

(b) If, after a hearing, the court is convinced beyond a reasonable doubt that the person is not appropriate for final discharge, the court shall continue the commissioner's custody of the person in a secure facility, transitional release program, or conditional release program. Otherwise, the court shall order the person finally discharged. In the event the court does not order final discharge of the person, the person still retains the right to annual reviews.

(c) At any time during which the person is on conditional release and the professional individual designated by the court in the treatment plan to monitor the person's compliance with it determines that the person has violated any material condition of that plan, that professional individual may request the district court to issue an emergency ex parte order directing a law enforcement officer to take the person into custody and return the person to the secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written or facsimile form delivered to the court not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic request was made.

(d) Upon the person being returned to the secure commitment facility from conditional release, notice thereof shall be given by the commissioner to the court. The court shall set the matter for a hearing within two days of receipt of notice of the person's having been returned to the secure commitment facility and cause notice thereof to be given to the attorney general, the person, and the commissioner. The attorney general shall have the burden of proof to show probable cause that the person violated conditions of conditional release. The hearing shall be to the court. At the conclusion of the hearing, the court shall issue an order returning the person to the secure commitment facility, to the transitional release program, or to conditional release, and may order such other further conditions with which the person must comply if the person is returned to either the transitional release program or to conditional release.

(e) The final discharge shall not prevent the person from being prosecuted for any criminal acts which the person is alleged to have committed or from being subject in the future to a subsequent commitment under this chapter.

§ 8613. INELIGIBILITY FOR BAIL, BOND, OR HOUSE ARREST

Any person for whom a petition pursuant to this subchapter has been filed and is in the secure confinement of the state shall not be eligible for bail, bond, house arrest, or any other measures releasing the person from the physical protective custody of the state.

§ 8614. COSTS

The commissioner shall be responsible for all costs relating to the evaluation and treatment of persons committed to the commissioner's custody under any provision of this subchapter.

Subchapter 2. Out-Patient Civil Commitment

§ 8631. APPLICABILITY

This subchapter shall apply to any person committed to the custody of the commissioner for outpatient treatment and supervision pursuant to subdivision 8607(d)(2) of this title.

§ 8632. OUT-PATIENT COMMITMENT ORDER; VIOLATION

(a) The court shall commit a person subject to this subchapter to the custody of the commissioner for outpatient treatment and supervision to be coordinated by the case manager. The commitment order is effective immediately on entry of the order, except that the outpatient treatment and supervision begins on the person's release from a secure correctional facility or release from a state hospital and continues until the person's mental abnormality or personality disorder has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

(b) The commitment order shall impose requirements necessary to ensure the person's compliance with treatment and supervision and to protect the community. These may include:

(1) Requiring the person to be personally supervised at all times by the department.

(2) Requiring the person to reside in a particular location.

(3) Prohibiting the person's contact with a victim or potential victim of the person.

(4) Requiring the taking of prescribed medications.

(5) Prohibiting the person's possession or use of alcohol or regulated drugs.

(6) Requiring the person's participation in and compliance with a specific course of treatment.

(7) Requiring the person to:

(A) submit to tracking under a particular type of tracking service and to any other appropriate supervision; and

(B) refrain from tampering with, altering, modifying, obstructing, or manipulating the tracking equipment.

(8) Prohibiting the person from changing the person's residence without prior authorization from the court and from leaving the state without that prior authorization.

(9) If determined appropriate by the court, prohibiting the person from contact with children or from frequenting facilities, locations, or events in which children are likely to be present and not engaging in activities in which contact with children is likely.

(10) Requiring the person to notify the case manager immediately, but in any event within 24 hours, of any change in the person's status that affects proper treatment and supervision, including a change in the person's physical health or job status and including any incarceration of the person.

(11) Any other requirements determined necessary by the judge.

(c) The court shall provide a copy of the requirements imposed pursuant to subsection (b) of this section to the case manager. The case manager may provide to the person instruction regarding the requirements associated with the order, regardless of whether the person is incarcerated at the time of the instruction.

(d) The person shall be advised by the court that a violation of the requirements imposed pursuant to subsection (b) of this section is a crime pursuant to section 8636 of this title and punishable by up to ten years in prison and a \$3,000.00 fine, or both.

§ 8633. RETURN TO LAW ENFORCEMENT CUSTODY

If a person, while committed to the custody of the commissioner pursuant to this subchapter, is taken into custody by any law enforcement officer or the commissioner of corrections pursuant to any probation violation, parole revocation, or furlough violation proceeding or any arrest or conviction for a criminal offense, upon the person's release from the custody of the law enforcement officer or commissioner of corrections or federal correctional system, the person shall be returned to the custody of the commissioner for further proceedings pursuant to this subchapter.

§ 8634. TREATMENT; SUPERVISION

(a) The commissioner shall approve and contract for the provision of a treatment plan to be developed by the treatment provider for a person committed pursuant to this subchapter. A treatment plan may include the monitoring of the person with a polygraph.

(b) The case manager shall provide supervision to the person. The provision of supervision may include, if required by court order, a tracking service and supervised housing.

(c) The commissioner may enter into an interagency agreement with the department of corrections for any necessary supervised housing. The commissioner shall reimburse the department of corrections for housing costs under this chapter.

(d) The case manager shall:

(1) Coordinate the outpatient treatment and supervision required by this subchapter, including performing a periodic assessment of the success of that treatment and supervision.

(2) Make timely recommendations to the court on whether to allow the committed person to change residence or to leave the state and on any other appropriate matters.

(3) Provide a report to the commissioner semiannually or more frequently as necessary, which shall include:

(A) any known change in the person's status that affects proper treatment and supervision; and

(B) any recommendations made to the court.

§ 8635. STATUS REPORTS AND OTHER INFORMATION

(a) A treatment provider or a supervision provider, other than the case manager or tracking service personnel, shall submit a report to the case manager, monthly or more frequently if required by the case manager, stating whether the person is complying with treatment or supervision requirements, as applicable.

(b) Tracking service personnel may provide to the case manager specific information relating to the person, including the person's compliance with a tracking requirement or involvement in criminal activity.

§ 8636. VIOLATION

A sexually violent predator who violates the requirements of the commitment order set forth in accordance with section 8632 of this title shall be imprisoned not more than ten years or fined not more than \$3,000.00, or both.

§ 8637. BIENNIAL EXAMINATION AND REVIEW

(a) Each person committed under this subchapter shall be examined and evaluated by the department once every two years. The commissioner shall provide the committed person with biennial written notice of the person's right to petition the court for release over the commissioner's objection. The notice shall contain a waiver of rights. The commissioner shall also forward the annual report, as well as the biennial notice and waiver form, to the court that committed the person. The person may retain or if the person is indigent and so requests the court may appoint a qualified professional individual to examine such person, and such expert or professional individual shall have access to all records concerning the person that are in the possession of the attorney general or agency with jurisdiction. The court that committed the person shall then conduct biennial review of the status of the committed person. The committed person shall have a right to have an attorney represent the person at the hearing and to be present at the hearing.

(b) Nothing contained in this subchapter shall prohibit the person from otherwise petitioning the court at this hearing for release.

(c) If the court at the hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be released, the court shall set a hearing on the issue.

§ 8638. PETITION FOR RELEASE

If the commissioner determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to engage in repeated acts of sexual violence if released, the commissioner shall authorize the person to petition the court for release. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for release, shall order a hearing within 30 days.

§ 8639. HEARING ON RELEASE

(a) At the hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf, and the court shall appoint an expert if the person is indigent and requests an appointment.

(b) The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or

personality disorder remains such that the person is not safe to be released and, if released, is likely to engage in predatory acts of sexual violence.

(c) The person shall have the right to demand that the trial be before a jury. If no demand is made 45 days from the completion of the probable cause hearing, the trial shall be before the court.

(d) If, after the hearing, the court or jury is convinced beyond a reasonable doubt that the person is not appropriate for release, the court shall order that the person remain in the custody of the commissioner. Otherwise, the court shall order that the person be released.

§ 8640. RIGHT TO FILE UNAUTHORIZED PETITION FOR RELEASE;
REVIEW

(a) On a person's commitment and annually after that commitment, the case manager shall provide the person with written notice of the person's right to file with the court and without the case manager's authorization a petition for release.

(b) Upon receipt of a petition from a committed person, the court shall review the petition as soon as practicable.

(c) If a person has previously filed a petition for release without the commissioner's approval, and if the court determined either upon review of the petition or following a hearing that the petitioner's petition was frivolous or that the petitioner's condition had not so changed that the person was safe to be at large, the court shall deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted.

(d) If the court finds that probable cause exists to believe that the petitioner's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence, the court shall set the matter for a hearing.

§ 8641. HEARING ON UNAUTHORIZED PETITION FOR RELEASE

(a) At the hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf, and the court shall appoint an expert if the person is indigent and requests an appointment.

(b) The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be released, and if released, is likely to engage in predatory acts of sexual violence.

(c) The person shall have the right to demand that the trial be before a jury. If no demand is made 45 days from the completion of the probable cause hearing, the trial shall be before the court.

(d) If, after the hearing, the court or jury is convinced beyond a reasonable doubt that the person is not appropriate for release, the court shall order that the person remain in the custody of the commissioner. Otherwise, the court shall order that the person be released.

§ 8642. DUTIES OF THE DEPARTMENT OF HEALTH; COSTS

(a) The commissioner is responsible for providing appropriate and necessary treatment and supervision through the case management system.

(b) The commissioner shall be responsible for all costs relating to the evaluation and treatment of persons committed to the commissioner's custody under any provision of this subchapter.

Subchapter 3. General Provisions

§ 8651. RIGHT TO COUNSEL

(a) Immediately after the filing of a petition under section 8604 of this title, a person subject to a civil commitment proceeding under this chapter is entitled to the assistance of counsel at all stages of the proceedings.

(b) The office of the defender general shall represent an indigent person who is the subject of a civil commitment proceeding.

§ 8652. EXPERTS

(a) A person who is subjected to an examination under this chapter may retain experts or professional individuals to perform an examination or participate in civil commitment proceedings on such person's behalf. When the person wishes to be examined by a qualified expert or qualified professional individual of such person's own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports in the possession of the attorney general or agency with jurisdiction.

(b) In the case of a person who is indigent, the court, upon the person's request, shall determine whether the services are necessary and reasonable compensation for such services. If the court determines that the services are

necessary and the expert or professional individual's requested compensation for such services is reasonable, the court shall assist the person in obtaining an expert or professional individual to perform an examination or participate in the trial on the person's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person, and compensation received in the same case or for the same services from any other source.

§ 8653. CONFIDENTIAL OR PRIVILEGED INFORMATION AND RECORDS

Relevant information and records which are otherwise confidential or privileged shall be released to the agency with jurisdiction or the attorney general for the purpose of meeting the notice requirement provided in section 8603 of this title and determining whether a person is or continues to be a sexually violent predator. Relevant information and records that are otherwise confidential or privileged may also be reviewed by the oversight commission on civil commitments, upon request by the commission, provided that the request is authorized by section 8660 of this title. The commission shall not have access to work-product or other confidential or privileged matters prepared by the attorney general.

§ 8654. COURT RECORDS

Any psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records, or victim impact statements which have been submitted to the court or admitted into evidence under this chapter shall be part of the record but shall be sealed and opened only on order of the court or mutual agreement of the parties or as provided in this chapter. Sealed records may be reviewed by the oversight commission on civil commitments, upon request by the commission, provided that the request is authorized by section 8660 of this title.

§ 8655. NOTICE TO VICTIMS OF RELEASE OF SEX OFFENDERS

A victim of a person committed under this chapter shall have the right to request notification by the commissioner before the person is released from a secure facility. If such notice is requested, the commissioner shall give written notice to the victim of such placement or release as expeditiously as possible at the address or telephone number provided to the commissioner by the victim. Any address or telephone number so provided shall be kept confidential. Failure to notify shall not be a reason for postponement of release. Nothing in this section shall create a cause of action against the state or an employee of

the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this action. The victim shall be given the committed person's town and street of residence.

§ 8656. PRIVILEGE FOR PERSONAL INFORMATION THAT IDENTIFIES VICTIM

Personal information, including a home address, home telephone number, and Social Security account number, that identifies the victim of a person subject to a civil commitment proceeding under this chapter is privileged from discovery by that person.

§ 8657. EFFECT OF CERTAIN SUBSEQUENT CONVICTIONS, JUDGMENTS, OR VERDICTS ON ORDER OF CIVIL COMMITMENT

(a) Except as provided by subsection (b) of this section, the following convictions, judgments, or verdicts do not affect an order of civil commitment under this chapter:

(1) a conviction for a felony if a sentence is not imposed;

(2) a conviction for a misdemeanor, regardless of whether a sentence is imposed; and

(3) a judgment or verdict of not guilty by reason of insanity for any offense absent a corresponding commitment to the department.

(b) The statutory duties imposed by this chapter are suspended for the duration of any confinement of a person who receives a conviction described by subdivision (a)(2) of this section.

§ 8658. RULEMAKING AUTHORITY.

(a) The department shall adopt rules for the purpose of administering this chapter.

(b) The department shall adopt rules that establish standards of care and case management for persons committed under subchapter 2 of this chapter.

(c) This chapter shall not take effect until rules are adopted pursuant to this section.

