

JOURNAL OF THE SENATE
OF THE
STATE OF VERMONT

BIENNIAL SESSION, 2009

VOLUME 1



Published by Authority

STATE OF VERMONT

BUILDINGS AND GENERAL SERVICES, MIDDLESEX, VERMONT

DAVID A. GIBSON
SECRETARY OF THE SENATE

VANESSA J. DAVISON
JOURNAL CLERK

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Journal of the Senate

Of the STATE OF VERMONT BIENNIAL SESSION, 2009

WEDNESDAY, JANUARY 7, 2009

Pursuant to the provisions of the Constitution and the laws of the State of Vermont, the Senate convened at the State House at Montpelier, on the first Wednesday, after the first Monday, the seventh day of January in the year of two thousand nine.

At ten o'clock in the forenoon, eastern standard time, the Senate was called to order by the President, Lieutenant Governor Brian E. Dubie.

Devotional Exercises

Devotional exercises were conducted by the Reverend David M. Hall of Montpelier.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Roll Call

The roll of the Senate was thereupon called by the Secretary, David A. Gibson, and it appeared that the following Senators were present.

Addison District	Senator Claire D. Ayer Senator Harold W. Giard
Bennington District	Senator Richard W. Sears, Jr. Senator Robert M. Hartwell
Caledonia District	Senator Matthew S. Choate Senator M. Jane Kitchel
Chittenden District	Senator Timothy R. Ashe Senator Edward S. Flanagan Senator Virginia V. Lyons Senator Hinda Miller Senator Douglas A. Racine Senator Diane B. Snelling

Essex-Orleans District	Senator Vincent Illuzzi Senator Robert A. Starr
Franklin District	Senator Randolph D. Brock Senator Sara Branon Kittell
Grand Isle District	Senator Richard T. Mazza
Lamoille District	Senator Susan J. Bartlett
Rutland District	Senator William H. Carris Senator Hull P. Maynard, Jr. Senator Kevin J. Mullin
Washington District	Senator Ann E. Cummings Senator William T. Doyle Senator Philip B. Scott
Windham District	Senator Peter E. Shumlin Senator Jeanette K. White
Windsor District	Senator John F. Campbell Senator Richard J. McCormack Senator Alice W. Nitka

Oath Administered

The Senators-elect were duly sworn by the Secretary and severally subscribed the oath of office.

Election of Officers

The President announced that the next order of business was the election of officers, and that nominations for Secretary were in order:

Senator Bartlett of Lamoille District nominated

DAVID A. GIBSON

of the Town of Brookline.

Senator Snelling of Chittenden District seconded the nomination.

There being no further nominations, on motion of Senator Shumlin, the nominations were closed and the Assistant Secretary was instructed to cast one ballot for

DAVID A. GIBSON

of the Town of Brookline, as Secretary of the Senate for the two years next ensuing.

Thereupon, he presented himself at the bar of the Senate and received the oath of office from the President.

Election of President *Pro Tempore*

The President then announced that the next order of business was the election of a President *pro tempore*.

Senator Sears of Bennington District nominated

PETER E. SHUMLIN

of Windham District.

Senator Scott of Washington District seconded the nomination.

There being no further nominations, on motion of Senator Sears, the nominations were closed and the Secretary was instructed to cast one ballot for

PETER E. SHUMLIN

of Windham District as President *pro tempore* of the Senate for the two years next ensuing.

Thereupon, he presented himself at the bar of the Senate and received the oath of office from the President.

Election of Third Member of Committee on Committees

The Senate then proceeded to the election of a Senator to serve with the President and President *pro tempore* as a member of the Committee on Committees, which appoints the standing committees of the Senate.

Senator Campbell of Windsor District nominated

RICHARD T. MAZZA

of Grand Isle District.

Senator Kitchel of Caledonia District seconded the nomination.

There being no further nominations, on motion of Senator Shumlin, the nominations were closed and the Secretary was instructed to cast one ballot for

RICHARD T. MAZZA

of Grand Isle District to serve with the President and President *pro tempore* as a member of the Committee on Committees.

Thereupon, he presented himself at the bar of the Senate and received the oath of office from the President.

Appointments

The President announced the appointment by the Secretary of

STEVEN D. MARSHALL

of Swanton, as Assistant Secretary of the Senate, and he presented himself at the bar of the Senate and received the oath of office from the Secretary.

The President announced the appointment by the Secretary of

VANESSA J. DAVISON

of Hardwick, as Journal Clerk, and

PRISCILLA L. ALEXANDER

of Montpelier, as Calendar Clerk, and

ROXANNA T. QUERO

of Montpelier, as Office Assistant.

The President announced the appointment of

MARTHA G. HANSON

of St. Johnsbury , as Administrative Assistant to the incoming President.

Senate Resolutions Adopted

Senate resolutions of the following titles were offered, read and adopted, and are as follows:

By Senator Shumlin,

S.R. 1. Senate resolution relating to the rules of the Senate.

Resolved by the Senate:

That the Senate be governed by the Permanent Rules of the Senate for the 2009 biennial session, as adopted in 1989, with amendments adopted in 1997, 2003, 2004, 2007, and 2008, until others are adopted.

By Senator Doyle,

S.R. 2. Senate resolution relating to appointment of a committee to inform the Governor of the organization of the Senate.

Resolved by the Senate:

That a committee of two Senators be appointed by the President to wait upon His Excellency, the Governor, and to inform him that the Senate has organized and is ready on its part to proceed with the business of the session.

By Senator Mazza,

S.R. 3. Senate resolution relating to informing the House of the organization of the Senate.

Resolved by the Senate:

That the Secretary be directed to inform the House of Representatives that a quorum of the Senate has assembled and organized by the election of **David A. Gibson**, of Brookline, as Secretary, and **Peter E. Shumlin**, a Senator from Windham District, as President *pro tempore*, and is ready on its part to proceed with the business of the session.

By Senators Shumlin, Mazza, Campbell, Doyle and Mullin,

S.R. 4. Senate resolution relating to meeting dates of the Senate.

Resolved by the Senate:

That for the 2009 session, beginning with the week of January 12 and extending through the week ending February 28, Rule 7 of the Permanent Rules of the Senate, as adopted in 1989 and as amended in 1997, 2003, 2004, 2007 and 2008, is suspended and the following Temporary Rule 7 is adopted:

Temporary Senate Rule 7. The Senate shall meet every Tuesday at nine o'clock and thirty minutes in the forenoon and Friday at eight o'clock and thirty minutes in the forenoon, unless otherwise ordered. In the discretion of the President *pro tempore* additional sessions of the Senate may be called on short notice.

Joint Resolutions Adopted on the Part of the Senate

Joint Senate resolutions of the following titles were severally offered, read and adopted on the part of the Senate, and are as follows:

By Senator Illuzzi,

J.R.S. 1. Joint resolution relating to joint rules.

Resolved by the Senate and House of Representatives:

That the joint rules of the Senate and the House as adopted in 2007 be adopted as the joint rules of this biennial session until others are adopted.

By Senator White,

J.R.S. 2. Joint resolution to provide for a Joint Assembly to receive the report of the committee appointed to canvass votes for state officers.

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Thursday, January 8, 2009, at ten o'clock in the forenoon to receive the report of the Joint Canvassing Committee appointed to canvass votes for Governor, Lieutenant Governor, State Treasurer, Secretary of State, Auditor of Accounts and Attorney General, and if it shall be declared by said Committee that there had been no election by the freemen of any of said state officers, then to proceed forthwith to elect such officers as have not been elected by the freemen.

By Senator Doyle,

J.R.S. 3. Joint resolution to provide for a Joint Assembly to hear the inaugural message of the Governor.

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Thursday, January 8, 2009, at two o'clock in the afternoon to receive the inaugural message of the Governor.

By Senator Shumlin,

J.R.S. 4. Joint resolution relating to Town Meeting adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, February 27, 2009, or Saturday, February 28, 2009, it be to meet again no later than Tuesday, March 10, 2009.

By Senator Shumlin,

J.R.S. 5. Joint resolution to provide for a Joint Assembly to hear the budget message of the Governor.

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Tuesday, January 22, 2009, at two o'clock in the afternoon to receive the budget message of the Governor.

Committee Appointed

Pursuant to the provisions of S.R. 2, the President appointed a Committee to wait upon His Excellency, the Governor, to inform him that the Senate is ready on its part to proceed with the business of the session:

Senator Shumlin
Senator Mullin

Report of Committee

Senator Shumlin, of Windham District, for the Committee appointed to wait upon His Excellency, the Governor, to inform him that the Senate is ready on its part to proceed with the business of the session, appeared at the bar of the Senate and reported that it had performed the duties assigned to it.

Canvassing Committee Elected

The President nominated as a committee on the part of the Senate to canvass votes for state officers,

Senator Giard, of Addison District
Senator Hartwell, of Bennington District
Senator Choate, of Caledonia District
Senator Ashe, of Chittenden District
Senator Starr, of Essex-Orleans District
Senator Brock, of Franklin District
Senator Mazza, of Grand Isle District
Senator Bartlett, of Lamoille District
Senator Mullin, of Rutland District
Senator Cummings, of Washington District
Senator White, of Windham District
Senator McCormack, of Windsor District

Thereupon, Senator Shumlin moved that the nominees be elected by the Senate, which was agreed to.

Thereupon, the President declared the nominees elected, and the Committee so elected received the oath of office from the Secretary.

The President designated Senator White, of Windham District, as Chair of the Joint Canvassing Committee to canvass votes for state officers.

Message from the House No. 1

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

Mr. President:

I am directed to inform the Senate that:

A quorum of the House has assembled and organized by the election of

Shapleigh Smith, Jr.

the Representative from Morristown, as Speaker, and

Donald G. Milne

of Washington, as Clerk, who in turn has appointed William M. McGill of Montpelier as First Assistant Clerk and H. Gwynn Zakov of Barre as Second Assistant Clerk, and is ready on its part to proceed with the business of the session.

Message from the House No. 2

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

Mr. President:

I am directed to inform the Senate that:

The House has considered joint resolutions originating in the Senate of the following titles:

J.R.S. 1. Joint resolution relating to joint rules.

J.R.S. 2. Joint resolution to provide for a joint assembly to receive the report of the committee appointed to canvass votes for state officers.

J.R.S. 3. Joint resolution to provide for a joint assembly to hear the inaugural message of the Governor.

And has adopted the same in concurrence.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until nine o'clock and thirty minutes in the morning.

THURSDAY, JANUARY 8, 2009

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend David M. Hall of Montpelier.

Joint Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Shumlin,

J.R.S. 6. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, January 9, 2009, it be to meet again no later than Tuesday, January 13, 2009.

Recess

On motion of Senator Shumlin the Senate recessed until the fall of the gavel.

Called to Order

At nine o'clock and fifty-nine minutes the Senate was called to order by the President.

Joint Assembly

At ten o'clock, the hour having arrived for the meeting of the two Houses in Joint Assembly pursuant to:

J.R.S. 2. Joint resolution to provide for a Joint Assembly to receive the report of the committee appointed to canvass votes for state officers.

The Senate repaired to the hall of the House.

Having returned therefrom, at ten o'clock and ten minutes, the President assumed the Chair.

Recess

On motion of Senator Shumlin the Senate recessed until ten o'clock and forty-five minutes.

Called to Order

At ten o'clock and fifty minutes the Senate was called to order by the President.

Standing Committees Appointed

The President *pro tempore*, on behalf of the Committee on Committees, reported the appointment of the standing committees, as follows:

Agriculture

A.M.	Senator Kittell, Chair	Room 26
	Giard, Vice-Chair	
	Bartlett	
	Starr	
	Choate	

Appropriations

P.M.	Senator Bartlett, Chair Kitchel, Vice-Chair Illuzzi Miller Sears Snelling Shumlin	Room 5
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Economic Development, Housing and General Affairs

A.M.	Senator Illuzzi, Chair Miller, Vice-Chair Racine Carris Ashe	Room 27
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Education

P.M.	Senator Starr, Chair Doyle, Vice-Chair Giard Nitka Brock	Room 28
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Finance

P.M.	Senator Cummings, Chair Ayer, Vice-Chair MacDonald Maynard McCormack Carris Hartwell	Room 6
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Government Operations

A.M.	Senator White, Chair Doyle, Vice-Chair Ayer Flanagan Brock	Room 4
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Health and Welfare

P.M. Senator Racine, Chair Room 17
Flanagan, Vice-Chair
Lyons
Mullin
Kittell
Choate

Institutions

P.M. Senator Scott, Chair Room 7
Mazza, Vice-Chair
Campbell
White
Ashe

Judiciary

A.M. Senator Sears, Chair Room 1
Campbell, Vice-Chair
Cummings
Mullin
Nitka

Natural Resources and Energy

A.M. Senator Lyons, Chair Room 8
MacDonald, Vice-Chair
Snelling
McCormack
Hartwell

Transportation

A.M. Senator Mazza, Chair Room 3
Scott, Vice-Chair
Maynard
Shumlin
Kitchel

Recess

On motion of Senator Shumlin the Senate recessed until eleven o'clock and twenty-five minutes.

Called to Order

At eleven o'clock and twenty-seven minutes the Senate was called to order by the President *pro tempore*.

Incoming President Takes Oath of Office

Senator Doyle moved that the President *pro tempore* appoint a Committee of two Senators to wait upon His Excellency, Brian E. Dubie, Lieutenant Governor-elect, and escort him to the bar of the Senate.

Which was agreed to.

Thereupon, the President *pro tempore* appointed as members of such Committee

Senator Doyle
Senator Mazza

The Committee appointed to wait upon His Excellency, Brian E. Dubie, Lieutenant Governor-elect, performed the duties assigned to it and appeared at the bar of the Senate accompanied by His Excellency, Brian E. Dubie, who took and subscribed the oath of office required by the Constitution from the Senator from Washington District, Senator William T. Doyle.

Remarks of Incoming Lieutenant Governor Brian E. Dubie Journalized

Thereupon, the incoming President addressed the Senate, assuring his full cooperation and accommodation on a nonpartisan and objective basis, and, on motion of Senator Doyle, his remarks were ordered entered in the Journal, and are as follows:

Remarks delivered by Lieutenant Governor Brian Dubie to the Vermont State Senate, after taking the oath of office on January 8, 2009:

“To my wife Penny, my daughters Emily and Casey and other members of my family, thank you for being here.

“Senator Shumlin, members of the Vermont Senate, and special guests:

“I would like to welcome you to the Vermont Senate. Thank you for coming to share our commencement of the 70th Biennial Session of the Vermont Legislature. We are excited to start our important work together.

“Before we get started, I’d like to share a story with you.

“My wife Penny wanted a dog. I said, “Let’s talk about it.” When I returned from a three-day airline trip, I saw a dog tied up on our front lawn. “I guess we decided to get a dog,” I concluded. Penny adopted this dog at the humane society.

“The next morning I was determined to go ice fishing with my kids and I thought I might as well bring the dog. Dressing three young kids for a day on the ice and loading the gear is quite an undertaking, but I got it done.

“As we started out on the ice, I had Emily by the hand and my youngest in a knapsack. I put my son Jack in a red tub which I pulled by a rope. Being a real smart guy, I figured, “Why not put my dog to work and tie him to the tub?” So holding back the dog, pulling Jack, holding Emily’s hand and carrying Matt -- we started out onto the ice.

“Things were going pretty well until about halfway to my brother’s fishing shanty, when another huge dog showed up. I thought, “This might get interesting.”

“I encouraged the other dog to move along -- which he did. My dog was interested in following his new friend -- which he did. At some point in this excitement, I let go of my dog’s rope which was tied to my son.

“I watched with great interest as my son and dog ran at full speed over the ice. My concern grew as I watched them run beyond the shanty, toward -- as this was early in the year -- open water. As I yelled “Hey, Dog!” I thought to myself, I don’t even know this dog’s name.”

“I was relieved that the dog did turn away from the water, and I was able to catch up with him.

“I learned an important lesson that day: if you are going work with someone, you’d better get to know them.

“At the very least – you’d better get to know their names.

“In that spirit, we have three new State Senators here today who took the oath of office for the first time yesterday:

“The junior senator from Chittenden District, Tim Ashe;

“The junior senator from Franklin District, Randy Brock;

“And the junior senator from Caledonia District, Matt Choate.

“Welcome, gentlemen, to the Vermont State Senate. We look forward to getting to know each of you. We look forward to working closely with you as we confront some pretty big challenges over the coming months.

“As we work together let us be encouraged by three powerful words: “Yes, we can.”

“President-elect Barack Obama inspired millions of Americans with these three words; his election to the presidency is truly historic.

“As Americans, we should all reflect on the sheer hopefulness that his election has brought to Americans, and to people all around to world.

“My daughter Emily, who is here today, just came home from 4 months in Egypt and Israel. She tells me that despite vast differences on many issues in

the Middle East, most people agree on one thing: that the election of Barack Obama is a good thing.

“I hope and pray for his success as he leads our great nation forward.

“We as a nation will need his words “Yes, we can”, as we confront our economic challenges.

“Along with Governor Douglas and each one of you, I look forward to working with our new President and his administration to unify and strengthen our nation and our state.

“We have faced great challenges in our past. Some have faced much harder challenges than we face today. A special Vermonter is here with us today – a Vermonter who lived through hardship unimaginable to you and me. Major Francis Angers was shot down over Germany in World War II, and spent 7 long months in a German POW camp. His service and his strength should serve as an inspiration to us all.

“This afternoon Governor Douglas will outline his proposed Economic Growth Plan. His proposed reforms include: Green Growth Zones, a Smart Grid for Vermont, an Innovation Challenge, R&D Tax Credits, Opportunity Zones, Urban Homesteads and Common Sense Permit Reform.

“I know that you all will do your best to study his reform proposals. I am also certain that you will do your best to improve them and pass them.

“I am confident of this because that is what we did together in the closing days of last year’s legislative session. We worked together -- and even adjourned early. Yes, we can.

“We will also need to ensure that our plans are in harmony with our congressional delegation’s. Senator Bartlett, Senator Illuzzi and Senator Mazza have already initiated these conversations.

“Our goal must be to make reforms to speed our recovery from this economic downturn and to enable us to be stronger when we do recover. We can encourage emerging industries and businesses to make Vermont their home, and provide opportunities for our young people.

“We have received strong guidance from President-elect Obama.

“Governor Douglas shared this conversation with the President-elect, who said to him, “Governor, we are going craft a stimulus package, but you need to go back to Vermont and make sure it does not get bogged down in red tape.”

“I would like to recognize a Vermonter with a vision, who has been fighting a lot of red tape.

“Jim Harrison and his family are here today. The Harrison family wants to produce clean wind energy on a hill top in Milton, Vermont. Jim and his family believe strongly in energy independence and protecting our environment. In addition, Jim wants to grow jobs around this green and growing sector. Jim, thank you for your vision and commitment. We want to help you with the red tape.

