

(2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);

(3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);

(4) aggravated assault as defined in 13 V.S.A. § 1024;

(5) murder as defined in 13 V.S.A. § 2301;

(6) manslaughter as defined in 13 V.S.A. § 2304;

(7) kidnapping as defined in 13 V.S.A. § 2405;

(8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;

(9) maiming as defined in 13 V.S.A. § 2701;

(10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);

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

(12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

(b) The state's attorney of the county where the juvenile petition is pending may move in the juvenile court for an order transferring jurisdiction under subsection (a) of this section within ten days of the filing of the petition alleging delinquency. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the juvenile court may deny the motion to transfer jurisdiction.

(c) Upon the filing of a motion to transfer jurisdiction under subsection (b) of this section, the juvenile court shall conduct a hearing in accordance with procedures specified in subchapter 2 of this chapter to determine whether:

(1) there is probable cause to believe that the child committed an act listed in subsection (a) of this section; and

(2) public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to juvenile courts and delinquent children.

(d) In making its determination as required under subsection (c) of this section, the court may consider, among other matters:

(1) The maturity of the child as determined by consideration of his or her age, home, environment; emotional, psychological and physical maturity; and relationship with and adjustment to school and the community.

(2) The extent and nature of the child's prior record of delinquency.

(3) The nature of past treatment efforts and the nature of the child's response to them.

(4) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.

(5) The nature of any personal injuries resulting from or intended to be caused by the alleged act.

(6) The prospects for rehabilitation of the child by use of procedures, services, and facilities available through juvenile proceedings.

(7) Whether the protection of the community would be better served by transferring jurisdiction from the juvenile court to the district court.

(e) A transfer under this section shall terminate the jurisdiction of the juvenile court over the child only with respect to those delinquent acts alleged in the petition with respect to which transfer was sought.

(f) The juvenile court, following completion of the transfer hearing, shall make written findings and, if the court orders transfer of jurisdiction from the juvenile court, shall state the reasons for that order. If the juvenile court orders transfer of jurisdiction, the child shall be treated as an adult. The state's attorney shall commence criminal proceedings as in cases commenced against adults.

(g) The order granting or denying transfer of jurisdiction shall not constitute a final judgment or order within the meaning of Rules 3 and 4 of the Vermont Rules of Appellate Procedure.

(h) If a person who has not attained the age of 16 at the time of the alleged offense has been prosecuted as an adult and is not convicted of one of the acts listed in subsection (a) of this section but is convicted only of one or more lesser offenses, jurisdiction shall be transferred to the juvenile court for disposition. A conviction under this subsection shall be considered an adjudication of delinquency and not a conviction of crime, and the entire matter shall be treated as if it had remained in juvenile court throughout. In case of an acquittal for a matter specified in this subsection and in case of a transfer to juvenile court under this subsection, the court shall order the sealing of all applicable files and records of the court, and such order shall be carried out as provided in subsection 5119(e) of this title.

(i) The record of a hearing conducted under subsection (c) of this section and any related files shall be open to inspection only by persons specified in

subsections 5117(b) and (c) of this title in accordance with section 5119 of this title and by the attorney for the child.

§ 5205. FINGERPRINTS; PHOTOGRAPHS

(a) Fingerprint files of a child under the jurisdiction of the court shall be kept separate from those of other persons under special security measures limited to inspection by law enforcement officers only on a need-to-know basis unless otherwise authorized by the court in individual cases.

(b) Copies of fingerprints shall be maintained on a local basis only and not sent to central state or federal depositories except in national security cases.

(c) Fingerprints of persons under the jurisdiction of the court shall be removed and destroyed when:

(1) the petition alleging delinquency with respect to which such fingerprints were taken does not result in an adjudication of delinquency; or

(2) jurisdiction of the court is terminated, provided that there has been no record of a criminal offense by the child after reaching 16 years of age.

(d) If latent prints are found at the scene of an offense and there is reason to believe that a particular child was involved, the child may be fingerprinted for purposes of immediate comparison, and, if the result is negative, the fingerprint card shall be immediately destroyed.

(e) No photograph shall be taken of any child when taken into custody without the consent of the judge unless the case is transferred for criminal proceeding.

(f) A person who violates this section shall be imprisoned not more than six months or fined not more than \$500.00, or both.

Subchapter 2. Petition, Merits, and Disposition

§ 5221. CITATION AND NOTICE TO APPEAR AT PRELIMINARY HEARING

(a) Citation. If an officer has probable cause to believe that a child has committed or is committing a delinquent act and the circumstances do not warrant taking the child into custody pursuant to subchapter 3 of this chapter, the officer may issue a citation to appear before a judicial officer in lieu of arrest.

(b) Appearance in court. A child who receives a citation described in this section shall appear at the court designated in the citation at the time and date specified in the citation unless otherwise notified by the court.

(c) Notice to parent. The officer who issues the citation shall also issue or cause to be issued a notice to the child's parent, guardian, or custodian. The notice shall indicate the date, time, and place of the preliminary hearing and shall direct the responsible adult to appear at the hearing with the child.

(d) Form. The citation to appear shall be dated and signed by the issuing officer and shall direct the child to appear before a judicial officer at a stated time and place. The citation shall state the name of the child to whom it is addressed, the delinquent act that the child is alleged to have committed, and a notice that the child is entitled to be represented by an attorney at the hearing and that an attorney will be appointed for the child if the parent or guardian is indigent and cannot afford an attorney.

(e) Filing of citation. The issuing officer shall sign the citation and file the citation and an affidavit as to probable cause with the state's attorney.

§ 5222. PETITION; CONTENTS

(a) The petition shall be supported by an affidavit as to probable cause. The petition shall contain the following:

(1) A concise statement of the facts which support the conclusion that the child has committed a delinquent act, together with a statement that it is in the best interests of the child that the proceedings be brought.

(2) The name, date of birth, telephone number, and residence address, if known, of the child and the custodial and noncustodial parents or the guardian or custodian of the child, if other than parent. If a parent is a participant in the Safe At Home Program pursuant to 15 V.S.A. § 1152, the petition shall so specify.

(b) If a temporary care order has been issued or the state is requesting that custody be transferred to the commissioner, the petition shall contain jurisdictional information as required by the Uniform Child Custody Jurisdiction Act, 15 V.S.A. § 1032 et seq.

(c) A petition alleging a delinquent act may not be amended to allege that a child is in need of care or supervision, and a child who has been adjudged a delinquent child as a result of a delinquency petition may not be subsequently adjudged a child in need of care or supervision, unless a separate petition alleging that the child is in need of care or supervision is filed.

§ 5223. FILING OF PETITION

(a) When notice to the child is provided by citation, the state's attorney shall file the petition and supporting affidavit at least ten days prior to the date for the preliminary hearing specified in the citation.

(b) The court shall send or deliver a copy of the petition and affidavit to all persons required to receive notice as soon as possible after the petition is filed and at least five days prior to the date set for the preliminary hearing.

§ 5224. FAILURE TO APPEAR AT PRELIMINARY HEARING

If a child or parent fails to appear at the preliminary hearing as directed by a citation, the court may issue a summons to appear, an order to have the child brought to court, or a warrant as provided in section 5108 of this title.

§ 5225. PRELIMINARY HEARING

(a) A preliminary hearing shall be held at the time and date specified on the citation or as otherwise ordered by the court. If a child is taken into custody prior to the preliminary hearing, the preliminary hearing shall be at the time of the temporary care hearing.

(b) Counsel for the child shall be assigned prior to the preliminary hearing.

(c) At the preliminary hearing, the court shall appoint a guardian ad litem for the child. The guardian ad litem may be the child's parent. On its own motion or motion by the child's attorney, the court may appoint a guardian ad litem other than a parent.

(d) At the preliminary hearing, a denial shall be entered to the allegations of the petition, unless the juvenile, after adequate consultation with the guardian ad litem and counsel, enters an admission.

(e) The court may order the child to abide by conditions of release pending a merits or disposition hearing.

§ 5226. NOTIFICATION OF CONDITIONS OF RELEASE TO VICTIM IN DELINQUENCY PROCEEDINGS

A victim in a delinquency proceeding based on a listed crime shall be notified promptly by the prosecutor's office when conditions of release are initially ordered or modified by the court and of the identity of the child when the conditions of release relate to the victim or a member of the victim's family or current household. A victim in a delinquency proceeding based on an act that is not a listed crime shall be notified promptly by the court when conditions of release are initially ordered or modified by the court and shall be notified promptly of the identity of the child when the conditions of release relate to the victim or a member of the victim's family or current household. Victims are entitled only to information contained in the conditions of release that pertain to the victim or a member of the victim's family or current household.

§ 5227. TIMELINES FOR PRETRIAL AND MERITS HEARING

(a) Pre-trial hearing. At the preliminary hearing, the court shall set a date for a pretrial hearing on the petition. The pretrial hearing shall be held within 15 days of the preliminary hearing. In the event there is no admission or dismissal at the pretrial hearing, the court shall set the matter for a hearing to adjudicate the merits of the petition.

(b) Merits hearing. Except for good cause shown, a merits hearing shall be held and merits adjudicated no later than 60 days from the date of the preliminary hearing.

§ 5228. CONSTITUTIONAL PROTECTIONS FOR A CHILD IN DELINQUENCY PROCEEDINGS

A child charged with a delinquent act need not be a witness against, nor otherwise incriminate, himself or herself. Any extrajudicial statement, if constitutionally inadmissible in a criminal proceeding, shall not be used against the child. Evidence illegally seized or obtained shall not be used over objection to establish the charge against the child. A confession out of court is insufficient to support an adjudication of delinquency unless corroborated in whole or in part by other substantial evidence.

§ 5229. MERITS ADJUDICATION

(a) The parties at a merits hearing in a delinquency proceeding shall be limited to the state's attorney and the child who is the subject of the petition. A merits adjudication hearing shall not proceed forward unless the child who is the subject of the delinquency petition is present in court.

(b) The state shall have the burden of establishing beyond a reasonable doubt that the child has committed a delinquent act.

(c) If the child who is the subject of the delinquency petition enters an admission to the petition, the court shall not accept the admission without first addressing the child personally in open court and determining that:

(1) the plea is voluntary;

(2) the child understands the nature of the delinquent act charged, the right to contest the charge, and the rights which will be waived if the admission is accepted by the court; and

(3) there is a factual basis for the delinquent act charged in the petition.

(d) A merits hearing shall be conducted in accordance with the Vermont Rules of Evidence.

(e) If the merits are contested, the court, after hearing the evidence, shall make its findings on the record.

(f) If the court finds that the allegations made in the petition have not been established beyond a reasonable doubt, the court shall dismiss the petition and vacate any orders transferring custody to the state or other person or any conditional custody orders.

(g) If, based on the child's admission or the evidence presented, the court finds beyond a reasonable doubt that the child has committed a delinquent act, the court shall order the department to prepare a disposition case plan within 28 days of the merits adjudication and shall set the matter for a disposition hearing. In no event, shall a disposition hearing be held later than 35 days after a finding that a child is delinquent.

(h) The court may proceed directly to disposition providing that the child, the custodial parent, the state's attorney, and the department agree.

§ 5230. DISPOSITION CASE PLAN

(a) Filing of case plan. The department shall file a disposition case plan no later than 28 days from the date of the finding by the court that a child is delinquent. The disposition case plan shall not be used or referred to as evidence prior to a finding that a child is delinquent.

(b) Content of case plan. A disposition case plan shall include, as appropriate:

(1) An assessment of the child's medical, psychological, social, educational, and vocational needs.

(2) An assessment of the impact of the delinquent act on the victim and the community, including, whenever possible, a statement from the victim.

(3) A description of the child's home, school, community, and current living situation.

(4) An assessment of the child's and family's strengths and risk factors.

(5) Proposed conditions of probation which address the identified risks and provide for, to the extent possible, repair of the harm to victims and the community. Proposed conditions may include a recommendation as to the term of probation.

(6) The plan of services shall describe the responsibilities of the child, the parents, the department, other family members, and treatment providers, including a description of the services required to achieve successful completion of the goals of probation and, if the child has been placed in the custody of the department, the permanency goal.

(c) Case plan for child in custody. If a child is in the custody of the commissioner at the time of disposition or if a transfer of custody is requested, the case plan shall include the following additional information:

(1) A permanency goal if the child is in custody. The long-term goal for a child found to be delinquent and placed in the custody of the department is a safe and permanent home. A disposition case plan shall include a permanency goal and an estimated date for achieving the permanency goal. The plan shall specify whether permanency will be achieved through reunification with a parent, custodian, or guardian; adoption; permanent guardianship; or other permanent placement. In addition to a primary permanency goal, the plan may identify a concurrent permanency goal.

(2) A recommendation with respect to custody for the child and a recommendation for parent-child contact if appropriate.

(3) A request for child support if the child has been placed in the custody of the department or the department recommends a transfer of custody.

§ 5231. DISPOSITION HEARING

(a) Timeline. A disposition hearing shall be held no later than 35 days after a finding that a child is delinquent.

(b) Hearing procedure. If disposition is contested, all parties shall have the right to present evidence and examine witnesses. Hearsay may be admitted and may be relied on to the extent of its probative value. If reports are admitted, the parties shall be afforded an opportunity to examine those persons making the reports, but sources of confidential information need not be disclosed.

(c) Standard of proof. If the court terminates the parental rights of one or both parents, the standard of proof on the issue of such termination shall be clear and convincing. On all other issues, the standard of proof shall be a preponderance of the evidence.

(d) Termination of parental rights. If the commissioner or the attorney for the child seeks an order terminating parental rights of one or both parents and transfer of custody to the commissioner without limitation as to adoption, the court shall consider the best interests of the child in accordance with section 5114 of this title.

(e) Further hearing. On its own motion or the motion of a party, the court may schedule a further hearing to obtain reports or other information necessary for the appropriate disposition of the case. The court shall make an appropriate order for the temporary care of the child pending a final disposition order. The

court shall give scheduling priority to cases in which the child has been removed from the home.

§ 5232. DISPOSITION ORDER

(a) If a child is found to be a delinquent child, the court shall make such orders at disposition as may provide for:

- (1) the child's supervision, care, and rehabilitation;
 - (2) the protection of the community;
 - (3) accountability to victims and the community for offenses committed;
- and
- (4) the development of competencies to enable the child to become a responsible and productive member of the community.

(b) In carrying out the purposes outlined in subsection (a) of this section, the court may:

(1) Place the child on probation subject to the supervision of the commissioner, upon such conditions as the court may prescribe. The length of probation shall be as prescribed by the court or until further order of the court.

(2) Order custody of the child be given to the custodial parent, guardian, or custodian. For a fixed period of time following disposition, the court may order that custody be subject to such conditions and limitations as the court may deem necessary and sufficient to provide for the safety of the child and the community. Conditions may include protective supervision for up to one year following the disposition order unless further extended by court order. The court shall schedule regular review hearings to determine whether the conditions continue to be necessary.

(3) Transfer custody of the child to a noncustodial parent, relative, or person with a significant connection to the child.

(4) Transfer custody of the child to the commissioner.

(5) Terminate parental rights and transfer custody and guardianship to the department without limitation as to adoption.

(c) If the court orders the transfer of custody of the child pursuant to subdivisions (b)(4) and (5) of this section, the court shall establish a permanency goal for the child and adopt a case plan prepared by the department designed to achieve the permanency goal. If the court determines that the plan proposed by the department does not adequately support the permanency goal for the child, the court may reject the plan proposed by the

department and order the department to prepare and submit a revised plan for court approval.

