pending the court's decision on the application.

(d) If the Commissioner seeks to have the patient receive the further treatment in a forensic facility or secure residential recovery facility, the application for an order authorizing continuing treatment shall expressly state that such treatment is being sought. The application shall contain, in addition to the statements required by subsection (b) of this section, a statement setting forth the reasons for the Commissioner's determination that clinically appropriate treatment for the patient's condition can be provided safely only in a secure residential recovery facility or forensic facility, as appropriate. An application for continued treatment in a forensic facility shall include the recommendation of the Human Services Community Safety Panel pursuant to 13 V.S.A. § 4821.

(e) As used in this chapter:

(1) "Secure," when describing a residential facility, means that the residents can be physically prevented from leaving the facility by means of locking devices or other mechanical or physical mechanisms.

(2) "Secure residential recovery facility" means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S.A. § 7102(11), for an individual who no longer requires acute inpatient care but who does remain in need of treatment within a secure setting for an extended period of time. A secure residential recovery facility shall not be used for any purpose other than the purposes permitted by this section.

Sec. 7. 18 V.S.A. § 7621 is amended to read:

§ 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;
ORDERS

* * *

(c) If the court finds that the patient is a patient in need of further treatment but does not require hospitalization, it shall order nonhospitalization for up to one year. If the treatment plan proposed by the Commissioner for a patient in need of further treatment includes admission to a secure residential recovery facility or a forensic facility, the court may at any time, on its own motion or on motion of an interested party, review the need for treatment at the secure residential recovery facility or forensic facility, as applicable.

* * *

Sec. 8. 18 V.S.A. § 7624 is amended to read:

§ 7624. APPLICATION FOR INVOLUNTARY MEDICATION

(a) The Commissioner may commence an action for the involuntary medication of a person who is refusing to accept psychiatric medication and meets any one of the following ~~six~~ conditions:

(1) has been placed in the Commissioner's care and custody pursuant to section 7619 of this title or subsection 7621(b) of this title;

(2) has previously received treatment under an order of hospitalization and is currently under an order of nonhospitalization, including a person on an order of nonhospitalization who resides in a secure residential recovery facility;

(3) has been committed to the custody of the Commissioner of Corrections as a convicted felon and is being held in a correctional facility that is a designated facility pursuant to section 7628 of this title and for whom the Departments of Corrections and of Mental Health have determined jointly that involuntary medication would be appropriate pursuant to 28 V.S.A. § 907(4)(H);

(4) has an application for involuntary treatment pending for which the court has granted a motion to expedite pursuant to subdivision 7615(a)(2)(A)(i) of this title;

(5)(A) has an application for involuntary treatment pending;

(B) waives the right to a hearing on the application for involuntary treatment until a later date; and

(C) agrees to proceed with an involuntary medication hearing without a ruling on whether ~~he or she~~ the person is a person in need of treatment; ~~or~~

(6) has been placed under an order of nonhospitalization in a forensic

facility; or

(7) has had an application for involuntary treatment pending pursuant to subdivision 7615(a)(1) of this title for more than 26 days without a hearing having occurred and the treating psychiatrist certifies, based on specific behaviors and facts set forth in the certification, that in ~~his or her~~ the psychiatrist's professional judgment there is good cause to believe that:

(A) additional time will not result in the person establishing a therapeutic relationship with providers or regaining competence; and

(B) serious deterioration of the person's mental condition is occurring.

(b)(1) Except as provided in subdivisions (2), (3), and (4) of this subsection, an application for involuntary medication shall be filed in the Family Division of the Superior Court in the county in which the person is receiving treatment.

(2) If the application for involuntary medication is filed pursuant to subdivision (a)(4) or (a)(6) of this section:

(A) the application shall be filed in the county in which the application for involuntary treatment is pending; and

(B) the court shall consolidate the application for involuntary treatment with the application for involuntary medication and rule on the application for involuntary treatment before ruling on the application for involuntary medication.

(3) If the application for involuntary medication is filed pursuant to subdivision (a)(5) or ~~(a)(6)(7)~~ of this section, the application shall be filed in the county in which the application for involuntary treatment is pending.