§ 8659. CREATION OF THE OVERSIGHT COMMISSION ON CIVIL COMMITMENTS

(a) The oversight commission on civil commitments is created and shall be comprised of eight members:

(1) One member appointed by the speaker of the house who shall not be a member of the general assembly but shall be an attorney;

(2) One member appointed by the committee on the committees who shall not be a member of the general assembly but shall be an attorney;

(3) One member appointed by the defender general who shall not be a member of the office of the defender general but shall be an attorney;

(4) One member appointed by the American Civil Liberties Union (ACLU) who shall not be a member of the ACLU;

(5) Two members appointed by the Vermont supreme court who shall be retired judges; and

(6) Two members appointed by the governor who shall not be employees of the executive branch of the state of Vermont, but one of whom shall be an attorney.

(b) Commission members shall serve for three-year terms. Prior to the completion of the three-year term, members may resign or be replaced by the appointing authority for good cause. At the end of a three-year term, the appointing authority may appoint a new member or reappoint the previous member.

§ 8660. AUTHORITY AND PURPOSE OF THE OVERSIGHT COMMISSION ON CIVIL COMMITMENTS

(a) The commission shall review all civil commitment cases in which a judge or jury has reached a final determination but shall not review a matter or information that relates to an ongoing investigation, a pending petition, a hearing, a trial, an appeal, or an examination.

(b) Meetings and discussions of the commission shall not be open to the public whenever information being reviewed or discussed is not a public record or is information acquired pursuant to section 8607 of this title. The commission shall treat as confidential all information that is sealed, confidential, or privileged as set forth in this chapter, except as otherwise directed by court order.

(c) The review shall be conducted at least annually and with the purpose of assessing the civil commitment process, determining if the practice is in keeping with section 8601 of this title.

(d) The commission shall prepare a report based upon its review, summarizing its findings, recommendations, and conclusions. The report shall be provided to the members of the house and senate committees on judiciary.

Copies shall be provided to the attorney general, agencies with jurisdiction and the governor. The report is due no later than January 30 of each year beginning in 2007. Prior to release to the public, the commission's report shall be redacted of information that is acquired that may identify a victim or is not a public record. The commission or other person entitled to the full report in connection with this section shall be relieved of all liability in connection with its good-faith effort to redact said information. The attorney general shall be responsible for any costs associated with the preparation of the report.

§ 8661. APPLICATION

This act shall apply to all sexually violent predators confined by the commissioner of corrections under sentence and all sexually violent predators in the custody of the commissioner as of July 1, 2006.

Sec. 22. 13 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

As used in this subchapter:

* * *

(4) "Mental abnormality" means a congenital or acquired condition that affects the emotional or volitional capacity of a person in a manner that predisposes the person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

* * *

(6) "Personality disorder" means a condition where a person exhibits personality traits which are inflexible and maladaptive and cause either significant functional impairment or subjective distress.

(7) ~~"Predatory" means an act directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.~~

(8) "Release" means release from confinement or custody or placement into the community for any reason, including release on bail pending appeal, probation, parole, furlough, work release, early release, alternative sanctions, house arrest, daily interrupt, community placement, or completion of sentence. It shall also mean probation or parole supervision of an out-of-state sex offender under an interstate agreement or compact.

(9)(8) "Registry" means the sex offender registry maintained by the department of public safety.

(10)(9) "Sex offender" means:

(A) A person who is convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court of any of the following offenses:

- (i) sexual assault as defined in 13 V.S.A. § 3252;
- (ii) aggravated sexual assault as defined in 13 V.S.A. § 3253;
- (iii) lewd and lascivious conduct as defined in 13 V.S.A. § 2601;
- (iv) sexual activity by a caregiver as defined in 33 V.S.A. § 6913(d);
- (v) an attempt to commit any offense listed in this subdivision.

(B) A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18:

- (i) any offense listed in subdivision (A) of this subdivision (9);
- (ii) kidnapping as defined in 13 V.S.A. § 2405(a)(1)(D);
- (iii) lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602;
- (iv) white slave traffic as defined in 13 V.S.A. § 2635;
- (v) sexual exploitation of children as defined in 13 V.S.A. chapter 64;
- (vi) or procurement or solicitation as defined in 13 V.S.A. § 2632(a)(6);
- (vii) an attempt to commit any offense listed in this subdivision.

(C) A person who takes up residence within this state, other than within a correctional facility, and who has been convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, for a sex crime the elements of which would constitute a crime under subdivision ~~(10)(A) or (B)~~ (9)(B) of this section if committed in this state.

(D) A nonresident sex offender who crosses into Vermont and who is employed, carries on a vocation, or is a student.

~~(11)(10)~~ (10) "Sexually violent offense" means ~~sexual assault or aggravated sexual assault, as described in 13 V.S.A. §§ 3252 and 3253~~ aggravated sexual

assault as defined in 13 V.S.A. § 3253, sexual assault as defined in 13 V.S.A. § 3252, or lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602, or a comparable offense in another jurisdiction of the United States, or any attempt to commit sexual assault, aggravated sexual assault, or a comparable offense in another jurisdiction of the United States.

~~(12)~~(11) "Sexually violent predator" means a person who ~~is a sex offender, who has been convicted of a sexually violent offense, as defined in subdivision (11) of this section, and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses~~ has been civilly committed under chapter 201 of Title 18 because the person has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in repeated acts of sexual violence.

~~(13)~~(12) "Employed, carries on a vocation" includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of governmental or educational benefit.

~~(14)~~(13) "Student" means a person who is enrolled on a full-time or part-time basis in any public or private educational institution in Vermont, including any secondary school, trade or professional institution, or institution of higher learning.

~~(15)~~(14) "Conviction" means a judgment of guilt following a verdict or finding of guilt, a plea of guilty, a plea of nolo contendere, an Alford Plea, or a judgment of guilt pursuant to a deferred sentence. A sex offender whose sentence is deferred shall have no duty to register after successful completion of the terms of the deferred sentence agreement for the duration specified in the agreement.

~~(16)~~(15) "Risk" means the degree of dangerousness that a sex offender poses to others. "High-risk" means a high degree of dangerousness that a sex offender poses to others. Dangerousness includes the probability of a sexual reoffense.

Sec. 23. REPEAL

13 V.S.A. § 5405 is repealed.

Sec. 24. 13 V.S.A. § 5407 is amended to read:

§ 5407. SEX OFFENDER'S DUTY TO REPORT

(a) A sex offender shall report to the department as follows:

(1) if convicted of a registry offense in another state, within 10 days after either establishing residence in this state or crossing into this state for purposes of employment, carrying on a vocation, or being a student, the sex offender shall provide the information listed in subsection 5403(a) of this title;

(2) annually within 10 days after the registrant's birthday, or if a person is determined to be a sexually violent predator pursuant to chapter 201 of Title 18, that person shall report to the department every 90 days;

(3) within three days after any change of address;

(4) within three days after the registrant enrolls in or separates from any postsecondary educational institution; and

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

* * *

(f) A person required to register as a sex offender under this subchapter shall continue to comply with this section for the life of that person, except during periods of incarceration, if that person:

(1) has at least one prior conviction for an offense described in subdivision ~~5401(10)~~ 5401(9) of this subchapter or a comparable offense in another jurisdiction of the United States;

(2) has been convicted of a sexual assault as defined in section 3252 of this title or aggravated sexual assault as defined in section 3253 of this title; however, if a person convicted under section 3252 is not more than six years older than the victim of the assault and if the victim is 14 years or older, then the offender shall not be required to register for life if the age of the victim was the basis for the conviction; or

(3) has been determined to be a sexually violent predator pursuant to ~~section 5405 of this subchapter~~ chapter 201 of Title 18.

(g) The department shall adopt forms and procedures for the purpose of verifying the addresses of persons required to register under this subchapter in accordance with the requirements set forth in section (b)(3) of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. Every 90 days for sexually violent predators and annually for other registrants, the department shall verify addresses of registrants by sending a nonforwardable address verification form to each registrant at the address last reported by the registrant. The registrant shall be required to sign and return the form to the department within 10 days of receipt.

Sec. 25. 13 V.S.A. § 5411(c)(1) is amended to read:

(c)(1) Except as provided for in subsection (e) of this section, upon request of a member of the public about a specific person, the department, the department of corrections, and any authorized local law enforcement agency shall release registry information on the following registrants:

(A) Sex offenders who have been convicted of section 3253 of this title (aggravated sexual assault), subdivision 2405(a)(1)(D) of this title if a registrable offense (kidnapping and sexual assault of a child), or 33 V.S.A. § 6913(d)(sexual activity with a vulnerable adult).

(B) Sex offenders who have at least one prior conviction for an offense described in subdivision ~~5401(10)~~ 5401(9) of this subchapter or a comparable offense in another jurisdiction.

(C) Sex offenders who have failed to comply with sex offender registration requirements and for whose arrest there is an outstanding warrant for such noncompliance.

(D) Sex offenders who have been designated as ~~sexual~~ sexually violent predators pursuant to ~~section 5405 of this title~~ chapter 201 of Title 18.

(E) Sex offenders who have been designated by the department of corrections, pursuant to section 5411b of this title, as high risk.

Sec. 26. 13 V.S.A. § 5411a(a) is amended to read:

(a) Notwithstanding sections 2056a-2056e of Title 20, the department shall electronically post information on the internet in accordance with subsection (b) of this section regarding the following sex offenders, upon their release from confinement:

(1) Sex offenders who have been convicted of a violation of section 3253 of this title (aggravated sexual assault) or subdivision 2405(a)(1)(D) of this title if a registrable offense (kidnapping and sexual assault of a child).

(2) Sex offenders who are convicted of a violation of section 3252 (sexual assault) or 2602 (lewd or lascivious conduct with child) of this title, and who have a prior conviction of a violation of section 3252 (sexual assault) or 2602 (lewd or lascivious conduct with child) of this title. Comparable offenses in another jurisdiction shall be included in this subsection.

(3) Sex offenders who have failed to comply with sex offender registration requirements and for whose arrest there is an outstanding warrant for such noncompliance. Information on offenders shall remain on the internet only while the warrant is outstanding.

(4) Sex offenders who have been designated as ~~sexual~~ sexually violent predators pursuant to ~~section 5405 of this title~~ chapter 201 of Title 18.

(5) Sex offenders who have not complied with sex offender treatment recommended by the department of corrections or who are ineligible for sex offender treatment. The department of corrections shall establish rules for the administration of this subdivision and shall specify what circumstances constitute noncompliance with treatment and criteria for ineligibility to participate in treatment. Offenders subject to this provision shall have the right to appeal the department of corrections' determination in superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure. This subdivision shall apply prospectively and shall not apply to those sex offenders who did not comply with treatment or were ineligible for treatment prior to March 1, 2005.

(6) Sex offenders who have been designated by the department of corrections, pursuant to section 5411b of this title, as high-risk.

and by renumbering the remaining section to be numerically correct.

Pending the question, Shall the House amend the bill as recommended by Reps. DePoy of Rutland City, et al? **Rep. DePoy of Rutland City** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the House amend the bill as recommended by Reps. DePoy of Rutland City, et al? was decided in the negative. Yeas, 59. Nays, 77.

Those who voted in the affirmative are:

Acinapura of Brandon	Flory of Pittsford	Livingston of Manchester
Adams of Hartland	Helm of Castleton	Louras of Rutland City
Allaire of Rutland City	Howard of Rutland City	Marcotte of Coventry
Allard of St. Albans Town	Hube of Londonderry	Marron of Stowe
Baker of West Rutland	Hudson of Lyndon	McAllister of Highgate
Bartlett of Dover	Hutchinson of Randolph	McFaun of Barre Town
Bostic of St. Johnsbury	Johnson of South Hero	Miller of Elmore
Branagan of Georgia	Johnson of Canaan	Morley of Barton
Brennan of Colchester	Kainen of Hartford	Myers of Essex
Canfield of Fair Haven	Kennedy of Chelsea	Nitka of Ludlow
Clark of St. Johnsbury	Kilmartin of Newport City	O'Donnell of Vernon
Clark of Vergennes	Koch of Barre Town	Parent of St. Albans City
Condon of Colchester	Komline of Dorset	Peaslee of Guildhall
Corcoran of Bennington	Krawczyk of Bennington	Potter of Clarendon
DePoy of Rutland City	Larocque of Barnet	Shaw of Derby
Donaghy of Poultney	Larrabee of Danville	Smith of New Haven
Dunsmore of Georgia	LaVoie of Swanton	Sunderland of Rutland Town
Errecart of Shelburne	Lawrence of Lyndon	Turner of Milton

Valliere of Barre City
Westman of Cambridge

Winters of Swanton
Winters of Williamstown

Wright of Burlington

Those who voted in the negative are:

Ancel of Calais
Aswad of Burlington
Atkins of Winooski
Audette of S. Burlington
Barnard of Richmond
Bohi of Hartford
Botzow of Pownall
Brooks of Montpelier
Chen of Mendon
Clarkson of Woodstock
Copeland-Hanzas of
Bradford
Cross of Winooski
Darrow of Dummerston
Deen of Westminster
Donahue of Northfield
Donovan of Burlington
Dostis of Waterbury
Dowland of Holland
Edwards of Brattleboro
Emmons of Springfield
Evans of Essex
Fallar of Tinmouth
Fisher of Lincoln
Frank of Underhill
French of Randolph

Gervais of Enosburg
Grad of Moretown
Green of Berlin
Haas of Rochester
Head of S. Burlington
Heath of Westford
Hosford of Waitsfield
Howrigan of Fairfield
Jerman of Essex
Jewett of Ripton
Keogh of Burlington
Kiss of Burlington
Klein of East Montpelier
Kupersmith of S. Burlington
Larson of Burlington
Leriche of Hardwick
Lippert of Hinesburg
Lorber of Burlington
Maier of Middlebury
Malcolm of Pawlet
Marek of Newfane
Martin of Wolcott
Masland of Thetford
McCullough of Williston
McLaughlin of Royalton
Milkey of Brattleboro

Miller of Shaftsbury
Minter of Waterbury
Molloy of Arlington
Monti of Barre City
Mook of Bennington
Nease of Johnson
Nuovo of Middlebury
Obuchowski of Rockingham
Orr of Charlotte
Partridge of Windham
Pellett of Chester
Perry of Richford
Peterson of Williston
Pugh of S. Burlington
Randall of Troy
Reese of Pomfret
Rodgers of Glover
Rusten of Halifax
Seibert of Norwich
Severance of Colchester
Shand of Weathersfield
Sharpe of Bristol
Smith of Morristown
Sweaney of Windsor
Tracy of Burlington
Zuckerman of Burlington

Those members absent with leave of the House and not voting are:

Dates of Shelburne
Endres of Milton
Houston of Ferrisburgh
Hunt of Essex
Keenan of St. Albans City

Kitzmiller of Montpelier
Martin of Springfield
Morrissey of Bennington
Niquette of Colchester
Otterman of Topsham

Pillsbury of Brattleboro
Trombley of Grand Isle
Young of Orwell

Rep. Clarkson of Woodstock explained her vote as follows:

"Madam Speaker:

I vote no on any civil commitment because punishing people for crimes they have not yet committed is an unacceptable breach of civil liberty. We open Pandora's box even with a proposal that caps our civilly committed population at 10.