“As many of you know, I am a commercial airline pilot. We do things differently in aviation. Here is a practice that may be helpful as we approach common-sense permit reform.

“I am certified by the FAA to fly in zero-ceiling and 600-foot visibility conditions. Every nine months, I have to demonstrate to the FAA that I am proficient to fly in these weather conditions. Because I am pre-certified by the FAA, on a dark and stormy night when getting landing clearance, I do not have to call up FAA headquarters and ask for a permit to land under these special landing conditions. The job of the FAA is to work proactively with the airlines on certification standards and to provide oversight.

“We could provide certification standards for wind projects, cellular communication towers, storm water systems, septic systems, and bridge and road projects. President Obama has said, “Let’s eliminate the red tape,” and this reform would.

“Right now we have hard-working state employees, dealing with a complex permit process and a tsunami of paper. Let’s transform the way we do business.

“Senator Bartlett, you and your committee have a very difficult job. We will all need to work together to craft a budget that the people of our state can afford, that is compassionate and that invests in people and infrastructure to make our state stronger.

“We know it will be hard work to build consensus and a budget based on shared priorities, while revenues are dramatically shrinking -- but yes, we can do this.

“Our budget challenges will force us to seek new ways of doing business. Here are a few ideas that I have heard from Vermonters.

“In Massachusetts when there’s a big snowstorm, the state calls up a ready reserve to assist the state with clearing the snow from their roads. This allows for a better utilization of hard working road crews and would save us money.

“Let’s standardize and accelerate the use of prefabricated bridges. In Manchester, Vermont, last summer, they replaced a critical bridge over the

Battenkill River with a prefabricated bridge. The entire replacement took just eleven days and saved money.

“We have a great Buy Local campaign here in Vermont. As a matter of fact, Vermonters purchase more locally than people in any other state.

“As a Vermont organic sugar maker, I love the Buy Local concept.

“In fact, I think we should expand it, and ask IBM to bid on a proposal to simplify and consolidate state IT services.

“IBM – our state’s largest commercial employer -- donates more annually to charities in our state than we buy from them in services!

“Let’s build collaboration with IBM, the Vermont Software Alliance, our state IT department and Champlain College and co-develop a new state-of-the-art municipal service software solution.

“How about contracting with Vermont’s Native American crafters to operate the Swanton I-89 Rest Area, where they could also reap benefits from the sales of their handcrafted products and allow other solutions at other rest areas and save us money.

“As I have said, my other job is as a pilot for American Airlines. We have a program at American called Ideas in Action. It has generated a company-wide spirit of innovation by offering cash rewards for employees who suggest cost-saving ideas that are accepted and implemented.

“In its first year, the program generated 49,000 suggestions, of which about 4,600 were implemented – for a total cost savings of about \$58 million. With those savings we bought a brand new 50-million-dollar Boeing 757. More recently those savings paid for a new, 150-million-dollar Boeing 777.

“I say, our Vermont state employees can generate cost-saving ideas to help our state, too.

“We in state government must provide a safety net for society. Our safety nets must be crafted more like a trampoline than a spider web. And as we confront our budgetary crisis we are going to need help.

“We are going to need our churches and faith communities to do the Lord’s work, helping Vermonters who have lost a job or lost hope. We are more than ever going to need our service clubs and community groups to continue to do the great work that they do. We need communities to pull together. We need families to pull together. Yes, together we can.

“A critically important function of government is to protect the public.

“We write laws in this building, but real people dedicate their service to enforce the laws we write. I would like to recognize two of those public

servants today. Our U.S. Attorney is Tom Anderson. It has been my privilege to work closely with Tom for the last five years. Tom, you are a true public servant and I thank you for your leadership.

“Next I would like to recognize Vermont State Police Lt. Bill Harkness. The night of the Brooke Bennett vigil in Randolph in early July, I had a conversation with Bill that I would like to share. I noticed Bill’s hand was recently bandaged and he was in obvious pain. I said, “Bill, I recommend that you go home.” He turned to me and said, “Lt. Governor, this is my community. I feel it is important for me to show support for the family and the community. I can deal with the pain.” I want to thank all our law enforcement officials, firefighters, and members of the national guard who every day put on a uniform and serve their communities just like Lt. Harkness.

“This year, the people of our state have also called upon us to strengthen our laws to better protect our children. Senator Sears, I would like to thank you and your committee for crafting a good package of reforms. The legislature should pass these laws to better protect our children. Yes, we must. Yes, we can.

“Many of you have heard me talk about Vermont’s opportunity in Green Tech and the Clean Tech sector. I would like to give one example of Vermont’s leadership in this growing enterprise.

“In April of 2005, a bill came before the Senate that intended to limit mercury exposure in our state. I supported the bill. But an amendment was proposed that would have closed a long-time Bennington employer, Energizer. They made hearing aid batteries that contained small amounts of mercury.

“I cast the tie-breaking vote against the amendment, and it failed – and the 180 families of Energizer’s 180 employees breathed a huge sigh of relief. I visited them in Bennington the next day. A lady by the name of Connie who had worked in that factory for 38 years grabbed me by the arm and said, “Lt. Governor Dubie, I want to thank you for saving my job.” I facilitated a connection with researchers at UVM and Norwich. We worked with Energizer to help them find a way to produce a mercury-free battery.

“I am pleased to announce that this past October, in Bennington, Energizer introduced its new zero-mercury hearing aid battery. It is great news for the whole planet, and those batteries were developed and are produced right here in Vermont.

“Those jobs could have gone out of state or off-shore, where someone else would have to deal with mercury. Instead, Energizer took the lead and is now the sole producer of mercury free hearing aid batteries in the world. They are now transferring this technology into other battery products.

“Energizer is a great example of a Green Tech, Green Valley Vermont Company. It’s about building our state’s economy on green engineering and environmental problem-solving. But it’s also about embracing our challenges with a positive, can-do attitude. It’s about saying, “Yes we can”.

“Senator Hartwell and I were at Energizer when the new battery was introduced last October, but Senator Sears couldn’t attend.

“So I have a couple of things for you, Senator Sears, from your constituents at Energizer (an Energizer Bunny and packet of Energizer zero-mercury hearing aid batteries). The people of Bennington, the employees at Energizer and their families, and the people of Vermont appreciate your leadership.

“Ladies and gentlemen, we have the opportunity to serve our state.

“We all can make a difference. Yes, we can.

“Those are three very powerful words.

“Three other words, dear to Vermonters, were first used as the motto of the Vermont Republic by Ira Allen in 1788: Freedom and Unity.

“Nine years later, our first governor, Thomas Chittenden, echoed those words in his own epitaph: "Out of storm and manifold perils rose an enduring state, the home of freedom and unity."

“Vermonters will weather the current storm together, and emerge a freer, stronger, more caring and more unified state. Yes, we can.”

Adjournment

On motion of Senator Shumlin, the Senate adjourned until one o’clock and fifty-five minutes in the afternoon.

Afternoon

The Senate was called to order by the President.

Joint Assembly

At two o'clock, the hour having arrived for the meeting of the two Houses in Joint Assembly pursuant to:

J.R.S. 3. Joint resolution to provide for a Joint Assembly to hear the inaugural message of the Governor.

The Senate repaired to the hall of the House.

Having returned therefrom, at three o'clock and thirty minutes, the President assumed the Chair.

Adjournment

On motion of Senator Mazza, the Senate adjourned until nine o'clock and thirty minutes in the morning.

FRIDAY, JANUARY 9, 2009

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend David M. Hall of Montpelier.

Message from the House No. 3

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

Mr. President:

I am directed to inform the Senate that:

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

J.R.S. 5. Joint resolution to provide for a Joint Assembly to hear the budget message of the Governor.

And has adopted the same in concurrence.

The House has adopted House concurrent resolution of the following title:

H.C.R. 1. House concurrent resolution in memory of Representative James Hutchinson of Randolph.

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

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

S. 1.

By Senator Sears,

An act relating to access to medical records by a decedent's spouse.

To the Committee on Health and Welfare.

S. 2.

By Senator Sears,

An act relating to offenders with a mental illness or other functional impairment.

To the Committee on Judiciary.

S. 3.

By Senator Sears,

An act relating to prohibiting retaliation for legislative testimony.

To the Committee on Judiciary.

S. 4.

By Senator Sears,

An act relating to the issuance of GARVEE bonds for certain transportation capital projects.

To the Committee on Transportation.

S. 5.

By Senator Sears,

An act relating to accidents involving an on-duty law enforcement officer, firefighter, or emergency medical personnel.

To the Committee on Transportation.

S. 6.

By Senators Illuzzi, Brock and Kittell,

An act relating to use of holding cells at the Northwest State Correctional facility by Franklin County law enforcement officers.

To the Committee on Institutions.

S. 7.

By Senator Mullin,

An act to prohibit the use of lighted tobacco products in the workplace.

To the Committee on Health and Welfare.

S. 8.

By Senator Mullin,

An act relating to consolidation of supervisory unions.

To the Committee on Education.

S. 9.

By Senator Mullin,

An act relating to requiring an integrated financial management system in school districts and supervisory unions.

To the Committee on Education.

S. 10.

By Senator Mullin,

An act relating to joint tenancy.

To the Committee on Judiciary.

S. 11.

By Senators Mullin and Sears,

An act relating to automated external defibrillators.

To the Committee on Judiciary.

S. 12.

By Senator Illuzzi,

An act relating to not requiring the physical presence of a defendant or offender at certain court proceedings.

To the Committee on Judiciary.

S. 13.

By Senators Campbell, Cummings, Mullin, Nitka, Sears and Shumlin,

An act relating to improving Vermont's sexual abuse response system.

To the Committee on Judiciary.

S. 14.

By Senator Mullin,

An act relating to expanding the scope of the beverage container redemption law.

To the Committee on Natural Resources and Energy.

S. 15.

By Senator Mullin,

An act relating to employment protection for volunteer firefighters.

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

**Message from the Governor
Appointments Referred**

A message was received from the Governor, by Heidi M. Tringe, Secretary of Civil and Military Affairs, submitting the following appointments, which were referred to committees as indicated:

Lunderville, Neale F. of Burlington- Secretary, Agency of Administration,- from August 23, 2008, to February 28, 2009.

To the Committee on Government Operations.

Dill, David of Lyndonville - Secretary, Agency of Transportation, - from August 23, 2008, to February 28, 2009.

To the Committee on Transportation.

Gartner, Shelley J., Esq. of Rutland - Magistrate, Vermont Family Court, - from October 1, 2008, to September 30, 2014.

To the Committee on Judiciary.

Harlow, Mary Gleason, Esq. of Clarendon - Magistrate, Vermont Family Court, - from October 1, 2008, to September 30, 2014.

To the Committee on Judiciary.

Hoyt, Christine A., Esq. of Tunbridge - Magistrate, Vermont Family Court, - from October 1, 2008, to September 30, 2014.

To the Committee on Judiciary.

Wood, Jonathan of Cambridge - Secretary, Agency of Natural Resources, - from November 7, 2008, to February 28, 2009.

To the Committee on Natural Resources and Energy.

Hofmann, Robert D. of Waterbury - Secretary, Agency of Human Services,
- from November 23, 2008, to February 28, 2009.

To the Committee on Health and Welfare.

Noyes, William A. of Barre - Commissioner, Department of Housing and
Community Affairs, - from September 22, 2008, to February 28, 2009.

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

Davis, Wendy, M.D. of Burlington - Commissioner, Department of Health,
- from August 18, 2008, to February 28, 2009.

To the Committee on Health and Welfare.

Bishop, Bethany of Montpelier - Commissioner, Department of Economic
Development, - from November 24, 2008, to February 28, 2009.

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

Gibbs, Jason of Duxbury - Commissioner, Department of Forests, Parks and
Recreation, - from November 24, 2008, to February 28, 2009.

To the Committee on Natural Resources and Energy.

Pallito, Andrew A. of Jericho - Commissioner, Department of Corrections, -
from December 31, 2008, to February 28, 2009.

To the Committee on Institutions.

Larocque, Leo O. of Whiting - Member of the Electricians' Licensing
Board, - from May 15, 2008, to June 30, 2009.

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

Williams, Robert of Poultney - Member of the Electricians' Licensing
Board, - from May 15, 2008, to June 30, 2009.

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

Goodrich, Steven V. of North Bennington - Member of the Plumber's
Examining Board, - from May 15, 2008, to February 28, 2011.

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

Nesbitt, Thomas D. of Waterbury Center - Member of the Plumber's Examining Board, - from May 15, 2008, to February 28, 2009.

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

Gallo, Edward J. of Richmond - Member of the Fish and Wildlife Board, - from May 28, 2008, to February 28, 2014.

To the Committee on Natural Resources and Energy.

Spates, Grant H. of Derby Line - Member of the Fish and Wildlife Board, - from November 14, 2008, to February 28, 2011.

To the Committee on Natural Resources and Energy.

Pelletier, Thomas of Montpelier - Member of the Vermont Housing Finance Agency, - from May 1, 2008, to January 31, 2011.

To the Committee on Finance.

Bourgeois, Steven J. of Swanton - Member of the Vermont Economic Development Authority, - from July 1, 2008, to June 30, 2014.

To the Committee on Finance.

Plausteiner, Susan D. of Brownsville - Member of the Vermont Economic Development Authority, - from July 1, 2008, to June 30, 2014.

To the Committee on Finance.

Schumacher, Rachel of North Bennington - Member of the Vermont Economic Development Authority, - from July 1, 2008, to June 30, 2014.

To the Committee on Finance.

Crowley, Thomas M. of South Burlington - Member of the State Police Advisory Commission, - from July 1, 2008, to June 30, 2012.

To the Committee on Government Operations.

Sartorelli, Ugo of Barre - Member of the State Police Advisory Commission, - from July 1, 2008, to June 30, 2012.

To the Committee on Government Operations.

Sheahan, Nancy Goss of South Burlington - Member of the State Police Advisory Commission, - from December 15, 2008, to February 28, 2010.

To the Committee on Government Operations.

Bailey, Richard of Hyde Park - Member of the Vermont Lottery Commission, - from July 1, 2008, to February 28, 2011.

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

O'Connor, Martha of Brattleboro - Member of the Vermont Lottery Commission, - from July 1, 2008, to February 28, 2011.

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

O'Brien, Benjamin R. of South Burlington - Member of the Occupational Safety and Health Review Board, - from June 27, 2008, to February 28, 2009.

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

Kiehle, James of Brattleboro - Member of the State Labor Relations Board, - from September 2, 2008, to June 30, 2014.

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

Marvin, David of Hyde Park - Member of the Sustainable Jobs Fund Board of Directors, - from September 18, 2008, to August 31, 2009.

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

Shields, Bruce of Wolcott - Member of the Sustainable Jobs Fund Board of Directors, - from November 27, 2008, to August 31, 2010.

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

Stewart, James of Pittsford - Member of the Sustainable Jobs Fund Board of Directors, - from September 1, 2008, to August 31, 2013.

To the Committee on Economic Development, Housing and General Affairs. **(RESIGNED)**

Hutchins, Russ of St. Johnsbury - Member of the Human Services Board, - from October 28, 2008, to February 28, 2009.

To the Committee on Health and Welfare.

Jenkins, David A. of Burlington - Member of the Board of Medical Practice, - from January 1, 2009, to December 31, 2013.

To the Committee on Health and Welfare.

Martin, Margaret F. of Middlebury - Member of the Board of Medical Practice, - from January 1, 2009, to December 31, 2011.

To the Committee on Health and Welfare.

Murray, John J., M.D. of Colchester - Member of the Board of Medical Practice, - from January 1, 2009, to December 31, 2013.

To the Committee on Health and Welfare.

Rinaldi, Robert R., D.P.M. of Chelsea - Member of the Board of Medical Practice, - from January 1, 2009, to December 31, 2013.

To the Committee on Health and Welfare.

Ryan, Janice E. of South Burlington - Member of the Board of Medical Practice, - from January 1, 2009, to December 31, 2013.

To the Committee on Health and Welfare.

Sadkin, Toby, M.D. of St. Albans - Member of the Board of Medical Practice, - from January 1, 2009, to December 31, 2013.

To the Committee on Health and Welfare.

Stouch, William H., M.D. of Burlington - Member of the Board of Medical Practice, - from January 1, 2009, to December 31, 2013.

To the Committee on Health and Welfare.

Thomashow, Peter, M.D. of Strafford - Member of the Board of Medical Practice, - from to January 1, 2009, to December 31, 2013.

To the Committee on Health and Welfare.

Young, Florence of Montpelier - Member of the Board of Medical Practice, - from January 1, 2009, to December 31, 2013.

To the Committee on Health and Welfare.

Senate Resolution Referred

S.R. 5.

Senate resolution of the following title was offered, read the first time and is as follows:

By Senator Cummings,

Senate resolution urging support for the Day One Initiative to close the Guantanamo prison, stop torture of detainees, and end the United States government's policy of extraordinary rendition.

Whereas, terrorists hijacked four airplanes on Sept. 11, 2001, crashing two into the World Trade Center towers in New York City, one into the Pentagon, and one into a rural Pennsylvania field, and

Whereas, the federal government immediately began searching for the perpetrators of these violent actions, and

Whereas, an extra-territorial prison was established on United States controlled land at Guantanamo, Cuba, to hold and try alleged terrorists removed from the due process protections afforded detainees within the United States, and

Whereas, in violation of the Geneva Convention, torture has been used in the interrogation of detainees at the Guantanomo prison, and

Whereas, a practice known as “extraordinary rendition” has been used to seize, without warrants or other judicial orders, citizens of other countries and secretly transport them to foreign jails for interrogation, and these individuals have often been subject to torture, and

Whereas, these practices are inconsistent with American core values, and

Whereas, the Day One Initiative is a national effort to persuade President-elect Obama to close the Guantanamo Prison, stop torture of detainees, and end the practice of extraordinary rendition through the issuance of executive orders on the first day of his presidency, *now therefore be it*

Resolved by the Senate:

That the Senate of the state of Vermont urges President-elect Obama, on his first day in office, to adopt the Day One Initiative by issuing executive orders that the Guantanamo prison in Cuba be closed, that the torture of detainees stop, and that the practice known as “extraordinary rendition” be ended, and be it further

Resolved: That the Secretary of the Senate be directed to send a copy of this resolution to President-elect Obama and to the Vermont Congressional delegation.

Thereupon, the President, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Judiciary.

House Concurrent Resolution Adopted

House concurrent resolution of the following title was offered, read and adopted in concurrence:

Offered by: All members of the House

Offered by: All members of the Senate

H.C.R. 1. House concurrent resolution in memory of Representative James Hutchinson of Randolph.

Message from the House No. 4

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

Mr. President:

I am directed to inform the Senate that:

The House has considered joint resolutions originating in the Senate of the following titles:

J.R.S. 4. Joint resolution relating to Town Meeting adjournment.