(4) Within 72 hours of the filing of an application for involuntary medication pursuant to subdivision ~~(a)(6)(7)~~ of this section, the court shall determine, based solely upon a review of the psychiatrist's certification and any other filings, whether the requirements of that subdivision have been established. If the court determines that the requirements of subdivision ~~(a)(6)(7)~~ of this section have been established, the court shall consolidate the application for involuntary treatment with the application for involuntary medication and hear both applications within 10 days after the date that the application for involuntary medication is filed. The court shall rule on the application for involuntary treatment before ruling on the application for involuntary medication. Subsection 7615(b) of this title shall apply to applications consolidated pursuant to this subdivision.

* * *

* * * Persons in Need of Custody, Care, and Habilitation or Continued
Custody, Care, and Habilitation * * *

Sec. 9. 13 V.S.A. § 4823 is amended to read:

§ 4823. FINDINGS AND ORDER; PERSONS WITH AN INTELLECTUAL
DISABILITY

(a) If the court finds that such person is a person in need of custody, care, and habilitation as defined in 18 V.S.A. § 8839, the court shall issue an order of commitment directed to the Commissioner of Disabilities, Aging, and Independent Living for placement in a designated program in the least restrictive environment consistent with the person's need for custody, care, and habilitation of such person for an indefinite or limited period in a designated program up to one year.

(b) ~~Such order of commitment shall have the same force and effect as an order issued under 18 V.S.A. § 8843 and persons committed under such an order shall have the same status, and the same rights, including the right to receive care and habilitation, to be examined and discharged, and to apply for and obtain judicial review of their cases, as persons ordered committed under 18 V.S.A. § 8843~~ Commitment procedures for an order initially issued pursuant to subsection (a) of this section and for discharge from an order of commitment or continued commitment shall occur in accordance with 18 V.S.A. §§ 8845–8847.

(c) ~~Section 4822 of this title shall apply to persons proposed for discharge under this section; however, judicial proceedings shall be conducted in the Criminal Division of the Superior Court in which the person then resides, unless the person resides out of State in which case the proceedings shall be conducted in the original committing court~~ In accordance with 18 V.S.A. § 8845, if the Commissioner seeks to have a person committed pursuant to this section placed in a forensic facility, the Commissioner shall provide a statement setting forth the reasons for the Commissioner's determination that clinically appropriate treatment and programming can be provided safely only in a forensic facility, including the recommendation of the Human Services Community Safety Panel pursuant to section 4821 of this title.

Sec. 10. 18 V.S.A. chapter 206, subchapter 3 is amended to read:

Subchapter 3. Judicial Proceeding; Persons with an Intellectual Disability
Who Present a Danger of Harm to Others

§ 8839. DEFINITIONS

As used in this subchapter:

(1) ~~“Danger of harm to others” means the person has inflicted or attempted to inflict serious bodily injury to another or has committed an act that would constitute a sexual assault or lewd or lascivious conduct with a child~~ “Commissioner” means the Commissioner of Disabilities, Aging, and Independent Living.

(2) “Designated program” means a program designated by the Commissioner as adequate to provide in an individual manner appropriate custody, care, and habilitation to persons with intellectual disabilities receiving services under this subchapter.

(3) “Forensic facility” has the same meaning as in section 7101 of this title.

(4) “Person in need of continued custody, care, and habilitation” means a person who was previously found to be a person in need of custody, care, and habilitation who poses a danger of harm to others and for whom the Commissioner has, in the Commissioner’s discretion, consented to or approved the continuation of the designated program. A danger of harm to others shall be shown by establishing that, in the time since the last order of commitment was issued, the person:

(A) has inflicted or attempted to inflict physical or sexual harm to another;

(B) by the person’s threats or actions, has placed another person in reasonable fear of physical or sexual harm; or

(C) has exhibited behavior demonstrating that, absent treatment or programming provided by the Commissioner, there is a reasonable likelihood that the person would inflict or attempt to inflict physical or sexual harm to another.