§ 5233. VICTIM'S STATEMENT AT DISPOSITION PROCEEDING;
VICTIM NOTIFICATION

(a) Upon the filing of a delinquency petition, the court shall notify a victim of his or her rights as provided by law and his or her responsibilities regarding the confidential nature of juvenile proceedings.

(b) A victim of a delinquent act has the right in a disposition proceeding to file with the court a written or recorded statement of the impact of the delinquent act on the victim and the need for restitution. A victim of a delinquent act involving a listed crime also has the right to be present at the disposition hearing for the sole purpose of presenting to the court the impact of the delinquent act on the victim and the need for restitution. A victim of a delinquent act that is not a listed crime may be present at the disposition hearing for the sole purpose of presenting to the court the impact of the delinquent act on the victim and the need for restitution if the court finds that the victim's presence at the disposition hearing is in the best interests of the child and the victim. The court shall take a victim's views into consideration in the court's disposition order. A victim shall not be allowed to be personally present at any portion of the disposition hearing except to present the impact statement unless authorized by the court.

(c) After an adjudication of delinquency has been made involving an act that is not a listed crime, the court shall inform the victim of the disposition of the case. Upon request of the victim, the court may release to the victim the identity of the child if the court finds that release of the child's identity to the victim is in the best interests of both the child and the victim.

(d) After an adjudication of delinquency has been made involving an act that is a listed crime, the state's attorney's office shall inform the victim of the disposition in the case. Upon request of the victim, the state's attorney's office shall release to the victim the identity of the child.

(e) For the purposes of this section, disposition in the case shall include whether the child was placed on probation and information regarding conditions of probation relevant to the victim.

§ 5234. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS
INVOLVING A LISTED CRIME

The victim in a delinquency proceeding involving a listed crime shall have the following rights:

(1) To be notified by the prosecutor's office in a timely manner when a predispositional or dispositional court proceeding is scheduled to take place and when a court proceeding of which he or she has been notified will not take place as scheduled.

(2) To be notified by the prosecutor's office as to whether delinquency has been found and disposition has occurred, including any conditions or restitution relevant to the victim.

(3) To present a victim's impact statement at the disposition hearing in accordance with subsection 5233(b) of this title and to be notified as to the disposition pursuant to subsection 5233(d) of this title.

(4) Upon request, to be notified by the agency having custody of the delinquent child before he or she is discharged from a secure or staff-secured residential facility. The name of the facility shall not be disclosed. An agency's inability to give notification shall not preclude the release. However, in such an event, the agency shall take reasonable steps to give notification of the release as soon thereafter as practicable. Notification efforts shall be deemed reasonable if the agency attempts to contact the victim at the address or telephone number provided to the agency in the request for notification.

(5) To obtain the name of the child in accordance with sections 5226 and 5233 of this title.

(6) To be notified by the court of the victim's rights under this section.

§ 5235. JUVENILE RESTITUTION

(a) Restitution shall be considered in every case in which a victim of a delinquent act has suffered a material loss. For purposes of this section, "material loss" means uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.

(b) When ordered, restitution may include:

(1) return of property wrongfully taken from the victim;

(2) cash, credit card, or installment payments paid to the restitution unit;
and

(3) payments in kind, if acceptable to the victim.

(c) In awarding restitution, the court shall make findings in accordance with subdivision 5262(b)(2) of this title.

(d) If restitution is ordered, the victim shall be entitled to payment from the crime victims' restitution fund, pursuant to 13 V.S.A. § 5363. An order of restitution shall establish the amount of material loss incurred by the victim.

which shall be the restitution judgment order. Every order of restitution shall include:

- (1) the juvenile's name and address;
- (2) the name of the victim;
- (3) the amount ordered; and
- (4) any co-defendant names if applicable.

(e) In the event the juvenile is unable to pay the restitution judgment order at the time of disposition, the court shall fix the amount thereof, which shall not exceed an amount the juvenile can or will be able to pay, and shall fix the manner of performance or refer to a restorative justice program that will address how loss resulting from the delinquency will be addressed, subject to modification under section 5264 of this title.

(f) The court shall transmit a copy of a restitution order to the restitution unit, which shall make payment to the victim in accordance with 13 V.S.A. § 5363.

(g) To the extent that the victims' compensation board has made payment to or on behalf of the victim in accordance with chapter 167 of Title 13, restitution, if imposed, shall be paid to the restitution unit, which shall make payment to the crime victims' compensation fund.

(h) When restitution is requested but not ordered, the court shall set forth on the record its reasons for not ordering restitution.

(i) Any information concerning restitution payments made by a juvenile shall be available to the Vermont restitution unit for purposes of determining restitution obligations of adult and juvenile co-defendants.

(j) In accordance with 13 V.S.A. § 5363, the restitution unit is authorized to make payments to victims of delinquent acts where restitution was ordered by a court prior to July 1, 2008, and the order was first entered on or after July 1, 2004.

Subchapter 3. Children in Custody

§ 5251. TAKING INTO CUSTODY

A child may be taken into custody by an officer:

- (1) pursuant to the laws of arrest of this state;
- (2) pursuant to an order of the court under the provisions of this chapter and chapters 52 and 53 of this title; or

(3) when the officer has reasonable grounds to believe that the child has committed a delinquent act; and that the child's immediate welfare or the protection of the community, or both, require the child's removal from the child's current home.

§ 5252. REQUEST FOR EMERGENCY CARE ORDER

(a) If an officer takes a child who is alleged to be delinquent into custody, the officer shall immediately notify the child's parents, guardian, or custodian and release the child to the care of child's parent, guardian, or custodian unless the officer determines that the child's immediate welfare or the protection of the community, or both, require the child's continued removal from the home.

(b) If the officer determines that the child's immediate welfare, the protection of the community, or both, require the child's continued removal from the home, the officer shall:

(1) Take the child into custody pending either issuance of an emergency care order or direction from the state's attorney to release the child.

(2) Prepare an affidavit in support of a request for an emergency care order. The affidavit shall include the reasons for taking the child into custody and, if known, placements with which the child is familiar, the names, addresses, and phone numbers of the child's parents, guardians, or custodians, and the name, address, and phone number of any relative who has indicated an interest in taking temporary custody of the child. The officer shall contact the department, and, if the department has knowledge of the reasons for the removal of the child, the department may prepare an affidavit as a supplement to the affidavit of the law enforcement officer.

(3) Provide the affidavit to the state's attorney.

(c) If the child is taken into custody during regular court hours, the state's attorney shall immediately file a request for an emergency care order accompanied by the supporting affidavit or direct the immediate return of the child to the child's parent, guardian, or custodian. If the child is taken into custody after regular court hours or on a weekend or holiday, the state's attorney or officer shall contact a judge to request an emergency care order or return the child to the child's parent, guardian, or custodian. If an order is granted, the state's attorney shall file the supporting affidavit with the family court on the next day that the court is open.

(d) If the judge denies a request for an emergency care order, the state's attorney shall direct the immediate return of the child to the child's custodial parent, guardian, or custodian.

§ 5253. EMERGENCY CARE ORDER; CONDITIONAL CUSTODY ORDER

(a)(1) Transfer of temporary custody. The court may issue an emergency care order transferring temporary custody of the child to the department pending a temporary care hearing if the court determines that:

(A) there is probable cause that the child has committed a delinquent act; and

(B) continued residence in the home is contrary to the child's welfare because:

(i) the child cannot be controlled at home and is at risk of harm to self or others; or

(ii) continued residence in the home will not safeguard the well-being of the child and the safety of the community because of the serious and dangerous nature of the act the juvenile is alleged to have committed.

(2) The determination may be made without hearing or notice to the custodial parent, guardian, or custodian, provided that it is reasonably supported by the affidavit prepared in accordance with subsection 5152(b) of this title.

(b) Contents of emergency care order. The emergency care order shall contain:

(1) A written finding that the child's continued residence in the home is contrary to the child's welfare and the factual allegations that support that finding.

(2) The date, hour, and place of the temporary care hearing to be held pursuant to section 5255 of this title.

(3) Notice of a parent's right to counsel at the temporary care hearing.

(c) Conditional custody order. If the court determines that the child may safely remain in the custody of the custodial parent, guardian, or custodian, the court may deny the request for an emergency care order and issue an emergency conditional custody order. The order shall contain:

(1) Conditions and limitations necessary to protect the child, the community, or both.

(2) The date, hour, and place of the temporary care hearing to be held pursuant to section 5255 of this title.

(3) Notice of a parent's right to counsel at the hearing.

§ 5254. NOTICE OF EMERGENCY CARE ORDER AND TEMPORARY CARE HEARING

(a) Notice to custodial parent. An officer shall deliver a copy of the emergency care order or conditional custody order to the parent, guardian, or custodian of the child. If delivery cannot be made in a timely manner, the officer shall otherwise notify the parent, guardian or custodian or cause them to be notified of the order, the date, time, and place of the temporary care hearing, and the parent's right to counsel. If the custodial parent, guardian, or custodian cannot be located, the officer shall so certify to the court in an affidavit describing the efforts made to locate the parent, guardian, or custodian.

(b) Notice to noncustodial parent. The department shall make reasonable efforts to locate any noncustodial parent and provide the noncustodial parent with notice of the date, hour, and place of the temporary care hearing and of the right to counsel.

(c) Notice to other parties. The court shall notify the following persons of the date and time of the temporary care hearing:

- (1) The state's attorney.
- (2) The department.
- (3) An attorney to represent the child.
- (4) A guardian ad litem for the child.
- (5) An attorney to represent the custodial parent.

§ 5255. TEMPORARY CARE HEARING

(a) A temporary care hearing shall be held within 72 hours of the issuance of an emergency care order or conditional custody order under section 5253 of this title. State holidays shall be excluded from the computation of 72 hours. If the custodial parent, guardian, or custodian has not been notified in accordance with section 5254 of this title and does not appear or waive appearance at the temporary care hearing and files thereafter with the court an affidavit so showing, the court shall hold another temporary care hearing within one business day of the filing of the affidavit as if no temporary care hearing had theretofore been held.

(b) If the state's attorney is seeking a temporary care order, the state's attorney shall file a petition on or before the temporary care hearing. If the state's attorney elects not to file a petition, the state's attorney shall so notify the court and the court shall vacate any emergency orders.

(c) The following persons shall be present at the temporary care hearing:

(1) The child.

(2) The child's custodial parent, guardian, or custodian, unless he or she cannot be located or fails to appear in response to notice.

(3) The child's guardian ad litem.

(4) An attorney for the child.

(5) An attorney for the custodial parent, if requested.

(6) A representative of the department.

(7) The state's attorney.

(d) A noncustodial parent shall have the right to be present at the hearing. The hearing shall not be delayed by reason of the inability of the department to locate the noncustodial parent.

(e) The department shall provide the following information to the court at the hearing:

(1) Any reasons for the child's removal which are not set forth in the affidavit required pursuant to section 5252 of this title.

(2) Services, if any, provided to the child and the family in an effort to prevent removal.

(3) The need, if any, for continued custody of the child with the department pending a hearing to adjudicate the merits of the petition.

(4) Services which could facilitate the return of the child to the custody of the parent or guardian.

(5)(A) The identity of a noncustodial parent and any relatives known to the department who may be suitable, willing, and available to assume temporary custody of the child.

(B) With respect to any person whom the department identifies pursuant to this subdivision, the department shall conduct an assessment of the suitability of the person to care for the child. The assessment shall include consideration of the person's ability to care for the child's needs, a criminal history record as defined in 20 V.S.A. § 2056a(a)(1) in accordance with subdivision (5)(C) of this subsection, and a check of allegations of prior child abuse or neglect by the person or by other adults in the person's home. The court may continue the hearing if necessary to permit the department to complete the assessment.

(C) The department shall request from the Vermont criminal information center criminal history record information for any person being

considered to assume temporary legal custody of the child pursuant to this subdivision. The request shall be in writing and shall be accompanied by a release signed by the person. The department through the Vermont criminal information center shall request criminal history record information from the appropriate state criminal repositories in all states in which it has reason to believe the person has resided or been employed. If no disqualifying record is identified at the state level, the department through the Vermont criminal information center shall request from the Federal Bureau of Investigation a national criminal history record check of the person's criminal history. The request to the FBI shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont criminal information center. The Vermont criminal information center shall send the department the criminal history record from any state repository and the FBI of a person about whom a request is made under this subdivision or inform the department that no record exists. The department shall promptly provide a copy of the criminal history record, if any, to the person and shall inform the person that he or she has the right to appeal the accuracy and completeness of the record through the Vermont criminal information center. Upon completion of the process under this subdivision, the person's fingerprint card shall be destroyed.

(6) Additional information as required by the Uniform Child Custody Jurisdiction Act pursuant to 15 V.S.A. § 1037 and the Indian Child Welfare Act pursuant to 25 U.S.C. Section 1901 et seq.

(f) All parties shall have the right to present evidence on their own behalf and examine witnesses. Hearsay, to the extent it is deemed relevant and reliable by the court, shall be admissible. The court may in its discretion limit testimony and evidence to only that which goes to the issues of removal, custody, and the child's welfare.

(g) The temporary care hearing shall also be a preliminary hearing on the petition.

§ 5256. TEMPORARY CARE ORDER

(a) The court shall order that custody be returned to the child's parent, guardian, or custodian unless the court finds by a preponderance of the evidence that return to the home would be contrary to the welfare of the child because of any of the following:

(1) The child cannot be controlled at home and is at risk of harm to self or others.

(2) Continued residence in the home will not protect the community because of the serious and dangerous nature of the act the child is alleged to have committed.

(3) The child's welfare is otherwise endangered.

(b) Upon a finding that any of the conditions set forth in subsection (a) of this section exists, the court may issue such temporary orders related to the custody of the child as it deems necessary and sufficient to protect the welfare and safety of the child including:

(1) A conditional custody order returning custody of the child to the parent, guardian, or custodian, subject to such conditions and limitation as the court may deem necessary and sufficient to protect the child and the community.

(2) An order transferring temporary custody of the child to a noncustodial parent or a relative.

(3) A temporary care order transferring temporary custody of the minor child to the commissioner.

(c)(1) If the court transfers custody of the child to the commissioner, the court shall issue a written temporary care order. The order shall include:

(A) a finding that remaining in the home is contrary to the child's welfare and the facts upon which that finding is based; and

(B) a finding as to whether reasonable efforts were made to prevent unnecessary removal of the child from the home.

(2) If at the conclusion of the hearing the court lacks sufficient evidence to make findings on whether reasonable efforts were made to prevent the removal of the child from the home, that determination shall be made at the next scheduled hearing in the case but, in any event, no later than 60 days after the issuance of the initial order removing a child from the home.

(3) The order may include such other provisions as may be necessary for the protection and welfare of the child, including:

(A) Conditions of release.

(B) An order for parent-child contact under such terms and conditions as are necessary for the protection of the child.

(C) An order that the department provide the child with services.

(D) An order that the department refer a parent to services.

(E) A genetic testing order if parentage of the child is at issue.

(F) An order that the department make diligent efforts to locate the noncustodial parent.

(G) An order that the custodial parent provide the department with names of all potential noncustodial parents and relatives of the child.