Everyone agrees civil commitment will only prevent 2 or 3 crimes of sexual violence in the next 10 years.

We enhance public safety not by investing our valuable resources in preventing 2 or 3 crimes but by investing in proven and effective measures which will prevent hundreds, if not thousands, future crimes and help eliminate a culture of sexual violence”

Rep. Wright of Burlington explained his vote as follows:

“Madam Speaker:

This amendment was a compromise that would have provided added protection for our communities in dealing with the most violent, untreated and highly likely to reoffend individuals. I am very concerned that a future legislature may be dealing with this under terrible circumstances. There will be no numbers that will explain away our failure here today.”

Pending the question, Shall the bill be read the third time? **Rep. Flory of** moved to amend the bill as follows:

In Sec.18, 13 V.S.A. § 3272, by striking subsection (a) in its entirety and inserting in lieu thereof new subsection (a) to read as follows:

(a)(1) The general assembly finds that providing treatment to sex offenders reduces the rate of their recidivism.

(2) In order to decrease the likelihood that sex offenders reoffend after release, the general assembly requests the department of corrections to consider and research:

(A) the effectiveness of providing sex offender programming and treatment immediately after incarceration, immediately prior to release, and on an outpatient basis in the community; and

(B) the effectiveness in treatment of sex offenders of all available treatment programs, including cognitive self-change and other programs not designed specifically for sex offenders.

Which was agreed to.

Pending the question, Shall the bill be read the third time? **Reps. LaVoie of Swanton and Komline of Dorset** moved to amend the bill as follows:

In Sec.3 by adding a new subsection (d) to read as follows:

(d)(1) The general assembly acknowledges that many diverse organizations in Vermont currently provide sexual violence prevention education in Vermont schools with minimal financial support from the state. In order to further the goal of comprehensive, collaborative statewide sexual violence prevention

efforts, the anti-violence partnership at the University of Vermont shall convene a task force to identify opportunities for sexual violence prevention education in Vermont schools. The task force shall conduct an inventory of sexual violence prevention activities currently offered by Vermont schools and by nonprofit and other nongovernmental organizations.

(2) The task force established by this subsection shall include representatives from:

(A) The department of education.

(B) The department of health.

(C) Prevent child abuse-Vermont.

(D) The Vermont network against domestic and sexual violence.

(E) The Vermont center for prevention and treatment of sexual abuse.

(F) The University of Vermont college of education and social services.

(3) On or before January 15, 2007, and on or before January 15 of each year thereafter, the task force shall report on its activities during the preceding year to the house and senate committees on education and judiciary.

Which was agreed to and third reading of the bill was ordered.

Message from Governor

A message was received from His Excellency, the Governor, by Mr. Neale Lunderville, Secretary of Civil and Military Affairs, as follows:

Madam Speaker:

I am directed by the Governor to inform the House that on the twenty-first day of February, 2006, he approved and signed a bill originating in the House of the following title:

H. 445 An act relating to the installation of after-market material on the front side windows of a motor vehicle

Adjournment

At five o'clock in the afternoon, on motion of **Rep. Sunderland of Rutland Town**, the House adjourned until tomorrow at one o'clock and fifteen minutes in the afternoon.

WEDNESDAY, FEBRUARY 22, 2006

At one o'clock and fifteen minutes in the afternoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Pastor Emeritus, Alan Bond of the Federal Church of Rochester, Rochester, VT.

Bill Referred to Committee on Ways and Means**H. 663**

House bill, entitled

An act relating to cigarette and tobacco products tax rate increases;

Appearing on the Calendar, affecting the revenue of the state, under the rule, was referred to the committee on Ways and Means.

Bill Referred to Committee on Appropriations**H. 863**

House bill, entitled

An act relating to aid for students who have earned the right to participate in a national level academic program or competition;

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

Committee Bill Introduced**H. 864**

By the committee on Institutions,

An act relating to capital construction and state bonding;

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

Senate Bills Referred

Senate bills of the following titles were severally taken up, read the first time and referred as follows:

S. 258

Senate bill, entitled

An act relating to credit counselors;
To the committee on Commerce.

S. 307

Senate bill, entitled
An act relating to a technical correction of a statute;
To the committee on Commerce.

House Resolution Referred to Committee**H.R. 14**

Reps. Keenan of St. Albans City, Acinapura of Brandon, Condon of Colchester, Kitzmiller of Montpelier, Marcotte of Coventry, Morley of Barton, Shand of Weathersfield and Trombley of Grand Isle offered a House resolution, entitled

House resolution in support of federal legislation to halt temporarily Dubai Ports World's assumption of operational contracts for certain United States ports;

Whereas, Peninsular & Oriental Steam has held contracts to operate the United States ports of Baltimore, Miami, New Orleans, New Jersey, New York, and Philadelphia, and

Whereas, these ports are among the largest in the United States and serve annually as the international transportation hubs for billions of dollars' worth of agricultural and manufactured exported and imported goods, and

Whereas, the importance of these key ports to our nation's economic vitality cannot be over estimated, and

Whereas, it is a matter of national security, second to none, that these ports remain secure at all times and not become vulnerable to terrorist infiltration, and

Whereas, recently, Dubai Ports World, a state-owned company of the United Arab Emirates, acquired all the assets of Peninsular & Oriental Steam, a \$6.8 billion transaction, including the British corporation's port management contracts in the United States, and

Whereas, despite the unfathomable situation of a state-owned company based in the United Arab Emirates controlling the operations of major American ports, the U.S. Treasury Department's Committee on Foreign Investments in the United States has approved Dubai Ports World's assumption of the operational responsibility of these United State's ports, and

Whereas, the outcry from public officials representing both political parties has been quick and condemnatory, and

Whereas, Governor Robert Ehrlich, the Republican governor of Maryland, has expressed his dismay and has stated that his state is "considering its options up to and including voiding the contract for the Port of Baltimore," a move that no governor would take without the most careful consideration of the legal consequences, and

Whereas, Governor George Pataki, the Republican governor of New York, has "directed the Port Authority of New York and New Jersey to explore all legal options," and

Whereas, U.S. Representative Peter King, a New York Republican, the Chair of the House Committee on Homeland Security, and U.S. Senator Charles Schumer, a New York Democrat, have announced they will each introduce legislation to halt temporarily the transfer of the port operations to Dubai Ports World by requiring the President to place a stay on the contracts' transfer, ordering the Committee on Foreign Investment in the United States to begin an investigation of the deal in coordination with other federal agencies, including the Coast Guard, requiring the secretaries of Homeland Security and the Treasury to prepare a report for Congress, and giving Congress 30 days after the secretaries' joint report is received to disapprove the sale with respect to American port operations, and

Whereas, to permit Dubai Ports World to operate these ports represents a grave threat to our nation's security which the federal government should not have approved, now therefore be it

Resolved by the House of Representatives:

That this legislative body supports the joint legislative efforts of U.S. Representative Peter King and U.S. Senator Charles Schumer to halt, at least temporarily, Dubai Ports World's assumption of port operating contracts in the United States, and be it further

Resolved: That the Clerk of the House be directed to send a copy of this resolution to U.S. Secretary of the Treasury John Snow, U.S. Assistant Secretary of the Treasury for International Affairs Clay Lowery, the Committee on Foreign Investment in the United States' Staff Chair Gay Sills, U.S. Secretary of Homeland Security Michael Chertoff, U.S. Representative Peter King, U.S. Senator Charles Schumer, and the Vermont Congressional Delegation.

Which was read and, in the Speaker's discretion, referred to the committee on Commerce.

Bill Read Second Time; Third Reading Ordered**H. 860**

Rep. Errecart of Shelburne spoke for the committee on Natural Resources and Energy.

House bill entitled

An act relating to Vermont's participation in the regional greenhouse gas initiative;

Having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Bill Amended; Third Reading Ordered**H. 342**

Rep. Kennedy of Chelsea, for the committee on Government Operations, to which had been referred House bill, entitled

An act relating to sheriff's law enforcement budget committees;

Reported in favor of its passage when amended as follows:

In Sec. 1, 24 V.S.A. § 313, by adding a subsection (d) as follows:

(d) This section shall not impede or affect a sheriff's authority to enter into contracts pursuant to section 290 of this title.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Government Operations agreed to and third reading ordered.

Bill Amended, Read Third Time and Passed**H. 856**

House bill, entitled

An act relating to enhancing sentences for and preventing risks posed by dangerous sexual offenders;

Was taken up and pending third reading of the bill, **Rep. O'Donnell of Vernon** moved to amend the bill as follows:

By inserting the following new sections:

Sec. 21. 13 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

(10) "Sex offender" means:

(A) A person who is convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court of any of the following offenses:

(i) sexual assault as defined in 13 V.S.A. § 3252, except as described in subdivision (C) of this subdivision (10);

(ii) aggravated sexual assault as defined in 13 V.S.A. § 3253;

(iii) lewd and lascivious conduct first offense as defined in 13 V.S.A. § 2601, unless pursuant to the terms of a court order at sentencing or plea agreement the offender is not to be placed on the internet registry; and lewd and lascivious conduct second and subsequent offenses as defined in 13 V.S.A. § 2601;

(iv) sexual abuse of a vulnerable adult as defined in 13 V.S.A. § 1379;

(v) second or subsequent conviction for voyeurism as defined in 13 V.S.A. § 2638(b) or (c); ~~and~~

(vi) kidnapping pursuant to subdivision 2405(a)(1)(D) or (E) of this title if the crime facilitated as an offense listed in subdivision (B) of this subdivision (10);

(vii) sexual activity by a caregiver as defined in 33 V.S.A. § 6913(d);

(viii) lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602;

(ix) sexual exploitation of children as defined in chapter 64 of this title;

~~(vi)(x)~~ an attempt to commit any offense listed in this subdivision.

(B) A person who is convicted of any of the following offenses against a victim who is a minor, ~~except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18:~~

~~(i) any offense listed in subdivision (A);~~

~~(ii) kidnapping as defined in 13 V.S.A. § 2405(a)(1)(D);~~

~~(iii) lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602;~~

~~(iv)(i)~~ white slave traffic as defined in 13 V.S.A. § 2635;

~~(v) sexual exploitation of children as defined in 13 V.S.A. chapter 64;~~

~~(vi) or (ii)~~ procurement or solicitation as defined in 13 V.S.A. § 2632(a)(6); or

~~(vii)(iii)~~ an attempt to commit any offense listed in this subdivision.

(C) A person who is under the age of 18 years and is convicted of sexual assault pursuant to subdivision 3252(a)(3) of this title when the victim is 14 or older shall be considered a sex offender only if so ordered by a judge or if included in the terms of a plea agreement.

~~(D)~~ (D) A person who takes up residence within this state, other than within a correctional facility, and who has been convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, for a sex crime the elements of which ~~would constitute a crime under~~ are substantially similar to the elements of any one of the crimes included in subdivision (10)(A) or (B) of this section ~~if committed in this state.~~

~~(D)~~ (E) A nonresident sex offender who crosses into Vermont and who is employed, carries on a vocation, or is a student.

(F) A person convicted of any offense who by the terms of a plea agreement or court order is to register pursuant to this chapter.

(G) A person who is required to register in another jurisdiction as a sex offender. With respect to a person who is required to register under this subsection, the state shall not be required to prove the substantial similarity of the element of the underlying conviction as is required in subdivision (D) of this subdivision (10).

* * *

(15) "Conviction" means a judgment of guilt following a verdict or finding of guilt, a plea of guilty, a plea of nolo contendere, an Alford Plea, or a judgment of guilt pursuant to a deferred sentence. A sex offender whose sentence is deferred shall have no duty to register after successful completion of the terms of the deferred sentence agreement for the duration specified in the agreement, unless if otherwise obligated by terms of the plea agreement.