(5) “Person in need of custody, care, and habilitation” means a person:

(A) a person with an intellectual disability, which means significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior that were manifest before 18 years of age;

(B) who presents a danger of harm to others ~~has inflicted or attempted to inflict serious bodily injury to another or who has committed an act that would constitute sexual conduct with a child as defined in section 2821 of this title or lewd and lascivious conduct with a child as provided in section 2602 of this title;~~ and

(C) for whom appropriate custody, care, and habilitation can be provided by the Commissioner in a designated program.

(6) "Victim" has the same meaning as in 13 V.S.A. § 5301(4).

§ 8840. JURISDICTION AND VENUE

~~Proceedings brought under this subchapter for commitment to the Commissioner for custody, care, and habilitation shall be commenced by petition in the Family Division of the Superior Court for the unit in which the respondent resides. [Repealed.]~~

§ 8841. PETITION; PROCEDURES

~~The filing of the petition and procedures for initiating a hearing shall be as provided in sections 8822-8826 of this title. [Repealed.]~~

§ 8842. HEARING

~~Hearings under this subchapter for commitment shall be conducted in accordance with section 8827 of this title. [Repealed.]~~

§ 8843. FINDINGS AND ORDER

(a) ~~In all cases, the court shall make specific findings of fact and state its conclusions of law.~~

(b) ~~If the court finds that the respondent is not a person in need of custody, care, and habilitation, it shall dismiss the petition.~~

(c) ~~If the court finds that the respondent is a person in need of custody, care, and habilitation, it shall order the respondent committed to the custody of the Commissioner for placement in a designated program in the least restrictive environment consistent with the respondent's need for custody, care, and habilitation for an indefinite or a limited period. [Repealed.]~~

§ 8844. LEGAL COMPETENCE

~~No determination that a person is in need of custody, care, and habilitation or in need of continued custody, care, and habilitation and no order authorizing commitment shall lead to a presumption of legal incompetence.~~

§ 8845. JUDICIAL REVIEW INITIAL ORDER FOR CUSTODY, CARE, AND HABILITATION

(a)(1) ~~A person committed under this subchapter may be discharged from custody by a Superior judge after judicial review as provided herein or by administrative order of the Commissioner. If a person is found incompetent to stand trial pursuant to 13 V.S.A. § 4820, the Criminal Division of the Superior Court shall automatically schedule a hearing to determine whether the person is a person in need of custody, care, and habilitation and requiring commitment.~~

(2) The Commissioner's recommendation that a person be placed in a forensic facility, if applicable, shall be filed with the court in advance of the commitment hearing and shall:

(A) expressly state the reasons for the Commissioner's determination that clinically appropriate treatment and programming can be provided safely only in a forensic facility; and

(B) include the recommendation of the Human Services Community Safety Panel pursuant to 13 V.S.A. § 4821.

(b) Procedures for judicial review of persons committed under this subchapter shall be as provided in section 8834 of this title, except that proceedings shall be brought in the Criminal Division of the Superior Court in the unit in which the person resides or, if the person resides out of state, in the unit that issued the original commitment order. The Commissioner or designee shall attend a commitment hearing for custody, care, and habilitation and be available to testify. All persons to whom notice is given may attend the commitment hearing and testify, except that the court may exclude those persons not necessary for the conduct of the hearing.

(c) A person committed under this subchapter shall be entitled to a judicial review annually. If no such review is requested by the person, it shall be initiated by the Commissioner. However, such person may initiate a judicial review under this subsection after 90 days after initial commitment but before the end of the first year of the commitment. The Vermont Rules of Evidence shall apply in all judicial proceedings brought under this subchapter.

(d)(1) If at the completion of the hearing and consideration of the record, the court finds at the time of the hearing that the person is still in need of custody, care, and habilitation, commitment shall continue for an indefinite or limited period. If the court finds at the time of the hearing that the person is no longer in need of custody, care, and habilitation, it shall discharge the person from the custody of the Commissioner. An order of discharge may be conditional or absolute and may have immediate or delayed effect. If the court finds by clear and convincing evidence that the person is a person in need of custody, care, and habilitation, the court shall order that the person be committed to the Commissioner and receive appropriate treatment and programming in a designated program that provides the least restrictive environment consistent with the person's need for custody, care, and habilitation for up to one year.