§ 5257. FILING OF INITIAL CASE PLAN

(a) If a temporary care order is issued granting custody to the commissioner, the department shall prepare and file with the court an initial case plan for the child and the family within 60 days of the child's removal from the home. The department shall provide a copy of the case plan to the parties, their attorneys, and the guardian ad litem.

(b) The initial case plan shall not be used or referred to as evidence prior to a finding that the child has committed a delinquent act.

§ 5258. POSTDISPOSITION REVIEW AND PERMANENCY REVIEW FOR DELINQUENTS IN CUSTODY

Whenever custody of a delinquent child is transferred to the commissioner, the custody order of the court shall be subject to a postdisposition review hearing pursuant to section 5320 of this title and permanency reviews pursuant to section 5321 of this title. At the permanency review, the court shall consider only the permanency goal and whether the department should continue to maintain custody of the child and shall not consider the appropriateness of the particular placement chosen by the department.

Subchapter 4. Probation

§ 5261. POWERS AND RESPONSIBILITIES OF THE COMMISSIONER REGARDING JUVENILE PROBATION

The commissioner shall be charged with the following powers and responsibilities regarding the administration of juvenile probation:

(1) To maintain supervision of juveniles placed on probation.

(2) To supervise the administration of juvenile probation services including the authority to enter into contracts with community-based agencies to provide probation services which may include restitution and community service programs and to establish policies and standards and adopt rules regarding juvenile probation investigation, supervision, casework and caseloads, record-keeping, and the qualification of juvenile probation officers.

(3) To prescribe rules, consistent with any orders of the court, governing the conduct of juveniles on probation.

§ 5262. CONDITIONS OF PROBATION

(a) The conditions of probation shall be such as the court in its discretion deems necessary to ensure to the greatest extent reasonably possible that the juvenile will be provided a program of treatment, training, and rehabilitation consistent with the protection of the public interest. The court shall provide as an explicit condition of every juvenile probation certificate that if the juvenile is adjudicated a delinquent or is convicted of an adult crime while on probation, then the court may find the juvenile in violation of the conditions of probation.

(b) The court may, as a condition of probation, require that the juvenile:

(1) Work faithfully for a prescribed number of hours at a community service activity acceptable to the court or, if so ordered by the court, at a community service activity acceptable to a probation officer.

(2) Make restitution or reparation to the victim of the juvenile's conduct for the damage or injury which was sustained. When restitution or reparation is a condition of probation, the court shall fix the amount thereof. The court shall further determine the amount the juvenile can or will be able to pay and fix the manner of performance. In the alternative, the court may refer the determination of the amount, the ability to pay, and the manner of performance to a restorative justice panel.

(3) Participate in programs designed to develop competencies to enable the child to become a responsible and productive member of the community.

(4) Refrain from purchasing or possessing a firearm or ammunition, any destructive device, or any dangerous weapon unless granted written permission by the court or juvenile probation officer.

(5) Report to a juvenile probation officer at reasonable times as directed by the court or the probation officer.

(6) Permit the juvenile probation officer to visit the juvenile at reasonable times at home or elsewhere.

(7) Remain within the jurisdiction of the court unless granted permission to leave by the court or the probation officer.

(8) Answer all reasonable inquiries by the juvenile probation officer and promptly notify the probation officer of any change in address or employment.

(9) Satisfy any other conditions reasonably related to the juvenile's rehabilitation.

(10) Reside at home or other location specified by the court.

(11) Attend or reside at an educational or vocational facility or a facility established for the instruction, recreation, or residence of persons on probation.

(12) Work faithfully at suitable employment or faithfully pursue a course of study or of vocational training that will equip the juvenile for suitable employment.

(13) Undergo available medical treatment, participate in psychiatric treatment or mental health counseling, and participate in alcohol or drug abuse assessment or treatment on an outpatient or inpatient basis.

§ 5263. JUVENILE PROBATION CERTIFICATE

(a) When a juvenile is placed on probation, the court shall issue a written juvenile probation certificate setting forth:

- (1) the name of the juvenile;
- (2) the nature of the delinquent act committed by the juvenile;
- (3) the date and place of the juvenile delinquency hearing;
- (4) the order of the court placing the juvenile on probation; and
- (5) the conditions of the juvenile's probation.

(b) The juvenile probation certificate shall be furnished to and signed by the juvenile and the parents or the guardian or custodian of the child, if other than parent. It shall be fully explained to them, and they shall be informed about the consequences of violating the conditions of probation, including the possibility of revocation of probation. A copy of the juvenile probation certificate shall also be furnished to the commissioner. The probation certificate is not invalidated if it is not signed as required by this subsection.

(c) The signature of a parent, guardian, or custodian on a probation certificate shall constitute verification that the parent, guardian, or custodian understands the terms of juvenile probation and agrees to facilitate and support the child's compliance with such terms and to attend treatment programs with the child as recommended by the treatment provider.

(d) The juvenile probation certificate shall be full authority for the exercise by the commissioner of all the rights and powers over and in relation to the juvenile prescribed by law and by the order of the court.

§ 5264. MODIFICATION OF CONDITIONS

(a) During the period of probation, the court, on application of a juvenile probation officer, the state's attorney, the juvenile, or on its own motion may modify the requirements imposed upon the juvenile or add further

requirements authorized by section 5262 of this title. A juvenile may request modification of a restitution issue determined by a restorative panel.

(b) Whenever the court proposes any modification of the conditions of probation, the juvenile probationer shall have a reasonable opportunity to contest the modification prior to its imposition.

§ 5265. VIOLATION OF CONDITIONS OF PROBATION

(a) If the juvenile fails to comply with conditions of probation, the state's attorney, a juvenile probation officer, or the court on its own motion may initiate a proceeding to establish that the juvenile is in violation of probation conditions.

(b) A juvenile probationer shall not be found in violation of conditions of probation unless the juvenile probationer is found to have violated a condition of probation, is again adjudicated a delinquent, or is convicted of a crime.

§ 5266. SUMMONS, APPREHENSION, AND DETENTION OF JUVENILE PROBATIONER

At any time before the discharge of a juvenile probationer or the termination of the period of probation:

(1) The court may summon the juvenile to appear before it or may issue an order for the juvenile's detention.

(2) Any juvenile probation officer may detain a juvenile probationer or may authorize any officer to do so by giving the officer a written statement setting forth that the juvenile has, in the judgment of the juvenile probation officer, violated a condition of probation. The written statement delivered with the juvenile by the detaining officer to the supervisor of the juvenile facility or residential program to which the juvenile is brought for detention shall be sufficient authority for detaining the juvenile.

(3) Any juvenile probationer apprehended or detained in accordance with the provisions of this chapter shall have no right of action against the juvenile probation officer or any other person because of such apprehension or detention.

§ 5267. DETENTION HEARING

(a) Whenever a juvenile probationer is detained on the grounds that the juvenile has violated a condition of probation, the juvenile shall be given a hearing before a judicial officer prior to the close of business on the next court business day in order to determine whether there is probable cause to hold the juvenile for a violation hearing. The juvenile and the adult who signed the probation certificate shall be given:

(1) notice of the detention hearing and its purpose and the allegations of violations of conditions of probation; and

(2) notice of the juvenile's right to be represented by counsel and right to be assigned counsel if the juvenile is unable to obtain counsel.

(b) At the detention hearing the juvenile shall be given:

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

(2) upon request, the opportunity to question witnesses against him or her unless, for good cause, the judicial officer decides that justice does not require the appearance of the witness.

(c) If probable cause is found to exist, the juvenile shall be held for a hearing to determine if the juvenile violated the conditions of probation. If probable cause is not found to exist, the proceedings shall be dismissed.

(d) A juvenile held in detention pursuant to a request to find the juvenile in violation of probation may be released by a judicial officer pending hearing or appeal.

§ 5268. NOTICE; VIOLATION HEARING

(a) The court shall not find a juvenile in violation of the juvenile's probation without a hearing, which shall be held promptly in the court in which the probation was imposed. If the juvenile is held in detention prior to the hearing, the hearing shall take place at the earliest possible time. Prior to the hearing, the juvenile and the adult who signed the probation certificate shall receive a written notice of the hearing at his or her last known address stating that the juvenile has allegedly violated one or more conditions of probation and which condition or conditions have been violated. At the hearing, the juvenile shall have:

(1) The right to legal counsel if requested by the juvenile probationer or the adult who signed the probation certificate to be assigned by the court in the same manner as in criminal cases.

(2) The right to disclosure of evidence against the juvenile.

(3) The opportunity to appear and to present evidence on the juvenile's behalf.

(4) The opportunity to question witnesses against the juvenile.

(b) The state's attorney having jurisdiction or the commissioner shall establish the alleged violation by a preponderance of the evidence, if the juvenile probationer contests the allegation.

§ 5269. DISPOSITION ALTERNATIVES UPON VIOLATION OF CONDITIONS OF PROBATION

If a violation of conditions of probation is established, the court may, in its discretion, modify the conditions of probation or order any of the disposition alternatives provided for in section 5232 of this title.

§ 5270. FINAL JUDGMENT

An order placing a juvenile on probation and a finding that a juvenile violated a condition of probation shall constitute a final judgment.

§ 5271. DISCHARGE FROM PROBATION

(a) The court placing a juvenile on probation may terminate probation and discharge the juvenile at any time.

(b) Upon the termination of the period of probation, the juvenile probationer shall be discharged from probation.

§ 5272. JUVENILE JUSTICE UNIT; JUVENILE JUSTICE DIRECTOR

(a) A juvenile justice unit is created in the family services division of the department. The unit shall be headed by a juvenile justice director.

(b) The juvenile justice director shall have the responsibility and authority to monitor and coordinate all state and participating regional and local programs that deal with juvenile justice issues, including prevention, education, enforcement, adjudication, and rehabilitation.

(c) The juvenile justice director shall ensure that the following occur:

(1) Development of a comprehensive plan for a coordinated and sustained statewide program to reduce the number of juvenile offenders, involving state, regional, and local officials in the areas of health, education, prevention, law enforcement, corrections, teen activities, and community wellness.

(2) Cooperation among state, regional, and local officials, court personnel, service providers, and law enforcement agencies in the formulation and execution of a coordinated statewide juvenile justice program.

(3) Cooperation among appropriate departments, including the department and the departments of education, corrections, employment and training, developmental and mental health services, and public safety, and the office of alcohol and drug abuse programs.

(4) A study of issues relating to juvenile justice and development of recommendations regarding changes in law and rules, as deemed advisable.

(5) Compilation of data on issues relating to juvenile justice and analysis, study, and organization of such data for use by educators, researchers, policy advocates, administrators, legislators, and the governor.

Subchapter 5. Youthful Offenders

§ 5281. MOTION IN DISTRICT COURT

(a) A motion may be filed in the district court requesting that a defendant under 18 years of age in a criminal proceeding who had attained the age of 10 but not the age of 18 at the time the offense is alleged to have been committed be treated as a youthful offender. The motion may be filed by the state's attorney, the defendant, or the court on its own motion.

(b) Upon the filing of a motion under this section and the entering of a conditional plea of guilty by the youth, the district court shall enter an order deferring the sentence and transferring the case to the family court for a hearing on the motion. Copies of all records relating to the case shall be forwarded to the family court. Conditions of release and any department of corrections supervision or custody shall remain in effect until the family court approves the motion for treatment as a youthful offender and orders conditions of juvenile probation pursuant to section 5284 of this title.

(c) A plea of guilty entered by the youth pursuant to subsection (b) of this section shall be conditional upon the family court granting the motion for youthful offender status.

(d)(1) If the family court denies the motion for youthful offender treatment pursuant to subsection 5284 of this title, the case shall be returned to the district court and the youth shall be permitted to withdraw the plea. The conditions of release imposed by the district court pursuant to subsection (b) of this section shall remain in effect, and the case shall proceed as though the motion for youthful offender treatment had not been made.

(2) Subject to Rule 11 of the Vermont Rules of Criminal Procedure and Rule 410 of the Vermont Rules of Evidence, the family court's denial of the motion for youthful offender treatment and any information related to the youthful offender proceeding shall be inadmissible against the youth for any purpose in the subsequent criminal proceeding in district court.

§ 5282. REPORT FROM THE DEPARTMENT

(a) Within 30 days after the case is transferred to family court, unless the court extends the period for good cause shown, the department shall file a report with the family court.

(b) A report filed pursuant to this section shall include the following elements:

(1) A recommendation as to whether youthful offender status is appropriate for the youth.

(2) A disposition case plan including proposed services and proposed conditions of juvenile probation in the event youthful offender status is approved.

(3) A description of the services that may be available for the youth when he or she reaches 18 years of age.

(c) A report filed pursuant to this section is privileged and shall not be disclosed to any person other than the department, the court, the state's attorney, the youth, the youth's attorney, the youth's guardian ad litem, the department of corrections, or any other person when the court determines that the best interests of the youth would make such a disclosure desirable or helpful.

§ 5283. HEARING IN FAMILY COURT

(a) Timeline. A hearing on the motion for youthful offender status shall be held no later than 35 days after the transfer of the case from district court.

(b) Notice. Notice of the hearing shall be provided to the state's attorney; the youth; the youth's parent, guardian, or custodian; the department; and the department of corrections.

(c) Hearing procedure.

(1) If the motion is contested, all parties shall have the right to present evidence and examine witnesses. Hearsay may be admitted and may be relied on to the extent of its probative value. If reports are admitted, the parties shall be afforded an opportunity to examine those persons making the reports, but sources of confidential information need not be disclosed.

(2) Hearings under subsection 5284(a) of this title shall be open to the public. All other youthful offender proceedings shall be confidential.

(d) The burden of proof shall be on the moving party to prove by a preponderance of the evidence that a child should be granted youthful offender status. If the court makes the motion, the burden shall be on the youth.

(e) Further hearing. On its own motion or the motion of a party, the court may schedule a further hearing to obtain reports or other information necessary for the appropriate disposition of the case.

§ 5284. DETERMINATION AND ORDER

(a) In a hearing on a motion for youthful offender status, the court shall first consider whether public safety will be protected by treating the youth as a youthful offender. If the court finds that public safety will not be protected by treating the youth as a youthful offender, the court shall deny the motion and return the case to district court pursuant to subsection 5281(d) of this title. If the court finds that public safety will be protected by treating the youth as a youthful offender, the court shall proceed to make a determination under subsection (b) of this section.

(b)(1) The court shall deny the motion if the court finds that:

(A) the youth is not amenable to treatment or rehabilitation as a youthful offender; or

(B) there are insufficient services in the juvenile court system and the department to meet the youth's treatment and rehabilitation needs.

(2) The court shall grant the motion if the court finds that:

(A) the youth is amenable to treatment or rehabilitation as a youthful offender; or

(B) there are sufficient services in the juvenile court system and the department to meet the youth's treatment and rehabilitation needs.

(c) If the court approves the motion for youthful offender treatment, the court:

(1) shall approve a disposition case plan and impose conditions of juvenile probation on the youth; and

(2) may transfer legal custody of the youth to a parent, relative, person with a significant relationship with the youth, or commissioner, provided that any transfer of custody shall expire on the youth's eighteenth birthday.

(d) The department shall be responsible for supervision of and providing services to the youth until he or she reaches the age of 18. A lead case manager shall be designated who shall have final decision-making authority over the case plan and the provision of services to the youth. The youth shall be eligible for appropriate community-based programming and services provided by the department.