J.R.S. 6. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Message from the House No. 5

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

Mr. President:

I am directed to inform the Senate that:

The House has appointed as members of the Joint Canvassing Committee on the part of the House to canvass votes for state officers:

Addison District	Bray of New Haven Clark of Vergennes Stevens of Shoreham
Bennington District	Miller of Shaftsbury Komline of Dorset Corcoran of Bennington
Caledonia District	Lawrence of Lyndonville Larocque of Barnet Leriche of Hardwick
Chittenden District	McCullough of Williston Wright of Burlington Zuckerman of Burlington
Essex-Orleans District	Rodgers of Glover Kilmartin of Newport City Peaslee of Guildhall

Franklin District	Consejo of Sheldon McAllister of Highgate Branagan of Georgia
Grand Isle District	Johnson of South Hero Condon of Colchester Brennan of Colchester
Lamoille District	Scheuermann of Stowe Nease of Johnson Martin of Wolcott
Orange District	Winters of Williamstown Davis of Washington French of Randolph
Rutland District	McNeil of Rutland Town Malcolm of Pawlet Courcelle of Rutland City
Washington District	McDonald of Berlin Minter of Waterbury Ancel of Calais
Windham District	Hube of Londonderry Edwards of Brattleboro Mrowicki of Putney
Windsor District	Haas of Rochester Pellett of Chester Adams of Hartland

Adjournment

On motion of Senator Mazza, the Senate adjourned, to reconvene on January 13, 2009, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 6.

TUESDAY, JANUARY 13, 2009

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Rebecca Clark of Montpelier.

Pledge of Allegiance

Vanessa J. Davison, Journal Clerk of the Senate, then led the members of the Senate in the pledge of allegiance.

Oath Administered to Senate Member

The Secretary reported that the oath of office was duly sworn to by Senator-elect Mark A. MacDonald of Orange District.

Bill Introduced

Senate bill of the following title was introduced, read the first time and referred:

S. 16.

By Senator Bartlett,

An act relating to regional common levels of appraisal.

To the Committee on Finance.

Joint Resolutions Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Committee on Transportation,

J.R.S. 7. Joint resolution providing for release of payments to towns for highway aid.

Whereas, Vermont towns are experiencing cash flow issues due to the potential delay in town highway aid payments, and

Whereas, the specific level of funding is uncertain due to the continuing erosion of revenues and uncertainty concerning federal stimulus funding for Vermont, and

Whereas, further payments are scheduled to be made in April of this year, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the Agency of Transportation shall make January payments for the town highway aid program as soon as practicable, and be it further

Resolved: That the payments shall be reduced by a total of \$925,000.00 from the funds that would otherwise have been sent as part of the January disbursements, and be it further

Resolved: That it is the intent of the General Assembly that the final payments for FY 2009 shall be increased or decreased to adjust for future legislative actions and appropriations changes, and be it further

Resolved: That a copy of this joint resolution be sent to David Dill, Secretary of the Agency of Transportation.

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Shumlin,

J.R.S. 8. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, January 16, 2009, it be to meet again no later than Tuesday, January 20, 2009.

Standing Committee Appointed

The President *pro tempore*, on behalf of the Committee on Committees, reported the appointment of the standing committees, as follows:

Rules

At Call

Senator Shumlin, Chair
Mazza, Vice-Chair
Campbell
Doyle
Mullin

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, January 16, 2009.

FRIDAY, JANUARY 16, 2009

Pursuant to Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the time for convening of the Senate having been set at 8:30 A.M., the Senate was called to order by David A. Gibson, Secretary of the Senate.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Presiding Officer Elected

Thereupon, pursuant to the provisions of Rule 8 of the Senate Rules, in the absence of the President and the President *pro tempore*, the Senate proceeded to the election of an acting President *pro tempore* to preside.

Nominations being in order, Senator Campbell nominated Senator Richard T. Mazza to be acting President *pro tempore*. Senator Lyons seconded the nomination.

There being no further nominations, on motion of Senator Campbell, the nominations were closed, and the Assistant Secretary was instructed to cast one ballot for Senator Richard T. Mazza to serve as presiding officer until the return of the President or the President *pro tempore*.

Senator Mazza Assumes the Chair**Message from the House No. 6**

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

Mr. President:

I am directed to inform the Senate that:

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

J.R.S. 8. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Message from the House No. 7

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

Mr. President:

I am directed to inform the Senate that:

The House has adopted joint resolution of the following title:

J.R.H. 1. Joint resolution relating to the construction of a proposed U.S. Border Patrol Station near the Beecher Falls Port of Entry.

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

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

S. 17.

By Senator Mullin,

An act relating to a local option Act 250 exemption for construction within a traditional industrial district.

To the Committee on Natural Resources and Energy.

S. 18.

By Senators McCormack, Ashe, Ayer and Kittell,

An act relating to limiting the power of municipalities or deeds to prohibit the installation of solar collectors, clotheslines, or other energy devices based on renewable resources.

To the Committee on Natural Resources and Energy.

S. 19.

By Senators Sears, Campbell and Shumlin,

An act relating to extension of filing deadlines for homestead declarations and property tax adjustment claims.

To the Committee on Finance.

Joint Resolution Referred**J.R.H. 1.**

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution relating to the construction of a proposed U.S. Border Patrol Station near the Beecher Falls Port of Entry.

Whereas, since the 1920s, a small, and now extremely inadequate, U.S. Border Patrol Station has been located at the Beecher Falls Port of Entry, and it provides administrative support services for an area containing multiple ports of entry along northern New England's border with Canada, and

Whereas, there is an urgent need for a new and far larger U.S. Border Patrol Station in this area that is designed to satisfy certain criteria, including: (1) appropriate emergency response time to the Canadian border; (2) a minimum 10-acre site; (3) appropriate site, shape, terrain, drainage, and soil conditions; (4) availability of utilities (water, sewer, power, gas, and communications); (5)

location near the Canadian border with compatible vehicle traffic, construction patterns, access roads, and zoning; (6) reasonable site acquisition, construction, and (if necessary) demolition costs; (7) that a willing seller is prepared to make the site available in a timely manner; and (8) ability of the site to accommodate facilities for a minimum of 50 U.S. Border Patrol agents in order to enable effective and efficient operational control, and

Whereas, the U.S. Border Patrol has identified two potential sites for the new station, one in Colebrook, New Hampshire (the Clark site) and one in Canaan, Vermont (the Dupont site), and

Whereas, the U.S. Border Patrol recently issued a 250-plus-page Environmental Assessment (EA) that was intended to serve as an objective and factually accurate evaluation of each site's potential to serve as the proposed station's location, and

Whereas, the document contains significant inaccuracies and lacks sufficiently comprehensive data to support its conclusion that the Clark site is the preferred alternative for constructing the U.S. Border Patrol Station, and

Whereas, among the major errors in the EA are the placement of Van Dyke Mountain in New Hampshire instead of Vermont, misstatements concerning each site's relationship to the floodplain, and the stated existence of a private school in Vermont that was actually in New Hampshire and closed more than five years ago, and

Whereas, the EA includes basic mathematical errors with respect to the cost of the Clark parcel and lacks any explanation as to why the Clark site requires a three-acre development but the Dupont site needs a 10-acre project, and

Whereas, perhaps the most glaring example of a major error is the statement that the Clark parcel is located 6.5 miles from the existing Border Patrol Station although a local resident's repeated measurement of the distance was 8.3 miles, and

Whereas, discrepancies were also identified in measuring the distance between the Dupont site and the current station, although all measurements agreed that the distance was under three miles, and

Whereas, only the Dupont site is within eight miles of the Beecher Falls Port of Entry as the U.S Border Patrol requires, and

Whereas, this inaccurate EA unfairly and arbitrarily labels the New Hampshire site as preferable without any stated rationale, and

Whereas, despite the announced January 16, 2009 deadline for receipt of comments, this deadline should be extended to allow for great scrutiny of the

sites for a U.S. Border Patrol Station that will serve as a major source of local employment, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly requests the U.S. Border Patrol to extend the original deadline for comments on the selection of a site for the proposed U.S. Border Patrol Station near the Beecher Falls Port of Entry, and be it further

Resolved: That the General Assembly requests the Vermont Congressional Delegation to work to assure that the Dupont site for the proposed U.S. Border Patrol Station is given accurate, fair, and unbiased consideration, and be it further

Resolved: That the secretary of state be directed to send a copy of this resolution to the commissioner of the U.S. Border Patrol and to the Vermont Congressional Delegation.

Thereupon, in the discretion of the acting President *pro tempore*, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Economic Development, Housing and General Affairs.

Message from the Governor

A message was received from the Governor, by Heidi Tringe, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the thirteenth day of January, 2009, pursuant to 3 V.S.A. §2002(b), I am herewith enclosing the following Executive Order:

01-09. Merger of Department of Housing and Community Affairs and Department of Economic Development within the Agency of Commerce and Community Development.

Executive Order Referred

The acting President *pro tempore* laid before the Senate an Executive Order relating to a merger of the Department of Housing and Community Affairs and the Department of Economic Development.

**STATE OF VERMONT
EXECUTIVE DEPARTMENT
EXECUTIVE ORDER**

WHEREAS, the Governor, pursuant to 3 V.S.A. § 2001, may make such changes in the organization of the executive branch or in the

assignment of functions among its units as he considers necessary for efficient administration; and

WHEREAS, it is desirable to reorganize the departments and divisions of government by better coordinating certain activities and improving the coordination and effectiveness of services to the public; and

WHEREAS, the Department of Economic Development and the Department of Housing and Community Affairs administer programs and provide services that share common policy interests and objectives; and

WHEREAS, the Department of Economic Development and the Department of Housing and Community Affairs have demonstrated effective collaboration as separate divisions within the Agency of Commerce and Community Development on a variety of issues serving Vermonters, municipalities and businesses throughout the state, including the pressing issue of providing and maintaining an adequate supply of housing for Vermont's workforce; and

WHEREAS, the related and intersecting areas of responsibility of the Department of Economic Development and the Department of Housing and Community Affairs provide a solid foundation on which to achieve meaningful efficiencies without compromising the quality or effectiveness of the services they have consistently provided.

NOW, THEREFORE, by virtue of the power vested in me by 3 V.S.A. Chapter 41 as Governor, I, James H. Douglas, do hereby create a Department of Economic, Housing, and Community Development by merging the Department of Economic Development and the Department of Housing and Community Affairs within the Agency of Commerce and Community Development. The Department of Economic, Housing, and Community Development shall be successor to and a continuation of the Department of Economic Development and the Department of Housing and Community Affairs.

1. All duties, responsibilities and authority, including all contracts and grant agreements, of the Department of Economic Development and the Department of Housing and Community Affairs, including its Division for Historic Preservation established in 22 V.S.A. Chapter 14, are hereby transferred to the Department of Economic, Housing and Community Development and shall continue in force and effect without any interruption in their functions.

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2. The positions of Commissioner of Economic Development and Commissioner of Housing and Community Affairs are abolished and all the duties, responsibilities and authority of those Commissioners are hereby transferred to the Commissioner of the Department of Economic, Housing and Community Development.
 3. All other authorized positions and equipment of the Department of Economic Development and the Department of Housing and Community Affairs are transferred to the Department of Economic, Housing and Community Development.
 4. The rules of each of the former Departments in effect on the effective date of this Executive Order shall be the rules of the Department of Economic, Housing and Community Development, until amended or repealed.
 5. All Boards, Commissions, and Councils of the former Departments shall be attached to the Department of Economic, Housing, and Community Development for administrative purposes including, but not be limited to: Vermont Community Development Board; Vermont Downtown Development Board; Scenery Preservation Council; Vermont Advisory Council on Historic Preservation; Vermont Commission on Native American Affairs; Council of Regional Commissions; Vermont Housing Council; Vermont Business Recruitment Partnership Advisory Committee; Vermont Economic Incentive Review Board; and Commission on the Future of Economic Development.
 6. The Department of Economic, Housing, and Community Development shall administer all programs formerly administered by the Department of Economic Development and the Department of Housing and Community Affairs and its Division for Historic Preservation, including, but not limited to:
 - Vermont Community Development Program (10 V.S.A. §§ 681 – 690a);
 - Vermont Downtown Program (24 V.S.A. §§ 2790 – 2797 including Village Centers, Growth Centers, and New Town Centers);
 - Historic Barns Preservation Grant Program (24 V.S.A. § 5603);
 - HOME Program (42 U.S.C.A. Chapter 130, Subchapter II; 10 V.S.A. § 321(b));
 - Certified Local Government Program (16 U.S.C. § 470a(c)(1));

- Employment Training Program (10 V.S.A. § 531);
 - Vermont Employment Growth Initiative Program (32 V.S.A. § 5930b);
 - Vermont Procurement Technical Assistance Center Program (3 V.S.A. §§ 2471a - 2471b); and
 - Vermont World Trade Office and Vermont Global Trade Partnership (10 V.S.A. §§ 25 – 33).
7. The Department of Economic, Housing, and Community Development shall be headed by the Commissioner who shall be appointed by the Secretary with the approval of the Governor and who shall be the chief executive and administrative officer and head of the department and shall serve at the pleasure of the Secretary. The Commissioner of Economic, Housing, and Community Development may appoint the following exempt positions: a deputy commissioner of Economic Development, a deputy commissioner of Housing, and an executive assistant.
8. The Secretary of the Agency of Commerce and Community Development and the Commissioner of Economic, Housing, and Community Development together shall further study the effectiveness, priority and delivery of services and shall report to the governor by November 15, 2009, any further recommendation for restructuring and/or statutory changes.

This Executive Order shall take effect on July 1, 2009, unless disapproved by the General Assembly pursuant to 3 V.S.A. § 2002. This Executive Order shall be submitted to the General Assembly pursuant to 3 V.S.A. § 2002(b).

Witness my name hereunto
subscribed and the Great Seal of
the State of Vermont hereunto
affixed at Montpelier this 13th day
of January, 2009.

/s/James H. Douglas
Governor

By the Governor:
/s/Heidi M. Tringe
Secretary of Civil and Military Affairs
EXECUTIVE ORDER NO. 01-09

Thereupon, pursuant to the rules of the Senate, Executive Order No. 01-09 was referred to the Committee on Economic Development, Housing and General Affairs.

Recess

On motion of Senator Campbell the Senate recessed until eleven o'clock and forty-five minutes.

Called to Order

At eleven o'clock and forty-five minutes the Senate was called to order by the acting President *pro tempore*.

Message from the House No. 8

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

Mr. President:

I am directed to inform the Senate that:

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

J.R.S. 7. Joint resolution providing for release of payments to towns for highway aid.

And has adopted the same in concurrence.

Rules Suspended; Bill Committed

S. 13.

Pending entry on the Calendar for notice, on motion of Senator Sears, the rules were suspended and Senate bill entitled:

An act relating to improving Vermont's sexual abuse response system.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Judiciary, Senator Sears moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Appropriations with the report of the Committee on Judiciary *intact*,

Which was agreed to.

Rules Suspended; Third Reading Ordered; Rules Suspended; Joint Resolution Adopted in Concurrence; Joint Resolution Messaged

J.R.H. 1.

Pending entry on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and Joint House Resolution entitled:

Joint resolution relating to the construction of a proposed U.S. Border Patrol Station near the Beecher Falls Port of Entry.

Was taken up for immediate consideration.

Senator Illuzzi, for the Committee on Economic Development, Housing and General Affairs, to which the resolution was referred, reported that the joint resolution ought to be adopted in concurrence.

Thereupon, the joint resolution was read the second time by title only pursuant to Rule 43, and third reading of the joint resolution was ordered.

Thereupon, on motion of Senator Campbell, the rules were suspended and the joint resolution was placed on all remaining stages of its adoption in concurrence forthwith.

Thereupon, the joint resolution was read the third time and adopted in concurrence.

Thereupon, on motion of Senator Campbell, the rules were suspended, and the joint resolution was ordered messaged to the House forthwith.

Adjournment

On motion of Senator Campbell, the Senate adjourned, to reconvene on Tuesday, January 20, 2009, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 8.

TUESDAY, JANUARY 20, 2009

The Senate was called to order by the acting President *pro tempore*, Senator Mazza.

Devotional Exercises

Devotional exercises were conducted by the Reverend Kevin Rooney of Northfield.

Pledge of Allegiance

The acting President *pro tempore* then led the members of the Senate in the pledge of allegiance.

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

S. 20.

By Senators Campbell and Illuzzi,

An act relating to termination of workers' compensation temporary disability benefits.

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

S. 21.

By Senators Campbell and Illuzzi,

An act relating to a fee for late payment of workers' compensation benefits.

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

S. 22.

By Senator Sears,

An act relating to furlough for an offender convicted of a driving offense punishable by more than two years in prison.

To the Committee on Judiciary.

S. 23.

By Senator Mullin,

An act relating to screening panels for medical injury claims.

To the Committee on Judiciary.

S. 24.

By Senators McCormack, Campbell, Cummings, Flanagan, Lyons, MacDonald and Racine,

An act relating to the repeal of the requirement that school budgets in excess of the maximum inflation amount be presented to the voters as a divided question.

To the Committee on Education.

S. 25.

By Senators Doyle and White,

An act relating to the repeal or revision of certain state agency reporting requirements.

To the Committee on Government Operations.

S. 26.

By Senator Mullin,

An act relating to recovery of profits from crime.

To the Committee on Judiciary.

S. 27.

By Senators Miller, Bartlett, Carris, Hartwell, Illuzzi, Kitchel, Maynard and Snelling,

An act relating to tastings and sale of wines by wineries.

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

Senate 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, are hereby adopted on the part of the Senate:

By Senators Doyle, Cummings and Scott,

By Representative Koch and others,

S.C.R. 1.

Senate concurrent resolution congratulating the Aldrich Public Library on its centennial anniversary.

By Senators Doyle, Cummings and Scott,

By Representative Koch and others,

S.C.R. 2.

Senate concurrent resolution congratulating *The Bridge* newspaper on its 15th anniversary.

By Senator Lyons,

By Representatives Klein and Ancel,

S.C.R. 3.

Senate concurrent resolution commemorating the centennial anniversary of the appointment of Vermont's first state forester and the establishment of the first state forest.