* * *

Sec. 22. 13 V.S.A. § 5402 is amended to read:

§ 5402. SEX OFFENDER REGISTRY

* * *

(b) All information ~~contained in the~~ posted on the internet registry may be disclosed for any purpose ~~permitted under the law of this state~~, including use by:

~~(1) local, state and federal law enforcement agencies exclusively for lawful law enforcement activities;~~

~~(2) state and federal governmental agencies for the exclusive purpose of conducting confidential background checks;~~

~~(3) any employer, including a school district, who is authorized by law to request records and information from the Vermont criminal information center, where such disclosure is necessary to protect the public concerning persons required to register under this subchapter. The identity of a victim of an offense that requires registration shall not be released; and~~

(4) a person identified as a sex offender in the registry for the purpose of reviewing the accuracy of any record relating to him or her. The identity of a victim of an offense that requires registration shall not be released.

* * *

Sec. 23. 13 V.S.A. § 5403 is amended to read:

§ 5403. REPORTING UPON CONVICTION

(a) Upon conviction and prior to sentencing, the court shall order the sex offender to provide the court with the following information, which the court shall forward to the department forthwith:

- (1) name;
- (2) date of birth;
- (3) general physical description;
- (4) current address;
- (5) Social Security number;
- (6) fingerprints;
- (7) current digital photograph;
- (8) current employment; and

(9) name and address of any postsecondary educational institution at which the sex offender is enrolled as a student.

(b) Within 10 days after sentencing, the court shall forward to the department the sex offender's conviction record, including offense, date of conviction, sentence and any conditions of release or probation.

Sec. 24. 13 V.S.A. § 5407 is amended to read:

§ 5407. SEX OFFENDER'S DUTY TO REPORT

* * *

~~(e) Except as provided for in subsection (f) of this section, a person required to register as a sex offender under this subchapter shall continue to comply with this section, except during periods of incarceration, until 10 years have elapsed since the person was released from prison or discharged from parole, supervised release, or probation, whichever is later. The 10 year period shall not be affected or reduced in any way by the actual duration of the offender's sentence as imposed by the court, nor shall it be reduced by the sex offender's release on parole or ending of probation or other early release.~~

~~(f) A person required to register as a sex offender under this subchapter shall continue to comply with this section for the life of that person, except during periods of incarceration, if that person:~~

~~(1) has at least one prior conviction for an offense described in subdivision 5401(10) of this subchapter or a comparable offense in another jurisdiction of the United States;~~

~~(2) has been convicted of a sexual assault as defined in section 3252 of this title or aggravated sexual assault as defined in section 3253 of this title; however, if a person convicted under section 3252 is not more than six years older than the victim of the assault and if the victim is 14 years or older, then the offender shall not be required to register for life if the age of the victim was the basis for the conviction; or~~

~~(3) has been determined to be a sexually violent predator pursuant to section 5405 of this subchapter.~~

~~(g)(c)~~ The department shall adopt forms and procedures for the purpose of verifying the addresses of persons required to register under this subchapter in accordance with the requirements set forth in section (b)(3) of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. Every 90 days for sexually violent predators and annually for other registrants, the department shall verify addresses of registrants by sending a nonforwardable address verification form to each registrant at the

address last reported by the registrant. The registrant shall be required to sign and return the form to the department within 10 days of receipt.

(h)(f) A registrant who has no permanent address shall report to the department to notify it as to his or her temporary residence. Temporary residence, for purposes of this section, need not include an actual dwelling or numbered street address, but shall identify a specific location. A registrant shall not be required to check in daily if he or she makes acceptable other arrangements with the department to keep his or her information current.

Sec. 25. 13 V.S.A. § 5411 is amended to read:

§ 5411. NOTIFICATION TO LOCAL LAW ENFORCEMENT AND
LOCAL COMMUNITY

(a) Upon receiving a sex offender's registration materials from the department of corrections, notification that a nonresident sex offender has crossed into Vermont for the purpose of employment, carrying on a vocation, or being a student, or a sex offender's release or change of address, including changes of address which involve taking up residence in this state, the department shall immediately notify the local law enforcement agency of the following information, ~~which may be used only for lawful law enforcement activities;~~

- (1) name;
- (2) general physical description;
- (3) nature of offense;
- (4) sentence;
- (5) the fact that the registry has on file additional information, including the sex offender's photograph and fingerprints;
- (6) current employment;
- (7) name and address of any postsecondary educational institution at which the sex offender is enrolled as a student; and
- (8) whether the offender complied with treatment recommended by the department of corrections.

~~(b)(1) Except as provided for in subsections (c) and (e) of this section, the department, the department of corrections, and any authorized local law enforcement agency shall release registry information concerning persons required to register under state law if the requestor can articulate a concern about the behavior of a specific person regarding the requestor's personal~~

~~safety or the safety of another, or the requestor has reason to believe that a specific person may be a registered sex offender and can articulate a concern regarding the requestor's personal safety or the safety of another. However, the identity of a victim of an offense shall not be released.~~

~~(2) The department, the department of corrections, and any authorized local law enforcement agency shall release the following registry information if the requestor meets the requirements in subdivision (1) of this subsection:~~

~~(A) a general physical description of the offender;~~

~~(B) date of birth;~~

~~(C) the date and nature of the offense;~~

~~(D) whether the offender complied with treatment recommended by the department of corrections; and~~

~~(E) whether there is an outstanding warrant for the offender's arrest.~~

~~(e)(b)(1) Except as provided for in subsection (e) of this section, upon request of a member of the public about a specific person, the department, the department of corrections, and any authorized local law enforcement agency shall release registry information on the following registrants: posted on the internet regarding registrants if the requestor states that he or she does not have access to the on-line registry. However, the identity of a victim of an offense shall not be released.~~

~~(A) Sex offenders who have been convicted of section 3253 of this title (aggravated sexual assault), subdivision 2405(a)(1)(D) of this title if a registrable offense (kidnapping and sexual assault of a child), or 33 V.S.A. § 6913(d)(sexual activity with a vulnerable adult).~~

~~(B) Sex offenders who have at least one prior conviction for an offense described in subdivision 5401(10) of this subchapter or a comparable offense in another jurisdiction.~~

~~(C) Sex offenders who have failed to comply with sex offender registration requirements and for whose arrest there is an outstanding warrant for such noncompliance.~~

~~(D) Sex offenders who have been designated as sexual predators pursuant to section 5405 of this title.~~

~~(E) Sex offenders who have been designated by the department of corrections, pursuant to section 5411b of this title, as high risk.~~

(2) The department, the department of corrections, and any authorized local law enforcement agency shall release the following registry information to a requestor in accordance with subdivision (1) of this subsection:

- (A) the offender's known aliases;
- (B) the offender's date of birth;
- (C) a general physical description of the offender;
- (D) the offender's ~~town of residence~~ address;
- (E) the date and nature of the offender's conviction;

(F) if the offender is under the supervision of the department of corrections, the name and telephone number of the local department of corrections office in charge of monitoring the offender;

(G) whether the offender complied with treatment recommended by the department of corrections;

(H) whether there is an outstanding warrant for the offender's arrest;
and

(I) the reason for which the offender information is accessible under subdivision (1) of this subsection.

(3) Upon request of a member of the public for registry information not related to a specific person, the department, the department of corrections, and any authorized local law enforcement agency may release registry information posted on the internet regarding registrants if the requestor states that he or she does not have direct access to the online registry. However, the identity of a victim of an offense shall not be released. Any information listed in subdivision (2) of this subsection may be released pursuant to a request which falls under this subdivision (3).

~~(4)~~(c) The department, the department of corrections, and any local law enforcement agency authorized to release registry information shall keep a log of requests for registry information and follow the procedure for verification of the requestor's identity recommended by the department. Such log shall include the requestor's name, address, telephone number, the name of the person for whom the request was made, the reason for the request, and the date of the request. Information about requestors shall be confidential and shall only be accessible to criminal justice agencies.

~~(e) After 10 years have elapsed from the completion of the sentence, a person required to register as a sex offender for life pursuant to section 5407 of this title may petition the district court for a termination of notification. The~~

state shall make a reasonable attempt to notify the victim of the proceeding, and consider victim testimony regarding the petition. If the registrant was convicted of a crime which requires lifetime registration, there shall be a rebuttable presumption that the person is a high risk sex offender. Should the registrant present evidence that he or she is not a high risk offender, the state shall have the burden of proof to establish by a preponderance of the evidence that the person remains a high risk to reoffend. The court shall consider whether the offender has successfully completed sex offender treatment. The court may require the offender to submit to a psychosexual evaluation. If the court finds that there is a high risk of reoffense, notification shall continue. The Vermont Rules of Civil Procedure shall apply to these proceedings. A registrant may petition the court to be removed from the registry once every 60 months. The presumption under this section that a lifetime registrant is a high risk offender shall not automatically subject the offender to increased public access to his or her status as a sex offender and related information under subdivision (e)(1)(E) of this section or section 5411a of this title.

(d) The department, the department of corrections, and any authorized local law enforcement agency are authorized to notify members of the public whenever, in the sole discretion of the department or agency, community safety requires notification. Such notification shall include the following information:

- (1) the offender's known aliases;
 - (2) the offender's date of birth;
 - (3) a general physical description of the offender;
 - (4) the offender's address;
 - (5) the date and nature of the offender's conviction;
 - (6) if the offender is under the supervision of the department of corrections, the name and telephone number of the local department of corrections office in charge of monitoring the offender;
 - (7) whether the offender complied with treatment recommended by the department of corrections;
 - (8) whether there is an outstanding warrant for the offender's arrest; and
 - (9) the notifying department's or agency's opinion that the sex offender poses a danger.
- (e) Active community notification regarding registered sex offenders who may pose a danger to members of the community is an important public safety

tool which the general assembly intends for authorized agencies to use at their discretion in accordance with this subchapter.

Sec. 26. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding sections 2056a–2056e of Title 20, the department shall electronically post information on the internet in accordance with subsection (b) of this section regarding ~~the following~~ all sex offenders, upon their release from confinement:

~~(1) Sex offenders who have been convicted of a violation of section 3253 of this title (aggravated sexual assault) or subdivision 2405(a)(1)(D) of this title if a registrable offense (kidnapping and sexual assault of a child).~~

~~(2) Sex offenders who are convicted of a violation of section 3252 (sexual assault) or 2602 (lewd or lascivious conduct with child) of this title, and who have a prior conviction of a violation of section 3252 (sexual assault) or 2602 (lewd or lascivious conduct with child) of this title. Comparable offenses in another jurisdiction shall be included in this subsection.~~

~~(3) Sex offenders who have failed to comply with sex offender registration requirements and for whose arrest there is an outstanding warrant for such noncompliance. Information on offenders shall remain on the internet only while the warrant is outstanding.~~

~~(4) Sex offenders who have been designated as sexual predators pursuant to section 5405 of this title.~~

~~(5) Sex offenders who have not complied with sex offender treatment recommended by the department of corrections or who are ineligible for sex offender treatment. The department of corrections shall establish rules for the administration of this subdivision and shall specify what circumstances constitute noncompliance with treatment and criteria for ineligibility to participate in treatment. Offenders subject to this provision shall have the right to appeal the department of corrections' determination in superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure. This subdivision shall apply prospectively and shall not apply to those sex offenders who did not comply with treatment or were ineligible for treatment prior to March 1, 2005.~~

~~(6) Sex offenders who have been designated by the department of corrections, pursuant to section 5411b of this title, as high risk.~~

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

- (1) the offender's name and any known aliases;
- (2) the offender's date of birth;
- (3) a general physical description of the offender;
- (4) a digital photograph of the offender;
- (5) the offender's ~~town of residence~~ address;
- (6) the date and nature of the offender's conviction;
- (7) if the offender is under the supervision of the department of corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;
- (8) whether the offender complied with treatment recommended by the department of corrections;
- (9) a statement that there is an outstanding warrant for the offender's arrest, if applicable; and
- (10) the reason for which the offender information is accessible under this section.

(c) The department shall have the authority to take necessary steps to obtain digital photographs of offenders whose information is required to be posted on the internet and to update photographs as necessary. An offender who is requested by the department to report to the department or a local law enforcement agency for the purpose of being photographed for the internet shall comply with the request within 30 days.

(d) An offender's street address shall not be posted electronically. The identity of a victim of an offense that requires registration shall not be released.

(e) Information regarding a sex offender convicted of sexual assault as defined in subdivision 3252(a)(3) of this title who is under the age of 18 years old and whose victim was 14 years or older shall ~~not~~ be posted electronically if ~~the conduct that is the basis for the offense is criminal only because of the age of the victim and the perpetrator is within 38 months of age of the victim so ordered by a judge or included in the terms of a plea agreement.~~

~~(f) Information regarding a sex offender shall not be posted electronically prior to the offender reaching the age of 18, but such information shall be otherwise available pursuant to section 5411 of this title.~~

~~(g)(1)~~ Information on sex offenders shall be posted on the internet for the duration of time for which they are subject to notification requirements under section 5401 et seq. of this title.

(g) Except as provided in subsection (f) of this section, and except during periods a sex offender is incarcerated, information on a sex offender shall be posted on the internet until, pursuant to court order issued pursuant to this section, the information is removed from the internet.