(e) The youth shall not be permitted to withdraw his or her plea of guilty after youthful offender status is approved except to correct manifest injustice pursuant to rule 32(d) of the Vermont Rules of Criminal Procedure.

§ 5285. MODIFICATION OR REVOCATION OF DISPOSITION

(a) If it appears that the youth has violated the terms of juvenile probation ordered by the court pursuant to subdivision 5284(c)(1) of this title, a motion for modification or revocation of youthful offender status may be filed in family court. The court shall set the motion for hearing as soon as practicable. The hearing may be joined with a hearing on a violation of conditions of probation under section 5265 of this title. A supervising juvenile or adult probation officer may detain in an adult facility a youthful offender who has attained the age of 18 for violating conditions of probation.

(b) A hearing under this section shall be held in accordance with section 5268 of this title.

(c) If the court finds after the hearing that the youth has violated the terms of his or her probation, the court may:

(1) maintain the youth's status as a youthful offender, with modified conditions of juvenile probation if the court deems it appropriate;

(2) revoke the youth's status as a youthful offender status and return the case to the district court for sentencing; or

(3) transfer supervision of the youth to the department of corrections.

(d) If a youth's status as a youthful offender is revoked and the case is returned to the district court under subdivision (c)(2) of this section, the district court shall hold a sentencing hearing and impose sentence. When determining an appropriate sentence, the district court may take into consideration the youth's degree of progress toward rehabilitation while on youthful offender status. The district court shall have access to all family court records of the proceeding.

§ 5286. REVIEW PRIOR TO THE AGE OF 18

(a) The family court shall review the youth's case before he or she reaches the age of 18 and set a hearing to determine whether the court's jurisdiction over the youth should be continued past the age of 18. The hearing may be joined with a motion to terminate youthful offender status under section 5285 of this title. The court shall provide notice and an opportunity to be heard at the hearing to the state's attorney, the youth, the department, and the department of corrections.

(b) After receiving a notice of review under this section, the state may file a motion to modify or revoke pursuant to section 5285 of this title. If such a motion is filed, it shall be consolidated with the review under this section and all options provided for under section 5285 of this title shall be available to the court.

(c) The following reports shall be filed with the court prior to the hearing:

(1) The department shall report its recommendations, with supporting justifications, as to whether the family court should continue jurisdiction over the youth offender past the age of 18 and, if continued jurisdiction is recommended, whether the department or the department of corrections should be responsible for supervision of the youthful offender.

(2) If the department recommends that the department of corrections be responsible for supervision of the youthful offender past the age of 18, the department shall notify the department of corrections, which shall report on the services which would be available for the youth in the event supervision over him or her is transferred to the department of corrections.

(d) If the court finds that it is in the best interest of the youth and consistent with community safety to continue the case past the age of 18, it shall make an order continuing the court's jurisdiction up to the age of 22. The order shall specify whether the youth will be supervised by the department or the department of corrections. Irrespective of which department is specified in the order, the department and the department of corrections shall jointly develop a case plan for the youth and coordinate services and share information to ensure compliance with and completion of the juvenile disposition.

(e) If the court finds that it is not in the best interest of the youth to continue the case past the age of 18, it shall terminate the disposition order, discharge the youth, and dismiss the case in accordance with subsection 5287(c) of this title.

§ 5287. TERMINATION OR CONTINUANCE OF PROBATION

(a) A motion may be filed at any time in the family court requesting that the court terminate the youth's status as a youthful offender and discharge him or her from probation. The motion may be filed by the state's attorney, the youth, the department, or the court on its own motion. The court shall set the motion for hearing and provide notice and an opportunity to be heard at the hearing to the state's attorney, the youth, and the department.

(b) In determining whether a youth has successfully completed the terms of probation, the court shall consider:

(1) the degree to which the youth fulfilled the terms of the case plan and the probation order;

(2) the youth's performance during treatment;

(3) reports of treatment personnel; and

(4) any other relevant facts associated with the youth's behavior.

(c) If the court finds that the youth has successfully completed the terms of the probation order, it shall terminate youthful offender status, discharge the youth from probation, and file a written order dismissing the family court case. The family court shall provide notice of the dismissal to the district court, which shall dismiss the district court case.

(d) Upon discharge and dismissal under subsection (c) of this section, all records relating to the case in the district court shall be expunged, and all records relating to the case in the family court shall be sealed pursuant to section 5119 of this title.

(e) If the court denies the motion to discharge the youth from probation, the court may extend or amend the probation order as it deems necessary.

§ 5288. RIGHTS OF VICTIMS IN YOUTHFUL OFFENDER PROCEEDINGS

(a) The victim in a proceeding involving a youthful offender shall have the following rights:

(1) To be notified by the prosecutor in a timely manner when a court proceeding is scheduled to take place and when a court proceeding to which he or she has been notified will not take place as scheduled.

(2) To be present during all court proceedings subject to the provisions of Rule 615 of the Vermont Rules of Evidence and to express reasonably his or her views concerning the offense and the youth.

(3) To request notification by the agency having custody of the youth before the youth is released from a residential facility.

(4) To be notified by the prosecutor as to the final disposition of the case.

(5) To be notified by the prosecutor of the victim's rights under this section.

(b) In accordance with court rules, at a hearing on a motion for youthful offender treatment under section 5281 of this title, the court shall ask if the victim is present and, if so, whether the victim would like to be heard regarding disposition. In ordering disposition, the court shall consider any views offered at the hearing by the victim. If the victim is not present, the court shall ask whether the victim has expressed, either orally or in writing, views regarding disposition and shall take those views into consideration in ordering disposition.

(c) No youthful offender proceeding shall be delayed or voided by reason of the failure to give the victim the required notice or the failure of the victim to appear.

(d) For purposes of this section "victim" shall have the same meaning as in subdivision 5301(4) of Title 13.

Subchapter 6. Placement of Minors in Secure Facilities

§ 5291. DETENTION OF MINORS CHARGED AS DELINQUENTS IN A SECURE FACILITY FOR THE DETENTION OF DELINQUENT CHILDREN

(a) Unless ordered otherwise at or after a temporary care hearing, the commissioner shall have sole authority to place the child who is in the custody of the department in a secure facility for the detention of minors.

(b) Upon a finding at the temporary care hearing that no other suitable placement is available and the child presents a risk of injury to him- or herself, to others, or to property, the court may order that the child be placed in a secure facility used for the detention of delinquent children until the commissioner determines that a suitable placement is available for the child. Alternatively, the court may order that the child be placed in a secure facility used for the detention of delinquent children for up to seven days. Any order for placement at a secure facility shall expire at the end of the seventh day following its issuance unless, after hearing, the court extends the order for a time period not to exceed seven days.

§ 5292. DETENTION IN ADULT FACILITIES OF MINORS CHARGED OR ADJUDICATED AS DELINQUENTS

(a) A minor charged with a delinquent act shall not be detained under this chapter in a jail or other facility intended or used for the detention of adults unless the child is alleged to have committed a crime punishable by life imprisonment and it appears to the satisfaction of the court that public safety and protection reasonably require such detention.

(b) A minor who has been adjudicated as a delinquent child shall not by virtue of such adjudication be committed or transferred to an institution or other facility used primarily for the execution of sentences of persons convicted of a crime.

(c) The official in charge of a jail or other facility intended or used for the detention of adult offenders or persons charged with crime shall inform the court immediately when a minor who is or appears to be under the age of 18 years is received at the facility other than pursuant to subsection (a) of this

section or section 5293 of this title and shall deliver the minor to the court upon request of the court or transfer the minor to the detention facility designated by the court by order.

§ 5293. DISPOSITION OF MINORS ADJUDICATED AS ADULT OFFENDERS; SEPARATION OF PERSONS UNDER 18 YEARS FROM ADULTS

(a) Pretrial detention.

(1) A minor who is under the age of 18 who has been arrested shall not be placed in a facility for adult offenders unless a felony charge has been filed in district court or the district court has exercised jurisdiction over the matter and the state's attorney has determined that a felony charge will be filed without delay. A minor who is eligible for release under chapter 229 of Title 13 shall be released.

(2)(A) A minor who is under the age of 18 who has been arrested for a misdemeanor shall immediately and without first being taken elsewhere:

(i) be released to his or her parents, guardian, or custodian; or

(ii) be delivered to the district court.

(B) If the minor is delivered to the district court, the arresting officer shall immediately file written notice thereof with the court together with a statement of the reason for taking the minor into custody. A minor who is eligible for release under chapter 229 of Title 13 shall be released. In the event that the minor is not released:

(i) the minor shall not be detained in a facility for adult offenders;

(ii) The court shall defer to the commissioner of corrections concerning the facility in which the minor shall be detained.

(b) Sentencing of minor. If a minor is convicted of an offense in a court of criminal jurisdiction as an adult, the court shall sentence the minor as an adult.

(c) Placement of minors under 16. The commissioner of corrections shall not place a minor under the age of 16 who has been sentenced to a term of imprisonment in a correctional facility used to house adult offenders.

(d) Placement of minors over 16 convicted of felony. The commissioner of corrections may place in a facility for adult offenders a minor who has attained the age of 16 but is under the age of 18 who has been convicted of a felony and who has been sentenced to a term of imprisonment.

(e) Placement of minor over 16 convicted of misdemeanor. The commissioner of corrections shall not place in a facility for adult offenders a minor who has attained the age of 16 but is under the age of 18 who has been convicted of a misdemeanor

(f) Transfer of minor at 18th birthday. At the 18th birthday of a minor convicted of a misdemeanor, the commissioner may transfer the minor to a facility for adult offenders.

(g) Applicability. The provisions of this section shall apply to the commitment of minors to institutions within or outside the state of Vermont.

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

Ninth: In the renumbered Sec. 3, 33 V.S.A. § 5301(2), after the word "removal" by adding the words from the child's current home

Tenth: In the renumbered Sec. 3, 33 V.S.A. § 5302(b)(2), in the last sentence after the word "The" by adding the words officer shall contact the department and the

Eleventh: In the renumbered Sec. 3, 33 V.S.A. § 5306, in subsection (a), in the first sentence, after the words "order to the" by inserting the word custodial and in the third sentence by striking out the words "the parents" and inserting in lieu thereof the words such persons and in subsection (b), in the first sentence, after the word "conditional" by striking out the word "care" and inserting in lieu thereof the word custody and, in the second sentence, by striking out the following: ", in writing,"

Twelfth: In the renumbered Sec. 3, 33 V.S.A. § 5307(e), by striking out subdivision (5) in its entirety and inserting in lieu thereof:

(5)(A) The identity and location of a noncustodial parent, a relative, or a person with a significant relationship with the child known to the department who may be appropriate, capable, willing, and available to assume temporary legal custody of the child. If the noncustodial parent cannot be located, the department shall provide to the court a summary of the efforts made to locate the parent.

(B) With respect to any person whom the department identifies pursuant to this subdivision, the department shall conduct an assessment of the suitability of the person to care for the child. The assessment shall include consideration of the person's ability to care for the child's needs, a criminal history record as defined in 20 V.S.A. § 2056a(a)(1) in accordance with subdivision (5)(C) of this subsection, and a check of allegations of prior child

abuse or neglect by the person or by other adults in the person's home. The court may continue the hearing if necessary to permit the department to complete the assessment.

(C) The department shall request from the Vermont criminal information center criminal history record information for any person being considered to assume temporary legal custody of the child pursuant to this subdivision. The request shall be in writing and shall be accompanied by a release signed by the person. The department through the Vermont criminal information center shall request criminal history record information from the appropriate state criminal repositories in all states in which it has reason to believe the person has resided or been employed. If no disqualifying record is identified at the state level, the department through the Vermont criminal information center shall request from the Federal Bureau of Investigation a national criminal history record check of the person's criminal history. The request to the FBI shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont criminal information center. The Vermont criminal information center shall send the department the criminal history record from any state repository and the FBI of a person about whom a request is made under this subdivision or inform the department that no record exists. The department shall promptly provide a copy of the criminal history record, if any, to the person and shall inform the person that he or she has the right to appeal the accuracy and completeness of the record through the Vermont criminal information center. Upon completion of the process under this subdivision, the person's fingerprint card shall be destroyed.

Thirteenth: In the renumbered Sec. 3, 33 V.S.A. § 5308, by striking out subsection (b) in its entirety and inserting in lieu thereof:

(b) Upon a finding that any of the conditions set forth in subsection (a) of this section exists, the court may issue such temporary orders related to the custody of the child as it deems necessary and sufficient to protect the welfare and safety of the child including:

(1) A conditional custody order returning custody of the child to the parent, guardian, or custodian, subject to such conditions and limitations as the court may deem necessary and sufficient to protect the child.

(2) An order transferring temporary custody of the child to a noncustodial parent or a relative who is appropriate, capable, willing, and available to care for the child.

(3) A temporary care order transferring temporary custody of the minor child to the commissioner.

Fourteenth: In the renumbered Sec. 3, 33 V.S.A. § 5308(c), in subdivision (2)(B) after the words "with services" by adding the following: , if legal custody of the child has been transferred to the commissioner and by adding a new subdivision (3) to read:

(3) In his or her discretion, the commissioner may provide assistance and services to children and families to the extent that funds permit notwithstanding subdivision (2)(B) of this subsection.

Fifteenth: In the renumbered Sec. 3, 33 V.S.A. § 5308(c)(2)(C), after the word "disabilities" by adding the words provided that the child's needs are given primary consideration

Sixteenth: In the renumbered Sec. 3, 33 V.S.A. § 5309(d), in the first sentence after the words "request of the" by adding the words secretary of the and in the last sentence by striking out the words "requirements of subdivision 5102(2)(C)" and inserting in lieu thereof the words criteria of subdivision 5102(2)(B)(ii)

Seventeenth: In the renumbered Sec. 3, 33 V.S.A. § 5311, in the catchline by striking out the following: "PRELIMINARY HEARING"

Eighteenth: In the renumbered Sec. 3, 33 V.S.A. § 5313(b), after the words "is issued" by adding the words except for good cause shown

Nineteenth: In the renumbered Sec. 3, 33 V.S.A. § 5316, in subdivision (b)(4) after the word "disabilities" by adding the words provided that the child's needs are given primary consideration and by striking out subdivision (b)(9) in its entirety

Twentieth: In the renumbered Sec. 3, 33 V.S.A. § 5319(b), at the end of the subsection by adding the following: The court may allocate the costs of supervised visitation.

Twenty-first: In the renumbered Sec. 3, by adding a new 33 V.S.A. § 5322 to read as follows:

§ 5322. POSTDISPOSITION REVIEW AND PERMANENCY REVIEW FOR CHILDREN IN NEED OF CARE AND SUPERVISION

Whenever custody of a child in need of care or supervision is transferred to the commissioner, the custody order of the court shall be subject to a postdisposition review hearing pursuant to section 5320 of this title and permanency reviews pursuant to section 5321 of this title. At the permanency review, the court shall consider only the permanency goal and whether the department should continue to maintain custody of the child and shall not

consider the appropriateness of the particular placement chosen by the department.

and by renumbering the remaining statutory section to be numerically correct.

Twenty-second: By deleting the renumbered Sec. 4, REPORT FROM THE DEPARTMENT FOR CHILDREN AND FAMILIES, in its entirety, and by renumbering the remaining sections to be numerically correct.