(2) Notwithstanding subdivision (1) of this subsection, a person may initiate a judicial review in the Family Division of the Superior Court under this subchapter at any time after 90 days following a current order of

commitment.

(e) If the Commissioner has recommended to the court that a person be placed in a forensic facility, the court, after determining that the person is a person in need of custody, care, and habilitation, shall determine whether placement at a forensic facility is both appropriate and the least restrictive setting adequate to meet the person's needs. If so determined, the court shall order the person placed in a forensic facility for a term not to exceed the duration of the initial commitment order. The committing court shall automatically review any placement at a forensic facility 90 days after commitment to ensure that the placement remains the least restrictive setting adequate to meet the person's needs.

§ 8846. PETITION AND ORDER FOR CONTINUED CUSTODY, CARE,
AND HABILITATION

(a)(1) If, prior to the expiration of any previous commitment order issued in accordance with 13 V.S.A. § 4823 or this subchapter, the Commissioner believes that the person is a person in need of continued custody, care, and habilitation, the Commissioner shall initiate a judicial review in the Family Division of the Superior Court. The Commissioner shall, by filing a written petition, commence proceedings for the continued custody, care, and habilitation of a person. The petition shall include:

(A) the name and address of the person alleged to need continued custody, care, and habilitation; and

(B) a statement of the current and relevant facts upon which the person's alleged need for continued custody, care, and habilitation is predicated.

(2) Any commitment order for custody, care, and habilitation or continued custody, care, and habilitation issued in accordance with 13 V.S.A. § 4823 or this subchapter shall remain in force pending the court's decision on the petition.

(3) If the Commissioner seeks placement for the person alleged to need continued custody, care, and habilitation at a forensic facility, the petition for continued custody, care, and habilitation shall:

(A) expressly state the reasons for the Commissioner's determination that clinically appropriate treatment and programming can be provided safely only in a forensic facility; and

(B) include a renewed recommendation of the Human Services Community Safety Panel pursuant to 13 V.S.A. § 4821.

(b) Upon receipt of the petition, the court shall set a date for the hearing within 10 days after the date of filing, which shall be held in accordance with subsections 8845(b) and (c) of this subchapter.

(c)(1) If at the completion of the hearing and consideration of the record, the court finds by clear and convincing evidence at the time of the hearing that the person is still in need of continued custody, care, and habilitation, it shall issue an order of commitment for up to one year in a designated program in the least restrictive environment consistent with the person's need for continued custody, care, and habilitation. If the court finds at the time of the hearing that the person is no longer in need of continued custody, care, and habilitation, it shall discharge the person from the custody of the Commissioner in accordance with section 8847 of this subchapter. In determining whether a person is a person in need of continued custody, care, and habilitation, the court shall consider the degree to which the person has previously engaged in or complied with the treatment and programming provided by the Commissioner. Nothing in this section shall prohibit the Commissioner from seeking, nor the court from ordering, consecutive commitment orders when the criteria for commitment are otherwise met.

(2) In a petition in which placement at a forensic facility is sought, a court shall first determine whether an order for continued custody, care, and habilitation is appropriate. If the court grants the petition for continued custody, care, and habilitation, it shall then determine whether placement at a forensic facility is appropriate and the least restrictive setting adequate to meet the person's needs. If so determined, the court shall order the person placed in a forensic facility for a term not exceed the duration of the order for continued custody, care, and habilitation. The committing court shall automatically review any placement at a forensic facility 90 days after commitment to ensure that the placement remains the least restrictive setting adequate to meet the person's needs.

(d) Notwithstanding subdivision (1) of subsection (a), a person may initiate a judicial review in the Family Division of the Superior Court under this subchapter at any time after 90 days following a current order of continued commitment.