(1) An offender may file a petition with the district court that sentenced the offender one day after the following criteria have been met: 10 consecutive years have elapsed since the person was released from prison or discharged from parole, supervised release, or probation, whichever is later; the person has not committed another offense, no charge is pending for which probable cause has been found or an indictment issued; and the offender poses no risk of reoffending. The 10-year period shall not be affected or reduced in any way the actual duration of the offender's sentence as imposed by the court, nor shall it be reduced by the sex offender's release on parole or ending of probation or other early release. A copy of the petition shall be provided by the offender to VCIC, the state's attorney, and the attorney general's office on or before the filing of the petition in district court. The court may upon its own motion or upon motion of the state's attorney or attorney general dismiss the petition if the petition fails to set forth the grounds or if the state's attorney or attorney general files a certified copy of a record of conviction of an offense that occurred during the 10-year period or a record of a charge that is pending and for which probable cause has been found or an indictment issued. The court may take judicial notice of its own records. If the petition is not dismissed prior to hearing on the merits, the court may set the matter for hearing. Discovery shall be in accordance with terms set forth by the court. The burden shall be upon the offender to establish by clear and convincing evidence that 10 consecutive years have elapsed since the person was released from prison or discharged from parole, supervised release, or probation whichever is later, and the person has not committed another offense no charge is pending for which probable cause has been found or an indictment issued and the offender poses no risk of reoffending. The 10-year period shall not be affected or reduced in anyway by the actual duration of the offender's sentence as imposed by the court nor shall it be reduced by the sex offender's release on parole or ending of probation or other early release.

(2) Information regarding offenders who are successful in removing their names from the internet registry shall remain available to the following:

(A) local, state, and federal law enforcement agencies exclusively lawful law enforcement activities,

(B) state and federal governmental agencies for the exclusive purpose of conducting confidential background checks;

(C) any employer, including a school district, who is authorized by law to request records and information from the Vermont criminal information center, where such disclosure is necessary to protect the public concerning persons required to register under this subchapter. The identity of a victim of an offense that requires registration shall not be released.

(h) Except during periods in which a sex offender is incarcerated, information concerning a sex offender shall be posted on the internet for the life of that person if he or she:

(1) has at least one prior conviction for an offense described in subdivision 5401(10) of this title or a comparable offense in another jurisdiction of the United States; or

(2) has been convicted of a sexual assault as defined in section 3252 of this title or aggravated sexual assault as defined in section 3253 of this title; except a person convicted under subdivision 3252(a)(3) of this title who is under 18 years may, if the victim of the offense was 14 years or older have his or her registry information posted on the internet for life only if so ordered by a judge or included in the terms of a plea agreement. If there is no indication that the registration should be for life, the registry shall be posted pursuant to subdivision (f) of this section;

(3) has been determined to be a sexually violent predator pursuant to section 5405 of this title;

(4) has been determined to be "high risk" pursuant to section 5411b of this title;

(5) has been determined by VCIC to have failed to comply with a registry requirement;

(6) the person is required to register for life pursuant to the terms of a plea agreement or court order;

(7) the person is required to register for life in another jurisdiction as a sex offender; or

(8) the person is convicted of a violation of subdivision 2405(a)(1)(D) or (E) of this title if the crime facilitated is an offense listed in subdivision 5401(10)(A) or (B) of this title.

(h)(i) Posting of the information shall include the following language: "This information is made available for the purpose of complying with 13 V.S.A. § 5401 et seq., which requires the Department of Public Safety to establish and maintain a registry of persons who are required to register as sex offenders and to post electronically information on sex offenders. The registry

is based on the legislature's decision to facilitate access to publicly available information about persons convicted of sexual offenses. EXCEPT FOR OFFENDERS SPECIFICALLY DESIGNATED ON THIS SITE AS HIGH RISK, THE DEPARTMENT OF PUBLIC SAFETY HAS NOT CONSIDERED OR ASSESSED THE SPECIFIC RISK OF REOFFENSE WITH REGARD TO ANY INDIVIDUAL PRIOR TO HIS OR HER INCLUSION WITHIN THIS REGISTRY AND HAS MADE NO DETERMINATION THAT ANY INDIVIDUAL INCLUDED IN THE REGISTRY IS CURRENTLY DANGEROUS. THE MAIN PURPOSE OF PROVIDING THIS DATA ON THE INTERNET IS TO MAKE INFORMATION MORE EASILY AVAILABLE AND ACCESSIBLE, NOT TO WARN ABOUT ANY SPECIFIC INDIVIDUAL. If you have questions or concerns about a person who is not listed on this site or you have questions about sex offender information listed on this site, please contact the Department of Public Safety or your local law enforcement agency. Please be aware that many nonoffenders share a name with a registered sex offender. Any person who uses information in this registry to injure, harass, or commit a criminal offense against any person included in the registry or any other person is subject to criminal prosecution." "This registry does not contain information on all sex offenders. Only sex offenders convicted of certain crimes, listed in 13 V.S.A. § 5401, are required to register. Persons arrested for, or charged with, a sex crime are not required to register unless the arrest and/or charges result in a conviction of a sex crime included in section 5401. Please be aware that many nonoffenders shall a name with a registered sex offender. Be advised that the registry posts only the last known address of an offender, and that any offender may have moved from that address and not yet notified the registry of the new address. If you have concerns about the behavior of any person, whether he or she is included on this registry or not, or if you believe that any information on this registry is no accurate, please contact the Department of Public Safety or your local law enforcement agency. The information provided on this website is intended to be used for public safety and community awareness purposes only. The Department of Public Safety and the Department of Corrections have not considered or assessed the specific risk of reoffense with regard to any individual prior to his or her inclusion on this website and have made no determination that any individual included on this website is currently dangerous. The primary purpose of providing this information is to make the information easily available and accessible, not to warn about any specific individual. Use this information to threaten, intimidate, or harass any registrant or any other person may result in criminal prosecution."

(i)(1) The department shall post electronically general information about the sex offender registry and how the public may access registry information. Electronically posted information regarding sex offenders listed in subsection (a) of this section shall be organized and available to search by the sex offender's name and the sex offender's address and county of residence.

~~(j) Any member of the public who seeks to access information on specific sex offenders on the sex offender website shall register on the website. Registration information about site users shall not be public. The website shall require the person's name and address and shall require the person to acknowledge that he or she has read the following disclaimer: "THE IDENTIFYING INFORMATION REGARDING A REGISTERED USER OF THIS SITE IS MAINTAINED PURSUANT TO LAW AND IS CONFIDENTIAL AND NOT SUBJECT TO PUBLIC DISCLOSURE. THE INFORMATION IS COLLECTED TO IDENTIFY A PATTERN OR PRACTICE OF MISUSE OF SEX OFFENDER REGISTRATION INFORMATION SUCH AS THE COMMISSION OF A CRIME AGAINST A REGISTERED SEX OFFENDER OR ANY ATTEMPT TO PORTRAY FALSELY AN INDIVIDUAL AS A SEX OFFENDER. USING AND SHARING SEX OFFENDER INFORMATION RESPONSIBLY TO ENSURE THE SAFETY OF YOURSELF, YOUR FAMILY, AND YOUR COMMUNITY IS NOT A PATTERN OR PRACTICE OF MISUSE."~~

(k) The department shall adopt rules for the administration of this section and shall expedite the process for the adoption of such rules. The department shall ~~not~~ implement this section prior to the adoption of such rules.

(l) If a sex offender's information is required to be posted electronically pursuant to subdivision (a)(2) of this section, the department shall list the offender's convictions for any crime listed in subdivision 5401(10) of this title, regardless of the date of the conviction or whether the offender was required to register as a sex offender based upon that conviction

Sec. 27. 13 V.S.A. § 5411b is amended to read:

§ 5411b. DESIGNATION OF HIGH-RISK SEX OFFENDER

(a) The department of corrections may evaluate a sex offender required to register under section 5401 of this title for the purpose of determining whether the offender is "high-risk" as defined in section 5401 of this title. ~~The designation of high risk under this section is for the purpose of identifying an offender as one who should be subject to increased public access to his or her status as a sex offender and related information, including internet access. The designation of a person as "high-risk" shall be registry information and shall be posted pursuant to section 5411a of this title.~~

(b) After notice and an opportunity to be heard, a sex offender who is designated as high-risk shall have the right to appeal de novo to the superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure.

(c) The department of corrections shall adopt rules for the administration of this section. ~~The department of corrections shall not implement this section prior to the adoption of such rules.~~

(d) The department of corrections shall identify those sex offenders under the supervision of the department as of the date of passage of this act who are high-risk and shall designate them as such no later than September 1, 2005.

Sec. 28. 13 V.S.A. § 5412 is amended to read:

§ 5412. ~~ACTIVE COMMUNITY NOTIFICATION BY THE~~

~~DEPARTMENT OF PUBLIC SAFETY, THE DEPARTMENT OF
CORRECTIONS, AND LOCAL LAW ENFORCEMENT;
IMMUNITY~~

(a) The department, the department of corrections, any authorized local law enforcement agency, and their employees shall be immune from liability in carrying out the provisions under this subchapter except in instances of gross negligence or willful misconduct, provided that the agencies complied with the rules adopted pursuant to this subchapter.

~~(b) The department, the department of corrections, and any authorized local law enforcement agency are authorized to notify members of the public who are likely to encounter a sex offender who poses a danger under circumstances that are not enumerated in this subchapter.~~

~~(c) Notification of the community beyond those persons likely to encounter a sex offender shall be authorized only under circumstances which constitute a compelling risk to public safety and only after consultation with the Vermont crime information center and the department of corrections.~~

~~(d) Active community notification regarding registered sex offenders who may pose a danger to members of the community is an important public safety tool which the general assembly intends for authorized agencies to use at their discretion in accordance with this subchapter.~~

and by renumbering the remaining section to be numerically correct

Pending the question, Shall the House amend the bill as recommended by Rep. O'Donnell of Vernon? **Rep. O'Donnell of Vernon** asked and was granted leave of the House to withdraw her amendment.

Pending third reading of the bill **Reps. LaVoie of Swanton and Flory of Pittsford** moved to amend the bill as follows:

First: in Sec. 10, § 2602 of 13 V.S.A., by striking subdivision (b)(2) in its entirety and inserting in lieu thereof a new subdivision (b)(2) to read as follows:

(2) For a second or subsequent offense, imprisoned not less than ~~two~~ three years and ~~not more than 30 years or a maximum term of life, and, in addition, may be fined not more than \$10,000.00~~ \$25,000.00, or both. A minimum sentence ordered pursuant to this subdivision 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 minimum sentence imposed.

Second: in Sec. 12, § 3252 of 13 V.S.A., by striking subdivision (f)(1) in its entirety and inserting in lieu thereof a new subdivision (f)(1) to read as follows:

(f)(1) A person who violates subsection (a), (b), (d), or (e) of this section shall be imprisoned not less than three years and for a maximum term of life, and, in addition, may be fined not more than \$25,000.00. A minimum sentence ordered pursuant to this subdivision 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 minimum sentence imposed.

Third: in Sec. 12, § 3253 of 13 V.S.A., by striking subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) A person who commits the crime of aggravated sexual assault shall be imprisoned ~~up to and including~~ not less than five years and a maximum term of life or, and, in addition, may be fined not more than \$50,000.00, ~~or both. No person who receives a minimum sentence under this section shall be eligible for early release or furlough until the expiration of the minimum sentence imposed. A minimum sentence ordered pursuant to this subdivision 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 minimum sentence imposed.~~

Pending the question, Shall the House amend the bill as recommended by Reps. LaVoie of Swanton, et al? **Rep. Flory of Pittsford** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the House amend the

bill as recommended by Reps. LaVoie of Swanton, et al? was decided in the negative. Yeas, 50. Nays, 82.

Those who voted in the affirmative are:

Acinapura of Brandon
Adams of Hartland
Allaire of Rutland City
Allard of St. Albans Town
Baker of West Rutland
Bartlett of Dover
Bostic of St. Johnsbury
Branagan of Georgia
Brennan of Colchester
Canfield of Fair Haven
Clark of St. Johnsbury
Clark of Vergennes
Dates of Shelburne
DePoy of Rutland City
Donaghy of Poultney
Endres of Milton
Errecart of Shelburne

Flory of Pittsford
Helm of Castleton
Hube of Londonderry
Hudson of Lyndon
Johnson of Canaan
Kennedy of Chelsea
Kilmartin of Newport City
Koch of Barre Town
Komline of Dorset
Krawczyk of Bennington
Larrabee of Danville
LaVoie of Swanton
Lawrence of Lyndon
Livingston of Manchester
Marcotte of Coventry
McAllister of Highgate
McFaun of Barre Town

Miller of Elmore
Morley of Barton
Morrissey of Bennington
Niquette of Colchester
O'Donnell of Vernon
Parent of St. Albans City
Peaslee of Guildhall
Pillsbury of Brattleboro
Shaw of Derby
Sunderland of Rutland Town
Turner of Milton
Valliere of Barre City
Westman of Cambridge
Winters of Swanton
Winters of Williamstown
Wright of Burlington

Those who voted in the negative are:

Ancel of Calais
Aswad of Burlington
Atkins of Winooski
Audette of S. Burlington
Barnard of Richmond
Botzow of Pownal
Brooks of Montpelier
Chen of Mendon
Clarkson of Woodstock
Condon of Colchester
Copeland-Hanzas of
Bradford
Corcoran of Bennington
Cross of Winooski
Darrow of Dummerston
Deen of Westminster
Donahue of Northfield
Dostis of Waterbury
Dowland of Holland
Edwards of Brattleboro
Emmons of Springfield
Evans of Essex
Fallar of Tinnmouth
Fisher of Lincoln
Frank of Underhill
French of Randolph