Twenty-third: In the renumbered Sec. 4, 13 V.S.A. § 1030, by amending the catchline to read:

§ 1030. VIOLATION OF AN ABUSE PREVENTION ORDER OR, AN ORDER AGAINST STALKING OR SEXUAL ASSAULT, OR A PROTECTIVE ORDER CONCERNING CONTACT WITH A CHILD

Twenty-fourth: By adding a new Sec. 5 to read as follows:

Sec. 5. Rule (3)(c)(6) of the Vermont Rules of Criminal Procedure is amended to read:

(6) The person has violated an order issued by a court in this state pursuant to 12 V.S.A. chapter 178, 15 V.S.A. chapter 21, or 33 V.S.A. chapter 69 or subsection 5115(e).

Twenty-fifth: By adding a new Sec. 6 to read as follows:

Sec. 6. 33 V.S.A. § 3902 is amended as follows:

§ 3902. ASSIGNMENT OF SUPPORT RIGHTS BY PUBLIC ASSISTANCE RECIPIENTS; PROCEEDINGS TO ESTABLISH SUPPORT OBLIGATION

* * *

(e) ~~When a responsible parent is receiving welfare assistance under Title XVI of the Social Security Act or chapter 11 of this title, on the parent's own behalf or on behalf of a dependent child, no amounts shall accrue or be collected under the support order while the welfare assistance is being received. The commissioner shall monitor receipt of welfare assistance by responsible parents to ensure collection action is not instituted while welfare assistance is being received and that collection action is instituted promptly when the responsible parent no longer receives assistance.~~

(f) If a support order has been entered and the legal custodian and obligee relinquishes physical responsibility of the child to a caretaker without modifying the physical rights and responsibilities order, the office of child support may change the payee of support upon the caretaker's receipt of Reach Up family assistance (RUFA) from the department for children and families. The obligor's obligation under the support order to pay child support and

medical support continues but shall be payable to the office of child support upon the caretaker's receipt of RUFA and shall continue so long as the assignment is in effect. The office of child support shall notify the obligor and obligee under the support order, by first class mail at last known address, of the change of payee.

Twenty-sixth: By adding a new Sec. 7 to read as follows:

Sec. 7. 33 V.S.A. § 3903 is amended to read:

§ 3903. CHILD SUPPORT DEBT

(a) Except as otherwise provided in this section, any payment of Reach Up financial assistance made to or for the benefit of a dependent child creates a debt due and owing to the department for children and families by any responsible parent in an amount equal to the amount of Reach Up financial assistance paid.

~~(1) A debt shall not be incurred by any responsible parent while that parent receives public assistance for the benefit of any of his or her dependent children. A debt previously incurred by any responsible parent shall not be collected from the responsible parent while that parent receives public assistance for the benefit of his or her dependent children, or assistance under Title XVI of the Social Security Act.~~

(2)(b) Collection of child support debts shall be made as provided by this section and section 3902 of this title and by subchapter 7 of chapter 11 of Title 15. Regardless of the amount of Reach Up financial assistance paid, the court may limit the child support debt, taking into consideration the criteria of section 659 of Title 15. The department for children and families and the responsible parent may limit the child support debt by stipulation which shall be enforceable on its terms unless it is modified.

And by renumbering the remaining sections to be numerically correct.

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. Flory of Pittsford** moved that the House refuse to concur and ask for a Committee of Conference, which was agreed to.

Senate Proposal of Amendment Concurred in

H. 257

The Senate proposed to the House to amend House bill, entitled

An act relating to the codification of existing community justice centers;

By striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 24 V.S.A. chapter 58 is added to read:

CHAPTER 58. COMMUNITY JUSTICE CENTERS

§ 1961. LEGISLATIVE FINDINGS

A system of community justice centers that operates under the authority of a single statute will:

(1) Help each community justice center collaborate more closely with law enforcement and state's attorneys, state agencies, social service providers, victim advocacy organizations, and other community resources.

(2) Enhance the services each community justice center provides.

(3) Help each community justice center further its policy interest of achieving restorative justice.

§ 1962. DEFINITIONS

As used in this chapter:

(1) "Legislative body" means the mayor and board of aldermen of a city, a city council, a town selectboard, the president and trustees of an incorporated village, or the legislative bodies of a group of municipalities.

(2) "Municipality" means a city, town, incorporated village, or group of municipalities.

§ 1963. AUTHORITY OF MUNICIPALITIES

The legislative body of any municipality may create within its jurisdiction a community justice center to resolve civil disputes and address the wrongdoings of individuals who have committed municipal, juvenile, or criminal offenses. A municipality may designate an organization to act as its community justice center.

§ 1964. STRUCTURE OF THE COMMUNITY JUSTICE BOARDS

Each community justice center:

(1) Shall have an advisory board comprised of at least 51 percent citizen volunteers.

(2) May use a variety of restorative justice approaches, including community panels or boards, group conferencing, or mediation.

(3) Shall include programs to resolve disputes, address the needs of victims, address the wrongdoing of the offender, and promote the rehabilitation of youthful and adult offenders.

§ 1965. DUTIES OF THE COMMUNITY JUSTICE CENTERS

Each community justice center:

(1) Shall work in close coordination with state agencies, law enforcement agencies, state's attorneys, social service providers, victim advocacy organizations, and other community resources in administering the programs defined in subdivision 1964(3) of this title.

(2) Shall, in collaboration with state and local agencies, provide training on the restorative justice process to citizen volunteers to enable their participation in the local community justice center.

(3) May address quality of life issues in the community it serves by providing informational and educational resources to the community.

(4) May apply for funding from private foundations, other governmental sources, or other sources.

§ 1966. COMMUNITY JUSTICE CENTERS' RELATIONSHIP WITH STATE GOVERNMENT ENTITIES

(a) The agency of human services shall provide to the community justice centers the information, analysis, and technical support which the community justice centers, in collaboration with the agency of human services, determine are necessary to further their policy of restorative justice.

(b) Funding from the agency of human services. The agency of human services may provide funding and authorize community justice centers to participate in the implementation of state programs related to juvenile and criminal offenses.

(c) Access to information. Community justice center employees and volunteers participating in state-funded programs shall have access to information, analysis, and technical support as necessary to carry out their duties within the program in accordance with state and federal confidentiality statutes and policies. Victim information that is not part of the public record shall not be released without the victim's consent.

(d) Liability.

(1) For the purposes of defining liability, community justice center volunteers participating in programs funded by the agency of human services pursuant to subsection (b) of this section shall be considered volunteers of that agency.

(2) In all other cases, the state and the municipality shall each be liable for the acts and omissions of employees operating within the scope of their employment.

§ 1967. CASES PROHIBITED

No case involving domestic violence, sexual violence, sexual assault, or stalking shall be referred to a community justice center except in department of corrections offender reentry programs pursuant to protocols protecting victims. The community justice centers shall work with the department of corrections and the center for crime victim services or its designee to develop victim safety protocols for community justice centers that take into consideration victim needs such as safety, confidentiality, and privacy.

Which proposal of amendment was considered and concurred in.

Committee of Conference Appointed**S. 365**

Pursuant to the request of the Senate for a Committee of Conference on the disagreeing votes of the two Houses on Senate bill, entitled

An act relating to capital construction and state bonding;

The Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Emmons of Springfield

Rep. Myers of Essex

Rep. Fallar of Tinmouth

Rules Suspended; Bill Committed**S. 357**

Pending entrance of the bill on the Calendar for notice, on motion of **Rep. Adams of Hartland**, the rules were suspended and Senate bill, entitled

An act relating to domestic violence;

Was taken up for immediate consideration.

On motion of **Rep. Adams of Hartland** the bill was committed to the committee on Appropriations.

Rules Suspended; Bill Committed**S. 350**

Pending entrance of the bill on the Calendar for notice, on motion of **Rep. Adams of Hartland**, the rules were suspended and Senate bill, entitled

An act relating to energy independence and economic prosperity;

Was taken up for immediate consideration.

On motion of **Rep. Adams of Hartland** the bill was committed to the committee on Appropriations.

Bills Messaged to Senate Forthwith

On motion of **Rep. Adams of Hartland**, the rules were suspended and the following bills were ordered messaged to the Senate forthwith:

S. 226

Senate bill, entitled

An act relating to requiring the installation of photoelectric only smoke alarms;

S. 271

Senate bill, entitled

An act relating to child support for children with disabilities;

S. 301

Senate bill, entitled

An act relating to enhancing the penalties for assaulting a law enforcement officer and to the crime of assault with bodily fluids;

Message from Governor

A message was received from His Excellency, the Governor, by Ms. Dennise Casey, Secretary of Civil and Military Affairs, as follows:

Madam Speaker:

I am directed by the Governor to inform the House that on the twenty-second day of April, 2008, he approved and signed a bill originating in the House of the following title:

H. 616 An act relating to farm-fresh raw milk

Message from the Senate No. 59

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that the Senate has considered a bill originating in the House of the following title:

H. 588. An act relating to property loaned to museums.

And has passed the same in concurrence.

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

H. 11. An act relating to the commissioner of health.

H. 432. An act relating to establishing Juneteenth National Freedom Day.

H. 515. An act relating to the collection and disposal of mercury-added thermostats.

H. 806. An act relating to public water systems.

H. 867. An act relating to health insurance plan coverage for athletic trainer services.

H. 889. An act relating to the state's transportation program.

And has passed the same in concurrence with proposals of amendment in the adoption of which the concurrence of the House is requested.

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

J.R.H. 61. Joint resolution designating May 2008 as Carcinoid Cancer Awareness Month.

And has adopted the same in concurrence.

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

H. 641. An act relating to nursing mothers in the workplace.

And has concurred therein.

Adjournment

At four o'clock and fifty-five minutes in the afternoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at one o'clock in the afternoon.

WEDNESDAY, APRIL 23, 2008

At one o'clock in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Marion Gray Scholarship winners, Jesse LaFountain and Summer Becker from Hartford High School.

Committee of Conference Appointed**H. 615**

Pursuant to the request of the Senate for a Committee of Conference on the disagreeing votes of the two Houses on House bill, entitled

An act relating to juvenile judicial proceedings;

The Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Lippert of Hinesburg

Rep. Flory of Pittsford

Rep. Haas of Rochester

**Rules Suspended; Senate Proposal of Amendment Not Concurred in;
Committee of Conference Requested and Appointed**

H. 889

On motion of **Rep. Westman of Cambridge**, the rules were suspended and House bill, entitled

An act relating to the state's transportation program;

Appearing on the Calendar for notice, was taken up for immediate consideration.

The Senate proposed to the House to amend House bill, entitled

By striking out all after the enacting clause and inserting in lieu thereof the following:

**Sec. 1. TRANSPORTATION PROGRAM; ADVANCEMENTS,
CANCELLATIONS, AND DELAYS**

(a) The state's proposed fiscal year 2009 transportation program appended to the agency of transportation's proposed fiscal year 2009 budget, as amended by this act, is adopted to the extent federal, state, and local funds are available.

(b) As used in this act, unless otherwise indicated, the term "agency" means the agency of transportation, and the term "secretary" means the secretary of transportation. As used in this act, the table heading "As Proposed" means the transportation program referenced in subsection (a) of this section; the table heading "As Amended" means the amendments as made by this act; the table heading "Change" means the difference obtained by subtracting the "As Proposed" figure from the "As Amended" figure; and the term "change" or "changes" in the text refers to the project- and program-

specific amendments, the aggregate sum of which equals the net "Change" in the applicable table heading.

*** State Bridges ***

Sec. 2. PROGRAM DEVELOPMENT – STATE BRIDGES

The following modifications are made to the program development – state bridges program:

(1) Funding of the state bridge development and evaluation program is amended to read:

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	1,049,648	0	-1,049,648
ROW	256,419	0	-256,419
Construction	0	0	0
Other	0	0	0
Total	1,306,067	0	0
<u>Sources of funds</u>		0	-1,306,067
State	263,993	0	-263,993
Federal	1,042,074	0	-1,042,074
Local	0	0	0
Total	1,306,067	0	-1,306,067

(2) Funding is added as follows to advance state bridge projects not scheduled for construction in fiscal year 2009. The authorized funds shall be expended on projects according to their priority ranking. To the extent the agency determines that the funds would be more efficiently spent advancing a lower ranking project due to permitting, right-of-way, or other practical constraints that impede the advancement of a higher ranking project, the agency shall substantiate and report its determination to the joint transportation oversight committee at its July 2008 meeting.

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE, ROW or other	0	1,306,067	1,306,067
Total	0	1,306,067	1,306,067
<u>Sources of funds</u>			
State	0	263,993	263,993
Federal	0	1,042,074	1,042,074
Local	0	0	0
Total	0	1,306,067	1,306,067

*** Roadway ***

Sec. 3. PROGRAM DEVELOPMENT – ROADWAY

The following modifications are made to the program development - roadway program:

(1) Authorized spending on the Cabot-Danville FEGC F 028-3(26)C/I project is amended to read:

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	0	0	0
ROW	0	0	0
Construction	3,700,000	1,000,000	-2,700,000
Other	0	0	0
Total	3,700,000	1,000,000	-2,700,000
<u>Sources of funds</u>			
State	185,000	50,000	-135,000
Federal	3,515,000	950,000	-2,565,000
Local	0	0	0
Total	3,700,000	1,000,000	-2,700,000

(2) Authorized spending on the Hartford-Newbury I-91 IM 091-2(72) project is amended to read:

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	0	0	0
ROW	0	0	0
Construction	4,500,000	0	-4,500,000
Other	0	0	0
Total	4,500,000	0	-4,500,000
<u>Sources of funds</u>			
State	900,000	0	-900,000
Federal	3,600,000	0	-3,600,000
Local	0	0	0
Total	4,500,000	0	-4,500,000

(3) Authorized spending on the Derby GSA border crossing IM 091-34(45) project is amended to read:

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	0	0	0
ROW	0	0	0
Construction	0	0	0
Other	287,500	0	-287,500
Total	287,500	0	-287,500
<u>Sources of funds</u>			

State	287,500	0	-287,500
Federal	0	0	0
Local	0	0	0
Total	287,500	0	-287,500

(4) The following project has received a federal earmark and is added to program development – roadway program – roadway projects candidates list: Bristol STP 021-1 () – Downtown Streetscape and Sidewalk Improvements – \$240,000; 100% federal funds available until expended.

(5) The following project has received a federal earmark and is added to program development – roadway program – roadway projects candidates list: Essex Junction STP 5300 () – Route 15 Streetscape Improvements – \$1,641,500 to be allocated between this project and the existing project Colchester TCSP TCSE (7) – Campus Connector; 100% federal funds available until expended.

*** Paving ***

Sec. 4. PROGRAM DEVELOPMENT – PAVING

The following modifications are made to the program development – paving program:

(1) Authorized spending in the district leveling program is amended to read:

FY09	As Proposed	As Amended	Change
PE	0	0	0
ROW	0	0	0
Construction	1,650,000	2,550,000	900,000
Other	0	0	0
Total	1,650,000	2,550,000	900,000
<u>Sources of funds</u>			
State	1,650,000	2,550,000	900,000
Federal	0	0	0
Local	0	0	0
Total	1,650,000	2,550,000	900,000

(2) In addition to the change made in subdivision (1) of this section, total authorized spending in the paving program is increased by \$866,850 in transportation funds and \$3,467,400 in federal funds. The agency shall allocate the additional funds to paving projects in its discretion.