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, are hereby adopted in concurrence:

Offered by: Representative Turner and others

H.C.R. 2

House concurrent resolution congratulating Sean Ross of Milton High School on winning the 2008 Division II individual cross-country championship

Offered by: Representative Turner and others

H.C.R. 3

House concurrent resolution congratulating the 2008 Milton High School Yellowjackets Division II championship girls' soccer team

Offered by: Representative Myers and others

H.C.R. 4

House concurrent resolution congratulating Essex High School Coach William O'Neil on his 1,000th career victory

Offered by: Representative Klein and others

Offered by: Senators Cummings, Doyle and Scott

H.C.R. 5

House concurrent resolution congratulating the 2008 U-32 Raiders Division II championship boys' soccer team

Offered by: Representative Koch and others

Offered by: Senators Cummings, Doyle and Scott

H.C.R. 6

House concurrent resolution congratulating the Spaulding Union High School Crimson Tide 2008 Division II championship football team

Offered by: Representative Kitzmiller and others

Offered by: Senators Cummings, Doyle and Scott

H.C.R. 7

House concurrent resolution congratulating the Lost Nation Theater of Montpelier on its designation as one of the best regional theaters in America

Offered by: Representative Emmons and others

Offered by: Senators Campbell, McCormack and Nitka

H.C.R. 8

House concurrent resolution congratulating the 2008 Springfield High School Cosmos Division III championship football team

Offered by: Representative Hube

Offered by: Senators Campbell, McCormack and Nitka

H.C.R. 9

House concurrent resolution congratulating the Weston Craft Show on its 25th anniversary

Offered by: Representatives Minter and Stevens

H.C.R. 10

House concurrent resolution honoring Terry and Linda Pecor of Huntington on the 30th anniversary of their proprietorship of Beaudry's Store

Offered by: Representatives Minter and Stevens

H.C.R. 11

House concurrent resolution congratulating the Huntington Public Library on the dedication of its new home in the historic Huntington Union Meeting House

Offered by: Representative Wizowaty and others

H.C.R. 12

House concurrent resolution congratulating CarShare Vermont on launching its car-sharing service

Offered by: All Members of the House

Offered by: All Members of the Senate

H.C.R. 13

House concurrent resolution honoring the legislative council service of Samuel H. Burr

Offered by: All Members of the House

Offered by: All Members of the Senate

H.C.R. 14

House concurrent resolution honoring the legislative council service of Charles Alan Boright

Offered by: Representative Hube and others

Offered by: Senators Shumlin and White

H.C.R. 15

House concurrent resolution congratulating the Leland & Gray Union High School Rebels 2008 Division III championship baseball team

Adjournment

On motion of Senator Campbell, the Senate adjourned until nine o'clock in the forenoon on Thursday, January 22, 2009.

THURSDAY, JANUARY 22, 2009

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. 9

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

Mr. President:

I am directed to inform the Senate that:

The House has considered concurrent resolutions originating in the Senate of the following titles:

S.C.R. 1. Senate concurrent resolution congratulating the Aldrich Public Library on its centennial anniversary.

S.C.R. 2. Senate concurrent resolution congratulating The Bridge newspaper on its 15th anniversary.

S.C.R. 3. Senate concurrent resolution commemorating the centennial anniversary of the appointment of Vermont's first state forester and the establishment of the first state forest.

And has adopted them in concurrence.

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 2. House concurrent resolution congratulating Sean Ross of Milton High School on winning the 2008 Division II individual cross-country championship.

H.C.R. 3. House concurrent resolution congratulating the 2008 Milton High School Yellowjackets Division II championship girls' soccer team.

H.C.R. 4. House concurrent resolution congratulating Essex High School athletics Coach William O'Neil on his 1,000 career victory.

H.C.R. 5. House concurrent resolution congratulating the 2008 U-32 Raiders Division II championship boys' soccer team.

H.C.R. 6. House concurrent resolution congratulating the Spaulding Union High School Crimson Tide 2008 Division II championship football team.

H.C.R. 7. House concurrent resolution congratulating the Lost Nation Theater of Montpelier on its designation as "one of the best regional theaters in America".

H.C.R. 8. House concurrent resolution congratulating the 2008 Springfield High School Cosmos Division III championship football team.

H.C.R. 9. House concurrent resolution congratulating the Weston Craft Show on its 25th anniversary.

H.C.R. 10. House concurrent resolution honoring Terry and Linda Pecor of Huntington on the 30th anniversary of the proprietorship of Beaudry's Store.

H.C.R. 11. House concurrent resolution congratulating the Huntington Public Library on the dedication of its new home in the historic Huntington Union Meeting House.

H.C.R. 12. House concurrent resolution congratulating CarShare Vermont on launching its car sharing service.

H.C.R. 13. House concurrent resolution honoring the legislative service of Samuel H. Burr.

H.C.R. 14. House concurrent resolution honoring the legislative council service of Charles Alan Boright.

H.C.R. 15. House concurrent resolution congratulating the Leland & Gray Union High School Rebels 2008 Division III championship baseball team.

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

Message from the House No. 10

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

Mr. President:

I am directed to inform the Senate that:

The House has passed a bill of the following title:

H. 11. An act relating to the disposition of property upon death, transfer of interest in vehicle upon death, and homestead exemption.

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

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

S. 28.

By Senators Snelling, Bartlett, Campbell, Mazza and Miller,

An act relating to the regulation of landscape architects.

To the Committee on Government Operations.

S. 29.

By Senators Sears, Campbell, Cummings, Mullin and Nitka,

An act relating to legislative committee subpoena power.

To the Committee on Judiciary.

S. 30.

By Senator Mullin,

An act relating to school choice for students who have been subject to harassment.

To the Committee on Education.

S. 31.

By Senator Hartwell,

An act relating to exemptions to property transfer tax.

To the Committee on Finance.

S. 32.

By Senator Hartwell,

An act relating to tax credits for biomass harvesting and the manufacture of products that produce biomass power.

To the Committee on Finance.

S. 33.

By Senator Hartwell,

An act relating to tax on plastic bags.

To the Committee on Finance.

Bill Referred

House bill of the following title was read the first time and referred:

H. 11.

An act relating to the disposition of property upon death, transfer of interest in vehicle upon death, and homestead exemption.

To the Committee on Judiciary.

Joint Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Shumlin,

J.R.S. 9. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, January 23, 2009, it be to meet again no later than Tuesday, January 27, 2009.

Rules Suspended; Bill Amended; Third Reading Ordered**S. 13.**

Appearing on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and Senate bill entitled:

An act relating to improving Vermont's sexual abuse response system.

Was taken up for immediate consideration.

Senator Sears, for the Committee on Judiciary, to which the bill was referred, reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE INTENT

This act is intended to implement the November 12, 2008, Report of the Senate Committee on Judiciary's 34-Point Comprehensive Plan for Vermont's Sexual Abuse Response System. The purpose of this act is to increase child sexual abuse prevention efforts, enhance investigations and prosecutions of child sexual abuse, provide sentencing courts with the information necessary to devise appropriate sentences for sex offenders, and improve supervision of sex offenders.

* * * Prevention * * *

Sec. 2. COMPREHENSIVE STATEWIDE APPROACH TO THE PREVENTION OF CHILD SEXUAL ABUSE

(a) Prevention is the most important and most often overlooked tool available to the state to fight sexual violence against children. While there are a number of programs and organizations devoted to raising awareness about sexual abuse of children, a coordinated and properly funded statewide approach is needed to ensure that we are devoting appropriate resources and programming to stopping abuse before it happens, not just responding to the crime.

(b) The senate committee on health and welfare and the house committee on human services, in consultation with the senate and house committees on education and on appropriations, shall build on the recent work of the senate committee on judiciary in an effort to develop a comprehensive statewide approach to the prevention of child sexual abuse. Legislation shall be developed for introduction on January 5, 2010.

Sec. 3. 16 V.S.A. § 131 is amended to read:

§ 131. DEFINITIONS

For purposes of this subchapter: ~~“Comprehensive~~, “comprehensive health education” means a systematic and extensive elementary and secondary educational program designed to provide a variety of learning experiences for students that encourages parental involvement and is based upon knowledge of the human organism as it functions within its environment. The term includes, but is not limited to, a study of:

* * *

(9) Drugs, including education about alcohol, caffeine, nicotine, and prescribed drugs; ~~and~~

(10) Nutrition; and

(11)(A) Prevention of sexual abuse and sexual violence, including developmentally appropriate instruction for students around promoting healthy and respectful relationships, maintaining effective communication with trusted adults, recognizing sexual offending behaviors, and gaining awareness of available school and community resources.

(B) The department for children and families shall convene a working group that includes the department of education, parents, and sexual abuse prevention professionals to develop technical assistance materials in subdivision (A) of this subdivision (11). Any future amendments to the technical assistance materials shall include the participation of the same stakeholders.

Sec. 4. 16 V.S.A. § 254 is amended to read:

§ 254. EDUCATOR LICENSURE; EMPLOYMENT OF SUPERINTENDENTS

(a) The commissioner shall sign and keep a user agreement with the Vermont criminal information center.

(b) The commissioner shall request and obtain from the Vermont criminal information center the criminal record for any person applying for an initial license, for renewal of a license, or for reinstatement of a lapsed license as a professional educator or for any person who is offered a position as superintendent of schools in Vermont.

(c) A request made under this section shall be accompanied by a release signed by the person on a form provided by the Vermont criminal information center, a set of the person's fingerprints, and a fee established by the Vermont criminal information center which shall reflect the cost of obtaining the record. The fee shall be paid by the applicant. The release form to be signed by the applicant shall include a statement informing the applicant of:

(1) the right to challenge the accuracy of the record by appealing to the Vermont criminal information center pursuant to rules adopted by the commissioner of public safety; and

(2) the commissioner's policy regarding maintenance and destruction of records and the person's right to request that the record or notice be maintained

for purposes of using it to comply with future criminal record check requests made pursuant to section 256 of this title.

(d) Upon completion of a criminal record check, the Vermont criminal information center shall send to the commissioner either a notice that no record exists or a copy of the record. If a copy of a criminal record is received, the commissioner shall forward it to the person and shall inform the person in writing of:

(1) the right to challenge the accuracy of the record by appealing to the Vermont criminal information center pursuant to rules adopted by the commissioner of public safety; and

(2) the commissioner's policy regarding maintenance and destruction of records and the person's right to request that the record or notice be maintained for purposes of using it to comply with future criminal record check requests made pursuant to section 256 of this title.

(e) The commissioner shall request and obtain from the department for children and families information from the child abuse and neglect registry and from the department of disabilities, aging, and independent living information from the vulnerable adult abuse, neglect, and exploitation registry for any person applying for an initial license, for renewal of a license, or for reinstatement of a lapsed license as a professional educator or for any person who is offered a position as superintendent of schools in Vermont. The department for children and families and the department of disabilities, aging, and independent living shall adopt rules governing the process for registry information requests and the dissemination and maintenance of records in accordance with this subsection.

Sec. 5. 16 V.S.A. § 255 is amended to read:

§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES;
CONTRACTORS

(a) Superintendents, headmasters of recognized or approved Vermont independent schools, and their contractors shall request criminal record information for the following:

(1) The person a superintendent or headmaster is prepared to recommend for any full-time, part-time, or temporary employment.

(2) Any person directly under contract to an independent school or school district who may have unsupervised contact with school children.

(3) Any employee of a contractor under contract to an independent school or school district in a position that may result in unsupervised contact with school children.

(4) Any student working toward a degree in teaching who is a student teacher in a school within the superintendent's or headmaster's jurisdiction.

(b) After signing a user agreement, a superintendent or a headmaster shall make a request directly to the Vermont criminal information center. A contractor shall make a request through a superintendent or headmaster.

(c) A request made under this section shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont criminal information center which shall reflect the cost of obtaining the record from the FBI. The fee shall be paid in accordance with adopted school board policy.

(d) Upon completion of a criminal record check, the Vermont criminal information center shall send to the superintendent or headmaster a notice that no record exists or, if a record exists:

(1) ~~a~~ A copy of any criminal record for Vermont convictions, ~~and~~.

(2) ~~if~~ If the requester is a superintendent, a notice of any criminal record which is located in either another state repository or FBI records, but not a record of the specific convictions except those relating to crimes of a sexual nature involving children.

(3) ~~if~~ If the requester is a headmaster, a notice of any criminal record which is located in either another state repository or FBI records, but not a record of the specific convictions. However, if there is a record relating to any crimes of a sexual nature involving children, the Vermont criminal information center shall send this record to the commissioner who shall notify the headmaster in writing, with a copy to the person about whom the request was made, that the record includes one or more convictions for a crime of a sexual nature involving children.

* * *

(h)(1) Superintendents, headmasters of recognized or approved Vermont independent schools, and their contractors shall request from the department for children and families information from the child abuse and neglect registry and from the department of disabilities, aging, and independent living information from the vulnerable adult abuse, neglect, and exploitation registry for the following:

(A) The person a superintendent or headmaster is prepared to recommend for any full-time, part-time, or temporary employment.

(B) Any person directly under contract to an independent school or school district who may have unsupervised contact with schoolchildren.

(C) Any employee of a contractor under contract to an independent school or school district in a position that may result in unsupervised contact with schoolchildren.

(D) Any student working toward a degree in teaching who is a student teacher in a school within the superintendent's or headmaster's jurisdiction.

(2) The department for children and families and the department of disabilities, aging, and independent living shall adopt rules governing the process for registry information requests and the dissemination and maintenance of records in accordance with this subsection.

Sec. 6. 16 V.S.A. § 256 is amended to read:

§ 256. CONTINUED VALIDITY OF CRIMINAL RECORD CHECK;
MAINTENANCE OF RECORDS

(a) Anyone required to request a criminal record check or registry check under this subchapter about a person who previously has undergone a check, regardless of whether the check was for student teaching, licensure, or employment purposes, shall comply with that requirement by ~~acquiring the results of the previous criminal record check unless:~~

~~(1) the person refuses to authorize release of the information;~~

~~(2) the record no longer exists; or~~

~~(3) since the record check, there has been a period of one year or more during which the person has not worked for a Vermont school district or independent school requesting another record check or registry check in accordance with the procedures set forth in this subchapter.~~

(b) Anyone required to request a criminal record check or registry check under this subchapter about a person who previously has undergone a check may request a name and date of birth or fingerprint-supported recheck of the record or registry at any time during the course of the record subject's employment or service in the capacity for which the original check was authorized. Rechecking criminal records may be accomplished through a subscription service.

(c) A superintendent or headmaster who receives criminal record information under this subchapter shall maintain the record or information pursuant to the user agreement for maintenance of records. At the end of the time required by the user agreement for maintenance of the information, the superintendent or headmaster shall destroy the information in accordance with the user agreement unless the person authorizes maintenance of the record. If authorized by the person, the superintendent or headmaster shall:

(1) if the information is a notice of no criminal record, securely maintain the information indefinitely; or

(2) if the information is a criminal record or notice of the existence of a criminal record, send it to the commissioner for secure maintenance in a central records repository.

~~(e)~~(d) Upon authorization by the person, the commissioner shall release information maintained in the central records repository to a requesting superintendent or, in the case of a requesting headmaster, to the person. The commissioner shall maintain the notice or record in the repository at least until the person ceases working for a Vermont school district or independent school for a period of one year or more or until the person requests that the record be destroyed.

~~(d)~~(e) The state board may adopt rules regarding maintenance of records.

Sec. 7. 16 V.S.A. § 260 is amended to read:

§ 260. SCHOOL BOARD POLICIES

Each school board shall, by July 1, 1999, adopt a policy on supervision of volunteers and work study students. Policies shall require that superintendents, headmasters of recognized or approved schools, and their contractors check the names and birth dates of any volunteers or work study students with the Vermont Internet sex offender registry prior to allowing the volunteers or work study students unsupervised contact with schoolchildren. A person who is on the Vermont Internet sex offender registry shall not be eligible to be a volunteer or work study student.

Sec. 8. 20 V.S.A. § 2064 is added to read:

§ 2064. SUBSCRIPTION SERVICE

(a) As used in this section:

(1) "State Identification Number (SID)" means a unique number generated by the center to identify a person in the criminal history database.

(2) "Subscription service" means a service provided by the center whereby authorized requestors may be notified when an individual's criminal record is updated.

(b) The center shall provide the department for children and families and education officials authorized under subchapter 4 of chapter 5 of Title 16 to receive criminal records access to a criminal record subscription service. Authorized persons may subscribe to an individual's SID number, provided the individual has given written authorization on a release form provided by the center.

(c) The release form shall contain the individual's name, signature, date of birth, and place of birth. The release form shall state that the individual has the right to appeal the findings to the center, pursuant to rules adopted by the commissioner of public safety.

(d) The center shall provide authorized officials with information regarding the subscription service offered by the center prior to being authorized to participate in the subscription service. The materials shall address the following topics:

(1) Requirements of subscription, renewal, and cancellation with the service.

(2) How to interpret the criminal conviction records.

(3) How to obtain source documents summarized in the criminal conviction records.

(4) Misuse of the subscription service.

(e) Authorized officials shall certify on their subscription request that they have read and understood materials prior to receiving authorization to request a subscription from the center.

(f) During the subscription period, the center shall notify authorized officials in writing if new criminal conviction information is added to an individual's criminal history record. Notification may be sent electronically.

(g) An authorized official who receives a criminal conviction record pursuant to this section shall provide a free copy of such record to the subject of the record within ten days of receipt of the record.

(h) Except insofar as criminal conviction record information must be retained or made public pursuant to chapter 51 of Title 16 or the state board of education administrative rules promulgated thereunder, no person shall confirm the existence or nonexistence of criminal conviction record information or disclose the contents of a criminal conviction record without the individual's permission to any person other than the individual and properly designated employees of the authorized education official who have a documented need to know the contents of the record.

(i) Except insofar as criminal conviction record information must be retained or made public pursuant to chapter 51 of Title 16 or the state board of education administrative rules promulgated thereunder, authorized education officials shall confidentially retain all criminal conviction information received pursuant to this section for a period of three years. At the end of the retention period, the criminal conviction information must be shredded.

(j) A person who violates any subsection of this section shall be assessed a civil penalty of not more than \$5,000.00. Each unauthorized disclosure shall constitute a separate civil violation. The office of the attorney general shall have authority to enforce this section.

Sec. 9. 16 V.S.A. § 563a is added to read:

§ 563a. SCHOOL BOARDS; PREVENTION OF CHILD ABUSE

The school board of a school district shall:

(1) Ensure that all adults working in the schools receive orientation, based on materials recommended by the agency of human services and the department of education, on the prevention, identification, and reporting of child abuse.

(2) Provide opportunity for parents and caregivers to receive information and education, based on materials recommended by the agency of human services and the department of education, regarding child sexual abuse and sexual violence, mandatory reporting of child abuse, signs and symptoms of sexual abuse, sexual violence, grooming processes, and other predatory behaviors of sexual offenders.

Sec. 10. 33 V.S.A. § 3502 is amended to read:

§ 3502. CHILD CARE FACILITIES; SCHOOL AGE CARE IN PUBLIC SCHOOLS; 21ST CENTURY FUND

* * *

(d)(1) Regulations pertaining to child care facilities and family child care homes shall be designed to ensure that children in child care facilities and family child care homes are provided with wholesome growth and educational experiences, and are not subjected to neglect, mistreatment, or immoral surroundings.