Gervais of Enosburg
Grad of Moretown
Green of Berlin
Haas of Rochester
Head of S. Burlington
Heath of Westford
Hosford of Waitsfield
Howard of Rutland City
Howrigan of Fairfield
Hutchinson of Randolph
Jerman of Essex
Jewett of Ripton
Johnson of South Hero
Kainen of Hartford
Keogh of Burlington
Kitzmiller of Montpelier
Klein of East Montpelier
Kupersmith of S. Burlington
Larson of Burlington
Leriche of Hardwick
Lippert of Hinesburg
Lorber of Burlington
Maier of Middlebury
Malcolm of Pawlet
Marek of Newfane
Martin of Wolcott

Masland of Thetford
McCullough of Williston
McLaughlin of Royalton
Milkey of Brattleboro
Miller of Shaftsbury
Minter of Waterbury
Molloy of Arlington
Monti of Barre City
Mook of Bennington
Nease of Johnson
Nitka of Ludlow
Nuovo of Middlebury
Obuchowski of Rockingham
Orr of Charlotte
Otterman of Topsham
Partridge of Windham
Perry of Richford
Peterson of Williston
Potter of Clarendon
Pugh of S. Burlington
Randall of Troy
Rodgers of Glover
Rusten of Halifax
Seibert of Norwich
Shand of Weathersfield
Sharpe of Bristol

Smith of Morristown
Sweaney of Windsor

Tracy of Burlington
Trombley of Grand Isle

Zuckerman of Burlington

Those members absent with leave of the House and not voting are:

Bohi of Hartford
Donovan of Burlington
Dunsmore of Georgia
Houston of Ferrisburgh
Hunt of Essex
Keenan of St. Albans City

Kiss of Burlington
Larocque of Barnet
Louras of Rutland City
Marron of Stowe
Martin of Springfield
Myers of Essex

Pellett of Chester
Reese of Pomfret
Severance of Colchester
Smith of New Haven
Young of Orwell

Rep. Howard of Rutland City explained his vote as follows:

"Madam Speaker:

I voted against this amendment because I trust our prosecutors to make the best judgment for the safety of our communities and for the best interest of the survivor. A fifty percent acquittal rate of these cases, is a risk too great to take when the safety of our children is at stake.

Rep. Otterman of Topsham explained his vote as follows:

"Madam Speaker:

The facts and circumstances of criminal cases differ in many ways. The background and prospects of those convicted of crimes also vary. What is appropriate and advisable as a sentence in one case may be very different from the punishment suitable in another case.

Let us let the judges and prosecutors do their jobs. We should not tie their hands.

Pending third reading of the bill, **Rep. Kilmartin of Newport City** moved to amend the bill as follows:

In Sec. 12, chapter 72 of 13 V.S.A., by inserting §§ 3257-3260 to read:

§ 3257. FIRST DEGREE AGGRAVATED SEXUAL ASSAULT DEFINED

(a)(1) A person is guilty of first degree aggravated sexual assault if the person commits sexual assault as defined in section 3252 of this title or aggravated sexual assault as defined in section 3253 of this title and:

(A) the victim is under 13 years of age and is entrusted to the actor's care by authority of law or by the child's parent or guardian or by a person acting at the direction of the child's parent or guardian and the actor is at least 16 years of age;

(B) the victim is under 13 years of age and is the person's child, grandchild, foster child, adopted child, or stepchild;

(C) the victim is under 13 years of age and one or more heinous elements exist as defined in subdivision (2) of this subsection.

(D) two or more heinous elements as defined in subdivision (2) of this subsection exist; or

(E) one or more heinous elements as defined in subdivision (2) of this subsection exist, and the person has previously been convicted in this state of sexual assault or aggravated sexual assault or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault or aggravated sexual assault if committed in this state.

(2) For purposes of this section, a heinous element exists if:

(A) the victim was under the age of 11 and the actor is at least 15 years of age;

(B) the victim was under the age of 13, and the actor provided or delivered the victim to another actor who engaged in sexual assault or five or more lewd and lascivious acts against the victim;

(C) the offender intentionally mutilated the victim;

(D) the offender was armed with a dangerous weapon and threatened to use it against the victim in order to cause the victim to submit to the assault;

(E) the offender exposed the victim to extreme inhumane conditions as defined in subdivision (5) of this section;

(F) the offense involved the sexual assault of more than one victim;

(G) the offense involved more than one perpetrator sexually assaulting the victim; or

(H) the offender moved the victim from one place to another and did not intend to release the victim in a safe place; or

(I) the offender tortured the victim.

(3) A conviction for first degree aggravated sexual assault may not be based upon a heinous element constituted by conduct that was also an element of the underlying aggravated sexual assault conviction, except for factors of age.

(4) The findings for each heinous element shall be supported by different underlying facts, except for factors of age.

(5) As used in this section:

(A) "Extreme inhumane conditions" means situations where, either before or after the sexual assault, the offender knowingly causes or permits the victim to be placed in a situation likely to cause death or severe ongoing mental, emotional, or psychological harm.

(B) "Mutilation" means the intentional infliction of physical abuse designed to cause serious permanent disfigurement or permanent or protracted loss or impairment of any bodily function, where the offender relishes the infliction of the abuse, evidencing debasement or perversion.

(C) "Torture" means the intentional infliction of extreme mental anguish or extreme psychological or physical abuse when committed in an especially depraved manner.

(b)(1) A person who commits the crime of first degree aggravated sexual assault shall be imprisoned up to and including life without parole and fined not more than \$100,000.00. The sentence shall be determined by a jury pursuant to section 3259 of this title.

(2) The court shall not place on probation or parole or suspend or defer the sentence of any person convicted of first degree aggravated sexual assault. No person who receives a minimum sentence under this section shall be eligible for early release or furlough until the expiration of the minimum sentence imposed.

§ 3258. NOTICE OF INTENT TO SEEK CONVICTION FOR FIRST DEGREE AGGRAVATED SEXUAL ASSAULT

(a) Whenever the state intends to seek a conviction for the crime of first degree aggravated sexual assault, the attorney for the state, before trial or acceptance by the court of a plea of guilty, shall file with the court and serve upon the defendant a notice that:

(1) the state intends to seek a conviction for the crime of first degree aggravated sexual assault; and

(2) sets forth the provisions of section 3257 of this title which the state alleges will support the conviction.

(b) A notice of intent to seek a conviction for first degree aggravated sexual assault may be withdrawn at any time by a written notice of withdrawal filed with the court and served upon the defendant. Once withdrawn, the notice of intent to seek a conviction for first degree aggravated sexual assault may not be refiled.

§ 3259. SENTENCING HEARING

(a) When the attorney for the state has filed a notice as required under section 3258 of this title and the defendant is found guilty or pleads guilty to the offense of first degree aggravated sexual assault, the judge who presided at the trial or before whom the guilty plea was entered or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted:

(1) before the jury which determined the defendant's guilt; or

(2) before a jury impaneled for the purpose of the hearing if:

(A) the defendant was convicted upon a plea of guilty; or

(B) the jury which determined the defendant's guilt has been discharged for good cause.

(b) A jury impaneled under this section shall consist of 12 members, unless at any time before the conclusion of the hearing the parties stipulate with the approval of the court that it shall consist of a number less than 12.

(c) When a defendant is found guilty of or pleads guilty to the crime of first degree aggravated sexual assault, no presentence report shall be prepared.

(d)(1) The following information may be presented at the sentencing hearing:

(A) Information concerning aggravating factors as defined in subdivision (2) of this subsection.

(B) Information concerning mitigating factors as defined in subdivision (3) of this subsection.

(C) The trial transcript and exhibits.

(D) Any other information relevant to aggravating or mitigating factors presented by either the state or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

(2) As used in this section, aggravating factors shall include the following:

(A) The assault was committed while the defendant was in custody under sentence of imprisonment.

(B) The defendant was previously convicted of a felony involving the use of violence to a person.

(C) The assault was committed while the defendant was engaged in the commission of or in an attempt to commit or in immediate flight after committing a felony.

(D) The victim of the assault was particularly weak, vulnerable, helpless, or of tender years. "Tender years" shall be presumed when the victim was 11 years or under.

(E) The assault was particularly severe, brutal, or cruel.

(F) The assault involved multiple victims.

(G) The assault was random, predatory, or arbitrary in nature.

(H) There were multiple assaults of at least five in number and that were part of a pattern or scheme that existed over a period of at least 30 days.

(I) Any other factor that the state offers in support of a greater sentence.

(3) As used in this section, mitigating factors shall include the following:

(A) The defendant had no significant history of prior criminal activity before sentencing.

(B) The defendant was suffering from a severe mental or severe physical disability or condition that significantly reduced his or her culpability for the assault.

(C) The defendant was an accomplice in the assault committed by another person, and his or her participation was relatively minor.

(D) The defendant because of youth or old age lacked substantial capacity of judgment in committing the assault; provided, however, that capacity of judgment shall be presumed if the defendant is 13 years or older.

(E) The defendant acted under duress, coercion, threat or compulsion insufficient to constitute a defense but which significantly affected his or her conduct.

(F) The victim was at least 13 years of age and knowingly and intelligently consented to the sexual act; provided, however, this factor must be proved by clear and convincing evidence.

(G) Any other factor that the defendant offers in support of a lesser sentence.

(e) The state and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present an argument as to the adequacy of the information to establish the existence of the aggravating or mitigating factors and as to the appropriateness in that case of imposing a particular sentence. The burden of establishing any aggravating factor is on the state and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant and is not satisfied, except as otherwise provided, unless established by a preponderance of the evidence.

(f) In determining whether a sentence of life imprisonment without the possibility of parole is to be imposed upon a defendant, the jury shall consider information presented under subsections (d) and (e) of this section and any other mitigating factor that the defendant offers against imposition of such sentence.

(g) If the jury does not find that one of the aggravating factors set forth in subdivision (d)(2) of this section exists, the jury:

(1) shall impose a sentence of not less than the minimum term of 25 years' imprisonment; and

(2) shall not impose a sentence of life imprisonment without the possibility of parole.

(h)(1) If the jury finds unanimously that at least one of the aggravating factors set forth in subdivision (d)(2) of this section exists, the jury by a two-thirds vote may impose either:

(A) a sentence of not less than the minimum term of 25 years' imprisonment up to life; or

(B) a sentence of life imprisonment without the possibility of parole if the jury by unanimous vote finds that any aggravating factor or factors found to exist sufficiently outweigh any mitigating factor or factors found to exist or, in the absence of mitigating factors, that the aggravating factor or factors are sufficient to justify a sentence of life imprisonment without possibility of parole.

(2) Regardless of its findings with respect to the aggravating and mitigating factors, the jury is never required to impose a sentence of life without possibility of parole, and the court shall so instruct the jury.

§ 3260. AUTOMATIC REVIEW BY SUPREME COURT

(a) In all cases in which a sentence of life without possibility of parole is imposed under section 3259 of this title, the judgment of the conviction and the sentence shall be subject to automatic review by the supreme court.

(b) When considering an appeal under this section, the supreme court, in addition to any other issues properly raised, shall determine:

(1) whether the sentence of life imprisonment without the possibility of parole was imposed under the influence of passion, prejudice, or any other arbitrary factor; and

(2) whether the evidence supports the jury's finding of the existence of any aggravating factor in subsection 2303(d) of this title.

(c) When considering an appeal under this section, the supreme court, in addition to its general review powers, shall be authorized to:

(1) affirm the sentence; or

(2) set the sentence aside and remand the case for resentencing before a new jury.

Which was disagreed to.

Pending third reading of the bill, **Rep. Kilmartin of Newport City** moved to amend the bill as follows:

In Sec. 12, § 3253 of 13 V.S.A., by striking subsections (b) and (c) in their entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) A person who commits the crime of aggravated sexual assault shall be imprisoned up to and including life or fined not more than \$50,000.00, or both. No person who receives a minimum sentence under this section shall be eligible for early release or furlough until the expiration of the minimum sentence imposed. A jury shall impose the sentence for convictions of violating this section according to the procedures set forth in subsections 3259(a)-(b) and (e) of this title. The sentence imposed by the jury shall be consistent with the requirements of section 3271 of this title. There shall be no reconsideration of a jury-imposed sentence except by a jury. Appeal of a jury-imposed sentence under this section shall be in accordance with the provisions of section 2383 of Title 12 and the Vermont Rules of Criminal Procedure.

Pending the question, Shall the House amend the bill as recommended by Rep. Kilmartin of Newport City? **Rep. Kilmartin of Newport City** asked and was granted leave of the House to withdraw his amendment.

Pending third reading of the bill **Reps. LaVoie of Swanton and Livingston of Manchester** moved to amend the bill as follows:

First: in Sec. 10, § 2602 of 13 V.S.A., by striking subdivision (b)(3) in its entirety and inserting in lieu thereof a new subdivision (b)(3) to read as follows:

(3) ~~For a third offense, imprisoned not less than three years and up to and including life or fined not more than \$25,000.00, or both. Imprisoned for not more than 6 months, and, in addition, may be fined not more than \$500.00, if the child was at least 14 years old, the actor was no more than three years older than the child, and the two parties voluntarily participated in the conduct.~~

Second: in Sec. 12, § 3252 of 13 V.S.A., by striking subdivision (f)(2) in its entirety and inserting in lieu thereof a new subdivision (f)(2) to read as follows:

Which was agreed to.

Pending third reading of the bill, **Reps. Livingston of Manchester and Komline of Dorset** moved to amend the bill as follows:

First: In Sec.10, 13 V.S.A. § 2602, by striking subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a)(1) No person shall willfully and lewdly commit any lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of such person or of such child.