* * * Bike and Pedestrian Facilities * * *

Sec. 5. PROGRAM DEVELOPMENT – BIKE AND PEDESTRIAN FACILITIES

The following modifications are made to the program development – bike and pedestrian facilities:

(1) The following project has received a federal earmark and is added to program development – bike and pedestrian facilities – bike and pedestrian facilities candidates list as follows: Bennington – STP WALK () – Streetscape Improvement Project – \$490,000; 100% federal funds available until expended.

* * * Traffic and Safety Operations * * *

Sec. 6. PROGRAM DEVELOPMENT – TRAFFIC AND SAFETY OPERATIONS

The following modifications are made to the program development – traffic and safety operations program:

(1) The agency is authorized to add to the transportation program a signalization project at the east entrance to Fort Ethan Allen on Vermont Route 15 for the primary purpose of providing more direct public transportation service along the Chittenden County Transportation Authority's (CCTA) Essex Junction route subject to the agency's approval of CCTA's innovative financing proposal for construction of the project and concurrent approval and inclusion by the Chittenden County Metropolitan Planning Organization (CCMPO) of the project in the CCMPO's transportation improvement program (TIP). Subject to the project being added to the transportation program, spending on the project is authorized as follows:

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	0	50,000	50,000
ROW	0	0	0
Construction	0	0	0
Other	0	0	0
Total	0	50,000	50,000
<u>Sources of funds</u>			
State	0	0	0
Federal	0	0	0
Local	0	50,000	50,000
Total	0	50,000	50,000

* * * Park & Ride * * *

Sec. 7. PROGRAM DEVELOPMENT – PARK & RIDE

The following modifications are made to the program development park & ride program:

(1) Authorized spending in the municipal park & ride grant program is amended to read:

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	0	0	0
ROW	0	0	0
Construction	250,000	300,000	50,000
Other	0	0	0
Total	250,000	300,000	50,000
<u>Sources of funds</u>			
State	250,000	300,000	50,000
Federal	0	0	0
Local	0	0	0
Total	250,000	300,000	50,000

*** Transportation Buildings ***

Sec. 8. TRANSPORTATION BUILDINGS

The following modifications are made to the transportation buildings program:

(1) Authorized spending of development and evaluation funds on the Essex garage and office project is amended to read:

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	3,000	0	-3,000
ROW	0	0	0
Construction	0	0	0
Other	0	0	0
Total	3,000	0	-3,000
<u>Sources of funds</u>			
State	3,000	0	-3,000
Federal	0	0	0
Local	0	0	0
Total	3,000	0	-3,000

(2) The agency shall report by January 15, 2009 to the house and senate committees on transportation on the agency's plans for the location of maintenance facilities in Chittenden and Addison counties and in the interim shall not advance its current plan for the relocation of the facilities.

* * * Maintenance * * *

Sec. 9. MAINTENANCE

(a) Total authorized spending in the maintenance program is amended as follows:

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Personal Services	32,012,562	32,012,562	0
Operating Expenses	32,156,492	31,686,242	-470,250
Grants	316,020	316,020	0
Total	64,485,074	64,014,824	-470,250
<u>Sources of funds</u>			
State	60,733,558	60,305,808	-427,750
Federal	3,651,516	3,609,016	-42,500
Other	100,000	100,000	0
Total	64,485,074	64,014,824	-470,250

(b) These changes are made to reduce funding for the purchase of temporary bridge parts and to reduce fund in the ITS program. Authorized spending in the ITS program includes support for the installation of RWIS stations along the Interstate 89 corridor between Royalton and Williston.

* * * Aviation * * *

Sec. 10. AVIATION

The following modifications are made to the aviation program:

(1) Authorized spending on the Burlington International Airport Airport program is amended to read:

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	360,000	360,000	0
ROW	900,000	900,000	0
Construction	3,210,000	3,210,000	0
Other	0	0	0
Total	4,470,000	4,470,000	0
<u>Sources of funds</u>			
State	218,200	180,000	-38,200
Federal	4,023,000	4,023,000	0
Local	228,800	267,000	38,200
Total	4,470,000	4,470,000	0

(2) In addition to the change made in subdivision (1) of this section, total authorized spending in the aviation program is reduced by \$100,000 in

transportation funds. The agency shall determine where the reductions are to be made.

*** Bridge Maintenance ***

Sec. 11. BRIDGE MAINTENANCE

The following modifications are made to the bridge maintenance program:

(1) Authorized spending for the purchase of a servi-lift vehicle is amended to read:

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	0	0	0
ROW	0	0	0
Construction	500,000	0	0
Other	0	0	-500,000
Total	500,000	0	0
<u>Sources of funds</u>		0	-500,000
State	500,000		
Federal	0	0	-500,000
Local	0	0	0
Total	500,000	0	0
		0	-500,000

*** Town Bridges ***

Sec. 12. TOWN BRIDGE

The following modifications are made to the town bridge program:

(1) Authorized spending on the Dummerston TH62 West River BHO 1442(28) project is amended to read:

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	0	0	0
ROW	0	0	0
Construction	1,128,000	0	0
Other	0	0	-1,128,000
Total	1,128,000	0	0
<u>Sources of funds</u>		0	-1,128,000
State	225,600		
Federal	902,400	0	-225,600
Local	0	0	-902,400
Total	1,128,000	0	0
		0	-1,128,000

(2) Authorized spending on the Stamford TH14 TH3 9611 project is a

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	34,669	0	-34,669
ROW	48,286	0	-48,286
Construction	0	0	0
Other	0	0	0
Total	82,955	0	-82,955
<u>Sources of funds</u>			
State	74,660	0	-74,660
Federal	0	0	0
Local	8,295	0	-8,295
Total	82,955	0	-82,955

(3) A project to reconstruct the Bridge Street bridge in Morrisville on VT 100 is added to the transportation program.

(4) A project to reconstruct the Ripley bridge on Ripley Road in Rutland City near the intersection of Ripley Road and Dorr Drive is added to the transportation program.

* * * Town Highway Emergency Fund * * *

Sec. 13. TOWN HIGHWAY EMERGENCY FUND

Funding of the town highway emergency fund is amended to read:

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Other	0	312,860	312,860
Total	0	312,860	312,860
<u>Sources of funds</u>			
State	0	312,860	312,860
Federal	0	0	0
Local	0	0	0
Total	0	312,860	312,860

* * * Rail * * *

Sec. 14. RAIL

The following modifications are made to the rail program:

(1) Authorized spending on the three-way partnership program is amended to read as follows. In future budget years, funding for the program shall be limited to the costs of specific projects.

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	0	0	0

ROW	0	0	0
Construction	0	0	0
Other	750,000	45,000	-705,000
Total	750,000	45,000	-705,000
<u>Sources of funds</u>			
State	250,000	15,000	-235,000
Federal	0	0	0
Local	500,000	30,000	-470,000
Total	750,000	45,000	-705,000

(2)(A) Authorized spending for the project to design, permit, and rehabilitate the railroad tunnel under North Avenue (TH3) in Burlington is amended to read as follows:

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	50,000	0	-50,000
ROW	0	0	0
Construction	0	0	0
Other	0	0	0
Total	50,000	1,200,000	1,200,000
<u>Sources of funds</u>			
State	50,000	0	-50,000
Federal	0	960,000	960,000
Local	0	240,000	240,000
Total	50,000	1,200,000	1,150,000

(B) The project shall be advanced to construction as quickly as possible, using western corridor federal earmark funds for the \$960,000 federal share. As a precondition to advancing the project, the tunnel's owner, New England Central Railroad, Inc., must agree to be entirely responsible for the non-federal share as well as for any additional costs that may be incurred to complete the scope of work agreed to in the project agreement.

(C) The agency of transportation shall work with the Federal Highway Administration (FHWA) and the Federal Railroad Administration (FRA) to have federal oversight responsibility for federal earmark funds used for the North Avenue tunnel project transferred from FHWA to FRA.

(D) To replace the federal earmark funding used on the project, the agency is authorized to seek additional federal earmarks for other western corridor projects.

(3) Authorized spending on lease and encroachment management of railroad right-of-way is amended to read:

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Other	350,000	300,000	-50,000
Total	350,000	300,000	-50,000
<u>Sources of funds</u>			
State	350,000	300,000	-50,000
Federal	0	0	0
Local	0	0	0
Total	350,000	300,000	-50,000

(4) Authorized spending on maintenance of railroad buildings is amended to read:

<u>FY09</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Other	175,000	125,000	-50,000
Total	175,000	125,000	-50,000
<u>Sources of funds</u>			
State	175,000	125,000	-50,000
Federal	0	0	0
Local	0	0	0
Total	175,000	125,000	-50,000

* * * Rail Quiet Zones * * *

Sec. 15. RAIL QUIET ZONES

(a) The secretary of the agency shall negotiate and may approve an agreement on behalf of the state with the municipalities of Burlington, South Burlington, and Shelburne to cooperatively administer and fund the maintenance expenses of the quiet zones on the Vermont Railway. Any agreement shall include but not be limited to the following conditions:

(1) The agreement shall take effect in fiscal year 2010;

(2) Subject to availability of appropriated funds, total participation by the state of Vermont shall not exceed 50 percent of the total annual operating costs; and

(3) The agreement will be open to renegotiation in the event that a change in train traffic triggers the need to consider noise mitigation under an applicable federal statute or regulation.

* * * Annual Reports * * *

Sec. 16. 19 V.S.A. § 10c(k) is added to read:

(k) The agency shall by January 15 of each year submit a report on the pavement conditions of the state highway system to the house and senate committees on transportation.

Sec. 17. 19 V.S.A. § 10c(l) is added to read:

(l) The agency shall by January 15 of each year submit a report on the condition of bridges, culverts, and other structures on the state system and town highways to the house and senate committees on transportation.

*** Project Prioritization and Addition of New Projects***

Sec. 18. PROJECT PRIORITIZATION PROCESS AND PROPOSAL OF NEW PROJECTS FOR THE STATE TRANSPORTATION PROGRAM BY REGIONAL PLANNING COMMISSIONS

(a) To better reflect regional economic development, land use, and project priorities, the agency, in cooperation with the regional planning commissions, shall modify the existing project prioritization system to ensure that local input is assigned appropriate weighting in the system.

(b) The agency and the regional planning commissions shall jointly develop and adopt and the agency shall implement a written procedure that allows a regional planning commission to propose that a new project be substituted for an existing project or projects within the same region that are in the state transportation program. The procedure shall:

(1) ensure that the proposed new project for addition to the transportation program and the existing project or projects to be deleted from the program are roughly comparable in cost, using updated cost estimates;

(2) consider for removal from the transportation program only projects that are in candidate status;

(3) describe the project identification requirements and time line requirements that an RPC must satisfy to present the proposed change in the transportation program to the general assembly in a particular fiscal year; and

(4) describe the agency-regional planning commission communication protocols that will apply to the process.

(c) Each year, the agency's proposed transportation program shall include a separate report entitled "RPC Proposals" which shall describe all regional planning commission-proposed changes to the state's transportation program made in accordance with the procedure adopted pursuant to subsection (b) of this section.

(d) The agency and regional planning commissions shall report on the adopted procedure described in subsection (b) of this section and on changes made to the priority system in response to subsection (a) of this section to the committees on transportation by January 15, 2009.

Sec. 19. 19 V.S.A. § 10g(g) is added to read:

(g) The agency's annual transportation program shall include a separate report referencing this section describing all proposed projects in the program which would be new to the state transportation program if adopted.

*** Study of Transportation Bonding Options ***

Sec. 20. STUDY OF TRANSPORTATION BONDING OPTIONS AND
REDUCTION OF USE OF TRANSPORTATION FUNDS IN SUPPORT OF
GENERAL GOVERNMENT

(a) The state treasurer shall select and oversee, pursuant to a public competitive selection process, an investment bank to act as an adviser to the state to develop multiple financing proposals, including general obligation, revenue, and GARVEE bond options, for a program dedicated to assisting in closing the gap between transportation needs and available revenue.

(b) The state treasurer shall issue a report on the funding options available to the state for the purposes stated in subsection (a) of this section to the members of the joint fiscal committee and the capital debt affordability advisory committee. These committees shall meet on or before September 1, 2008 to review the report. Based on the treasurer's report, the joint fiscal office shall prepare for consideration by the joint fiscal committee transportation funding options available to the state which shall include annual reductions in the amount of transportation funds appropriated for general government purposes. On or before October 1, 2008, the joint fiscal committee, in consultation with the capital debt affordability advisory committee, shall make recommendations to the governor for the purpose of advising the governor during the budget preparation process.

*** State-Owned Railroad Property ***

Sec. 21. Sec. 17(e) of No. 175 of the Acts of the 2005 Adj. Sess. (2006) is amended to read:

(e) The authority granted by this section shall expire on June 30, 2009.

*** Central Garage ***

Sec. 22. AGENCY VEHICLE FLEET

Pursuant to 19 V.S.A. § 13(b), the agency of transportation is authorized to add one vehicle to the fleet as follows:

(1) one light duty vehicle for use by the program development division structures section for bridge inspections.

Sec. 23. TRANSFER TO THE CENTRAL GARAGE FUND

Notwithstanding 19 V.S.A. § 13(c), in fiscal year 2009, \$1,120,000.00 shall be transferred from the transportation fund to the central garage fund and allocated to the transportation equipment replacement account within the central garage fund for the purchase of equipment as authorized in 19 V.S.A. § 13(b).

*** Limitation on Use of State Highway Facilities ***

Sec. 24. REPEAL

19 V.S.A. § 21(c) (agency rules for parking) is repealed.

Sec. 25. 23 V.S.A. § 1106 is added to read:

§ 1106. LIMITATIONS ON USE OF STATE HIGHWAY FACILITIES

(a) For purposes of this section, "state highway facility" means a state highway rest area, picnic ground, parking area, or park-and-ride facility.

(b) No person shall enter or remain on any state highway facility for the purpose of overnight camping unless the particular facility has been designated for that purpose by the traffic committee.

(c) The traffic committee, after evaluating function, safety, and transportation mobility at a particular state highway facility, may prohibit persons entering or remaining at the particular facility for the purpose of selling, hiring, or leasing any goods, wares, merchandise or services.

(d) The traffic committee, on the basis of an engineering and traffic investigation or findings as to adverse effects on the quiet enjoyment and property values of people living adjacent to a state highway facility, may designate the size and types of vehicles allowed to park in a state highway facility or in particular areas of a state highway facility.

(e) Notice of the prohibitions under this section shall be posted at the affected facilities by regulatory signs conforming to the manual on uniform traffic control devices.

*** Transportation Fund; Sales Tax on Aviation Jet Fuel ***

Sec. 26. 32 V.S.A. § 9741(7) is amended to read:

(7) Sales of motor fuels taxed or exempted under chapter 28 of Title 23, provided, however, that aviation jet fuel shall be taxed under this chapter with the proceeds to be allocated to the transportation fund in accordance with section 11 of Title 19.

* * * Public Transit Study * * *

Sec. 27. PUBLIC TRANSIT STUDY

(a) Public transit study. Consistent with the goals, findings, and recommendations of the January 15, 2008 legislative report (Sec. 45 of No. 75 of the Acts of 2007) titled "A Study Regarding the Regional Connectivity of Vermont's Public Transit System," the agency of transportation, in cooperation with the joint fiscal office, shall conduct a further study to develop findings and recommendations for improving the efficient and effective delivery of public transit services in Vermont.