§ 8847. DISCHARGE FROM COMMITMENT OR PLACEMENT IN A FORENSIC FACILITY

(a) A person committed under 13 V.S.A. § 4823 or this subchapter may be discharged from an order of custody, care, and habilitation; an order of continued custody, care, and habilitation; or placement at a forensic facility by:

(1) a Family Division Superior judge after judicial review pursuant to subsection (b) of this section; or

(2) administrative order of the Commissioner pursuant to subsection (c) of this section.

(b)(1) A person under a commitment order for custody, care, and habilitation under 13 V.S.A. § 4823 or a commitment order for continued custody, care, and habilitation under this subchapter shall be entitled to a judicial review of the person's need for continued custody, care, and habilitation pursuant to sections 8845(d)(2) and 8846(d) of this subchapter. If the court finds that the person is not a person in need of custody, care, and habilitation or continued custody, care, and habilitation, the person shall be discharged from the custody of the Commissioner. A judicial order of discharge may be conditional or absolute and may have immediate or delayed effect.

(2)(A) In reviewing the placement of a person receiving treatment and programming at a forensic facility, the court may determine that while the placement at a forensic facility is no longer appropriate or that the setting is no longer the least restrictive setting adequate to meet the person's needs, the person is still a person in need of continued custody, care, and habilitation. In this instance, the court shall discharge the person from placement at the forensic facility while maintaining the person's order of commitment or continued commitment.

(B) When a person subject to judicial review pursuant to this subsection (b) is receiving treatment or programming at a forensic facility, either the State's Attorney of the county where the person's prosecution originated, or the Office of the Attorney General if that office prosecuted the person's case, or the victim, or both, may file a position with the court as an interested person concerning whether the person's discharge from placement at the forensic facility is appropriate.

(c)(1)(A) If the Commissioner determines that a person is no longer a person in need of custody, care, and habilitation; of continued custody, care, and habilitation; or of placement at a forensic facility, the Commissioner shall issue an administrative discharge from commitment or from placement at a forensic facility, or both. An administrative discharge from commitment or from placement at a forensic facility may be conditional or absolute and may have immediate or delayed effect. At least 10 days prior to the effective date of any administrative discharge by the Commissioner from commitment or placement at a forensic facility, or 10 days prior to the expiration of a current commitment order for which the Commissioner has decided not to seek continued commitment, the Commissioner shall give notice of the pending

discharge to the committing court and to either the State's Attorney of the county where the prosecution originated or to the Office of the Attorney General if that Office prosecuted the case.

(B) In reviewing the placement of a person receiving treatment and programming at a forensic facility, the Commissioner may determine that while the placement at a forensic facility is no longer appropriate or that the setting is no longer the least restrictive setting adequate to meet the person's needs, the person is still a person in need of continued custody, care, and habilitation. In this instance, the Commissioner shall discharge the person from placement at the forensic facility while maintaining the person's order of commitment or continued commitment.

(2)(A) When a person subject to administrative discharge pursuant to this subsection (c) is receiving treatment and programming at a forensic facility, the State's Attorney or Office of the Attorney General shall provide notice of the pending administrative discharge from placement at a forensic facility and from commitment, if applicable, to any victim of the offense for which the person has been charged who has not opted out of receiving notice.

(B) During the period in which the Commissioner gives notice of the pending administrative discharge pursuant to subdivision (1)(A) of this subsection (c) and the anticipated date of administrative discharge, which shall not be less than 10 days, the State's Attorney or the Office of the Attorney General or the victim, or both, may request a hearing in the Family Division of the Superior Court on whether the person's pending administrative discharge from placement at a forensic facility is appropriate, which shall be held within 10 days after the request. The pending administrative discharge from placement at the forensic facility shall be stayed until the hearing has concluded and any subsequent orders are issued, but in no event shall a subsequent order be issued more than five days after the hearing.

(d) Whenever a person is subject to a judicial or administrative discharge from commitment, the Criminal Division of the Superior Court shall retain jurisdiction over the person's underlying charge and any orders holding the person without bail or concerning bail, and conditions of release shall remain in place. Those orders shall be placed on hold while a person is in the custody, care, and habilitation of the Commissioner. When a person is discharged from the Commissioner's custody, care, and habilitation to a correctional facility, the custody of the Commissioner shall cease when the person enters the correctional facility.