(2) This section shall not apply if the child was at least 15 years old and the actor was no more than three years older than the child, and the two parties voluntarily participated in the conduct.

Second: In Sec.10, 13 V.S.A. § 2602, by striking subdivision (b)(3) in its entirety and inserting in lieu thereof a new subdivision (b)(3) to read as follows:

(3) ~~For a third offense, imprisoned not less than three years and up to and including life or fined not more than \$25,000.00, or both. Imprisoned for not more than 6 months, and, in addition, may be fined not more than \$500.00, if the child was at least 14 years old but less than 15 years old, the actor was no more than three years older than the child, and the two parties voluntarily participated in the conduct.~~

Third: In Sec.12, 13 V.S.A. § 3252, by striking subsection (c) in its entirety and inserting in lieu thereof new subsection (c) to read as follows:

(3) ~~The other person~~ (c) No person shall engage in a sexual act with a child who is under the age of 16, except;

(1) where the persons are married to each other and the sexual act is consensual; or

(2) the child was at least 15 years old and the actor was no more than three years older than the child, and the two parties voluntarily participated in the conduct.

Fourth: In Sec. 12, 13 V.S.A. § 3252(f), by striking subdivision (2)(B) in its entirety and inserting in lieu thereof a new subdivision (2)(B) to read as follows:

(B) A person who violates subsection (c) of this section shall be imprisoned for not more than 6 months, and, in addition, may be fined not more than \$500.00, if the child was at least 14 years old but less than 15 years old, the actor was no more than three years older than the child, and the two parties voluntarily participated in the conduct.

Which was agreed to.

Pending third reading of the bill, **Rep. Wright of Burlington** moved to amend the bill as follows:

By inserting the following new sections:

Sec. 21. 18 V.S.A. chapter 201 is added to read:

CHAPTER 201. CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

Subchapter 1. In-Patient Civil Commitment

§ 8601. LEGISLATIVE FINDINGS AND INTENT

(a) The general assembly finds that there exists a small but extremely dangerous group of sexually violent predators who have a mental abnormality or personality disorder and who are likely to engage in repeated acts of sexual violence if not treated for their mental abnormality or personality disorder. Because the existing civil commitment procedures under Vermont law are inadequate to address the special needs of sexually violent predators and the risks they present to society, the general assembly determines that a separate involuntary civil commitment process for the potentially long-term control, care, and treatment of sexually violent predators is necessary. The general assembly also finds that because of the nature of the mental abnormalities or personality disorders from which sexually violent predators suffer and the dangers they present, it is necessary to house involuntarily committed sexually

violent predators in an environment separate from persons otherwise involuntarily committed under Vermont law.

(b) It is the intent of the general assembly that the civil commitment proceedings in this act be used infrequently, and only in cases in which the state believes that a sex offender's mental condition makes the person a real and substantial threat to the community. Civil commitment should not be a substitute for proper investigation, prosecution, sentencing, incarceration, and in-prison treatment for sex offenders. Civil commitment is not intended to be punitive, but rather an effort to provide appropriate mental health treatment to sex offenders who suffer from a mental abnormality or personality disorder which makes such persons likely to engage in repeated acts of sexual violence. The general assembly hopes that such treatment will prove successful for offenders, and that many will be able to return safely to the community.

§ 8602. DEFINITIONS

As used in this chapter:

(1) "Agency with jurisdiction" means that agency which releases upon lawful order or authority a person serving a sentence or term of confinement and includes the department of corrections, the department of health, and the Vermont parole board.

(2) "Attorney general" means the attorney general of the state of Vermont.

(3) "Case manager" means a person employed by or under contract with the department to perform duties related to outpatient treatment and supervision of a person committed under this chapter.

(4) "Commissioner" means the commissioner of the department of health.

(5) "Department" means the department of health.

(6) "Likely to engage in repeated acts of sexual violence" means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.

(7) "Mental abnormality" means a congenital or acquired condition that affects the emotional or volitional capacity of a person in a manner that predisposes the person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(8) "Person" means an individual who is a potential or actual subject of proceedings under this chapter.

(9) "Personality disorder" means a condition where a person exhibits personality traits which are inflexible and maladaptive and cause either significant functional impairment or subjective distress that affects the emotional or volitional capacity of a person to a degree that makes it difficult or impossible for the person to control his or her behavior and in a manner that predisposes the person to the commission of sexually violent offenses.

(10) "Sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(11) "Sexually violent offense" means aggravated sexual assault as defined in 13 V.S.A. § 3253, sexual assault as defined in 13 V.S.A. § 3252, or lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602, or a comparable offense in another jurisdiction of the United States.

(12) "Sexually violent predator" means a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in repeated acts of sexual violence.

(13) "Tracking service" means an electronic monitoring service, global positioning satellite service, or other appropriate technological service that is designed to track a person's location.

(14) "Transitional release" means any halfway house, work release, or other placement designed to assist the person's adjustment and reintegration into the community once released from commitment.

(15) "Treatment staff" means the persons, agencies, or firms employed by or contracted with the commissioner to provide treatment, supervision, or other services to sexually violent predators.

§ 8603. NOTICE OF RELEASE OF SEXUALLY VIOLENT PREDATOR

(a) When it appears that a person may meet the criteria of a sexually violent predator as defined in this chapter, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team established in this section 90 days prior to:

(1) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense, except that in the case of a person who is returned to prison for no more than 90 days as a result of revocation of post-release supervision, written notice shall be given as soon as practicable following the person's readmission to prison.

(2) The release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to 13 V.S.A. § 4817.

(3) The release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to 13 V.S.A. § 4819.

(b) The commissioner of the department of corrections shall establish a multidisciplinary team for the purpose of assessing whether a person meets the criteria for a sexually violent predator. The team may include individuals from other state agencies. The team shall review the available records of a person referred to such team pursuant to subsection (a) of this section within 30 days of receiving notice and expeditiously notify the attorney general of its assessment.

(c) The agency with jurisdiction shall inform the attorney general and the multidisciplinary team of the following:

(1) The person's name, identifying factors, anticipated future residence, and offense history.

(2) Documentation of institutional adjustment and any treatment received.

(d) The attorney general shall appoint a committee to review the records of each person referred to the attorney general pursuant to subsection (a) of this section. The attorney general's review committee shall assist the attorney general in the determination of whether the person meets the definition of a sexually violent predator. The assessment of the multidisciplinary team shall be made available to the attorney general and the review committee.

(e) The agency with jurisdiction, its employees, officials, members of the multidisciplinary team, members of the attorney general's review committee, and individuals contracting, appointed, or volunteering to perform services under this chapter shall be immune from liability for any good-faith conduct under this section.

§ 8604. PETITION

(a) When the attorney general's review committee determines that a person meets the definition of a sexually violent predator, the attorney general may file a petition in the district court in the county where the person was convicted of or charged with a sexually violent offense alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.

(b) The district court shall have jurisdiction of actions involving the civil commitment of sex offenders under this chapter, unless otherwise noted.

§ 8605. PROBABLE CAUSE HEARING

(a) Upon filing of a petition under section 8604 of this title, the court shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made, the court shall direct that person be taken into custody.

(b) Within 72 hours after a person is taken into custody pursuant to subsection (a) of this section, such person shall be provided with notice of and an opportunity to appear in person at a hearing to contest probable cause as to whether the detained person is a sexually violent predator. At this hearing, the court shall:

(1) verify the detained person's identity; and

(2) determine whether probable cause exists to believe that the person is a sexually violent predator.

(c) The detained person shall have the following rights:

(1) to be represented by counsel;

(2) to present evidence on his or her behalf;

(3) to cross-examine witnesses who testify against such person; and

(4) to view and copy all petitions and reports in the court file.

(d) The attorney general may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

(e) If the probable cause determination is made, the court shall direct that the person be transferred to an appropriate secure facility for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by an individual deemed to be professionally qualified to conduct such an examination.

§ 8606. TRIAL

(a) Within 60 days after the completion of a probable cause hearing held pursuant to section 8605 of this title, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause or by the court on its own motion in the interest of justice, and when the respondent will not be substantially prejudiced.

(b) The person shall have the right to demand that the trial be before a jury. If no demand is made, the trial shall be before the court.

§ 8607. DETERMINATION

(a) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. A jury determination that the person is a sexually violent predator shall require a unanimous verdict. If the court or jury is not convinced beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release.

(b) If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the commissioner for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large. The person shall have the right to appeal the commitment decision to the supreme court.

(c)(1) The court shall determine whether a person committed for control, care, and treatment to the department of health pursuant to this subchapter is:

(A) committed to the custody of the commissioner for inpatient treatment and supervision pursuant to this subchapter at a facility designated by the commissioner; or

(B) committed to the custody of the commissioner for outpatient treatment and supervision pursuant to subchapter 2 of this chapter.

(2) In making its placement determination under subdivision (1) of this subsection, the court shall place the offender in the commitment setting which best promotes public safety.

(d) The department of health is authorized to enter into an interagency agreement with the department of corrections for the confinement of persons committed pursuant to this subchapter. Persons who are in the confinement of the commissioner of corrections pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the commissioner of corrections and except for occasional instances of supervised incidental contact, shall be segregated from such offenders.

(e) If any person while committed to the custody of the commissioner pursuant to this subchapter is taken into custody by any law enforcement officer pursuant to any parole revocation proceeding or any arrest or conviction for a criminal offense of any nature, upon the person's release from the custody of law enforcement, the person shall be returned to the custody of the commissioner for further treatment pursuant to this chapter. During any such period of time a person is not in the actual custody or supervision of the commissioner, the commissioner shall be excused from the provisions of section 8609 of this title, with regard to providing that person an annual

examination, annual notice, and annual report to the court, except that the commissioner shall give notice to the court as soon as reasonably possible after the taking of the person into custody that the person is no longer in treatment and notice to the court when the person is returned to the custody of the commissioner for further treatment.

(f) Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility until another trial is conducted. Any subsequent trial following a mistrial shall be held within 90 days of the previous trial, unless such subsequent trial is continued as provided in this section.

(g)(1) If the person charged with a sexually violent offense has been found incompetent to stand trial and is about to be released from state custody, and such person's commitment is sought pursuant to this chapter, the court shall first hear evidence and determine whether the person did commit the act or acts charged. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply.

(2) After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on such person's own behalf, and the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case.

(3) If after the conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that the person did commit the act or acts charged, the court shall enter a final order appealable by the person on that issue and may proceed to consider whether the person should be committed pursuant to this section.

§ 8608. ANNUAL EXAMINATIONS; TRANSITIONAL RELEASE

(a) Each person committed under this chapter shall have an examination of the person's mental condition once every year. The commissioner shall provide the committed person with an annual written notice of the person's right to petition the court for release over the commissioner's objection. The notice shall contain a waiver of rights. The commissioner shall also forward the annual report, as well as the annual notice and waiver form, to the court that committed the person. The person may retain or if the person is indigent and so requests the court may appoint a qualified professional individual to examine such person, and such expert or professional individual shall have access to all records concerning the person. The court that committed the

person shall then conduct an annual review of the status of the committed person's mental condition. The committed person shall have a right to have an attorney represent the person at the hearing, but the person is not entitled to be present at the hearing.

(b) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court at this hearing for discharge.

(c) If the court at the hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be placed in transitional release, the court shall set a hearing on the issue. At the hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be placed in transitional release and if transitionally released is likely to engage in acts of sexual violence. The person shall the right to have the matter tried before a jury.

(d) If, after the hearing, the court or jury is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

(e) If the court determines that the person should be placed in transitional release, the commissioner shall transfer the person to the transitional release program. The commissioner may contract for services to be provided in the transitional release program. During any period the person is in transitional release, that person shall comply with any rules the commissioner may establish for this program and every directive of the treatment staff of the transitional release program.

(f) At any time during which the person is in the transitional release program and the treatment staff determines that the person has violated any rule, directive, or condition associated with the transitional release program, the treatment staff may remove the person from the transitional release program and return the person to the secure commitment facility, or may request the court to issue an emergency ex parte order directing a law

enforcement officer to take the person into custody and return the person to the secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written or facsimile form delivered to the court by not later than 5:00 p.m. of the first day the court is open for the transaction of business after the verbal or telephonic request was made.

(g) Upon the person having been returned to the secure commitment facility from the transitional release program, notice thereof shall be given by the commissioner to the court. The court shall set the matter for a hearing within two days of receipt of notice of the person having been returned to the secure commitment facility and cause notice thereof to be given to the attorney general, the person, and the commissioner. The attorney general shall have the burden of proof to show probable cause that the person violated conditions of transitional release. The hearing shall be to the court. At the conclusion of the hearing, the court shall issue an order returning the person to the secure commitment facility or to the transitional release program and may order such other further conditions with which the person must comply if the person is returned to the transitional release program.

§ 8609. PETITION FOR TRANSITIONAL RELEASE; HEARING

(a) If the commissioner determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to engage in repeated acts of sexual violence if placed in transitional release, the commissioner shall authorize the person to petition the court for transitional release. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for transitional release, shall order a hearing within 30 days. The attorney general shall represent the state and shall have the right to have the petitioner examined by an expert or professional individual of such attorney's choice. The hearing shall be before the court. The burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if placed in transitional release is likely to engage in repeated acts of sexual violence.

(b) If, after the hearing, the court is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

(c) The provisions of subsections 8608(e), (f), and (g) of this title shall apply to a transitional release pursuant to this section.