(2) A licensed child care facility shall ensure that all adults working at the facility receive orientation, based on materials recommended by the agency of human services and the department of education, on the prevention, identification, and reporting of child abuse, including child sexual abuse.

* * *

Sec. 11. COMMUNITY OUTREACH PLAN

The agency of human services shall research the most effective way to raise community awareness about child sexual abuse, including the role of adults, with a goal of creating a community outreach plan that includes such strategies as educational materials and public service announcements. The agency shall

report on its progress by November 15, 2009 to the senate committee on health and welfare and to the house committee on human services.

Sec. 12. CENTER FOR THE PREVENTION AND TREATMENT OF SEXUAL ABUSE

(a) There is established within the agency of human services the Vermont center for the prevention and treatment of sexual abuse (center). The center shall be jointly overseen by the commissioner of the department of corrections and the commissioner of the department for children and families.

(b) The purpose of the center shall be to protect Vermont's citizens from sexual assault and child sexual abuse. The center shall oversee Vermont's systematic response to sexual assault and child sexual abuse, while recognizing that many agencies, organizations, and individuals have their own independent roles and responsibilities within this system.

(c) The responsibilities of the center shall include:

(1) Overseeing and coordinating sex offender treatment programs in correctional and juvenile institutions and in the community with support from the department of corrections and the department for children and families.

(2) Overseeing and coordinating victim and family treatment programs with support from the department for children and families.

(3) Providing support to sexual abuse prevention programs statewide and in local communities.

(4) Providing training to recognize and prevent sexual abuse in consultation with the department of corrections, the department for children and families, the department of state's attorneys and sheriffs, and other agencies, organizations, and individuals as are desirable and necessary.

(5) Providing a central organization for the acquisition and dissemination of information regarding best practices for the prevention of sexual violence; the treatment and supervision of adult and juvenile offenders; the provision of victims services; judicial practices conducive to public protection and the supervision of offenders; protocols for coordinated investigations of allegations of child sexual abuse; and any other information that may be beneficial in aiding Vermont's response to sexual abuse.

(d) The commissioner of the department of corrections and the commissioner of the department for children and families shall be responsible for maintaining and providing staffing for the center and shall report to the general assembly periodically on the status of the center.

Sec. 13. 13 V.S.A. § 3258 is added to read:

§ 3258. SEXUAL EXPLOITATION OF A MINOR

(a) No person shall engage in a sexual act with a minor if:

(1) the actor is at least 48 months older than the minor;

(2) the actor is in a position of power, authority, or supervision over the minor by virtue of the actor's professional, legal, occupational, or volunteer status and the minor's participation in a program or activity; and

(3) the actor abuses his or her position of power, authority, or supervision over the minor in order to engage in a sexual act.

(b) A person who violates subsection (a) of this section shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both.

Sec. 14. 13 V.S.A. § 5404 is amended to read:

§ 5404. REPORTING UPON RELEASE FROM CONFINEMENT OR SUPERVISION

(a) Upon receiving a sex offender from the court on a probationary sentence or any alternative sentence under community supervision by the department of corrections, or prior to releasing a sex offender from confinement or supervision, the department of corrections shall forward to the department the following information concerning the sex offender:

(1) an update of the information listed in subsection 5403(a) of this title;

(2) the address upon release and whether the offender will be living with a child under the age of 16;

(3) name, address, and telephone number of the local department of corrections office in charge of monitoring the sex offender; and

(4) documentation of any treatment or counseling received.

(b) The department of corrections shall notify the department within 24 hours of the time a sex offender changes his or her address or place of employment, or enrolls in or separates from any postsecondary educational institution, or begins residing with a child under the age of 16. In addition, the department of corrections shall provide the department with any updated information requested by the department.

(c) The information required to be provided by subsection (a) of this section shall also be provided by the department of corrections to a sex offender's parole or probation officer within three days of the time a sex offender is placed on probation or parole by the court or parole board.

(d) If it has not been previously submitted, upon receipt of the information to be provided to the department pursuant to subsection (a) of this section, the department shall immediately transmit the conviction data and fingerprints to the Federal Bureau of Investigation.

Sec. 15. 13 V.S.A. § 5407 is amended to read:

§ 5407. SEX OFFENDER'S RESPONSIBILITY TO REPORT

(a) Except as provided in section 5411d of this title, a sex offender shall report to the department as follows:

* * *

(3) within three days after any change of address, or if a person is designated as a high-risk sex offender pursuant to section 5411b of this title, that person shall report to the department within 36 hours, and shall report whether a child under the age of 16 resides at such address;

* * *

(5) within three days after any change in place of employment; and

(6) within three days of any name change;

(7) within three days of a child under the age of 16 moving into the residence of the registrant.

Sec. 16. 13 V.S.A. § 5415 is added to read:

§ 5415. ENFORCEMENT; SPECIAL INVESTIGATION UNITS

(a) Special investigation units, created pursuant to 24 V.S.A. § 1940, shall be responsible for the investigation of violations of this chapter's registry requirements and are authorized to conduct in-person registry compliance checks in a time, place, and manner it deems appropriate in furtherance of the purposes of this chapter. This section shall not be construed to prohibit local law enforcement from enforcing the provisions of this chapter.

(b) The department of public safety shall report to the senate and house committees on or before December 15, 2009, and annually thereafter, regarding its efforts under this section.

Sec. 17. APPROPRIATION; SPECIAL INVESTIGATION UNITS

(a) The sum of \$770,000.00 is appropriated from the general fund for the department of state's attorneys and sheriffs for fiscal year 2010 for the purpose of funding grants for special investigation units pursuant to 24 V.S.A. § 1940.

(b) The sum of \$880,000.00 is appropriated from the general fund for the department of public safety for fiscal year 2010 for the purpose of funding

Vermont state police investigators for special investigation units. The Vermont state police shall have the authority to coordinate and supervise the case management of the special investigation units.

Sec. 18. 33 V.S.A. § 4917 is amended to read:

§ 4917. MULTIDISCIPLINARY TEAMS; EMPANELING

(a) The commissioner or his or her designee may empanel a multidisciplinary team or a special investigative multi-task force team or both wherever in the state there may be a probable case of child abuse or neglect which warrants the coordinated use of several professional services. These teams shall participate and cooperate with the local special investigation unit in compliance with 13 V.S.A. § 5415.

(b) The commissioner or his or her designee, in conjunction with professionals and community agencies, shall appoint members to the multidisciplinary teams which may include persons who are trained and engaged in work relating to child abuse or neglect such as medicine, mental health, social work, nursing, child care, education, law, or law enforcement. The teams shall include a representative of the department of corrections. Additional persons may be appointed when the services of those persons are appropriate to any particular case.

* * *

Sec. 19. 20 V.S.A. § 1931 is amended to read:

§ 1931. POLICY

It is the policy of this state to assist federal, state, and local criminal justice and law enforcement agencies in the identification, detection or exclusion of individuals who are subjects of the investigation or prosecution of ~~violent~~ crimes. Identification, detection, and exclusion may be facilitated by the DNA analysis of biological evidence left by the perpetrator of a ~~violent~~ crime and recovered from the crime scene. The DNA analysis of biological evidence can also be used to identify missing persons.

Sec. 20. 20 V.S.A. § 1932 is amended to read:

§ 1932. DEFINITIONS

As used in this subchapter:

* * *

(5) “DNA sample” means a forensic unknown tissue sample or a tissue sample provided by any person convicted of ~~violent~~ a designated crime ~~or a forensic unknown sample~~. The DNA sample may be blood or other tissue type specified by the department.

* * *

(10) "State DNA database" means the laboratory DNA identification record system. The state DNA database is a collection of the DNA records related to forensic casework, ~~convicted offenders~~ persons required to provide a DNA sample under this subchapter, and anonymous DNA records used for protocol development or quality control.

* * *

(12) "Designated crime" means any of the following offenses:

(A) a felony;

(B) 13 V.S.A. § 1042 (domestic assault);

(C) any crime for which a person is required to register as a sex offender pursuant to subchapter 3 of chapter 167 of Title 13;

(D) an attempt to commit any offense listed in this subdivision; or

~~(C)~~(E) any other offense, if, as part of a plea agreement in an action in which the original charge was a crime listed in this subdivision and probable cause was found by the court, there is a requirement that the defendant submit a DNA sample to the DNA data bank.

Sec. 21. 20 V.S.A. § 1933 is amended to read:

§ 1933. DNA SAMPLE REQUIRED

(a) The following persons shall submit a DNA sample:

(1) ~~every~~ A person convicted in a court in this state of a designated crime on or after ~~the effective date of this subchapter~~; and April 29, 1998.

(2) ~~every~~ A person who was convicted in a court in this state of a designated crime prior to ~~the effective date of this subchapter~~ April 29, 1998, and, after ~~the effective date of this subchapter~~ such date, is:

(A) in the custody of the commissioner of corrections pursuant to 28 V.S.A. § 701;

(B) on parole for a designated crime;

(C) serving a supervised community sentence for a designated crime; ~~and~~ or

(D) on probation for a designated crime.

(b) A person required to submit a DNA sample who is serving a sentence ~~for a designated crime~~ in a correctional facility shall have his or her DNA samples collected or taken at the receiving correctional facility, or at a place

and time designated by the commissioner of corrections or by a court, if the person has not previously submitted a DNA sample.

(c) A person serving a sentence for a designated crime not confined to a correctional facility shall have his or her DNA samples collected or taken at a place and time designated by the commissioner of corrections, the commissioner of public safety, or a court if the person has not previously submitted a DNA sample in connection with the designated crime for which he or she is serving the sentence.

Sec. 22. 20 V.S.A. § 1940 is amended to read:

§ 1940. EXPUNGEMENT OF RECORDS AND DESTRUCTION OF SAMPLES

~~(a) If a person's conviction of a designated crime is reversed and the case is nolle prosequi or dismissed or the person is granted a full pardon~~ In accordance with procedures set forth in subsection (b) of this section, the department shall destroy the DNA sample and any records of a person related to the sample that were taken in connection with a particular alleged designated crime in any of the following circumstances:

(1) A person's conviction related to an incident that caused the DNA sample to be taken is reversed, and the case is dismissed.

(2) The person is granted a full pardon related to an incident that caused the DNA sample to be taken.

(b) If any of the circumstances in subsection (a) of this section occur, the court with jurisdiction or, as the case may be, the governor, shall so notify the department, and the person's DNA record in the state DNA database and CODIS and the person's DNA sample in the state DNA data bank shall be removed and destroyed. The laboratory shall purge the DNA record and all other identifiable information from the state DNA database and CODIS and destroy the DNA sample stored in the state DNA data bank. If the person has more than one entry in the state DNA database, CODIS, or the state DNA data bank, only the entry related to the dismissed case shall be deleted. The department shall notify the person upon completing its responsibilities under this subsection, by certified mail addressed to the person's last known address.

~~(b)(c)~~ (c) If the identity of the subject of a forensic unknown sample becomes known and that subject is excluded as a suspect in the case, the sample record shall be removed from the state DNA database upon the conclusion of the criminal investigation and finalization of any criminal prosecution.

Sec. 23. 20 V.S.A. § 1932 is amended to read:

§ 1932. DEFINITIONS

As used in this subchapter:

* * *

(5) “DNA sample” means a forensic unknown tissue sample or a tissue sample provided by any person convicted of a designated crime or for whom the court has determined at arraignment there is probable cause that the person has committed a felony. The DNA sample may be blood or other tissue type specified by the department.

Sec. 24. 20 V.S.A. § 1933 is amended to read:

§ 1933. DNA SAMPLE REQUIRED

(a) The following persons shall submit a DNA sample:

(1) A person convicted in a court in this state of a designated crime on or after April 29, 1998.

(2) A person for whom the court has determined at arraignment there is probable cause that the person has committed a felony in this state on or after July 1, 2011.

(3) A person who was convicted in a court in this state of a designated crime prior to April 29, 1998 and, after such date, is:

(A) in the custody of the commissioner of corrections pursuant to 28 V.S.A. § 701;

(B) on parole for a designated crime;

(C) serving a supervised community sentence for a designated crime;
or

(D) on probation for a designated crime.

(b) At the time of arraignment, the court shall set a date and time for the person to submit a DNA sample.

(c) A person required to submit a DNA sample who is serving a sentence in a correctional facility shall have his or her DNA samples collected or taken at the receiving correctional facility, or at a place and time designated by the commissioner of corrections or by a court, if the person has not previously submitted a DNA sample.

~~(e)~~(d) A person serving a sentence for a designated crime not confined to a correctional facility shall have his or her DNA samples collected or taken at a place and time designated by the commissioner of corrections, the

commissioner of public safety, or a court if the person has not previously submitted a DNA sample in connection with the designated crime for which he or she is serving the sentence.

Sec. 25. 20 V.S.A. § 1940 is amended to read:

§ 1940. EXPUNGEMENT OF RECORDS AND DESTRUCTION OF SAMPLES

(a) In accordance with procedures set forth in subsection (b) of this section, the department shall destroy the DNA sample and any records of a person related to the sample that were taken in connection with a particular alleged designated crime in any of the following circumstances:

(1) A person's conviction related to an incident that caused the DNA sample to be taken is reversed and the case is dismissed.

(2) The person is granted a full pardon related to an incident that caused the DNA sample to be taken.

(3) If the sample was taken post-arraignment, the felony charge which required the DNA sample is downgraded to a misdemeanor by the prosecuting attorney, upon a plea agreement or the person is convicted of a lesser offense that is a misdemeanor.

(4) If the sample was taken post-arraignment, the person is acquitted after a trial of all charges related to the incident which prompted the taking of the DNA sample.

(5) If the sample was taken post-arraignment, all criminal charges related to an incident that caused the DNA sample to be taken are dismissed by either the court or the state after arraignment, unless the attorney for the state can show good cause why the sample should not be destroyed.

* * *

Sec. 26. Rule 15 of the Vermont Rules of Criminal Procedure is amended to read:

RULE 15. DEPOSITIONS

* * *

(f) Protection of Deponents.

(1) *Deponent's Counsel and Victim Advocate.* A deponent may have counsel present at the deposition and may make legal objections to questions. The deponent shall be treated as a party at hearings on motions pertaining to the deposition. A victim of an alleged crime may have a victim advocate present during the deposition. The deponent may apply to the court for a

protective order if the deponent believes that he or she is being subjected to harassment or intimidation. A subpoena issued pursuant to V.R.Cr.P. 17, or other notice of the deposition given to the deponent, shall include notice that the deponent may have the assistance of counsel and the victim advocate as provided herein and seek a protective order as provided in subdivision (f)(3).

(2) *Depositions of Sensitive Witnesses.* A person under the age of 16 who is the victim in a prosecution under 13 V.S.A. § 2602 (lewd and lascivious conduct with a child), 3252 (sexual assault), 3253 (aggravated sexual assault), or 3253a (aggravated sexual assault of a child) shall not be deposed. A person under the age of 16 or any person who is a victim in a prosecution under 13 V.S.A. § 2601 (lewd and lascivious conduct), ~~2602 (lewd and lascivious conduct with a minor)~~, 3252 (sexual assault), or 3253 (aggravated sexual assault) shall be considered a sensitive witness. Prior to taking the deposition of a sensitive witness, the party seeking to take the deposition shall consult with the other parties and the deponent in an effort to reach an agreement on the time, place, manner and scope of the taking of the deposition. If an agreement cannot be reached, the party seeking to take the deposition shall so advise the court and specify the matters which are in dispute. The court shall then issue an order regulating the taking of the deposition including, in its discretion, a requirement that the deposition be taken in the presence of a judge or special master. The restrictions of 13 V.S.A. § 3255(a) shall apply to depositions. If a party taking a deposition proposes to ask about information that falls within 13 V.S.A. § 3255(a)(3)(A)-(C), the party shall notify the other parties and the deponent of this intent prior to seeking agreement on the scope of the deposition.

(3) *Protective Orders.* At the request of a party or deponent, and for good cause shown, the court may make any protective order which justice requires to protect a party or deponent from emotional harm, unnecessary annoyance, embarrassment, oppression, invasion of privacy, or undue burden of expense or waste of time. Such orders may include, among other remedies, the following: (1) that the deposition may be taken only on specified terms and conditions, including a designation of the time, place, and manner of taking the deposition; (2) that the deposition may be taken only by written questions; (3) that certain matters not be inquired into, or that the scope of the deposition be limited to certain matters; (4) that the deposition be conducted with only such persons present as the court may designate; (5) that after the deposition has been taken, the tape or transcription be sealed until further order of the court; (6) that the deposition not be taken. In ruling on such request, the court may consider, among other things, the age, health, level of intellectual functioning and emotional condition of the witness, whether the witness has knowledge material to the proof of or defense to any essential element of the

crime, whether the witness has provided a full written, taped or transcribed account of his or her proposed testimony at trial, whether the witness's testimony will relate only to peripheral issue in the case, or whether an informal interview or telephone conference with the witness will suffice for the purposes of discovery in the case.

Sec. 27. REPORT

The court administrator, the department of state's attorneys and sheriffs, and the office of the defender general shall individually report to the senate and house committees on judiciary in January 2012 on the impacts of Sec. 21 of this act as it relates to disposition of such cases.

Sec. 28. Rule 804a of the Vermont Rules of Evidence is amended to read:

804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE ~~TEN~~ TWELVE OR UNDER; ~~MENTALLY RETARDED OR MENTALLY ILL PERSON IN NEED OF GUARDIANSHIP~~

(a) Statements by a person who is a child ~~ten~~ 12 years of age or under or a ~~mentally retarded or mentally ill~~ person in need of guardianship as defined in 14 V.S.A. ~~§ 3061(4) or (5)~~ § 3061 at the time ~~of trial~~ the statements were made are not excluded by the hearsay rule if the court specifically finds at the time they are offered that:

(1) the statements are offered in a civil, criminal, or administrative proceeding in which the child or ~~mentally retarded or mentally ill~~ person in need of guardianship is a putative victim of sexual assault under 13 V.S.A. § 3252, aggravated sexual assault under 13 V.S.A. § 3253, aggravated sexual assault of a child under 13 V.S.A. § 3253a, lewd or lascivious conduct under 13 V.S.A. § 2601, ~~or lewd or lascivious conduct with a child under 13 V.S.A. § 2602~~, incest under 13 V.S.A. § 205, abuse, neglect, or exploitation under 33 V.S.A. § 6913, sexual abuse of a vulnerable adult under 13 V.S.A. § 1379, or wrongful sexual activity and the statements concern the alleged crime or the wrongful sexual activity; or the statements are offered in a juvenile proceeding under chapter ~~55~~ 53 of Title 33 involving a delinquent act alleged to have been committed against a child ~~thirteen~~ 13 years of age or under or a ~~mentally retarded or mentally ill~~ person in need of guardianship, if the delinquent act would be an offense listed herein if committed by an adult and the statements concern the alleged delinquent act; or the child is the subject of a petition alleging that the child is in need of care or supervision under chapter ~~55~~ 53 of Title 33, and the statement relates to the sexual abuse of the child;

(2) the statements were not taken in preparation for a legal proceeding and, if a criminal or delinquency proceeding has been initiated, the statements

were made prior to the defendant's initial appearance before a judicial officer under Rule 5 of the Vermont Rules of Criminal Procedure;

(3) the child or ~~mentally retarded or mentally ill~~ person in need of guardianship is available to testify in court or under Rule 807; and

(4) the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.