§ ~~8846~~ 8848. RIGHT TO COUNSEL

Persons subject to commitment or ~~judicial review~~ continued commitment under this subchapter shall have a right to counsel as provided in section 7111 of this title.

* * * Competency Examination * * *

Sec. 11. 13 V.S.A. § 4814 is amended to read:

§ 4814. ORDER FOR EXAMINATION OF COMPETENCY

* * *

(d) Notwithstanding any other provision of law, an examination ordered pursuant to subsection (a) of this section may be conducted by a doctoral-level psychologist trained in forensic psychology and licensed under 26 V.S.A. chapter 55. ~~This subsection shall be repealed on July 1, 2024.~~

* * *

* * * Fiscal Estimate of Competency Restoration Program * * *

Sec. 12. REPORT; COMPETENCY RESTORATION PROGRAM; FISCAL ESTIMATE

On or before November 1, 2024, the Agency of Human Services shall submit a report to the House Committees on Appropriations, on Health Care, and on Human Services and to the Senate Committees on Appropriations and on Health and Welfare that provides a fiscal estimate for the implementation of a competency restoration program operated or under contract with the Department of Mental Health. The estimate shall include:

(1) whether and how to serve individuals with an intellectual disability in a competency restoration program;

(2) varying options dependent upon which underlying charges are eligible for court-ordered competency restoration; and

(3) costs associated with establishing a residential program where court-ordered competency restoration programming may be performed on an individual who is neither in the custody of the Commissioner of Mental Health pursuant to 13 V.S.A. § 4822 nor in the custody of the Commissioner of Disabilities, Aging, and Independent Living pursuant to 13 V.S.A. § 4823.

* * * Rulemaking * * *

Sec. 13. RULEMAKING; CONFORMING AMENDMENTS

On or before August 1, 2024, the Commissioner of Disabilities, Aging, and Independent Living, in consultation with the Commissioner of Mental Health,

shall file initial proposed rule amendments with the Secretary of State pursuant to 3 V.S.A. § 836(a)(2) to the Department of Disabilities, Aging, and Independent Living, Licensing and Operating Regulations for Therapeutic Community Residences (CVR 13-110-12) for the purpose of:

(1) adding a forensic facility section of the rule that includes allowing the use of emergency involuntary procedures and the administration of involuntary medication at a forensic facility; and

(2) amending the secure residential recovery facility section of the rule to allow the use of emergency involuntary procedures and the administration of involuntary medication at the secure residential recovery facility.

* * * Effective Dates * * *

Sec. 14. EFFECTIVE DATES

This section, Sec. 12 (report; competency restoration program; fiscal estimate), and Sec. 13 (rulemaking; conforming amendments) shall take effect on passage. All remaining sections shall take effect on July 1, 2025.

And that when so amended the bill ought to pass.

Senator Lyons, for the Committee on Appropriations, to which the bill was referred, reported that the bill be amended as recommended by the Committee on Health and Welfare with the following amendments thereto:

First: In Sec. 1, purpose and legislative intent, by striking out the second sentence

Second: In Sec. 13, rulemaking; conforming amendments, in the first sentence, by striking out “August” and inserting in lieu thereof November

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of the Committee on Health and Welfare was amended as recommended by the Committee on Appropriations.

Thereupon, Senators Lyons, Weeks, Gulick, Hardy and Williams moved to amend the recommendation of amendment of the Committee on Health and Welfare as follows

First: By striking out Sec. 4, 13 V.S.A. § 4822, in its entirety and inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. 13 V.S.A. § 4822 is amended to read:

§ 4822. FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS

(a)(1) If the court finds that the person is a person in need of treatment or a patient in need of further treatment as defined in 18 V.S.A. § 7101, the court shall issue an order of commitment directed to the Commissioner of Mental Health that shall admit the person to the care and custody of the Department of Mental Health for ~~an indeterminate~~ a period of 90 days. In any case involving personal injury or threat of personal injury, the committing court may issue an order requiring a court hearing before a person committed under this section may be discharged from custody.