(b) Goal of study. The goal of the study is to recommend a governance and funding structure for public transportation that creates the most efficient use of taxpayer funds while simultaneously creating the most efficient system of public transportation services consistent with the statutory policy goals in 24 V.S.A. § 5083. The study shall:

(1) Make use of the data and information generated by the current short-range transit planning process to assess the strengths and weaknesses of the public transit delivery system;

(2) Compare the organizational structure and current service delivery system with those of several other states;

(3) Analyze different possible organizational structures for Vermont that could lower administrative or operating costs and improve service delivery throughout the state.

(c) The agency shall direct the study with the involvement of the agency of human services and of all public transit providers in the state who are direct grantees and sub-recipients of state and federal funds.

(d) Consistent with federal United We Ride initiatives, the study shall consider all federal and state funding invested through or by state and federal agencies on public, human service, and related transportation programs and shall evaluate the potential for achieving greater efficiency through coordination of effort or consolidation of funding and effort.

(e) The study report shall be delivered to the general assembly on or before January 15, 2009.

* * * Larrabee's Point Ferry * * *

Sec. 28. Sec. 1 of No. 59 of the Acts of 1991 is amended to read:

Sec. 1. LARRABEE'S POINT FERRY

(a) Rights granted.

The right and privilege of maintaining and operating a ferry across Lake Champlain from Larrabee's Point in the town of Shoreham, county of Addison and state of Vermont, to the town of Ticonderoga in the state of New York, is granted to ~~Shorewell Ferries, Inc.~~ 1759 Ltd. d/b/a Fort Ticonderoga Ferry, a Vermont corporation having its principal office at Shoreham in the county of Addison, its successors and assigns, for a period of ~~20~~ 45 years from the first day of January, 1991. No person other than ~~Shorewell Ferries, Inc.~~ 1759 Ltd. d/b/a Fort Ticonderoga Ferry, its successors or assigns, may operate a ferry within ten miles north or ten miles south from the ferry landing now in use on Larrabee's Point during such ~~20-year~~ 45-year period. The right and privilege herein granted includes the right to maintain the existing landings.

(b) Conditions.

~~Shorewell Ferries, Inc.~~ 1759 Ltd. d/b/a Fort Ticonderoga Ferry, its successors and assigns, shall be subject to the orders of the transportation board as authorized in Title 5, parts 1 and 3 and shall pay all taxes assessed this franchise and any property of ~~Shorewell Ferries, Inc.~~ 1759 Ltd. d/b/a Fort Ticonderoga Ferry, used in connection with the ferry. If the rights granted under this act are transferred to or acquired by the successors or assigns of ~~Shorewell Ferries, Inc.~~ 1759 Ltd. d/b/a Fort Ticonderoga Ferry, the transfer shall be recorded in the office of the secretary of state.

(c) Forfeiture.

If ~~Shorewell Ferries, Inc.~~ 1759 Ltd. d/b/a Fort Ticonderoga Ferry, its successors or assigns, establishes and operates a ferry under authority of this act, it shall be the duty of ~~Shorewell Ferries, Inc.~~ 1759 Ltd. d/b/a Fort Ticonderoga Ferry, its successors or assigns, as the case may be, to maintain suitable and safe ferryboats, sufficient for carrying and transporting motor and other vehicles, horses, cattle, passengers, and goods, and to operate ferry service at reasonable and seasonal times as required by the transportation board, but in no event shall the transportation board require the ferry to be operated prior to May 15 or after November 15 in any calendar year. Failure to comply with any order of the transportation board, or to pay any tax lawfully assessed against the franchise or against property of ~~Shorewell Ferries, Inc.~~ 1759 Ltd. d/b/a Fort Ticonderoga Ferry, its successors or assigns, owned or used in connection with the franchise, shall work a forfeiture of the rights and privileges granted under this act.

(d) Investments made.

All investments made by 1759 Ltd. d/b/a Fort Ticonderoga Ferry into the ferry service shall be reported to the agency of transportation, upon request, to obtain appropriate toll credits.

*** * * Highway Maintenance Vehicles—Right-of-Way * * ***

Sec. 29. 23 V.S.A. § 1050a is added to read:

§ 1050a. AUTHORIZED HIGHWAY MAINTENANCE VEHICLES

(a) For purposes of this section, "authorized vehicle" means a vehicle authorized by the agency of transportation (in the case of state highways) or the municipality (in the case of town highways) to perform maintenance on a highway.

(b) The driver of a vehicle shall yield the right-of-way to any authorized vehicle obviously and actually engaged in work upon a highway when the vehicle displays flashing lights meeting the requirements of subsection 1252(b) of this title.

*** * * Vermont Coordinate System * * ***

Sec. 30. 1 V.S.A. § 671 is amended to read:

§ 671. VERMONT COORDINATE SYSTEMS DEFINED

The systems of plane coordinates which have been established by the National Ocean Service/National Geodetic Survey (formerly the United States Coast and Geodetic Survey) or its successors for defining and stating the horizontal positions or locations of points on the surface of the earth within the state of Vermont are hereafter to be known and designated as the "Vermont Coordinate System 1927 and the Vermont Coordinate System 1983." The term "Vermont Coordinate System" is synonymous with the term "Vermont State Plane Coordinate System."

Sec. 31. 1 V.S.A. § 672 is amended to read:

§ 672. COORDINATES DEFINED

The plane coordinate values for a point on the earth's surface, used to express the horizontal position or location of such point on the Vermont Coordinate Systems, shall consist of two distances, expressed in U.S. Survey feet and decimals of a foot when using the Vermont Coordinate System 1927 and expressed in meters and decimals of a meter, or U.S. Survey feet and decimals of a foot when using the Vermont Coordinate System 1983. One of these distances, to be known as the "x-coordinate," shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate," shall

give the position in a north-and-south direction. These coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monumented points of the ~~North American Horizontal Geodetic Control Network~~ National Spatial Reference System established by the United States Coast and Geodetic Survey, its predecessor, or its successors.

*** Railroad Vandalism Prevention ***

Sec. 32. 13 V.S.A. § 3110 is added to read:

§ 3110. RAILROAD VANDALISM

(a) Purpose. The purpose of this section is to prevent acts of vandalism to railroad property which affect the health, safety, and welfare of the traveling public, the neighboring community, and railroad employees; to protect railroad property and freight in transportation by railroad; and otherwise to enhance the safety of transportation by railroad.

(b) Definitions. For purposes of this section:

(1) "Bodily injury" shall have the same meaning as in subdivision 1021(1) of this title.

(2) "Railroad" means any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including:

(A) commuter or other short-haul railroad passenger service in a metropolitan or suburban area; and

(B) high-speed ground transportation systems that connect metropolitan areas, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(3) "Railroad carrier" means a person providing railroad transportation.

(4) "Railroad property" means all property owned, leased, or operated by a railroad carrier, including a right-of-way, track, bridge, yard, shop, station, tunnel, viaduct, trestle, depot, warehouse, terminal, railroad signal system, train control system, centralized dispatching system, or any other structure, appurtenance, or equipment owned, leased, or used in the operation of any railroad carrier, including a train, locomotive, engine, rail car, work equipment, rolling stock, or safety device. "Railroad property" does not include administrative buildings, administrative offices, or administrative office equipment.

(5) "Right-of-way" means the track or roadbed owned, leased, or operated by a railroad carrier which is located on either side of its tracks and

which is readily recognizable to a reasonable person as being railroad property or is reasonably identified as such by fencing or appropriate signs.

(6) "Serious bodily injury" shall have the same meaning as in subdivision 1021(2) of this title.

(c) Vandalism of railroad property. No person shall, with reckless disregard for railroad property or the safety of another, commit an act which causes damage to railroad property.

(d) Penalty for vandalism of railroad property.

(1) A person who violates subsection (c) of this section shall be fined not more than \$500.00 or imprisoned for not more than six months, or both, if the violation results in property damage of \$900.00 or less.

(2) A person who violates subsection (c) of this section shall be fined not more than \$1,000.00 or imprisoned for not more than one year, or both, if the violation results in bodily injury to another person or property damage of greater than \$900.00.

(3) A person who violates subsection (c) of this section shall be fined not more than \$20,000.00 or imprisoned for not more than 15 years, or both, if the violation results in death or serious bodily injury to another person.

(e) Aggravated railroad vandalism. A person who intentionally causes damage to railroad property which results in death or serious bodily injury to another person shall be guilty of aggravated railroad vandalism.

(f) Penalty for aggravated railroad vandalism. A person who violates subsection (e) of this section shall be fined not more than \$25,000.00 or imprisoned for not more than 15 years, or both.

(g) If serious bodily injury or death results to more than one person other than the defendant as a result of a violation of this section, the defendant may be convicted of a separate violation of this section for each decedent or person injured.

Sec. 33. REPEALS

(1) 13 V.S.A. §§ 3101-3104 are repealed (railroad crimes).

(2) 5 V.S.A. § 3733 is repealed (damage to mills, dams and bridges).

* * * Bennington Rail Banking Project * * *

Sec. 34. BENNINGTON RAIL BANKING PROJECT

The Bennington rail banking project, of which the project Bennington STP Bike (26) is a portion, is authorized pursuant to the following conditions:

(1) Subject to Surface Transportation Board and Vermont Railway, Inc. approval, the rail banking shall commence at a point south of the VT 7A underpass, but not south of valuation station 3103+00 of which is located 1,700 feet south of the VT 7A underpass, and extend southerly to the terminus of the railroad in Bennington.

(2) A runaround track shall be constructed as part of the bike path project north of valuation station 3103+00 when project Bennington STP Bike (26) is constructed.

(3) The town of Bennington shall be responsible for:

(A) all fees and expenses incurred as part of the STB rail banking proceedings;

(B) all costs associated with the removal and proper disposal of the rails and ties with the town retaining the entire salvage value of the rails and ties; and

(C) after the rails and ties have been removed, all costs associated with grading the rail bed to a uniform grade in a neat appearance, allowing for proper drainage of the rail bed.

(4) where feasible and with the approval of the Vermont Railway, Inc., a portion of the railroad right-of-way between valuation station 3103+00 and VT 7A may be used for a transportation path provided it does not interfere with railroad operations.

*** School Bus Exemption for School Employees and Volunteers ***

Sec. 35. 23 V.S.A. § 4(34)(A)(iv) is amended to read:

(iv) motor vehicles with a manufacturer's rated seating capacity of fewer than 11 persons, including the operator, which are owned, leased, or hired by a school, or for which services are reimbursed by a school. However, if used to transport students, these shall be considered a Type II school bus for purposes of licensure, shall display an identification sign as prescribed in subdivision 1283(a)(1) of this title, and shall be equipped with a simple system of at least two red alternating warning lights; unless the driver is a school employee or a volunteer approved by the school or a regional public transit agency after a criminal background check, and is transporting no more than four students excluding the operator, provided that the vehicle has seat belts for all persons being transported;

*** Public Transportation System Integrity ***

Sec. 36. PUBLIC TRANSPORTATION SYSTEM INTEGRITY

(a) Notwithstanding any other law to the contrary, the agency of transportation is authorized, first, to spend up to \$100,000.00 in federal funds from the Public Transit Program – Statewide Encouragement of Carpools (STP RIDE) program and, second, to spend up to \$350,000.00 in funds (\$315,000.00 federal funds and \$35,000.00 state funds) from the Public Transit Program – Statewide Capital to make grant awards to subrecipients and other public transportation providers for the purpose of maintaining existing public transportation services statewide.

(b) To help the agency of transportation determine whether increased costs are likely to trigger service reductions in the statewide system of general public transportation services, each public transportation provider, by May 31, 2008, shall provide the agency of transportation with an estimate of its projected budget deficit, if any, for fiscal year 2009, assuming continuation of the services in existence upon passage of this act. Each projected budget deficit estimate shall be the difference in the amount between revenues budgeted by the provider agency in a board-approved budget and the expenses now necessary to incur to maintain current service levels. Public transportation providers shall inform the agency of transportation of the per-gallon fuel price used to determine operating expenses, their capacity to use preventive maintenance funding to maintain existing levels of service, as well as any other information that the agency of transportation may deem necessary to conduct its analysis.

(c) The agency of transportation in making grant awards under this section shall mitigate to the greatest extent practicable loss of general public transportation services. In addition, the agency of transportation shall provide for an equitable geographic distribution of funds statewide, if possible, depending upon each provider's ability to utilize preventive maintenance funding.

(d) Any funding not needed to maintain existing services shall remain in the capital program.

(e) As early as practicable, the agency of transportation shall issue a report to the joint transportation oversight committee established under 19 V.S.A. § 12b(a) regarding grant awards made under this section.

* * * Transportation Funds in Support of General Government * * *

Sec. 37. 19 V.S.A. § 11a is amended to read:

§ 11a. TRANSPORTATION FUNDS APPROPRIATED FOR SUPPORT OF GOVERNMENT

The maximum amount of transportation funds that may be appropriated for

the support of government, other than for the agency of transportation, the transportation board, transportation pay act funds, construction of transportation capital facilities used by the agency of transportation, and transportation debt service shall not exceed \$35,007,219 \$35,007,219.00 in fiscal year 2008 and in fiscal year 2009 and thereafter shall not exceed \$32,852,807.00.

* * * Recycled Asphalt Pavement * * *

Sec. 38. 19 V.S.A. § 10c(m) is added to read:

(m) Recycled asphalt pavement (RAP) shall be used on all agency paving projects to the extent sources of quality RAP are available consistent with producing quality hot mix asphalt. To that extent, the agency shall define paving project specifications and contract bid documents to allow the use of up to 50 percent RAP. The agency shall compare the cost-benefit of the state retaining the RAP versus the contractor retaining the RAP, and the agency shall report to the house and senate committees on transportation on the results of the comparison of the 2009 and 2010 legislative sessions.

* * * Smugglers Notch * * *

Sec. 39. 23 V.S.A. § 1006b is amended to read:

§ 1006b. SMUGGLERS NOTCH; WINTER CLOSURE OF VERMONT ROUTE 108

~~The agency of transportation may close the Smugglers Notch segment of Vermont Route 108 during periods of winter weather. To enforce the winter closure, the agency shall erect a lockable gate at both closure points, extending the width of the highway, posted with signs advising that the highway is closed and that traveling on the highway when it is closed is a violation of the motor vehicle laws of the state. Notwithstanding any law to the contrary, if the highway is officially closed but the gates at both closure points are not in a locked position across the highway, no ticket or any other form of summons and notice of a motor vehicle violation shall be issued to motorists driving on the closed portion of the highway signs conforming to the standards established by section 1025 of this title.~~

Sec. 40. SUPPLEMENTARY MEASURES; RECREATIONAL AND EMERGENCY ACCESS

To preclude unauthorized access by motor vehicles to the Smugglers Notch segment of Vermont Route 108 when it is closed during periods of winter weather, the agency of transportation shall develop and implement a plan by December 15, 2008 to provide for installation of physical barriers and

supplementary signage. The plan shall provide for the continued accommodation of recreational and emergency access.

*** State Rail Trails ***

Sec. 41. STATE MAINTAINED RAIL TRAILS

The agency shall report to the house and senate committees on transportation by January 15, 2009 on a funding and management plan for all rail trails that are owned and maintained by the agency.