(b) Upon motion of either party in a criminal or delinquency proceeding, the court shall require the child or ~~mentally retarded or mentally ill~~ person in need of guardianship to testify for the state.

Sec. 29. 33 V.S.A. § 4916b is amended to read:

§ 4916b. HUMAN SERVICES BOARD HEARING

(a) Within 30 days of the date on which the administrative reviewer mailed notice of placement of a report on the registry, the person who is the subject of the substantiation may apply in writing to the human services board for relief. The board shall hold a fair hearing pursuant to 3 V.S.A. § 3091. When the department receives notice of the appeal, it shall make note in the registry record that the substantiation has been appealed to the board.

(b)(1) The board shall hold a hearing within 60 days of the receipt of the request for a hearing and shall issue a decision within 30 days of the hearing.

(2) Priority shall be given to appeals in which there are immediate employment consequences for the person appealing the decision.

(3) At a hearing held under this subsection, evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, and, notwithstanding any administrative rule to the contrary, the Vermont Rules of Evidence are inapplicable except for the rules respecting privilege.

(A) Rule 804a of the Vermont Rules of Evidence shall not apply to hearings held under this subsection.

(B) Convictions and adjudications, whether by verdict, by judgment, or by a plea of any type, shall be competent evidence in a hearing held under this subchapter.

(c) A hearing may be stayed upon request of the petitioner if there is a related criminal or family court case pending in court which arose out of the same incident of abuse or neglect for which the person was substantiated.

(d) If no review by the board is requested, the department's decision in the case shall be final, and the person shall have no further right for review under

this section. The board may grant a waiver and permit such a review upon good cause shown.

Sec. 30. 13 V.S.A. § 3253a is added to read:

§ 3253a. AGGRAVATED SEXUAL ASSAULT OF A CHILD

(a) A person commits the crime of aggravated sexual assault of a child if the actor is over the age of 18 and commits sexual assault against a child under the age of 16 in violation of section 3252 of this title and at least one of the following circumstances exists:

(1) At the time of the sexual assault, the actor causes serious bodily injury to the victim or to another.

(2) The actor is joined or assisted by one or more persons in physically restraining, assaulting, or sexually assaulting the victim.

(3) The actor commits the sexual act under circumstances which constitute the crime of kidnapping.

(4) The actor has previously been convicted in this state of sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section, or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section if committed in this state.

(5) At the time of the sexual assault, the actor is armed with a deadly weapon and uses or threatens to use the deadly weapon on the victim or on another.

(6) At the time of the sexual assault, the actor threatens to cause imminent serious bodily injury to the victim or to another, and the victim reasonably believes that the actor has the present ability to carry out the threat.

(7) At the time of the sexual assault, the actor applies deadly force to the victim.

(8) The victim is subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence or the victim is subjected to repeated nonconsensual sexual acts as part of the actor's common scheme and plan.

(b) A person who commits the crime of aggravated sexual assault of a child shall be imprisoned for not less than 25 years with a maximum term of life, and, in addition, may be fined not more than \$50,000.00. The 25-year term of imprisonment required by this subsection shall be served and may not be

suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the 25-year term of imprisonment.

Sec. 31. LEGISLATIVE INTENT; CONSENT BY A MINOR

It is the intent of the general assembly in this act to address, among other issues, the Vermont supreme court's decisions in State v. Deyo, 2006 VT 120, and State v. Hazelton, 2006 VT 121. In both Deyo and Hazelton, the court ruled that the general assembly had adopted the common law doctrine that a minor cannot consent to a sexual act. Such a reading of the law disregards the plain language of the statutes which clearly indicates that the general assembly considered a minor's ability to consent when it enacted amendments to the statutory rape law in 2006 to ensure that teenagers who engaged in consensual sexual acts would not be criminally liable, or would at least not be subject to high mandatory minimum sentences. In this act, the general assembly responds to Deyo and Hazelton by clarifying further that "consent" as defined in 13 V.S.A. § 3251(3) means consent in fact.

Sec. 32. 13 V.S.A. § 3251 is amended to read:

§ 3251. DEFINITIONS

As used in this chapter:

* * *

(3) "Consent" means words or actions by a person indicating a voluntary agreement to engage in a sexual act. Provided, further, that when the general assembly uses the terms "consent," "consensual," and "nonconsensual," it does not intend to adopt the common law doctrine that a minor cannot consent to a sexual act.

* * *

Sec. 33. 13 V.S.A. § 7041 is amended to read:

§ 7041. DEFERRED SENTENCE

(a) Upon an adjudication of guilt and after the filing of a presentence investigation report, the court may defer sentencing and place the respondent on probation upon such terms and conditions as it may require if a written agreement concerning the deferring of sentence is entered into between the state's attorney and the respondent and filed with the clerk of the court.

(b) Notwithstanding subsection (a) of this section, the court may defer sentencing and place the respondent on probation without a written agreement between the state's attorney and the respondent if the following conditions are met:

- (1) the respondent is 28 years old or younger;
- (2) the crime for which the respondent is being sentenced is not a listed crime as defined in subdivision 5301(7) of this title;
- (3) the court orders a presentence investigation in accordance with the procedures set forth in Rule 32 of the Vermont Rules of Criminal Procedure, unless the state's attorney agrees to waive the presentence investigation;
- (4) the court permits the victim to submit a written or oral statement concerning the consideration of deferment of sentence;
- (5) the court reviews the presentence investigation and the victim's impact statement with the parties; and
- (6) the court determines that deferring sentence is in the interest of justice.

(c) Notwithstanding subsections (a) and (b) of this section, the court may not defer a sentence for a violation of section 2602 (lewd and lascivious conduct with a child), 3252(c) (sexual assault of a child under 16 unless the victim and the defendant were within five years of age and the act was consensual), 3252(d) or (e) (sexual assault of a child), 3253(a)(8) (aggravated sexual assault), or 3253a (aggravated sexual assault of a child) of this title.

(d) Entry of deferment of sentence shall constitute an appealable judgment for purposes of appeal in accordance with section 2383 of Title 12 and Rule 3 of the Vermont Rules of Appellate Procedure. Except as otherwise provided, entry of deferment of sentence shall constitute imposition of sentence solely for the purpose of sentence review in accordance with section 7042 of this title. The court may impose sentence at any time if the respondent violates the conditions of the deferred sentence during the period of deferment.

~~(e)~~(e) Upon violation of the terms of probation or of the deferred sentence agreement, the court shall impose sentence. Upon fulfillment of the terms of probation and of the deferred sentence agreement, the court shall strike the adjudication of guilt and discharge the respondent. Upon discharge Except as provided in subsection (g) of this section, the record of the criminal proceedings shall be expunged except that the record shall not be expunged until restitution has been paid in full upon the discharge of the respondent from probation, absent a finding of good cause by the court. Notwithstanding this subsection, the record shall not be expunged until restitution has been paid in full.

~~(e)~~(f) A deferred sentence imposed under subsection (a) or (b) of this section may include a restitution order issued pursuant to section 7043 of this

title. Nonpayment of restitution shall not constitute grounds for imposition of the underlying sentence.

(g) The Vermont criminal information center shall retain a special index of deferred sentences for sex offenses that require registration pursuant to section 5401 of this title. This index shall only list the name and date of birth of the subject of the expunged files and records, the offense for which the subject was convicted, and the docket number of the proceeding which was the subject of the expungement. The special index shall be confidential and may be accessed only by the director of the Vermont criminal information center and a designated clerical staff person for the purpose of providing information to the department of corrections in the preparation of a presentence investigation in accordance with 28 V.S.A. § 204a.

Sec. 34. 33 V.S.A. § 5119 is amended to read:

§ 5119. SEALING OF RECORDS

* * *

(f)(1) Except as provided in subdivisions (2), (3), ~~and (4)~~, and (5) of this subsection, inspection of the files and records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of such records, and only to those persons named in the record.

* * *

(5) The order unsealing a record pursuant to subdivisions (2), (3), and (4) of this subsection must state whether the record is unsealed entirely or in part and the duration of the unsealing. If the court's order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed or the particular persons who may have access to the record, or both.

(6)(A) If a person is convicted of a sex offense that requires registration pursuant to 13 V.S.A. § 5401, the court may inspect its own files and records included in the sealing order for the purpose of imposing sentence upon or supervising the person for the registrable offense.

(B) If a person is convicted of a sex offense that requires registration pursuant to 13 V.S.A. § 5401, the following persons or entities, without court permission, may inspect any files and records included in the sealing order:

(i) The department of corrections for the purpose of preparing a presentence investigation prior to the court's sentencing the person for the registrable offense.

(ii) Officials of correctional facilities operated by the department or in exercising supervision over the person in connection with the registrable offense.

(iii) A parole board in considering the person's parole or discharge or in exercising supervision over the person in connection with the registrable offense.

Sec. 35. 28 V.S.A. § 204 is amended to read:

§ 204. SUBMISSION OF WRITTEN REPORT; PROTECTION OF RECORDS

(a) A court, before which a person is being prosecuted for any crime, may in its discretion order the commissioner to submit a written report as to the circumstances of the alleged offense and the character and previous criminal history record of the person, with recommendation. If the presentence report is being prepared in connection with a person's conviction for a sex offense that requires registration pursuant to 13 V.S.A. § 5401, the commissioner shall obtain information pertaining to the person's juvenile record, if any, in accordance with 33 V.S.A. §§ 5117 and 5119, and any deferred sentences received for a registrable sex offense in accordance with 13 V.S.A. § 7041(g), and include such information in the presentence report.

* * *

(d) Any presentence report, pre-parole report, or supervision history prepared by any employee of the department in the discharge of the employee's official duty, except as provided in subdivision 204a(b)(5) and section 205 of this title, is privileged and shall not be disclosed to anyone outside the department other than the judge or the parole board, except that the court or board may in its discretion permit the inspection of the report or parts thereof by the state's attorney, the defendant or inmate or his or her attorney, or other persons having a proper interest therein, whenever the best interest or welfare of the defendant or inmate makes that action desirable or helpful.

* * *

Sec. 36. 28 V.S.A. § 204a is amended to read:

§ 204a. ~~SEXUAL~~ SEX OFFENDERS; ~~PRE-SENTENCE~~ PRESENTENCE INVESTIGATIONS; RISK ASSESSMENTS; PSYCHOSEXUAL EVALUATIONS

(a) The department of corrections shall conduct a presentence investigation for all persons convicted of:

- (1) lewd and lascivious conduct in violation of section 2601 of Title 13;

(2) lewd and lascivious conduct with a child in violation of section 2602 of Title 13;

(3) sexual assault in violation of section 3252 of Title 13;

(4) aggravated sexual assault in violation of section 3253 of Title 13; ~~or~~

(5) aggravated sexual assault of a child in violation of section 3253a of Title 13;

(6) kidnapping with intent to commit sexual assault in violation of subdivision 2405(a)(1)(D) of Title 13; or

(7) an offense involving sexual exploitation of children in violation of chapter 64 of Title 13.

(b) A presentence investigation required by this section:

(1) shall include an assessment of the offender's risk of reoffense and a determination of whether the person is a high risk offender;

(2) shall include a psychosexual evaluation if so ordered by the court; ~~and~~

(3) shall include information regarding the offender's records maintained by the department for children and families in the child abuse and neglect registry pursuant to 33 V.S.A. § 4916 if the offender was previously substantiated for child abuse or neglect;

(4) shall include information, if any, regarding any deferred sentences received by the offender for a registrable sex offense in accordance with 13 V.S.A. § 7041(g); and

(5) shall be completed before the defendant is sentenced. Upon completion, the department shall submit copies of the presentence investigation to the court, the state's attorney, ~~and~~ the defendant's attorney, and the department for children and families. Copies of a presentence investigation authorized by this subdivision shall remain privileged and are not subject to public inspection.

* * *

(d) The requirement that a presentence investigation be performed pursuant to subsection (a) of this section:

(1) ~~may be waived if the court finds that a report is not necessary for purposes of sentencing; and~~

(2) shall not be interpreted to prohibit the performance of a presentence investigation, psychosexual evaluation, or risk assessment at any other time

during the proceeding, including prior to the entry of a plea agreement or prior to sentencing for a violation of probation.

* * *

Sec. 37. 33 V.S.A. § 4919 is amended to read:

§ 4919. DISCLOSURE OF REGISTRY RECORDS

(a) The commissioner may disclose a registry record only as follows:

* * *

(9) To the commissioner of the department of corrections in accordance with the provisions of 28 V.S.A. § 204a(b)(3).

* * *

Sec. 38. 28 V.S.A. § 252a is added to read:

§ 252a. REVIEW OF PROBATION CONDITIONS

(a) Whenever the court imposes a sentence upon a defendant who has been convicted of an offense enumerated in section 204a of this title that includes a period of incarceration of more than 180 days to serve to be followed by probation, the court shall review the probation conditions imposed at the time of sentencing after the incarceration portion of the sentence has been served, and prior to the offender's release to probation. Such review shall include information about the offender developed after the date of sentencing, including information about the offender's incarceration period.

(b) The department of corrections shall prepare a prerelease probation report to the court at least 30 days prior to the release based upon information available to the department. The prerelease probation report shall include the offender's degree of participation in treatment while incarcerated and the need for additional treatment or conditions and other information relevant to the offender's release to the probationary sentence. The department of corrections shall provide a copy of the prerelease probation report to the attorney for the offender and the prosecuting attorney at the same time it provides the report to the court.

(c) If the department of corrections, the prosecuting attorney, or the court on its own motion recommends a change to the original probation order, the court shall schedule a modification hearing prior to the release date. The court may modify the conditions or add further requirements as authorized by section 252 of this title. The offender shall have a reasonable opportunity to contest the modification prior to its imposition. The prosecuting attorney shall represent the state in connection with any proceeding held in accordance with this section.

Sec. 39. 28 V.S.A. § 252 is amended to read:

§ 252. CONDITIONS OF PROBATION

* * *

(b) When imposing a sentence of probation, the court may, as a condition of probation, require that the offender:

* * *

(16) Submit to periodic polygraph testing if the offender is being placed on probation for a sex offense that requires registration pursuant to 13 V.S.A. § 5401;

(17) Permit a probation officer or designee to monitor or examine the offender's activities, communications, and use of any computer or other digital or electronic device, including cell phone, smartphone, digital camera, digital video camera, digital music player or recorder, digital video player or recorder, personal digital assistant, portable electronic storage device, gaming system, or any other contemporary device capable of the storage of digital electronic communication or data storage or access to the Internet or other computer or digital network;

(18) Satisfy any other conditions reasonably related to his or her rehabilitation. The court shall not impose a condition prohibiting the offender from engaging in any legal behavior unless the condition is reasonably related to the offender's rehabilitation or necessary to reduce risk to public safety. Such conditions may include prohibiting the use of alcohol, prohibiting having contact with minors, prohibiting or limiting the use of a computer or other electronic devices, and permitting a probation officer access to all mail covers, subscription services, and credit card statements.

Sec. 40. LEGISLATIVE INTENT

It is the intent of the general assembly that Sec. 39 of this act be construed to presume that any search of a probationer or his or her houses, papers, and possessions be conducted in strict adherence with Chapter I, Article 11 of the Constitution of the State of Vermont.

Sec. 41. 28 V.S.A. § 255 is amended to read:

§ 255. DISCHARGE

(a) Upon the termination of the period of probation or the earlier discharge of the probationer in accordance with section 251 of this title, the probationer shall, ~~unless the court has ordered otherwise under subsection (b) of this section or under subsection 7043(1) of Title 13,~~ be relieved of any obligations

imposed by the order of the court and shall have satisfied the sentence for the crime.

(b) [Deleted.]

(c) A court hearing shall be held prior to discharging an offender from probation for a sex offense that requires registration pursuant to 13 V.S.A. § 5401, unless all parties and the department of corrections have filed notice in support of discharge with the court.

Sec. 42. 28 V.S.A. § 106 is added to read:

§ 106. SYSTEMS APPROACH TO COMMUNITY SUPERVISION OF SEX OFFENDERS; SPECIALIZED PROBATION OFFICERS

(a) The department of corrections shall establish a comprehensive systems approach to the management of sex offenders which employs longer and more intensive community supervision of higher-risk sex offenders by specialized probation officers coupled with regular polygraph tests and pre- and postincarceration treatment to promote rehabilitation.

(b) Multidisciplinary case management teams shall be created, each involving as appropriate a specialized probation or parole officer, a treatment provider, a victim's advocate, a representative of the department for children and families, and a forensic polygraph examiner. These professionals shall collaborate, prioritizing community safety and the protection of former victims and shall participate and cooperate with the local special investigation unit in compliance with 13 V.S.A. § 5415. These teams shall address the specific treatment and supervision needs of a particular offender to assure protection of the public, to assist that offender in reintegrating safely into the community, to support and protect known victims, and respond to any new concerns about risk of reoffense.

(c) The department of corrections shall designate and specially train probation and parole officers in each district office to supervise sex offenders, to provide more consistent and intensive case management and impose and enforce conditions uniquely suited to aiding the offenders' reintegration into the community. These officers shall not have a caseload of more than 40 offenders.

Sec. 43. AUDIT OF DEPARTMENT OF CORRECTIONS' CASELOADS PERTAINING TO SEX OFFENDERS

(a) On or before January 15, 2010, the auditor of accounts shall submit to the house and senate committees on judiciary and the house committee on institutions and corrections an independent audit of probation and parole personnel's current sex offender management caseloads. The audit shall assess

the efficacy of the current model and provide recommendations for increasing oversight of community supervision of sex offenders and support for best practices for probation and parole personnel.

(b) The audit shall be conducted in consultation with the center for the prevention and treatment of sexual abuse.

Sec. 44. 28 V.S.A. § 204b is added to read:

§ 204b. HIGH-RISK SEXUAL OFFENDERS

A person who is sentenced to an incarcerative sentence for a violation of any of the offenses listed in subsection 204a(a) of this title, and who is designated by the department of corrections as high-risk pursuant to 13 V.S.A. § 5411b while serving his or her sentence, shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of 70 percent of his or her maximum sentence.