(2) If the Commissioner seeks to have a person receive treatment in a forensic facility pursuant to an order of nonhospitalization under subdivision (1) of this subsection, the Commissioner shall submit a petition to the court expressly stating that such treatment is being sought, including:

(A) a statement setting forth the reasons for the Commissioner's determination that clinically appropriate treatment for the person's condition can be provided safely only in a forensic facility; and

(B) the recommendation of the Human Services Community Safety Panel pursuant to section 4821 of this title.

(3) If the Commissioner determines that treatment at a forensic facility is appropriate, and the court finds that treatment at a forensic facility is the least restrictive setting adequate to meet the person's needs, the court shall order the person to receive treatment at a forensic facility for a period of 90 days. The court may, at any time following the issuance of an order, on its own motion or on motion of an interested party, review whether treatment at the forensic facility continues to be the least restrictive treatment option.

(b) An order of commitment issued pursuant to this section shall have the same force and effect as an order issued under 18 V.S.A. §§ 7611–7622, and a person committed under this order shall have the same status and the same rights, including the right to receive care and treatment, to be examined and discharged, and to apply for and obtain judicial review of ~~his or her~~ the person's case, as a person ordered committed under 18 V.S.A. §§ 7611–7622.

(c)(1) Notwithstanding the provisions of subsection (b) of this section, at least 10 days prior to the proposed discharge of any person committed under this section, the Commissioner of Mental Health shall give notice of the discharge to the committing court and State's Attorney of the county where the prosecution originated. In all cases requiring a hearing prior to discharge of a person found incompetent to stand trial under section 4817 of this title, the hearing shall be conducted by the committing court issuing the order under that section. In all other cases, when the committing court orders a hearing under subsection (a) of this section or when, in the discretion of the

Commissioner of Mental Health, a hearing should be held prior to the discharge, the hearing shall be held in the Family Division of the Superior Court to determine if the committed person is no longer a person in need of treatment or a patient in need of further treatment as set forth in subsection (a) of this section. Notice of the hearing shall be given to the Commissioner, the State's Attorney of the county where the prosecution originated, the committed person, and the person's attorney. Prior to the hearing, the State's Attorney may enter an appearance in the proceedings and may request examination of the patient by an independent psychiatrist, who may testify at the hearing.

(2)(A) This subdivision (2) shall apply when a person is committed to the care and custody of the Commissioner of Mental Health under this section after having been found:

(i) not guilty by reason of insanity; or

(ii) incompetent to stand trial, provided that the person's criminal case has not been dismissed.

(B)(i) When a person has been committed under this section, the Commissioner shall provide notice to the State's Attorney of the county where the prosecution originated or to the Office of the Attorney General if that office prosecuted the case:

(I) at least 10 days prior to discharging the person from:

(aa) the care and custody of the Commissioner; or

(bb) a hospital, a forensic facility, or a secure residential recovery facility to the community on an order of nonhospitalization pursuant to 18 V.S.A. § 7618;

(II) at least 10 days prior to the expiration of a commitment order issued under this section if the Commissioner does not seek continued treatment; or

(III) any time that the person elopes from the custody of the Commissioner.

(ii) When the State's Attorney or Attorney General receives notice under subdivision (i) of this subdivision (B), the Office shall provide notice of the action to any victim of the offense for which the person has been charged who has not opted out of receiving notice. A victim receiving notice pursuant to this subdivision (ii) has the right to submit a victim impact statement to the Family Division of the Superior Court in writing or through the State's Attorney or Attorney General's office.

(iii) As used in this subdivision (B), “victim” has the same meaning as in section 5301 of this title.

(d) The court may continue the hearing provided in subsection (c) of this section for a period of 15 additional days upon a showing of good cause.

(e) If the court determines that commitment shall no longer be necessary, it shall issue an order discharging the patient from the custody of the Department of Mental Health.