(d) Nothing in this act shall prohibit a person from filing a petition for transitional release, conditional release, or final discharge pursuant to this chapter. However, if a person has previously filed a petition for transitional release, conditional release, or final discharge without the commissioner's approval, and if the court determined either upon review of the petition or following a hearing that the petitioner's petition was frivolous or that the petitioner's condition had not so changed that the person was safe to be at large, the court shall deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from committed persons without the commissioner's approval, the court shall endeavor whenever possible to review the petition and determine whether the petition is based upon frivolous grounds and if so shall deny the petition without a hearing.

§ 8610. CONDITIONAL RELEASE HEARING

(a) During any period the person is in transitional release, the person at least annually, and at any other time deemed appropriate by the treatment staff, shall be examined by the treatment staff to determine if the person's mental abnormality or personality disorder has so changed as to warrant such person being considered for conditional release. The treatment staff shall forward a report of its examination to the court for review. If the court determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be placed in conditional release, the court shall set a hearing on the issue. The attorney general shall have the burden of proof to show beyond a reasonable doubt that the person's mental abnormality or personality disorder remains such that the person is not safe to be at large and that if placed on conditional release is likely to engage in repeated acts of sexual violence. The person shall have the same rights as enumerated in section 8606 of this title, except the right to a jury trial. Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the attorney general, the person, and the commissioner.

(b) If, after the hearing, the court is convinced beyond a reasonable doubt that the person is not appropriate for conditional release, the court shall order that the person remain either in secure commitment or in transitional release. Otherwise, the court shall order that the person be placed on conditional release.

§ 8611. CONDITIONAL RELEASE PLAN OF TREATMENT

(a) If the court determines that the person should be placed on conditional release, the court, based upon the recommendation of the treatment staff, shall establish a plan of treatment which the person shall be ordered to follow. This plan of treatment may include provisions such as:

- (1) where the person shall reside and with whom;
- (2) requirements for taking prescribed medications;
- (3) attending individual and group counseling;
- (4) abstinence from illegal drugs and alcohol;
- (5) maintaining employment;
- (6) having no contact with children; and

(7) not frequenting facilities, locations, or events in which children are likely to be present and not engaging in activities in which contact with children is likely.

(b) Upon a showing by the person that the person accepts the plan of treatment and is prepared to follow it, the court shall release the person from the transitional release program.

§ 8612. FINAL RELEASE HEARING

(a) After a minimum of five years have passed in which the person has been free of violations of conditions of such person's treatment plan, the treatment staff or other professionals directed by the court may examine such person to determine if the person's mental abnormality or personality disorder has changed so as to warrant such person being considered for final discharge. The individual preparing the report shall forward the report to the court for review. If the court determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be entitled to final discharge, the court shall set a formal hearing on the issue. The attorney general shall have the burden of proof to show beyond a reasonable doubt that the person's mental abnormality or personality disorder remains such that the person is not appropriate for final discharge. The person shall have the same rights as enumerated in section 8606 of this title, except the right to a jury trial. Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the attorney general, the person, and the commissioner.

(b) If, after a hearing, the court is convinced beyond a reasonable doubt that the person is not appropriate for final discharge, the court shall continue the commissioner's custody of the person in a secure facility, transitional release program, or conditional release program. Otherwise, the court shall order the person finally discharged. In the event the court does not order final discharge of the person, the person still retains the right to annual reviews.

(c) At any time during which the person is on conditional release and the professional individual designated by the court in the treatment plan to monitor the person's compliance with it determines that the person has violated any material condition of that plan, that professional individual may request the district court to issue an emergency ex parte order directing a law enforcement officer to take the person into custody and return the person to the secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written or facsimile form delivered to the court not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic request was made.

(d) Upon the person being returned to the secure commitment facility from conditional release, notice thereof shall be given by the commissioner to the court. The court shall set the matter for a hearing within two days of receipt of notice of the person's having been returned to the secure commitment facility and cause notice thereof to be given to the attorney general, the person, and the commissioner. The attorney general shall have the burden of proof to show probable cause that the person violated conditions of conditional release. The hearing shall be to the court. At the conclusion of the hearing, the court shall issue an order returning the person to the secure commitment facility, to the transitional release program, or to conditional release, and may order such other further conditions with which the person must comply if the person is returned to either the transitional release program or to conditional release.

(e) The final discharge shall not prevent the person from being prosecuted for any criminal acts which the person is alleged to have committed or from being subject in the future to a subsequent commitment under this chapter.

§ 8613. INELIGIBILITY FOR BAIL, BOND, OR HOUSE ARREST

Any person for whom a petition pursuant to this subchapter has been filed and is in the secure confinement of the state shall not be eligible for bail, bond, house arrest, or any other measures releasing the person from the physical protective custody of the state.

§ 8614. COSTS

The commissioner shall be responsible for all costs relating to the evaluation and treatment of persons committed to the commissioner's custody under any provision of this subchapter.

Subchapter 2. Out-Patient Civil Commitment§ 8631. APPLICABILITY

This subchapter shall apply to any person committed to the custody of the commissioner for outpatient treatment and supervision pursuant to subdivision 8607(c)(1)(B) of this title.

§ 8632. OUT-PATIENT COMMITMENT ORDER; VIOLATION

(a) The court shall commit a person subject to this subchapter to the custody of the commissioner for outpatient treatment and supervision to be coordinated by the case manager. The commitment order is effective immediately on entry of the order, except that the outpatient treatment and supervision begins on the person's release from a secure correctional facility or release from a state hospital and continues until the person's mental abnormality or personality disorder has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

(b) The commitment order shall impose requirements necessary to ensure the person's compliance with treatment and supervision and to protect the community. These may include:

- (1) Requiring the person to be personally supervised at all times by the department.
- (2) Requiring the person to reside in a particular location.
- (3) Prohibiting the person's contact with a victim or potential victim of the person.
- (4) Requiring the taking of prescribed medications.
- (5) Prohibiting the person's possession or use of alcohol or regulated drugs.
- (6) Requiring the person's participation in and compliance with a specific course of treatment.
- (7) Requiring the person to:
 - (A) submit to tracking under a particular type of tracking service and to any other appropriate supervision; and

(B) refrain from tampering with, altering, modifying, obstructing, or manipulating the tracking equipment.

(8) Prohibiting the person from changing the person's residence without prior authorization from the court and from leaving the state without that prior authorization.

(9) If determined appropriate by the court, prohibiting the person from contact with children or from frequenting facilities, locations, or events in which children are likely to be present and not engaging in activities in which contact with children is likely.

(10) Requiring the person to notify the case manager immediately, but in any event within 24 hours, of any change in the person's status that affects proper treatment and supervision, including a change in the person's physical health or job status and including any incarceration of the person.

(11) Any other requirements determined necessary by the judge.

(c) The court shall provide a copy of the requirements imposed pursuant to subsection (b) of this section to the case manager. The case manager may provide to the person instruction regarding the requirements associated with the order, regardless of whether the person is incarcerated at the time of the instruction.

(d) The person shall be advised by the court that a violation of the requirements imposed pursuant to subsection (b) of this section is a crime pursuant to section 8636 of this title and punishable by up to ten years in prison and a \$3,000.00 fine, or both.

§ 8633. RETURN TO LAW ENFORCEMENT CUSTODY

If a person, while committed to the custody of the commissioner pursuant to this subchapter, is taken into custody by any law enforcement officer or the commissioner of corrections pursuant to any probation violation, parole revocation, or furlough violation proceeding or any arrest or conviction for a criminal offense, upon the person's release from the custody of the law enforcement officer or commissioner of corrections or federal correctional system, the person shall be returned to the custody of the commissioner for further proceedings pursuant to this subchapter.

§ 8634. TREATMENT; SUPERVISION

(a) The commissioner shall approve and contract for the provision of a treatment plan to be developed by the treatment provider for a person committed pursuant to this subchapter. A treatment plan may include the monitoring of the person with a polygraph.

(b) The case manager shall provide supervision to the person. The provision of supervision may include, if required by court order, a tracking service and supervised housing.

(c) The commissioner may enter into an interagency agreement with the department of corrections for any necessary supervised housing. The commissioner shall reimburse the department of corrections for housing costs under this chapter.

(d) The case manager shall:

(1) Coordinate the outpatient treatment and supervision required by this subchapter, including performing a periodic assessment of the success of that treatment and supervision.

(2) Make timely recommendations to the court on whether to allow the committed person to change residence or to leave the state and on any other appropriate matters.

(3) Provide a report to the commissioner semiannually or more frequently as necessary, which shall include:

(A) any known change in the person's status that affects proper treatment and supervision; and

(B) any recommendations made to the court.

§ 8635. STATUS REPORTS AND OTHER INFORMATION

(a) A treatment provider or a supervision provider, other than the case manager or tracking service personnel, shall submit a report to the case manager, monthly or more frequently if required by the case manager, stating whether the person is complying with treatment or supervision requirements, as applicable.

(b) Tracking service personnel may provide to the case manager specific information relating to the person, including the person's compliance with a tracking requirement or involvement in criminal activity.

§ 8636. VIOLATION

A sexually violent predator who violates the requirements of the commitment order set forth in accordance with section 8632 of this title shall be imprisoned not more than ten years or fined not more than \$3,000.00, or both.

§ 8637. BIENNIAL EXAMINATION AND REVIEW

(a) Each person committed under this subchapter shall be examined and evaluated by the department once every two years. The commissioner shall provide the committed person with biennial written notice of the person's right to petition the court for release over the commissioner's objection. The notice shall contain a waiver of rights. The commissioner shall also forward the annual report, as well as the biennial notice and waiver form, to the court that committed the person. The person may retain or if the person is indigent and so requests the court may appoint a qualified professional individual to examine such person, and such expert or professional individual shall have access to all records concerning the person that are in the possession of the attorney general or agency with jurisdiction. The court that committed the person shall then conduct biennial review of the status of the committed person. The committed person shall have a right to have an attorney represent the person at the hearing and to be present at the hearing.

(b) Nothing contained in this subchapter shall prohibit the person from otherwise petitioning the court at this hearing for release.

(c) If the court at the hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be released, the court shall set a hearing on the issue.

§ 8638. PETITION FOR RELEASE

If the commissioner determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to engage in repeated acts of sexual violence if released, the commissioner shall authorize the person to petition the court for release. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for release, shall order a hearing within 30 days.

§ 8639. HEARING ON RELEASE

(a) At the hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf, and the court shall appoint an expert if the person is indigent and requests an appointment.

(b) The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be released and, if released, is likely to engage in predatory acts of sexual violence.

(c) The person shall have the right to demand that the trial be before a jury. If no demand is made 45 days from the completion of the probable cause hearing, the trial shall be before the court.

(d) If, after the hearing, the court or jury is convinced beyond a reasonable doubt that the person is not appropriate for release, the court shall order that the person remain in the custody of the commissioner. Otherwise, the court shall order that the person be released.

§ 8640. RIGHT TO FILE UNAUTHORIZED PETITION FOR RELEASE;

REVIEW

(a) On a person's commitment and annually after that commitment, the case manager shall provide the person with written notice of the person's right to file with the court and without the case manager's authorization a petition for release.

(b) Upon receipt of a petition from a committed person, the court shall review the petition as soon as practicable.

(c) If a person has previously filed a petition for release without the commissioner's approval, and if the court determined either upon review of the petition or following a hearing that the petitioner's petition was frivolous or that the petitioner's condition had not so changed that the person was safe to be at large, the court shall deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted.

(d) If the court finds that probable cause exists to believe that the petitioner's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence, the court shall set the matter for a hearing.

§ 8641. HEARING ON UNAUTHORIZED PETITION FOR RELEASE

(a) At the hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf, and the court shall appoint an expert if the person is indigent and requests an appointment.

(b) The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or

personality disorder remains such that the person is not safe to be released, and if released, is likely to engage in predatory acts of sexual violence.

(c) The person shall have the right to demand that the trial be before a jury. If no demand is made 45 days from the completion of the probable cause hearing, the trial shall be before the court.

(d) If, after the hearing, the court or jury is convinced beyond a reasonable doubt that the person is not appropriate for release, the court shall order that the person remain in the custody of the commissioner. Otherwise, the court shall order that the person be released.

§ 8642. DUTIES OF THE DEPARTMENT OF HEALTH; COSTS

(a) The commissioner is responsible for providing appropriate and necessary treatment and supervision through the case management system.

(b) The commissioner shall be responsible for all costs relating to the evaluation and treatment of persons committed to the commissioner's custody under any provision of this subchapter.

Subchapter 3. General Provisions

§ 8651. RIGHT TO COUNSEL

(a) Immediately after the filing of a petition under section 8604 of this title, a person subject to a civil commitment proceeding under this chapter is entitled to the assistance of counsel at all stages of the proceedings.

(b) The office of the defender general shall represent an indigent person who is the subject of a civil commitment proceeding.

§ 8652. EXPERTS

(a) A person who is subjected to an examination under this chapter may retain experts or professional individuals to perform an examination or participate in civil commitment proceedings on such person's behalf. When the person wishes to be examined by a qualified expert or qualified professional individual of such person's own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports in the possession of the attorney general or agency with jurisdiction.

(b) In the case of a person who is indigent, the court, upon the person's request, shall determine whether the services are necessary and reasonable compensation for such services. If the court determines that the services are necessary and the expert or professional individual's requested compensation for such services is reasonable, the court shall assist the person in obtaining an