Sec. 45. 33 V.S.A. § 4913 is amended to read:

§ 4913. SUSPECTED CHILD ABUSE AND NEGLECT; REMEDIAL ACTION

(a) Any physician, surgeon, osteopath, chiropractor, or physician's assistant licensed, certified, or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, dentist, psychologist, pharmacist, any other health care provider, school superintendent, school teacher, school librarian, child care worker, school principal, school guidance counselor, mental health professional, social worker, probation officer, any employee, contractor, and grantee of the agency of human services who have contact with clients, police officer, camp owner, camp administrator, camp counselor, or member of the clergy who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 4914 of this title within 24 hours. As used in this subsection, "camp" includes any residential or nonresidential recreational program.

* * *

Sec. 46. TRAINING IN THE REPORTING OF SUSPECTED CHILD ABUSE; DEPARTMENT OF CORRECTIONS

The general assembly finds that employees, contractors, and grantees of the agency of human services who have contact with clients should be mandatory reporters under the law. The agency shall develop training for its employees in the identification and reporting of suspected child abuse and neglect, including

the assessment of risk of harm, and report to the senate and house committees on judiciary, the senate committee on health and welfare, the house committee on human services, and the house committee on corrections and institutions no later than September 15, 2009 regarding its efforts to ensure that its employees are properly trained.

Sec. 47. 28 V.S.A. § 502b is amended to read:

§ 502b. TERMS AND CONDITIONS OF PAROLE

(a) When an inmate is paroled, the parole board shall establish terms and conditions of parole that it deems reasonably necessary to ensure that the inmate will lead a law-abiding life and that will assist the inmate to do so. Such terms and conditions shall be set forth in the parolee's parole agreement. Terms and conditions of parole shall be designed to protect the victim, potential victims, and the public, and to reduce the risk of reoffense. Such conditions may include prohibiting the use of alcohol; prohibiting having contact with minors; prohibiting or limiting the use of a computer or other electronic devices; permitting a probation officer access to all mail covers, subscription services, and credit card statements; and permitting a probation officer to monitor or examine the offender's activities, communications, and use of any computer or other digital or electronic device, including cell phone, smartphone, digital camera, digital video camera, digital music player or recorder, digital video player or recorder, personal digital assistant, portable electronic storage device, gaming system, or any other contemporary device capable of the storage of digital electronic communication or data storage or access to the Internet or other computer or digital network.

* * *

Sec. 48. Rule 32.1 of the Vermont Rules of Criminal Procedure is amended to read:

RULE 32.1. REVOCATION AND MODIFICATION OF PROBATION

(a) Revocation of Probation.

(1) Preliminary Hearing. Whenever a probationer is held in custody on the ground that he or she has violated a condition of ~~his~~ probation, ~~he~~ the probationer shall be afforded a prompt hearing before a judicial officer in order to determine whether there is probable cause to hold the probationer for a revocation hearing. The probationer shall be given:

(A) notice of the preliminary hearing and its purpose and of the alleged violation of probation;

(B) an opportunity to appear at the hearing and present evidence in his or her own behalf;

(C) upon request, the opportunity to question opposing witnesses ~~against him~~ unless, for good cause, the judicial officer decides that justice does not require the appearance of the witness; and

(D) notice of ~~his~~ the right to be represented by counsel and ~~his~~ the right to assigned counsel if he or she is unable to obtain counsel.

The proceeding shall be taken down by a court reporter or recording equipment. If probable cause is found to exist, the probationers shall be held for a revocation hearing. If probable cause is not found to exist, the proceeding shall be dismissed.

(2) Revocation Hearing. The revocation hearing, unless waived by the probationer, shall be held within a reasonable time in the court in which probation is imposed. The probationer shall be given:

(A) written notice of ~~his~~ the alleged violation of probation;

(B) disclosure of the evidence against him or her;

(C) an opportunity to appear and to present evidence ~~in his own~~ behalf;

(D) the opportunity to question opposing witnesses ~~against him~~; and

(E) written notice of ~~his~~ the right to be represented by counsel and ~~his~~ the right to assigned counsel if he or she is unable to obtain counsel.

(3) Release From Custody.

(A) ~~A~~ Except as otherwise provided, a probationer held in custody pursuant to a request to revoke probation may be released by a judicial officer pending hearing or appeal. In determining conditions of release, the judicial officer shall consider the factors set forth in 13 V.S.A. § 7554(b). Any denial of or change in the terms of release shall be reviewable in the manner provided in 13 V.S.A. §§ 7554 and 7556 for ~~pre-trial~~ pretrial release.

(B) Notwithstanding subdivision (a)(3)(A) of this rule, a probationer who is serving a sentence for a sex offense that requires registration pursuant to 13 V.S.A. § 5401 who violates a risk-related condition of probation may be held in custody until the revocation hearing.

(b) Modification of Probation. A hearing and assistance of counsel are required before the terms or conditions of probation can be modified, unless the relief granted to the probationer upon his or her request or the court's own motion is favorable to ~~him~~ the probationer.

Sec. 49. AUDIT OF THE STATE'S SEXUAL ABUSE RESPONSE SYSTEM

(a) On or before November 15, 2011, and every five years thereafter, the auditor of accounts shall submit to the house and senate committees on judiciary and the house committee on corrections and institutions an independent audit of the state's sexual abuse response system that addresses prevention, criminal investigations, presentence investigations and sentencing of offenders, supervision and treatment of offenders, victim and family assistance and treatment, and training for those working in the system.

(b) The audit shall be conducted in consultation with the center for the prevention and treatment of sexual abuse.

Sec. 50. 33 V.S.A. § 306 is amended to read:

§ 306. ADMINISTRATIVE PROVISIONS

* * *

(c) The commissioner may publicly disclose the findings or information about any case of child abuse or neglect that has resulted in the fatality or near fatality of a child, including information obtained under chapter 49 of this title, unless the state's attorney or attorney general who is investigating or prosecuting any matter involving the fatality requests the commissioner to withhold disclosure, in which case the commissioner shall not disclose any information until completion of any criminal proceedings involving the fatality or the state's attorney or attorney general consents to disclosure, whichever occurs earlier.

Sec. 51. LOCAL COMMUNITY SEX OFFENDER RESIDENCY RESTRICTIONS

(a) Some local communities in Vermont have recently enacted or debated local ordinances that are designed to prevent sexual violence against children by restricting where registered sex offenders can live. These restrictions usually prohibit a sex offender from living within a certain distance of a school, park, playground, or child care facility.

(b) The general assembly is very concerned that such policies could have a negative impact on public safety in our rural state by isolating offenders or driving them underground. Densely populated towns and city centers that have ordinances push offenders out into more rural communities where there are fewer opportunities for successful community reintegration and law enforcement supervision. Sex offender compliance with the state registry is currently over 99 percent, and the general assembly believes that keeping this high rate is essential to public safety.

(c) According to sex offender management experts, research has shown that sex offender residency restrictions are unlikely to deter sex offenders from committing new crimes and should not be considered a viable public safety strategy. While residency restrictions are intended to reduce sex crimes against children by strangers, 90 percent of such crimes are committed by a relative or family friend.

(d) Therefore, the general assembly respectfully requests that the Vermont League of Cities and Towns, Inc. work proactively with local communities to ensure they are receiving accurate and substantive information about the lack of efficacy of such laws and to encourage communities to focus on prevention and other strategies to improve community safety.

Sec. 52. REPORT; DEPARTMENT OF CORRECTIONS

On or before November 15, 2009, the department of corrections shall report to the senate and house committees on judiciary and the house committee on corrections and institutions regarding the following:

(1) Proposed legislation on protocols for releasing a sex offender from confinement into a home with children. If placement in a home with children is being considered, the department of corrections shall notify the department for children and families, and the departments shall work together to determine whether such a placement is appropriate. If any risk of harm to a child is determined to exist based on placement of the offender in the home, the residence shall not be approved. If a placement is determined to be appropriate, such a decision shall be revisited at set times by the departments to ensure that a risk of harm to a child does not emerge. The department shall develop these protocols in consultation with the chairs of the following committees:

- (A) Senate judiciary;
- (B) House judiciary;
- (C) House corrections and institutions;
- (D) Senate health and welfare; and
- (E) House human services.

(2) Criteria and centralized review of release recommendations made by the department with respect to sex offenders. Decisions to release or recommend release of a sex offender from confinement or discharge from supervision should be done in consultation with a treatment team of individuals with expertise in the field of managing sex offenders, and such decisions and the rationale should be documented in the case record. A decision to release an offender despite treatment team advice to the contrary should be reviewed by

the commissioner or a designee. The department should operate under the assumption that sex offenders should be supervised in the community for as long as possible unless overwhelming information indicates otherwise.

(3) A plan to improve training and oversight of department employees who work with sex offenders. Training should include orientation and mentoring for new employees, as well as continuing education for long-term employees.

(4) An update on the implementation of the provisions of this act.

Sec. 53. EFFECTIVE DATE

(a) This section and Secs. 1, 2, 11–13, 16–22, 30–32, and 49–52 of this act shall take effect upon passage.

(b) Secs. 3–7, 9, 10, 14, 15, 26–29, and 33–48 of this act shall take effect July 1, 2009.

(c) Sec. 8 of this act shall take effect July 1, 2010.

(d) Secs. 23–25 of this act shall take effect July 1, 2011.

And that when so amended the bill ought to pass.

Senator Sears, 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 the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered on a roll call, Yeas 29, Nays 0.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Lyons, MacDonald, Maynard, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr, White.

The Senator who voted in the negative was: None.

The Senator absent and not voting was: Kittell.

****During debate of the measure, Senator Sears addressed the Chair in connection with the Judiciary Committee report on the bill and requested that the statement of purpose to the bill be journalized, which was agreed to and is as follows:

“This bill proposes to:

Develop a comprehensive statewide approach to the prevention of child sexual abuse;

Include a sexual abuse prevention component in all school health curricula;

Conduct outreach efforts to raise awareness of families and communities about child sexual abuse;

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

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

Permit criminal record checks to be done through a subscription service with the Vermont criminal information center;

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

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

Formally establish the center for the prevention and treatment of sexual abuse and its mission;

Create a new crime of sexual exploitation of a minor;

Require registered sex offenders to report whether they are living in a household with a child under the age of 16;

Fund and staff special investigation units fully and place responsibility for sex offender registry compliance with the units;

Require participation by the department of corrections in child protection response teams and special investigation units;

Upon passage, require collection of DNA from any person convicted for a misdemeanor domestic violence or a misdemeanor sex offense for which registration as a sex offender is required;

As of 2011, require collection of DNA from any person arraigned for a felony offense; eliminate the right to take pretrial depositions of child victims in sexual abuse cases;

Amend the age requirement for admissibility of prior statements of child victims to 12 years at the time the statements were made;

Amend the evidentiary requirements for human services board substantiation proceedings to minimize the impact on child witnesses;

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

Clarify that the general assembly did not adopt the common law definition of consent and did previously enact legislation to ensure that teenagers who engaged in consensual sexual acts would not be criminally liable, or would at least not be subject to high mandatory minimum sentences;

Eliminate the option of a deferred sentence for a person charged with sexual abuse of a child;

Establish an index for deferred sentences and permit the department of corrections access for the purpose of preparing a presentence report for the sentencing court for most sex offenses;

Mandate presentence reports for most sex offenses and add new crimes for which the reports are required;

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

Permit the department for children and families access to presentence investigations;

Permit a sentencing court access to its sealed juvenile records of a person convicted of a sexual offense;

Permit the department of corrections access to any sealed juvenile records of a person convicted of a sexual offense for the purpose of developing a presentence report or supervising the person;

Require courts to review and amend conditions of probation for sex offenders as appropriate when a split sentence is imposed;

Permit periodic polygraph examinations and supervision of computer activities as special conditions of probation;

Require a judicial hearing prior to discharging a sex offender from probation;

Establish a systems approach of community supervision of sex offenders and assign specialized probation officers to work only with sex offenders;

Require an independent review of probation and parole caseloads as they relate to supervision of sex offenders;

Require high-risk sex offenders to serve at least 70 percent of their maximum sentence;

Add all agency of human services employees who have contact with clients to the list of mandatory reporters of suspected child abuse or neglect;

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

Establish an independent review of the state sexual abuse response system;

Fully comply with federal law that requires the department for children and families to release information to the public about child fatalities to include release of information about “near fatalities”;

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

Require the department of corrections to report to the general assembly:

- protocols for permitting a sex offender to live in a home with children and plans to notify the department for children and families;
- criteria and centralized review or release recommendations made by the department with respect to sex offenders;
- a plan to improve training and oversight of department employees who work with sex offenders; and
- an update on the implementation of this act.”

Recess

On motion of Senator Shumlin the Senate recessed until one o'clock and fifty-five minutes.

Called to Order

At one o'clock and fifty-five minutes the Senate was called to order by the President.

Joint Assembly

At two o'clock, the hour having arrived for the meeting of the two Houses in Joint Assembly pursuant to:

J.R.S. 5. Joint resolution to provide for a Joint Assembly to hear the budget message of the Governor.

The Senate repaired to the hall of the House.

Having returned therefrom, at two o'clock and fifty-five minutes, the President assumed the Chair.

Adjournment

On motion of Senator Mazza, the Senate adjourned until nine o'clock in the morning.

FRIDAY, JANUARY 23, 2009

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

S. 34.

By Senators Miller, Ashe, Ayer, Campbell, Carris, Flanagan, Giard, Kittell, Lyons, McCormack, Racine, Shumlin and White,

An act relating to the agreement among the states to elect the president by national popular vote.

To the Committee on Government Operations.

S. 35.

By Senators White, Ashe, Ayer, Bartlett, Campbell, Carris, Giard, Hartwell, Kitchel, Kittell, Lyons, Miller, Racine, Sears, Snelling and Starr,

An act relating to campaign finance.

To the Committee on Government Operations.

S. 36.

By Senators Sears, Mullin and Cummings,

An act relating to voting procedures for judicial retention.

To the Committee on Judiciary.

S. 37.

By Senator Mullin,
An act relating to billing for health services.
To the Committee on Health and Welfare.

Recess

On motion of Senator Shumlin the Senate recessed until the fall of the gavel.

Called to Order

At nine o'clock and fifteen minutes in the forenoon the Senate was called to order by the President.

Bill Amended; Bill Passed; Rules Suspended; Bill Messaged**S. 13.**

Senate bill entitled:
An act relating to improving Vermont's sexual abuse response system.
Was taken up.

Thereupon, pending third reading of the bill, Senator Sears, on behalf of the Committee on Judiciary moved to amend the bill as follows

First: In Sec. 25, 20 V.S.A. § 1940(a)(3), after the following: “that is a misdemeanor” by inserting the following: other than domestic assault pursuant to 13 V.S.A. § 1042 or a sex offense for which registration is required pursuant to 13 V.S.A. § 5401 et. seq.

Second: In Sec. 27, by striking out the figure: “21” and inserting in lieu thereof the figure: 26

Third: In Sec. 30, 13 V.S.A. § 3253a, in subdivision (a)(2), by striking out the following: “sexually assaulting” and inserting in lieu thereof the following: committing a nonconsensual sexual act upon

Fourth: By adding a new section to be numbered Sec. 30a, to read as follows:

Sec. 30a. 13 V.S.A. § 3253 is amended to read:

§ 3253. AGGRAVATED SEXUAL ASSAULT

(a) A person commits the crime of aggravated sexual assault if the person commits sexual assault under any one of the following circumstances:

* * *

(2) The actor is joined or assisted by one or more persons in physically restraining, assaulting or ~~sexually assaulting~~ committing a nonconsensual sexual act upon the victim.

* * *

Fifth: In Sec. 33, 13 V.S.A. § 7041, in subsection (c), after the following: “lewd and lascivious conduct with a child” by adding the following: unless the victim and the defendant were within five years of age and the act was consensual

Sixth: In Sec. 41, 28 V.S.A. § 255, in subsection (c), by striking out the following: “, unless all parties and the department of corrections have filed notice in support of discharge with the court”

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Sears on behalf of the Committee on Judiciary?, Senator Sears requested and was granted leave to withdraw the *third* and *fourth* recommendations of amendment.

Thereupon, the question, Shall the bill be amended as recommended by Senator Sears on behalf of the Committee on Judiciary in the *first*, *second*, *fifth* and *sixth* recommendations of amendment?, was decided in the affirmative.

Thereupon, pending third reading of the bill, Senator Brock, on behalf of the Committee on Education moved to amend the bill as follows:

First: In Sec. 4, 16 V.S.A. § 254, by adding a new subsection (f) to read as follows:

(f) A person who has a conviction for a sex offense that requires registration pursuant to section 13 V.S.A. § 5401 shall not be eligible for an initial license, for renewal of a license, or for reinstatement of a lapsed license as a professional educator or for employment as a superintendent of schools in Vermont.

Second: In Sec. 5, 16 V.S.A. § 255, by adding a new subsection (i) to read as follows:

(i) A person who has a conviction for a sex offense that requires registration pursuant to section 13 V.S.A. § 5401 shall not be eligible to serve in the capacity as provided in subdivisions (a)(1)–(4) of this section.

Which were collectively agreed to.

Thereupon, pending third reading of the bill, Senators Miller and White moved to amend the bill by adding a new section to be numbered Sec. 52a to read as follows:

Sec. 52a. 13 V.S.A. §3252(c)(2) is amended to read:

(2) where the person is less than ~~19~~ 21 years old, the child is at least ~~15~~ 14 years old, and the sexual act is consensual.

Thereupon, pending the question, Shall the bill be amended as recommended by Senators Miller and White?, Senator White requested and was granted leave to withdraw the recommendation of amendment.

Thereupon, pending third reading of the bill, Senators Illuzzi, MacDonald, Starr, Choate and Kitchel moved to amend the bill by as follows:

First: In Sec. 17(a) at the end of subsection (a) by inserting the following:

The funds shall be allocated to special investigative units created to ensure equal levels of service in all regions of the state in a manner consistent with the counties' geographics.

Second: By adding two new subsections to be lettered (c) and (d), to read as follows:

(c) The special investigative unit now serving Essex, Orleans, Caledonia and Orange Counties shall be dissolved and replaced with units as set forth in Sec. 17(a) above.

(d) The sheriffs and the state's attorneys in Essex, Orleans, Caledonia and Orange Counties, after consulting with the state police station commanders in Derby, St. Johnsbury and Bradford, shall by majority vote, at a meeting convened for this purpose, decide which municipalities shall be included in the replacement special investigative units.

Third: By adding a new section to be numbered Sec. 52a to read as follows:

Sec. 52a. 24 V.S.A. §1940(c) is amended to read:

(c) A specialized investigative unit grants board is created which shall be comprised of the attorney general, the secretary of administration, the executive director of the department of state's attorneys, the commissioner of the department of public safety, the executive director of the center for crime victim services, and the executive director of the Vermont League of Cities and Towns. Specialized investigative units organized and operating under this section for the investigation of sex crimes, child abuse, elder abuse, domestic violence, or crimes against those with physical or developmental disabilities may apply to the board for a grant or grants covering the costs of salaries and employee benefits to be expended during a given year for the performance of unit duties as well as unit operating costs for rent, utilities, equipment, training, and supplies. Grants under this section shall be approved by a majority of the

entire board and shall not exceed 50 percent of the yearly salary and employee benefit costs of the unit. Preference shall be given to grant applications which include the participation of the department of public safety, the department for children and families, sheriffs' departments and municipalities within the region.