(f) The court shall issue its findings and order not later than 15 days from the date of hearing.

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

Sec. 8a. 18 V.S.A. § 7627 is amended to read:

§ 7627. COURT FINDINGS; ORDERS

* * *

(o) For a person who is receiving treatment pursuant to an order of nonhospitalization in a forensic facility, if the court finds that without an order for involuntary medication there is a substantial probability that the person would continue to refuse medication and as a result would pose a danger of harm to self or others, the court may order administration of involuntary medications at a forensic facility for up to 90 days, unless the court finds that an order is necessary for a longer period of time. An order for involuntary medication pursuant to this subsection shall not be longer than the duration of the current order of nonhospitalization. If at any time the treating psychiatrist finds that a person subject to an order for involuntary medication has become competent pursuant to subsection 7625(c) of this title, the order shall no longer be in effect.

Third: In Sec. 10, 18 V.S.A. chapter 206, subchapter 3, in section 8847, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) A person committed under 13 V.S.A. § 4823 or this subchapter may be discharged as follows:

(1) by a Criminal Division Superior Court judge after an automatic 90-day review of placement at a forensic facility pursuant to subsection 8845(e) of this subchapter;

(2) by a Family Division Superior Court judge after judicial review of an order of custody, care, and habilitation; an order of continued custody, care,

and habilitation; or placement at a forensic facility pursuant to subsection (b) of this section; or

(3) by administrative order of the Commissioner regarding an order of custody, care, and habilitation; an order of continued custody, care, and habilitation; or placement at a forensic facility pursuant to subsection (c) of this section.

Which was agreed to.

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

House Concurrent Resolutions

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, were severally adopted in concurrence:

By Reps. Bartley and others,

By Senator Gulick,

H.C.R. 181.

House concurrent resolution recognizing June 24, 2024 as Saint-Jean-Baptiste Day in Vermont.

By Reps. Canfield and others,

By Senators Collamore, Bray, Hardy, Weeks and Williams,

H.C.R. 182.

House concurrent resolution congratulating the 2024 Fair Haven Union High School Slaters Division II championship girls' basketball team.

By Rep. Noyes,

By Senator Westman,

H.C.R. 183.

House concurrent resolution recognizing March 2024 as National Senior Nutrition Program Month in Vermont and celebrating over a half century of the federal Senior Nutrition Program.

By Reps. Hango and others,
By Senators Brock and Norris,

H.C.R. 184.

House concurrent resolution congratulating the Desorcie family on 60 years of wonderful and continuous family ownership of Desorcie's Market in Highgate Center.

By Reps. Masland and Holcombe,
By Senators Clarkson, MacDonald, McCormack and White,

H.C.R. 185.

House concurrent resolution congratulating the 2024 Thetford Academy Panthers Division III championship boys' basketball team.

By Reps. Casey and others,

H.C.R. 186.

House concurrent resolution celebrating the centennial of diplomatic relations between the Republic of Ireland and the United States and the continuing enthusiastic and warm friendship between the two nations.

By Reps. Morrissey and others,
By Senators Campion and Sears,

H.C.R. 187.

House concurrent resolution congratulating the 2024 Mt. Anthony Union High School Patriots wrestling team on winning the school's 35th consecutive State championship.

By Reps. Morgan and others,

H.C.R. 188.

House concurrent resolution congratulating Milton High School junior Olivia Thomas on her individual track and field achievements.

By Rep. Noyes,
By Senator Brock,

H.C.R. 189.

House concurrent resolution designating March 28, 2024 as Alzheimer's Awareness Day at the State House.

By Reps. Durfee and others,

By Senators Bray, Campion, Hardy and Sears,

H.C.R. 190.

House concurrent resolution designating March 26, 2024 as Robert Frost Day in Vermont.

By the Committee on Government Operations and Military Affairs,

H.C.R. 191.

House concurrent resolution recognizing March 25, 2024 as National Medal of Honor Day in Vermont.

Adjournment

On motion of Senator Baruth, the Senate adjourned, to reconvene on Tuesday, March 26, 2024, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 49.