*** Repeal of Miscellaneous Reporting Requirements ***

Sec. 42. SESSION LAW REPEALS

The following provisions of session law are repealed:

(1) Sec. 2(a) of No. 144 of (1998) of the Acts of the 1997 Adj. Sess. (report on changes in the scheduling of projects in the transportation capital program or project development plan).

(2) Sec. 3(a) of No. 18 of 1999 (report on changes in the scheduling of projects in the transportation capital program or project development plan).

(3) Sec. 3(a) of No. 156 of (2000) the Acts of the 1999 Adj. Sess. (report on changes in the scheduling of projects in the transportation capital program or project development plan).

(4) Sec. 48(c) of No. 80 of 2005 (report on the status of Connecticut River bridge projects).

(5) Sec. 20 of No. 175 of (2006) the Acts of the 2005 Adj. Sess. (report on purchase of equipment for Amtrak).

(6) Sec. 50 of No. 175 of (2006) of the Acts of the 2005 Adj. Sess. (report on collection of town bridge and culvert inventory data).

Sec. 43. TITLE 19 REPEALS

The following provisions of Title 19 are repealed:

(1) § 10g(d)(1) (analysis of balance between the state's commitment to transportation projects and total available resources over the 10-year period commencing with the fiscal year of the transportation program).

(2) § 10g(e) (separate report regarding certain projects with cost estimates exceeding \$5 million).

Sec. 44. TITLE 23 REPEALS

The following provisions of Title 23 are repealed:

(1) § 304b(a) (report regarding conservation motor vehicle registration plates).

(2) § 1042(d) (report on municipal truck routes).

(3) § 1803(k) (annual report of Vehicle Equipment Safety Commission).

Sec. 45. TITLE 32 REPEAL

32 V.S.A. § 706(4) (report on transfers of appropriation balances within the agency of transportation) is repealed:

* * * Aggregate Sources * * *

Sec. 46. AGGREGATE SOURCES

The agency of transportation shall coordinate with the agency of natural resources to investigate the potential for prepermitting new state aggregate sources, including the temporary installation of portable asphalt pavement plants associated with transportation resurfacing projects. The agency's director of program development shall brief the house and senate committees on transportation on the outcome of the evaluation during testimony on the fiscal year 2010 budget.

* * * Addison-Crown Point, NY Bridge * * *

Sec. 47. ADDISON-CROWN POINT, NY BRIDGE

Before entering into any agreement with the New York state department of transportation regarding replacement or rehabilitation of the bridge over Lake Champlain between Addison, VT and Crown Point, NY, the agency of transportation shall ensure that the agreement provides for thorough consideration of alternative transportation options, including replacement of the bridge with a ferry.

* * * Truck Annual Permit Pilot Project * * *

Sec. 48. 23 V.S.A. § 1402(e) is added to read:

(e) Pilot project allowing annual permits for low bed trailers.

(1) The commissioner may issue an annual permit to allow the transportation of a so-called "low-bed" trailer. A "low-bed" trailer is defined as a trailer manufactured for the primary purpose of carrying heavy equipment on a flat-surfaced deck, which deck is at a height equal to or lower than the top of the rear axle group.

(2) A blanket permit may be obtained for an annual fee of \$250.00 per unit, provided the total vehicle length does not exceed 75 feet, does not exceed

a loaded width of 12'6", does not exceed a total weight of 108,000 lbs., and has a height not exceeding 14 feet.

(3) Warning signs and flags shall be required if the vehicle exceeds 75 feet in length, or exceeds 8'6" in width.

(4) This subsection shall expire on June 30, 2010. No later than January 15, 2010, the department of motor vehicles, after consultation with the agency of transportation, Vermont League of Cities and Towns, and Vermont Truck and Bus Association, shall report to the house and senate committees on transportation on the results of this two year pilot project. The report shall include recommendations on extending this provision on low bed trailers, as well as other recommendations relating to longer vehicle lengths.

*** Vermont Truck Network ***

Sec. 49. 23 V.S.A. § 1432(c) is amended to read:

(c) The truck network. The truck network shall consist of the following: U.S. Route 2 between the New Hampshire state line and the junction of U.S. Route 5; U.S. Route 2 from the junction of exit 21 on I-91 to exit 8 on Interstate 89; U.S. Route 2 between the New York state line and VT Route 78; VT Route 2A; U.S. Route 4 from the New York state line to the junction of VT Route 100 south; VT Route 279 from the New York state line to the junction of U.S. Route 7; U.S. Route 5 from the junction of U.S. Route 2 to the junction of exit 20 of I-91; U.S. Route 5 between I-91 at exit 22 to the south entrance of the St. Johnsbury-Lyndonville industrial park; U.S. Route 5 south from I-91 at exit 22 to the intersection of St. Johnsbury Railroad Street and Hastings Hill Street; U.S. Route 7; VT Route 9 from the New York state line to the junction of exit 2 on I-91; VT Route 9 from the junction of exit 3 on I-91 to the New Hampshire state line; VT Route 18 from U.S. Route 2 to the New Hampshire state line; VT Route 22A between U.S. Route 4 and U.S. Route 7; VT Route 78; VT Route 103; VT Route 105 from the junction of U.S. Route 7 to the junction of VT Route 100, then southerly on VT Route 100 to the junction of VT Route 100 and VT Route 14, then easterly on VT Route 14 to the junction of VT Route 14 and U.S. Route 5, then northerly on U.S. Route 5 to the junction of U.S. Route 5 and VT Route 105, then easterly on VT Route 105 from the junction of U.S. Route 5 to the New Hampshire border; VT Route 104 from VT Route 105 to I-89 at exit 19; VT Route 253 from the New Hampshire border to the Canadian border; VT Route 289; and U.S. Route 302. The commissioner is authorized to place special restrictions applying to motor vehicles on any route of the truck network when, in his or her opinion, the restrictions would provide for the safe operation of all vehicles on the route.

*** Enhancement Grants ***

Sec. 50. TRANSPORTATION ENHANCEMENT GRANTS

Notwithstanding 19 V.S.A. § 38(e), no new awards will be made under the transportation enhancement grant program during federal fiscal year 2009. The agency shall advise towns and other potential applicants of the one-year suspension.

* * * Authority to Purchase Amtrak Equipment * * *

Sec. 51. Sec. 44 of No. 75 of the Acts of 2007 is amended as follows:

Sec. 44. LEGISLATIVE APPROVAL FOR PURCHASE OF EQUIPMENT FOR AMTRAK VERMONT SERVICE

(a) Pursuant to Sec. 20 of No. 175 of the Acts of the 2005 Adj. Sess. (2006), the general assembly approves the state of Vermont's purchase, through the agency of transportation, of five Colorado Rail Car units, consisting of three motorized units and two passenger cars.

(b) This approval is subject to the following conditions:

(1) Financing for the demonstration project must be available under the Railroad Rehabilitation & Improvement Financing (RRIF) loan program administered by the Federal Railroad Administration (FRA).

(2) The Diesel Multiple Unit (DMU) equipment selected by Amtrak through a competitive procurement process in 2003 must be utilized.

(3) The purchase contract with the DMU vendor shall include an option to purchase future equipment, with pricing protections.

(4) The DMU equipment must meet or exceed current Federal Railroad Administration (FRA) structural safety requirements.

(5) The DMU equipment must comply with accessibility standards under the Americans with Disabilities Act (ADA).

(6) The vendor of the DMU equipment must agree, should the state of Vermont determine that the demonstration project is unsuccessful, to act as the state's agent to sell the DMU equipment at a minimum of 90 percent of the purchase price and, should the DMU equipment not sell within one year, to purchase the DMU equipment back at 90 percent of the purchase price. The stipulation in the vendor contract related to the equipment buyback must be reviewed by the state treasurer as containing satisfactory protection for the state's financial interest related to the state indebtedness limits.

~~(7) The contract for construction and purchase of the DMU equipment must be approved by the state treasurer and the attorney general as including sufficient guarantees to assure successful manufacture and delivery of the~~

~~DMU equipment, as well as performance of the vendor's undertakings to sell or buy back the DMU equipment, should the state determine that the demonstration project is unsuccessful.~~

(8) Any agreements between the state of Vermont and Amtrak or the FRA must be flexible enough to permit redeployment of the DMU equipment in the event of the reconfiguration of Amtrak service to Vermont.

* * * Report on Diesel Tax Exemption * * *

Sec. 52. REPORT ON MOTOR BUS EXEMPTION FROM DIESEL TAX

The joint fiscal office shall analyze and report by January 15, 2009 to the house and senate committees on transportation on the transportation fund revenue implications of amending the diesel tax to eliminate the exemption for motor buses. The report shall specifically consider the revenue implications of amending 23 V.S.A. § 3003(d) to read:

"§ 3003. IMPOSITION OF TAX; EXCEPTIONS

* * *

(d)(1) For users, the following uses shall be exempt from taxation under this chapter and be entitled to a credit for any tax paid for such uses under section 3020 of this title:

(A) uses, the taxation of which would be precluded by the laws and Constitution of the United States and this state;

(B) uses for agricultural purposes not conducted on the highways of the state;

(C) uses by any state, municipal, school district, fire district or other governmentally owned vehicles for official purposes;

(D) uses by any vehicle off the highways of the state; and

(E) ~~uses by motor buses registered in this state; and~~

~~(F)~~ uses by any vehicle registered as a farm truck under subsection 367(f) of this title.

(2) Provided, however, that no tax shall be due with respect to fuel for use in any state, municipal, school district, fire district or other governmentally owned vehicle owned, leased, or contracted for other than single-trip use by a government entity, as long as the distributor takes from the purchaser at the time of sale an exemption certificate in the form prescribed by the commissioner; and provided,

further, that no tax shall be due with respect to fuel delivered for farm use to a farm bulk fuel storage tank.

* * *

* * * Railroad Farm Crossings * * *

Sec. 53. 5 V.S.A. § 3456 is amended to read:

§ 3456. JURISDICTION

Without affecting special provisions of law relating to matters contained herein, the board shall have jurisdiction on due notice to hear, determine, render judgment, and make orders and decrees in all matters provided for in the charter of any railroad, or in the statutes of this state relating to railroads, and shall have like jurisdiction in all matters respecting:

* * *

(3) The construction and maintenance of proper fences, cattle guards and, farm crossings, and rural crossings;

* * *

Sec. 54. 5 V.S.A. § 3639 is amended to read:

§ 3639. FARM CROSSINGS AND CATTLE GUARDS; CONSTRUCTION AND MAINTENANCE

(a) For the purposes of this subchapter, "farm crossing" means a railroad crossing that is utilized exclusively as access to and from adjoining property which is actively used for farming including one residence of the farmer or farm family, or residence of a farm employee or employee family when the housing is owned by the farmer, and the resident is directly involved in the day-to-day operation of the farm.

(b) A crossing that does not completely meet the criteria for a "farm crossing" as set forth in subsection (a) of this section nor the criteria for a rural crossing as set forth in section 3639a of this title shall be deemed a private crossing. The owner of property accessed by a private crossing shall be liable for the total costs associated with construction, upgrade, and maintenance of the crossing as well as securing and maintaining liability insurance.

(c)(1) For the purposes of this subchapter, "farming" shall mean any of the following activities that, by themselves or together, amount to a minimum of 50 percent of the use of the land served by the farm crossing:

(A) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, horticultural and orchard crops, or forest products;
or

(B) the raising, feeding, or management of livestock, poultry, fish, or bees; or

(C) the operation of greenhouses; or

(D) the production of maple syrup; or

(E) the on-site storage, preparation, and wholesale of agricultural products principally produced on the farm; or

(F) the on-site production of fuel or power from agricultural products or wastes produced on the farm.

(2) Farming shall not include retail and other activities which involve use of a crossing by the general public, including but not limited to farm stands, pick-your-own operations, and cut-your-own operations.

(d)(1) A person or corporation owning or operating a railroad shall construct and maintain farm crossings of the road ~~railroad~~ for the use of the proprietors of accommodation of farming on lands adjoining the railroad; and, If livestock are kept on those adjoining lands, the railroad shall provide cattle guards or gates at all farm and road ~~highway~~ crossings sufficient to prevent cattle and animals from getting on the railroad. A farm crossing may be temporarily or permanently closed or discontinued by mutual agreement between all parties having an interest therein. If no such mutual agreement can be reached by such interested parties, then a person or corporation owning or operating a railroad and desiring to close any farm crossing shall make application to the transportation board. The board shall thereupon give notice to all parties interested, in such manner as the board may direct, of hearing on such application, such hearing to be in the county where such crossing is located. After such hearing, a person or corporation owning or operating a railroad shall not close such farm crossing without the approval of the transportation board. A person aggrieved by the closing of a farm crossing after January 1, 1955, by a person or corporation owning or operating a railroad may notify the transportation board by registered or certified mail of such closing, and thereupon such board shall conduct a hearing. Notice and place of hearing shall be as hereinbefore provided. The transportation board may require the reopening of any such crossing and make such other order as is permitted in section 3649 of this title. At any such hearing the burden of proof shall rest with the person or persons effecting or seeking to effect the closing of such farm crossing. Any person aggrieved by an order of the transportation board may, in accordance with Rule 75 of the Vermont Rules of Civil Procedure, appeal to the superior court, whereupon such cause shall be tried as an original action brought under the provisions of section 402 of Title 12. The railroad shall file for record notice of the existence of the farm

crossing maintained by the railroad in the clerk's office of the town where the crossing is located.

(2) In the event that a farmer significantly increases actual use of a farm crossing, either temporarily or permanently, the farmer shall notify the railroad of the nature, scope, and duration of the increase prior to the increase so as to give the railroad sufficient time to alert its train crews operating a train over the crossing of the increase in use. Where the nature, scope, and duration of the increase in use is such that an upgrade is necessary, the railroad shall pay the first \$2,500.00 of the cost, three-fourths of the cost between \$2,500.00 and \$5,000.00, one-half of the cost from \$5,000.00 to \$10,000.00, and the farmer shall pay all of the cost of the upgrade over \$10,000.00. Where the railroad and the farmer cannot come to mutual agreement over the necessary upgrade and the cost of the upgrade, application shall be made to the transportation board pursuant to section 3639b of this title. A railroad shall be notified by the farmer of a crossing whenever a farm crossing that has not been permanently closed is again being used.

~~(b) A person or railroad corporation closing any farm crossing in violation of a provision of this section or failing to comply with any such order shall be fined not less than \$50.00 nor more than \$500.00 and any person aggrieved by such violation may recover his or her damages in an action on this statute.~~

Sec. 55. 5 V.S.A. § 3639a is added to read:

§ 3639a. RURAL CROSSINGS

(a) For purposes of this section, a "rural crossing" is a crossing that:

- (1) Was a farm crossing in existence on January 1, 1955;
- (2) Has not been authorized for closure by mutual agreement of the parties or by an order of the public service board or the transportation board;
- (3) Is no longer used for the accommodation of farming as defined in section 3639 of this title;
- (4) Is not the subject of a private crossing agreement between the railroad and the owner of the land accommodated by the crossing; and
- (5) Has not been laid out as a town or state highway.

(b) Notwithstanding section 3425 of this title, a railroad shall maintain rural crossings to accommodate the historic uses of the crossings as they existed for 15 or more years prior to January 1, 2008. The railroad shall file for record notice of the existence of the rural crossing maintained by the railroad in the clerk's office of the town where the crossing is located. However, a railroad