Fourth: By amending Sec. 53(b) by striking out the following: "and 33-48" and inserting in lieu thereof the following: 33-48 and 52a

Which were collectively agreed to.

Thereupon, the bill was read the third time and passed.

Thereupon, on motion of Senator Campbell, the rules were suspended, and the bill was ordered messaged to the House forthwith.

Message from the House No. 11

A message was received from the House of Representatives by Mr. William M. MaGill, its First Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

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

J.R.S. 9. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Adjournment

On motion of Senator Mazza, the Senate adjourned, to reconvene on Tuesday, January 27, 2009, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 9.

TUESDAY, JANUARY 27, 2009

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Amelia Pitton of Montpelier.

Pledge of Allegiance

Pages Lucy Hilgendorf and Daniel Hoyne-Grosvenor then led the members of the Senate in the pledge of allegiance.

Joint Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Shumlin,

J.R.S. 10. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, January 30, 2009, it be to meet again no later than Tuesday, February 3, 2009.

Joint Resolutions Placed on Calendar**J.R.S. 11.**

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senator Shumlin,

J.R.S. 11. Joint resolution providing for a Joint Assembly for the election of a Sergeant at Arms, an Adjutant and Inspector General, and three Trustees of the University of Vermont and State Agricultural College.

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Thursday, February 19, 2009, at ten o'clock and thirty minutes in the forenoon to elect a Sergeant-at-Arms, an Adjutant and Inspector General, and three trustees of the University of Vermont and State Agricultural College. In case election of all such officers shall not be made on that day, the two Houses shall meet in Joint Assembly at ten o'clock and thirty minutes in the forenoon, on each succeeding day, Saturdays and Sundays excepted, and proceed in such election, until all such officers are elected.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

J.R.S. 12.

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senator Shumlin,

J.R.S. 12. Joint resolution establishing a procedure for the conduct of the election of UVM trustees by plurality vote by the General Assembly in 2009.

Whereas, in 1997 the election of three trustees of the University of Vermont and State Agricultural College was decided by plurality vote, which required one ballot only, and

Whereas, in 1999 the election of three trustees of the University of Vermont and State Agricultural College was decided by majority vote, which required a total of eight ballots, and

Whereas, in 2001 and subsequent bienniums the elections of three trustees of the University of Vermont and State Agricultural College were decided by plurality vote, each of which required one ballot only, and

Whereas, if an election for multiple vacancies is to be decided by a plurality vote, then a great savings of time can be effectuated, *now therefore be it*

Resolved by the Senate and House of Representatives:

That, notwithstanding the current provisions of Joint Rule 10, and for this election only, the election of three trustees of the University of Vermont and State Agricultural College at a Joint Assembly to be held on February 19, 2009, shall be governed by the following procedure:

(1) All candidates for the office of Trustee shall be voted upon and decided on the same ballot; members may vote for any number of candidates up to and including the maximum number of vacancies to be filled, which in this case shall be three.

(2) The three candidates receiving the most votes shall be declared elected to fill the three vacancies.

(3) In the event that the first balloting for the Trustee vacancies results in a tie vote for one or more of the three vacant positions, then voting shall continue on successive ballots until the vacancies have been filled, again by election declared of those candidates receiving the most votes.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Senate 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, are hereby adopted on the part of the Senate:

By Senators Doyle, Cummings, Scott and Carris,

By Representative Clarkson and others,

S.C.R. 4

Senate concurrent resolution congratulating the Vermont State Symphony Orchestra on its 75th anniversary.

By Senators Scott, Ashe, Campbell, Carris Cummings, Doyle, Illuzzi, MacDonald, Mazza, Miller, Racine and White,

S.C.R. 5.

Senate concurrent resolution honoring the Vermont Detachment of the Sons of the American Legion and welcoming Thomas Cisna, its 41 National Commander, to Vermont.

By Senators Sears, Miller, Ashe, Ayer, Bartlett, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Maynard, Mazza, McCormack, Mullin, Nitka, Racine, Scott, Shumlin, Snelling, Starr and White,

By Representative Atkins and others,

S.C.R. 6.

Senate concurrent resolution honoring Court Administrator and Vermont Supreme Court Clerk Lee Suskin.

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, are hereby adopted in concurrence:

Offered by: Representative Audette and others

H.C.R. 16

House concurrent resolution honoring former Representative Michael Flaherty of South Burlington

Offered by: Representative Obuchowski and others

H.C.R. 17

House concurrent resolution congratulating Jocelyn Pond on her receipt of the William E. Mikell Spirit of Youth Award

Offered by: Representative Obuchowski and others

H.C.R. 18

House concurrent resolution congratulating the Bellows Falls All-Stars baseball team on winning the 2008 Cal Ripken Division state championship

Offered by: Representative Obuchowski and others

H.C.R. 19

House concurrent resolution congratulating the Rockingham Free Public Library on the 100th anniversary of its residency in its Carnegie Building home

Offered by: Representative Obuchowski and others

H.C.R. 20

House concurrent resolution congratulating Dr. Timothy Johnson on a quarter century of optometry practice in Bellows Falls

Offered by: Representative Hube

Offered by: Senators Shumlin and White

H.C.R. 21

House concurrent resolution celebrating the 200-year history of the Muzzy-Allen-Monroe family in the town of Jamaica and its 160-year proprietorship of the J.A. Muzzy Company

Offered by: Representative Haas

H.C.R. 22

House concurrent resolution recognizing the celebration in the town of Rochester of the Asian Lunar Year 4707

Offered by: Representative Koch and McFaun

Offered by: Senators Doyle, Cummings, and Scott

H.C.R. 23

House concurrent resolution honoring Charles V. Fantoni of Barre Town for his state and community public service

Offered by: Representative Shand

Offered by: Senators Campbell, McCormack and Nitka

H.C.R. 24

House concurrent resolution congratulating the Proctorsville Volunteer Fire Department on its 175th anniversary

Offered by: Representative O'Donnell and others

Offered by: Senators Shumlin and White

H.C.R. 25

House concurrent resolution honoring the Brattleboro Union High School marching band on its participation in the 2009 presidential inaugural parade in Washington, D.C.

Offered by: Representatives Minter and Stevens

Offered by: Senators Cummings, Doyle and Scott

H.C.R. 26

House concurrent resolution congratulating the 2008 Harwood Union High School Highlanders Division II championship boys' cross-country team

Offered by: Representatives Minter and Stevens

Offered by: Senators Cummings, Doyle and Scott

H.C.R. 27

House concurrent resolution congratulating the Harwood Union High School Highlanders 2008 Division II championship field hockey team

Offered by: Representative O'Brien

Offered by: Senator Racine

H.C.R. 28

House concurrent resolution congratulating Brittany Kelemen of Jonesville on being crowned Miss Vermont Teen USA 2009

Offered by: Representatives Keenan and Pugh

H.C.R. 29

House concurrent resolution recognizing the importance of nurse anesthetists in Vermont's health care system

Message from the House No. 12

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

Mr. President:

I am directed to inform the Senate that:

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 16. House concurrent resolution honoring former Representative Michael Flaherty of South Burlington.

H.C.R. 17. House concurrent resolution congratulating Jocelyn Pond on her receipt of the William E. Mikell Spirit of Youth Award.

H.C.R. 18. House concurrent resolution congratulating the Bellows Falls All-Stars baseball team on winning the 2008 Cal Ripken Division state championship.

H.C.R. 19. House concurrent resolution congratulating the Rockingham Free Public Library on the 100th anniversary of its residency in its Carnegie Building home.

H.C.R. 20. House concurrent resolution congratulating Dr. Timothy Johnson on a quarter century of optometry practice in Bellows Falls.

H.C.R. 21. House concurrent resolution celebrating the 200-year history of the Muzzy-Allen-Monroe family in the town of Jamaica and its 160-year proprietorship of the J.A. Muzzy Company.

H.C.R. 22. House concurrent resolution recognizing the celebration in the town of Rochester of the Asian Lunar Year 4707.

H.C.R. 23. House concurrent resolution honoring Charles V. Fantoni of Barre Town for his state and community public service.

H.C.R. 24. House concurrent resolution congratulating the Proctorsville Volunteer Fire Department on its 175th anniversary.

H.C.R. 25. House concurrent resolution honoring the Brattleboro Union High School marching band on its participation in the 2009 presidential inaugural parade in Washington, D.C.

H.C.R. 26. House concurrent resolution congratulating the 2008 Harwood Union High School Highlanders Division II championship boys' cross-country team.

H.C.R. 27. House concurrent resolution congratulating the Harwood Union High School Highlanders 2008 Division II championship field hockey team.

H.C.R. 28. House concurrent resolution congratulating Brittany Keleman of Jonesville on being crowned Miss Vermont Teen USA 2009.

H.C.R. 29. House concurrent resolution recognizing the importance of nurse anesthetists in Vermont's health care system.

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

The House has considered concurrent resolutions originating in the Senate of the following titles:

S.C.R. 4. Senate concurrent resolution congratulating the Vermont State Symphony Orchestra on its 75th anniversary.

S.C.R. 5. Senate concurrent resolution honoring the Vermont Detachment of the Sons of the American Legion and welcoming Thomas Cisna, its 41st National Commander, to Vermont.

S.C.R. 6. Senate concurrent resolution honoring Court Administrator and Vermont Supreme Court Clerk Lee Suskin.

And has adopted the same in concurrence.

Adjournment

On motion of Senator Mazza, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, January 30, 2009.

FRIDAY, JANUARY 30, 2009

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Melvin Bridge of Ryegate.

Message from the House No. 13

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

Mr. President:

I am directed to inform the Senate that:

The House has passed House bill of the following title:

H. 12. An act relating to education property tax rates.

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

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

J.R.S. 10. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Message from the House No. 14

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

Mr. President:

I am directed to inform the Senate that:

The House has adopted joint resolution of the following title:

J.R.H. 4. Joint resolution relating to the Canine Good Citizenship program.

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

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

S. 38.

By Senators Brock, Choate, Flanagan, Giard, Illuzzi, Kittell, Maynard, Nitka and Starr,

An act relating to requiring the Department of Finance and Management to annually publish on its website a report on grants issued by executive branch agencies.

To the Committee on Government Operations.

S. 39.

By Senators White and Shumlin,

An act relating to acceptable dose levels of direct gamma radiation from nuclear power stations.

To the Committee on Health and Welfare.

S. 40.

By Senator White,

An act relating to agritourism.

To the Committee on Agriculture.

S. 41.

By Senator Mullin,

An act relating to increasing Medicaid reimbursement rates.

To the Committee on Health and Welfare.

S. 42.

By Senators Cummings and Ayer,

An act relating to the Department of Banking, Insurance, Securities, and Health Care Administration.

To the Committee on Finance.

S. 43.

By Senator White,

An act relating to property taxation of housing subsidy covenant property.

To the Committee on Finance.

S. 44.

By Senator Doyle,

An act relating to indicating anatomical gifts on a driver's license.

To the Committee on Transportation.

S. 45.

By Senators White and Ayer,

An act relating to noncompliance with the No Child Left Behind Act.

To the Committee on Education.

S. 46.

By Senator Hartwell,

An act relating to the responsibility for providing special education and complying with the No Child Left Behind Act; unfunded mandates; annual adjustments to education property tax rates; and a study concerning consolidation of school districts .

To the Committee on Education.

S. 47.

By Senators Lyons, Snelling and Hartwell,

An act relating to salvage yards.

To the Committee on Natural Resources and Energy.

S. 48.

By Senators Shumlin, Mullin, Choate, Ashe, Ayer, Bartlett, Brock, Campbell, Carris, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Racine, Scott, Sears, Snelling, Starr and White,

An act relating to marketing of prescribed products.

To the Committee on Finance.

S. 49.

By Senator Hartwell,

An act relating to opening the polls up to four days prior to the day of a general election.

To the Committee on Government Operations.

S. 50.

By Senator Hartwell,

An act relating to the contaminant testing requirements for a public water supply that receives water from out-of-state suppliers.

To the Committee on Natural Resources and Energy.

S. 51.

By Senators Shumlin, Ayer, Bartlett, Campbell, Carris, Choate, Cummings, Giard, Hartwell, Illuzzi, Kitchel, Lyons, Maynard, Mazza, McCormack, Miller, Mullin, Nitka, Scott, Sears, Snelling and White,

An act relating to Vermont's motor vehicle franchise laws.

To the Committee on Transportation.

S. 52.

By Senators Doyle and Cummings,

An act relating to enhancing the penalty for assault of a nurse.

To the Committee on Judiciary.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 53.

By the Committee on Health and Welfare,

An act relating to restoration of chiropractic services in Medicaid in fiscal year 2009.

Bill Referred

House bill of the following title was read the first time and referred:

H. 12.

An act relating to education property tax rates.

To the Committee on Finance.

Joint Resolution Placed on Calendar**J.R.H. 4**

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution relating to the Canine Good Citizenship program.

Whereas, dogs play an important role in the lives of many Vermont citizens by serving as companions, therapy dogs, and assistance dogs, and

Whereas, it is recognized that dog-related problems are most often caused by irresponsible owners, and

Whereas, responsible dog ownership is encouraged in Vermont, and responsible owners should properly control and provide adequate training for their dogs, and

Whereas, “Canine Good Citizen” programs identify and officially recognize those dogs who behave as members in good standing with the community, and

Whereas, the Canine Good Citizen Program, which was developed by the American Kennel Club, teaches pet owners that dogs should exhibit “good citizen” behaviors in the presence of people and other animals, in both the home and the community, and

Whereas, children and adults of all ages participate in Canine Good Citizen classes to learn the skills involved in responsible dog ownership, and

Whereas, with dog bites and animal concerns on the rise, there is a real need for dogs to remain well-behaved community members, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly encourages dog training programs and kennel clubs to provide training and education for community pet owners that result in dogs being “Canine Good Citizens,” and be it further

Resolved: That the secretary of state be directed to send a copy of this resolution to Deborah Brown, President of the Vermont Federation of Dog Clubs, in North Hero

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Message from the Governor Appointments Referred

A message was received from the Governor, by Heidi M. Tringe, Secretary of Civil and Military Affairs, submitting the following appointments, which were referred to committees as indicated:

Melville, Alexander Sears of Woodstock - Member of the State Board of Education, - from July 7, 2008, to June 30, 2010.

To the Committee on Education.

Martinez, W. William of Rutland - Member of the Natural Resources Board Water Resources Panel, - from February 1, 2009, to January 31, 2013.

To the Committee on Natural Resources and Energy.

Birmingham, Lisa Nolen of Stowe - Member of the Natural Resources Board Land Use Panel, - from February 1, 2009, to January 31, 2013.

To the Committee on Natural Resources and Energy.

Davies, William of Orleans – Alternate Member of the Natural Resources Board, - from February 1, 2009, to January 31, 2013.

To the Committee on Natural Resources and Energy.

Young, Peter F., Jr., Esq. of Northfield – Chair of the Natural Resources Board, - from February 1, 2009, to January 31, 2011.

To the Committee on Natural Resources and Energy.

Alexander, Sonia D. of Wilmington - Member of the Valuation Appeals Board, - from February 1, 2009, to January 31, 2012.

To the Committee on Finance.

Welch, Michael A. of St. Johnsbury - Member of the Valuation Appeals Board, - from February 1, 2009, to January 31, 2012.

To the Committee on Finance.

Bill Ordered to Lie**S. 7.**

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

An act to prohibit the use of lighted tobacco products in the workplace.

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

Sec. 1. 18 V.S.A. §§ 1421 and 1426 are amended to read:

§ 1421. ~~DEFINITIONS~~ SMOKING IN THE WORKPLACE; PROHIBITION

~~As used in this subchapter:~~

~~(1) "Smoking area" means an area that nonsmoking employees are not required to visit on a regular basis where smoking is permitted pursuant to a policy established under this subchapter. Up to 30 percent of employee cafeteria and lounge areas may be designated as a smoking area.~~

~~(2) "Workplace" The use of lighted tobacco products is prohibited in any "workplace," which, for the purposes of this subchapter, means an enclosed structure where employees perform services for an employer or, in the case of an employer who assigns employees to departments, divisions, or similar organizational units, the enclosed portion of a structure where the unit to which the employee is assigned is located. "Workplace" includes a vehicle owned or leased by the employer. Except for schools, workplace does not include areas commonly open to the public nor any portion of a structure which that also serves as the employee's or employer's personal residence. For schools, workplace shall include includes any enclosed location at which where instruction or other school-sponsored functions are occurring and students are present.~~

§ 1426. ENFORCEMENT

(a) An employee aggrieved by an employer's failure to comply with the provisions of this subchapter may file a complaint with the department of health.

~~(b) If the complaint is based on an employer's alleged failure to establish a smoking policy or post the policy and summary as required under section 1424 of this title, the department shall not initiate an action under this section until it has given the employer written notice of the alleged violation and ten days to come into voluntary compliance with the provisions of this subchapter.~~

~~(e) The commissioner of health or a hearing officer designated by the commissioner may, after notice and an opportunity for hearing, impose an~~

administrative penalty of \$100.00 against an employer who violates a ~~provision of~~ this chapter. The hearing before the commissioner shall be a contested case subject to the provisions of chapter 25 of Title 3 (Administrative Procedure Act).

(c) Nothing in this section shall limit the commissioner's authority under any other provisions of law.

Sec. 2. 18 V.S.A. § 1743 is amended to read:

§ 1743. EXCEPTIONS

The restrictions in this chapter on possession of lighted tobacco products ~~shall do~~ not apply to:

~~(1) Workplace smoking areas designated under subchapter 2 of chapter 28 of this title.~~

~~(2) Areas~~ areas not commonly open to the public of owner-operated businesses with no employees.

Sec. 3. REPEAL

18 V.S.A. §§ 1422, 1423, 1424, and 1425 (dealing with a smoking policy) are repealed.

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 pending the question, Shall the bill be amended as recommended by the Committee on Health and Welfare?, on motion of Senator Racine the bill was ordered to lie.

Joint Resolutions Adopted on the Part of the Senate

Joint Senate resolutions entitled:

J.R.S. 11. Joint resolution providing for a Joint Assembly for the election of a Sergeant at Arms, an Adjutant and Inspector General, and three Trustees of the University of Vermont and State Agricultural College.

J.R.S. 12. Joint resolution establishing a procedure for the conduct of the election of UVM trustees by plurality vote by the General Assembly in 2009.

Having been placed on the Calendar for action, were taken up and adopted severally on the part of the Senate.

Message from the House No. 15

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